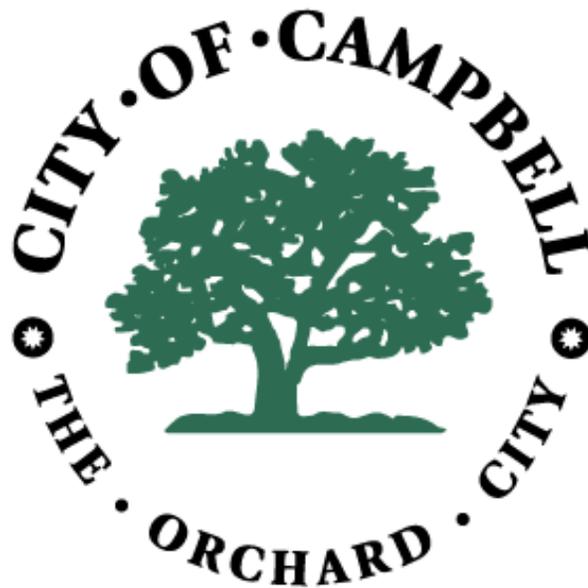


**CITY OF CAMPBELL
STANDARD SPECIFICATIONS**

GENERAL PROVISIONS



MARCH 2022

PUBLIC WORKS DEPARTMENT

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FOREWORD

CITY OF CAMPBELL SPECIFICATIONS UPDATE TO THE GENERAL PROVISIONS FOR PUBLIC WORKS CONSTRUCTION

This March 2022 edition of the General Provisions to the City of Campbell Standard Specifications for Public Works Construction and the amendments contained therein as noted in the General Provisions Revision Log found in said document, issued by the Department of Public Works, is a complete revision of and supersedes the previous publication entitled “City of Campbell Standard Specifications and Details for Public Works Construction, dated July 1994 – GENERAL PROVISION SECTIONS 1-9” only. This March 2022 edition of the General Provisions herein now referred to as the “CCSS-GP” also references the latest updates to the following Codes: Campbell Municipal Code as well as the State of California’s Civil Code, Public Contract Code, Business and Professions Code, Labor Code, Government Code, Code of Civil Procedure, Vehicle Code, and Health and Safety Code.

The Technical Provisions of the City of Campbell Standard Specifications and Details for Public Works Construction, Technical Specifications (CCSS) dated July 1994 are still valid and incorporates by reference the City of San Jose Standard Specifications, July 1992 (SJSS) and Standard Details, July 1992 (SJSP). In turn, by reference, the SJSS incorporates by reference much of the State of California’s Standard Specifications (SS) and Standard Plans (SP), and the American Public Works Association Standard Specifications for Public Works Construction, 1991 (Green Book). Portions of each of these documents will be necessary for construction within the City of Campbell.

The CCSS includes modifications to the SJSS. Any contract modifications to the CCSS are as noted in the Contract Documents.

It is the duty of the bidder, developer, Contractor, and/or Consultant to follow the CCSS-GP (including the appropriate Codes referenced therein) and CCSS and determine the appropriate Technical Specification Sections and Standard Details of the SJSS, SJSP, SS, SP and Green Book that may apply.

CITY OF CAMPBELL

GENERAL PROVISIONS

SECTION 1: ABBREVIATIONS AND DEFINITIONS

Unless the context otherwise requires, wherever in the Standard Specifications and other Contract Documents the following abbreviations and terms are used, the intent and meaning shall be interpreted as provided in this Section 1.

1.01 Abbreviations

Abbreviation	Meaning
AAN	American Association of Nurserymen
AASHTO	American Association of State Highway and Transportation Officials
AB	Aggregate Base
AC	Asphalt Concrete
ACI	American Concrete Institute
ADL	Aerially Deposited Lead
AIA	American Institute of Architects
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
AMA	Archaeological Monitoring Area
ANSI	American National Standards Institute
APCD	Air Pollution Control District
APHA	American Public Health Association
API	American Petroleum Institute
APWA	American Public Works Association
AREMA	American Railway Engineering and Maintenance-of-Way Association
AQMD	Air Quality Management District
AS	Aggregate Subbase
ASA	American Standards Association
ASCE	American Society of Civil Engineers
ASHVE	American Society of Heating & Ventilating Engineers
ASLA	American Society of Landscape Architects
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
ASQ	American Society for Quality
ATPB	Asphalt Treated Permeable Base
ATS	Active Treatment System
AWG	American Wire Gauge
AWPA	American Wood Protection Association
AWS ^a	American Welding Society
AWWA	American Water Works Association
AWIS	Automated Work Zone Information System
BBS	Battery Backup System
BNSF	Burlington Northern Santa Fe
Cal/OSHA	California Division of Occupational Safety and Health Administration
CBC	California Building Code

CCSS	City of Campbell Standard Specifications and Details for Public Works
CDPH	California Department of Public Health
CIDH	Cast-In-Drilled-Hole
CIH	Certified Industrial Hygienist
CIP	Cast In Place
CISS	Cast-In-Steel-Shell
CJP	Complete Joint Penetration
CMU	Concrete Masonry Unit
CPM	Critical Path Method
CPL	Composite Plastic Lumber
CPRA	California Public Records Act
CRCP	Continuously Reinforced Concrete Pavement
CRM	Crumb Rubber Modifier
CSL	Crosshole Sonic Logging
CSS	Cement Stabilized Soil
CTB	Cement Treated Base
CTPB	Cement Treated Permeable Base
CVN	Charpy V-Notch
CWI	AWS Certified Welding Inspector
DBE	Disadvantaged Business Enterprise
DFEH	California Department of Fair Employment and Housing
DIR	California Department of Industrial Relations
DRA	Dispute Resolution Advisor
DRB	Dispute Resolution Board
DTSC	Department of Toxic Substances Control
DVBE	Disabled Veteran Business Enterprise
ECTC	Erosion Control Technology Council
EEI	Electrical Engineers Institute
EIA/ECIA	Electronic Industries Alliance/Electronic Components Industry Association
ELAP	Environmental Laboratory Accreditation Program
ESA	Environmentally Sensitive Area
ETL	Electrical Testing Laboratories
FAA	Federal Aviation Administration
fc	extreme fiber compressive stress in concrete at service loads
f _c	compressive strength of concrete
FHWA	Federal Highway Administration
FDR	Full Depth Reclamation
GAAP	Generally Accepted Accounting Principles
GGBFS	Ground Granulated Blast Furnace Slag; slag cement
GGL	Gamma-Gamma Logging
GSP	Galvanized Steel Pipe
HMA	Hot Mix Asphalt
HMA-O	Hot Mix Asphalt (open graded)
HS	High Strength
ICC	International Code Council
ICEA	Insulated Cable Engineers Association
IES	Illuminating Engineers Society
IMSA	International Municipal Signal Association
ITE	Institute of Transportation Engineers
IEEE	Institute of Electrical and Electronics Engineers
JMF	Job Mix Formula
JPCP	Jointed Plain Concrete Pavement
KSF	Kips per Square Foot

KSI	Kips per Square Inch
LCB	Lean Concrete Base
LCS	Caltrans Lane Closure System
LEED	Leadership in Energy and Environmental Design
LTDS	Long Term Design Strength
MC	Medium Curing
METS	Caltrans Materials Engineering and Testing Services
MPI	Master Painters Institute
MPQP	Material Plant Quality Program published by Caltrans
MR	Movement Rating
MSDS	Material Safety Data Sheet
MT	Magnetic Particle Testing
MUTCD	California Manual on Uniform Traffic Control Devices
NAL	Numeric Action Level
NDT	Non-Destructive Testing
NEL	Numeric Effluent Limitation
NETA	International Electrical Testing Association
NEC	National Electrical Code
NEMA	National Electrical Manufacturers Association
NFPA	National Fire Protection Association
NMAS	Nominal Maximum Aggregate Size
NPDES	National Pollutant Discharge Elimination System
NPT	National Pipe Thread Taper
NRTL	Nationally Recognized Testing Laboratory
NTU	Nephelometric Turbidity Unit
OBC	Optimum Binder Content
OGFC	Open Graded Friction Course
OSD	Offices of Structure Design
PLAC	Permit License Agreement Certification
PC	Pre-Cast
PCC	Portland Cement Concrete
PCF	Pounds per Cubic Foot
PCMS	Portable Changeable Message Sign
PG	Performance Grade
PJP	Partial Joint Penetration
POC	Pedestrian Overcrossing
PQR	Procedure Qualification Record
PS	Pre-Stressed
PSF	Pedestrian Signal Face
PUC	Public Utilities Commission
PV	Programmed Visibility
QAP	Quality Assurance Program
QSD	Qualified SWPPP Developer
QSP	Qualified SWPPP Practitioner
RAP	Reclaimed Asphalt Pavement
RCSC	Research Council on Structural Connections
REA	Rural Electrification Administration
RECP	Rolled Erosion Control Product
RFI	Request for Information
RHMA	Rubberized Hot Mix Asphalt
RHMA-G	Rubberized Hot Mix Asphalt (gap graded)
RHMA-O	Rubberized Hot Mix Asphalt (open graded)
RHMA-O-HB	Rubberized Hot Mix Asphalt (open graded high binder)

RPL	Recycled Plastic Lumber
RSC	Rapid Strength Concrete
RSP	Rock Slope Protection
RSS	Revised Standard Specifications
RT	Radiographic Testing
RWQCB	Regional Water Quality control board
SMSA	Standard Metropolitan Statistical Area
SC	Slow Curing
SCC	Self-Consolidating Concrete
SCM	Supplementary Cementitious Material
SDS	Safety Data Sheet
SS	Caltrans Standard Specifications
SSPC	The Society for Protective Coatings
SWPPP	Stormwater Pollution Prevention Plan
SWRCB	State Water Resources Control Board
TEES	Transportation Electrical Equipment Specifications
TIA	Telecommunications Industry Association; time impact analysis
TRO	Time-Related Overhead
TV	Target Value
UBC	Uniform Building Code
UFFA	Ultra Fine Fly Ash
UL	Underwriters Laboratories, Inc
USC	United States Code
USLE	Universal Soil Loss Equation
USM	Unidentified Stock Material
UT	Ultrasonic Testing
VECP	Value Engineering Change Proposal
VFD	Variable-Frequency Drive
VPM	Volts Per Mil
WMA	Warm Mix Asphalt
WPC	Water Pollution Control
WPCP	Water Pollution Control Plan
WPS	Welding Procedure Specification
WQO	Water Quality Objective

^aInterpret a reference to AWS as a reference to AWS, ANSI/AWS, or AASHTO/AWS

^bInterpret a reference to MSDS as a reference to SDS under 29 CFR 1910.1200

1.02 Terms and Definitions

1.02.1 Abandon. Render unserviceable in place.

1.02.2 Acts of God. *Acts of God* as defined in Public Contract Code § 7105.

1.02.3 Acceptance. The formal written acceptance by the City Council, of the entire contract which has been completed in all respects by Contractor in accordance with the Contract Documents, and any modifications thereof previously approved.

1.02.4 Activity. Task, event, or other project element on a schedule that contributes to completing the project.

An activity has a description, start date, finish date, duration, and one or more logic ties.

- 1.02.5 Addendum.** A written modification of the Contract Documents provided to holders of the Contract Documents prior to the opening of proposals issued by the City.
- 1.02.6 Adjust.** Raise or lower a facility to match a new grade line.
- 1.02.7 Admitted Surety, Insurer or Carrier.** A surety or insurance carrier admitted to transact insurance in the State of California, as evidenced by the surety's or insurer's possession of a valid Certificate of Authority issued by the California Department of Insurance, as defined by the California Insurance Code.
- 1.02.8 Aerially deposited lead.** Lead primarily from vehicle emissions deposited within unpaved areas or formerly unpaved areas.
- 1.02.9 As-Built Drawings.** The Contractor-marked drawings, indicating all Project conditions, locations, configurations, and any other changes or deviations which may vary from the Project Drawings, including references to any addenda, Change Orders, or shop drawings. Also referred to as "Record Drawings".
- 1.02.10 Authorized laboratory.** Independent testing laboratory (1) not employed or compensated by any subcontractor or subcontractor's affiliate providing other services for the Contract and (2) authorized by the Department.
- 1.02.11 Award.** The acceptance by the City of a contractor's Proposal.
- 1.02.12 Base.** Layer of specified material of planned thickness placed immediately below the pavement or surfacing.
- 1.02.13 Basement material.** Material in an excavation or embankment under the lowest layer to be placed.
- 1.02.14 Bid.** See Proposal.
- 1.02.15 Bidder.** Any individual, firm, partnership, corporation, or combination thereof, private or municipal, submitting a Proposal for the Work contemplated, acting directly or through a duly authorized representative.
- 1.02.16 Bid Guaranty.** Proposal guaranty accompanying the Proposal submitted by the Bidder, in the form of cash, a certified or cashier's check, or a Bidder's Bond made to the benefit of the City of Campbell in an amount equal to at least ten percent (10%) of the total amount of the Proposal, including all alternates.
- In the above definition, the following terms are defined as follows:
- (a) Bidder's Bond: A form of a Bid Guaranty, provided by an admitted Surety insurer, authorized to issue Surety bonds in the State of California, on the form provided by the City in the Proposal Forms.
- 1.02.17 Bid item.** Work unit for which the Bidder provides a price.

- 1.02.18 Bid Opening.** The date and time set forth in the Notice Inviting Bids for the City to open all Proposals received for the Work.
- 1.02.19 Bid Proposal Forms.** The approved form upon which the City requires formal bids be prepared and submitted for the work.
- 1.02.20 Bid Schedule.** List of bid items, units of measure, and the associated quantities. The verified Bid Item List is the Bid Item List with verified prices.
- 1.02.21 Bond for Faithful Performance.** A bond in the form approved by the City and in the sum of at least 100 percent of the Contract Sum, secured by a surety, and conditioned upon the Contractor's faithful performance of the Contract terms within the Contract Time.
- 1.02.22 Bond for Labor and Materials.** A bond in the form approved by the City and in the sum of at least 100 percent of the Contract Sum, secured by a surety, and conditioned upon the Contractor paying those named in Section 3181 of the California Civil Code involved in the Project for labor and materials.
- 1.02.23 Borrow.** Fill acquired from an excavation source outside the described cut area.
- 1. Local borrow.** Material obtained by widening cuts or excavating from sources outside the planned or authorized cross section on the job site. The location of the local borrow is described or designated by the Engineer.
 - 2. Imported borrow.** Borrow that is not local borrow.
- 1.02.24 Bridge.** Structure that:
- Has a bridge number
 - Carries a (1) utility, (2) railroad, or (3) vehicle, pedestrian, or other traffic over, under, or around obstructions or waterways
- 1.02.25 Building-construction Contract.** Contract that has *Building Construction* on the cover of the *Notice Inviting Bids and Special Provisions*.
- 1.02.26 Calendar Day.** Any day, including all legal holidays, Saturdays, and Sundays.
- 1.02.27 California Test.** Department-developed test for determining work quality. For California Tests, go to the METS website.
- 1.02.28 Caltrans.** The Department of Transportation of the State of California.
- 1.02.29 Caltrans Specifications.** The Standard Specifications of Caltrans, as most recently adopted.
- 1.02.30 Certificate of Compliance.** Certificate stating the material complies with the Contract.

- 1.02.31 Certified Industrial Hygienist.** Industrial hygienist certified in comprehensive practice by the American Board of Industrial Hygiene.
- 1.02.32 Change Order.** A written order to the Contractor, covering changes to the Contract found by the City to be necessary for the proper completion of the Work contemplated by the Contract, and establishing the basis of payment and/or time adjustments for the Work affected by the changes.
- 1.02.33 City Clerk.** The City Clerk of the City of Campbell.
- 1.02.34 City of Campbell.** A municipal corporation of the State of California, as created by law. Also referred to as “City” or “Campbell.”
- 1.02.35 City Compliance Officer.** The Engineer or such other City employee as the City Manager may designate as having primary responsibility for administering and enforcing labor standard requirements in these Standard Specifications.
- 1.02.36 City Council.** The City Council of the City of Campbell.
- 1.02.37 City Engineer.** The City Engineer of the City of Campbell acting either directly or through properly authorized agents, such agents acting within the scope of the particular duties properly delegated to them.
- 1.02.38 City Manager.** The Chief Administrative Officer of the City.
- 1.02.39 Claim.** A separate demand by the Contractor for any event arising out of or related to the Work or Project, including but not limited to the following: (a) a time extension, (b) payment of money or damages arising from Work done by or on behalf of the Contractor pursuant to the Contract, (c) an amount of payment which is disputed by the City, or (d) a rejected Change Order request.
- 1.02.40 Closure.** Closure of a traffic lane or lanes, including shoulder, ramp, or connector lanes, within a single traffic control system.
- 1.02.41 Commercial Quality.** Quality meeting the best general practices.
- 1.02.42 Commercial Source.** Established business operating as a material source for the general public.
- 1.02.43 Conduit.** A pipe or tube in which smaller pipes, tubes, or electrical conductors are inserted or are to be inserted.
- 1.02.44 Contract.** The written agreement covering the performance of the Work and the furnishing of labor, materials, tools, and equipment for the Work. Also referred to as the “Contract Documents”. The Contract shall include the Notice Inviting Bids, Proposal, plans, specifications, General Conditions, Special Provisions, written addenda, contract bonds, insurance certificates, Change Orders, the Agreement, and any other agreements amending or extending the Work and which may be required to

complete the Work in a substantial and acceptable manner. Any permit issued by the City for construction within the public right-of-way shall also be deemed a contract.

- 1.02.45 Contract Documents.** All documents identified by the City as “Contract Documents in the Proposal Forms.
- 1.02.46 Contract Item.** A specific unit of Work for which a price is provided in the Contract.
- 1.02.47 Contract Time.** The number of working or calendar days allowed for completion of the Contract. If a calendar date of completion is shown in the Notice Inviting Bids in lieu of a number of working or calendar days, the Contract shall be completed by that date.
- 1.02.48 Contract Sum.** The price indicated in Contractor’s signed Proposal and as agreed upon by the Contractor and City in the Contract.
- 1.02.49 Contractor.** The person or persons, firm, partnership, corporation, or combination thereof private or municipal, who enters into the Contract with the City or the City’s legal representative to perform the Work, including those working under a Public Works encroachment permit.
- 1.02.50 Controlling Operation.** That particular Work which must be wholly or partially completed before the next logical portion of the Work can be carried out.
- 1.02.51 Critical Path.** Longest continuous chain of activities for the project that has the least amount of total float of all chains. In general, a delay on the critical path extends the scheduled completion date.
- 1.02.52 Critical Path Method.** Network-based planning technique using activity durations and relationships between activities to calculate a schedule for the entire project.
- 1.02.53 Culvert.** Structure other than a bridge that provides an opening under a roadway.
- 1.02.54 Data Date.** Day after the date through which a schedule is current. Everything occurring earlier than the data date is as-built and everything on or after the data date is planned.
- 1.02.55 Date of Acceptance.** The date which the Notice of Completion is filed at the office of the County Clerk in the county in which the Work is performed.
- 1.02.56 Day.** 24 consecutive hours running from midnight to midnight; calendar day.
1. **Business day.** Day on the calendar except a Saturday and a holiday.
 2. **Working day:** Time measure unit for work progress. A working day is any 24-consecutive-hour period except:
 - 2.1. Saturdays, Sundays and Legal Holidays (days designated as holidays in the City of Campbell Municipal Code).

- 2.2. Day during which you cannot perform work on the controlling activity for at least 50 percent of the scheduled work shift with at least 50 percent of the scheduled labor and equipment due to any of the following:
 - 2.2.1. Adverse weather-related conditions.
 - 2.2.2. Traffic maintenance under the Contract.
 - 2.2.3. Suspension of a controlling activity that you and the Engineer agree benefits both parties.
 - 2.2.4. Unanticipated event not caused by either party, such as:
 - 2.2.4.1. Act of God
 - 2.2.4.2. Act of a public enemy.
 - 2.2.4.3. Pandemic.
 - 2.2.4.4. Fire.
 - 2.2.4.5. Flood.
 - 2.2.4.6. Governor-declared state of emergency.
 - 2.2.4.7. Landslide.
 - 2.2.4.8. Quarantine restriction.
 - 2.2.5. Issue involving a third party, including:
 - 2.2.5.1. Industry or area-wide labor strike.
 - 2.2.5.2. Material shortage.
 - 2.2.5.3. Freight embargo.
 - 2.2.5.4. Jurisdictional requirement of a law enforcement agency.
 - 2.2.5.5. Workforce labor dispute of a utility or nonhighway facility owner resulting in a nonhighway facility rearrangement not described and not solely for the Contractor's convenience. Rearrangement of a nonhighway facility includes installation, relocation, alteration, or removal of the facility.
- 2.3. Day during a concurrent delay.
- 3. Original working days:

- 3.1. Working days to complete the work shown on the *Notice to Bidders* for a non-cost-plus-time- based bid
- 3.2. Working days bid to complete the work for a cost-plus-time-based bid

Where working days is specified without the modifier *original* in the context of the number of working days to complete the work, interpret the number as the number of original working days as adjusted by any time adjustment.

1.02.57 Deduction. Money permanently taken from a progress payment or the final payment. Deductions are cumulative and are not retentions under Public Contract Code § 7107.

1.02.58 Delay. Event that extends the completion of an activity.

1. **Excusable delay:** Delay caused by the Department and not reasonably foreseeable when the work began, such as:
 - 1.1. Change in the work
 - 1.2. Department action that is not part of the Contract
 - 1.3. Presence of an underground utility main not described in the Contract or in a location substantially different from that specified
 - 1.4. Described facility rearrangement not rearranged as described, by the utility owner by the date specified, unless the rearrangement is solely for the Contractor's convenience
 - 1.5. Department's failure to obtain timely access to the right-of-way
 - 1.6. Department's failure to review a submittal or provide notification in the time specified
2. **Critical delay:** Excusable delay that extends the scheduled completion date
3. **Concurrent delay:** Occurrence of at least 2 of the following events in the same period of time, either partially or entirely:
 - 3.1. Critical delay
 - 3.2. Delay to a controlling activity caused by you
 - 3.3. Non-working day

1.02.59 Department of Public Works. The Department of Public Works of the City of Campbell, as created by law. Also referred to as the “Department.”

1.02.60 Detour. Temporary route for traffic around a closed road part. A passageway through

a job site is not a detour.

- 1.02.61 Directed Change Order.** City imposed change order work performed at contract unit price or force account when both the City and Contractor cannot agree on a price. The Contractor does not have the right to terminate the Contract based upon the issuance of the Directed Change Order, however, they may file a Claim for additional compensation which the Contractor believes is due or owed for performing said Directed Change Order work.
- 1.02.62 Director of Public Works.** The executive officer of the Department of Public Works, as created by law. Also referred to as the “Director.”
- 1.02.63 Disabled Veteran Business Enterprise:** Business certified as a DVBE by the Department of General Services, Office of Small Business and DVBE Services.
- 1.02.64 Disadvantaged Business Enterprise.** Disadvantaged business enterprise as defined in 49 CFR 26.5.
- 1.02.65 Dispose of.** Remove from the job site.
- 1.02.66 Divided Highway.** Highway with separated traveled ways for traffic, generally in opposite directions.
- 1.02.67 Encroachment Permit.** A permit issued by the Public Works Department on behalf of the City authorizing work in the public right-of-way. Special provisions for encroachment permit work are included with the permit and take precedence over all other specifications or details and may only be superseded by the Engineer.
- 1.02.68 Engineer.** Resident Engineer responsible for the Contract's administration; Resident Engineer's authorized representatives. The City’s representative for the Project.
- 1.02.69 Engineer’s Estimate.** The list of estimated quantities of work to be performed as contained in the Proposal.
- 1.02.70 Early Completion Time.** Difference in time between an early scheduled completion date and the work completion date.
- 1.02.71 Environmentally Sensitive Area.** Area within or near construction limits where access is prohibited or limited to protect environmental resources.
- 1.02.72 Estimated Cost.** Estimated cost of the project as shown on the *Notice Inviting Bids*.
- 1.02.73 Extra Work.** New and unforeseen work when determined by the City that such work is not covered by any of the various items for which there is a bid price or by combinations of such items in the Proposal.
- 1.02.74 Federal-Aid Contract.** Contract that has a federal-aid project number on the cover of

the Notice to Bidders and Special Provisions.

- 1.02.75 Final Acceptance.** When Engineer has made the final inspection of the Work and determines that the Work has been completed in all respects and in its entirety in accordance with the Contract Documents and recommends that the City formally accept the Work.
- 1.02.76 Final Pay Item.** Bid item whose quantity shown on the Bid Item List is the quantity paid.
- 1.02.77 Finished Grade.** Final surface of the completed facility. If the work under the Contract includes stage construction, the relation between the finished grade and the work under the Contract is shown.
- 1.02.78 Fixed Cost.** Labor, material, or equipment cost directly incurred by the Contractor as a result of performing or supplying a particular bid item that remains constant regardless of the item's quantity.
- 1.02.79 Float.** Difference between the earliest and latest allowable start or finish times for an activity.
- 1. Department-owned float.** Time saved on the critical path by actions of the Department. It is the last activity shown on the schedule before the scheduled completion date.
- 1.02.80 Force Account Work.** Work ordered on a construction project without an existing agreement on its cost and performed with the understanding that the contractor will bill the owner according to the cost of labor, materials, and equipment, plus a certain percentage for overhead and profit.
- 1.02.81 Full Compensation.** Total and complete payment including overhead and profit for furnishing all supervision, labor, materials, tools, equipment and doing all work involved in providing the item complete and in place in accordance with the requirements of the Contract Documents.
- 1.02.82 Grading Plane.** Basement material surface on which the lowest layer of subbase, base, pavement, surfacing, or other specified layer is placed.
- 1.02.83 Guarantee Period.** The Contractor's work on the Project shall be guaranteed to be free from any and all defects arising out of faulty materials or workmanship for one (1) year after Work acceptance, except for Work parts for which Contractor was relieved of maintenance or protection, if any.
- 1.02.84 Highway.** The whole right of way or area which is reserved for and secured for use of the public for purposes of vehicular travel. Also referred to as "street" or "road."
- 1.02.85 Holiday.** Those days designated as holidays in the City of Campbell Municipal Code.

- 1.02.86 Hours of darkness.** Hours of darkness as defined in Vehicle Code § 280.
- 1.02.87 Idle Equipment.** Equipment:
1. On the job site at the start of a delay
 2. Idled because of the delay
 3. Not operated during the delay
- 1.02.88 Informal-bid Contract.** Contract that has Informal Bid Authorized by Public Contract Code § 10122 on the cover of the Notice Inviting Bids and Special Provisions.
- 1.02.89 Inspector.** An authorized representative of the Engineer, acting exclusively for the benefit of City, properly assigned to make all necessary inspections of the Work performed or being performed, or of the materials furnished or being furnished by the Contractor for conformance to the Contract Documents.
- 1.02.90 Job Site.** Area within the defined boundaries of a project.
- 1.02.91 Labor Surcharge and Equipment Rental Rates.** Department publication that lists labor surcharge and equipment rental rates.
- 1.02.92 Laboratory.** The established laboratory of the Department or other laboratories authorized by the Department to test materials and work involved in the Contract.
- 1.02.93 Landscaping.** Practice of a landscaping contractor under 16 CA Code of Regs § 832.27.
- 1.02.94 Limit of Work.** The area described or outlined on the project plans. This area shall constitute the extent of the Contractor's operation related to the project.
- 1.02.95 Liquidated Damages.** The amount prescribed in the Contract Documents to be paid to the City or to be deducted from any payments due or to become due to the Contractor for each day's delay in completing the whole or any specified portion of the Work beyond the time allowed in the Contract Documents.
- 1.02.96 Material.** Any product or substance specified for use in the construction of a project.
- 1.02.97 Material Storage Area.** An area, if any, described or outlined on the Project plans to be used by the Contractor for material and equipment storage related to the Project.
- 1.02.98 Material Shortage:**
1. Shortage of raw or produced material that is area-wide and caused by an unusual market condition except if any of the following occurs:
 - 1.1. Shortage relates to a produced, nonstandard material
 - 1.2. Supplier's and the Contractor's priority for filling an order differs

- 1.3. Event outside the United States for a material produced outside the United States
- 2. Unavailability of water that delays a controlling activity
- 1.02.99 Material Source Facility Audit.** Self-audit and a Department audit evaluating a facility's capability to consistently produce materials that comply with Department standards.
- 1.02.100 Median.** Portion of a divided highway separating the traveled ways including inside shoulders.
- 1.02.101 Milestone.** Event activity that has zero duration and is typically used to represent the start or end of a certain stage of the project.
- 1.02.102 Mobilization.** Preparatory work that must be performed or costs incurred before starting work on the various items on the job site (Public Contract Code § 10104).
- 1.02.103 Modify.** Add to or subtract from an appurtenant part.
- 1.02.104 Narrative Report.** Document submitted with each schedule that discusses topics related to project progress and scheduling.
- 1.02.105 Near Critical Path.** Chain of activities with total float exceeding that of the critical path but having not more than 10 working days of total float.
- 1.02.106 Notice of Intent to Award of Contract.** The notice posted by the City setting forth the name of the lowest responsive and responsible Bidder the City intends to award the Contract for the Work.
- 1.02.107 Notice of Award.** The signed notice sent by the City to the lowest responsive and responsible Bidder setting forth who the City has awarded the Contract for the Work.
- 1.02.108 Notice Inviting Bids.** The advertisement for proposals for all Work on which proposals or bids are required. Such advertisement will indicate, among other things, the location of the Work, bonding requirements, licensing requirements, and the time and place of opening of proposals or bids.
- 1.02.109 Notice to Proceed.** The notice issued by the Engineer authorizing the Contractor to proceed with the Work, among other particulars.
- 1.02.110 Notice of Termination.** The written notice issued by the Engineer specifying that the Contract is terminated.
- 1.02.111 Obliterate.** Place an earth cover over or root, plow, pulverize, or scarify.
- 1.02.112 Partnering.** The commitment between the City, the Contractor, and all Project stakeholders to create a cooperative Project environment in an effort to prevent disputes

whether through formal or informal Partnering.

- 1.02.113 Pavement.** Uppermost layer of material placed on a traveled way or shoulder.
- 1.02.114 Permanent Erosion Control Establishment Period.** Number of working days shown on the *Notice Inviting Bids* for permanent erosion control establishment work.
- 1.02.115 Plans.** The official Project Plans and Standard Plan Details, profiles, typical cross sections, working drawings and supplemental drawings, or reproductions thereof, approved by the Engineer, which show the location, character, dimensions, and details of the Work to be performed. All such documents are to be considered as part of the Plans whether or not reproduced in the Contract Documents.
- In the above definition, the following terms are defined as follows:
- (a) Standard Plan Details. The Standard Plan Details of the Department, approved by City Council. Also referred to herein as “Standard Details.”
- (b) Project Plans. The specific details and dimensions peculiar to the Work and supplemented by the Standard Plans insofar as the same apply.
- 1.02.116 Plant Establishment Period:** Number of working days shown on the *Notice Inviting Bids* for plant establishment work.
- 1.02.117 Project.** Any Work carried out in connection with the services described in the Contract Documents.
- 1.02.118 Project Plan Drawings.** Drawings included in the Proposal Forms accompanying the City’s Notice Inviting Bids.
- 1.02.119 Proposal.** The offer of the bidder for the Work when made out and submitted on the prescribed Proposal Form, properly signed and guaranteed. Also referred to as a “Bid.”
- 1.02.120 Proposal Form.** The approved form upon which the City requires formal Proposals be prepared and submitted for the Work.
- 1.02.121 Proposal Guaranty.** The cash, cashier’s check, certified check, or Bidder’s Bond accompanying the Proposal submitted by the bidder as a guaranty that the bidder will enter into a contract with the City for the performance of the Work if it is awarded to the bidder, and will provide all documents (including but not limited to the contract bonds and insurance) required of the bidder.
- 1.02.122 Public Works.** The Public Works Department of the City of Campbell.
- 1.02.123 Quality Characteristic.** Characteristic of a material that is measured to determine conformance with a given requirement.
- 1.02.124 Quality Control Plan.** Contractor's plan to ensure QC.

- 1.02.125 Reconstruct.** Remove and disassemble and construct again at an existing or new location.
- 1.02.126 Record Drawings.** The Contractor-marked drawings, indicating all Project conditions, locations, configurations, and any other changes or deviations which may vary from the Project Plan Drawings, including references to any addenda, Change Orders, or shop drawings. Also referred to as “As-Built Drawings”.
- 1.02.127 Relocate:** Remove and install or place in a new location.
- 1.02.128 Remove.** Remove and dispose of.
- 1.02.129 Request for Information.** A request submitted by Contractor to Engineer for clarification of a discrepancy or confusion arising from the Contract Documents.
- 1.02.130 Reset.** Remove and install or place laterally at the same station location.
- 1.02.131 Right of Way.** The whole right of way or area which is reserved for and secured for use the Work.
- 1.02.132 Roadbed.** Roadway portion extending from the curb line to curb line or the shoulder line to shoulder line.
- A divided highway has 2 roadbeds.
- 1.02.133 Roadside.** Area between the outside shoulder edge and the right-of-way limits.
- 1.02.134 Roadway.** That portion of the right of way included between the outside lines of sidewalks, or curbs, slopes, ditches, channels, waterways, and including all the appertaining structures, and other features necessary to proper drainage and protection.
- 1.02.135 Salvage.** Remove, clean, and haul to a specified location.
- 1.02.136 Schedule:**
- 1. Baseline schedule:** Initial schedule showing the original work plan starting on the date of Contract approval. This schedule shows no completed work to date and no negative float or negative lag to any activity.
 - 2. Revised schedule:** Schedule that incorporates a proposed or past change to logic or activity durations.
 - 3. Updated schedule:** Current schedule developed from the accepted baseline and any subsequent accepted updated or revised schedules through regular monthly review to incorporate actual past progress.
- 1.02.137 Scheduled Completion Date.** Planned work completion date shown on the current schedule.

- 1.02.138 Shoulder.** Roadway portion contiguous with the traveled way for accommodation of a stopped vehicle, emergency use, and lateral support of base and surface courses.
- 1.02.139 Small Tool.** Tool or piece of equipment not listed in Labor Surcharge and Equipment Rental Rates that has a replacement value of \$500 or less.
- 1.02.140 Special Provisions.** Specific clauses setting forth conditions or requirements peculiar to the Work and supplementary to these Standard Specifications. The Caltrans publications entitled “Labor Surcharge and Equipment Rental Rates” and “General Prevailing Wage Rates”, and the Davis Bacon Wage Rates (for federally funded projects) are to be considered as a part of the Special Provisions.
- 1.02.141 Standard Specifications.** The directions, provisions, and requirements contained in these Standard Specifications as supplemented by the Special Provisions.
- 1.02.142 State.** State of California, including its agencies, departments or divisions whose conduct or action is related to the work.
- 1.02.143 Stop Notice.** A written notice, signed and verified by the claimant or its agent, as defined in California Civil Code Section 3103.
- 1.02.144 Structure Design.** Offices of Structure Design of the Department of Transportation.
- 1.02.145 Subbase.** Layer of material between a base and the basement material.
- 1.02.146 Subcontractor.** An individual, firm, partnership, corporation, or combination thereof who has entered into a construction contract with the Contractor to perform a portion of Contractor’s Work.
- 1.02.147 Subgrade.** Roadbed portion on which pavement, surfacing, base, subbase, or a layer of any other material is placed.
- 1.02.148 Submittal:**
1. **Action submittal:** Written and graphic information and samples that require the Department's response.
 2. **Informational submittal:** Written information that does not require the Department's response.
- 1.02.149 Substantial Completion.** When the Work, or designated portion thereof, is sufficiently complete in accordance with the Contract Documents so that the City can occupy or utilize the Work, or designated portion thereof, for the use for which it was intended, as evidenced by the Engineer’s Certificate of Substantial Completion. The Certificate of Substantial Completion shall set forth the date on which Substantial Completion is deemed by City in its sole discretion to have occurred, subject to the provision of these Standard Specifications.
- 1.02.150 Substantial Defects.** Defects plainly seen as damaged, displaced, or missing parts or

improper functioning of materials, parts, equipment, or systems.

- 1.02.151 Substructure.** Bridge parts below the bridge seats, pier tops, and haunches for rigid-framed bridges or spring lines for arched bridges; includes abutment backwalls, abutment parapets, and wingwalls.
- 1.02.152 Superintendent.** The Contractor's designated authorized representative for the Project, with the authority to represent and act for the Contractor at the Project site.
- 1.02.153 Superstructure.** Bridge parts except the substructure.
- 1.02.154 Supplemental Project Information.** Information relevant to the project, specified as supplemental project information, and made available to bidders.
- 1.02.155 Surety.** One who promises to answer for the debt, default, or miscarriage of another.
- 1.02.156 Surfacing.** Uppermost layer of material placed on a traveled way or shoulders; pavement.
- 1.02.157 Time Impact Analysis.** Analysis using a CPM schedule developed specifically to demonstrate the effect a proposed or past change or delay has on the current scheduled completion date.
- 1.02.158 Time-scaled Network Diagram.** Graphic depiction of a CPM schedule comprised of activity bars with relationships for each activity represented by arrows. The tail of each arrow connects to the activity bar for the predecessor and points to the successor.
- 1.02.159 Total bid.** Sum of the item totals as verified by the Department; original Contract price.
- 1.02.160 Total Float.** Amount of time that an activity or chain of activities can be delayed before extending the scheduled completion date.
- 1.02.161 Traffic.** Pedestrians, bicyclists, ridden or herded animals, vehicles, streetcars, and other conveyances either singularly or together while using any highway for purposes of travel.
- 1.02.162 Traffic break.** Traffic operation performed by a California Highway Patrol officer or other law enforcement officer to slow or stop traffic within the traveled way.
- 1.02.163 Traffic lane.** Portion of traveled way used for the movement of a single line of vehicles.
- 1.02.164 Traveled way.** Portion of the roadway for the movement of vehicles, exclusive of the shoulders, berms, sidewalks, and parking lanes.
- 1.02.165 Tunnel.** Tunnel as defined in 8 CA Code of Regs § 8405 et seq.
- 1.02.166 Unauthorized work.** Work performed beyond the lines and grades described in the

Contract or established by the Engineer or extra work performed without Department authorization.

1.02.167 Unsuitable material. Material encountered below the natural ground surface in embankment areas or below the grading plane in excavation areas that the Engineer determines to be in any of the following conditions:

1. Of such unstable nature that it cannot be compacted to the specified density using ordinary methods at optimum moisture content.
2. Too wet to be properly compacted and cannot be dried before incorporating it into the work. Excessive moisture alone is not sufficient cause for determining that the material is unsuitable.
3. Inappropriate for the planned use.

1.02.168 Withhold. Money temporarily or permanently taken from a progress payment.

1.02.169 Work. All the work specified, indicated, shown, or contemplated in the Contract to construct the improvement, including but not limited to all alterations, amendments, or extensions thereto made by Change Order or other written orders of the Engineer.

1.02.170 Work plan. Detailed formulation of a program of action.

1.02.171 Work zone. Area of a highway with construction, maintenance, or utility work activities

END OF SECTION

SECTION 2: PROPOSAL REQUIREMENTS AND CONDITIONS

2-1.01 Contents of Proposal Forms.

Prospective Bidders will be furnished with Proposal Forms. A Proposal Form may contain a schedule of items for which only lump sum amounts are asked to be bid. It may contain estimated quantities of various kinds of Work to be performed or materials to be furnished with a schedule of items for which unit prices are asked to be bid. The unit prices or lump sum amounts bid shall include full compensation for furnishing all labor, materials, tools, and equipment and doing all Work, completed and in place for that particular item of Work.

2-1.02 Approximate Estimate of Quantities.

The quantities stated in the Proposal Forms are approximate only, given as a basis for the comparison of Proposals. The City does not, expressly or by implication, represent or guaranty that the actual amount of Work will correspond therewith, and reserves the right to increase or decrease the amount of any class or portion of the Work, or to omit portions of the Work, as may be deemed necessary or advisable by the Engineer. The bidder shall verify the actual quantities necessary for the Work.

Where the City has prepared an Engineer's Estimate for the cost of the Work, such estimate is made only for the purpose of comparison, study, and design by the City. Such estimate is not a part of the Contract.

2-1.03 Examination of Plans, Specifications, Contract, and Site of Work.

The Bidder shall examine carefully the Work site, the Proposal Forms, the Project plans, specifications, drawings, and maps, and all other Contract Documents therefor. Copies of these documents are on file and may be examined through the City's online solicitation webpage, as listed on the Proposal Forms.

In the event of any inconsistency between the terms of these Standard Specifications and the Project plans, specifications, drawings, and maps, the terms of the Project-specific documents shall control to the extent necessary to resolve such inconsistency.

The submission of a Bid shall serve as conclusive evidence that the Bidder has investigated and is fully aware of the conditions and difficulties to be encountered, the character, quality, and scope of Work to be performed, the current site conditions, the quantities of materials to be furnished, and the requirements of the Proposal Forms, plans, specifications, and the Contract Documents.

Where the City has made investigations of site conditions, including but not limited to subsurface conditions, geotechnical reports, test boring logs, or compiled "Materials Information" in areas where Work is to be performed under the Contract, or in other areas, some of which may constitute possible local material sources, such investigations are made only for the purpose of study and design. Where such investigations have been made, Bidders may, upon written request, inspect the records of the City as to such investigations subject to and upon the conditions hereinafter set forth. The records of such investigations are not a part of the Contract and are shown solely for the convenience of the Bidder. It is expressly understood and agreed that the

City assumes no responsibility whatsoever in respect to the sufficiency or accuracy of the City investigations thus made, the records thereof, or of the interpretations set forth therein or made by the City in its use thereof and there is no warranty or guaranty either express or implied, that the conditions indicated by such investigations or records thereof are representative of those existing throughout such areas, or any part thereof, or that unlooked-for developments may not occur, or that materials other than, or in proportions different from those indicated, may not be encountered. No information derived from such inspection of City records of investigations or compilation thereof will in any way relieve the bidder or contractor from any risk or from properly fulfilling the terms of the contract.

Only written requests to inspect records of such preliminary investigations will be considered. Such written requests may be submitted to the Department of Public Works, 70 North First Street, Campbell, California 95008, or by email to publicworks@campbellca.gov. The written request shall clearly state the Project title in the subject line with attention to the Engineer specified in the Notice Inviting Bids.

Bidders or Contractors are cautioned to make such independent investigation and examination as they deem necessary to satisfy themselves as to conditions to be encountered in the performance of the Work and, with respect to possible local material sources, the quality and quantity of material available from such property, and the type and extent of processing that may be required in order to produce material conforming to the requirements of the specifications.

2-1.04 Proposal Forms.

The City will furnish to each Bidder the Proposal Forms which, when completely filled out and executed by the Bidder as directed in the "Notice Inviting Bids", shall be submitted as its Proposal. Proposals not presented on the Proposal Forms may, in the City's sole discretion, be deemed nonresponsive and rejected on that basis.

On all bid items for which bids are to be received on a unit price basis, the unit price for all items bid shall be shown, as well as the extended price (unit price multiplied by the number of units shown on the proposal form) for each bid item bid. In the case of any discrepancy between the extended price for any bid item bid, the unit price multiplied by the number of units shall prevail. In the event of any discrepancy between the total contract amount and the sum of the extended prices of all items, the sum of the extended prices of all items shall prevail.

When Proposals are signed by an agent, other than the officer or officers of a corporation authorized to sign contracts on its behalf or a member of a co-partnership, an executed "Power of Attorney" shall be submitted with the Proposal; otherwise, the Proposal may be rejected at the City's sole discretion as irregular and unauthorized. Proof of the authority of the person or persons signing on behalf of the bidder shall be provided to City upon request after the Bid opening.

2-1.05 Ineligibility to Bid.

No City employees or firm that has provided architectural or engineering services to the City for this Project may submit a bid, subcontract for a party of the Work, or supply materials for the Project.

2-1.06 Rejection of Bids.

The City may, in its sole discretion, reject any or all Bids presented, including rejecting all Bids, a nonresponsive Bid, or a Bid from an entity that is a parent, affiliate, or subsidiary, or that is under common ownership, control, or management with any other entity submitting a Bid on the Project. The City may, in its sole discretion, waive any informalities or minor irregularities in the Bid.

2-1.07 Bid Guaranty.

All Bids shall be presented under sealed cover and accompanied by cash, a certified or cashier's check, or a bidder's bond. The Bid Bond must be provided by an admitted Surety insurer, authorized to issue Surety bonds in the State of California, and it must execute the Bid Bond. Said check or bond shall be made payable to the City of Campbell.

The security shall be in an amount equal to at least ten (10) percent of the total amount of the Bid including all alternates. A Bid will not be considered by the City unless one of the above specified forms of bidder's security is enclosed with it.

2-1.08 Withdrawal of Proposals.

A Bidder may withdraw its Bid at any time prior to the date and time fixed in the Notice Inviting Bids for the opening of Bids only by written request for the withdrawal of the Bid filed with the City Clerk. The request shall be executed by the Bidder or the Bidder's duly authorized representative. The withdrawal of a Bid does not prejudice the right of the Bidder to file a new Bid, if timely. No Bids will be received, and no Bid may be withdrawn, after the time fixed for the opening of Bids, as set forth in the Notice Inviting Bids.

2-1.09 Public Opening of Bids.

Bids will be publicly opened and read at the time and place indicated in the Notice Inviting Bids. Bidders or its authorized agents are invited to be present.

2-1.09A Bid Relief.

The City may grant bid relief under Public Contract Code Section 5100 to 5110, inclusive, which set forth the criteria and procedures for relief of Bidders, and for authorizing Contract award to another Bidder. Submit any request for bid relief to the Engineer.

2-1.10 Disqualification of Bidders.

Any one or more of the following causes may, at City's sole discretion, be considered as sufficient for the disqualification of bidder and provide cause for the rejection of a bid or bids:

- a. No more than one Bid from any individual, firm, partnership, corporation, or combination thereof, as a principal, under the same or different names will be considered. Reasonable grounds for believing that any individual, firm, partnership, corporation, or combination thereof is a principal in more than one Bid for the work contemplated may cause the rejection of all Bids in which such

individual, firm, partnership, corporation, or combination thereof is a principal. If there is reason for believing that collusion exists among the bidders, any or all Bids may be rejected.

- b. Bids in which unit prices are obviously unbalanced may be rejected. A person, firm, or corporation submitting a sub-bid to a Bidder, or who has quoted prices on materials to a bidder, is not thereby disqualified from submitting a sub-bid or quoting prices to other Bidders or from being a principal Bidder for the same work.
- c. Lack of competency as revealed by any financial statement, as may be required by the special provisions, or by experience or plant and equipment statements submitted.
- d. Lack of responsibility as shown by past work on any Public Works project for any public entity judged from the standpoint of workmanship and progress.
- e. Incomplete work on any Public Works project for any public entity which, in the judgment of the City, might hinder or prevent the prompt completion of additional work if awarded.
- f. Being in arrears on any existing Public Works contract for any public entity, in litigation with the City or having defaulted on a previous contract with any public entity.
- g. Failure of the Bidder to have a valid Contractor's license in the class specified in the Notice Inviting Bids at the time of bid opening.
- h. Failure of the Bidder to provide prices for all items in the Proposal, including alternatives, or submitting an incomplete or otherwise non-responsive proposal.
- i. Any other ground which the City determines, in the City's sole discretion, significantly impairs the ability of the Bidder to perform on a City project.
- j. Any other ground which the Engineer determines would significantly impair the ability of the Bidder to perform the proposed work. In making this determination, the Engineer may consider, without limitation, items such as any previous or current prevailing wage violations by the bidder, the number of stop notices on previous public works projects performed by the bidder, and the existence of past or current agreements with other public entities to not bid on public works projects.

2-1.11 Ineligibility To Contract.

Pursuant to Public Contract Code Section 10285.1, Bidder is ineligible to submit a Bid for this Project if Bidder has been suspended from bidding upon or being awarded a public works or services contract with the State or any public entity in the State in the past three years or if Bidder (or any partner, member, officer, director, responsible managing officer, or responsible managing employee thereof) has been convicted by a court of competent jurisdiction of any charge of fraud, bribery, collusion, conspiracy, or any other act in violation of State or federal antitrust law in connection with the bidding upon, award of, or performance of, any public

works contract, as defined in Section 1101 of the Public Contracting Code, with any public entity, as defined in Section 1100.

2-1.12 General Guaranty.

The Contractor's work shall be guaranteed to be free from any and all defects arising out of faulty materials or workmanship for 1 year after Work acceptance, except for Work parts for which Contractor was relieved of maintenance or protection, if any ("Guarantee Period"). Neither the final inspection, the final payment, nor any provision in the Contract, nor partial or entire use or occupancy of the premises by the City shall constitute an acceptance of the Work not done in accordance with the Contract, or relieve the Contractor of liability in respect to any express warranties or responsibility for faulty material or workmanship.

This guaranty excludes damage or displacement caused by an event outside Contractor's control, including only: normal wear and tear, improper operation, insufficient maintenance, abuse, unauthorized change, epidemic, and Act of God.

The final acceptance of the Work shall be contingent upon sufficient sureties being provided to guarantee the foregoing obligations. These sureties may take any of the following forms: a cash retention in the amount of twenty-five percent (25%) of the consideration for the completed Contract, Bond for Faithful Performance of the Maintenance Period, or other security acceptable to the City.

During the Guarantee Period, Contractor shall repair or replace each Work part having a substantial defect. The City shall not pay for such corrective work. During Contractor's corrective work activities, Contractor must provide the same insurance specified before Contract acceptance.

During the Guarantee Period, the City will monitor the Contractor's completed work. If the City finds work having a substantial defect, the City will list the defective components and furnish Contractor with a list. Within ten (10) days of receipt of the list, Contractor shall submit for authorization a detailed plan to correct the work. Contractor shall include in the schedule:

1. Start and completion dates;
2. List of labor, equipment, materials, and any special services Contractor plans to use; and
3. A description of any work incidental to the corrective work, including but not limited to, traffic control and temporary and permanent pavement markings.

The City will notify Contractor when the plan is authorized. Contractor must start the corrective work within fifteen (15) days of the City's notice.

If the City determines that the corrective work is urgently required to prevent injury or property damage, then the City will provide Contractor with an order to start emergency repair work and a list of the parts requiring corrective work. Contractor must mobilize and start the corrective work within twenty-four (24) hours. Contractor must submit a corrective work plan to the City within five (5) business days of starting the emergency repair work.

If Contractor fails to perform corrective work, as specified, the City may perform the work and bill Contractor for any and all costs related to its performance of the corrective work.

2-1.13 Proof of Competency of Bidders.

All Bidders must meet all qualification requirements contained in the Proposal Forms.

Any Bidder may also be required to furnish evidence satisfactory to City that the Bidder and its proposed subcontractors have sufficient means and experience in the type of work called for in the Proposal Forms to assure completion of the Contract in a satisfactory manner.

The City may withhold award of the Contract from any Bidder not satisfactorily demonstrating sufficient means and experience, and the Contract may be awarded to the responsible Bidder submitting the lowest responsive bid.

2-1.14 Addenda and Interpretations Prior to Bidding.

The City may issue written addenda by way of clarifications, amendments, changes, or additions to the Contract Documents may be issued by the City before the opening of Bids. Any and all addenda will be posted to the City's online solicitation webpage, as listed on the Proposal Forms. Failure of any Bidder to review any addenda shall not relieve the Bidder from any obligations imposed or information presented in the addenda. All addenda issued shall become part of the Contract and the price therefore, set forth in the Bid. The Bidder's failure to review, consider, sign, and submit any or all Project addenda with the Bid shall be a cause for rejection of the Bid.

If any person contemplating submitting a Bid for the construction of the Project is in doubt as to the true meaning of any part of the Proposal Forms, Plans, Special Provisions, or other Contract Documents, or finds discrepancies in, or omissions from, the Proposal Forms, Plans, Special Provisions, or other Contract Documents, that person shall submit to the Engineer a written request for an interpretation or correction thereof at least seven (7) days before the deadline for receipt of Bids or as specified in the Proposal Forms. A request received by the Engineer later than the above-said deadline will not be answered. Any interpretation or correction of the Contract Documents will be made only by Addendum and will be posted to the City's online solicitation webpage, as listed on the Proposal Forms. The City will not be responsible for any other explanation or interpretation of the Contract Documents. Failure to submit a written request for an interpretation or correction shall serve as evidence that the Bidder finds no ambiguities, discrepancies, or omissions in the Proposal Forms, Plans, Special Provisions, or other Contract Documents.

No oral interpretation of the meaning of the plans, specifications, or other documents will be made. If any such oral interpretation is made, it shall not be considered by the bidder in preparing its bid.

2-1.15 Subcontracting Requirements.

In completing the Bid Proposal, Bidder must follow the applicable subcontracting sections as specified in Section 8-1.01, "Subcontracting."

2-1.16 Bid Submittal.

Each Bid must be submitted on the City-approved Proposal Forms, which shall be completed by

the Bidder, executed, and submitted as its Bid. No facsimile or electronically transmitted Bid or modification of a Bid will be considered. No Bid received after the date and time fixed for receiving Bids will be considered. All late Bids will be returned to the Bidder unopened.

Each Bid shall be enclosed in a sealed envelope bearing the title of the Project, the name of the Bidder, and the date and time of the Bid opening, as specified in the Notice Inviting Bids. Formal Proposal Forms shall be addressed and delivered to the City Clerk. All Bids shall be delivered on or before the date and time set for the opening of the Bids published in the Notice Inviting Bids. It is the sole responsibility of the Bidder to insure delivery and receipt of its Bid in proper time.

2-1.17 Compliance with Contractor's Licensing Laws.

Attention is directed to the provisions of Chapter 9 of Division 3 of the California Business and Professions Code concerning the licensing of contractors.

All Bidders and Contractors shall possess the required classification of Contractor's License, as specified in the Contract Documents, at the time the Bid is submitted, per Business and Professions Code Section 7028.15. If federal funds are involved in this Project, the Contractor shall possess the required classification of Contractor's License, as specified in the Contract Documents at the time of Contract award, per Public Contract Code Section 20103.5. If the Bidder does not possess the required Contractor's License at the time a Bid is submitted or at the time the Contract is awarded in the case of a federally funded Project, the Bid shall be considered non-responsive and shall be rejected by the City. The City may require forfeiture of the Bidder's Bond.

2-1.18 Contractor Registration Requirements.

The Contractor shall comply with the registration requirements set forth in Sections 1725.5 and 1771.1 of the California Labor Code, which are incorporated into this Contract. The registration requirements include, but are not limited to, the following.

- a. Contractor Registration. A Contractor must be registered in accordance with Sections 1725.5 and 1771.1 of the California Labor Code in order to be qualified to submit a Bid Proposal. The City will reject a Bid Proposal from a Contractor that is not properly registered at the time the Contractor submits the Bid Proposal.
 - (i) Proof of Registration. The Contractor must include its registration number on its Bid Proposal.
 - (ii) Late Submission of Registration Number. The Contractor's Bid will not be deemed non-responsive for failure to include the Contractor's registration number if the Contractor submits the number within 24 hours after the Bid Opening or if the City is otherwise readily able to verify that the Contractor is properly registered. Notwithstanding the foregoing, the Contractor must still be properly registered at the time it submits its Bid Proposal.
 - (iii) Maintaining Registration. The Contractor must be properly registered in accordance with this provision for the entire term of the Contract.
- b. Subcontractor Registration. Every Subcontractor performing any Work, whether or not listed in the Contractor's Bid Proposal, must be registered in accordance with Sections 1725.5 and 1771.1 of the California Labor Code before starting such Work and for the

entire time that it performs such Work.

- (i) Unregistered Subcontractors. The City will reject a Bid Proposal from a Contractor listing a subcontractor that is not registered unless the Contractor submits adequate proof of one of the following:
 - (1) The subcontractor is registered before the Bid Proposal is opened; or
 - (2) Within 24 hours of the Bid Proposal opening, the subcontractor is registered and has paid the penalty registration fee specified in Section 1725.5 of the California Labor Code; or
 - (3) The Contractor replaces the Subcontractor with another registered Subcontractor pursuant to Public Contract Code Section 4107.5.
 - (ii) Proof of Registration. The Contractor must include on the Subcontractor listing form in its Bid Proposal the registration number of each listed Subcontractor. Notwithstanding the foregoing, the Contractor's Bid will not be deemed nonresponsive for failure to include the registration number of a Subcontractor if the Contractor submits the number within 24 hours after the Bid Opening or if the City is otherwise readily able to verify that the Subcontractor is properly registered.
 - (iii) Subcontractor Substitution. A Subcontractor's failure to be properly registered is an additional ground for substitution in accordance Public Contract Code Section 4107. The substitution must be with a properly registered Subcontractor.
- (2) Contractor's Responsibility. The Contractor is responsible for ensuring compliance with all of the Subcontractor registration requirements set forth herein.
- c. Noncompliance. Once the Contract is executed, it is a material breach of the Contract for the Contractor to be in violation of any of the registration requirements set forth in this Section.

END OF SECTION

SECTION 3: AWARD AND EXECUTION OF CONTRACT

3-1.01 Award of Contract.

The City, in its sole discretion, reserves the right to reject any and all Bids, including for failure to submit the required Bid Security or any other item required by the Proposal Forms, or a Bid which is in any other way incomplete or irregular. The City has the right, but is not required, to waive nonmaterial irregularities in a Bid.

If the City awards the Contract, the award will be to the lowest responsive and responsible Bidder whose Bid complies with all the requirements prescribed. If two (2) or more Bids are the same and the lowest, the City may accept either Bid it chooses in its sole discretion. Pursuant to Municipal Code Section 3.20.050(7), if all Bids presented are rejected, the City Council may re-advertise the Project or authorize the City Manager to proceed with the purchase of the materials, services, or equipment by negotiation in the open market subject to final approval of purchase by City Council.

The City will compare all Bids on the basis of the Engineer's Estimate of the quantities of Work to be done.

3-1.01A Timing of Award.

If the City awards the Contract, it will award the Contract no earlier than five (5) business days after the City sends its Notice of Intent to Award the Contract to all Bidders and no later than ninety (90) calendar days after the opening of the Bids.

If the lowest responsible Bidder refuses or fails to execute the contract, the City may award the contract to the second lowest responsive and responsible Bidder. Such award, if made, will be made within 105 calendar days after the opening of the Bids. If the second lowest responsible Bidder refuses or fails to execute the Contract, the City may award the Contract to the third lowest responsive and responsible Bidder. Such award, if made, will be made within 120 calendar days after the opening of the Bids. The Public Works Department may proceed in like manner until the Director either finds a responsible and responsive Bidder willing to be awarded the contract or determines that it is not in the best interest of the City to proceed further.

The periods of time specified above within which the award of Contract may be made shall be subject to extension for such further period as may be agreed upon in writing between the Director and the Bidder concerned.

3-1.01B Notice of Intent to Award.

If the City intends to award a Contract, the City will notify or cause to be notified all Bidders of that decision through posting a Notice of Intent to Award through the City's online solicitation webpage, as listed on the Proposal Forms.

3-1.01C Notice of Award.

If the City intends to award a Contract, the City will notify, via certified mail, the successful Bidder with a signed Notice of Award.

3-1.01D Contractor License & Registration.

For a federal-aid contract, the Contractor must be properly licensed as a contractor from Contract award through Contract acceptance (Public Contract Code Section 10164).

For a non-federal-aid contract:

1. Contractor must be properly licensed as a contractor from Bid opening through Contract acceptance (Bus. & Prof. Code Section 7028.15),
2. Joint venture bidders must obtain a joint venture license before Contract award (Bus. & Prof. Code Section 7029.1).

All Contractors and Subcontractors doing work in the City of Campbell shall have a valid City of Campbell Business License in addition to the appropriate State Contractor's License.

No Contractor or Subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5.

3-1.01E Alternates.

City will have the right to accept alternates in any order or combination, unless otherwise specifically provided in the Proposal Documents.

3-1.01F Basis of Bid.

For a lump-sum-based bid, the City compares Bids based on the total price. For a unit-price-based bid, the City compares Bids based on the sum of the item totals. For a cost-plus-time-based bid, the City compares Bids based on the sum of the item totals and the total bid for time.

3-1.02 Execution of Contract.

The successful Bidder shall, within ten (10) business days after receipt of the Notice of Award, execute and deliver the following documents to the City:

- (1) Two originals of the Contract executed by Contractor,
- (2) One original of the Bond for Faithful Performance,
- (3) One original of the Bond for Labor and Materials,
- (4) Certificates of Insurance, as required in Section 3-1.05 "Insurance Requirements", and
- (5) Any and all other documents required to be submitted to the City at the time of execution of the Contract, as required in the Contract Documents.

If Bidder submits all the above-stated documents to City within ten (10) business days, and if all such items comply with the requirements of the Proposal Forms and are acceptable to City, City

will sign the Contract and return a signed copy of the Contract to Bidder.

3-1.03 Failure to Execute Contract.

Failure of the successful Bidder to execute the Contract in the form satisfactory to City and file acceptable bonds and insurance as required shall be just cause in the City's sole discretion for voiding the award and the forfeiture of the proposal guaranty.

The successful Bidder may file with the City a written notice, signed by the Bidder or their authorized representative, specifying that the Bidder will refuse to execute the Contract if presented to the Bidder, in effect withdrawing its Bid. The filing of such notice shall have the same force and effect as the failure of the Bidder to execute the Contract and furnish acceptable bonds within the time hereinbefore prescribed.

If City consents to the withdrawal of the Bid of the apparent lowest responsive and responsible Bidder, or the apparent lowest responsive and responsible Bidder fails or refuses to sign the Contract or submit to City all of the items required by the Bid Documents, within ten (10) business days after receipt of the Notice of Award, or that Bidder is not financially or otherwise qualified to perform the Contract, City may reject such Bidder's Bid and select the next apparent lowest responsible Bidder, until all Bids are exhausted, or reject all Bids. Any Bidder whose Bid is rejected because the Bidder has failed or refused, within ten (10) business days after receipt of Notice of Award, to sign the Agreement or submit to City all of the items required by the Bid Documents, shall be liable to the City for all resulting damages.

3-1.04 Contract Bonds.

The successful bidder shall furnish a Bond for Faithful Performance and a Bond for Labor and Materials to the Engineer at the time of execution of the Contract.

Each bond shall conform to the form included in the Proposal Forms. All alterations, extensions of time, extra and additional work, and other changes authorized by Contract Documents may be made without securing the consent of the surety or sureties of the contract bonds. All surety companies must be authorized to transact business within the State of California.

3-1.04A Faithful Performance Bond.

The Contractor shall provide a performance and payment bond covering the Contractor's obligations under the Contract Documents, each in the full amount of the Contract Price (or another term representing the amount). The surety and form shall be approved by the City and the City shall be named as obligee.

A Bond for Faithful Performance of the Maintenance Period shall be required as indicated in Section 2-1.12 "General Guaranty".

3-1.04B Labor & Materials Bond.

The Bond for Labor & Materials shall be a good and sufficient bond approved by the City in an amount not less than 100 percent of the Contract Sum. To be approved, the Bond for Labor & Materials must provide that if the Contractor or any Subcontractor fails to pay any of the

persons named in Section 3181 of the California Civil Code, or amounts due under the Unemployment Insurance Code with respect to the work or labor contracted to be done and performed by any claimant, then the surety or sureties will pay for same, in an amount not exceeding the amount of the bond, and also, in case suit is brought upon the bond, a reasonable attorney's fee to be fixed by the court. To be approved, the bond must be issued by an admitted surety and shall, by its term, inure to the benefit of any of the persons named in Section 9100 of the California Civil Code, to give a right of action to such persons or their assigns in any suit brought upon the bond, including the right of action to recover on the bond, in any suit brought to foreclose the liens provided for in Title 15, Part 4, Division 3 of the California Civil Code or in a separate suit brought on this bond. The Bond shall otherwise comply with all of the provisions of Title 15, Part 4, Division 3 of the California Civil Code.

Unless a Labor & Materials Bond is filed and approved as herein provided, no claim in favor of the Contractor arising under the Contract shall be audited, allowed, or paid by the City. Any persons named in Section 3181 of the Civil Code of the State of California, shall receive payment of their respective claims in the manner provided by Chapter 4, Part 4, Division 3, Title 15 of the Civil Code of the State of California upon having complied with the conditions of Section 3183 of the Civil Code.

3-1.05 Insurance Requirements.

Contractor shall, at its sole expense, purchase and maintain in full force and effect, such insurance as will protect itself and the City from claims, such as bodily injury, wrongful death, and property damage, which may arise out of or result from the Work required by the Contract Documents, whether such Work is done by Contractor, by any Subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The amounts of such insurance and any additional insurance requirements are specified in the Contract Documents.

In the event Contractor does not comply with the required insurance requirements, City may, at its option, provide insurance coverage to protect City and the cost of such insurance shall be paid by Contractor and may be deducted from the Contract Sum.

3-1.06 Notification of Surety and Insurance Companies.

The surety companies and other signers of any of the above mentioned bonds, and all insurance companies, shall familiarize themselves with all of the conditions and provisions of this Contract, and they waive the right of special notification of any change or modification of this Contract or of extension of time, or of decreased or increased Work, or of the cancellation of the Contract, or of any other act or acts by the City or its authorized agents, under the terms of this Contract, and failure to notify the sureties or insurance companies of changes shall not relieve the sureties or insurance companies of their obligation under this Contract.

3-1.07 Damages for Collusion.

If at any time it is found that the person, firm, or corporation to whom the Contract has been awarded, in presenting any bid or bids, colluded with any other party or parties, then the Contract awarded may be declared by the City to be null and void, and the Contractor and their sureties shall be liable to the City for all loss or damage which the City may have suffered as a result of

such collusion, and the City may re-advertise anew for bids for said Work.

3-1.08 Return of Bid Guaranties.

Until the award and execution by the Contractor of the Contract, the Engineer shall hold the Bid Guaranties of the three lowest Bidders until the Contract has been executed. Any other Bid Guaranties may be released by the Engineer when the Engineer determines in the Engineer's sole discretion that the best interest of the City would not be served by retaining such Bid Guaranties.

If the Bid is not accepted by City within 60 days after the date set for the opening of Bids, or if the Bidder, to whom the Contract is awarded, executes and delivers to City all the required documents and insurance, City shall return the Bid Guaranty to each Bidder.

3-1.09 Protesting of Bid Award.

A Bidder may protest the City's award of a Contract. A protesting Bidder shall submit its protest by notifying the City Clerk, in writing, of their grounds for believing the award was improper within five (5) calendar days from the date upon which the City issues its Notice of Intent to Award, specifying in detail the ground(s) of the protest and the facts supporting the protest. The Bidder shall submit their bid protest in conformity with Chapter 3.22 "Bid Protest Procedures" of the Campbell Municipal Code.

Bidders are instructed that, irrespective of any changes to the information contained in the Notice of Intent to Award, there is a single protest period, and any and all protests must be delivered by the deadline specified above, regardless of whether or not the protest is directed at the Bid of the proposed awardee or at the Bid of another Bidder. By way of example only, should the City indicate in its Notice of Intent to Award that it intends to award to the lowest Bidder, the third lowest Bidder will be required to deliver any protest it may have as to the Bid of the second lowest Bidder, regardless of whether or not it is also prepared to protest the bid of the lowest Bidder. Failure to provide such notice within the five (5) calendar day period will constitute waiver of any and all rights, claims, damages or causes of action against the City arising out of the award of the Contract.

The procedure and time limits set forth in this Section are mandatory and the Bidders' sole and exclusive remedy in the event of protest. Failure to comply with these procedures shall constitute a waiver of any right to further pursue the protest, including filing a Government Code claim or legal proceedings.

The decision of the City shall be final.

END OF SECTION

SECTION 4: SCOPE OF WORK

4-1.01 Intent.

The intent of the Contract Documents, including Project plans and specifications, is to prescribe the details for the construction and completion of the Work which the Contractor undertakes to perform in accordance with the terms of the Contract. Where the Contract Documents describe portions of the Work in general terms, but not in complete detail, it is understood that only the best general practice is to prevail and that only materials and workmanship of the first quality are to be used. Unless otherwise specified, the Contractor shall furnish all labor, materials, tools, equipment and incidentals, and do all the Work involved in executing the Contract in a satisfactory and workmanlike manner, commensurate with trade standards.

Nothing in the Contract Documents voids the Contractor's public safety responsibilities.

4-1.02 Work Description.

Contractor will construct the Work as described in the Notice Inviting Bids and as described in the Contract Documents.

4-1.03 Changes in the Work.

4-1.03A General.

The City reserves the right, without notice to the Sureties, and as may be deemed by the City to be necessary for the proper completion of the Work, to order or authorize changes to the scope of the Work without invalidating the Contract.

Any such changes will be set forth in a Change Order which will specify the work to be done in connection with the change, adjustment of Contract Time, if any, and the basis of full compensation for such work. A Change Order will not become effective until approved in writing by the City. Contractor shall proceed promptly with any changes in the Work, unless otherwise provided in the relevant Change Order.

4-1.03B Change Order Issuance Procedures.

The City may issue a proposed Change Order, issued by the Director or the Director's properly authorized agent, to the Contractor at any time. Upon receipt of a Change Order from the City, the Contractor shall promptly proceed with the ordered work.

If ordered in writing by the City, by letter of intent to perform extra work, executed by the Director or the Director's properly authorized agent, the Contractor shall proceed with the work so ordered prior to actual receipt of an approved Change Order therefor. In such cases, the City will, as soon as practicable, issue an approved Change Order for such work and the

provisions of this Section shall be fully applicable to such subsequently issued Change Order.

If the Contractor signifies acceptance of the terms and conditions of such proposed Change Order by executing such document and if such Change Order is approved by the City and issued to the Contractor, payment in accordance with the provisions as to compensation therein set forth shall constitute full compensation for all work included therein or required thereby. A Change Order executed by the Contractor and approved by the City is an executed Change Order, as that term is defined in Section 1. An approved Change Order shall supersede a proposed, but unapproved, Change Order covering the same work.

Contractor can submit a Change Order Request by providing all supporting documentation, as specified herein. Such a Change Order Request shall not become an operative Change Order until signed by the City.

4-1.03C Price Adjustment.

If a Change Order adjusts the compensation for an item of work, the Contractor shall, upon request, furnish the Engineer with adequate detailed cost data for such item of work. If the Contractor requests an adjustment in compensation for an item of work by means of a Change Order Request, such cost data shall be submitted with the Request.

If the City and Contractor cannot agree upon a price for performing a Change Order, the City has the right to issue a Directed Change Order requiring Contractor to perform the Change Order work at the contract unit price or force account as noted in Section 9-2.02 "Force Account Payment." Contractor will thereafter perform work for the price and on the terms set forth in such Directed Change Order. The Contractor shall not have the right to terminate the Contract based upon the issuance of a Directed Change Order. Contractor may, however, make a Claim as provided for in the Contract, pursuant to Section 9-3, "Claims" and Section 4-1.03D, "Change Order Claim Procedures", for additional compensation which the Contractor believes is due and owing for performing Directed Change Order work.

The compensation provided for in each and every Change Order shall include all costs and taxes applicable thereto, and the City shall not be liable for any increase in taxes during the term of Change Order work. Any Extra Work costs for a Change Order shall mean the actual costs incurred or to be incurred by Contractor and each Subcontractor.

The total cost of a Change Order shall be the sum of labor, costs, material costs, equipment rental costs, and specialist costs as defined in Section 9, "Measurement, Payment, and Claims." This limit applies in all cases of Claims for Extra Work, whether calculating Contract modifications, RFPs, or calculating claims of all types, and applies even in the event of fault, negligence, strict liability, or tort claims of all kinds, including strict liability or negligence. No other costs, including special damages of any type and lost profit arising out of or connected with the performance of Extra Work of any nature may be recovered by Contractor.

The following constitute charges included in overhead for all Contract modifications, including

force account work:

- a. Drawings: filed drawings, shop drawings, etc. including submissions of drawings.
- b. Routine field inspection of work proposed.
- c. General superintendence.
- d. General administration of Change Orders.
- e. Computer services.
- f. Salaries of Project engineer, superintendent, timekeeper, storekeeper, and secretaries.
- g. Janitorial services.
- h. Temporary on-site facilities, such as offices, utilities (including telephones, plumbing, electrical (power, lighting), internet platforms), fencing, etc.
- i. Home office expenses.
- j. Insurance and Bond premiums.
- k. Procurement and use of vehicles and fuel used coincidentally in base bid work.
- l. Protection of Work.
- m. Final cleanup.
- n. Other incidental work.

Overhead and profit on labor for Extra Work shall not exceed a total of 15 percent. Overhead and profit on materials for Extra Work shall not exceed a total of 15 percent. Overhead and profit on equipment rentals for Extra Work shall not exceed a total of 15 percent. When Extra Work is performed by a first tier Subcontractor, Contractor shall receive a five (5) percent markup on Subcontractors' total actual costs of Extra Work.

As a condition to Contractor's right to an adjustment of the Contract Sum herein, Contractor must keep detailed and accurate records itemizing each element of cost and shall provide substantiating records and documentation, including timecards and invoices, to City. Such records and documentation shall be submitted to Engineer daily.

4-1.03C(1) City-Operated Equipment.

When City-operated equipment is used to perform Extra Work, Contractor shall be paid as follows:

- (a) Payment for equipment will be made in accordance with Section 9-2.02A(3) "Equipment Rental."
- (b) Payment for cost of labor will be made at not more than rates of such labor established by collective bargaining agreements for type of worker and location of work, whether or not owner-operator is actually covered by such an agreement.

4-1.03C(2) Work Performed by Special Forces or Other Special Services.

When City and Contractor, by agreement, determine that special service or item of Extra Work cannot be performed by Contractor or those of any Subcontractors, service may be performed by a specialist. Invoices for such services based on current market prices thereof may be accepted without complete itemization of labor, material, and equipment rental costs when it is

impracticable and not in accordance with established practice of special service industry to provide complete itemization.

In those instances wherein Contractor is required to perform Extra Work necessitating a fabrication or machining process in a fabrication or machine shop facility away from the Project Site, charges for that portion of Extra Work performed off-site may, by agreement, be accepted as specialist billing. City must be notified in advance of all off-site work. To specialist invoice price, less credit to City for any cash or trade discount offered or available, whether or not such discount may have been taken, will be added 15 percent in lieu of the percentages provided in Section 9-2.02A "Work Performed by Contractor."

4-1.03D Change Order Claim Procedures.

Notwithstanding the terms of Section 4-1.03C, "Price Adjustment", should the Contractor disagree with any term or condition set forth in a Change Order which the Contractor has not executed, including but not limited to the scope of Work and the Contract Time, the Contractor shall submit a Claim pursuant to Section 9-3, "Claims." The Claim shall state the points of disagreement, and, if possible, the Contract specification references, quantities, and costs involved. If Contractor does not timely submit a Claim, the Change Order will be considered executed, and Contractor shall be deemed to have assented that the Work is within the Contract requirements and with payment made as set forth in the Change Order. Such payment shall constitute full compensation for all work included therein or required thereby.

If Contractor's Claim concerns an adjustment to compensation, the compensation payable for all work required by said Change Order to which such Claim relates will be determined as provided in Sections 4-1.03F, "Changes in Character of Work", Sections 4-1.03G, "Extra Work", and Section 4-1.03H, "Revocable Contract Items," inclusive.

Where the Claim concerns an adjustment to a Contract Time, the time to be allowed therefor will be determined as provided in Section 8-1.07, "Liquidated Damages."

4-1.03E Increased or Decreased Quantities.

Increases or decreases in the quantity of a Contract item of work will be determined by comparing the total pay quantity of such item of work with the Engineer's Estimate therefor.

If the total pay quantity of any item of work required under the Contract varies from the Engineer's Estimate by 25 percent or less, payment will be made for the quantity of work of said item performed at the Contract unit price, unless eligible for adjustment pursuant to Section 4-1.03F, "Changes in Character of Work."

If the total pay quantity varies from the Engineer's Estimate by more than 25 percent, in the absence of an executed Change Order specifying the compensation to be paid, the compensation payable to the Contractor will be determined in accordance with Sections 4-1.03-E(1), "Increases of More Than 25 Percent", (2), "Decreases of More Than 25 Percent, or (3), "Eliminated Items", as the case may be.

4-1.03E(1) Increases of More Than 25 Percent.

Should the total pay quantity of any item of work required under the Contract exceed the Engineer's Estimate by more than 25 percent, the work in excess of 125 percent of such estimate and not covered by an executed Change Order specifying the compensation to be paid will be paid for by adjusting the Contract unit price, as hereinafter provided, or at the sole option of the City, payment for the work involved in such excess will be made on the basis of force account as provided in Section 9-2.02, "Force Account Payment."

Such adjustment of the Contract unit price will be the difference between the Contract unit price and the actual unit cost, which will be determined as hereinafter provided, of the total quantity of the item. If the costs applicable to such item of work include fixed costs, such fixed costs will be deemed to have been recovered by the Contractor by the payments made for 125 percent of the Engineer's Estimate of the quantity for such item, and in computing the actual unit cost, such fixed costs will be excluded. Subject to the above provisions, such actual unit cost will be determined by the City in the same manner as if the work were to be paid for on a force account basis as provided in Section 9-2.02, "Force Account Payment", or such adjustment will be as agreed to by the Contractor and the City.

When the compensation payable for the number of units of an item of work performed in excess of 125 percent of the Engineer's Estimate is less than \$5,000 at the applicable contract unit price, the Engineer reserves the right to make no adjustment in said price if the Engineer so elects, except that an adjustment will be made if requested in writing by the Contractor within 10 working days from the date the Contractor became aware, or should have reasonably become aware, of the increase.

4-1.03E(2) Decreases of More Than 25 Percent.

Should the total pay quantity of any item of work required under the contract be less than 75 percent of the Engineer's Estimate therefor, an adjustment in compensation pursuant to this Section will not be made unless the Contractor so requests in writing within 10 working days from the date when the Contractor became aware, or should have reasonably become aware, of the decrease. If the Contractor so requests, the quantity of said item performed, unless covered by an executed contract change order specifying the compensation payable therefor, will be paid for by adjusting the contract unit price as hereinafter provided, or at the option of the City payment for the quantity of the work of such item performed will be made on the basis of force account as provided in Section 9-2.02, "Force Account Payment", provided however, that in no case shall the payment for such work be less than that which would be made at the contract unit price.

Such adjustment of the contract unit price will be the difference between the contract unit price and the actual unit cost, which will be determined as hereinafter provided, of the total pay quantity of the item, including fixed costs. Such actual unit cost will be determined by the City in the same manner as if the work were to be paid for on a force account basis as provided in Section 9-2.02, "Force Account Payment", or such adjustment will be as agreed to by the

Contractor and the City.

The payment for the total pay quantity of such item of work will in no case exceed the payment which would be made for the performance of 75 percent of the Engineer's Estimate of the quantity for such item at the original contract unit price.

4-1.03E(3) Eliminated Items.

Should any Contract item of the work be eliminated in its entirety for any reason, including but not limited to the convenience of the City, in the absence of an executed Change Order covering such elimination, payment will be made to the Contractor for actual costs incurred in connection with such eliminated contract item if incurred prior to the date of notification in writing by the City of such elimination.

If acceptable material is ordered by the Contractor for the eliminated item prior to the date of notification of such elimination by the City, and if orders for such material cannot be canceled, it will be paid for at the actual cost to the Contractor. In such case, the material paid for shall become the property of the City and the actual cost of any further handling will be paid. If the material is returnable to the vendor and if the Engineer so directs, the material shall be returned, and the Contractor will be paid for the actual cost of charges made by the vendor for returning the material. The actual cost of handling returned material will be paid. The actual costs or charges to be paid by the City to the Contractor as provided in this Section (3) will be computed in the same manner as if the work were to be paid for on a force account basis as provided in Section 9-2.02, "Force Account Payment."

4-1.03F Changes in Character of Work.

The City adjusts the unit price of an item if:

1. Ordered plan or specification change materially changes the character of a work item from that on which the bid item price was based.
2. Unit cost of the charged item differs from the unit cost of that item under the original plans and specifications.
3. No approved Change Order addresses the payment.

The basis of such adjustment in compensation will be the difference between the actual unit cost to perform the Work of said item or portion thereof involved in the change as originally planned and the actual unit cost of performing the Work of said item or portion thereof involved in the change, as changed. Actual unit costs will be determined by the City in the same manner as if the Work were to be paid for on a force account basis as provided in Section 9-2.02, "Force Account Payment", or such adjustment will be as agreed to by the Contractor and the City. Any such adjustment will apply only to the portion of the Work of said item actually changed in character. At the option of the City, the Work of said item or portion of item which is changed in character will be paid for by force account as provided in Section 9-2.02, "Force Account Payment"

If the compensation for an item of Work is adjusted under this Section, the costs recognized in determining such adjustment shall be excluded from consideration in making an adjustment for such item of work under the provisions in Section 4-1.03E, "Increased or Decreased Quantities."

4-1.03G Extra Work.

New and unforeseen work will be classified as extra work when determined by the City that such work is not covered by any of the various items for which there is a bid price or by combinations of such items. In the event portions of such work are determined by the City to be covered by some of the various items for which there is a bid price or combinations of such items, the remaining portion of such work will be classified as extra work. Extra work also includes work specifically designated as extra work in the plans or specifications. The Contractor shall do such extra work and furnish labor, material, and equipment therefor upon receipt of Contract Change Order or other written order of the City, and in the absence of such Contract Change Order or other written order of the City, the Contractor shall not be entitled to payment for such extra work.

Payment for extra work required to be performed pursuant to the provisions in this Section, in the absence of an executed Contract Change Order, will be made by force account as provided in Section 9-2.02, "Force Account Payment", or as agreed to by the Contractor and the City.

4-1.03H Revocable Contract Items.

Items noted as "Revocable" in the Proposal may be deleted entirely or in part at the sole discretion of the City. The provisions of Section 4-1.03E "Increased or Decreased Quantities" shall not apply to entire or partial deletion of Revocable items.

4-1.04 Use of Materials Found on the Job Site.

Unless designated as selected material as provided in Section 19-2.03, "Selected Material," the Contractor, with the approval of the Engineer, may use in the proposed construction such stone, gravel, sand or other material suitable in the opinion of the Engineer as may be found in excavation that comply with the Contract specifications. The Contractor will be paid for the excavation of such materials at the contract price for such excavation, but the Contractor shall replace at their sole expense with other suitable material all of that portion of the material so removed and used which was contemplated for use in the Work, except that the Contractor need not replace, at their expense, any material obtained from structure excavation used as structure backfill. No charge for materials so used will be made against the Contractor. The Contractor shall not excavate or remove any material from within the Project location that is not within the excavation, as indicated by the slope and grade lines, without written authorization from the Engineer.

4-1.05 Differing Site Conditions.

Consistent with Public Contracts Code Section 7104, for all excavations extending deeper than four feet below the surface, the Contractor shall promptly, and before the following conditions

are disturbed, notify the City in writing, of any:

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

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 costs of, or the time required for, performance of any part of the Work, City shall issue a Change Order.

In the event a dispute arises between the City and the Contractor as to whether or not 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 the Contract Documents or by law which pertain to the resolution of disputes and protests between the contracting parties.

If Contractor fails to promptly notify the Engineer of differing site conditions, Contractor waives its right to claim a differing site condition for the period between Contractor's discovery of the differing site condition and Contractor's notification to the Engineer.

If Contractor disturbs the site after discovery and before the Engineer's investigation, Contractor waives its differing site condition claim.

4-1.06 Concealed, Unforeseen, or Unknown Conditions or Events.

Except and only to the extent provided otherwise in Section 4 of these Standard Specifications, Contractor agrees to (1) bear the risk of concealed, unforeseen, or unknown conditions or events, if any, which may be encountered in performing the Contract, and (2) that Contractor's bid for the Contract was made with full knowledge of this risk.

In agreeing to bear the risk of concealed, unforeseen, or unknown conditions or events, Contractor understands that, except and only to the extent otherwise provided in Section 4, concealed, unforeseen, or unknown conditions or events shall not excuse Contractor from its obligation to achieve Final Completion of the Work within the Contract Time, and shall not entitle Contractor to an adjustment of the Contract Sum.

If Contractor encounters concealed, unforeseen, or unknown conditions or events that may

require a change to the design shown in the Contract Documents, Contractor shall immediately notify Engineer in writing such that Engineer can determine if a change to the design is required. Contractor shall be liable to City for any extra costs incurred as the result of Contractor's failure to immediately give such notice.

If, as the result of concealed, unforeseen or unknown conditions or events, the City issues a Change Order that changes the design from the design depicted in the Contract Documents, Contractor shall be entitled, subject to compliance with all the provisions of the Contract, including those set forth in Section 4, to an adjustment of the Contract Sum and/or Contract Time, for the cost and delay resulting from implementing the changes to the design. Except as provided in this Section, or as may be expressly provided otherwise in the Contract, there shall be no adjustment of the Contract Sum and/or Contract Time as a result of concealed, unforeseen or unknown conditions or events.

Contractor shall, as a condition precedent to any adjustment in Contract Sum or Contract Time herein, fully comply with Section 4 (including the timely filing of a Change Order Request and all other requirements for Change Orders Requests and Claims).

4-1.07 Waiver.

The Contractor agrees and understands that no oral approval, express or implied, of any adjustment of the Contract Sum or Contract Time by City or its agents shall be binding upon City unless and until such approval is ratified by execution of a written Change Order.

4-1.08 Final Cleaning Up.

Before final inspection of the Work, the Contractor shall clean the job site, staging site, highway, material sites, and all ground occupied by the Contractor in connection with the Work of all rubbish, excess materials, falsework, temporary structures, temporary pavement striping and markings, temporary storm water protection measures, and equipment. Contractor shall remove all USA markings from all paved and concrete surfaces throughout the Project site without damaging said surfaces. Contractor shall also remove all construction information signage, including but not limited to temporary warning, regulatory, and guide signs. All parts of the Work and project site shall be left in a neat and presentable condition.

Full compensation for final cleaning up will be considered as included in the prices paid for the various Contract items of Work and no separate payment will be made therefor.

END OF SECTION

SECTION 5: CONTROL OF WORK

5-1.01 General.

Contractor shall furnish all resources, except City-furnished materials, required to complete the Work as described in the Contract Documents and provide quality control. Contractor's Work is subject to the City's inspection, sampling, and testing. The City's inspection, sampling, and testing, however, does not relieve Contractor of its responsibility to provide quality control. Contractor shall provide City with safe and unrestricted access to the Work, including furnishing all facilities necessary for the City's inspection.

Where the Contract Documents do not specify means and methods to complete the Work, Contractor shall choose such means and methods. Where the Contract Documents describe more than one construction method, material, or equipment, the City does not assure that the stated construction method, material, or equipment can be used successfully throughout all or any part of the Work. Contractor is solely responsible to use the alternative or alternatives that will accomplish the Work under the conditions encountered at the Project site.

Contractor's failure to comply with any Contract Document part is a waiver of its right to an adjustment of Contract Time or Contract Price related to that Contract Document part.

5-1.02 Authority of Engineer.

The Engineer makes the final decision on questions regarding the Contract Documents, including but not limited to the following:

- (a) Work and material quality and acceptability
- (b) Manner of performance of the Work
- (c) Drawing and specification interpretation
- (d) Contract fulfillment
- (e) Time and progress rate
- (f) Measurement and payment

Engineer's responses are for the sole benefit of the City and shall not act as a waiver of defects in the Work. Failure of the Engineer to enforce any part of the Contract does not waive City's enforcement of any Contract provision. The Engineer's decision shall be final and the Engineer shall have authority to enforce and make effective such decisions and orders which the Contractor fails to carry out promptly. The Engineer shall have the right to order the Work stopped, if in the Engineer's opinion such action becomes necessary, until the Engineer has determined and ordered that the Work may proceed in due fulfillment of all Contract requirements. The Engineer may reject Work that does not comply with the Contract Documents at any time, including after a payment has been made.

5-1.03 Plans and Shop Drawings.

The Contract plans furnished consist of general drawings and show such details as are necessary to give a comprehensive idea of the construction contemplated. All authorized alterations affecting the requirements and information given on the Contract plans shall be in writing.

The Contract plans shall be supplemented by such shop drawings prepared by the Contractor as are necessary to adequately control the Work. No change shall be made by the Contractor in any shop drawing after it has been reviewed by the Engineer without further written approval by the City.

Contractor shall submit all shop drawings as specified and as otherwise required to control the Work. Each shop drawing and calculation sheet must be in black ink and sequentially numbered.

Text and graphics must be legible for photocopying and reduction.

In addition, it is the sole responsibility of the Contractor to identify any potential impact and changes to the Work as a result of the implementation of the items shown and described by shop drawings and any associated documentations.

Contractor's calculations must demonstrate the design adequacy. Calculations specified as independently checked must be sealed and signed by a registered civil engineer in California and who did not seal and sign the drawings.

For Contractor to make a change to an authorized drawing, Contractor shall submit the change as specified above for a new shop drawing submittal. Contractor shall note any and all changes.

After the work shown on the shop drawings is complete, Contractor shall submit electronic copies of the record drawings to the City. Contractor shall include an index of the sheet numbers and titles on the first sheet for each structure and arrange the drawings in a drawing-number order as indicated on the index.

Shop drawings shall include all information requested by, and are subject to review by, the City.

Shop drawings shall be reviewed by the Engineer before any Work involving such drawings is performed. It is expressly understood that review of the Contractor's shop drawings shall not relieve the Contractor of any responsibility under the Contract for the successful completion of the Work in conformity with the requirements of the Contract Documents. Such review shall not operate to waive any of the requirements of the Contract Documents or relieve the Contractor of any obligation thereunder, and defective Work, materials, and equipment may be rejected notwithstanding such review.

Moreover, it is expressly understood that approval by the Engineer does not relieve the Contractor of any responsibility for accuracy of dimensions and details, or for mutual agreement of dimensions and details. It is mutually agreed that the Contractor shall be responsible for agreement and

conformity of its shop drawings with the approved Contract Documents.

Full compensation for furnishing all shop drawings shall be considered as included in the prices paid for the Contract items of Work to which such drawings relate, and no additional compensation will be allowed therefor.

The Engineer's review of shop drawings and other submittals submitted for the Engineer's review by the Contractor shall not act as a waiver of defects subsequently discovered in such documents or in Work performed by the Contractor in reliance on those documents.

Shop drawings shall be submitted in such number as required by the Engineer, accompanied by letter of transmittal which shall give a list of the numbers and dates of the drawings submitted. Shop drawings shall be complete in every respect and bound in sets. Unless otherwise requested, shop drawings shall be submitted electronically to Engineer for approval.

Contractor must allow 20 days for City review of all shop drawings and calculation sheets. The City will provide comments, including descriptions of any deficiencies, with a date stamp for the date of review, in its response to Contractor. The Contractor shall submit all working drawings and schedules sufficiently in advance of construction requirements to allow ample time for checking, corrections, resubmitting, and rechecking.

The Engineer's review of the Contractor's plans and working drawings shall in no way be construed to impose tort liability on the City or any of its officers, employees, or agents by reason of any damage to property or injury to person, including death, resulting from or arising out of the use of such plan, and the Contractor shall indemnify, defend, and hold harmless the City, its officers, employees, and agents from any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys' fees, losses or liabilities arising out of or in connection with the use of such plans and working drawings on the Project.

The Contractor shall keep at the Project site a copy of all plans and specifications, including all Change Orders, any written authorization and directives, and authorized shop drawings, and shall at all times give the Engineer and the Engineer's representatives access thereto.

Plans and specifications, including authorized shop drawings, and copies thereof furnished by the Engineer shall not be used on other projects without the Engineer's written consent.

5-1.04 Conformity With Contract Documents and Allowable Deviations.

Work and materials shall conform to the lines, grades, cross sections, dimensions, and material requirements, including tolerances, shown on the plans or indicated in the specifications. Although measurement, sampling and testing may be considered evidence as to such conformity, the Engineer shall be the sole judge as to whether the Work or materials deviate from the plans and specifications, and the Engineer's decision as to any allowable deviations therefrom shall be final.

5-1.05 Coordination and Interpretation of Plans, Standard Specifications, and Special Provisions.

These Standard Specifications, the Standard Plan Details, Project plans, special provisions, Change Orders, and all supplementary documents are essential parts of the Contract Documents, and a requirement occurring in one is as binding as though occurring in all. They are intended to be complementary, and to describe and provide for a complete Work.

If a discrepancy exists, the order of precedence shall be as follows:

1. Governing ranking of Contract Documents in descending order is:
 - 1.1. Project Special Provisions
 - 1.2. Project Plans
 - 1.3. City of Campbell Standard Specifications
 - 1.4. City of Campbell Standard Details
 - 1.5. Caltrans Revised Standard Specifications
 - 1.6. Caltrans Standard Specifications
 - 1.7. Caltrans Revised Standard Plans
 - 1.8. Caltrans Standard Plans
2. Written numbers and notes on a drawing govern over graphics.
3. A detail drawing governs over a general drawing.
4. A specific specification governs over a general specification.
5. Specification in a Section governs over a specification referenced by that Section.

If a discrepancy is found or confusion arises in the Contract Documents, the Contractor shall submit a Request for Information to the Engineer for clarification and shall conform to the Engineer's explanation as part of the Contract. The Engineer's decision thereon shall be final.

If the Contractor, in the course of the Work, discovers any discrepancies between the plans and the conditions actually encountered at the Project site, or any errors or omissions in the plans or in the layout given by stakes, points, or instructions, it shall be the Contractor's duty to inform the Engineer immediately in writing; and the Engineer shall promptly investigate the same. Any Work done after such discovery until authorized by Engineer will be done at the Contractor's sole risk and no additional compensation will be granted.

5-1.05A Project Plan and Record Drawings.

The Contractor shall keep and maintain at the Project site one set of Project Plan Drawings, or drawings included in the Proposal Forms accompanying the Notice Inviting Bids. On these, the Contractor shall mark all Project conditions, locations, configurations, and any other changes or deviations which may vary from the details represented on the original Contract Documents, including buried or concealed construction and utility features which are revealed during the course of construction. Special attention shall be given to recording the horizontal and vertical location of all buried utilities that differ from the locations indicated in the Contract Documents. Said Record Plan Drawings, or As-Built Drawings, shall be supplemented by any detailed sketches as necessary or directed to fully indicate the Work as actually constructed. These Record Drawings are the

Contractor's representation of as-built conditions, including all revisions made necessary by addenda, Change Orders, and the like and Contractor shall maintain and keep the Record Plan Drawings up to date during the progress of the Work.

The Record Plan Drawings shall include specific reference information to any addenda, Change Orders, or shop drawings, including any appropriate addenda or Change Order number or shop drawing manufacturer, drawing, and revision number.

Record Plan Drawings shall be accessible to the Engineer at all times during the Work.

On a monthly basis and as a condition of payment, the Contractor shall submit an updated set of the Record Plan Drawings to the Engineer. Final payment will not be approved until the Contractor-prepared Record Plan Drawings are delivered to the Engineer. Said up to date Record Plan Drawings may be in the form of a set of prints with carefully plotted information as approved by the Engineer.

Upon substantial completion of the Work and prior to final acceptance, the Contractor shall complete and deliver a complete set of Record Plan Drawings to the Engineer for transmittal to the City, conforming to the construction records of the Contractor. This set of drawings shall consist of corrected plans showing the reported location of the Work. The information submitted by the Contractor and incorporated by the Engineer into the Record Plan Drawings will be assumed to be reliable, and the Engineer will not be responsible for the accuracy of such information, nor for any errors or omissions which may appear on the Record Plan Drawings as a result.

5-1.05B Arrangement.

The specifications and drawings herein referred to are arranged and numbered for convenience. Such arrangement and numbering shall not limit the Work required by any separate trade. The terms and conditions of limitation are between Contractor and their Subcontractors. The General Conditions apply to all Work including authorized extra Work.

5-1.06 Order of Work.

When required by the Contract Documents, the Contractor shall follow the sequence of operations as set forth therein.

Unless otherwise stated in the Contract Documents, the Contractor may re-sequence Work to suit their means and method by submitting a written request to City. Such re-sequencing shall not cause adverse impacts to the Work, and shall be approved in advance by City in writing. Any cost associated with such re-sequencing is borne solely by the Contractor and no additional compensation will be allowed thereof.

Full compensation for conforming to such requirements will be considered as included in the prices paid for the various Contract items of Work and no additional compensation will be allowed therefor.

5-1.07 Superintendence.

The Contractor shall designate in writing before starting Work a competent authorized representative, or Superintendent, who shall have the authority to represent and act for the Contractor at the Project site. A competent Superintendent approved for the Project must be able to read, write, and verbally communicate in English. The Superintendent may not perform the Work of any trade, pick-up materials, or perform any Work not directly related to the supervision and coordination of the Work at the Project site when Work is in progress.

The Superintendent will receive the Engineer's orders, prosecute the Engineer's orders, supervise workers, and coordinate the subcontractor's work.

The Superintendent shall be present at the Project site at all times while Work is actually in progress on the Contract. Failure to maintain a Superintendent on the Project site when Work is in progress shall be considered a material breach of this Contract, entitling City to terminate the Contract or alternatively, issue a stop Work order until the Superintendent is on the Project site. If, by virtue of issuance of said stop Work order, Contractor fails to complete the Contract on time, Contractor will be assessed Liquidated Damages in accordance with the Agreement.

Whenever the Contractor or their Superintendent is not present on any particular part of the Work where it may be desired to give direction, orders will be given by the Engineer, which shall be received and obeyed by the Subcontractor or foreman who may have charge of the particular Work in reference to which the orders are given. The resultant cost of such orders shall be borne solely by the Contractor and no additional compensation will be allowed thereof.

Any order given by the Engineer, not otherwise required by the specifications to be in writing, will on request of the Contractor, be given or confirmed by the Engineer in writing.

The Engineer shall always be supplied with the names and telephone numbers of at least two persons in charge of or responsible for the Work, including but not limited to the Superintendent, who can be reached for emergency work 24 hours a day, 7 days a week. The 24-hour contact number shall not direct calls to a recorder, other message taking service, or voicemail. The 24-hour contact number shall be a mobile number that accepts and receives text messaging.

5-1.07A Status of Contractor.

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

5-1.08 Lines and Grades.

The Contractor shall be responsible for providing all stakes and marks as necessary to establish the lines and grades required for completion of the Work specified in the specifications, on the plans, and in the special provisions. All stakes and marks shall be set and cut sheets provided by an individual licensed in the State of California to provide such stakes, marks, and cut sheets. The cut sheets shall be subject to review and approval by the Engineer and shall be provided to the

Engineer at least two working days prior to planned start of Work. All plans shall reference the City's benchmark circuit.

Stakes and marks set by the Contractor shall be carefully preserved by the Contractor. In case such stakes and marks are destroyed or damaged, they will be replaced at the Contractor's earliest convenience. The Contractor will pay for the cost of necessary replacement or restoration of stakes and marks which were destroyed or damaged. The Contractor shall not disturb any monuments not indicated for removal or replacement on the plans found within the area of the Work or improvements unless they have first procured written permission from the Engineer. The Contractor shall bear all expenses associated with tying out, resetting, and re-documenting any monuments which may be disturbed or damaged during the Work.

5-1.09 Inspection.

The Engineer shall, at all times, have safe access to the Work wherever it is in preparation or progress, and shall be furnished with every reasonable facility for ascertaining that the materials and the workmanship are in accordance with the requirements and intentions of these specifications, the special provisions, and the plans. All Work done and all materials furnished shall be subject to the Engineer's inspection.

The Engineer will have the authority to reject the Work, or any portion thereof, which does not conform to the Contract Documents. Engineer will have the authority to stop the Work or any portion thereof. Engineer will have the authority to require additional inspection or testing of the Work in accordance with the Contract Documents, whether or not such Work is fabricated, installed, or completed. The Engineer shall have, however, no obligation to exercise the authority granted to Engineer in the Contract Documents.

The inspection of the Work or materials shall not relieve the Contractor of any obligations to fulfill the Contract as prescribed. Contractor shall make all Work and materials designated by Engineer as not meeting Contract requirements compliant and City may reject unsuitable Work or materials, notwithstanding that such Work or materials may have been previously inspected by the Engineer or that payment therefor has been included in a progress estimate.

Projects financed in whole or in part with Federal, State, County, or Regional agency funds or otherwise subject to the jurisdiction or control by another public entity, shall be subject to inspection at all times by the appropriate Federal, State, County, or Regional agency or other public entity involved.

The Contractor shall notify the Engineer at least forty-eight (48) hours in advance of the time required for the services of the City Inspector and any specialized inspections, such as material and compaction testing. Should the Contractor fail to notify the Engineer and proceeds with Work requiring inspection, all said Work shall be rejected by the Engineer. The Work so rejected may be subsequently accepted by the Engineer only after receipt of the certification described below and only if the Engineer approves such certification. Should the Contractor request acceptance of such rejected Work, the Contractor shall, at the Contractor's sole expense, secure the services of private material testing laboratories, consulting engineers, or licensed land surveyors, as

previously approved by the City, who shall certify that said Work does, in fact, conform to the requirements of the Contract Documents, plans, and specifications.

Neither the inspection by the Engineer, nor any order, measurement, approved notification, certificate, payment of money, or acceptance of any part or whole of the Work, nor any extension of time or any possession by the City or its agents shall operate as a waiver of any provision of this Contract or of any power reserved therein to the City or its agents, or any right to damage thereunder; nor shall any waiver by the City of any breach of this Contract be held to be a waiver of any subsequent breach of the same provision or any other provision of the Contract. All remedies shall be taken and construed as cumulative.

5-1.09A Inspection for Sole Benefit of the City.

The Contractor is hereby advised that inspection of the Contractor's Work during the Contract is for the sole and exclusive benefit of the City. Such inspection shall not relieve the Contractor from any obligation to perform the Work pursuant to the Contract Documents, plans, and specifications, even if defects or deficiencies in such Work were noted or observed at the time of such inspection and not communicated to the Contractor.

5-1.10 Removal of Rejected and Unauthorized Work.

All Work which has been rejected by the Engineer shall be remedied or removed and replaced by the Contractor in an acceptable manner and no compensation will be allowed to the Contractor for such removal, replacement, or remedial work. Any Work done beyond the lines and grades shown on the plans or established by the Engineer, or any extra Work done without written authority from the City, will be considered as unauthorized Work and will not be paid for. Upon order of the Engineer, unauthorized Work shall be remedied, removed, or replaced at the Contractor's sole expense.

Upon failure of the Contractor to comply promptly with any order of the Engineer made under this Section, the Engineer may cause rejected or unauthorized Work to be remedied, removed, or replaced, and to deduct the costs from any moneys due or to become due the Contractor.

5-1.10A Acceptance of Defective or Nonconforming Work.

If the City prefers to accept defective or nonconforming Work, the City may do so in its sole discretion and without the consent of the Contractor instead of requiring its removal and correction, in which case a Change Order will be issued to reflect a reduction in the Contract amount. Such adjustment shall be affected whether or not final payment has been made. Acceptance of defective or nonconforming Work may occur only upon issuance by the City of a Change Order or as set forth above.

5-1.10B Modification to Contractor's Work.

The City may modify the Contractor's Work, either before or after acceptance of the Project, without commencing or voiding any of the warranties or accepting, in part or in whole, the Contractor's Work. Notification of the City's intent to modify the Contractor's Work will be made

in writing forty-eight (48) hours prior to commencement of the modification. Whenever the City makes a Claim against the Contractor for defective workmanship or materials, it shall be the sole obligation of the Contractor to establish that the defect being complained of was due solely to a modification, if any, made by the City.

5-1.11 Equipment and Plants.

Contractor shall provide and pay for all equipment and plants for proper execution and final completion of the Work. Contractor warrants to City that only equipment and plants suitable to produce the quality of Work and materials required by the Contract will be permitted to operate on the Project.

Plants shall be designed and constructed in accordance with general practice for such equipment and shall be of sufficient capacity to ensure the production of sufficient material to carry the Work to completion within the time limit.

The Contractor shall provide adequate and suitable equipment and plants to meet the above requirements, and when ordered by the Engineer, shall remove unsuitable equipment from the Work and discontinue the operation of unsatisfactory plants.

The Contractor shall identify each piece of their equipment, other than hand tools, by means of an identifying number plainly stenciled or stamped on the equipment at a conspicuous location, and shall furnish to the Engineer a written list giving the description of each piece of equipment and its identifying number. In addition, the make, model number and empty gross weight of each unit of compacting equipment shall be plainly stamped or stenciled in a conspicuous place on the unit. The gross weight shall be either the manufacturer's rated weight or the scale weight.

The make, model, serial number, and manufacturer's rated capacity for each scale shall be clearly stamped or stenciled on the load receiving element and its indicator or indicators. All meters shall be similarly identified, rated, and marked. Upon request of the Engineer, the Contractor shall furnish a statement by the manufacturer designating sectional and weighbridge capacities of portable vehicle scales.

Each machine or unit of equipment shall be operated by an experienced operator skilled in handling the particular make of machine or unit of equipment in use, at a speed or rate of production not to exceed that recommended by the manufacturer.

All vehicles used to haul materials over existing traveled ways shall be equipped with pneumatic tires and operated within legal wheel load limits.

On a daily basis, the Contractor shall provide to the Engineer a list of employees and equipment used on the Project.

5-1.12 Alternative Equipment.

While certain of these specifications may provide that equipment of a particular size and type

is to be used to perform portions of the Work, it is to be understood that the development and use of new or improved equipment is to be encouraged.

The Contractor may request, in writing, permission from the Engineer to use equipment of a different size or type in place of the equipment specified.

The Engineer, before considering or granting such request, may require the Contractor to furnish, at the Contractor's expense, evidence satisfactory to the Engineer that the equipment proposed for use by the Contractor is capable of producing work equal to, or better than, that which can be produced by the equipment specified.

If such permission is granted by the Engineer, it shall be understood that such permission is granted for the purpose of testing the quality of Work actually produced by such equipment and is subject to continuous attainment of results which, in the opinion of the Engineer, are equal to, or better than, that which can be obtained with the equipment specified. The Engineer shall have the right to withdraw such permission at any time that the Engineer determines that the alternative equipment is not producing work that is equal, in all respects, to that which can be produced by the equipment specified. Upon withdrawal of such permission by the Engineer, the Contractor will be required to use the equipment originally specified and shall, in accordance with the directions of the Engineer, remove and dispose of or otherwise remedy, at the Contractor's expense, any defective or unsatisfactory work produced with the alternative equipment.

Neither the City nor the Contractor shall have any Claim against the other for either the withholding or the granting of permission to use alternative equipment, or for the withdrawal of such permission.

Permission to use alternative equipment in place of equipment specified will only be granted where such equipment is new or improved and its use is deemed by the Engineer to be in furtherance of the purposes of this Section. The approval for use of particular equipment on any project shall in no way be considered as an approval of the use of such equipment on any other project.

Nothing in this Section shall relieve the Contractor of responsibility for furnishing materials or producing finished Work of the quality specified in the Contract Documents.

5-1.12A Alternative Methods of Construction.

Whenever the plans or specifications provide that more than one specified method of construction or more than one specified type of material or construction equipment may be used to perform portions of the Work and leave the selection of the method of construction or the type of material or equipment to be used up to the Contractor, it is understood that the City does not guarantee that every such method of construction or type of material or equipment can be used successfully throughout all or any part of any project. It shall be the Contractor's responsibility to select and use the alternative or alternatives which will satisfactorily perform the Work under the conditions encountered. In the event some of the alternatives are not feasible or it is necessary to use more

than one of the alternatives on any Project, full compensation for any additional cost involved shall be considered as included in the Contract price paid for the item of Work involved and no additional compensation will be allowed therefor.

5-1.13 Character of Workers.

If any subcontractor or person employed by the Contractor shall appear to the Engineer to be incompetent, not possess the proper license or certification for the Work performed as required by the California Labor Code or other applicable regulations, or act in a disorderly or improper manner, they shall be discharged from the Work immediately on the request of the Engineer without cost to the City, and such person shall not again be employed on the Work.

5-1.14 Final Inspection and Contract Acceptance.

Upon substantial completion of all items of Work, and written request from the Contractor, the Engineer will make a preliminary final inspection and prepare a deficiency list. The Contractor is required to complete all items of Work and all deficiency items within the allotted Contract Days per Contract Documents. Upon completion of said items, the Contractor shall make a written request for final inspection and acceptance of the Work. The Engineer will then make a final inspection and, if warranted, recommend acceptance of the Work.

5-1.15 Cost Reduction Incentive.

The Contractor may submit to the Engineer, in writing, proposals for modifying the plans, specifications, or other requirements of the Contract for the sole purpose of reducing the total cost of construction. The cost reduction proposal shall not impair, in any manner, the essential functions or characteristics of the Project, including but not limited to service life, economy of operation, ease of maintenance, desired appearance, or design and safety standards.

Cost reduction proposals shall contain the following information:

- a. A description of both the existing Contract requirements for performing the Work and the proposed changes.
- b. An itemization of the Contract requirements that must be changed if the proposal is adopted.
- c. A detailed estimate of the cost of performing the Work under the existing Contract and under the proposed change.
- d. A statement of the time within which the Engineer must make a decision thereon.
- e. The Contract items of work affected by the proposed changes, including any quantity variation attributable thereto.

The provisions of this Section shall not be construed to require the Engineer to consider any cost reduction proposal which may be submitted hereunder; the City will not be liable to the Contractor for failure to accept or act upon any cost reduction proposal submitted pursuant to this Section nor for any delays to the work attributable to any such proposal. If a cost reduction proposal is similar to a change in the plans or specifications, under consideration by the City for the Project, at the

time said proposal is submitted or if such a proposal is based upon or similar to Standard Specifications, standard special provisions or Standard Plans adopted by the City after the advertisement for the Contract, the Engineer will not accept such proposal and the City reserves the right to make such changes without compensation to the Contractor under the provisions of this Section.

The Contractor shall continue to perform the Work in accordance with the requirements of the Contract until a Change Order, incorporating the cost reduction proposal, has been issued. If Change Order has not been issued by the date upon which the Contractor's cost reduction proposal specifies that a decision thereon should be made, or such other date as the Contractor may subsequently have specified in writing, such cost reduction proposal shall be deemed rejected.

The Engineer shall be the sole judge of the acceptability of a cost reduction proposal and of the estimated net savings in construction costs from the adoption of all or any part of such proposal. In determining the estimated net savings, the right is reserved to disregard the Contract bid prices if in the judgment of the Engineer, such prices do not represent a fair measure of the value of Work to be performed or to be deleted.

The City reserves the right where it deems such action appropriate, to require the Contractor to pay in part or whole the City's costs of investigating a cost reduction proposal submitted by the Contractor as a condition of considering such proposal. Where such a condition is imposed, the Contractor shall indicate acceptance thereof in writing, and such acceptance shall constitute full authority for the City to deduct amounts payable to the City from any monies due or that may become due to the Contractor under the Contract.

If the Contractor's cost reduction proposal is accepted in whole or in part, such acceptance will be by a Change Order, which shall specifically state that it is executed pursuant to this Section. Such Change Order shall incorporate the changes in the plans and specifications which are necessary to permit the cost reduction proposal or such part of it as has been accepted to be put into effect, and shall include any conditions upon which the City's approval thereof is based if the approval of the City is conditional. The Change Order shall also set forth the estimated net savings in construction costs attributable to the cost reduction proposal effectuated by the Change Order. The Contractor's cost of preparing the cost reduction incentive proposal and the City's cost of investigating a cost reduction incentive proposal, including any portion thereof paid by the Contractor, shall be excluded from consideration in determining the estimated net savings in construction costs.

Acceptance of the cost reduction proposal and performance of the Work thereunder shall not extend the time of completion of the Contract unless specifically provided for in the Change Order authorizing the use of the cost reduction proposal.

The amount specified to be paid to the Contractor in the Change Order which effectuates a cost reduction proposal shall constitute full compensation to the Contractor for the cost reduction proposal and the performance of the Work thereof pursuant to the said Change Order.

The City expressly reserves the right to adopt a cost reduction proposal for general use on contracts administered by the City when it determines that said proposal is suitable for application to other contracts. When an accepted cost reduction proposal is adopted for general use, only the Contractor

who first submitted such proposal will be eligible for compensation pursuant to this Section, and in that case, only as to those contracts awarded to the Contractor prior to submission of the accepted cost reduction proposal and as to which such cost reduction proposal is also submitted and accepted. Cost reduction proposals identical or similar to previously submitted proposals will be eligible for consideration and compensation under the provisions of this Section if the identical or similar previously submitted proposals were not adopted for general application to other contracts administered by the City. Subject to the provisions contained herein, the City or any other public agency shall have the right to use all or any part of any submitted cost reduction proposal without obligation or compensation of any kind to the Contractor.

This Section shall apply only to contracts awarded to the lowest bidder pursuant to competitive bidding.

5-1.16 Project Appearance.

The Contractor shall maintain a neat appearance to the Work and Project site, confining operations at the Project site to areas permitted by law, ordinances, permits, and the Contract Documents. Contractor shall not unreasonably encumber the Project site with materials or equipment in any area visible to the public, the following shall apply:

1. When practicable, broken concrete and debris developed during clearing and grubbing shall be disposed of concurrently with its removal. If stockpiling is necessary, the material shall be removed or disposed of daily unless otherwise specified in the special provisions or as directed by the Engineer.
2. The Contractor shall furnish trash bins for all construction debris, including all excess dirt, waste material, and rubbish caused by Contractor. All debris shall be placed in trash bins daily. Forms or falsework that are to be re-used shall be stacked neatly concurrently with their removal. Forms and falsework that are not to be re-used shall be disposed of concurrently with their removal.
3. The Contractor shall not sweep construction and other debris into the storm drainage system and shall prevent such materials from entering the storm drains.
4. The Contractor shall keep the Project site and surrounding area free from the accumulation of equipment, machinery, and surplus materials.

The Contractor is advised that disposal of dirt and other debris into the Municipal Storm Drain System or a Watercourse is prohibited under the California State Fish & Game Code and the Regional Water Quality Control Board. Any fines or penalties levied against the Contractor for violation of the above and related regulations are the sole responsibility of the Contractor.

Except as otherwise provided as a separate pay item, full compensation for conforming to the provisions in this Section shall be considered as included in prices paid for the various contract items of Work involved and no additional compensation will be allowed therefor.

Personnel of Contractor and Subcontractors shall not occupy or otherwise make use of the Project site during any time that Work is not being performed at the Project site, except as otherwise provided in the Contract Documents.

Personal vehicles of the Contractor's employees shall not be parked in the neighborhood or on the traveled way unless otherwise approved in advance and in writing by the Engineer.

When entering or leaving roadways carrying public traffic, the Contractor's equipment, whether empty or loaded, shall in all cases yield to public traffic and shall travel in the normal direction of travel.

The City prohibits the use of any public property or public rights of way locations as construction staging points, unless specifically approved in writing by the Engineer. Contractor shall adhere to Section 5-1.16A "Contractor Equipment Staging and Good Neighbor Guidelines."

5-1.16A Contractor Equipment Staging and Good Neighbor Guidelines.

As applicable or as directed by the Engineer, it shall be the Contractor's responsibility to survey the City of Campbell for an appropriate location for its construction staging.

The following requirements shall apply to the Contractor's construction staging area:

- The staging area shall be located on an existing asphalt, concrete, or non-permeable surfaced area. No staging area shall be allowed on undeveloped lots.
- The staging area shall be included in the Contractor's Stormwater Pollution Prevention Plan (SWPPP) or Water Pollution Control Plan (WPCP).
- The staging area shall not be located in an environmentally or culturally sensitive area and/or impact water resources (rivers, streams, bays, inlets, lakes, and drainage sloughs).
- The staging area shall not be located in a regulatory floodway or within the base floodplain (100-year).
- The staging area shall not affect the access to adjacent properties and/or roadways.
- The Contractor shall install a minimum of two Project information signs at the staging area. Such signs shall include, but are not limited to the following information:

[Staging Area Location/Address]
Will be used by: [Insert Contractor's Name]
[Insert Contractor's Contact Info]
For: [Insert Project Title & Description]
From: [Insert Duration of Use]

The Contractor shall maintain and keep the information current on the signs for the duration of the Project.

- The Contractor shall submit a proposed truck route plan showing routes to and from the staging area to be taken by its construction related vehicles. Such plan shall be submitted to the Engineer no later than 10 working days prior to the first day of Work.
- The Contractor shall maintain the staging area and its surrounding streets, sidewalk, curb & gutter at a level of cleanliness and tidiness as specified by the Engineer.

- Hours of Work as specified in Section 8, “Prosecution and Progress”, shall apply to accessing the staging area.
- The City’s Noise Ordinance shall be strictly enforced. Violators will be cited.
- The Contractor’s construction crew shall carpool to and from the staging area whenever possible to minimize the number of construction vehicles on the surrounding streets and to minimize the parking impact to the immediate area of the Project site.
- The Contractor shall not store construction debris/waste in the staging area. All debris shall be hauled off and disposed of the same working day in which the debris/waste was generated.
- The Contractor shall not store any equipment, materials, and debris in the public right-of-way or on City property.
- If using private property for staging, the Contractor shall provide proof of an agreement with the property owner at the Engineer’s request.
- The Contractor shall coordinate and work with the City on staging areas necessary for construction operations. The Contractor shall submit a plan indicating their staging and shall work with the City so that staging will minimize disruptions.

At the conclusion of the Project, the Contractor shall return the staging area to its original condition or better. The Contractor shall survey the area for construction staging.

5-1.17 Conferences.

At any time during progress of the Work, the Engineer shall have authority to require the Contractor and any Subcontractors and/or suppliers at any tier to attend a job-site conference. Any notice of such conference shall be duly observed and complied with by the Contractor and Subcontractors and suppliers.

5-1.18 Partnering.

The City and Contractor will use good faith efforts to promote the formation of a successful Partnering relationship in order to effectively complete the Contract to the benefit of both parties. The purpose of this relationship is to establish and maintain cooperative communication and to mutually resolve conflicts at the lowest responsible management level. The establishment of a Partnering relationship will not change or modify the terms and conditions of the Contract and will not relieve either party of the legal requirements of the Contract.

The City and Contractor will engage in either Formal Partnering or Informal Partnering, depending upon the size of the Project.

5-1.18A Formal Partnering.

In Formal Partnering, the City and Contractor implement the Partnering relationship through at least one pre-construction workshop conducted by an independent facilitator. The purpose of the initial pre-construction workshop is to mutually develop a strategy for forming a successful partnering relationship. The City and Contractor may participate in additional facilitated workshops during the life of the project as they mutually agree is necessary and appropriate.

For all projects in which the Engineer's estimate for the entire project prior to advertising for bids is \$15 million or more, the City and Contractor may participate in Formal Partnering agreed to by both parties. The Contractor shall elect Formal Partnering by submitting a request in writing to the Engineer after approval of the Contract.

The scheduling of a partnering workshop, selection of the partnering facilitator and workshop site, and other administrative details shall be as agreed to by both parties. The parties shall use good faith efforts to schedule the initial, pre-construction partnering workshop and to select the facilitator for the workshop as soon as reasonably possible following award of the Contract where Formal Partnering is mandatory or as soon as reasonably possible following a Contractor's election to require Formal Partnering for all other projects.

The costs of Formal Partnering involved in providing the pre-construction partnering workshop, any subsequent, additional partnering workshops, and the facilitator for the partnering workshops shall be borne equally by the City and Contractor. These costs may be provided elsewhere in this Contract either as an allowance item or a specific bid item. If not, then the Engineer may issue a Change Order in the amount of one-half of the estimated cost of the facilitator and the partnering workshops.

The division of costs for the facilitator and partnering workshops will be made by determining the cost in conformance with the provisions in Section 9-2.02B "Work Performed by Special Forces or Other Special Services", of the Standard Specifications, and paying to the Contractor one-half of that costs, except no markups will be allowed.

All other costs associated with Formal Partnering, including but not limited to attending the partnering workshops and sessions, completing partnering evaluations, and attending trainings, will be borne separately by the party incurring the costs, such as wages and travel expenses, and no additional compensation will be allowed therefor.

5-1.18B Informal Partnering.

In Informal Partnering, the City and Contractor will implement the Partnering relationship through partnering discussions that are not conducted by an independent facilitator. The City and Contractor may participate in additional unfacilitated partnering meetings during the life of the project as they mutually agree is necessary and appropriate.

The City and Contractor may engage in informal partnering on all projects in which the Engineer's estimate for the entire project prior to advertising for bids is below \$15 million.

5-1.19 Coordination with Other Entities.

Other entities may perform work at or near the Project site and material sources at any time. Contractor shall coordinate its activities to avoid delays. Contractor is responsible to the other entities for damage to work, persons, or property and for costs due to unnecessary delays.

5-1.20 Submittals.

Contract Documents will specify Submittals required for the Work.

5-1.20A Material Submittal Format.

The materials and/or equipment proposed by the Contractor to be used on the Work shall be submitted to and approved by the Engineer before the start of the affected Work to allow for review and corrections without work delays – especially those materials and/or equipment that have long lead time for ordering.

The Contractor shall submit four (4) hard copies of each submittal for review and approval by the Engineer.

The Contractor may elect to email each submittal to the Engineer for review and approval.

The Contractor is to allow 10 business days to review each submittal and subsequent resubmittal with the exception of shop drawings.

The Contractor is to allow 15 working days to review each shop drawing submittal and subsequent re-submittal.

The time allowed for the review of the submittal starts when the City receives the submittal.

Submittals and support information shall be separated and clearly labeled when submitted to the Engineer. The list supplied in the Contract Documents is intended to be comprehensive, but no claim for its completeness is implied and submittal of the complete list will not relieve the Contractor of supplying all the information needed or of complying with any of the other requirements of the Contract Documents. Revised lists may be issued by the Engineer, and items may be added to the Material List supplied.

Manufacturer's specifications shall be supplied along with the submittal list for all applicable products mentioned in the Contract Documents.

The Engineer reserves the right to reject any item that does not fulfill the requirements of the Contract Documents.

All submittals shall contain:

1. The date of submission and the dates of any previous submissions, including identification of revision or resubmittals.
2. The Project title and number.
3. Contractor identification and the names of subcontractors, suppliers, and manufacturers.
4. Specification Section number(s) and Bid Item(s) which pertain.
5. Applicable standards, such as ASTM, Federal, or State Specification numbers. Certified

test results indicating performance of materials/products with regard to Specification requirements.

6. The Contractor shall be required to initial or sign, certifying the review of submittals and verification of products, field construction criteria, and coordination of the information within the submittal and the Project plans and specifications.

The Contractor shall be required to review and approve all submittals and provide them stamped and signed as evidence thereof, prior to submitting to the Engineer for review. Submittals which are not stamped and signed by the Contractor will be rejected. Submittals shall be numbered consecutively.

The preparation of plans, drawings, and necessary documents, as required by the Contract Documents for each submittal shall be considered as part of the requirements of other items of work and no additional compensation shall be allowed therefor.

The Engineer reserves the right to reject any item that does not fulfill the requirements of the Contract Documents.

The Engineer reserves the right to require additional submittals from the Contractor that are not specifically identified in the Contract Documents. If so requested, the Contractor shall provide the requested material pursuant to this Section.

5-1.20B(1) Additional Submittals.

The Contractor shall submit to the Engineer the following:

1. Construction Schedule
2. Traffic Control Plan
3. Material Submittals / Schedule of Values
4. Storm Water Pollution / Erosion Control Plan
5. Notice to Residents (Draft Form) – for all phases of work
6. Staging and Site Logistic Plan

The City reserves the right to delay the issuance of the Notice to Proceed (NTP) or start of Work unless all submittals listed above are received and approved by the Engineer. Any exceptions or rejected submittals will be remedied and resubmitted for the Engineer's review and approval prior to the issuance of the NTP or start of Work.

5-1.21 Property and Facility Preservation.

5-1.21A General.

Contractor shall preserve and protect:

1. Roadway improvements and facilities
2. Property adjacent to the Project site
3. Waterways

4. ESAs
5. Lands administered by other agencies
6. Railroads and other railroad equipment
7. Non-roadway facilities, including utilities
8. Survey monuments
9. City instrumentation
10. Temporary Work
11. Roadside vegetation not to be removed.

Further, Contractor shall comply with Government Code Section 4216 *et seq.* Contractor shall notify the Engineer at least three (3) business days before it contacts the regional notification center. Contractor's failure to contact the regional notification center prohibits excavation.

Contractor shall immediately report any and all property and facility damage to the Engineer. If Contractor, or any of its employees, agents, subcontractors, or suppliers, causes any such damage, Contractor shall be responsible for all costs associated with remedying the damage. If the Contractor fails to comply with providing the necessary remedy to the damage, the Engineer may elect to have the City or contract forces to perform the remedy and deduct all expenses incurred from this work from any monies that are due or to become due to the Contractor. By exercising this option, the Contractor is in no way relieved of its aforementioned responsibilities to perform these duties.

Contractor shall install suitable safeguards to preserve and protect property and facilities from damage.

Contractor shall also install temporary facilities, such as sheet piling, cribbing, bulkheads, shores, or other supports, necessary to support existing facilities or to support materials carrying the facilities.

5-1.21B Railroad Property.

If Contractor's Work is on or adjacent to railroad property, the Work shall not interfere with railroad operations.

For an excavation on or affecting railroad property, Contractor shall submit work plans showing the system to be used to protect the railroad facilities 65 days in advance of the planned excavation for review.

If the Contract Documents do not include an agreement with a railroad company, Contractor shall not allow any personnel or equipment on the railroad property.

Contractor shall ensure all construction-related material, equipment, and debris are not on railroad property.

5-1.21C Nonhighway Facilities.

Before starting any Work that could damage or interfere with underground infrastructure,

Contractor shall locate the infrastructure described in the Contract Documents, including laterals and other appurtenances, and determine the presence of other underground infrastructure inferred from visible facilities, such as buildings, meters, and junction boxes.

Underground infrastructure described in the Contract Documents may be in different locations from those described, and additional infrastructure may exist.

Upon discovering an underground main or trunk line not described in the Contract Documents, Contractor shall immediately notify both the Engineer and the infrastructure owner. The Engineer orders the locating and protecting of the infrastructure. The locating and protecting of underground infrastructure not described in the Contract Documents is subject to a Change Order. If ordered, Contractor shall repair infrastructure damage at no additional cost. If the damage is not due to Contractor's negligence, damaged infrastructure repair is subject to a Change Order.

Contractor shall immediately notify the Engineer of a Work delay due to the presence of main-line underground infrastructure not described in the Contract Documents or in a substantially different location. Contractor shall also immediately notify the Engineer if the infrastructure described in the Contract Documents cannot be found.

5-1.21C(1) Nonhighway Facility Rearrangement.

The City may rearrange a nonhighway facility during the Contract. Such rearrangement may include installation, relocation, alteration, or removal of the facility.

The City may authorize facility owners and their agents to enter the highway to perform such rearrangement work for their facilities or to make connections or repairs to their property. Contractor shall coordinate its Work with the facility owners to avoid Work delays.

If necessary rearrangement of underground infrastructure is not described in the Contract Documents, the Engineer may issue a Change Order for the performance of such work.

To rearrange work from that described in the Contract Documents, the Contractor shall:

- (a) Immediately notify the Engineer;
- (b) Make an arrangement with the infrastructure owner;
- (c) Obtain authorization for the rearrangement from the Engineer; and
- (d) Pay the infrastructure owner any additional costs.

The Contractor shall incorporate the nonhighway facility work into their overall schedule. The Contractor will be granted additional days to coordinate their work with the facility owners and no additional compensation will be granted thereof.

5-1.21D Survey Monuments.

Contractor shall protect survey monuments on and off the roadways and highways. Upon discovery of a survey monument not identified and located in the Contract Documents, Contractor shall immediately stop all work near the monument and notify the Engineer. Contractor shall not

resume Work near the monument until so authorized by the Engineer.

5-1.21E Landscape.

If Contractor damages landscaping not to be removed, then Contractor shall (1) dispose of the damaged landscaping, unless Engineer authorizes otherwise, and (2) replace the damaged landscaping at Contractor's sole cost.

Contractor shall replace damaged plants with plants of the same species. Contractor shall replace trees with minimum 24-inch box sized trees, and shrubs with a minimum No. 15 container sized shrubs.

If a plant establishment or permanent erosion control establishment plan is specified in the Contract Documents, Contractor shall replace plants before the start of the plant establishment or permanent erosion control establishment period; otherwise Contractor shall replace plants within the allotted contract days and before the Contract acceptance by City.

Contractor shall water each plant immediately after planting, as well as saturate the backfill soil around and below the roots or the ball of earth around the roots of each plant. Contractor shall water all plants as necessary to maintain each plant in a healthy condition until Contract acceptance by the City or as noted in the plant establishment period as specified in the Contract Documents.

Contractor shall refer to Section 20, "Landscaping" of these Specifications.

5-1.21F Irrigation Facilities.

Contractor shall keep existing irrigation facilities in place that are described to be removed, relocated, or modified until the Engineer determines that they are no longer needed.

Contractor shall maintain the existing water supply. If the existing water supply is interrupted for more than three consecutive days, Contractor shall provide an alternative water supply. Contractor shall water the existing plants in the irrigated area from that alternative water supply, including those maintained by the City, as necessary to maintain healthy plant growth.

If Contractor and the City irrigate existing plants from the same water supply, Contractor shall furnish enough water to the City for watering plantings on and off the roadway as necessary to maintain a healthy condition of the plants through Contract acceptance by the City.

If Contractor damages irrigation facilities not to be removed, Contractor shall:

- (1) Remove and dispose of the damaged facilities.
- (2) Repair and replace damaged facilities within three days.
- (3) Use similar commercial-quality components from the same manufacturer or components that are compatible with the existing irrigation system if authorized.
- (4) After completing the repair or replacement of the facilities, Contractor shall perform an operational test in the presence of the Engineer. If Contractor repairs or replaces the remote control valves, Contractor shall conduct the test with the irrigation controller in the automatic mode.

Contractor shall notify the Engineer at least two (2) business days before shutting off the water supply to any portion of the existing irrigation system and inform Engineer how long the shut off will last. Contractor shall restore the water supply to any portion of the existing irrigation system immediately after the appropriate work is completed.

Contractor shall refer to Section 20, “Landscaping” of these Specifications.

5-1.22 Maintenance and Protection.

Contractor shall maintain and protect Work until the City grants relief from maintenance or accepted the Contract.

Contractor shall not remove any padlock used to secure a portion of the Work until the Engineer is present to replace it. Notify the Engineer at least three (3) business days before removing the lock.

Contractor shall prevent construction equipment that exceeds the maximum weight limits in Vehicle Code Div. 15 from operating on completed or existing treated base, pavement, or structures.

5-1.23 Request for Information.

Contractor shall submit a Request for Information (RFI) upon recognition of any event or question of fact arising under the Contract Documents. The Engineer will respond to the RFI within five (5) business days. Contractor shall proceed with the Work while waiting for a response from the Engineer, unless otherwise ordered.

Contractor may protest the Engineer’s response by submitting an Initial Potential Claim Record form within five (5) business days after receiving the Engineer’s response and complying with Section 9-3, “Claims”.

END OF SECTION

SECTION 6: CONTROL OF MATERIALS

6-1 GENERAL

6-1.01 Materials.

Contractor warrants free and clear title to all material supplied and equipment installed or incorporated in the Work. Contractor agrees, upon completion of the Work, to deliver the premises together with all improvements and appurtenances constructed or placed thereon by the Contractor, to City free from any claims, liens, or charges. Contractor further agrees that neither the Contractor, nor any person, firm, or corporation furnishing any materials or labor for any Work covered by the Contract, shall have the right to lien upon the premises or any improvement or appurtenances therein, except that Contractor may install metering devices and other equipment of utility companies or of political subdivisions the title to which is commonly retained by the utility company or the political subdivision. In the event of the installation of any such metering device or equipment, Contractor shall advise City in writing as to the ownership thereof.

Nothing contained herein, however, shall defeat or impair the right of persons furnishing material or labor under any bond given by Contractor for their protection of any rights under any law permitting such persons to look to funds due Contractor held by City.

The provision of this Section shall be inserted in all subcontracts and material contracts and notice of its provisions shall be given to all persons furnishing material for the Work when no formal contract is entered into for such material.

6-1.02 Source of Supply and Quality of Materials.

The Contractor shall furnish all materials required to complete the Work, except materials that are designated in the Contract Documents to be furnished by the City and materials furnished by the City in accordance with Section 9-2.02, "Force Account Payment."

Only materials conforming to the requirements of the Contract Documents shall be incorporated in the Work. All material must be authorized for use and approved by the Engineer.

The materials furnished and used shall be new, except as may be provided elsewhere in the Contract Documents. The materials shall be manufactured, handled, and used in a workmanlike manner to ensure completed Work in accordance with the Contract Documents.

The Contractor shall furnish the Engineer a list of the sources of materials including those of its Subcontractors. The list shall be submitted to the Engineer in sufficient time to permit inspecting and testing in advance of the materials' use.

Materials to be used in the Work will be subject to inspection and tests by the Engineer or the Engineer's designated representative. The Contractor shall furnish, without charge, such samples as may be required. After testing, if it is found that the proposed sources of supply do not furnish

a uniform product, or if the product from any such sources proves unacceptable at any time, the Contractor shall furnish approved material from other sources subject to prior approval of City. No material which, even after approval, has in any way become unfit for use shall be used in the Work. The Engineer may inspect, sample, or test materials at the source of supply or other locations, but such inspection, sampling, or testing will not be undertaken until the Engineer is assured by the Contractor of the cooperation and assistance of both the Contractor and the supplier of the material. The Contractor shall ensure that the Engineer or the Engineer's authorized representative has free access at all times to the material to be inspected, sampled, or tested.

It is understood that such inspections and tests in no way shall be considered as a guaranty of acceptance of such material nor of continued acceptance of material presumed to be similar to that upon which inspections and tests have been made, and that inspection and testing performed by the City shall not relieve the Contractor or the Contractor's suppliers of responsibility for quality control.

Manufacturers' warranties, guaranties, instruction sheets and parts lists, which are furnished with certain articles or materials incorporated in the Work, shall be delivered to the Engineer before final acceptance of the Work.

Reports and records of inspections made and tests performed, when available at the Project site, may be examined by the Contractor.

6-1.03 City-Furnished Materials.

Materials which are listed as City furnished materials in the Special Provisions will be available to the Contractor free of charge, unless otherwise specified in the Contract Documents.

The Contractor shall submit a written request to the Engineer for the delivery of City furnished material at least fifteen (15) days in advance of the date of its intended use or scheduled installation, except that the written request for the delivery of City furnished sign panels for roadside signs and overhead sign structures shall be submitted at least thirty (30) days in advance of their intended installation. The request shall state the quantity and the type of each material required.

The locations at which City furnished materials will be available to the Contractor free of charge will be designated in the Contract Documents. In such cases, said materials shall be hauled to the Project site by the Contractor at the Contractor's sole expense, including any necessary loading and unloading that may be involved. If the locations are not designated in the Contract Documents, the City furnished materials will be furnished to the Contractor free of charge at the Project site. In either case, all costs of handling and placing City furnished material shall be considered as included in the Contract Price paid for the item involving such City furnished material.

The Contractor shall be responsible for all materials furnished to the Contractor and shall pay all demurrage and storage charges. City furnished materials lost or damaged from any cause whatsoever shall be replaced by the Contractor at the Contractor's sole expense. The Contractor

shall be liable to the City for the cost of replacing lost or damaged City furnished material and such costs may be deducted from any monies due or to become due the Contractor. Such material, after receipt at the point of delivery, shall form part of the work for all purposes of the contract as if it had been supplied by the Contractor itself.

All City furnished material that the Contractor does not use for the Work shall remain the property of the City and shall be returned to the Engineer at the location requested by the City.

If the Contractor discovers any defect in materials furnished by the City, it shall immediately notify the City. Any work done by Contractor after discovery, until authorized, will be done at the Contractor's risk.

6-1.03A No Stopping Signs.

Prior to the start of Work which requires parking restriction(s), the Contractor shall request from City approval to post and maintain temporary "No Stopping" signs on each street where the Work will take place. The City will provide signs for the Contractor's use during the construction of a City Project, at no extra cost to Contractor. For all other (private & utility) projects, the "No Stopping" signs may be purchased at the Public Works Department located at City Hall – 70 N. 1st Street, Campbell, California 95008.

It shall be the Contractor's sole responsibility to post and maintain "No Stopping" signs in areas where the Contractor's Work will require restricted parking. To be enforceable, Contractor must post signs not less than 72 hours prior to the start of the Work at a maximum spacing of 60 feet. The signs must clearly show the date(s) and hours of the parking prohibition, as well as the date and time the signs were posted. Contractor is required to fill in all applicable information on the "No Stopping" signs.

If Contractor does not perform all Work during the timeframe indicated on the "No Stopping" signs, Contractor will reschedule the Work with at least five (5) working days advance notice. The Contractor shall perform all re-posting of "No Stopping" signs and re-notification of businesses, tenants, and residents as a result of its failure to meet the posted schedule. Any delays caused by Contractor's failure to adhere to the approved schedule will be at the Contractor's sole expense. No additional compensation will be allowed for costs resulting from said delays.

The Contractor shall remove the "No Stopping" signs immediately when they are no longer needed for use in the respective area of the Project.

The Contractor shall notify the Campbell Police Department directly after posting, and immediately upon removal of the said signs at (408) 866-2121.

During the morning of each scheduled workday, the Contractor shall be responsible for calling the City of Campbell's Police Dispatch to tow cars violating the "No Stopping" signs and posted schedule, if necessary. The Contractor shall have available for the Community Services Officer (CSO) responding to the call photo documentation of the "No Stopping" signs posted, if the signs were removed or vandalized the previous night.

6-1.04 Storage of Materials.

Articles or materials to be incorporated in the Work shall be stored in such a manner as to ensure the preservation of their quality and fitness for the Work and to facilitate inspection. The Contractor shall pay for all damage and storage charges, and shall not be entitled to any additional compensation from City for such charges.

6-1.05 Defective Materials.

All materials, which the Engineer has determined do not conform to the requirements of the Contract Documents, will be rejected whether in place or not. Contractor shall remove all rejected materials immediately from the Project site, unless otherwise permitted by the Engineer. No rejected material, the defects of which have been subsequently corrected, shall be used in the Work, unless the Engineer provides written preapproval. Upon failure of the Contractor to comply promptly with any order of the Engineer made under the provisions in this Section, the Engineer shall have authority to cause the removal and replacement of rejected material and to deduct the cost thereof from any moneys due or to become due the Contractor.

6-1.06 Trade Names and Alternatives.

Whenever in the Contract Documents, any articles or materials to be incorporated in the Work is designated or specified under a trade name or the name of a manufacturer and catalog information, such specification shall be deemed to be followed by the words “or approved equal.” The use of an alternative article or material which is of equal quality and of the required characteristics for the purpose intended will be permitted, subject to the following requirements and to the Contract Documents:

1. The burden of proof as to the quality and suitability of alternatives shall be upon the Contractor and the Contractor shall furnish all information necessary and as required by the Engineer to confirm approval. The Engineer shall be the sole judge as to the quality and suitability of alternative articles or materials and the Engineer's decision shall be final.
2. Whenever the specifications permit the substitution of a similar or equivalent material or article, no tests or action relating to the approval of such substitute material will be made until the request for substitution is made in writing by the Contractor to Engineer accompanied by complete data as to the equality of the material or article proposed. Such request shall be made in ample time to permit approval without delaying the work, or not less than thirty (30) days for review.
3. Wherever in the Contract Documents the name or the name and address of a manufacturer or supplier is given for a material, product, or equipment, or if any other source of a material, product, or equipment is indicated therefor, such information is given for the convenience of the Contractor only, and no limit, restriction, or direction is indicated or intended thereby, nor is the accuracy or reliability of such information guaranteed. It shall be the responsibility of the Contractor to determine the accurate identity and location of any such manufacturer, supplier, or other source of any material, product, or equipment

called for in the Contract Documents.

4. Approval by the Engineer of a substitute item proposed by the Contractor shall not relieve Contractor of the responsibility for full compliance with the Contract Documents and for adequacy of the substituted item. The Contractor shall also be responsible for resultant changes and all additional costs which the substitution requires in the Work, the Work of Subcontractors and of other contractors, and shall effect such changes without cost to the City.
5. If Engineer rejects a substitution request, Contractor shall furnish the originally specified items.
6. The substitution request shall include substantiating data that proves that substitution causes no delay and is of equal or better quality and suitability for the Work.

The City will consider proposals for substitution of materials, equipment, methods, and services only when such proposals are accompanied by full and complete technical data, and all other information requested is provided, in order to evaluate the proposed substitution. Each request for substitution shall include a statement of cause. City may require substantiating documents to prove quality, delivery time, and cost.

6-1.06A No Warranty for Listed Material Supplier or Equipment Manufacturer.

The City does not warrant nor guarantee the ability of any material supplier or equipment manufacturer listed in the Contract Documents to perform their work in a timely manner or in a manner acceptable to City. Furthermore, the City does not warrant that such materials or equipment installed and in place will be acceptable to the City.

6-1.07 Plant Inspection.

The Engineer may inspect the production of material, or the manufacture of products at the source of supply. Plant inspection, however, will not be undertaken until the Engineer is assured of the cooperation and assistance of both the Contractor and the material producer. The Engineer or the Engineer's authorized representative shall have free entry at all times to such parts of the plant as concerns the manufacture or production of the materials. Adequate facilities shall be furnished free of charge to make the necessary inspection. The City assumes no obligation to inspect materials at the source of supply.

6-1.08 Certificates of Compliance.

A Certificate of Compliance shall be furnished prior to the use of any materials for which these Specifications or the Contract Documents require that such a certificate be furnished. In addition, when so authorized in the Contract Documents, the Engineer may permit the use of certain materials or assemblies prior to sampling and testing if accompanied by a Certificate of Compliance. The certificate shall be signed by the manufacturer of the material or the

manufacturer of assembled materials and shall state that the materials involved comply in all respects with the requirements of the Contract Documents. A Certificate of Compliance shall be furnished with each lot of material delivered to the Work and the lot so certified shall be clearly identified in the certificate.

All materials used on the basis of a Certificate of Compliance may be sampled and tested at any time. The fact that material is used on the basis of a Certificate of Compliance shall not relieve the Contractor of responsibility for incorporating material in the work which conforms to the requirements of the Contract Documents and any such material not conforming to such requirements will be subject to rejection whether in place or not.

The City reserves the right to refuse to permit the use of material on the basis of a Certificate of Compliance.

The form of the Certificate of Compliance and its disposition shall be as directed by the Engineer.

6-1.09 Foreign Materials and Assemblies.

Materials which are manufactured, produced, or fabricated outside of the United States shall be delivered to a distribution point in Santa Clara County, unless otherwise required in the Contract Documents, where they shall be retained for a sufficient period of time to permit inspection, sampling, and testing.

Attention is directed to the provisions in Section 8-1.07, "Liquidated Damages." The Contractor shall not be entitled to an extension of time for acts or events occurring outside of the United States and it shall be the Contractor's responsibility to deliver materials obtained from outside of the United States to the point of entry into the continental United States in sufficient time to permit timely delivery to the job site.

The Contractor, at no cost to the City, shall supply the facilities and arrange for any testing required in California and by City, which the City is not equipped to perform. All testing by the Contractor shall be subject to witnessing by the Engineer.

The manufacturer, producer, or fabricator of foreign material or assemblies shall furnish to the Engineer a Certificate of Compliance in accordance with the provisions in Section 6-1.08, "Certificates of Compliance." In addition, certified mill test reports clearly identifiable to the lot of material shall be furnished where required in the Contract Documents or otherwise requested by the Engineer.

If the welding of steel for structural steel members or the casting and prestressing of precast prestressed concrete members is to be performed outside of the United States, the following requirements shall apply:

1. Such fabrication shall be performed only within the plants and by fabricators who have previously established, to the satisfaction of the Engineer, that they have the experience, knowledge, trained manpower, quality controls, equipment and other

facilities required to produce the quality and quantity of work required. At the option of the Engineer, prequalification of the plant and fabricator will be established either by the submission of detailed written proof thereof or through in-plant inspection by the Engineer or the Engineer's representative, or both.

2. The Contractor shall make written application to the Engineer for approval for such foreign fabrication at the earliest possible time and, in no case, later than fifty (50) calendar days in advance of the planned start of fabrication. The application shall list the specific units or portion of a work which will be fabricated outside of the United States.
3. The Contractor shall advise the Engineer, in writing, at least twenty (20) calendar days in advance of the actual start of any such foreign fabrication.
4. All documents pertaining to the Contract, including but not limited to, correspondence, bid documents, working drawings, and data shall be written in the English language and all numerical data shall use the foot-pound-second system of units of measurement.

6-1.10 Commencement of Warranty.

Unless expressly agreed to in writing by the City, all warranties required under the Contract Documents shall commence upon acceptance by the City of the entire Project. Use or occupancy by the City of a portion of the Project either before or after completion of that portion of the Work shall not commence the running of any warranty required under the Contract Documents.

6-1.11 Samples.

All materials must be of specified quality and fully equal to samples previously submitted to the City. The Contractor shall furnish to the Engineer for testing, free of charge, samples of all materials proposed to be used in the Work, and also samples of completed mock-up panels of Portland cement concrete or asphaltic concrete work. When so required by the Engineer, the Contractor shall submit for approval samples of the various materials, together with the finish thereon, as specified for that intended to be used in the Work. All materials and workmanship shall be equal in every respect to that of the samples so submitted and approved. These samples shall be sent to such place as the Engineer may direct. In all cases, freight must be prepaid by the Contractor. These samples will be returned to the Contractor, if requested, freight collect.

Where samples are called for, two (2) or more samples of materials to be used in fulfilling the requirements of the specifications shall be deposited with the Engineer as soon as possible prior to their use in the Work.

No materials or equipment of which samples are required to be submitted for approval shall be used on the Work until such approval has been given by the Engineer, save only at the Contractor's risk and expense.

6-2 LOCAL MATERIALS

6-2.01 General.

Local material must be rock, sand, gravel, earth, or mineral material other than local borrow or selected material obtained or produced from a source in the work vicinity specifically for use on the Project. Local borrow must not be a material from an established commercial source.

The Contractor shall be responsible for making all arrangements necessary to obtain materials from any local material source other than a mandatory local material source. This shall include making any arrangements necessary for hauling the material to the Project site.

Contractor is responsible for all other testing expenses. Samples of material from local sources shall be taken in the presence of the Engineer.

Full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all the Work involved in conforming to the provisions in this Section for furnishing and producing materials from any source shall be considered as included in the Contract Price and no additional compensation will be allowed therefor.

6-3 TESTING

6-3.01 City Required Quality Assurance

Quality assurance includes all activities used to (1) guaranty an overall level of quality for the Project and (2) ensure compliance with the Contact Documents.

The Engineer may at any time require materials to be tested to ensure conformance with Contract Documents. Contractor shall allow sufficient time for tests to be conducted and the results to be reviewed prior to continuing with the Work, which may be affected by any test results. Unless otherwise specified, all tests shall be performed in accordance with the methods used by the Department of Public Works, and shall be made by the Engineer or the Engineer's designated representative.

The City uses Caltrans, American Association of State Highway and Transportation Officials (AASHTO), and American Society for Testing and Material (ASTM) developed methods for testing the quality of materials and work. These methods are identified by number and are referred to in the Contract Documents as California (Cal), AASHTO, and ASTM Tests.

Whenever the specifications require compliance with specified values for the following properties, tests will be made by the California Test indicated unless otherwise specified in the Contract Documents or the City's Quality Assurance Program (QAP).

Whenever a reference is made in the Contract Documents to a California Test by number, it shall mean the California Test in effect on the day the Notice to Proceed for the Work is dated.

Whenever the Contract Documents provide an option between two (2) or more tests, the Engineer will determine the test to be used.

Whenever a reference is made in the specifications to a Contract Documents, manual, or test designation of the ASTM, AASHTO, Federal Specifications, or any other recognized national organization, and the number or other identification representing the year of adoption or latest revision is omitted, it shall mean the specification, manual, or test designation in effect on the day the Notice to Proceed for the Work is dated. Whenever said specification manual or test designation provides for test reports (such as certified mill test reports) from the manufacturer, copies of such reports, identified as to the lot of material, shall be furnished to the Engineer. The manufacturer's test reports shall supplement the inspection, sampling, and testing provisions in Section 6, "Control of Materials," and shall not constitute a waiver of the City's right to inspect. When material which cannot be identified with specific test reports is proposed for use, the Engineer may, at the Engineer's discretion, select random samples from the lot for testing. Test specimens from the random samples, including those required for retest, shall be prepared in accordance with the referenced specification and furnished by the Contractor at the Contractor's expense. The number of such samples and test specimens shall be entirely at the discretion of the Engineer.

The Contractor shall furnish, without charge, adequate samples of all materials necessary for testing, and no material shall be used prior to approval by the Engineer, except as provided in Section 6-1.08, "Certificates of Compliance."

City acceptance includes sampling, testing and inspections performed by the City to verify compliance with the Contract Documents.

6-3.01A Failed Tests.

Unless otherwise specified, all required tests whose results fail to meet the specifications shall be paid for by the Contractor. Any such charges shall be deducted from monies due, or to become due, to the Contractor.

6-3.01B Permit Testing.

All testing for Work performed under Public Works permits issued by the City shall be accomplished at the expense of the permittee, regardless of the test results.

6-3.02 Contractor Required Quality Control.

Quality control includes sampling, testing, and inspections performed by the Contractor's Quality Control program to (1) control material quality and (2) ensure the specified quality characteristics for the Project are met.

Full compensation for performing quality control tests and making the results available to the Engineer shall be considered as included in the contract prices paid for the various items of work involved and no additional compensation will be allowed therefor. Such services shall comply

with the following Quality Control Requirements:

1. General
Material production and testing equipment must measure accurately and precisely.

2. Quality Control (QC) Program
Contractor shall develop, implement and maintain a QC program.
The Contractor shall prepare and maintain QC records, including but not limited to the following:
 - 2.1 Names and qualifications of:
 - 2.1.1 Samplers
 - 2.1.2 Testers
 - 2.1.3 Inspectors
 - 2.2 Testing laboratories' identification and certifications
 - 2.3 Testing equipment calibrations and certifications
 - 2.4 Inspection reports
 - 2.5 Sampling and testing records organized by date and type of material
 - 2.6 Test results with comparison of quality characteristic requirements
 - 2.7 Test results in relation to action and any suspension limits
 - 2.8 Records of corrective actions and suspensions

The Contractor shall notify the Engineer within 24-hours of any noncompliance identified in their QC program.

The Contractor shall allow the City access to all QC records.

The Contractor shall submit all QC test data and QC test results within 2-business days of test completion.

3. Quality Control Manager
This subsection applies to work requiring a QC Manager, as noted in the Special Provisions.

The Contractor's QC Manager must be responsible for the quality of work, including but not limited to materials and workmanship performed by its own workers and subcontractor.

The Contractor shall assign a QC Manager before the start of the affected work. The QC Manager shall be the sole individual responsible for the following:

- 3.1 Receiving, reviewing and approving all correspondence, submittals, and reports before submitting to the City.
- 3.2 Signing the QC plan
- 3.3 Implementing the QC plan
- 3.4 Maintaining the QC plan and records

The QC Manager must be employed by the Contractor or must be hired by subcontractor providing only QC services. The QC Manager must not be employed or compensated by a subcontractor or by other persons or entities hired by subcontractors who will provide other services or materials for the Project.

The Contractor shall provide to the Engineer the name and contact information of the QC Manager.

4. Quality Control Plans

The Contractor shall submit one copy of each authorized QC plan to the Engineer.

The Contractor shall make 1 copy of the quality control plan available at the jobsite.

6-3.03 Statistical Testing.

Whenever both individual test results and operating range requirements are specified in the Contract Documents, materials shall meet both requirements. Materials used in the Work to replace materials which did not comply with requirements and were removed shall conform to the limits specified for the operating range.

Individual samples tested prior to the first use of aggregates from each source, or prior to the first use of aggregates after appreciable changes have been made in aggregate processing procedures, shall conform to the limits specified for the operating range.

If individual test results on materials used in the Work do not fall within specified limits, but the operating range utilizing such test results is within the specified operating range limits, the individual test results may be waived at the discretion of the Engineer. No test result for material used in the Work shall be omitted from the operating range determination.

Operating ranges shall be computed as follows:

Operating ranges shall be rounded to the same number of significant figures as are reported for individual test results. When the figure to be dropped is less than 5, round down; if greater than 5, round up, and if it is 5, round up or down to the even number.

Operating ranges shall be continuous for the entire Project. In determining an operating range for a material property, all of the individual test results that represent material actually used in the Work, except individual test results for portions of such material for which requirements have been revised by a Change Order, shall be used in the calculation. The test results shall enter the calculation sequence in the chronological order that the Work is performed. The first individual test results shall start an operating range and shall meet the operating range requirements. Until more than four (4) test results are available, the operating range shall be the numerical average of the individual test results. When more than four (4) test results are available, the operating range shall be determined by adding the last four (4) individual test results, adding the new individual

test results to this product and then dividing this sum by five (5).

Where more than one source is used for a single material and the sources are not similar in all respects, a separate operating range shall be calculated for each source.

Where a single source provides material to more than one project, a separate operating range shall be calculated for each project. A single test result representing material delivered to different projects shall be used in each operating range for which it is appropriate and separate tests will not be required.

6-3.04 Field Tests, or Adjustments and Operations.

The Contractor shall arrange for the presence of a manufacturer's representative or other qualified persons who shall instruct City operating personnel in the operation and care of all the various pieces of equipment and parts of the installation as determined by the Engineer. The Contractor shall superintend the operations of the equipment during the thirty (30) day period and shall be responsible for the proper operation thereof, and shall make no claim against the City for any damage to the equipment during such operation, or for the services of the above-mentioned representatives or other qualified persons. The Contractor shall make changes, adjustments, or replacements of equipment as may be required to make the equipment comply with the specifications, or to replace any defective parts or material.

6-4 SUBSTITUTIONS

6-4.01 General.

Contractor's proposed requests for changes in products, materials, equipment, and methods of construction required by the Contract Documents after award of the Contract are considered "requests for substitutions". The following are not considered permitted substitutions:

1. Revisions to Contract Documents requested by the City.
2. Specified options of products and construction methods included in the Contract Documents.
3. Compliance with governing regulations and orders issued by governing authorities.

6-4.02 Submittal.

Requests for substitution will be considered by the City **only** if received within ten (10) calendar days from the date of award. Requests received after this period may be accepted or rejected at the sole discretion of the City.

Each request for substitution shall be prepared and presented to the City in accordance with the

procedures for submittals as specified in the Contract Documents and shall be submitted on the Substitution Request Form as included in the Contract Documents. The following additional information shall be provided:

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

6-4.03 Substitution Conditions.

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

1. Extensive revisions to Contract Documents are not required.
2. Proposed substitution is consistent with the general intent of the Contract Documents.
3. The request is timely, fully documented, and properly submitted.
4. The product or method of construction specified in the Contract Documents cannot be provided within the specified Contract Time. The request for substitution may not be considered if the product or method cannot be provided as a result of failure of the Contractor to pursue the work promptly or coordinate activities properly.
5. A substantial advantage is offered to the City, in terms of cost, time, energy conservation, or other considerations of merit, after deducting offsetting any additional responsibilities the City may be required to bear due to the substitution. Additional responsibilities for the City may include additional compensation to the Consulting Engineer/Architect for redesign and evaluation services, increased cost of other construction by the City or

separate contractors, and similar considerations.

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

6-4.04 Unacceptable Substitution Conditions.

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

6-4.05 City's Action.

The City will notify the Contractor of acceptance or rejection of the request for substitution within 28 calendar days of receipt. If a decision on use of a substitute cannot be made within these time limits, the product originally specified in the Contract Documents shall be used.

6-4.06 Time Extension.

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

Should the originally specified materials not be available within the specified Contract Time due to the negligence of the Contractor to order and obtain such materials, the Contractor shall be responsible to provide, install, and maintain a temporary "equal" material as approved by the City, and shall replace such temporary material with the required product upon availability. The Contractor shall be responsible for all costs associated with the installation, maintenance, and removal of the temporary product and the installation of the specified product, including an extended one-year warranty to cover the final product installed. Sufficient funds to cover the purchase and installation of the specified product will be withheld from monies due the Contractor until such work has been completed and accepted by the City.

6-4.07 Specified “Or Equal” Items.

Wherever catalog numbers and specific brands of trade names followed by the designation "or equal" are used in conjunction with a designated material, product, item, or service mentioned in the Contract Documents, they are used to establish the standards of quality and utility required. Contractor shall submit “or equal” items for review within thirty (30) calendar days of Contract Award pursuant to Section 6-1.06, “Trade Names and Alternatives”. "Or equal" proposals will be subject to acceptance by the City.

END OF SECTION

SECTION 7: LEGAL RELATIONS AND RESPONSIBILITY

7-1.01 Laws to be Observed.

The Contractor shall keep fully informed of all existing and future State and Federal laws and county and municipal ordinances and regulations which in any manner affect those engaged or employed in the Work, or the materials used in the Work, or which in any way affect the conduct of the Work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. The Contractor shall at all times observe and comply with, and shall cause all the Contractor's agents and employees to observe and comply with, all such existing and future laws, ordinances, regulations, orders, and decrees of bodies or tribunals having any jurisdiction or authority over the Work; and shall to the fullest extent allowed by law indemnify, defend, and hold harmless the City of Campbell, and all officers, employees, and agents thereof connected with the Work against any claim or liability arising from any work performed under the Contract or based on the violation of any such law, ordinance, regulation, order, or decree, whether by the Contractor or their employees, Subcontractors, or suppliers at any tier unless such claim or liability arises due to the sole negligence or willful misconduct of the City, its officers, employees, or agents. If any discrepancy or inconsistency is discovered in the plans, drawings, specifications, or Contract Documents for the Work in relation to any such law, ordinance, regulation, order, or decree, the Contractor shall forthwith report the same to the Engineer in writing.

7-1.01A Labor Standards.

The Contractor shall comply with the labor standard requirements set forth below in this Section 7-1.01A.

7-1.01A(1) City Compliance Officer.

1. **City Compliance Officer:** For purposes of this Section 7-1.01A, the “City Compliance Officer” is the Engineer or such other City employee as the City Manager may designate as having primary responsibility for administering and enforcing the labor standard requirements set forth in this Section. The term includes the City Compliance Officer’s staff and any other City employees and agents authorized to assist in the administration and enforcement of these labor standards.
2. **Contact Information:** The address for the City Compliance Officer for purposes of correspondence and inquiries is 70 N. 1st Street, Campbell, CA. The Office’s phone number is 408-866-2150.
3. **Scope of Authority:** The City Compliance Office has primary responsibility for administering and enforcing the prevailing wage requirements, the payroll requirements, and all other labor standards required by this Contract.

7-1.01A(2) Working Hours.

The Contractor shall comply with the working-hour requirements set forth in Sections 1810 through 1815 of the California Labor Code, which are incorporated into this Contract.

7-1.01A(3) Prevailing Wage.

Contractor shall comply with and shall ensure that all Subcontractors comply with prevailing wage law pursuant to the State of California Labor Code, including but not limited to Section 1720 *et seq* or if federal funds are involved, the Federal (Davis Bacon) Wage Rates, as indicated in the Contract Documents. However, if the California prevailing wage rate for a particular job classification is higher than the Federal (Davis Bacon) Wage Rates, the Contractor and Subcontractors shall pay the higher wage between the two rates. Compliance with these sections is mandatory. The Work under this Contract is subject to compliance monitoring and enforcement by the State of California Department of Industrial Relations.

The State of California Department of Industrial Relations ascertains the general prevailing per diem wage rates where the Work is to be performed for each craft, classification, or type of worker required to perform the Work. A copy of the general prevailing per diem wage rates will be as shown in the Contract Documents. Contractor shall post a copy of the general prevailing per diem wage rates as well as job site notices as prescribed by regulation at the Project site. By this reference, such schedule is made part of the Contract Documents. Contractor shall pay not less than the prevailing wage rates, as specified in the schedule and any amendments thereto, to all workers employed by Contractor in the execution of the Work.

Contractor shall cause all subcontracts to include the provision that all Subcontractors shall pay not less than the prevailing rates to all workers employed by such Subcontractors in the execution of the Work.

Additional prevailing wage requirements include, but are not limited to, the following:

1. **Unlisted Job Classifications:** The prevailing wage rate applicable to a craft, classification, or type of worker not shown on the General Prevailing Wage Determinations shall be the rate applicable to the most closely related craft, classification, or type of worker. Contact the Public Works Department at (408) 866-2150 for crafts, classifications, or types of workers not listed in the General Prevailing Wage Determinations.
2. **Paying Higher Wages:** The prevailing wage rates listed in the General Prevailing Wage Determination are minimum rates. The Contractor may pay workers more than the applicable prevailing wage rate. The City will not pay extra compensation based on the inability of the Contractor to hire workers at the prevailing wage rates.
3. **No Adjustments:** The City will not pay extra compensation based on increases in the prevailing wage rates listed in the General Prevailing Wage Determination during the term of the Contract.
4. **Posting Notice:** The Contractor must post at a prominent place at each Project site at which Work is performed a sign at all times informing employees that the City's prevailing wage requirements apply to the Work and that these requirements are enforced by the City Compliance Officer. The sign shall include the telephone number and address of Public Works Department. The Contractor also must post at each Project site where Work is performed the General Prevailing Wage Determinations in effect for each craft, classification, and type of worker employed required to perform the

Work. If the Contractor fails to post the sign or General Prevailing Wage Determinations as required, the City Compliance Officer shall have the right to do so.

5. **Restitution for Underpayment:** The Contractor, or any Subcontractor of the Contractor, must pay the following amount to each employee who was paid less than the applicable prevailing wage rate during any period of time that such employee was performing Work: the difference between the applicable prevailing wage rate and the actual amount paid.
6. **Penalties:** Contractor shall forfeit to City, as a penalty, not more than \$200 for each calendar day or portion thereof for each worker that is paid less than the prevailing rates as determined by the Director of Industrial Relations for the work or craft in which the worker is employed for any portion of the Work done by Contractor or any Subcontractor under the Contract. The amount of this penalty shall be determined pursuant to applicable law. Such forfeiture amounts may be deducted from the Contract Sum or sought directly from the surety under its Performance Bond if there are insufficient funds remaining in the Contract Sum. Contractor shall also pay to any worker who was paid less than the prevailing wage rate for the work or craft for which the worker was employed for any portion of the Work, for each day, or portion thereof, for which the worker was paid less than the specified prevailing per diem wage rate, an amount equal to the difference between the specified prevailing per diem wage rate and the amount which was paid to the worker. Review of any civil wage and penalty assessment shall be made pursuant to the California Labor Code.
7. **Liability for Subcontractor's Penalties:** The Contractor is liable for any penalties resulting from the payment of less than the prevailing wage rate by one of its Subcontractors, unless the Contractor can clearly demonstrate to the City Compliance Officer all of the following has a defensible position pursuant to Labor Code Section 1775(b):
 - a. The contract between the Contractor and its Subcontractor for the performance of the Work included a copy of Sections 1771, 1775, 1776, 1777.5, 1813, and 1815 of the California Labor Code; and
 - b. The Contractor periodically reviewed the certified payroll records of its Subcontractor for payment of the specified general prevailing rate of per diem wages; and
 - c. Upon becoming aware of the Subcontractor's payment of less than the applicable prevailing wage rate, the Contractor diligently took corrective action to halt or rectify the violation, including, but not limited to, retaining sufficient funds from payments due the subcontractor for Work performed; and
 - d. Before making final payment to its Subcontractor, the Contractor obtained an affidavit, signed under penalty of perjury, from the Subcontractor stating that the Subcontractor paid each of its workers not less than the applicable general prevailing rate of per diem wages and any amounts due pursuant to Section 1813 of the California Labor Code.

8. **Withholding:** The Engineer may withhold and retain from payments or moneys due the Contractor the following: (1) the amount of any outstanding restitution resulting from an underpayment, (2) penalties resulting from such underpayment, and (3) any amounts required to satisfy any civil wage and penalty assessment issued by the California Labor Commission in accordance with the California Labor Code. The Engineer's right to withhold under this provision is separate and independent from any other right to withhold moneys included in this Contract.

9. **Notice of Withholding:** The City Compliance Officer will provide written notice to the Contractor, if applicable, of any withholding resulting from a prevailing wage violation by Contractor or any applicable Subcontractor. The notice will describe the nature of the violation, the amount of wages, penalties, and forfeitures withheld, and the procedure for obtaining review of the withholding.
 - a. **Service of Notice:** The City Compliance Officer will serve the notice by first-class and certified mail, in a sealed envelope, with postage prepaid, addressed to the person on whom it is to be served, at the office address last given for that person.
 - b. **Service on Surety:** The City Compliance Officer will also serve a copy of the notice by certified mail to the surety that issued the payment and performance bonds for the Contract.
 - c. **Appeal of Withholding:** In accordance with California Labor Code Section 1771.6, the Contractor or the affected Subcontractor may seek review of the City's withholding by transmitting a written request for review to the Office of the Labor Commissioner for the State of California. The Contractor or the affected Subcontractor shall transmit a copy of the written request for review to the City Compliance Officer.
 - d. **Time to Appeal Withholding:** In accordance with California Labor Code Section 1742, the Contractor or affected Subcontractor may appeal the withholding by transmitting a written request to review a notice of withholding to the Office of the Labor Commissioner for the State of California within sixty (60) calendar days after service of the Notice of Withholding. If review is not requested within sixty (60) calendar days, then the City Compliance Officer's determination is final.

10. **Additional Requirements:** The Contractor is directed to review and comply with any and all additional prevailing wage requirements specified in the Contract Documents.

7-1.01A(4) Payroll Records.

Contractor and all Subcontractors shall keep accurate payroll records, showing the name, address, social security number, job classification, straight time and overtime hours worked each day and week, the actual per diem wages paid to each journey-worker, apprentice, worker, or other employee employed in connection with the Work, payrate, itemized deductions made, check number issued, and apprentices and the apprentice-to-journeyman ratio. All payroll records shall be certified as being true and correct by the Contractor or Subcontractors keeping such records.

Each certified payroll record must include a Statement of Compliance form signed under penalty

of perjury that declares: (1) the information contained in the payroll record is true, correct, and complete; (2) the Contractor or Subcontractor has complied with the requirements of Labor Code Sections 177.1, 1811, and 1815 for any work performed by its employees on the Project; and (3) wage rates paid are at least those required in the Contract Documents. Electronic certified payroll records of the Contractor and all Subcontractors shall be submitted weekly for the life of the Project to the City Compliance Officer.

All payroll records for the Project shall be available for inspection at all reasonable hours at the principal office of Contractor on the following basis:

- (1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or the employee's authorized representative on request.
- (2) A certified copy of all payroll records shall be made available for inspection upon request to City, the State of California Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the State of California Division of Industrial Relations.
- (3) A certified copy of all payroll records shall be made available upon request by the public for inspection or copies thereof made; provided, however, that the request by the public shall be made to either City, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. The public shall not be given access to such records at the principal offices of Contractor or Subcontractors. Any copy of the records made available for inspection as copies and furnished upon request to the public or any public agency by City shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of Contractor awarded the Contract or performing the Contract shall not be marked or obliterated.

Contractor shall file a certified copy of the payroll records with the entity that requested the records within 10 days after receipt of a written request. Contractor shall inform City of the location of such payroll records for the Project, including the street address, city, and county; and Contractor shall, within 5 working days, provide notice of change of location of such records. In the event of noncompliance with the requirements of this Article 14.4 or with the State of California Labor Code Section 1776, Contractor shall have ten (10) days in which to comply following receipt of notice specifying in what respects Contractor must comply. Should noncompliance still be evident after the ten (10) day period, Contractor shall forfeit to City, as a penalty, \$100 for each day, or portion thereof, for each worker, until strict compliance is accomplished. Such forfeiture amounts may be deducted from the Contract Sum.

Contractor shall submit certified payrolls for hauling and delivering ready-mixed concrete. Payrolls must be accompanied by a written time record. The time record must include the following:

- (1) Truck driver's full name and address.
- (2) Name and address of the factory or batching plant.
- (3) Time the concrete was loaded at the factory or batching plant.
- (4) Time the truck returned to the factory or batching plant.
- (5) Truck driver's signature certifying under penalty of perjury that the information contained in this written time record is true and correct.

7-1.01A(5) Nondiscrimination.

Contractor shall comply with Section 1735 of the Labor Code, which reads as follows:

"No discrimination shall be made in the employment of persons upon public works because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of such persons, except as provided in Section 12940 of the Government Code, and every Contractor for public works violating this section is subject to all the penalties imposed for a violation of this chapter."

Contractor shall also comply with the following "Nondiscrimination Clause" that is required pursuant to 2 C.C.R. Section 11105:

NONDISCRIMINATION CLAUSE

1. During the performance of this contract, Contractor and its Subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, military and veteran status. Contractors and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code § 12990 et seq.) and the applicable regulations promulgated thereunder (Cal. Code Regs., Title 2, § 11000 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990, set forth in Subchapter 5 of Division 4.1 of Title 2 of the California Code of Regulations are incorporated into this contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
2. Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

Contractor shall also comply with the following "Standard California Nondiscrimination Construction Contract Specifications that is required by 2 C.C.R. Section 11122:

**STANDARD CALIFORNIA NONDISCRIMINATION CONSTRUCTION
CONTRACT SPECIFICATIONS (GOV. CODE, SECTION 12990)**

These specifications are applicable to all state Contractors and subcontractors having a construction contract or subcontract of \$5,000 or more.

1. As used in the specifications:

- a. "Act" means the Fair Employment and Housing Act.
 - b. "Administrator" means Administrator, Office of Compliance Programs, California Department of Fair Employment and Housing, or any person to whom the Administrator delegates authority.
2. Whenever the Contractor or any subcontractor subcontracts a portion of the work, it shall include in each subcontract of \$5,000 or more the nondiscrimination clause in this contract directly or through incorporation by reference. Any subcontract for work involving a construction trade shall also include the Standard California Construction Contract Specifications, either directly or through incorporation by reference.
3. The Contractor shall implement the specific nondiscrimination standards provided in paragraph 6(a) through (e) of these specifications.
4. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer members of any group protected by the Act shall excuse the Contractor's obligations under these specifications, Government Code Section 12990, or the regulations promulgated pursuant thereto.
5. In order for the non-working training hours of apprentices and trainees to be counted, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor or the California Department of Industrial Relations.
6. The Contractor shall take specific actions to implement its nondiscrimination program. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor must be able to demonstrate fully its efforts under Steps (a) through (e) below:
 - a) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and at all facilities at which the Contractor's employees are assigned to work. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligations to maintain such a working environment.
 - b) Provide written notification within seven days to the director of DFEH when the union or unions with which the Contractor has a collective bargaining agreement has impeded the Contractor's efforts to meet its obligations.

- c) Disseminate the Contractor's equal employment opportunity policy by providing notice of the policy to unions and training, recruitment and outreach programs and requesting their cooperation in assisting the Contractor to meet its obligations; and by posting the company policy on bulletin boards accessible to all employees at each location where construction work is performed.
 - d) Ensure all personnel making management and employment decisions regarding hiring, assignment, layoff, termination, conditions of work, training, rates of pay or other employment decisions, including all supervisory personnel, superintendents, general foremen, on-site foremen, etc., are aware of the Contractor's equal employment opportunity policy and obligations, and discharge their responsibilities accordingly.
 - e) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the equal employment opportunity policy and the Contractor's obligations under these specifications are being carried out.
7. Contractors are encouraged to participate in voluntary associations, which assist in fulfilling their equal employment opportunity obligations. The efforts of a contractor association, joint contractor-union, contractor-community, or other similar groups of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under these specifications provided that the Contractor actively participates in the group, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's.
8. The Contractor is required to provide equal employment opportunity for all persons. Consequently, the Contractor may be in violation of the Fair Employment and Housing Act (Gov. Code § 12990 et seq.) if a particular group is employed in a substantially disparate manner.
9. The Contractor shall not use the nondiscrimination standards to discriminate against any person because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.
10. The Contractor shall not enter into any subcontract with any person or firm decertified from state contracts pursuant to Government Code Section 12990.

11. The Contractor shall carry out such sanctions and penalties for violation of these specifications and the nondiscrimination clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Government Code Section 12990 and its implementing regulations by the awarding agency. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Government Code Section 12990.
12. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company's equal employment opportunity policy is being carried out, to submit reports relating to the provisions hereof as may be required by OCP and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, status, (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in any easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.

7-1.01A(6) Employee Sign In/Sign Out.

The Contractor shall maintain a sign-in and sign-out sheet showing which employees are present on the Project site. The Contractor shall establish procedures so that all employees sign in and out of the job site daily. The Contractor shall provide, upon request, a copy of the sign-in and sign-out sheet to the City Compliance Officer and to any employee or the employee's authorized representative.

7-1.01A(7) Discrimination Prohibited.

1. **Labor Code Prohibition:** The Contractor must comply with, and is subject to, the employment non-discrimination requirements set forth in California Labor Code Section 1735, which is incorporated into this Contract.
2. **City Prohibition:** The City is an equal opportunity employer. Contractor and its Subcontractors shall comply with all applicable federal, state, and local laws and regulations, including but not limited to the following: Title VII of the Civil Rights Act, Americans with Disabilities Act, The Rehabilitation Act of 1973 (Sections 503 and 504), California Fair Employment and Housing Act (Government Code Sections 12900 *et seq.*), and the regulations promulgated thereunder, and California Labor Code Sections 1101 and 1102. Contractor shall comply with Section 7-1.01A(6) "Employee Sign In/Sign Out", above.

7-1.01A(8) Apprentices.

1. **Compliance:** The Contractor and its Subcontractors shall comply with all requirements of the State Apprenticeship Program, as set forth in Section 1777.5 and Chapter 4 of Division 3 of the California Labor Code (Section 3070 *et seq.*), which collectively are incorporated into this Contract. The Contractor is solely responsible for securing

compliance with Section 1777.5 for all apprenticeable occupations.

2. **Subcontracts:** The Contractor shall include in all subcontracts the obligation for Subcontractors to comply with the requirements of the State Apprenticeship Program.
3. **Evidence of Compliance:** The Contractor shall comply promptly with all requests of the City Compliance Officer for documentation that the Contractor and its Subcontractors are in compliance with the State Apprenticeship Program.
4. **Penalties:** The Contractor is subject to the penalties set forth in Section 1777.7 of the California Labor Code for a failure to comply with the requirements of Section 1777.5. Section 1777.7 is incorporated into this Contract.
5. **Withholding:** The Engineer may withhold and retain from payments or moneys due to the Contractor the amount of any penalties imposed based on a violation of Section 1777.5 of the California Labor Code. The Engineer's right to withhold under this provision is separate and independent from any other right to withhold moneys included in this Contract.

7-1.01A(9) Workers' Compensation.

1. **Requirement:** The Contractor shall secure worker's compensation for all of its employees in accordance with Section 3700 of the California Labor Code. By signing the Contract, the Contractor certifies and files with the City the following statement:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provision before commencing the performance of the Work of this Contract."
2. **Prohibition:** The Contractor is prohibited from performing Work if at any time during the course of performing such Work the Contractor is not in compliance with Section 3700 of the California Labor Code. The Contractor must not allow a Subcontractor to perform Work if at the time of such Work the Subcontractor is not in compliance with Section 3700 of the California Labor Code.
3. **Proof of Compliance:** Before starting any Work, the Contractor shall provide the Engineer with one of the following: (1) satisfactory proof that it is properly insured by one or more insurers authorized to write worker's compensation insurance in California, (2) a valid certificate of consent to self-insure issued by the Director of Industrial Relations for the State of California, or (3) certificate of exemption from Workers' Compensation laws.
 - a. **Maintaining Compliance:** The Contractor shall maintain such insurance or certificate of consent to self-insure for the term of the Contract.
 - b. **Requests for Proof of Compliance:** Upon the request of the Engineer and at any time during the term of the Contract, the Contractor must provide satisfactory proof

that it is in compliance with Section 3700 of the California Labor Code.

4. **Failure to Comply:** The Contractor's failure to comply promptly with a request by the Engineer for proof of compliance with Section 3700 of the California Labor Code, or the Contractor's failure to be in compliance with Section 3700, is a material breach of this Contract. Such breach is a basis for the Engineer to suspend Work in accordance with Section 8-1.05, "Temporary Suspension of Work." The Contractor is responsible for all costs and damages resulting from any such suspension of Work.
5. **Withhold:** If any injury occurs to any employee of the Contractor for which the employee, or the employee's dependents, is entitled to compensation from the City under the California Labor Code provisions applicable to worker's compensation, the Engineer may withhold and retain from any moneys due the Contractor an amount sufficient to cover such compensation.
6. **Subcontractors:** The Contractor shall include in all of its subcontracts the obligation for Subcontractors to comply with the requirements of this Section 7-1.01A. "Labor Standards."

7-1.01A(10) Certified Electricians.

The Contractor must use, and must cause its Subcontractors to use, properly certified persons to perform any Work as electricians in accordance with Chapter 4.5 of Division 1 of the California Labor Code, entitled "Electrician Certification" (Labor Code Sections 108 – 108.5).

7-1.01A(11) Labor Standards Enforcement.

1. **Cooperation:** The Contractor and its Subcontractors shall cooperate fully with the City Compliance Officer as part of any action by the City Compliance Officer to administer and/or enforce the labor standards set forth in this Section.
2. **Inspections:** The Contractor and its Subcontractors agree that the City Compliance Officer has the following rights in the performance of the Officer's duties: (1) to engage in random inspections of job sites, (2) to have access to the employees performing Work, and (3) to have access to employee time sheets, inspection logs, payroll records, paychecks and any other documents reasonably related to an appropriate investigation of the Contractor's and subcontractor's compliance with the labor standards set forth in this Section.
3. **Audit:** The City Compliance Officer may audit such records of the Contractor and its Subcontractors as the Officer deems necessary to determine compliance with the labor standards set forth in this Section.

7-1.01A(12) Subcontractors.

Notwithstanding anything to the contrary, the prevailing wage requirements, payroll record requirements, and all other labor standard requirements set forth in this Section are applicable to each and every Subcontractor engaged by the Contractor to perform Work. The Contractor shall include in every such subcontract the following provision(s): (1) an agreement from the

Subcontractor that it is subject to each of the labor standard requirements set forth in this Section, (2) an agreement from the Subcontractor that it will comply with each of the labor standard requirements, and (3) an agreement from the Subcontractor that the City Compliance Officer can enforce each of the labor standard requirements against the Subcontractor to the same extent it can enforce the provisions against the Contractor.

7-1.01B Contractor's Licensing Laws.

Attention is directed to the provisions of Chapter 9 of Division 3 of the Business and Professions Code concerning the licensing of contractors.

All Bidders and Contractors shall be licensed in accordance with the laws of this State at the time of bid in the classification set forth in these Contract Documents and any Bidder or Contractor not so licensed is subject to the penalties imposed by such laws and rejection of their Bid, pursuant to Business and Professions Code Section 7028.15.

In all City projects where federal funds are involved, no Bid submitted shall be invalidated by the failure of the Bidder to be licensed at the time of bidding in accordance with the laws of California. However, at the time a federally funded contract is awarded, the Contractor shall be properly licensed in accordance with the laws of the State of California, pursuant to Public Contract Code Section 20103.5.

The first payment for Work or material under the Contract shall not be made by the City unless and until the Registrar of Contractors certifies to the City that the records of the Contractors State License Board indicate that the Contractor was properly licensed at the time the Contract was awarded. Any Bidder or Contractor not so licensed shall be subject to all legal penalties imposed by law, including, but not limited to, any appropriate disciplinary action by the Contractors State License Board. Failure of the Bidder to timely obtain proper and adequate licensing for an award of a Contract shall constitute a failure to execute the Contract as provided in Section 3-1.03, "Failure to Execute Contract" and shall result in the forfeiture of the security of the Bidder.

7-1.01B(1) City Business License.

All Contractors and Subcontractors doing work in the City of Campbell shall have a valid City of Campbell Business License in addition to the appropriate State Contractor's License, pursuant to Campbell Municipal Code Section 5.01.008.

7-1.01C Vehicle Code.

Pursuant to the authority contained in Vehicle Code Section 591, the City has determined that within the Project area and areas open to public traffic, the following requirements of the Vehicle Code will apply. The lighting requirements in Section 25803; the brake requirements in Chapter 3, Division 12; the splash apron requirements in Section 27600, and, when operated on completed or existing treated base, surfacing, pavement or structures, except as otherwise provided in Section 7-1.02 "Weight Limitations," the weight limitation requirements contained in Division 15.

Attention is directed to the statement in said Section 591 that this Section shall not relieve the Contractor or any person from the duty of exercising due care while operating equipment. The Contractor and its Subcontractors shall take all necessary precautions for safe operation of their

equipment and the protection of the public from injury and damage from such equipment.

Any other requirements set forth in Divisions 11, 12, 13, 14 and 15 of the Vehicle Code which the City, pursuant to the authority contained in Vehicle Code Section 591, will require compliance with, will be set forth in the Contract Documents.

7-1.01D Trench Safety.

Contractor shall comply with the provisions of Section 6705 of the Labor Code concerning trench excavation safety plans, for trenches five (5) feet or more in depth. The trench excavation safety plan and shop drawings for a protective system shall be submitted to the Engineer for approval at least three (3) weeks before the Contractor intends to begin excavation for the trench.

The drawings must show the design and details for providing worker protection from caving ground during excavation.

Shop drawings of protective systems for which Construction Safety Orders require design by a registered professional engineer must be sealed and signed by an engineer who is registered as a civil engineer in California.

The submittal to the City must allow for review time and include the contents shown in the following table, except the review time is 65 days for an excavation on or affecting railroad property:

Drawing Review Time and Contents

Topic	Plan not requiring a signature	Plan requiring a signature
Review Time	5 business days before excavating	20 days before excavating
Contents	Drawings Calculations Material information Proprietary system information	Drawings Calculations Material information Proprietary system information Soil classification Soil properties Soil design calculations

7-1.01E Air Pollution Control.

The Contractor shall comply with all air pollution control rules, regulations, ordinances, and statutes of the Bay Area Air Pollution Control District and all other regulatory agencies which apply to any Work performed pursuant to the Contract.

Unless otherwise provided in the Contract Documents, material to be disposed of shall not be burned either inside or outside the Project right of way.

Contractor shall reference Section 14, "Environmental Stewardship", of these Specifications.

7-1.01F Water Pollution.

Contractor shall comply with all federal, state, and local water pollution prevention and storm

drain pollution prevention rules, regulations, ordinances, statutes, and guidelines.

The Contractor shall exercise every reasonable precaution to protect streams, lakes, reservoirs, bays, and coastal waters from pollution with fuels, oils, bitumens, calcium chloride, and other harmful materials and shall conduct and schedule their Work operations so as to avoid or minimize muddying and silting of said streams, lakes, reservoirs, bays, and coastal waters. Due care shall be exercised to preserve roadside vegetation beyond the limits of construction.

Water pollution control work is intended to provide prevention, control, and abatement of water pollution to streams, waterways, and other bodies of water, and shall consist of constructing those facilities which may be shown on the Contract Documents or as directed by the Engineer.

In order to provide effective and continuous control of water pollution, it may be necessary for the Contractor to perform the Contract Work in small or multiple units, on an out of phase schedule, and with modified construction procedures. The Contractor shall provide temporary water pollution control measures, including but not limited to, dikes, basins, ditches, and applying straw and seed, which become necessary as a result of the Work. The Contractor shall coordinate water pollution control work with all other Work done on the Contract.

Before starting any Work on the Project, the Contractor shall submit, for acceptance by the Engineer, a program to control water pollution effectively during construction of the Project. Such program shall show the schedule for the erosion control work included in the Contract Documents and for all water pollution control measures which the Contractor proposes to take in connection with construction of the Project to minimize the effects of its operations upon adjacent streams and other bodies of water. The Contractor shall not perform any clearing and grubbing or earthwork on the Project, other than that specifically authorized in writing by the Engineer, until such program has been accepted.

If the measures being taken by the Contractor are inadequate to control water pollution effectively, the Engineer may direct the Contractor to revise its operations and its water pollution control program. Such directions will be in writing and will specify the items of Work for which the Contractor's water pollution control measures are inadequate. No further work shall be performed on said items until the water pollution control measures are adequate and, if also required, a revised water pollution control program has been accepted.

The Engineer will notify the Contractor of the acceptance or rejection of any submitted or revised water pollution control program in not more than five (5) working days.

The City will not be liable to the Contractor for failure to accept all or any portion of an originally submitted or revised water pollution control program, nor for any delays to the Work due to the Contractor's failure to submit an acceptable water pollution control program.

The Contractor may request the Engineer to waive the requirement for submission of a written program for control of water pollution when the nature of the Contractor's operation is such that erosion is not likely to occur. Waiver of this requirement will not relieve the Contractor from responsibility for compliance with the other provisions of this Section. Waiver of the requirement for a written program for control of water pollution will not preclude requiring submittal of a written program at a later time if the Engineer deems it necessary because of the effect of the Contractor's operations.

Unless otherwise approved by the Engineer in writing, the Contractor shall not expose a total area of erodible earth material, which may cause water pollution, exceeding 750,000 square feet for each separate location, operation, or spread of equipment before either temporary or permanent erosion control measures are accomplished.

Where erosion which will cause water pollution is probable due to the nature of the material or the season of the year, the Contractor's operations shall be so scheduled that permanent erosion control features will be installed concurrently with or immediately following grading operations.

Nothing in the terms of the Contract Documents shall relieve the Contractor of the responsibility for compliance with Sections 5650 and 12015 of the Fish and Game Code, applicable regulations of the Regional Water Quality Control Board, Santa Clara Valley Water District requirements, or other applicable statutes relating to prevention or abatement of water pollution.

When borrow material is obtained from other than commercially operated sources, erosion of the borrow site during and after completion of the Work shall not result in water pollution. The material source shall be finished, where practicable, so that water will not collect or stand therein.

The requirements of this Section shall apply to all Work performed under the Contract and to all non-commercially operated borrow or disposal sites used for the Project.

The Contractor shall also conform to the following provisions:

1. Where working areas encroach on live streams, barriers adequate to prevent the flow of muddy water into streams shall be constructed and maintained between working areas and streams, and during construction of such barriers, muddying of streams shall be held to a minimum.
2. Removal of material from beneath a flowing stream shall not be commenced until adequate means, such as a bypass channel, are provided to carry the stream free from mud or silt around the removal operations.
3. Should the Contractor's operations require transportation of materials across live streams, such operations shall be conducted without muddying the stream. Mechanized equipment shall not be operated in the stream channels of such live streams except as may be necessary to construct crossings or barriers and fills at channel changes.
4. Water containing mud or silt from aggregate washing or other operations shall be treated by filtration, or retention in a settling pond, or ponds, adequate to prevent muddy water from entering live streams.
5. Oily or greasy substances originating from the Contractor's operations shall not be allowed to enter or be placed where they will later enter a live stream.
6. Portland cement or fresh Portland cement concrete shall not be allowed to enter flowing water of streams.
7. When operations are completed, the flow of streams shall be returned as nearly as possible

to its original course without creating possible future bank erosion, and settling pond sites shall be graded so they will drain and will blend in with the surrounding terrain.

8. Material derived from roadway work shall not be deposited in a live stream channel where it could be washed away by high stream flows.
9. Where there is possible migration of anadromous fish in streams affected by construction on the project, the Contractor shall conduct their operations so as to allow free passage of such migratory fish.

Compliance with the requirements of this Section shall in no way relieve the Contractor from its responsibility to comply with the other provisions of the Contract Documents, in particular the Contractor's responsibility for damage and for preservation of property.

Full compensation for conforming to the requirements of this Section shall be considered as included in the Contract prices paid for the various items of work and no additional compensation will be allowed therefor.

Contractor shall reference Section 13, "Water Pollution Control", of these Specifications.

7-1.01G Use of Pesticides.

The Contractor shall comply with all rules and regulations of the Department of Food and Agriculture, the Department of Health, the Department of Toxic Substances Control, and the Department of Industrial Relations, and all other agencies which govern the use of pesticides required in the performance of the Work on the Contract.

Pesticides shall include but shall not be limited to herbicides, insecticides, fungicides, rodenticides, germicides, nematocides, bactericides, inhibitors, fumigants, defoliant, desiccants, soil sterilant, and repellents.

Any substance or mixture of substances intended for preventing, repelling, mitigating, or destroying weeds, insects, diseases, rodents, or nematodes and any substance or mixture of substances intended for use as plant regulator, defoliant, or desiccant shall be considered a pesticide.

Application shall be in accordance with the applicable State laws and the City of Campbell Policy on the Use of Pesticides on City Property. The application of the herbicide shall be applied by a person who holds a Qualified Applicator License (QAL) or Certificate (QAC) from the California Department of Pesticide Regulation and is registered with the Santa Clara Department of Agriculture or who has been trained and/or works under the direction of the QAL/QAC holder. The Contractor shall provide the Engineer with a copy of their QAL/QAC prior to the application of the herbicide on City Property. Contractor shall refer to Section 20-1.02C "Pesticides".

7-1.01H Sound Control Requirements.

The Contractor shall minimize noise and comply with all local sound control and noise level rules, regulations, and ordinances which apply to any Work performed pursuant to the Contract, including but not limited to Campbell Municipal Codes Section 18.04.052.

Each internal combustion engine used for any purpose on the Project or related to the Project 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.

Noise level from and hours of Contractor's work outside of City of Campbell Municipal Code Section 18.04.052 operations, if required by the Contract Documents, shall comply with the City's ordinances or requirements. Noise level requirements shall apply to all equipment used in the Project including, but not limited to, trucks, transit mixers, or transient equipment that may or may not be allowed by the Contractor. The use of loud sound signals shall be avoided in favor of warning lights, except those required by safety laws for the protection of personnel.

All work outside of the City of Campbell Municipal Code Section 18.04.052 hours shall require prior written approval of the Engineer unless specified otherwise in the Contract Documents.

Contractor shall refer to Section 14, "Environmental Stewardship", of these Specifications.

7-1.0II Assignment of Antitrust Actions.

The Contractor's attention is directed to the following provisions of Government Code Sections 4550 – 4554 and Public Contract Code Section 7103.5, which shall be applicable to the Contractor and Subcontractors:

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

7-1.0IJ Time for Giving of Notice.

The terms of Code of Civil Procedure Section 1013 shall not apply to any notices given by City under the Contract Documents.

7-1.0IK Compliance with the Underground Notification System.

To the extent it applies to the Contractor's Work, the Contractor shall comply with the requirements of Government Code Sections 4216 through 4216.24, inclusive.

7-1.0IL Prohibition of Gifts.

The Contractor agrees not to offer any City officer, official, or employee any gift prohibited by the City's Administrative Policies and Procedures, "Acceptance of Gifts", dated April 20, 1988.

The offer or giving of any gift prohibited by the City's Administrative Policies and Procedures shall constitute a material breach of this Contract by Contractor. In addition to any other remedies City may have in law or equity, City may terminate for cause this Contract for such breach as provided elsewhere in the Contract Documents.

7-1.02 Weight Limitations.

Unless expressly permitted in the Contract Documents, construction equipment or vehicles of any kind which, laden or unladen, exceed the maximum weight limitations set forth in Division 15 of the Vehicle Code, shall not be operated over completed or existing treated base, surfacing, pavement, or structures in any areas within the limits of the Project, whether or not such area is subject to weight limitations under Section 7-1.01C, "Vehicle Code," unless expressly permitted in the Contract Documents or except as hereinafter provided.

After application of the curing seal, no traffic or Contractor's equipment will be permitted on cement treated base or lean concrete base for a period of 72 hours. After 72 hours, traffic and equipment operated on the base shall be limited to that used in paving operations and placing additional layers of cement treated base. No traffic or equipment will be permitted on treated permeable base except for that equipment required to place the permeable base and the subsequent layer of pavement. Trucks used to haul treated base, Portland cement concrete, or asphalt concrete shall enter onto the base to dump at the nearest practical entry point ahead of spreading equipment. Empty haul trucks shall exit from the base at the nearest practical exit point. Entry and exit points shall not be more than 200 feet ahead of spreading equipment except in locations where specifications prohibit operation of trucks outside the area occupied by the base or where steep slopes or other conditions preclude safe operation of hauling equipment. In such locations, entry and exit points shall be established at the nearest point ahead of spreading equipment permitted by specifications and allowing safe operation of hauling equipment. Damage to curing seal or base shall be repaired promptly by the Contractor at the Contractor's sole expense, as directed by the Engineer.

Within the limits of the Project and subject to the control of the Engineer, and provided that the Contractor at the Contractor's sole expense shall provide such protective measures as are deemed necessary by the Engineer and shall repair any damage caused by such operations, the Contractor will be permitted to:

- (1) Make transverse crossings of such portions of an existing public road or street as are within the highway right of way with construction equipment which exceeds the size or weight limitations set forth in Division 15 of the Vehicle Code.
- (2) Make transverse crossings of treated bases, surfacing, or pavement which are under construction or which have been completed, with construction equipment which exceeds the size or weight limitations set forth in Division 15 of the Vehicle Code.
- (3) Cross bridge structures that are not open to public traffic and which are designed for HS20-44 Live Loading (culverts and pipes excluded), with construction equipment which exceeds the size or weight limitations set forth in Division 15 of the Vehicle Code, but not exceeding the weight limitations hereinafter specified, provided that the Contractor furnishes to the Engineer the dimensions

and maximum axle loadings of equipment proposed for use on bridge structures:

- (a) The maximum loading on bridge structures due to pneumatic-tired truck and trailer combinations shall not exceed (1) 28,000 pounds for single axles, (2) 48,000 pounds for tandem axles, nor (3) 60,000 pounds total gross load for single vehicles or 110,000 pounds total gross load for truck and trailer or semi-trailer combinations.
- (b) The loading on bridge structures due to 2 and 3 axle pneumatic-tired earth movers shall not exceed that shown in the following table.

**ALLOWABLE CONSTRUCTION LOADING ON BRIDGES
FOR 2 AND 3 AXLE EARTH MOVERS**

Spacing of Bridge Girders (center to center in feet)	Maximum Axle Loading (in pounds)
4	28,000
5	29,000
6	30,000
7	32,000
8	34,000
9	37,000
10 and over	40,000

Minimum axle spacing:

- For 3-axle earth-movers:
 - Axles 1 to 2 = 8 feet
 - Axles 2 to 3 = 20 feet
 - For 2-axle earth-movers:
 - Axles 1 to 2 = 20 feet
- (4) Move equipment within the limits of the Project over completed or existing base, surfacing, pavement, and structures, whether or not open to the public, in accordance with the limitations and conditions established by the Engineer.

Within the limits of the Project and subject to the condition that the Contractor shall repair, at the Contractor's sole expense, any damage caused thereby, the Contractor will be permitted to cross culverts and pipes with construction equipment which exceeds the size or weight limitations set forth in Division 15 of the Vehicle Code in accordance with the conditions set forth on the plans. If such conditions are not set forth on the plans, the provisions in the first paragraph in this Section will apply.

Should the Contractor desire to increase the load carrying capacity of a structure or structures which are to be constructed as a part of the Contract, in order to facilitate its own operations, the Contractor may request the Engineer to consider redesigning the structure or structures. Proposals by the Contractor to increase the load carrying capacity of structures above 130,000 pounds per

single axle or pair of axles less than 8 feet apart, or above 330,000 pounds total gross vehicle weight, will not be approved. The request shall include a description of the structure or structures involved and a detailed description of the overloads to be carried, the date the revised plans would be required, and a statement that the Contractor agrees to pay all costs involved in the strengthening of the structure or structures, including the cost of revised plans, and further that the Contractor agrees that no extension of time will be allowed by reason of any delay to the Work which may be due to the alteration of the structure or structures. If the Engineer determines that strengthening the structure or structures will be permitted, the Engineer will inform the Contractor of the estimated cost of the alterations, including engineering, and the date that revised plans could be furnished. If the cost and date are satisfactory to the Contractor, the Engineer will prepare a Change Order providing for the agreed upon alterations and payment to the City.

7-1.03 Payment of Taxes and Utilities.

The Contract Sum shall include full compensation for all taxes which the Contractor is required to pay, whether imposed by Federal, State or local government, including, without being limited to, Federal excise tax. No tax exemption certificate nor any document designed to exempt the Contractor from payment of any tax will be furnished to the Contractor by the City, as to any tax on labor, services, materials, transportation, or any other items furnished pursuant to the Contract. Contractor shall pay all utilities used on the Project until the City's Final Acceptance.

7-1.04 Permits and Licenses.

The Contractor shall procure all necessary permits and licenses, pay all charges and fees, and give all notices necessary and incident to the due and lawful prosecution of the Work in sufficient time to prevent delays to the Work.

The Environmental Quality Act (Public Resources Code Sections 21000 to 21176, inclusive) may be applicable to permits, licenses, and other authorizations which the Contractor must obtain from local agencies in connection with performing the Work. The Contractor shall comply with the provisions of said statutes in obtaining such permits, licenses, and other authorizations and they shall be obtained in sufficient time to prevent delays to the Work.

In the event that the City has obtained permits, licenses, or other authorizations applicable to the Work, the Contractor shall comply with the provisions of said permits, licenses, and other authorizations.

To the fullest extent permitted by law, the Contractor shall defend, indemnify, and hold harmless the City, its officials, officers, employees, and agents from all legal claims, demands, liabilities, damages, losses, actions in law or equity, civil and/or criminal, or expenses (including attorneys' fees and costs), arising from any and all acts or omissions of the Contractor, Subcontractors, or any their officers, employees, or agents in violation of any permit or license issued, except where caused by the sole negligence or willful misconduct of City.

7-1.05 Patents.

The Contractor shall assume all costs arising from the use of patented materials, equipment, devices, or processes used on or incorporated in the Work, and agrees to indemnify, defend, and hold harmless the City, its employees, duly authorized agents and duly authorized representatives,

from any claim, liability, litigation, or actions of, or on account of the use of any patented materials, equipment devices, or processes.

7-1.06 Safety and Health Provisions.

Contractor is solely and completely responsible for conditions on the Project site, including safety of all persons and property during performance of the Work. This requirement applies continuously and is not limited to working hours.

Contractor shall take all necessary precautions for the safety of Contractor's and any Subcontractor's employees on the Work, and shall comply with all applicable occupational safety and health standards, rules, regulations, and orders established by the Federal Government, State of California, County of Santa Clara and the City of Campbell or any other government agency of competent jurisdiction to prevent accidents or injury to persons on, about, or adjacent to the premises where the Work is performed. Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all appropriate safeguards for the protection of workers and the public and shall post danger signs warning against hazards created by such features of construction (including but not limited to fire, toxics, chemicals, odors, noise, vibration, equipment operations, obstructions, falling objects, falls, and all other construction hazards), and Contractor shall designate a responsible member of its organization whose duty shall be the prevention of accidents. Contractor shall report the name and position of the person so designated to the Engineer.

The Contractor shall comply with the applicable provisions of the California Occupational Safety and Health Act of 1973 and the Labor Code.

The Contractor is the controlling employer and must ensure that hazardous conditions are corrected. (Labor Code Section 6400).

The Engineer may notify Cal/OSHA if Contractor fails to establish or maintain a safe and healthful workplace.

Contractor shall submit copies of its injury and illness Prevention Program and permits required by Cal/OSHA to the City. The Program must address the use of personal and company-issued electronic devices during work on the Project. Contractor will not permit the use of entertainment and personal communication devices at the Project site. Workers may use a communication device for business purposes in the work area, at a location where their safety and the safety of other workers and the traveling public is not compromised.

The City is not responsible for the health and safety of Contractor's personnel, Subcontractor's personnel, Supplier's personnel, and any other persons present at the Project site at the request of Contractor or Subcontractors.

All working areas utilized by the Contractor to perform work during the hours of darkness, shall be lighted to conform to the minimum illumination intensities established by California Division of Occupational Safety and Health Construction Safety Orders. All lighting fixtures shall be mounted and directed in a manner precluding glare to approaching traffic.

Full compensation for conforming to the requirements of this Section shall be considered as

included in the Contract Price paid for the various items of work involved and no additional payment will be made therefor.

The Contractor shall provide for sanitary facilities for the sole use of the workers on the Project site. Such facilities shall be placed and maintained by the Contractor so as not to be aesthetically displeasing, annoying to the neighbors, nor offensive to the senses nor community standards of decency. The Engineer shall be the sole judge of the adequacy of the facilities, the placement, and the maintenance thereof. Upon notification by the Engineer of deficiencies in any of these areas, the Contractor shall make immediate corrections. Failure to take corrective action within 24 hours shall give the Engineer due cause to stop the Work in the Contract and to order the corrective work to be done on the toilet facility and to charge all costs of such work against the monies due or to become due to the Contractor.

Full compensation for conforming to the requirements of this Section shall be considered as included in the Contract Price paid for the various items of work involved and no additional payment will be made therefor.

7-1.07 Public Convenience.

This Section defines the Contractor's responsibilities with regard to convenience of the public and public traffic in connection with the Contractor's operations.

Attention is directed to Section 12, "Detours," for provisions relating to the passage of traffic around the Work area.

Attention is directed to Section 7-1.08 "Public Safety," for additional provisions relating to the Contractor's responsibility for the safety of the public in the Project area.

Attention is directed to Section 12, "Temporary Traffic Control," for requirements concerning traffic control.

In the event of a suspension of the Work, attention is directed to Section 8-1.05, "Temporary Suspension of Work."

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

Unless otherwise provided in the Contract Documents, all public traffic shall be permitted to pass through the Work with as little inconvenience and delay as possible. Where possible, such traffic shall be routed on new or existing paved surfaces.

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

Existing traffic signals and highway lighting shall be kept in operation for the benefit of the traveling public during progress of the Work, and other forces will continue routine maintenance of existing systems.

Construction operations shall be conducted in such a manner as to cause as little inconvenience as possible to abutting property owners. Convenient access to driveways, houses, and buildings along the line of the Work shall be maintained and temporary approaches to crossings or intersecting highways shall be provided and kept in good condition. When the abutting property owner's access across the right of way line is to be eliminated, or to be replaced under the Contract by other access facilities, the existing access shall not be closed until the replacement access facilities are usable.

The Contractor may be required to cover certain signs which regulate or direct public traffic to roadways that are not open to traffic. The Contractor shall include in the Traffic Control Plan any existing signs that need to be covered.

Upon completion of rough grading at the grading plane, or placing any subsequent layer thereon, the surface of the roadbed shall be brought to a smooth and even condition free of humps and depressions, satisfactory for the use of public traffic.

After subgrade preparation for a specified layer of material has been completed, the Contractor shall, at the Contractor's expense, repair any damage to the roadbed or completed subgrade, including damage caused by the Contractor's operations or use by public traffic.

While subgrade and paving operations are underway, public traffic shall be permitted to use the shoulders and, if half-width paving methods are used, shall also be permitted to use the side of the roadbed opposite the one under construction. When sufficient width is available, a passageway wide enough to accommodate at least two lanes of traffic shall be kept open at locations where subgrade and paving operations are in active progress.

Any shaping of shoulders or reshaping of subgrade necessary for the accommodation of public traffic thereon during subgrade preparation and paving operations shall be paid for at the Contractor's own expense and no additional compensation will be allowed thereof.

The Contractor shall furnish flaggers for the purpose of expediting the passage of public traffic through the Work under one-way controls as required by the Engineer. Compensation for the convenience or direction or warning of public traffic shall be considered included in the Contract Sum and no additional payment shall be made therefor.

Water or dust palliative shall be applied if ordered by the Engineer for the alleviation or prevention of dust nuisance as provided in Section 10, "Dust Control."

In order to expedite the passage of public traffic through or around the Work and where ordered by the Engineer, the Contractor shall install signs, lights, flares, temporary railing (Type K), barricades, and other facilities for the sole convenience and direction of public traffic. Also where directed by the Engineer, the Contractor shall furnish competent flaggers whose sole duties shall consist of directing the movement of public traffic through or around the Work.

The Contractor will be required to pay the cost of replacing or repairing all facilities installed for the convenience or direction or warning of public traffic that are lost while in the Contractor's custody, or are damaged.

If the closure of a street or blocking of the traffic in that street is anticipated or desired, the Contractor must have the Engineer's written approval prior to such closing or blocking. If a street

is blocked or closed at any time, the Contractor shall also notify City Police Dispatch (Non-Emergency) at 408-866-2101 of such situations. The Contractor shall also notify City Police Dispatch (Non-Emergency) when such access restriction is eliminated.

Except as otherwise provided in this Section or the Contract Documents, full compensation for conforming to the requirements in this Section and the Contract Documents shall be considered as included in the Contract Prices paid for the various contract items of Work and no additional compensation will be allowed therefor.

7-1.08 Public Safety.

It is the Contractor's responsibility to provide for the safety of traffic and the public during construction at the Project site.

Attention is directed to Section 7-1.11, "Responsibility for Damage."

Attention is directed to Section 7-1.07, "Public Convenience," for provisions relating to the Contractor's responsibility for providing for the convenience of the public in connection with the Contractor's operations.

Attention is directed to Section 12, "Temporary Traffic Control," for requirements concerning flagging and traffic-handling equipment and devices used in carrying out the provisions of said Section 7-1.07 and this Section.

The Contractor is responsible for controlling dust resulting from the Work, inside and outside the City right-of-way.

Whenever the Contractor's operations create a condition hazardous to traffic or to the public, the Contractor shall, at the Contractor's sole expense and without cost to the City, furnish, erect, and maintain such fences, temporary railing (Type K), barricades, lights, signs, and other devices and take such other protective measures as are necessary to prevent accidents, or damage or injury to the public.

Such fences, temporary railing (Type K), barricades, lights, signs, and other devices furnished, erected and maintained by the Contractor, at the Contractor's expense, are in addition to any construction area traffic control devices for which payment is provided for elsewhere in the specifications.

The Contractor shall also furnish such flaggers as are necessary to give adequate warning to traffic or to the public of any dangerous conditions to be encountered.

Signs, lights, flags, and other warning and safety devices and their use shall conform to the requirements set forth in the current California Manual on Uniform Traffic Control Devices (MUTCD). Signs or other protective devices furnished and erected by the Contractor at the Contractor's sole expense, as above provided, shall not obscure the visibility of, nor conflict in intent, meaning, and function of either existing signs, lights and, traffic control devices or any construction area signs and traffic control devices for which furnishing of, or payment for, is provided elsewhere in the Contract Documents. Signs furnished and erected by the Contractor at the Contractor's sole expense shall be approved by the Engineer as to size, wording, and location.

The installation of general roadway illumination shall not relieve the Contractor of any responsibility for furnishing and maintaining any of the protective facilities hereinbefore specified.

Unless otherwise indicated in the Contract Documents, the Contractor shall keep all existing traffic signal and street lighting in operation.

Contractor shall cover any existing signs that direct traffic to a closed area.

Construction equipment shall enter and leave the highway via existing ramps and crossovers and shall move in the direction of public traffic. All movements of workers and construction equipment on or across lanes open to public traffic shall be performed in a manner that will not endanger the public or traffic.

The Contractor's trucks or other mobile equipment which leave a roadway lane, that is open to public traffic, to enter the construction area, shall slow down gradually in advance of the location of the turnoff to give following public traffic an opportunity to slow down.

When leaving a work area and entering a roadway carrying public traffic, the Contractor's equipment, whether empty or loaded, shall in all cases yield to public traffic.

Contractor shall immediately remove hauling spillage from the roadway or shoulder open to traffic. When hauling on roadways, the Contractor shall trim the loads, and remove material from shelf areas to minimize spillage on the roadway.

Lanes, ramps, and shoulders shall be closed in accordance with the details shown on the plans, the provisions of Section 12, "Temporary Traffic Control," and as provided in the Contract Documents.

Pedestrian openings through falsework shall be paved or provided with full width continuous wood walks and shall be kept clear. Pedestrians shall be protected from falling objects and curing water for concrete. Overhead protection for pedestrians shall extend not less than 4 feet beyond the edge of the bridge deck. All pedestrian openings through falsework shall be illuminated. Temporary pedestrian facilities must comply with the California MUTCD, Part 6, Chapter 6D "Pedestrian and Worker Safety."

The Contractor shall notify the Engineer not less than fifteen (15) calendar days before the anticipated start of each falsework and girder erection operation whenever such falsework or girders will reduce clearances available to public traffic.

Where the height of vehicular openings through falsework is less than fifteen and a half (15.5) feet, a W34C(CA) "CAUTION VERTICAL CLEARANCE __' __" Arrow" sign shall be provided on all approaches to structures with vertical clearances less than fifteen and a half (15.5) feet.

Temporary facilities which the Contractor uses to perform the Work shall not be installed or placed where they will interfere with the free and safe passage of public traffic.

Temporary facilities which could be a hazard to public safety if improperly designed shall comply with design requirements specified in the Contract Documents for such facilities or, if none are

specified, with standard design criteria or codes appropriate for the facility involved. Working drawings and design calculations for such temporary facilities shall be prepared and signed by an engineer who is registered as a Civil Engineer in the State of California and shall be submitted to the Engineer for review pursuant to Section 5-1.03, "Plans and Shop Drawings." Such submittal shall designate thereon the standard design criteria or codes used. Installation of such temporary facilities shall not start until the Engineer has reviewed the drawings. Provision for the payment for signs, lights, flares, temporary railing (Type K), barricades, and other facilities by Extra Work as provided in Section 7-1.07, "Public Convenience," or by Contract item as provided in Section 12, "Temporary Traffic Control," shall in no way relieve the Contractor from any responsibility as provided in this Section.

The Contractor shall install Type K temporary railing or other authorized protective systems under any of the following conditions:

1. Excavations: Where the near edge of the excavation is within 15-feet from the edge of an open traffic lane
2. Temporarily unprotected permanent obstacles: When the work includes the installation of a fixed obstacle together with a protective system, such as a sign structure together with protective railing, and the Contractor elects to install the obstacle before installing the protective system; or the Contractor for their convenience and as authorized, removes a portion of an existing protective railing at an obstacle and does not replace such railing completely on the same day
3. Storage areas: When material or equipment is stored within 15-feet of the edge of an open traffic lane and the storage is not otherwise prohibited by the Contract
4. Height differentials: When construction operations create a height differential greater than 0.15 feet within 15-feet of the edge of a traffic lane.

Installation of Type K temporary railing is not required if an excavation within 15-feet from the edge of an open traffic lane is protected by any of the following:

1. Steel plate or concrete covers of adequate thickness to prevent accidental entry by traffic or the public
2. Side slope where the downhill slope is 4:1 (Horizontal:Vertical) or less unless a naturally occurring condition
3. Barrier or railing

The Contractor shall offset the approach end of Type K temporary railing a minimum of 15-feet from the edge of an open traffic lane. The Contractor shall install the temporary railing on a skew toward the edge of the traffic lane of not more than 1-foot transversely to 10-feet longitudinally with respect to the edge of the traffic lane. If the 15-foot minimum offset cannot be achieved, the temporary railing must be installed on the 10 to 1 skew to obtain the maximum available offset between the approach end of the railing and the edge of the traffic lane, and an array of temporary crash cushion modules must be installed at the approach end of the temporary railing.

The Contractor shall secure the Type K temporary railing in place before starting work for which the temporary railing is required.

If a traffic lane is closed with channelizers for excavation work, the Contractor shall move the devices to the adjacent edge of the traveled way when not excavating. The Contractor shall space

the devices as specified for the closure.

The Contractor shall never move or temporarily suspend anything over a traffic lane that is open to the public, unless the traffic lane is protected.

Except as otherwise provided in this Section or elsewhere in the Contract Documents, full compensation for conforming to all of the provisions in this Section and in the special provisions shall be considered as included in the Contract prices paid for the various contract items of work and no additional compensation will be allowed therefor.

Should the Contractor be negligent or fail to furnish and/or maintaining warning and protective facilities as required herein, the City may furnish and/or maintain such facilities and charge Contractor therefor by deducting the cost thereof from periodic progress payments due the Contractor as such costs are incurred by City.

In the event the Contractor does not provide such flaggers and guards as are required by this Section, the Engineer may request that the Campbell Police Department provide for public safety and that the costs related thereto shall be deducted from any periodic progress payments due the Contractor.

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

The Contractor shall always provide for emergency vehicle access and fire engine access to all fire hydrants in or around the Project area.

The Contractor shall follow the Contract Documents as related to the City's Storm Water Pollution Control Ordinance and the City's Best Management Practice for Construction Industry document.

7-1.09 Use of Explosives.

The use of explosives is expressly prohibited, unless specifically provided for in the Contract Documents. When the use of explosives is necessary for the prosecution of the Work pursuant to the Contract Documents, the Contractor shall use the utmost care not to endanger life or property.

7-1.10 Preservation of Property.

Attention is directed to Section 7-1.11, "Responsibility for Damage," and to Section 8-1.09, "Utilities and Other Facilities." Due care shall be exercised to avoid injury to existing highway improvements or facilities, utility facilities, adjacent property, and roadside trees, shrubs, and other plants that are not to be removed.

Roadside trees, shrubs, and other plants that are not to be removed, and pole lines, fences, signs, markers and monuments, buildings and structures, conduits, pipelines under or above ground, sewer and water lines, all highway facilities, and any other improvements or facilities within or adjacent to the Project shall be protected from injury or damage, and if ordered by the Engineer, the Contractor shall provide and install suitable safeguards, approved by the Engineer, to protect

such objects from injury or damage. If such objects are injured or damaged by reason of the Contractor's operations, they shall be replaced or restored at the Contractor's sole expense. The facilities shall be replaced or restored to a condition as good as when the Contractor entered upon the Work, or as good as required by the Contract Documents, if any such objects are a part of the Work being performed under the Contract. The Engineer may make or cause to be made such temporary repairs as are necessary to restore to service any damaged facility. The cost of such repairs shall be borne by the Contractor and may be deducted from any moneys due or to become due to the Contractor under the Contract. The fact that any underground facility is not shown upon the plans shall not relieve the Contractor of any responsibility under Section 8-1.09, "Utilities and Other Facilities." It shall be the Contractor's responsibility, pursuant thereto, to ascertain the location of such underground improvements or facilities which may be subject to damage by reason of the Contractor's operations.

Full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all the Work involved in protecting or repairing property as specified in this Section shall be considered as included in the Contract Price and no additional compensation will be allowed therefor.

7-1.11 Responsibility for Damage.

The City, including but not limited to, its agents, officials, officers, and employees thereof including but not limited to the Engineer, shall not be answerable or accountable in any manner for: any loss or damage that may happen to the Work or any part thereof; for any loss or damage to any of the materials or other things used or employed in performing the Work; for injury to or death of any person, either workers or the public; or damage to property from any cause which might have been prevented by the Contractor, Subcontractor, or their workers, or anyone employed by the Contractor, except where caused by the sole negligence or willful misconduct of City.

The Contractor shall be responsible for any liability imposed by law and for injuries to or death of any person or damage to property resulting from defects or obstructions or from any cause whatsoever during the progress of the Work or at any time before its completion and final acceptance.

To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the City, its agents, officers, officials, employees, and volunteers including but not limited to the Engineer, from and against any and all claims, demands, suits or actions of every name, kind, and description, liabilities, damages, or expenses (including attorney's fees and costs) brought for or on account of, injuries to or death of any person, including but not limited to workers and the public or damage to property resulting from the acts or omissions of Contractor, Subcontractors, or their employees or agents in any way related to the Contract, except where caused by the sole negligence or willful misconduct of City. It is the intent of the parties that this obligation applies regardless of the existence or degree of fault or negligence on the part of the City.

With respect to third party claims against the Contractor, the Contractor waives any and all rights to any type of express or implied indemnity against the City, its agents, officers, or employees.

In addition to any remedy authorized by law, so much of the money due the Contractor under and by virtue of the Contract as shall be considered necessary by the City may be retained by the City until disposition has been made of such suits or claims for damages as aforesaid.

The retention of money due the Contractor shall be subject to the following:

1. The City will give the Contractor thirty (30) days' notice of its intention to retain funds from any partial payment which may become due to the Contractor prior to acceptance of the Contract. Retention of funds from any payment made after acceptance of the Contract may be made without such prior notice to the Contractor.
2. No retention of additional amounts out of partial payments will be made if the amount to be retained does not exceed the amount being withheld from partial payments pursuant to Section 9-2.05, "Progress Payments."
3. If the City has retained funds and it is subsequently determined that the City is not entitled to be indemnified and held harmless by the Contractor in connection with the matter for which such retention was made, the City shall pay interest on the amount retained at the same rate as that received by the City on such funds for the period of such retention.

The Contractor shall be responsible for any liability imposed by law and for injuries to or death of any person including but not limited to workers and the public, or damage to property. Contractor shall indemnify and hold harmless any county, city, or district, their officers and employees connected with the Work, within the limits of which county, city, or district the Work is being performed hereunder, all in the same manner and to the same extent as provided above for the protection of the City and all officers and employees thereof connected with the Work.

Nothing in this Contract is intended to make the public or any member thereof a third-party beneficiary hereunder, nor is any term and condition or other provision of the Contract intended to establish a standard of care owed to the public or any member thereof.

7-1.11A Protection of Contractor's Work and Property.

The Contractor shall protect its work, supplies, and materials from damage due to the nature of the Work, the action of the elements, trespassers, or any cause whatsoever which is under the Contractor's control, until the completion and acceptance of the Work. Neither the City nor any of its agents assumes any responsibility for collecting indemnity from any person or persons causing damage to the Work of the Contractor.

7-1.11B Insurance Requirements.

Contractor agrees to follow all insurance requirements specified in the applicable Contract Documents and/or Permit Conditions.

7-1.11C Insurance During Termination and/or Suspension.

If the City elects to suspend the Work as provided for in the Contract Documents, it shall be the Contractor's obligation to keep all insurance policies required under the Contract Documents in place and effective throughout the period of such suspension. If the City should elect to terminate the Contract, it shall be the Contractor's obligation to keep all insurance required under the Contract Documents in place and in effect until the acceptance of the Project by the Engineer.

7-1.11D Legal Actions Against the City.

In the event litigation is brought against the City concerning compliance by the City with State, Federal, regional, or local laws, ordinances, rules, or regulations applicable to the Work, the provisions of this Section shall apply.

- (A) If, pursuant to court order, the City prohibits the Contractor from performing all or any portion of the Work, the delay will be considered a right of way delay within the meaning of Section 8-1.08, "Right of Way Delays," unless the Contract is terminated as hereinafter provided.
- (B) If, pursuant to court order (other than an order to show cause), the City is prohibited from requiring the Contractor to perform all or any portion of the Work, the City may, if it so elects, eliminate the enjoined work pursuant to Section 4-1.03, "Changes in the Work," or terminate the Contract.
- (C) If the final judgment in an action prohibits the City from requiring the Contractor to perform all or any portion of the Work, the City will either eliminate the enjoined work pursuant to Section 4-1.03, "Changes in the Work," or terminate the Contract.
- (D) If the Contract is to be terminated, the termination and the determination of the total compensation payable to the Contractor shall be governed by the provisions of Section 8-1.10, "Termination of Contract."
- (E) If any legal action is filed involving the Project, the City may, in its sole discretion, elect to terminate the Contract for convenience or suspend the Contract, as provided elsewhere in the Contract Documents. This right to terminate and/or suspend the Contract shall include but not be limited to an action brought under the California Environmental Quality Act (CEQA).

7-1.12 Disposal of Material Outside the Project Limits.

If the Contractor elects to dispose of materials at locations other than those where arrangements have been made by the City, or, if material is to be disposed of and the City has not made arrangements for disposal of such material, the Contractor shall make arrangements for disposing of materials outside the Project limits and the Contractor shall pay all costs involved. Arrangements shall include, but not be limited to, entering into agreements with property owners and obtaining necessary permits, licenses, testing, and environmental clearances. Before disposing of any material outside the Project limits, the Contractor shall furnish to the Engineer satisfactory evidence that the Contractor has entered into agreements with the property owners of the site involved and has obtained said permits, licenses, and clearances.

When any material is to be disposed of outside the Project right of way, and the City has not made arrangements for disposal of such material, the Contractor shall first obtain written authorization from the property owner on whose property the disposal is to be made and the Contractor shall file with the Engineer said authorization or a certified copy thereof together with a written release from the property owner absolving the City from any and all responsibility in connection with the disposal of material on said property, and before any material is disposed of on said property, the Contractor shall obtain written permission from the Engineer to dispose of the material at the

location designated in said authorization.

When material is disposed of as above provided and the disposal location is visible from a highway, the Contractor shall dispose of the material in a neat and uniform manner to the satisfaction of the Engineer.

Where the City has made arrangements with owners of land in the vicinity of the Project for the disposal of materials on an owner's property, such arrangements are made solely for the purpose of providing all bidders an equal opportunity to dispose of said materials on such property. Bidders or Contractors may, upon written request, inspect the documents evidencing such arrangements between property owners and the City. If the Contractor so elects, it may exercise any rights that have been obtained by the City, which may be exercised by a Contractor under such arrangements, subject to and upon the conditions hereinafter set forth.

Such arrangements are not a part of the Contract and it is expressly understood and agreed that the City assumes no responsibility to the bidder or Contractor whatsoever in respect to the arrangements that the City made with the property owner to dispose of materials thereon and that the Contractor shall assume all risks in connection with the use of such property, the terms upon which such use shall be made, and there is no warranty or guaranty, either express or implied, as to the quantity or types of materials that can be disposed of on such property.

In those instances in which the City has compiled "Materials Information" as referred to in Section 2-1.03, "Examination of Plans, Specifications, Contract, and Site of Work," said compilation will include the documents setting forth the arrangement made with some of the property owners for the disposal of material on such owners' properties. The inclusion of such documents therein shall not in any respect operate as a waiver of any of the provisions in this Section concerning said documents.

The bidder or Contractor is cautioned to make such independent investigation and examination as they deem necessary to satisfy themselves as to the quantity and types of materials which may be disposed of on such property and the rights, duties, and obligations acquired or undertaken under such arrangement with the property owner.

Notwithstanding that the Contractor may elect to dispose of materials on any such property owner's property, no material may be disposed of on such property unless the Contractor has first either:

- (1) Executed a document that will guarantee to hold such owner harmless from all claims for injury to persons or damage to property resulting from the Contractor's operations on the property owner's premises and also agree to conform to all other provisions set forth in the arrangement made between the City and the property owner. Said document will be prepared by the Engineer for execution by the Contractor, or
- (2) Entered into an agreement with the owner of the disposal site on any terms mutually agreeable to the owner and the Contractor; provided that the Contractor shall furnish to the Engineer a release, in a form satisfactory to the Engineer, executed by the owner, relieving the City of any and all obligations under the City's arrangement with the owner.

If the Contractor elects to dispose of material under (1), the use of such site shall be subject to the terms, conditions, and limitations of the arrangement made between the property owner and the

City and the Contractor shall pay such charges as are provided for in the arrangement made by the City with the property owner, and deductions will be made from any moneys due or that may become due the Contractor under the contract sufficient to cover the charges for such material disposed of.

If the Contractor elects to dispose of material under (2), the Contractor shall pay such charges as are provided for in the agreement between the owner and the Contractor and deductions will not be made from any moneys due or that may become due the Contractor under the contract to cover such charges.

Before acceptance of the Contract, the Engineer may require the Contractor to submit written evidence that the owner of the disposal site is satisfied that the Contractor has satisfactorily complied with the provisions of either: (1), the arrangement between the City and the owner, or (2), the agreement between the owner and the Contractor, as the case may be.

Full compensation for all costs involved in disposing of materials as specified in this Section, including all costs of hauling, shall be included in the Contract Price and no additional compensation will be allowed therefor.

7-1.13 Cooperation.

Should construction be under way by other forces or by other contractors within or adjacent to the limits of the Work specified or should work of any other nature be under way by other forces within or adjacent to said limits, the Contractor shall cooperate with all such other contractors or other forces to the end that any delay or hindrance to their work will be avoided. The right is reserved to perform other or additional work at or near the site (including material sources) at any time, by the use of other forces.

When two or more contractors are employed on related or adjacent work, or obtain materials from the same material source, each contractor shall conduct their operations in such a manner as not to cause any unnecessary delay or hindrance to the other.

Each contractor shall be responsible to the other for all damage to work, to persons or property caused to the other by his/her operations, and for loss caused the other due to his/her unnecessary delays or failure to finish their work within the time specified for completion. The Contractor shall conduct, adjust, correct, and coordinate its Work with the work of others so that no discrepancies shall result in the whole Work and shall defend, indemnify, and hold the City harmless against any claims arising therefrom. The Contractor, including its Subcontractors at any tier, 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 workmanship on the part of other contractors, where such delay or such defective workmanship will interfere with the Contractor's own operations. 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 workmanship 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. If the Work of the Contractor is delayed because of any acts or omissions of any other contractor, the Contractor shall on that account have no claim against the City other than for an extension of time.

7-1.13A Mutual Responsibility of Contractors.

If the Contractor or any of its Subcontractors or employees cause loss or damage to any other contractor, and if such other contractor makes a claim against the City, its officers, officials, employees, or agents, on account of any loss so sustained, the City shall notify the Contractor, who shall defend, indemnify, and hold harmless the City, its officers, officials, employees, and agents against any such claim, expense, or judgement arising therefrom.

7-1.14 Relief From Maintenance and Responsibility.

Only upon the written request of the Contractor and written consent of the Engineer, the Engineer may make a partial acceptance of a major portion of the Work of the Contract, such as a traffic control signal system, a highway lighting system, or a storm sewer system. Such partial acceptance will relieve the Contractor from responsibility for maintenance and repair due to damage by vehicular or pedestrian traffic or other public use. Such partial acceptance may or may not begin the one-year maintenance period responsibility of the Contractor as specified in Section 2-1.12 "General Guaranty" contained herein. A partial acceptance will only be considered upon a written request from the Contractor specifying the circumstances and the specific portion of the Work to be accepted. The Engineer shall be the sole and final judge of whether the indicated special circumstances warrant a partial acceptance and of what portion of the completed work may be subject to partial acceptance, and whether the maintenance period responsibilities commence.

Nothing in this Section will be construed as relieving the Contractor of full responsibility for making good defective work or materials found at any time before Final Acceptance and accompanying end of the one-year maintenance period.

7-1.15 Contractor's Responsibility for the Work and Materials.

Until Final Acceptance of the Work, the Contractor shall have the charge and care of the Work and of the materials to be used therein (including materials for which the Contractor has received partial payment or materials which have been furnished by the City) and shall bear the risk of injury, loss, or damage to any part thereof by the action of the elements or from any other cause, whether arising from the execution or from the non-execution of the Work, except as otherwise expressly provided for in the Contract Documents.

The Contractor shall rebuild, repair, restore, and make good all injuries, losses, or damages to any portion of the Work or the materials occasioned by any cause before its completion and acceptance and shall bear the expense thereof, except as otherwise expressly provided for in the Contract Documents and except for such injuries, losses, or damages as are directly and proximately caused by acts of the Federal, State, regional, or local Government or the public enemy.

Where necessary to protect the Work or materials from damage, the Contractor shall, at the Contractor's sole expense, provide suitable drainage of the Work area and erect such temporary structures as are necessary to protect the Work or materials from damage. The suspension of the Work from any cause whatsoever shall not relieve the Contractor of any responsibility for the Work and materials as herein specified. If ordered by the Engineer, the Contractor shall, at the Contractor's sole expense, properly store materials which have been furnished by the City. Such storage by the Contractor shall be on behalf of the City and the City shall at all times be entitled to the possession of such materials, and the Contractor shall promptly return the same to the site

of the Work when requested. The Contractor shall not dispose of any of the materials so stored except on written authorization from the Engineer.

The City reserves the right to use or occupy any portion or all of the Work prior to completion. Upon occupying or commencing use of any such portion or all of the Work prior to completion, the Contractor shall not be relieved of any duty for maintaining and protecting said Work and the Contractor shall be required thereafter to complete said Work. The Contractor shall be fully responsible for coordinating with the City for the completion of such Work such that said Work will cause the least interference with the City's use and/or occupancy.

7-1.15A Damage by Storm, Flood, or Earthquake.

Attention is directed to Section 7-1.15, "Contractor's Responsibility for the Work and Materials." In the event damage to the Work is caused by a storm, flood, tidal wave, or earthquake, and other natural disasters (hereinafter called an "Occurrence") the provisions of this Section shall be applicable and the Contractor may apply in writing to the Engineer for the City to participate in the cost of repairing damage to the Work from such cause or, in lieu thereof, and at the sole discretion of the City, terminate the Contract and relieve the Contractor of further obligation to perform the Work, subject to the following:

- A. Occurrence. "Occurrence" shall include only earthquakes, storms, and floods as to which the Governor of the State of California has proclaimed a State of Emergency pursuant to Government Code Section 8625 and when the damaged Work is located within the territorial limits to which such proclamation is applicable or, which were, in the opinion of the Engineer, of a magnitude at the site of the Work sufficient to have caused such a proclamation had they occurred in a populated area or in an area in which such a proclamation was not already in effect.

- B. Application by Contractor. The Contractor's written request for the City to participate in the cost of rebuilding, repairing, restoring, or otherwise remedying the damage to the Work caused by the Occurrence shall be submitted to the Engineer before performing any work other than emergency work, including emergency work necessary to provide for passage of public traffic.

- C. Protecting the Work from Damage. Nothing in this Section shall be construed to relieve the Contractor of any responsibility to protect the Work from damage. The Contractor shall bear the entire cost of repairing damage to the Work caused by the Occurrence which the Engineer determines was due to the failure of the Contractor to comply with the requirements of the Contract Documents, take reasonable and adequate measures to protect the Work, or exercise sound engineering and construction practices in the conduct of the Work, and such repair costs shall be excluded from consideration under the provisions of this Section.

- D. Repair Work. Repair of damaged Work under the provisions of this Section shall be pursuant to a Change Order issued hereunder and specifying the repair work to be performed. Such repair work shall consist of restoring the in-place construction (for the purposes of this Section erected falsework and formwork shall be considered in-place construction) to the same state of completion to which such Work had advanced prior to the Occurrence. Emergency work which the Engineer determines would have been part of

the repair work if it had not previously been performed, will be considered to be part of said repair work.

The City reserves the right to make changes in the Contract Documents applicable to the portions of the Work to be repaired, and if such changes will increase the cost of repairing the damage over the Engineer's estimate of the cost of repair without the changes, the Contractor will be paid for such increased costs in accordance with Subsection E, "Determination of Costs" and the increased cost amount shall not be considered in determining the cost of repair to be borne by the Contractor under Subsection F, "Payment for Repair Work".

Nothing in this Section shall be construed to relieve the Contractor of full responsibility for the risk of injury, loss, or damage to materials not yet incorporated in the Work and to materials, tools, and equipment (except erected falsework and formwork) used to perform the Work, or to relieve the Contractor of any responsibility under Section 7-1.11, "Responsibility for Damage." The provisions of this Section shall not be applicable to the repair of damage caused by an Occurrence to any portion of the Work as to which the Contractor has been granted relief from maintenance and responsibility pursuant to Section 7-1.14, "Relief From Maintenance and Responsibility," or to the removal of slides and slipouts or the repair and restoration of damage to the Work resulting from slides and slipouts pursuant to Caltrans Construction Manual (July 2019) Section 19, Section 4-1903A (3), "Slides and Slipouts."

- E. Determination of Costs. Unless otherwise agreed between the Engineer and the Contractor, the cost of the Work performed pursuant to this Section will be determined in accordance with the provisions in Section 9-2.02, "Force Account Payment," except there shall be no markup allowance pursuant to Section 9-2.02A, "Work Performed by Contractor," unless the Occurrence that caused the damage was a tidal wave or earthquake. The cost of emergency work, which the Engineer determines would have been part of the repair work if it had not previously been performed, will be determined in the same manner as the authorized repair work. The cost of repairing damaged work which was not in compliance with the requirements of the Contract Documents shall be borne solely by the Contractor, and such costs shall not be considered in determining the cost of repair under this Subsection E.
- F. Payment for Repair Work. When the Occurrence that caused the damage was an earthquake, the City will pay the cost of repair determined as provided in Subsection E, "Determination of Costs", that exceeds five percent (5%) of the amount of the Contractor's bid for bid comparison purposes.

When the Occurrence that caused the damage was a storm or flood, the City will participate in the cost of the repair determined as provided in Subsection, "Determination of Costs", in accordance with the following:

1. On projects for which the amount of the Contractor's bid for bid comparison purposes is \$100,000 or less, the City's participation will be ninety percent (90%) of the cost of repair that exceeds \$5,000.
2. On projects for which the amount of the Contractor's bid for bid comparison

purposes is more than \$100,000, but less than \$2,000,000 the City's participation will be ninety percent (90%) of the cost of repair that exceeds five percent (5%) of the amount of the Contractor's bid for bid comparison purposes.

3. On projects for which the Contractor's bid for bid comparison purposes is greater than \$2,000,000, the City will pay ninety percent (90%) of the cost of repair that exceeds \$100,000.

G. Termination of Contract Due to Occurrence. If the City elects to terminate the Contract, the termination and the determination of the total compensation payable to the Contractor shall be governed by the provisions of Section 8-1.10, "Termination of Contract."

7-1.16 Acceptance of Work.

When the Engineer has made the final inspection as provided in Section 5-1.14, "Final Inspection and Contract Acceptance" and determines that the Work has been completed in all respects, and in its entirety, in accordance with the Contract Documents, the Engineer will recommend that the City formally accept the Work. Immediately upon and after such acceptance of the Work by the City, the Contractor will be relieved of maintaining and protecting the Work as a whole, except for any specifically designated maintenance items and all warranty work as required by the Contract Documents.

7-1.17 Property Rights in Materials.

Nothing in the Contract Documents shall be construed as vesting in the Contractor any right of property in the materials used in the Work after they have been installed for their intended use in the Project. All such materials shall become the property of the City upon being so attached or affixed.

7-1.18 Rights in Land and Improvements.

Nothing in the Contract Documents shall be construed as allowing the Contractor to make any arrangements with any person to permit occupancy or use of any land, structure, or building within the limits of the Contract for any purpose whatsoever, either with or without compensation, in conflict with any agreement between the City and any owner, former owner, or tenant of such land, structure, or building.

The Contractor shall not occupy City-owned property limits as shown on the plans or outside the expressly designated areas in the Contract Documents unless the Contractor enters into a rental agreement with the City. Such a rental agreement will be based on the fair rental values.

7-1.19 Repair of Equipment.

The work of installing, assembling, repairing, or reconditioning, or other work of any nature on machinery, equipment, or tools used in or upon the Work shall be considered a part of the Work to be performed under the Contract and any laborers, workers, or mechanics working on such machinery, equipment, or tools, unless employed by bona fide commercial repair shops, garages, blacksmith shops, or machine shops, which have been established and operating on a commercial basis for a period of at least two months prior to the award of the Contract, shall be subject to all

the requirements relating to labor set forth in the Contract Documents.

7-1.20 Material Plant Labor.

The construction, erection, and operation of material production, proportioning, or mixing plants from which material is used wholly on the Contract or on contracts under the supervision of the City shall be considered a part of the Work to be performed under the Contract and any laborers, workers, or mechanics working on such plants shall be subject to all of the requirements relating to labor set forth in the Contract Documents.

7-1.21 Provisions of Law and Venue.

It is specifically provided that this Contract is to be interpreted and enforced in accordance with the laws of the State of California and subject to all the provisions of law regulating and controlling the performance of work for the City, and that the rules of law shall prevail over any provision contained in any of the contract documents which may be in conflict or inconsistent therewith.

Each and every provision of law and clause required by law to be inserted in these Contract documents shall be deemed to be inserted herein and the Contract Documents shall be read and enforced as though it were included herein, and if through mistake or otherwise, any such provisions are not inserted, or are not correctly inserted, then upon application of either party, the Contract Documents shall forthwith be physically amended to make such insertion or correction at no additional cost to City.

Pursuant to California Code of Civil Procedure Section 394, proper venue for any legal action arising out of these Contract Documents shall be the County of Santa Clara, or, where otherwise appropriate, in the Federal District Court for the Northern District of California. There is no express or implied agreement between the parties to mediate and/or arbitrate in any forum any matter arising under this Contract. All depositions, document production, mediations, arbitrations, and any other meetings will take place in the City of Campbell, unless otherwise agreed-to by the parties.

In the event that a particular City public work contract is funded or required to be approved in whole or in part by the state or federal government and any provision contained herein is inconsistent with any applicable state or federal statutes, rules or regulations, orders, or controlling policies pertaining to such funding or approval, such provisions to the extent that it is inconsistent shall not apply to said City public works contract.

7-1.22 California Public Records Act.

City is a public agency subject to the disclosure requirements of the California Public Records Act (“CPRA”). If Contractor’s proprietary information is contained in documents or information submitted to City, and Contractor claims that such information falls within one or more CPRA exemptions, Contractor must clearly mark such information “Confidential and Proprietary,” and identify the specific lines containing the information. In the event of a request for such information, City will make best efforts to provide notice to Contractor prior to such disclosure. If Contractor contends that any documents are exempt from the CPRA and wishes to prevent disclosure, it is required to obtain a protective order, injunctive relief or other appropriate remedy from a court of law in Santa Clara County before the City is required to respond to the CPRA request. If Contractor

fails to obtain such remedy within the time the City is required to respond to the CPRA request, City may disclose the requested information without any liability to Contractor. Contractor further agrees that it shall defend, indemnify, and hold City harmless against any claim, action or litigation (including but not limited to all judgments, costs, and attorney's fees) that may result from denial by City of a CPRA request for information arising from any representation, or any action (or inaction), by the Contractor.

7-1.23 Final Guarantee.

Neither the City's final acceptance nor payment, nor any provisions in the Contract Documents, shall relieve the Contractor of its responsibility for faulty materials or workmanship.

Contractor shall guarantee all workmanship and materials for a period of one (1) year from the time the City Council accepts the improvements installed by the Work or as specified in the Contract Documents, excluding normal wear and tear, improper operation, insufficient maintenance, abuse, unauthorized change, or an Act of God. The Contractor may be required to furnish a written guaranty covering all or certain items of Work for varying periods of time from the date of Acceptance of the Work. The Work to be guaranteed, the form, and the time limit of the guaranty will be specified in the Contract Documents. Said guaranty shall be signed and delivered along with any and all manufacturers' warranties, guaranties, instruction sheets, and parts lists which are furnished with certain articles or materials incorporated in the Work, shall be delivered to the Engineer before City acceptance of the Work.

The Contract bonds must be in force until the later of (1) the expiration of the guarantee period or (2) the completion of the corrective work.

The warranty/guarantee period shall be counted from the date of recording of the Notice of Completion by City. Contractor shall repair or replace any or all defective Work, together with any other Work that may be displaced in so doing, that is or becomes defective during the period of said guarantee without expense whatsoever to City.

The aforesaid one-year warranty/guarantee period does not in any way limit or waive City's rights to legal recourse for latent construction effects, pursuant to California Code of Civil Procedure Sections 337.15 and 337.1.

During the guarantee period, the Engineer monitors the completed Work. If the Engineer finds work having a substantial defect, the Engineer lists the defective work parts and will furnish the Contractor with a list. In the event Contractor fails to submit for authorization a detailed plan for correcting the work, consistent with the requirements of any guarantee required by the Contract Documents, within ten (10) days of the date of a written notification from the City and start all necessary corrective and related work within fifteen (15) days of the notification, it is expressly agreed and understood that City is authorized to proceed to have the defects remedied and made good at the expense of the Contractor, who shall pay the cost and charges therefor immediately on demand.

7-1.24 Notice.

Any notice from one party to the other under the Contract shall be in writing and shall be dated and signed by the party giving such notice or by a duly authorized representative of such party.

Any such notice shall not be effective for any purpose whatsoever unless served in the following manner:

1. If the notice is given to City, it must be by personal delivery thereof to the Engineer or by depositing the notice in the United States mail, enclosed in a sealed envelope, addressed to City for the attention of the Engineer, priority mail, and postage prepaid or by overnight mail.
2. If the notice is given to Contractor, it must be by personal delivery thereof to Contractor or to Contractor's Superintendent, or by depositing the same in the United States mail, enclosed in a sealed envelope, addressed to Contractor at its regular place of business or at such other address as may have been established for the conduct of the Work, priority mail, and postage prepaid or by overnight mail.
3. If the notice is given to the Surety or any other person, by personal delivery to such Surety, or by depositing the same in the United States mail, enclosed in a sealed envelope, addressed to Surety or person at the address of such Surety or person last communicated by him/her to the party giving the notice, priority mail, and postage prepaid or by overnight mail.
4. Deposit of notice in the United States mail shall be the date of receipt thereof.

7-1.25 Material Storage.

The Contractor shall store materials only within the Work limits and Material Storage Areas designated in the Contract Documents. Should these areas prove inadequate, the Contractor shall make advance arrangements for and pay all fees in connection with the use of property other than the Project site for storage of materials or other purposes.

7-1.26 Non-Waiver by the City.

The Contractor hereby agrees that waiver by the City of any breach or violation or any term or condition of the Contract Documents shall not be deemed to be a waiver or any other term or condition contained herein or a waiver of any subsequent breach or violation of the same term or condition of the Contract. Payment for or acceptance by City of any Work or services by Contractor performed under this Contract shall not be deemed to be a waiver of any term or condition of this Contract even if at the time of such payment or acceptance the City was aware of the Contractor's failure to comply with any term or condition of the Contract. Conformance with any of the provisions in one part of the Contract Documents shall not relieve the Contractor from its responsibilities as set forth elsewhere in the Contract Documents.

7-1.27 Archeological and Paleontological Rights.

Notwithstanding any other provisions of this Contract, in the event any archeological or paleontological objects within the Project area are discovered during the course of the Work, the Contractor shall halt the Work within the area affected, and the City shall have and retain all right, title and interest to such objects and shall have the further right, during the course of the Contract, to examine or cause to have examined, the site of the Work for any such objects and to perform or have performed archeological or paleontological excavations and all other related work to explore

for, discover, recover, and remove such objects from the site of the work.

In the event the work of archeological or paleontological examination and related work delays the Contractor's work, the Contractor shall be entitled to an extension of time to complete the work equal to the number of days thus delayed pursuant to Section 8-1.08, "Right of Way Delays", and compensation for such delay will be determined in accordance with said Section 8-1.08, "Right of Way Delays." The Contractor shall be entitled to no other compensation for any Archeological and Paleontological delays.

7-1.28 Emergencies.

In an emergency affecting the safety of persons or property, the Contractor shall act reasonably to prevent threatened damage, injury, or loss. The Contractor shall immediately notify the City in writing of such actions. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall be determined as provided in Section 4-1.03, "Changes in the Work."

7-1.29 Integration Clause.

The Contract, including the Contract Documents, constitutes the entire agreement between the parties. There are no prior or contemporaneous oral agreements between the parties not set forth in the contract. Any modification to the contract or these specifications must be in writing in order to be effective and binding on the parties to the Contract.

7-1.30 Indemnification.

To the fullest extent permitted by law, Contractor agrees to indemnify, defend and hold harmless the City, its officials, officers, and agents (collectively, "Indemnitees") from and against any and all liability, claim, action, loss, injury, damage, judgment, or expense (including attorneys' fees and costs) ("Losses") caused by or resulting from the negligence, recklessness, or willful misconduct of Contractor in connection with its performance of this Contract for (1) bodily injury including, but not limited to, bodily injury, sickness, or disease, emotional injury or death to persons including, but not limited to, the public any employees or agents of you, Indemnitees, or any other contractor; and (2) damage to property of anyone including loss of use thereof, caused or alleged to be caused in whole or in part by any negligent or otherwise legally actionable act or omission of Contractor or anyone directly or indirectly employed by Contractor or anyone for use acts Contractor may be liable, except if proximately caused by the sole, active negligence of the City.

Contractor acknowledges and agrees that Contractor's obligation to defend City and the other Indemnitees arises at the time such Losses is tendered to Contractor by the Indemnitees and continues at all times until finally resolved, and/or decided by an adjudicatory body or a court of competent jurisdiction. This provision shall survive the termination of the Agreement or the completion of the Work.

The obligation to defend shall arise regardless of any claim or assertion that Indemnitees caused or contributed to the Losses.

END OF SECTION

SECTION 8: PROSECUTION AND PROGRESS

8-1.01 Subcontracting.

No subcontract releases Contractor from the Contract or relieves Contractor of its responsibility for a Subcontractor's work. The Contractor shall be fully responsible to the City for the acts and omissions of Subcontractors, and of persons employed by the Contractor and Subcontractors. The Contractor shall be responsible for the coordination of trades, Subcontractors, and suppliers engaged upon this Work.

The Contractor shall perform not less than 30 percent of the Contract Sum, except that any designated "Specialty Items" may be performed by subcontract and the amount of any such "Specialty Items" so performed may be deducted from the original total Contract Sum before computing the amount of work required to be performed by the Contractor with the Contractor's own organization.

All subcontracts and contracts with materials providers must comply with the Contract Documents, and all terms and provisions under the Contract Documents are incorporated into each subcontract. Subcontracts shall also contain certification by the Subcontractor that said Subcontractor is experienced in and qualified to do, and knowledgeable about the subcontracted work. Copies of subcontracts and contracts with materials providers shall be available to the Engineer at the time any litigation against the City concerning the Project is filed.

Nothing contained in the Contract Documents shall be construed as creating any contractual relationship between any Subcontractor and the City.

Pursuant to Public Contract Code Section 6109, the Contractor shall not perform work on this Project with any Subcontractor who is ineligible to perform work on public works projects pursuant to Section 1777.1 or 1777.7 of the Labor Code. Any contract on a public works project entered into between the Contractor and a debarred Subcontractor is void as a matter of law. For a list of debarred contractors, go to the Department of Industrial Relations' website. A debarred Subcontractor may not receive any public money for performing work as a Subcontractor on a public works contract, and any public money that may have been paid to a debarred Subcontractor by the Contractor on this Project shall be returned to City. The Contractor shall be responsible for the payment of wages to workers of a debarred Subcontractor who worked on the Project.

The Contractor and all subcontractors for the Work shall comply with the "Subletting and Subcontracting Fair Practices Act", as codified in Public Contract Code Sections 4100 et seq., unless otherwise specified in the Contract Documents. If Contractor, or any subcontractor, violates Public Contract Code Sections 4100 et seq., the City may exercise the remedies provided in Public Contract Code Section 4110. The City may refer the violation to the Contractor's State License Board, as provided under Public Contract Code Section 4111.

Before Work is started on a subcontract, the Contractor shall submit to the Engineer a written statement showing all Work to be subcontracted, the names of the Subcontractors, and the description of each portion of the Work to be so subcontracted.

When a portion of the Work which has been subcontracted by the Contractor is not being prosecuted in a manner satisfactory to the City, the Contractor shall immediately remove the

Subcontractor or any designated employee of the Subcontractor upon the request of the Engineer and shall not again be employed on the Work.

The production of aggregates of all kinds with portable, semiportable, or temporary crushing or screening, proportioning, and mixing plants established or reopened for the purpose of supplying aggregate or material for a particular project or projects shall be considered as subcontracted if produced by other than Contractor's forces. The erection, establishment, or reopening of such plants and the operation thereof in the production of said materials for use on the Work shall conform to the requirements relating to labor set forth in the Contract Documents.

8-1.02 Assignment.

The performance of the Contract or any Contract part may be assigned only with prior written consent from the City. To request consent, Contractor must submit a written assignment request. The City does not consent to any requested assignment that would relieve Contractor or its surety of the responsibility to complete the Work or any part of the Work. To assign any subcontract, Contractor must comply with Public Contract Code Section 4107.

The Contractor may assign moneys due or to become due under the Contract and such assignment will be recognized by the City, if given proper notice thereof, to the extent permitted by law, but any assignment of moneys shall be subject to all proper set-offs in favor of the City and to all deductions provided for in the Contract and particularly all money withheld, whether assigned or not, shall be subject to being used by the City for the completion of the Work in the event that the Contractor should be in default therein.

8-1.03 Commencement of Work.

The date of commencement of the Work shall be set forth in the Notice to Proceed. Unless otherwise approved by the Engineer, the Contractor shall begin work within ten (10) calendar days from the date of the Notice to Proceed, and shall diligently prosecute the same to completion within the time limit provided in the Contract Documents. Should the eleventh (11) day after the issuance of the Notice to Proceed fall on a Saturday, Sunday, or legal holiday, the following working day shall be the first working day charged.

The date of commencement of the Work shall not be postponed by the failure of Contractor, Subcontractors, or of persons or firms for whom Contractor is responsible, to act.

The Contractor shall notify the Engineer, in writing, of the Contractor's intent to begin work at least 72 hours before Work is begun. The notice shall be delivered to the Engineer and shall specify the date the Contractor intends to start.

Under no circumstances shall the Contractor enter the site of the Work until receipt of the Notice to Proceed. Should the Contractor begin work in advance of receiving Notice to Proceed, any work so performed shall be considered as having been done by the Contractor's own risk and expense and as a volunteer unless a Notice to Proceed is subsequently issued. Should any work be performed prior to Notice to Proceed, such work shall be subject to inspection and acceptance by City as provided for elsewhere in these Contract Documents.

8-1.04 Schedules.

The Contractor shall furnish and submit a computerized construction schedule prepared using the Critical Path Method (CPM), which legibly describes each activity; shows all controlling activities; enumerates the order in which the Contractor proposes to carry out the Work; the sequence and interdependence of construction activities (showing logical links between the time-scaled work activities); all salient features of the Work (including procurement of materials and equipment, and material testing); the dates on which the contractor will start the salient features of the Work; and the scheduled dates for completing the said salient features. The CPM schedule shall be submitted to the Engineer at the preconstruction meeting or to the Engineer within 8 business days from the issuance of the Notice of Award whichever is earlier. Failure to timely submit an acceptable CPM schedule may result in damages in an amount as set forth in the Contract Documents. Progress schedules shall be in the form specified by the City unless otherwise specified in the Contract Documents or approved by the Engineer.

Updated progress schedules shall be provided to the Engineer weekly at the Weekly Field Meeting, or more frequently if deemed necessary by the Engineer. No progress payment will be made for any Work until an updated schedule has been submitted and approved by the Engineer. Updated schedules shall incorporate all current schedule information, including actual progress, approved time adjustments, and proposed changes in sequence and logic.

The monthly progress schedule shall include:

- a. Time for submittals and reviews
- b. Time for fabrication and delivery of manufactured products for the Work
- c. The interdependence of procurement and construction activities
- d. Be a time-scaled network diagram, with references to specific calendar dates
- e. Time for the Engineer to review submittals or inspect the Work
- f. Identify the activities which constitute the controlling operations or critical path.

The monthly progress schedule shall not contain multiple critical paths. Failure to comply with the monthly progress schedule outlined herein shall result in payment retention.

Full compensation for furnishing, updating, and submitting schedules for the Project shall be considered as included in the Contract Sum and no additional compensation will be allowed therefor.

Scheduling of Change Order work is the sole responsibility of the Contractor. The Contractor shall revise the schedule to incorporate all activities involved in completing the Change Order work, and submit a new schedule to the Engineer for review and approval.

Delays or changes to non-critical activities will not be considered for a Contract Time extension. Non-critical activities are those activities which when delayed, do not affect the Contract Time.

The Project schedules submitted shall be consistent in all respects with the time and order of Work requirements of the Contract. The Engineer, at his or her sole discretion, retains the right to reject any and all construction schedules submitted by the Contractor, including when the Engineer determines that the Contractor has too many items on the Critical Path, or the logic of the schedule

is in error, or if the Engineer determines salient items of Work are missing from the schedule.

8-1.05 Temporary Suspension of Work.

The Engineer shall have the authority to suspend the Work, wholly or in part, for any period as the Engineer may deem necessary, due to unsuitable weather, such other conditions as are considered unfavorable for the suitable prosecution of the Work, or for such time as the Engineer may deem necessary due to the failure on the part of the Contractor to carry out orders given, or to perform any provision of the Contract. The Contractor shall immediately comply with the written order of the Engineer to suspend the Work wholly or in part. The suspended Work shall be resumed when conditions are favorable and methods are corrected, as ordered or approved in writing by the Engineer.

In the event that a suspension of Work is ordered as provided above, and should such suspension be ordered by reason of the failure of the Contractor to carry out orders or to perform any provision of the Contract; or by reason of weather conditions being unsuitable for performing any item or items of Work, which Work, in the sole opinion of the Engineer, could have been performed prior to the occurrence of such unsuitable weather conditions had the Contractor diligently prosecuted the Work when weather conditions were suitable; the Contractor, at the Contractor's sole expense, shall do all the work necessary to provide a safe, smooth, and unobstructed passageway through construction for use by public traffic; and provide for proper and efficient operations of sewer, drainage, and other facilities within the site of the work during the period of such suspension as provided in Section 7-1.07, "Public Convenience," and 7-1.08, "Public Safety," and as specified in the Contract Documents. If Contractor fails to perform the Work above specified, the City will perform such Work and the cost thereof will be deducted from moneys due or to become due the Contractor.

If the Engineer orders a suspension of all of the Work or a portion of the Work which is the current Controlling Operation(s), due to unsuitable weather or to such other conditions as are considered unfavorable to the suitable prosecution of the Work, the days on which the suspension is in effect shall not be considered working days as defined in Section 8-1.06, "Time of Completion." If a portion of Work at the time of such suspension is not a current Controlling Operation, but subsequently does become the current Controlling Operation(s), the determination of working days will be made on the basis of the then current Controlling Operation(s).

If a suspension of Work is ordered by the Engineer due to the failure on the part of the Contractor to carry out orders given or to perform any provision of the Contract, the days on which the suspension order is in effect shall be considered working days if such days are working days within the meaning of the definition set forth in Section 8-1.06, "Time of Completion."

In addition to the requirements specified above, the following shall apply:

If the performance of all or any portion of the Work is suspended or delayed by the Engineer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the Contractor believes that additional compensation and Contract Time is due as a result of that suspension or delay, the Contractor shall submit to the Engineer in writing a request for adjustment within 7 calendar days of receipt of the notice of suspension. The request shall set forth the reasons and support for the adjustment.

Upon receipt, the Engineer will evaluate the Contractor's request. If the Engineer agrees that the cost or time or cost and time requested for the performance of the Contract has increased as a result of the suspension and the suspension was caused by conditions beyond the control of and not the fault of the Contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the Engineer will make an adjustment (excluding profit) issue a Change Order, as appropriate. The Engineer will notify the Contractor of the Engineer's determination whether or not an adjustment of the Contract is warranted within ten calendar days.

No Contract adjustment will be allowed unless the Contractor has submitted the request for adjustment within the time prescribed.

No Contract adjustment will be allowed under the provisions specified in this Section to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided for or excluded under any term or condition of this Contract.

Any Contract adjustment warranted due to suspension of Work ordered by the Engineer will be made in the same manner as provided for right of way delays in Section 8-1.08, "Right of Way Delays."

In the event of a suspension of Work under any of the conditions set forth under this Section, such suspension of Work shall not relieve the Contractor of the Contractor's responsibilities as set forth in the Contract Documents, including but not limited to the Contractor's maintenance of the Project site in a safe condition and the responsibilities set forth in Section 7, "Legal Relations and Responsibility".

8-1.06 Time of Completion.

1. Time of the Essence. Time is of the essence in the performance of this Contract. The Contractor shall proceed expeditiously with adequate forces and shall achieve full completion of the Work within the Contract Time.

2. Working Day. A working day is defined as any day, except as follows:

- a) Saturdays, Sundays and legal holidays;
- b) Days on which the Contractor is prevented by inclement weather or conditions resulting immediately therefrom adverse to the current controlling operation or operations, as determined by the Engineer, from proceeding with at least 75 percent of the normal labor and equipment force engaged on that operation or operations for at least 60 percent of the total daily time being currently spent on the controlling operation or operations; or
- c) Days on which the Contractor is prevented, by reason of requirements in "Maintaining Traffic" of the Contract Documents, from working on the controlling operation or operations for at least 60 percent of the total daily time being currently spent on the controlling operation or operations.

3. Prevention of Work. Should the Contractor prepare to begin work at the regular starting time of any day on which inclement weather, or the conditions resulting from the weather, or the

condition of the work, prevents the work from beginning at the usual starting time and the crew is dismissed as a result thereof and the Contractor does not proceed with at least 75 percent of the normal labor and equipment force engaged in the current controlling operation or operations for at least 60 percent of the total daily time being currently spent on the controlling operation or operations, the Contractor will not be charged for a working day whether or not conditions should change thereafter during that day and the major portion of the day could be considered to be suitable for those construction operations.

The current controlling operation or operations is to be construed to include any feature of the work (e.g. an operation or activity, or a settlement or curing period) considered at the time by the Engineer and the Contractor, which, if delayed or prolonged, will delay the time of completion of the contract.

Determination that a day is a non-working day by reason of inclement weather or conditions resulting immediately therefrom, shall be made by the Engineer. The Contractor will be allowed 15 days from the issuance of the Weekly Statement of Working Days in which to file a written protest setting forth in what respects the Contractor differs from the Engineer; otherwise, the decision of the Engineer shall be deemed to have been accepted by the Contractor as correct. The Engineer will furnish the Contractor a weekly statement showing the number of working days charged to the contract for the preceding week, the number of working days of time extensions being considered or approved, the number of working days originally specified for the completion of the contract and the number of working days remaining to complete the contract and the extended date for completion thereof, except when working days are not being charged in conformance with the provisions in Section 8-1.05, "Temporary Suspension of Work."

If Engineer determines and notifies Contractor that Contractor's progress is such that Contractor will not achieve full completion of the Work within the Contract Time, Contractor shall immediately and at no additional cost to City, take all measures necessary, including working such overtime and additional shifts, as may be required to ensure that the Work is fully completed within the Contract Time. Upon receipt of such notice from Engineer, Contractor shall immediately notify Engineer of all measures to be taken to ensure full completion of the Work within the Contract Time. Contractor shall reimburse City for any extra costs or expenses (including the reasonable value of any services provided by City's employees) incurred as a result of such measures.

4. Completion Date. By signing the Contract, the Contractor agrees that the Contract Time is reasonable for performing the Work and that Contractor will complete the Work within the Contract Time, unless such time is adjusted, in writing, by Change Order by the City ("Milestone Dates"). The Contractor may complete the Work before the completion date if it will not interfere with the City or its other contractors engaged in related or adjacent Work. The Work shall be regarded as completed as noted on the City's Notice of Completion.

The Contractor shall have no right to an adjustment in the time of completion due to weather conditions or industrial conditions which are normal for the locality of the Project site. The time period for completion of the Contract has been calculated with consideration given to the average climatic range and usual industrial conditions prevailing in the locality of the Project site.

5. Inclement Weather. Time extensions, including determinations that a day is a non-working day, due to inclement weather will be allowed only for weather conditions that affect the progress of activities that are on the critical path/controlling operation or operations

as noted above and only upon the written consent of the Engineer. The Contractor shall exercise due diligence in protecting the Work area from weather as well as take corrective action after the weather has passed.

Delays due to inclement weather are not compensable.

6. Saturday, Sunday, Holiday and Night Work. Unless otherwise provided in the Contract Documents, or authorized by the Engineer in writing, Work shall be done between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday. If Saturday work is authorized by the Engineer, hours of construction shall be between the hours of 9:00 a.m. and 4:00 p.m. There shall be no construction activity on Sundays or City observed holidays. These hour restrictions apply unless the Engineer has determined that the Work is necessary for the proper care and protection of Work already performed, or unless the Engineer has determined that the Work is of an emergency nature or would be in the best interest of the public. When the Engineer has made such a determination, all costs incurred by the City to provide inspection of the Work during these times shall be borne by the Contractor and shall be withheld from monies due or to become due to the Contractor, or in the case of permit work, all costs incurred by the City to provide inspection of the Work during these times shall be borne by the permittee.
7. Annual Holiday Closure. At the option of the Engineer, the Contractor may be required to suspend all Work and activities during the City's annual Holiday Closure in late December and early January of each year. No Work shall be done during this suspension except such work as is necessary for the proper care and protection of Work already performed, or except in case of an emergency, and in any case, only with the prior written permission of the Engineer.

This suspension of Work will be at no cost to the City. Working days will not be assessed during this suspension of Work.

8-1.07 Liquidated Damages.

Contractor agrees that if all the Work called for under the Contract is not finished or completed by Contractor within the Contract Time, or any authorized extension thereof, the City will suffer damage; and that it is and will be impracticable or extremely difficult to ascertain the actual amount of damage which the City will sustain by reason of such delay; and it is therefore agreed that the Contractor will pay to the City, the fixed sum set forth in the Contract Documents per day for each and every calendar day delay until the Work is completed including punch list items; and the Contractor and its Sureties agrees to pay said liquidated damages and further agrees that the City may deduct the amount thereof from any moneys due or that may become due the Contractor under the Contract.

It is further agreed that in case the Work called for under the Contract is not finished and completed in all parts and requirements within the Contract Time, the Engineer shall have the exclusive right to increase the number of calendar days, and if the Engineer decides to increase the Contract Time, the Engineer shall further have the right to charge to the Contractor, the Contractor's heirs, assigns, or sureties and to deduct from the final payment for the Work all or any part, of the actual cost of engineering, inspection, superintendence, and other overhead expenses which are directly chargeable to the Contract, and which accrue during the period of such extension, except that cost

of final surveys and preparation of final estimate shall not be included in such charges.

Contractor shall, within twenty-four (24) hours from the beginning of any known delay of scheduled activities, notify Engineer in writing of the delay.

Contractor shall not be relieved of liability for liquidated damages or engineering and inspection charges for any delay period in excess of that expressly provided for in this Section.

8-1.07A Contractor Caused Delay.

Should the progress of the Work be delayed, disrupted, hindered, obstructed, or interfered with by any fault, neglect, act, or failure to act of the Contractor or any of its officers, agents, servants, employees, Subcontractors, or suppliers so as to cause any additional cost, expense, liability or damage to City (including legal fees and disbursements incurred by City) (whether incurred in defending claims arising from such delay or in seeking reimbursement and indemnity from the Contractor and its surety hereunder or otherwise) or any damages or additional costs or expenses for which City may or shall become liable, the Contractor and its Surety shall and does hereby agree to compensate City for and indemnify them against all such costs, expenses, damages, and liability.

The Contractor shall, in addition to all of the other obligations imposed by the Contract Documents upon the Contractor in such case and at its own cost and expense, work such overtime as may be necessary to make up for all time lost in the completion of the Work and of the Project due to such delay. No additional compensation will be allowed therefor.

8-1.07B Delay Caused by Other.

The Contractor will be granted a Contract Time extension and will not be assessed liquidated damages or the cost of engineering and inspection for any portion of the delay in completion of the Work beyond the time named in the Contract Documents for the completion of the Work caused by acts beyond the control and without the fault or negligence of Contractor, including Acts of God or of the public enemy, fire, floods, tidal waves, earthquakes, epidemics, quarantine restrictions, strikes, labor disputes, shortage of materials and freight embargoes, changes made under Section 4-1.03, "Changes in the Work", by the failure of the City to acquire or clear right of way, or by moving the Contractor's plant pursuant to Section 6, "Local Materials."

The Contractor shall not be entitled to a Contract Time extension unless the Contractor:

- (1) Notifies City in writing of the cause or causes of such delay, obstruction, hindrance, or interference within forty-eight (48) hours of the commencement thereof, and
- (2) Demonstrates that it could not have anticipated or avoided such delay, obstruction, hindrance, or interference and has used all available means to minimize the consequences thereof.

Contractor acknowledges that provision of such notice is an essential condition precedent to Contractor's rights in connection with any such delays, obstructive hindrances, or interferences

and to City ability to fully identify and expeditiously address and avoid such cause or causes, and, accordingly, Contractor expressly waives all rights with respect to any such cause or causes for which notice hereunder was not provided. Notwithstanding the foregoing, if the Contract is at variance with granting such time extension, then the provisions of the Contract shall control.

The Engineer shall ascertain the facts and the extent of the delay, and the Engineer's findings thereon shall be final and conclusive.

8-1.07C Delay Caused by City.

If the City causes a substantial delay to the Project and the Contractor sustains losses which could not have been avoided by its judicious handling of the Project, the City, in its sole discretion, may elect to pay the Contractor an amount the City finds fair and reasonable for the Contractor's actual losses, as in the sole opinion of the City, were unavoidable due to the delay. The total amount of any payment made pursuant to this Section, shall be as determined in Section 8-1.08 "Right of Way Delays."

The Contractor shall not be entitled to the aforesaid payment unless the Contractor notifies the City in writing of the City's substantial delay within forty-eight (48) hours of the commencement thereof and includes facts and supporting documentation of the following:

- (1) That Contractor could not have anticipated or avoided such delay, obstruction, hindrance, or interference and has used all available means to minimize the consequences thereof; and
- (2) Evidence of the delay based upon and by incorporating the most recently updated and approved critical path method (CPM) schedule and narratives to explain that the City's delay impacted the Project schedule.

Contractor acknowledges that provision of such notice is an essential condition precedent to Contractor's rights in connection with any such delays and to City ability to fully identify and expeditiously address and avoid such cause or causes. Accordingly, Contractor expressly waives all rights with respect to any such cause or causes for which notice hereunder was not provided. Notwithstanding the foregoing, if the Contract is at variance with granting such time extension, then the provisions of the Contract shall control.

Contractor shall make all reasonable efforts to work with the City to remove or eliminate the cause for substantial delay, and shall, upon cessation of the cause, diligently pursue performance of its contractual obligations.

8-1.07D Delay Due to Material Shortage.

No Contract Time extension will be granted for a delay caused by a shortage of materials unless the Contractor furnishes to the Engineer documentary proof that the Contractor has made every effort to obtain such materials from all known sources within reasonable reach of the Work in a diligent and timely manner, and further proof in the form of supplementary progress schedules, as required in Section 8-1.04, " Schedules," that the inability to obtain such materials when originally planned and did in fact cause a delay in final completion of the entire Work which could not be compensated for by revising the sequence of the Contractor's operations.

The term "shortage of materials," as used in this Section, shall apply only to materials, articles, parts, or equipment which are standard items and are to be incorporated in the Work. It shall not apply to materials, parts, articles, or equipment which are processed, made, constructed, fabricated, or manufactured to meet the specific requirements of the Contract. Only the physical shortage of material will be considered under these provisions as a cause for extension of time. Delays in obtaining materials due to priority in filling orders will not constitute a shortage of materials.

8-1.08 Right of Way Delays.

If, through the failure of the City to acquire or clear right of way for the Work, the Contractor sustains a loss which could not have been avoided by the judicious handling of forces, equipment, and plant, the Engineer has sole discretion to adjust the Contract Sum as follows.

Compensation for idle time of equipment will be determined in the same manner as determinations are made for equipment used in the performance of Extra Work paid for on a force account basis, with the following exceptions:

- (1) The right of way delay factor for each classification of equipment shown in the Caltrans publication entitled Labor Surcharge And Equipment Rental Rates and General Prevailing Wage Rates," which is a part of the Contract, will be applied to such equipment rental rate.
- (2) The time for which such compensation will be paid, will be the actual normal working time during which such delay condition exists, but in no case will exceed eight (8) hours in any one day.
- (3) The days for which compensation will be paid, will be the business days during the existence of such delay, except that when rental of equipment is paid for under the provisions in Section 9-2.02, "Force Account Payment." No payment will be made for right of way delays in accordance with the provisions in this Section.

Actual loss shall be understood to include no items of expense other than idle time of equipment and necessary payments for idle time of workers, cost of extra moving of equipment, and cost of longer hauls. Compensation for idle time of equipment will be determined as provided in this Section and compensation for idle time of workers will be determined as force account labor and no markup will be added in either case for overhead and profit. The cost of extra moving of equipment and the cost of longer hauls will be paid for as Extra Work.

If performance of the Contractor's Work is delayed as the result of the failure of the City to acquire or clear right of way, an extension of time determined pursuant to the provisions in Section 8-1.07, "Liquidated Damages," will be granted.

8-1.09 Utilities and Other Facilities.

Attention is directed to Section 7-1.10, "Preservation of Property," and Section 7-1.11, "Responsibility for Damage."

The Contractor shall protect from damage utilities and other facilities that are to remain in place,

be installed, relocated, or otherwise rearranged.

It is anticipated that some or all of the utilities and other facilities, both above ground and below ground, that are required to be rearranged (as used herein, rearrangement includes installation, relocation, alteration, or removal) as a part of the project site improvement will be rearranged in advance of construction operations. Where it is not anticipated that such rearrangement will be performed prior to construction, or where the rearrangement must be coordinated with the Contractor's construction operations, the existing utilities and other facilities that are to be rearranged will be indicated in the Contract Documents.

1. Right of Entry. The right is reserved to the City and the owners of utilities and other facilities, or their authorized agents, to enter upon the Project for the purpose of making such changes as are necessary for the rearrangement of their utilities and other facilities or for making necessary connections or repairs to their properties. The Contractor shall cooperate with forces engaged in such work and shall conduct their operations in such a manner as to avoid any unnecessary delay or hindrance to the work being performed by such other forces. Wherever necessary, the Work of the Contractor shall be coordinated with the rearrangement of such utilities or other facilities, for the coordination of the work.

2. Right of Access. Contractor shall obtain authorization from the owners of utilities and other facilities involved and shall notify City at least seventy-two (72) hours in advance, when it is necessary to interrupt any existing service to make connections. Interruption in service shall be of the shortest possible duration for the Work at hand and shall be approved in advance by City.

3. Utilities and Other Facilities Not Shown on Contract Documents. Where it is determined by the Engineer that the rearrangement of an utility or other facility, the existence of which is not shown on the Contract Documents, is essential in order to accommodate the improvement, the Engineer will provide for the rearrangement of such utility or other facility by other forces and the Contractor shall be given additional working days to accommodate for the coordination and rearrangement of such facility by the other forces and no additional compensation will be allowed thereof.

Attention is directed to Government Code Sections 4215 through 4217 concerning the protection of public utilities in public contracts.

Attention is directed to the possible existence of underground main or trunk line facilities not indicated in the Contract Documents and to the possibility that underground main or trunk lines may be in a location different from that which is indicated in the Contract Documents. The Contractor shall ascertain the exact location of underground main or trunk lines whose presence is indicated in the Contract Documents, the location of their service laterals or other appurtenances, and of existing service lateral or appurtenances of any other underground facilities which can be inferred from the presence of visible facilities such as buildings, meters, and junction boxes prior to doing work that may damage any of such facilities or interfere with their service.

If the Contractor discovers underground main or trunk lines not indicated in the Contract Documents, the Contractor shall immediately give the Engineer and the pertinent Utility Company written notification of the existence of such facilities. Such main or trunk lines shall be located and protected from damage as directed by the Engineer and the cost of such work will be paid for as Extra Work. The Contractor shall, if directed by the Engineer, repair any damage which may occur

to such main or trunk lines. The cost of such repair work, not due to the failure of the Contractor to exercise reasonable care, will be paid for as Extra Work. Damage due to the Contractor's failure to exercise reasonable care shall be repaired at the Contractor's sole cost and expense and no additional compensation will be allowed therefor.

Where it is determined by the Engineer that the rearrangement of an underground facility is essential in order to accommodate the project site improvement and the Contract Documents do not provide that such facility is to be rearranged, the Engineer will provide for the rearrangement of such facility by other forces or such rearrangement shall be performed by the Contractor and will be paid for as Extra Work. In the instances where other forces will provide for the rearrangement of the facility, the Engineer shall provide the Contractor with extra days and no additional compensation will be allowed therefor.

The Contractor shall immediately notify the Engineer of any delays to operations as a direct result of underground main or trunk line facilities which were not indicated on the Contract Documents or were located in a position substantially different from that indicated on the Contract Documents, or as a direct result of utility or other facilities not being rearranged as herein provided (other than delays in connection with rearrangements made to facilitate construction operations or delays due to a strike or labor dispute). Any such delays will be considered right of way delays within the meaning of Section 8-1.08, "Right of Way Delays," and compensation for such delay will be determined in accordance with said Section 8-1.08. The Contractor shall be entitled to no other compensation for any such delay.

Notwithstanding any other provisions of the Contract Documents, the City shall, as between the City and Contractor, assume the responsibility and the cost therefor for the location, repair of damage not due to the Contractor's failure to exercise reasonable care, removal, or relocation of existing main and trunkline utility facilities located on the site of the Work, if such facilities are not identified in the Contract Documents made a part of the Notice to Contractors inviting bids for the Work, and for equipment on the Project necessarily idled during such location, repair, removal or relocation. If the Contractor, while performing the Contract, discovers utility facilities not identified by the City in the Contract Documents, the Contractor shall immediately notify the Engineer and the utility in writing within twenty-four (24) hours of discovery. The public utility, where it is the owner of an affected utility, shall have the sole discretion to perform repairs, removal, or relocation work or permit the Contractor to do such repairs, removal, or relocation work on the affected utility at a reasonable price.

The Contractor shall not be assessed liquidated damages for delay in completion of the Project when such delay was caused by the failure of the City to provide for removal or relocation of such unmarked utility facilities.

4. Utilities and Other Facilities Shown on Contract Documents. If the Contractor cannot locate an underground facility whose presence is indicated on the Contract Documents, the Contractor shall so notify the Engineer in writing. If the facility for which such notice is given is in a substantially different location from that indicated on the Contract Documents, the additional cost of locating the facility will be paid for as Extra Work.

When ordered by the Engineer in writing, the Contractor shall rearrange any utility or other facility necessary to be rearranged as a part of the project site improvement, and such work will be paid for as Extra Work.

Should the Contractor desire to have any rearrangement made in any utility facility, or other improvement, for the Contractor's convenience in order to facilitate construction operations, which rearrangement is in addition to, or different from, the rearrangements indicated on the Contract Documents, the Contractor shall make whatever arrangements are necessary with the owners of such utility or other facility for such rearrangement and bear all expenses in connection therewith.

5. Impact of Strike or Labor Dispute. Any delays to the Contractor's operations as a direct result of utility or other facilities not being rearranged as provided in this Section due to a strike or labor dispute, will entitle the Contractor to an extension of time as provided in Section 8-1.07, "Liquidated Damages." The Contractor shall be entitled to no other compensation for any such delay.

6. Visible Utilities. Nothing herein shall be deemed to require the City to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the site of the construction project can be inferred from the presence of other visible facilities, such as buildings, meter, and junction boxes, on or adjacent to the site of the construction. However, nothing herein shall relieve the City from identifying main or trunklines in the Contract Documents.

7. Utility Delays. Nothing herein shall preclude the City from pursuing any appropriate remedy against the utility for delays which are the responsibility of the utility.

Nothing herein shall be construed to relieve the utility from any obligation as required either by law or by Contract to pay the cost of removal or relocation of existing utility facilities.

8-1.10 Termination of Contract.

The Contract may be terminated by the Engineer when termination is authorized by Section 7-1.11D, "Legal Actions Against the City," Section 7-1.15A, "Damage by Storm, Flood, or Earthquake," or by other provisions of the Contract Documents which authorize termination.

The City also reserves the right to terminate the Contract at any time upon a determination by the Engineer in the Engineer's sole discretion that termination of the Contract is in the best interest of the City. If the City elects to terminate the Contract for convenience, the termination of the Contract and the total compensation payable to the Contractor shall be governed by the following:

- (A) The City will issue the Contractor a written Notice of Termination signed by the Engineer. Upon receipt, the Contractor shall:
 - (1) Stop all Work under the Contract except that specifically directed to be completed prior to acceptance.
 - (2) Perform Work the Engineer deems necessary to secure the Project for termination.
 - (3) Remove equipment and plant from the site of the Work.
 - (4) Take such action as is necessary to protect materials from damage.

- (5) Notify all Subcontractors and suppliers that the Contract is being terminated and that their Contracts or orders are not to be further performed unless otherwise authorized in writing by the Engineer.
 - (6) Provide the Engineer with an inventory list of all materials previously produced, purchased, or ordered from suppliers for use in the Work and not yet used in the Work, including its storage location, and such other information as the Engineer may request.
 - (7) Dispose of materials not yet used in the Work, as directed by the Engineer. It shall be the Contractor's responsibility to provide the City with good title to all materials purchased by the City hereunder, including materials for which partial payment has been made as provided in Section 9-2.06, "Progress Payments," and with bills of sale or other documents of title for such materials.
 - (8) Subject to the prior written approval of the Engineer, settle all outstanding liabilities and all claims arising out of Subcontracts or orders for materials terminated hereunder. To the extent directed by the Engineer, the Contractor shall assign to the City all the right, title, and interest of the Contractor under Subcontracts or orders for materials terminated hereunder.
 - (9) Furnish the Engineer with the documentation required to be furnished by the Contractor under the provisions of the Contract including, on projects as to which Federal and State funds are involved, all documentation required under the Federal and State requirements included in the Contract.
 - (10) Take such other actions as the Engineer may direct.
- (B) Acceptance of the Contract as hereinafter specified shall not relieve the Contractor of responsibility for damage to materials. The Contractor shall continue to be responsible for damage to materials after issuance of the Notice of Termination, except as follows:
- (1) The Contractor's responsibility for damage to materials for which partial payment has been made as provided in Section 9-2.06, "Progress Payments," and for materials furnished by the City for use in the Work and unused shall terminate when the Engineer certifies that such materials have been stored in the manner and at the locations the Engineer has directed.
 - (2) The Contractor's responsibility for damage to materials purchased by the City subsequent to the issuance of the Notice of Termination, shall terminate when title and delivery of such materials has been taken by the City.
 - (3) When the Engineer determines that the Contractor has completed the Work under the Contract directed to be completed prior to termination and such other Work as may have been ordered to secure the Project for termination, the Contractor will recommend that the Engineer formally accept the

Contract to the extent performed, and immediately upon and after such acceptance by the Engineer, the Contractor will not be required to perform any further Work thereon.

- (C) Termination of the Contract shall not relieve the Contractor or its Surety of its obligation for any just claims or warranties arising out of the Work performed by Contractor.
- (D) The total compensation to be paid to the Contractor shall be determined by the Engineer on the basis of the following:
 - (1) The reasonable cost to the Contractor, without profit, for all Work performed under the Contract, including mobilization, demobilization, and Work done to secure the project for termination. In determining the reasonable cost, deductions will be made for the cost of materials to be retained by the Contractor, amounts realized by the sale of materials, and for other appropriate credits against the cost of the Work. Deductions will also be made, when the Contract is terminated under the authority of Section 7-1.15A, "Damage by Storm, Flood, or Earthquake," for the cost of materials damaged by the "occurrence." When, in the opinion of the Engineer, the cost of a Contract item of work is excessively high due to costs incurred to remedy or replace defective or rejected work, the reasonable cost to be allowed will be the estimated reasonable cost of performing such work in compliance with the requirements of the Contract Documents and the excessive actual cost shall be disallowed.
 - (2) A reasonable allowance for profit on the cost of the Work performed as determined under Subsection (D)(1), provided the Contractor establishes to the satisfaction of the Engineer that it is reasonably probable that the Contractor would have made a profit had the Contract been completed and provided further, that the profit allowed shall in no event exceed four percent (4%) of said cost of Work actually performed.
 - (3) The reasonable cost to the Contractor of handling material returned to the vendor, delivered to the City or otherwise disposed of as directed by the Engineer.
 - (4) A reasonable allowance for the Contractor's administrative costs in determining the amount payable due to termination of the Contract.
 - (5) A reasonable credit to the City for defective or incomplete work not corrected.

All records of the Contractor and subcontractors necessary to determine compensation in accordance with the provisions of this Section shall be available to the City at all times after the Notice of Termination and for a period of three (3) years thereafter, and Contractor shall retain such records for that period.

After acceptance of the Work then performed by the Engineer, the Engineer may make payments on the basis of interim estimates pending issuance of the Final Estimate in accordance with

Section 9-2.07A, "Final Payment," when, in the Engineer's opinion, the amount thus paid, together with all amounts previously paid or allowed, will not result in total compensation in excess of that to which the Contractor will be entitled. All payments, including payment upon the Final Estimate shall be subject to deduction for prior payments and amounts, if any, to be kept or retained under the provisions of the Contract.

If this Contract is terminated by the City for cause, and it is later determined that the proper basis for a termination for cause did not exist, the termination shall be deemed to have been a termination for convenience and governed by the terms of this contract dealing with such termination.

If the Contract is terminated by the City for cause or convenience, such termination shall neither act as a waiver by the City of its right to require the Contractor to correct defects in the Work performed by the Contractor nor void any warranties applicable to the Work performed under the Contract.

The provisions of this Section shall be included in all Subcontracts. In the event of conflict between the termination provisions of this Section and any other provision of the Contract or subcontract, this Section shall prevail.

8-1.11 A Continuation of Contract.

If a dispute should arise between the Contractor and the City regarding Work performed or to be performed or payment therefor, Contractor hereby agrees that it will continue to perform the Work called for under this Contract and hereby expressly waives its rights, if any, to terminate or suspend Work pending resolution of said dispute.

8-1.12 Concurrent Delays.

Where there are concurrent delays to a controlling item of Work, no extension of time or additional compensation shall be granted to the Contractor where at least one of the delays is due, in part or in whole, to the Contractor's own acts.

8-1.13 City's Right to Carry Out the Work.

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails within seven (7) days of the date the written notice from the City was sent to commence and continue correction of such default or neglect with diligence and promptness, the City may make good such deficiencies. Contractor shall be responsible for any and all costs incurred by City in curing such default or neglect.

END OF SECTION

SECTION 9: MEASUREMENT, PAYMENT, AND CLAIMS

9-1 MEASUREMENT

9-1.01 General.

All Work to be paid for at a Contract price per unit of measurement will be measured by the Engineer in accordance with United States Standard Measurements. A ton shall consist of 2,000 pounds avoirdupois.

9-1.02 Weighing Equipment and Procedures.

Unless shipped by rail, material paid for by weight shall be weighed on scales furnished by and at the expense of the Contractor or on other sealed scales regularly inspected by the California Division of Measurement Standards or its designated representative.

All weighing, measuring, and metering devices used to measure the quantity of materials used in the Work shall be suitable for the purpose intended and shall conform to the tolerances and specifications as outlined in Title 4, Division 8 of the California Administrative Code, the California Business and Professions Code, Division 5, and the Contract Documents. Devices not Type-approved by the Division of Measurement Standards shall be Type-approved in accordance with California Test 109.

All weighing, measuring, or metering devices used to determine the quantity of materials to be paid for will be considered to be "commercial devices," and shall be sealed by the Division of Measurement Standards or its authorized representative as often as the Engineer may deem necessary. The installation of all portable vehicle scales must be approved by the Engineer prior to sealing.

All vehicle scales shall be of sufficient size to permit the entire vehicle or combination of vehicles to rest on the scale deck while being weighed. Combination vehicles may be weighed as separate units provided they are disconnected while being weighed. The maximum concentrated load shall not exceed the manufacturer's designed section capacity of the scale.

All weighing, measuring, or metering devices required by these Specifications for the purpose of proportioning a material or product will be considered to be "non-commercial devices," and shall be tested and approved in accordance with California Test 109. This testing shall be done by one of the following, in the presence of the Engineer, as often as the Engineer deems necessary:

- (1) A County Sealer of Weights and Measures,
- (2) A Scale Service Agency, or
- (3) A Division of Measurement Standards Official.

The Contractor shall notify the Engineer at least 24 hours in advance of testing the device.

All under-supports for scale bearing points shall be constructed of Portland cement concrete produced from commercial quality aggregates and cement, which contains not less than 470 pounds of cement per cubic yard. Under-supports shall be constructed in a manner to prevent any

shifting or tilting of the support. They shall have a minimum height of 14 inches above ground line. The footings shall have a minimum depth of 6 inches below the ground line. The bearing surface of the footings shall have a minimum width of 30 inches and shall be of such area that the pressure does not exceed 4,000 pounds per square foot. Adequate drainage shall be provided to prevent saturation of the ground under the scale. Scale bulkheads shall be of adequate material and strength to resist displacement.

If timber bulkheads are used, the minimum cross section shall be 8-inches by 8-inches. Wedges shall not be used to shim the supports. If shimmying is necessary, it shall be done by securely attached metal shims or by grouting. Shimmying shall not exceed 3-inches. The approach ramps shall be level with the scale deck for a distance of not less than 1/2 the length of the scale deck. The mechanical indicating elements shall be installed level and plumb and shall be rigidly mounted upon a concrete foundation.

The lever system and mechanical indicating elements of hopper scales shall be rigidly attached to non-yielding supports in such a manner as to prevent any loss in weight due to bending and distortion of the supports.

When a multiple beam type scale is used in proportioning materials, an over and under indicator shall be provided which will give positive visible evidence of the amount of any over and underweight. The indicator shall be so designed that it will operate during the addition of the last 200 pounds of any weighing. The over-travel of the indicator shall be at least 1/3 of the loading travel. Indicators shall be enclosed to protect against moisture and dust.

All over and under, dial, and other indicators for weighing and measuring systems used in proportioning materials shall be grouped so that the smallest increment for each indicator can be accurately read from the point at which the proportioning operation is controlled.

The Contractor shall bear the expense of all service fees for testing and approving of "non-commercial devices." The cost of the equipment, labor, and materials furnished by the Contractor to assist in the testing of weighing, measuring, or metering devices will be considered as included in the Contract prices paid for the various contract items requiring said weighing, measuring, or metering, included in the Contract Sum, and no separate payment will be made therein.

Whenever pay quantities of material are determined by weighing, the scales shall be operated by a weighmaster licensed in accordance with the provisions of the California Business and Professions Code, Division 5, Chapter 7. The Contractor shall furnish a Public Weighmaster's certificate or certified daily summary weigh sheets. A representative of the Department may, at the discretion of the Engineer, be present to witness the weighing and to check and compile the daily record of such scale weights.

When required by the Engineer, the operator of each vehicle weighed shall obtain a weight or load slip from the weigher and deliver said slip to the Engineer at the point of delivery of the material.

If material is shipped by rail, the car weights will be accepted provided that actual weight of material only will be paid for and not minimum car weight used for assessing freight tariff, and provided further that car weights will not be acceptable for material to be passed through mixing plants.

Vehicles used to haul material being paid for by weight, shall be weighed empty daily and at such additional times as the Engineer may direct. Each vehicle shall bear a plainly legible identification mark. Vehicles may from time to time be required by the Engineer to have the weight of the material to be paid for verified by weighing the empty and loaded vehicle on such other scales as the Engineer may designate.

All loads in vehicles hauled over streets and highways shall be legal loads and no payment will be made for the loads in excess of the legal load limits.

All materials which are specified for measurement by the cubic yard "measured in the vehicle" shall be hauled in vehicles of such type and size that the actual contents may be readily and accurately determined. Unless all vehicles are of uniform capacity, each vehicle must bear a plainly legible identification mark indicating its water level capacity. All vehicles shall be loaded to at least their water level capacity and all loads shall be leveled when the vehicles arrive at the point of delivery. Loads hauled in vehicles not meeting the above requirements or loads of a quantity less than the capacity of the vehicle, measured after being leveled off as above provided, will be subject to rejection, and no compensation will be allowed for such material.

When material is to be measured and paid for on a volume basis and it is impractical to determine the volume by the specified method of measurement, or when requested by the Contractor in writing and approved by the Engineer in writing, the material will be weighed in accordance with the requirements specified for weight measurement and such weights will be converted to volume measurement for payment purposes. Factors for conversion from weight measurement to volume measurement will be determined by the Engineer and shall be agreed to by the Contractor before such method of measurement of pay quantities will be adopted.

Quantities of material wasted or disposed of in a manner not called for under the Contract, or rejected loads of material, including material rejected after it has been placed by reason of the failure of the Contractor to conform to the provisions of the Contract, or material not unloaded from the transporting vehicle, or material placed outside of the lines indicated on the plans or established by the Engineer, or material remaining on hand after completion of the Work; will not be paid for and such quantities will be deducted from the final total quantities. No compensation will be allowed for hauling and disposing of rejected material.

The weight of all aggregate or other roadway material which is to be paid for on a weight basis, except imported borrow, imported topsoil, straw, fiber, aggregate subbases, aggregate bases, or aggregate for cement treated bases, will be determined by deducting from the weight of material, the weight of water in the material at the time of weighing in excess of 3 percent of the dry weight of the material. When imported borrow, imported topsoil, or aggregate subbase is being paid for on weight basis, the weight to be paid for will be determined by deducting from the weight of the material, the weight of water in the material at the time of weighing in excess of 6 percent of the dry weight of the material. When straw is being paid for on weight basis, the weight to be paid for will be determined by deducting from the weight of straw, the weight of water in the straw at the time of weighing in excess of 15 percent of the dry weight of the straw. When fiber is being paid for on a weight basis, the weight of water in the fiber at the time of weighing shall not exceed 15 percent of the dry weight of the

fiber. No deduction will be made for the weight of water in fiber. The percentage of water in the material shall be determined by California Test 226. The weight of aggregate base and aggregate for cement treated bases which are to be paid for on a weight basis, will be determined as provided in Section 26, "Aggregate Bases," and Section 27, "Cement Treated Bases," respectively.

The weight of water deducted as provided in this Section will not be paid for.

Full compensation for all expenses involved in conforming to the requirements specified in this Section shall be considered as included in the Contract unit prices paid for the materials being measured or weighed and no additional compensation will be allowed therefor.

9-1.03 Pay Quantities.

All quantities shown in the Contract Documents, unless specifically designated as final pay quantities are estimated quantities and will be measured and paid for in accordance with the applicable provisions of the Contract Documents. The estimated quantities shall be considered as approximate only and no guaranty is made that the quantities which can be determined by computations, based on the details and dimensions of the plans, will equal the estimated quantities as shown in the Contract Documents.

9-1.04 Final Pay Quantities.

When the estimated quantities for a specific portion of the Work are designated in the Contract as final pay quantities, said estimated quantities shall be the final quantities for which payment for such specific portion of the Work will be made, unless the dimensions of said portions of the Work shown on the plans are revised by the Engineer. If such dimensions are revised, and such revisions result in an increase or decrease in the quantities of such Work, the final quantities for payment will be revised in the amount represented by the changes in the dimensions. The estimated quantities for such specific portion of the Work shall be considered as approximate only and no guarantee is made that the quantities which can be determined by computations, based on the details and dimensions shown on the plans, will equal the estimated quantities. No allowance will be made in the event that the quantities based on computations do not equal the estimated quantities.

When portions of an item have been designated in the Contract as final pay quantities, portions not so designated will be measured and paid for in accordance with the applicable provisions of the Contract Documents.

In case of a discrepancy between the quantities designated in the Contract as final pay quantities and the quantity of the same item shown in the Engineer's Estimate, payment will be based on the final pay quantities shown on the Base Bid Schedule.

9-2 PAYMENT

9-2.01 Scope of Payment.

The Contractor shall accept the Contract Sum as full payment for furnishing all resources and activities necessary to complete the Work in accordance with the Contract Documents. Contractor shall accept the compensation provided in the Contract Sum and Contract Documents as full

payment for:

1. Furnishing all labor, materials, tools, equipment, and incidentals necessary to complete the Work;
2. Performing all Work contemplated and embraced under the Contract Documents;
3. Risk, loss, damage repair, suspension or discontinuation, or cost of whatever character and description arising from or relating to the Work and performance of the Work, including unforeseen difficulties;
4. All expenses incurred in consequence of the Work, including all permits, licenses, agreements, certifications, taxes, and royalties and costs arising from patents, trademarks, and copyrights involved in the Work;
5. All expenses incurred in consequence with the suspension or discontinuance of the Work as provided in the Contract; and
6. Completing the Work according to the Contract Documents.

The City does not pay for Contractor's loss, damage, repair, or extra costs of whatever character arising from the Work that is a direct or indirect result of Contractor's choice of construction methods, materials, equipment, or manpower, unless specifically mandated by the Contract.

No compensation will be made in any case for loss of anticipated profits.

Any payment to the Contractor for Work performed under this Contract, whether a partial progress payment or final payment, shall not waive City's right to demand that the Contractor correct defects in the Contractor's Work, whether or not defects were known to the Engineer, the City, or the City's agents or employees at the time such payment was made.

Whenever it is specified or indicated in the Contract Documents that the Contractor is to do Work or furnish materials for which no price is fixed in the Contract, it is understood and agreed that there is included in each lump sum or unit price bid, the entire cost of all Work, incidental to the completion of that part of the Work covered by each lump sum or unit price bid, or if not directly incidental to any specific bid items, the cost thereof has been distributed among those bid items deemed most appropriate by the Contractor and is included in the Contract Sum.

Payment for a bid item includes payment for Work in sections referenced by the section set forth by that bid item.

The City pays for Change Order work based on one or a combination of the following:

1. Bid item prices
2. Agreed Price
3. Force Account
4. Specialist Billing

The Engineer shall work with the Contractor on an Agreed Price. If the Contractor and Engineer cannot agree on the price, then the City will pay for the work by Force Account.

The Contractor shall pay their subcontractors within seven (7) days of receipt of each progress payment, pursuant to Public Contract Code Sections 10262 and 10262.5.

9-2.02 Force Account Payment.

Payment as provided herein shall constitute full compensation to the Contractor for performance of Extra Work paid for on a force account basis and no additional compensation will be allowed therefor. When Extra Work is to be paid for on a force account basis, the labor, materials, and equipment used in the performance of such Work shall be subject to the preapproval of the Engineer and compensation will be determined as follows.

9-2.02A Work Performed by Contractor.

The Contractor will be paid the direct and actual costs for labor, materials and equipment used in performing the Extra Work determined as hereinafter provided except where agreement has been reached to pay in accordance with Section 9-2.02B, "Work Performed by Special Forces or Other Special Services."

To the total of the direct and actual costs computed as provided herein, there will be added a markup of 15 percent to the cost of labor, 15 percent to the cost of materials, and 15 percent to the equipment rental and no additional markup will be allowed thereof.

The above markups shall constitute full compensation for all overhead costs (general overhead, supervision, office expenses, field office facilities, utilities, and transportation) and profit which shall be deemed to include all items of expense not specifically designated as cost or equipment rental herein. No additional markups will be permitted. The total payment made as provided above shall be deemed to be the actual and direct cost of such Extra Work and shall constitute full compensation therefor.

When Extra Work to be paid for on a force account basis is performed by a Subcontractor, approved in accordance with the provisions in Section 8-1.01, "Subcontracting," an additional markup of 5 percent will be added to the total cost of said Extra Work including all markups specified in this Section. Said additional 5 percent markup shall reimburse the Contractor for any and all additional overhead, job site, home office, and administrative costs, and no other additional payment will be made by reason of performance of the Extra Work by a Subcontractor.

9-2.02A(1) Labor.

The Contractor will be paid the cost of labor for the workers (including foremen, when authorized in advance by the Engineer) used in the actual and direct performance of the Extra Work. The cost of labor, whether the employer is the Contractor, Subcontractor, or other forces, will be the sum of the following:

- (a) Actual Wages.** The actual wages paid shall include any employer payments to or on behalf of the workers for: health and welfare, pension, vacation, training and other State and Federal recognized fringe benefit payments.
- (b) Labor Surcharge.** To the actual wages, as defined in Section (a), above, will be added a labor surcharge set forth in the State of California, Department of Transportation publication entitled "Labor Surcharge And Equipment Rental Rates", which is in effect on the date upon which the Extra Work is accomplished and which is a part of the Contract. Said labor surcharge shall constitute full compensation for all payments imposed by State

and Federal laws (i.e. Workers' Compensation insurance, social security, Medicare, Federal Unemployment Insurance, State Unemployment Insurance, and State Training Taxes) and for all other payments made to, or on behalf of, the workers, other than actual wages as defined in this Section.

- (c) **Subsistence and Travel Allowance.** The actual subsistence and travel allowance paid to such workers.

9-2.02A(2) Materials.

The City reserves the right to furnish such materials as it deems advisable, and the Contractor shall have no claims for costs and markup on such materials.

Only materials furnished by the Contractor and necessarily used in the performance of the Extra Work will be paid for. The cost of such materials will be the cost to the purchaser, whether Contractor, Subcontractor, or other forces, from the supplier thereof, except as the following are applicable:

- (a) If a cash or trade discount by the actual supplier is offered or available to the purchaser of the materials, it shall be credited to the City notwithstanding the fact that such discount may not have been taken.
- (b) If materials are procured by the purchaser by any method which is not a direct purchase from and a direct billing by the actual supplier to such purchaser, the cost of such materials shall be deemed to be the price paid to the actual supplier as determined by the Engineer plus the actual costs, if any, incurred in the handling of such materials.
- (c) If the materials are obtained from a supply or source owned wholly or in part by the purchaser, the cost of such materials shall not exceed the price paid by the purchaser for similar materials furnished from said source on contract items or the current wholesale price for such materials delivered to the job site, whichever price is lower.
- (d) If the cost of such materials is, in the opinion of the Engineer, excessive, then the cost of such material shall be deemed to be the lowest current wholesale price at which such materials were available in the quantities concerned delivered to the job site, less any discounts as provided in Section (a), above.
- (e) If the Contractor does not furnish satisfactory evidence of the cost of such materials from the actual supplier thereof within thirty (30) days of billing, the City reserves the right to establish the cost of such materials at the lowest current wholesale prices at which such materials were available in the quantities concerned delivered to the location of the Work, less any discounts as provided in Section (a), above

9-2.02A(3) Equipment Rental.

- (a) **Rental Rate.** The Contractor will be paid for the use of equipment at the rental rates listed for such equipment in the State of California Department of Transportation publication entitled Labor Surcharge And Equipment Rental Rates, which is in effect on the date upon which the Work is accomplished and which is a part of the Contract,

regardless of ownership and rental or other agreement, if such may exist, for use of such equipment entered into by the Contractor, except that for those pieces of equipment with a rental rate of \$10.00 per hour or less as listed in the Labor Surcharge And Equipment Rental Rates publication and which are rented from a local equipment agency, other than Contractor owned, the Contractor will be paid at the hourly rate shown on the rental agency invoice or agreement for the time used on force account work as provided in Section 9-2.02A(3)(b), "Equipment on the Work." If a minimum equipment rental amount is required by the local equipment rental agency, the actual amount charged will be paid to the Contractor.

If it is deemed necessary by the Engineer to use equipment not listed in said publication, a suitable rental rate for such equipment will be established by the Engineer. The Contractor may furnish any cost data which might assist the Engineer in the establishment of such rental rate. If the rental rate established by the Engineer is \$10.00 per hour or less, the provisions above concerning rental of equipment from a local equipment agency shall apply.

The rental rates paid as above provided shall include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, and all incidentals.

Operators of rented equipment will be paid for as provided in Section 9-2.02A(1), "Labor."

All equipment shall, in the opinion of the Engineer, be in good working condition and suitable for the purpose for which the equipment is to be used.

Unless otherwise specified, manufacturer's ratings and manufacturer approved modifications shall be used to classify equipment for the determination of applicable rental rates. Equipment which has no direct power unit shall be powered by a unit of at least the minimum ratings recommended by the manufacturer.

Individual pieces of equipment or tools not listed in said publication and having a replacement value of \$500 or less, whether or not consumed by use, shall be considered to be small tools and no payment will be made therefor.

Rental time will not be allowed while equipment is inoperative due to breakdowns.

- (b) **Equipment on the Work.** The rental time to be paid for equipment on the Work shall be the time the equipment is in operation on the Extra Work being performed, and in addition, shall include the time required to move the equipment to the location of the Extra Work and return it to the original location or to another location requiring no more time than that required to return it to its original location, except that moving time will not be paid for if the equipment is used at the site for Work other than the Extra Work. Loading and transporting costs will be allowed, except that no payment will be made if the equipment is used for Work other than the Extra Work.

The following shall be used in computing the rental time of equipment on the Work:

- (1) When hourly rates are listed, less than 30 minutes of operation shall be considered

1/2 hour of operation.

- (2) When daily rates are listed, less than 4 hours of operation shall be considered 1/2 day of operation.

(c) **Equipment for Extra Work.** For the use of equipment moved in on the Work and used exclusively for Extra Work paid for on a force account basis, the Contractor will be paid the rental rates listed in the State of California Department of Transportation publication entitled "Labor Surcharge And Equipment Rental Rates", which is in effect on the date upon which the Work is accomplished and which is a part of the Contract, or determined as provided in Section 9-2.02A(3) and for the cost of transporting the equipment to the location of the Work and its return to its original location, all in accordance with the following provisions:

- (1) The original location of the equipment to be hauled to the location of the Work shall be agreed to by the Engineer in advance.
- (2) The City will pay the costs of loading and unloading such equipment.
- (3) The cost of transporting equipment in low bed trailers shall not exceed the hourly rates charged by established haulers.
- (4) The cost of transporting equipment shall not exceed the applicable minimum established rates of the Public Utilities Commission.

The rental period shall begin at the time the equipment is unloaded at the site of the Extra Work, shall include each day that the equipment is at the site of the Extra Work, excluding Saturdays, Sundays, and legal holidays unless the equipment is used to perform the Extra Work on such days, and shall terminate at the end of the day on which the Engineer directs the Contractor to discontinue the use of such equipment. The rental time to be paid per day will be a minimum of 4 hours. Any time beyond 4 hours, Contractor shall be paid on actual time equipment is used for Extra Work.

The hours to be paid for equipment which is operated less than 8 hours due to breakdowns, shall not exceed 8 less the number of hours the equipment is inoperative due to breakdowns.

When hourly rates are listed, less than 30 minutes of operation shall be considered to be 1/2 hour of operation.

When daily rates are listed, payment will not be made if the equipment is not used.

- (5) Should the Contractor desire the return of the equipment to a location other than its original location, the City will pay the cost of transportation in accordance with the above provisions, provided such payment shall not exceed the cost of moving the equipment to the Work.
- (6) Payment for transporting, loading, and unloading equipment, as above provided, will not be made if the equipment is used on the Work in any other way than upon Extra Work paid for on a force account basis.

When Extra Work other than work specifically designated as Extra Work in the Contract Documents is to be paid for on a force account basis and the Engineer determines that such Extra Work requires the Contractor to move on to the work equipment which could not reasonably have been expected to be needed in the

performance of the Contract, the Engineer may authorize payment for the use of such equipment at equipment rental rates in excess of those listed as applicable for the use of such equipment subject to the following additional conditions:

- (1) The Engineer shall specifically approve the necessity for the use of particular equipment on such Work.
- (2) The Contractor shall establish to the satisfaction of the Engineer that such equipment cannot be obtained from a normal equipment source or sources and those of the Subcontractors.
- (3) The Contractor shall establish to the satisfaction of the Engineer that the proposed equipment rental rate for such equipment from the proposed source is reasonable and appropriate for the expected period of use.
- (4) The Engineer shall approve the equipment source and the equipment rental rate to be paid by the City before the Contractor begins Work involving the use of said equipment.

(d) **Independently Owned and Operated Equipment.** When independently owned and operated equipment is used to perform Extra Work to be paid for on a force account basis, the Contractor will be paid for the equipment and operator, as follows:

- (1) Payment for the equipment will be made in accordance with the provisions in Section 9-2.02A(3), "Equipment Rental."
- (2) Payment for the cost of labor and subsistence or travel allowance will be made at the rates paid by the Contractor to other workers operating similar equipment already on the Project or, in the absence of such other workers, at the rates for such labor established by collective bargaining agreements for the type of worker and location of the Work, whether or not the owner-operator is actually covered by such an agreement. A labor surcharge will be added to the cost of labor described herein, in accordance with the provisions in Section 9-2.02A(1)(b), "Labor Surcharge."

To the direct cost of equipment rental and labor, computed as provided herein, will be added the markups for equipment rental and labor as provided in Section 9-2.02A, "Work Performed by Contractor."

9-2.02B Work Performed by Special Forces or Other Special Services.

When the Engineer and the Contractor, by agreement, determine that a special service or an item of Extra Work cannot be performed by the forces of the Contractor or those of any of the subcontractors, such service or Extra Work item may be performed by a specialist. Invoices for such service or item of Extra Work on the basis of the current market price thereof may be accepted without complete itemization of labor, material, and equipment rental costs when it is impracticable and not in accordance with the established practice of the special service industry to provide such complete itemization.

In those instances wherein a Contractor is required to perform Extra Work necessitating a fabrication or machining process in a fabrication or machine shop facility away from the job site, the charges for that portion of the Extra Work performed in such facility may, by

agreement, be accepted as a specialist billing.

To the specialist invoice price, less a credit to the City for any cash or trade discount offered or available, whether or not such discount may have been taken, will be added ten percent (10%) in lieu of the percentages provided in Section 9-2.02A, "Work Performed by Contractor."

9-2.03 Records.

The Contractor shall maintain all records in such a manner as to provide a clear distinction between the direct costs of Extra Work paid for on a force account basis and the costs of other operations.

From the above records, the Contractor shall furnish the Engineer completed daily Extra Work reports, on forms furnished by the City, for each day's Extra Work to be paid for on a force account basis. The daily Extra Work reports shall itemize the materials used, and shall cover the direct cost of labor and the charges for equipment rental, whether furnished by the Contractor, Subcontractor, or other forces, except for charges described in Section 9-2.02B, "Work Performed by Special Forces or Other Special Services." The daily Extra Work reports shall provide names or identifications and classifications of workers, the hourly rate of pay and hours worked, and also the size, type and identification number of equipment, and hours operated.

Material charges shall be substantiated by valid copies of vendor's invoices. Such invoices shall be submitted with the daily extra work reports, or if not available, they shall be submitted with subsequent daily Extra Work reports. Should said vendor's invoices not be submitted within thirty (30) days of billing the City reserves the right to establish the cost of such materials at the lowest current wholesale prices at which said materials were available in the quantities concerned delivered to the location of work less any discounts as provided in Section 9-2.02A(2)(a).

Said daily Extra Work reports shall be signed by the Contractor or the Contractor's authorized representative.

The Engineer will compare his/her records with the completed daily Extra Work reports furnished by the Contractor and make any necessary adjustments. When these daily Extra Work reports are agreed upon and signed by both parties, said reports shall become the basis of payment for the Extra Work performed, but shall not preclude subsequent adjustment based on a later audit by the City.

The Contractor's cost records pertaining to Work paid for on a force account basis shall be open to inspection or audit by representatives of the City, during the life of the Contract and for a period of not less than 3 years after the date of acceptance thereof, and the Contractor shall retain such records for that period. Where payment for materials or labor is based on the cost thereof to forces other than the Contractor, the Contractor shall make every reasonable effort to ensure that the cost records of such other forces will be open to inspection and audit by representatives of the City on the same terms and conditions as the cost records of the Contractor. If an audit is to be commenced more than 60 days after the acceptance date of the Contract, the Contractor will be given a 10-day notice of the time when such audit. is to begin.

9-2.04 Stop Notices.

City will comply with California Civil Code Section 9350 *et seq.* regarding Stop Notices. All Preliminary and Stop Notices shall be sent to the attention and address indicated in the Contract Documents. The City withholds payments to cover claims filed under Civil Code Section 9000 *et seq.*

9-2.05 Progress Payments.

The Contractor shall be paid for the actual field accepted quantities of the various items of Work in accordance with the provisions below. However, the total invoiced and total payments shall not exceed the Contract Sum unless otherwise adjusted via Contract Change Order.

9-2.06 Timely Progress Payments by City and Interest.

By the 10th day of each month or as approved by the Engineer, the Contractor shall submit to the Engineer for approval an estimate in writing the value of the Work completed as compared to the time of the estimate. This shall include an itemization by bid items. The value of the Work shall be based upon the principals set forth in the measurement and payment portions of the bid items as set forth in the Contract Documents.

California Public Contract Code Section 20104.50 establishes the following procedures for timely progress payments and payment of interest.

- (1) In the event the City fails to make any progress payment within 30 days after receipt of an undisputed and properly submitted payment request from the Contractor, the City shall pay interest to the Contractor equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure.
- (2) Upon receipt of a payment request, the City shall act in accordance with both of the following:
 - a. Each payment request shall be reviewed by the City as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request; and
 - b. Any payment request determined by the City not to be a proper payment request suitable for payment shall be returned to the Contractor as soon as practicable, but not later than seven days after receipt. A request returned pursuant to this paragraph shall be accompanied by a document from the City setting forth in writing the reasons why the payment is not proper.
- (3) The number of days available to the City to make a payment without incurring interest shall be reduced by the number of days by which the City exceeds the above seven-day return requirement.
- (4) A “progress payment” includes all payment due to Contractor at the time of the invoice, except that portion of the final payment designated by the Contract as retention earnings.

No such estimate or payment shall be construed to be an acceptance of any defective work or improper materials.

Attention is directed to the express prohibition against payment to unlicensed contractors contained in Public Contract Code Section 10164.

The estimates of the Engineer shall be final and conclusive evidence of the amount of Work performed by the Contractor under this Contract, and shall be taken as full measure of compensation to be received by the Contractor.

Before any partial payment or the final payment is made, the Contractor may be required to submit satisfactory evidence that the Contractor is not delinquent in payments to employees, Subcontractors, suppliers, or creditors for labor and materials incorporated into the Work.

The Contractor shall maintain and provide to the City, with each partial payment request, certified payrolls for all of its employees and Subcontractor employees.

9-2.06A Payments Withheld.

City may decline to certify payment and may withhold its certificate, or any certificate for payment previously issued, in whole or in part to such extent as may be necessary to protect City from loss because of defective work not remedied; third party claims filed or reasonable evidence indicating probable filing of such claims; payments which may be due and payable for just claims against Contractor or any Subcontractors in or about the performance of the Work; failure of Contractor to make proper payments to Subcontractors for labor, materials, or equipment; reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract amount; damage to City or to other work or property; reasonable evidence that the Work had not been or will not be completed within the Contract time; failure to carry out the Work in accordance with the Contract Documents; failure to provide weekly certified payroll records; Stop Notices filed, failure or refusal of Contractor to fully comply with the Contract; or costs to Owner resulting from the failure of Contractor to complete the Work within the Contract Time.

Whenever City withholds any monies otherwise due Contractor, City shall give written notice of the amount withheld and the reasons therefore to Contractor. When Contractor removes the grounds for such withholding, Contractor shall submit an invoice therefore, pursuant to Section 9-2.05, "Progress Payments."

9-2.06B Retention.

The City shall retain five percent (5%) of such estimated value of the Work done, and five percent (5%) of the value of the materials so estimated to have been furnished and delivered and unused or furnished and stored as aforesaid as part security for the fulfillment of the Contract by Contractor. City will pay to Contractor, while Contractor carries on the Work, the balance not retained, after deducting therefrom all previous payments and all sums to be kept or retained after the provisions of the Contract and applicable laws.

No such estimate or payment shall be construed as an acceptance of any defective work or improper materials.

After completion of the Work and during project closeout for final project acceptance, if the Engineer finds that the Contractor's Work is satisfactory and has been made in accordance with the approved Contract Documents, the City may reduce the total amount being retained to 2.5 percent of the total estimated value of Work. Such reduction will only be made upon the written request of the Contractor and shall be approved in writing by the surety on the Faithful Performance Bond and by the surety on the Labor & Materials Bond. The approval of the surety shall be submitted to the City and the signature of the person executing the approval for the surety shall be properly acknowledged and the power of attorney authorizing him/her to give such consent must either accompany the document or be on file with the City.

The City shall pay monthly to the Contractor, while carrying on the Work, the balance not retained after deducting therefrom all previous payments and all sums to be kept or retained under the provisions of the Contract. No such estimate or payment shall be required to be made when, in the judgment of the Engineer, the Work is not proceeding in accordance with the provisions of the Contract, or the total value of the Work done since the last estimate amounts to less than \$5,000.

9-2.06C Application for Progress Payment.

1. By the 10th day of each month or as approved by the Engineer, the Contractor shall submit an application for progress payment for the Work done in the preceding month to the City. The Contractor shall submit its monthly application for progress payment at a time acceptable to the Engineer, and the Contractor shall include whatever documentation the Engineer reasonably determines is necessary to authorize a progress payment.

The Contractor shall submit all field quantities completed to date for payment with each monthly pay estimate along with progress as-built drawings. The Contractor shall provide, in writing, who from their team will be responsible for field measuring quantities with the Engineer. Upon completion of a contract bid item, the Contractor's representative shall field measure the final quantities with the Engineer. This agreed upon amount will be considered final and no re-measuring of these field quantities will be allowed without the approval of the City. All supporting documentation required for payment of an item, shall be submitted by the Contractor within two pay periods following the work. Documentation submitted more than two pay periods after the work was completed will not be paid and the cost of this work shall be borne by the Contractor.

2. Before the City makes any partial payment or the final payment, and as a condition of a Contractor's application for progress or final payment being deemed complete, the Engineer may require the Contractor to submit satisfactory evidence that the Contractor is not delinquent in payments to employees, Subcontractors, suppliers, or creditors for labor and materials incorporated into the work.
3. The Contractor shall provide to the Engineer, with each application for progress payment, the verified and certified payroll records for all of its employees and those employees of its Subcontractors, as required in Section 7-1.01A(3), "Prevailing Wage," and in Section 7-1.01A(4), "Payroll Records." The verified and certified payroll records

submitted with each application for progress payment shall be for the same period of time as the work for which the Contractor is seeking payment.

- a. The Contractor agrees that submission of the verified and certified payroll records with each application for progress payment is an express condition precedent to the Engineer's obligation to make a progress payment. The Engineer is not obligated to approve or make, in whole or in part, any progress payment due the Contractor until the Contractor has submitted the required payroll records.
- b. Any payment of a progress payment, in whole or in part, by the Engineer despite the Contractor's failure to submit the required payroll records in a timely manner is not a waiver of any other term or conditions contained in this Contract or a waiver of the right to withhold payment for any subsequent breach.

9-2.06D Payment of Withheld Funds.

The Contractor may substitute securities for any moneys withheld by the City to ensure performance under this Contract, provided that substitution of securities shall not be allowed in contracts where federal or State statutes, regulations, or policies do not allow the substitution of securities. At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with the City, or with a State or federally chartered bank as the escrow agent, the City shall then pay such withheld moneys to the Contractor. Upon satisfactory completion of the Contract, the securities shall be returned to the Contractor.

Securities eligible for investment under this Section shall include those listed in Section 16430 of the California Government Code, bank or savings and loans 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 Contractor shall be the beneficial owner of any securities substituted for moneys withheld and shall receive any interest thereon.

The escrow agreement used to implement this Section shall be null, void, and unenforceable unless it is substantially similar to the following form, pursuant to Public Contract Code Section 22300:

**ESCROW AGREEMENT FOR
SECURITY DEPOSITS IN LIEU OF RETENTION**

This Escrow Agreement is made and entered into by and between City of Campbell, whose address is 70 N. First Street, Campbell, CA 95008, hereinafter called "Owner," and _____ whose address is _____ hereinafter called "Contractor", and _____ whose address is _____ hereinafter called "Escrow Agent."

For the consideration hereinafter set forth, the Owner, Contractor, and Escrow Agent agree as follows:

- (1) Pursuant to Section 22300 of the Public Contract Code of the State of California, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by Owner pursuant to the Construction Contract entered into between the Owner and Contractor for _____ ("Project") in the amount of _____ (\$ _____) dated _____ (hereinafter referred to as the "Contract"). Alternatively, on written request of the Contractor, the Owner shall make payments of the retention earnings directly to the Escrow Agent. When Contractor deposits the securities as a substitute for Contract earnings, the Escrow Agent shall notify the Owner within ten (10) days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Contract between the Owner and Contractor. Securities shall be held in the name of the City of Campbell and shall designate the Contractor as the beneficial owner.
- (2) The Owner shall make progress payments to the Contractor for such funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the Escrow Agent holds securities in the form and amount specified above.
- (3) When the Owner makes payment of retentions earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the Contractor until such time as the escrow created under this Contract is terminated. The Contractor may direct the investment of the payments into securities. All terms and conditions of this agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the Owner pays the Escrow Agent directly.
- (4) Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account and all expenses of the Owner. These expenses and payment terms shall be determined by the Owner, Contractor, and Escrow Agent.
- (5) The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to the Owner.
- (6) Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account accompanied by written authorization from Owner to the Escrow Agent that Owner consents to the withdrawal of the amount sought to be withdrawn by Contractor.

- (7) The Owner shall have a right to draw upon the securities in the event of default by the Contractor. Upon seven days written notice to the Escrow Agent from the Owner of the default, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the Owner.
- (8) Upon receipt of written notification from the Owner certifying that the Contract is final and complete, and that the Contractor has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Contractor all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payments of fees and charges.
- (9) Escrow Agent shall rely on the written notifications from the Owner and the Contractor pursuant to Sections (5) and (8), inclusive, of this Agreement and the Owner and Contractor shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest set forth above.
- (10) The names of the persons who are authorized to give written notice or to receive written notice on behalf of the Owner and on behalf of Contractor in connection with the foregoing, and exemplars of their respective signatures are as follows:

At the time the Escrow Account is opened, the Owner and Contractor shall deliver to the Escrow Agent a fully executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers on the date first set forth above.

On behalf of Owner

On behalf of Contractor

Title

Title

Name

Name

Signature

Signature

Address

Address

On behalf of Escrow Agent

Title

Name

Signature

Address

9-2.07 Payment After Acceptance.

After the Work has been accepted by the Engineer, as provided in Section 7-1.16, "Acceptance of Work," payments will be made to the Contractor subject to the provisions in this Section.

9-2.07A Final Payment.

Final payment is the final partial progress payment. No less than thirty (30) calendar days after final inspection and acceptance of the Work, the Contractor will submit a written proposed final estimate to the Engineer. If the thirtieth (30th) calendar day falls on a Saturday, Sunday, or legal holiday, then receipt of the proposed final estimate by the Engineer shall not be later than close of business on the next business day. The Engineer shall review and approve or, if necessary, revise the proposed final estimate and return to the Contractor. The Contractor shall then handle such proposed final estimate as specified in this Section. Payment on the final estimate, whether it be as proposed or as determined after resolution of any claims filed, will be ninety-five percent (95%) of the total amount due. The remaining five percent (5%) of the amount due will be paid thirty-five (35) days after the Notice of Completion has been recorded in compliance with the Code of Civil Procedure of the State of California, unless Contractor provides the City with other adequate sureties in accordance with Section 2-1.12 "General Guaranty" or Section 9-2.06D "Payment of Withheld Funds". Moreover, final payment will be made only after Contractor has submitted the following satisfactory to the Engineer:

- (1) Evidence that all payrolls, material bills, and other indebtedness connected with said Work have been paid;
- (2) Contractor and Subcontractor certified payroll records;
- (3) As-Build record construction plans; and
- (4) Uniform Hazardous Waste Manifests, if applicable.

In any event, payment of the final payment of the five percent (5%) retention amount shall not relieve the Contractor of its responsibility and liability for the one-year guaranty of the Work as specified in Section 2-1.12, "General Guaranty." It also shall not prevent City from withholding from final payment such amounts which are in dispute between City and Contractor.

Acceptance by Contractor of final payment of all undisputed Contract amounts shall constitute a release by Contractor of all claims against City arising by virtue of the Contract related to those amounts.

Notwithstanding the provisions of this Section, for a period of three years after Acceptance of the Work, all estimates and payments made by City, including the final estimate and payment, shall be subject to correction and adjustment for clerical errors in the calculations involved in the determination of quantities and payments.

Acceptance of final payment by Contractor shall constitute a waiver of all claims, except claims meeting the following requirements: claims (a) previously made in writing in compliance with the notice, protest, claims, and dispute resolution procedures and requirements specified in the Contract Documents, (b) included in Contractor's written statement of claims, and (c) identified by Contractor as unsettled at the time of final payment.

9-3 CLAIMS

9-3.01 General.

This Section shall be interpreted in accordance with, the claims resolution process established by Section 9204 of Chapter 9, Part 1, Division 2 of the California Public Contract Code (“Section 9204”). All provisions of Section 9204 are incorporated into and form an integral part of the Contract Documents for this Project. The City and Contractor shall comply with California Public Contract Code Section 9204 when applicable. The rights granted by Section 9204 may not be waived, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action; and (2) the City may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of Section 9204, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in Section 9204.

It is the intention of this Section that disputes between the parties arising under and/or by virtue of the Contract be brought to the attention of the Engineer at the earliest possible time in order that the matters may be mitigated and/or resolved, if possible, or other appropriate action promptly taken.

A “Claim” shall mean a separate demand by the Contractor for: (a) a time extension, (b) payment of money or damages arising from Work done by or on behalf of the Contractor pursuant to the Contract, (c) an amount of payment which is disputed by the City, or (d) a rejected Change Order Request. In accordance with California Public Contract Code Sections 20104.2 and 9204, presuming Contractor has diligently pursued and exhausted the administrative procedures of the Contract, the following procedures apply to Claims between the Contractor and the City.

No Claims for Extra Work, materials, labor, equipment, or costs shall be considered or permitted if Contractor fails to timely notify the City of the Claim and thereafter diligently pursue and exhaust all the administrative remedies and processes set forth in the Contract Documents and State Specifications, including but not limited to Change Orders, Differing Site Conditions, Initial Potential Claim Records, Supplemental Potential Claim Records, and Full and Final Potential Claims Records. Contractor must exhaust all such processes in order to preserve and pursue any Claim, and failure to do so shall be deemed a waiver of the Claim.

Contractor’s compliance with the requirements specified in the Contract Documents (including, but not limited to, this Section) shall be a prerequisite to initiation of litigation. Failure of the Contractor to conform to these procedures and requirements shall constitute a failure to pursue diligently and exhaust the administrative procedures in the Contract, and is deemed as the Contractor's waiver of the potential Claim and a waiver of the right to a corresponding Claim for the disputed work.

9-3.02 Notice of Potential Claim.

No claim will be considered or allowed unless the Contractor has first complied with the notice and/or protest requirements specified in the Contract Documents, including, but not limited to, this Section. Nothing in the Contract Documents shall excuse the Contractor from its duty to file or

give the required claim and/or protest notices. Contractor shall not be entitled to the payment of any additional compensation where the written notices of potential claim have not been given to the Engineer in the manner required by and within the time limitations of this Section.

The written notice of potential claim shall set forth the reasons for which the Contractor believes a Contract adjustment will or may be due, the nature of the adjustment involved, and, insofar as possible, the amount of the potential Claim. The notice as above required must have been given to the Engineer prior to the time that the Contractor shall have performed the Work giving rise to the potential Claim for a Contract adjustment, if based on an act or failure to act by the Engineer, or in all other cases at the earliest possible time, but no later than within five (5) days after the happening of the event, thing, occurrence, or other cause giving rise to the potential Claim. The Contractor shall assign an exclusive identification number for each Claim that shall be used for all correspondence and documentation relating to the Claim. City may request additional information from Contractor regarding the Contractor's Claim which shall be provided to City within ten (10) days of the request.

It is the intention of this Section that differences between the parties arising under and by virtue of the Contract be brought to the attention of the Engineer at the earliest possible time in order that such matters may be settled, if possible, or other appropriate action promptly taken. The Contractor hereby agrees that it shall have no right to additional compensation for any Claim that may be based on any such act, failure to act, event, thing, or occurrence for which no written notice of potential Claim as herein required was filed.

The Contractor shall provide the City the opportunity to examine the site of Work within five (5) calendar days from the notice of potential Claim. The Contractor shall proceed with the performance of all Work unless otherwise specified by the Engineer.

9-3.03 Supplemental Notice of Claim.

Within fifteen (15) calendar days of submitting the notice of potential Claim, the Contractor shall provide a signed supplemental notice of potential Claim to the Engineer with reasonable documentation to support the Claim that provides at least the following information:

- 1) The complete nature and circumstances of the dispute giving rise to the potential Claim.
- 2) The Contract Document provisions and specifications supporting the basis of the Claim.
- 3) The estimated cost of the potential Claim and an itemized breakdown of individual costs and how the estimate was determined. An estimate of the costs and the cost breakdown must be provided even if the costs claimed have not been incurred when the Claim is submitted. The cost breakdown must include an itemization of costs for (a) labor including workers' names, classifications, regular hours and overtime hours worked, dates worked, and other pertinent information; (b) materials stored or incorporated in the Work including invoices, purchase orders, location of materials either stored or incorporated into the Work, dates materials were transported to the Project or incorporated into the Work, and other pertinent information; and (c) itemization of machinery and equipment including make, model, hours of use, dates of use, and equipment rental rates of any rented equipment.
- 4) A time impact analysis of the Project schedule that demonstrates the effect on the scheduled completion date due to schedule changes or disruptions where a request for adjustment of Contract Time is made.

- 5) The identification and copies of the Contractor's documents and communications and the substance of any oral communications that support the potential Claim.

The information provided in items 1 and 2, above, shall provide the Contractor's complete reasoning for additional compensation or Contract adjustments.

If the estimated cost or effect on the scheduled completion date changes, the Contractor shall update information in items 3 and 4, above, as soon as the change is recognized and submit this information to the Engineer.

9-3.04 Claim.

The Claim shall be in writing, sent by registered or certified mail with return receipt requested, and include the documents necessary to substantiate the Claim. Claims must be filed within thirty (30) calendar days of the City's written rejection of Contractor's request for a Contract adjustment, or on or before the date of final payment, whichever is earlier. Nothing in this Section is intended to extend the time limit or supersede notice requirements otherwise provided for in the Contract Documents.

The Contractor shall keep full and complete records of the costs and additional time incurred for any work for which a Claim for additional compensation is made. The City shall have access to those records and any other records as may be required by the City to determine the facts or contentions involved in the Claim.

Notwithstanding any other provisions, Contractor's recovery on Claims for additional compensation shall be limited to Contractor's proven direct and actual costs incurred. Contractor shall be precluded from claiming consequential damages, including lost profits, lost bonding capacity, and financing costs. Notwithstanding Section 9-2.02A, no markups shall be allowed on any Extra Work performed on a force account basis.

Any Claim for overhead type expenses or costs, in addition to being certified, shall be supported by an audit report of an independent Certified Public Accountant. Any Claim for overhead shall be subject to audit by the City at its discretion.

Any costs or expenses incurred by the City in reviewing or auditing any Claims that are not supported by the Contractor's cost accounting or other records shall be deemed to be damages incurred by the City within the meaning of the California False Claims Act.

9-3.05 Claims Certification.

All Claims submitted by the Contractor shall include the following notarized certification:

“I, _____, BEING THE _____ (MUST BE AN OFFICER) OF _____ (CONTRACTOR), DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA, AND DO PERSONALLY CERTIFY AND ATTEST THAT: I HAVE THOROUGHLY REVIEWED THE ATTACHED CLAIM FOR ADDITIONAL COMPENSATION AND/OR EXTENSION OF TIME, AND KNOW ITS CONTENTS, AND SAID CLAIM IS MADE IN GOOD FAITH; THE SUPPORTING DATA IS TRUTHFUL AND ACCURATE; THAT THE AMOUNT REQUESTED ACCURATELY REFLECTS THE CONTRACT ADJUSTMENT FOR WHICH THE CONTRACTOR BELIEVES THE OWNER IS LIABLE; AND, FURTHER, THAT I AM FAMILIAR WITH CALIFORNIA PENAL CODE SECTION 72 AND CALIFORNIA GOVERNMENT CODE 12650, ET SEQ, PERTAINING TO FALSE CLAIMS, AND FURTHER KNOW AND UNDERSTAND THAT SUBMISSION OR CERTIFICATION OF A FALSE CLAIM MAY LEAD TO FINES, IMPRISONMENT, AND/OR OTHER SEVERE LEGAL CONSEQUENCES.”

By: _____
Title: _____

Failure to submit the above notarized certificate will be sufficient cause for denying the Claim.

9-3.06 City’s Response.

Upon receipt of a Claim pursuant to this Section 9-3, the City shall conduct a reasonable review of the Claim and provide a written response to the Contractor within 45 days of the date of the Claim, identifying the portion of the Claim that is disputed and the portion that is undisputed. If additional information or details are required by the City to determine the basis and amount of the Claim, the Contractor shall furnish additional information or details so that the information is received by the City no later than the fifteenth (15th) day after receipt of the written request from the City. Failure to submit the information or details to the City within the time specified, or failure to permit access to relevant Contractor records, will be sufficient cause for denying the Claim. Contractor’s acceptance of the City’s payment toward any undisputed portion of the Claim shall constitute a waiver of all matters associated with that undisputed portion of the Claim.

Upon receipt of a Claim, the parties may by mutual agreement extend the time period provided herein. All amounts that the City identifies in its response as undisputed must be processed and paid within 60 days of the City’s response. Pursuant to Public Contract Code Section 9204, if the City fails to pay within 60 days, undisputed amounts not paid will bear interest at 7 percent per annum.

Any costs or expenses incurred by the City in reviewing or auditing a Claim not supported by the Contractor’s cost accounting or other records shall be deemed to be damages incurred by the City within the meaning of the California False Claims Act.

9-3.07 Meet and Confer.

If the Contractor disputes the City's written response, or the City fails to respond within the time prescribed, the Contractor may so notify the City in writing either within 15 days of the City's response or within 15 days of the City's failure to timely respond and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, the City shall schedule a meet and confer conference within 30 days for settlement of the dispute.

9-3.08 Mediation.

Within 10 business days following the conclusion of the meet and confer conference, if the Claim or any portion of the Claim remains in dispute, the City shall provide the Contractor with a written statement identifying the portion of the Claim that remains in dispute. Any payment due on the undisputed portion of the Claim shall be processed and made within 60 days of the City's written statement. Any disputed portion of the Claim, as identified in writing, shall be submitted to nonbinding mediation, with the City and the Contractor sharing costs equally. The parties shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing, unless the parties agree to select a mediator at a later time.

- A. If the parties cannot agree on a mediator, each party shall select a mediator and those mediators shall select a qualified third party to mediate the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in selecting the neutral mediator.
- B. This Section does not preclude the City from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this Section does not resolve the parties' dispute.
- C. The mediation shall be held no earlier than the date the Contractor completes the Work or the date that the Contractor last performs Work, whichever is earlier. All unresolved Claims shall be considered jointly in a single mediation, unless a new and unrelated Claim arises after mediation is complete.

9-3.09 Arbitration.

Upon receipt of a Claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration.

9-3.10 Civil Actions.

Procedures for civil actions to resolve Claims of \$375,000 or less between the parties are governed pursuant to Public Contract Code Section 20104.4.

9-3.11 Government Code Claims.

In addition to any and all Contract requirements pertaining to notices of and requests for compensation or payment for Extra Work, disputed Work, construction claims, and/or changed conditions, the Contractor must comply with the Claim procedures set forth in Government Code Sections 900 *et seq.* prior to filing any lawsuit against the City. Such Government Code Claims

and any subsequent lawsuit shall be limited to those matters that remain unresolved after all procedures pertaining to the Extra Work, disputed Work, construction claims, and/or changed conditions have been followed by the Contractor. If no such Government Code Claim is submitted, or if the prerequisite contractual requirements are not satisfied, no action against the City may be filed. A Government Code Claim must be filed no earlier than the date the Work is completed or the date the Contractor last performs Work on the Project, whichever occurs first. A Government Code Claim shall be inclusive of all unresolved Claims unless a new unrelated Claim arises after the Government Code Claim is submitted.

9-3.12 Non-Waiver.

The City's failure to respond to a Claim from the Contractor within the time periods described in this Section or to otherwise meet the time requirements of this Section shall result in the Claim being deemed rejected in its entirety. A Claim that is denied by reason of the City's failure to have responded to a Claim or its failure to otherwise meet the time requirements of this Section, shall not constitute an adverse finding with regard to the merits of the Claim or the responsibility or qualifications of the Contractor.

9-3.13 Forum For Dispute Resolution.

It is the express intention of the parties that all legal proceedings related to this Agreement or to the Project or to any rights or any relationship between the parties arising therefrom, shall be solely and exclusively initiated and maintained in Santa Clara County Superior Court. Contractor and City each irrevocably consent to the jurisdiction of such courts in any such legal proceeding and waive any objection it may have to jurisdiction of any such legal proceeding.

9-3.14 Duty to Continue Performance.

Unless stated otherwise in the Contract Documents, Contractor shall continue to satisfy its payment obligations to Contractor, pending the final resolution of any dispute or disagreement between Contractor and City.

END OF SECTION