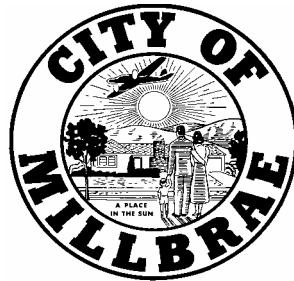


City of Millbrae

Department of Public Works Engineering Division



Part I General Conditions For Public Works Construction

March 2005

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SECTION 1

DEFINITIONS AND TERMS

G1.01 GENERAL. Whenever the following abbreviations and terms, or pronouns in place of them, appear in the Contract Documents, the intent and meaning shall be interpreted as provided in this Section 1. Working titles having a masculine gender, such as "workman" and "flagman" and the pronoun "he," are utilized for the sake of brevity, and are intended to refer to persons of either sex.

G1.02 DEFINITIONS. As used herein, unless the context otherwise requires, the following terms have the following meaning:

Acceptance: The formal written acceptance by the City of an entire contract which has been completed in all respects in accordance with the Contract Documents.

Addenda: Written interpretations or revisions to any of the Contract Documents issued by the City before the bid opening.

Agents: The term "agents" means, in the case of the City, its Consulting Engineer, (if not the Engineer of the work and defined as the Engineer in the Contract Documents), the City Legal Counsel and others retained by the City to provide services associated with contract work.

As Approved: The words "as approved," unless otherwise qualified, shall be understood to be followed by the words "by the Engineer for conformance with the Contract Documents."

As-Built Drawings: Contract plans revised to reflect any modifications resulting during the construction phase and conditions found to differ from those shown on the contract plans.

As Shown; and As Indicated: The words "as shown" and "as indicated" shall be understood to be followed by the words "on the Contract Plans," "in the Specifications" or "by the Contract Documents" as appropriate.

Bidder: Any individual, firm, partnership, corporation or combination thereof, submitting a proposal for the work contemplated, acting directly or through a duly authorized representative.

Caltrans: The Department of Transportation, Business & Transportation Agency, State of California.

City: The City of Millbrae.

City Administrator: The City Administrator of the City.

City Clerk: The City Clerk of the City.

Contract Change Order: An order authorized by the City and issued to the contractor amending the Contract Documents. An "approved Contract Change Order" is an order signed by the Engineer or the City Administrator. An "executed Contract Change Order" is an order signed by the Engineer or the City Administrator and the Contractor.

Contract: The written agreement covering the performance of the work and the furnishing of labor, materials, tools and equipment in the construction of the work. The Contract shall include the Contract Documents, and any and all supplemental agreements. Supplemental agreements are written agreements covering alterations, amendments or extensions to the Contract and include contract change orders.

Contract Completion: The date the City accepts the entire work as being in compliance with the Contract Documents, or formally waives nonconforming work to the extent of nonconformity, and issues the final payment in accordance with Section 9 of these General Conditions.

Contract Documents: The Contract Documents consist of the Notice to Bidders; General Conditions; Special Provisions; Technical Specifications; Proposal (as accepted); Contract; Contract Drawings; Addenda; Change Orders and any other

documents specified and required to be part of the Contract.

Contractor: The person or persons, firm, partnership, corporation or combination thereof, private or municipal, who enters into the Contract with the City. Requirements set out in the Contract Documents for the Contractor shall apply to all of the Contractor's agents such as subcontractors and suppliers as applicable.

Contract Drawings: The official plans, profiles, cross sections, elevations, details, and supplemental drawings furnished by the Engineer, which show the locations, character, dimensions and details of the work to be performed. Contract Drawings may either be bound in the same book as the balance of the Contract Documents or bound in separate sets, and are a part of the Contract Documents regardless of the method of binding. Also referred to as "Contract Plans," "Plans," and "Drawings."

Council or City Council: The City Council of the City of Millbrae.

County: The County of San Mateo.

Days: Unless otherwise designated, "days" will be understood to mean calendar days.

Engineer: The City's Director of Public Works, unless otherwise defined in the Special Provisions. The term may also include representatives or agents of the City acting in contract administration capacities such as a Resident Engineer or Inspector when such inclusion is appropriate such as in the context of a Notice of Potential Claim and Safety Requirements.

Engineer's Estimate: The list of estimated quantities of work to be performed as may be contained in the Proposal Form.

Federal Agencies: Whenever, in the Specifications, reference is made to any Federal agency or officer, such reference shall be deemed made to any agency or officer succeeding, in accordance with law, to the powers, duties, jurisdiction and authority of the agency or officer mentioned.

Field Changes: A document that records minor variations or changes in the plans and/or specifications, which minor variations do not affect the basic design, schedule, compensation or other material terms of the contract.

Fixed Costs: Any necessary labor, material and equipment costs directly expended on the item or items under consideration which remain constant regardless of the quantity of the work done.

General Notes: The written instructions, provisions, conditions or other requirements appearing on the Contract Drawings, and so identified thereon, which pertain to the performance of the work.

Legal Holidays: Those days designated as State holidays by the Government Code or declared by the City Council.

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 the Contractor for each calendar day's delay in completing the whole, or any specified portion, of the work beyond the time allowed in the Contract Documents.

Notice to Proceed: A written notice given by the City to the Contractor fixing the date on which the Contract time will commence to run and on which the Contractor shall start to perform his obligation under the Contract Documents.

Office of the City: Whenever reference is made to the Office of the City or the City's office, such reference shall be deemed made to the City's office at 621 Magnolia Avenue, Millbrae, California.

Or Equal: The term "or equal" shall mean that the "equal" product is the same or better than the product named in function, performance, reliability, quality and general configuration. Determination of equality in reference to the project design requirements will be made by the Engineer. Such equal products shall not be purchased or installed by the Contractor without written acknowledgment of the Engineer.

Owner: The City.

Plans: Refer to Contract Drawings.

Professional Engineer: An engineer licensed by the Board of Registration for Professional Engineers, State of California.

Project: A term sometimes used to reference the work of improvement called for under the Contract.

Proposal: The offer of the bidder for the work, when made out and submitted on the prescribed proposal form, properly signed and guaranteed.

Proposal Form: The approved form upon which the City requires formal bids be prepared and submitted for the work.

Proposal Guaranty: The 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 the Contract is awarded to him. Also referred to as "Bidder's Security."

Provide: The term "provide" shall be understood to mean "furnish and install, complete and in place."

Responsive: A "responsive" Proposal is one which complies with the requirements prescribed herein for Proposals.

Responsible: A "responsible" proposer is one who has the ability and will to satisfactorily perform the contract as evidenced by the proposer's experience and skills in the kind of work contemplated by the contract, access to resources, financial stability, dependability and integrity and who has demonstrated trustworthiness, as well as quality of fitness.

Special Provisions: The Special Provisions are specific clauses setting forth conditions or requirements of the work and supplementary to these General Conditions. Also referred to as "Supplementary Conditions."

Specifications: The term "Specifications" refers to those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards, and workmanship as applied to the work and certain administrative details applicable thereto. Where standard specifications, such as those of ASTM, AASHTO, etc., have been referred to, the applicable portions of such standard specifications shall become a part of these Contract Documents. If referenced specifications conflict with Specifications contained herein, the requirements contained herein shall prevail. Also referred to as "Technical Specifications."

State: The State of California.

Substantial Completion: There is substantial completion or substantial performance of the contract when all essentials necessary to the full accomplishment of the purpose for which the things contracted for are performed with such an approximation to complete performance that the City obtains substantially what is called for by the contract. The City shall determine substantial completion in its own judgment.

Work: The word "work" includes all material, labor, tools, and all appliances, machinery, transportation, and appurtenances necessary to perform and complete the Contract, and such additional items not specifically indicated or described which can be reasonably inferred as belonging to the item described or indicated and as required by good practice to provide a complete and satisfactory system or structure.

Work Site: The area or areas of actual construction and the areas immediately adjacent thereto.

Note: The use of any particular gender pronoun shall mean either or both genders without qualification or reservation. The use of a particular pronoun is for convenience of document construction only.

G1.03 ABBREVIATIONS. As used herein, unless the context otherwise requires, the following abbreviations have the following meanings:

AAMA	Architectural Aluminum Manufacturers' Association
AAN	American Association of Nurserymen
AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
AFBMA	Anti-Friction Bearing Manufacturers' Association
AGA	American Gas Association
AGMA	American Gear Manufacturers' Association
AIA	American Institute of Architects
AIEE	American Institute of Electrical Engineers
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
AITC	American Institute of Timber Construction
AMCA	Air Movement and Control Association
ANSI	American National Standards Institute
APA	American Plywood Association
APWA	American Public Works Association
API	American Petroleum Institute
AREA	American Railway Engineering Association
ARI	American Refrigeration Institute
ASA	American Standards Association
ASHRAE	American Society of Heating, Refrigeration and Air Conditioning Engineers
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
AT&T	American Telephone and Telegraph
AWG	American Wire Gage
AWPA	American Wood Preservers' Association
AWS	American Welding Society

AWWA	American Water Works Association
CRSI	Concrete Reinforcing Steel Institute
CS	Commercial Standards (US Department of Commerce)
CSI	Construction Specifications Institute
DOT	United States Department of Transportation
EIA	Electronic Industries Association
EPA	Environmental Protection Agency
FGMA	Flat Glass Marketing Association
FHWA	Federal Highway Administration
FM	Factory Mutual
FS	Federal Specification
IAMPO	International Association of Mechanical and Plumbing Officials
ICBO	International Conference of Building Officials
IEEE	Institute of Electrical and Electronics Engineers
NAAMM	National Association of Architectural Metal Manufacturers
NBFU	National Bureau Fire Underwriters
NEC	National Electrical Code
NEMA	National Electrical Manufacturers' Association
NFC	National Fire Code
NFPA	National Fire Protection Association
OSHA	Occupational Safety and Health Administration
PEI	Porcelain Enamel Institute
PG&E	Pacific Gas and Electric Company
PS	Product Standard (US Department of Commerce)
PacBell	Pacific Bell
SAE	Society of Automotive Engineers
SCFM	Standard Cubic Feet per Minute
SCPO	Structural Clay Products Institute

SDR	Standard Dimension Ratio
SMACNA	Sheet Metal and Air Conditioning Contractors' National Association
SSPC	Steel Structures Painting Council
TCA	Tile Council of America
TPI	Truss Plate Institute
UBC	Uniform Building Code
UL	Underwriters' Laboratory
UMC	Uniform Mechanical Code
UPC	Uniform Plumbing Code
WCLIB	West Coast Lumber Inspection Bureau
WIC	Woodwork Institute of California
WWPA	Western Wood Products' Association

SECTION 2

PROPOSAL REQUIREMENTS, INSTRUCTIONS TO BIDDERS

G2.01 OBTAINING PROPOSAL FORMS Proposal forms and other bid documents shall be obtained from the City of Millbrae, 621 Magnolia Avenue, Millbrae, California 94030.

G2.02 ENGINEER'S ESTIMATE If an Engineer's Estimate of quantities is given in the Proposal, the quantities are approximate only, being given as a basis for the comparison of bids. The City does not, expressly or by implication, agree that the actual amount of work will correspond to the estimate. The City reserves the right to increase or decrease the amount of any class or portion of the work or to omit portions of the work.

G2.03 EXAMINATION OF CONTRACT DOCUMENTS AND SITE OF WORK The bidder shall examine carefully the Contract Documents and the site of work and shall inform himself of the conditions relating to the execution of the work. Failure to do so will not relieve the successful bidder of his obligation to enter into a Contract and complete the work in strict accordance with the Contract Documents. "Conditions relating to the execution of the work" include the requirements of federal, state and local laws, statutes and ordinances relative to the execution of the work, including, but not limited to, applicable regulations concerning minimum wage rates, non-discrimination in the employment of labor, protection of public and employee health and safety, and environmental protection. The submission of a Proposal shall be conclusive evidence that the bidder has investigated and is satisfied as to the conditions to be encountered, the character, quality and scope of work to be performed, the quantities of materials to be furnished and the requirements of the Contract Documents.

G2.04 SURFACE TOPOGRAPHY; SUBSURFACE CONDITIONS DATA Where an investigation of surface topography and/or subsurface conditions has been conducted in areas where work is to be performed, prospective bidders may inspect the records of such investigations at the City office subject to and upon the conditions set forth hereinafter.

Investigations of surface topography and/or subsurface conditions were made for the purpose of study and design only and neither the City nor the Engineer(s) which conducted such investigations assumes any responsibility whatsoever in respect to the sufficiency or accuracy of the investigations thus made, the records thereof, or of the interpretations set forth therein or made by the City in its use thereof. There is no warranty or guaranty, either express or implied, that the conditions indicated by such investigations are representative of those existing throughout such areas, or any part thereof, or that unforeseen developments may not occur, or that materials other than or in proportions different from those indicated may not be encountered.

Logs of test borings, geotechnical reports, or topographic maps showing a record of the data obtained by the City's investigations of surface and subsurface conditions that are made available shall not be considered a part of the Contract Documents. Such logs, reports and maps represent only the opinion of the consultant retained by the City as to the character of the materials encountered by him in his investigations and are available only for the convenience of the bidder or Contractor.

The availability or use of information described in this Section G2.04 is not intended to be and shall not be construed to be a waiver of the provisions of Section G2.03, and will not relieve the bidder or Contractor from any risk, or from properly examining the site and making such additional investigations as he may elect, or from properly fulfilling all the terms of the Contract Documents.

G2.05 EXPLANATIONS Any explanation of the Contract Documents desired by a prospective bidder shall be requested in writing from the Engineer, and delivered to City no less than 14 calendar days prior to the date for opening of proposals. Any explanation, instruction, or change to Contract Documents will be made by written addendum which will be mailed or delivered to each firm receiving a set of the Contract Documents. Upon mailing or delivery, such addendum will become a part of Contract Documents and binding on all bidders. The receipt of the addendum by the bidder shall be acknowledged and so noted in the space provided on the Proposal Form. All addenda shall be attached to the Proposal. Only written explanations, instructions or changes so given by the City will be effective. Oral explanations or instructions will not be binding on the City.

G2.06 PREPARATION OF PROPOSALS The form of Proposal in this book, when filled out and executed by the bidder, shall be submitted as his bid. Bids not presented on such forms will be disregarded.

All blank spaces in the Proposal form must be filled in, as required, preferably in black ink. All price information shall be shown, clearly legible, in both words and figures, where required. No changes shall be made in the phraseology of the forms. Written amounts shall govern in the case of discrepancy between the amounts stated in writing and the amounts stated in figures. In case of discrepancy between unit prices and extended totals, unit prices shall prevail.

The bidder shall sign his Proposal in the blank space provided therefor. If bidder is the sole owner, the Proposal shall be signed by the owner. If the bidder is a corporation, it must be signed by two officers of the corporation consisting of (1) the chair of the board, president or vice-president; and (2) the secretary, assistant secretary, chief finance officer or assistant treasurer, or by a person authorized by the corporation to execute written contracts on its behalf, and the corporate seal affixed thereto. If the corporate seal is not affixed to the contract, or if it is executed by a person other than an officer, or by only one officer, there must be attached to the contract a certified copy of a resolution of the corporation authorizing such officer or person to execute written contracts for and on behalf of the corporation. If bidder is a partnership, the true name of the firm shall be set forth above, the names and addresses of all partners shall be given and the Proposal shall be signed by a partner in the firm authorized to sign contracts on behalf of the partnership. If the bidder is a joint venture, the Proposal shall be signed by each participating company by officers or other individuals who have the full and proper authorization to do so. If the Proposal is signed by an agent of the bidder other than an officer of a corporation or a member of a partnership, a notarized power-of-attorney must be on file with the Owner prior to opening of Proposals or must be submitted with the Proposal. If requested by the City, the bidder shall promptly submit evidence satisfactory to the City of the authority of the person signing the Proposal.

G2.07 SUBMISSION OF PROPOSALS All Proposals must be submitted not later than the time prescribed, at the place, and in the manner set forth in the Notice to Bidders. Proposals must be made on the Proposal forms provided herewith. Proposals and other required forms may be copied and submitted as a separate package or may be left attached to this book. Any Proposal received after the prescribed time shall be rejected, regardless of whether or not Proposals are opened exactly at the prescribed time.

Each Proposal must be submitted in a sealed envelope. The envelope must be clearly marked to show the bidder's name and the Contract name, without being opened, and be addressed in conformance with the instructions in the Notice to Bidders.

G2.08 LIST OF SUBCONTRACTORS The bidder shall submit with his Proposal, on the List of Subcontractors provided, the names and business addresses of each subcontractor who will perform work under this Contract in excess of 1/2 of 1 percent of the amount of the total Proposal, and shall list the portion of the work which will be done by each such subcontractor. If the bidder fails to specify a subcontractor for any portion of the work, the bidder agrees to perform that portion of the work himself, and represents that he is qualified to perform that portion of the work himself.

G2.08A IDENTIFICATION OF SURETY COMPANY FURNISHING PERFORMANCE AND PAYMENT BONDS The bidder shall submit with his proposal the names and addresses of the surety(ies) that will be furnishing the required Performance and Payment Bonds if it is awarded the contract. The surety(ies) shall be California admitted insurer(s). To verify the surety(ies) is(are) California admitted, the bidder shall submit a copy of the County Clerk's Certificate(s) showing the surety(ies) is(are) California admitted with an affidavit attesting to the validity of the Certificate(s). Any proposal not identifying such insurer(s) and not providing the County Clerk's Certificate(s) may be considered non responsive by the City in its sole discretion and the proposal then rejected.

G2.09 PROPOSAL GUARANTY All Proposals shall be accompanied by a cashier's check or certified check, payable to the City Clerk of the City, or a Bid Bond so payable executed by a corporation authorized to transact business as a surety in the State of California in an amount not less than 10 percent of the total amount of the Proposal submitted.

This bid security shall be given as a guaranty that the bidder will not withdraw his Proposal for ninety (90) days after bid opening, and that if awarded the Contract, the successful bidder will execute the attached Contract and furnish a properly executed Performance Bond and Payment Bond each in the full amount of the Contract price within the time specified.

If the bidder elects to furnish a Bid Bond, he shall use the Bid Bond form bound herewith; additional forms may be obtained from the City. The Attorney-in-Fact who executes this bond on behalf of the surety must attach a notarized copy of his power-of-attorney as evidence of his authority to bind the surety on the date of execution of the bond. Any conditions or limitation placed upon said check or any alteration of the form of said bond, or imperfection in the execution thereof, will render it informal and may, at the option of the City, result in the rejection of the Proposal.

If the Bidder elects to furnish a cashier's check, he shall also submit therewith the Bid Security Form included herewith.

G2.10 NON-COLLUSION AFFIDAVIT All Proposals shall be accompanied by an executed non-collusion affidavit in the form required by Public Contract Code Section 7106.

G2.11 WITHDRAWAL OF PROPOSALS A bidder may withdraw his Proposal at any time prior to the time fixed in the Notice to Bidders for the opening of bids only by filing a written notice with the City. The notice shall be executed by the bidder in conformance with Section G2.06. A telegraphic or telefax notice of withdrawal is not effective. Withdrawal of a Proposal does not prejudice the right of a bidder to submit a new Proposal. No Proposal may be withdrawn after the time scheduled for opening of Proposals, unless and until the time specified in Section G3.02, Time of Award, has elapsed.

G2.12 PUBLIC OPENING OF PROPOSALS Proposals will be opened and read aloud publicly at the date, time and place designated in the Notice to Bidders. The City official opening the bids will determine the official time and such determination will be final. Bidders and their authorized representatives are invited to be present.

G2.13 REJECTION OF PROPOSALS Proposals may be rejected if they show such items as: any alteration of form; additions not called for; conditional bids; incomplete bids; erasures; irregularities which make the Proposals incomplete, indefinite or ambiguous; obviously unbalanced prices; no acceptable Bid Security; or if the Proposal is not properly executed.

G2.14 DISQUALIFICATION OF BIDDERS More than one Proposal from an individual, firm, partnership, corporation or combination thereof under the same or different names will not be considered. Reasonable grounds for believing that any individual, firm, partnership, corporation or combination thereof is interested in more than one Proposal for the work contemplated may cause the rejection of all Proposals in which such individual, firm, partnership, corporation or combination thereof is interested. If there is reason for believing that collusion exists among the bidders, any or all Proposals may be rejected. A party who has quoted prices on materials or work to a bidder is not thereby disqualified from quoting prices to other bidders, or from submitting a bid directly for the materials or work. A Proposal may be rejected on the basis of a bidder, any officer of such bidder, or any employee of such bidder who has a proprietary interest in such bidder, having been disqualified, removed, or otherwise prevented from bidding on, or completing, a federal, state or local project because of a violation of law or a safety regulation. When the City uses a pre-qualification process, the City may reject any proposal from any bidder who is not pre-qualified and such determination will be final.

G2.15 LICENSING OF BIDDERS Bidders and their proposed subcontractors shall hold such licenses as may be specified in the Notice to Bidders and as may be required by Division 3, Chapter 9 of the California Business and Professions Code concerning the licensing of contractors. As a matter of bidder responsibility, each bidder shall be properly licensed in accordance with the laws of the State of California at the time of bid opening. Failure to be so licensed may be reason to reject a bid totally in the sole discretion of the City. If the bid is submitted by a joint venture, then each member of the joint venture must be licensed at the time of bid opening, but a joint venture license is not required until contract award.

G2.16 RESPONSIBILITY OF BIDDERS Bidders shall, if requested by the City, submit a statement of qualifications which shall include experience in the type of work to be performed, financial condition, available construction equipment, and listing of all agencies for which work has been performed during the past two years. The City may reject the Proposal of any bidder on the basis of insufficient work experience and/or skills in the kind of work contemplated in the contract, insufficient financial capability, inadequate equipment, poor performance on work previously completed for the City or other agencies, or previous violation of safety or other legal requirements resulting in disqualification or otherwise being prevented from bidding on federal, state or local agency projects.

To be responsible a bidder must have clearly demonstrated trustworthiness as well as quality of fitness, capacity and experience to satisfactorily perform the contract.

G2.16A INELIGIBILITY OF CONTRACTORS Pursuant to Public Contract Code Section 6109, by submitting its bid, a bidder certifies that it has not been deemed ineligible to bid, work on or be awarded a public works project pursuant to California Labor Code Sections 1777.1 or 1777.7 and that it will not use any subcontractors to perform work on the public works project that have been deemed ineligible to perform work on a public works project pursuant to California Labor Code Sections 1777.1 and 1777.7. Any contract on a public works project between a contractor and a debarred subcontractor is void as a matter of law. Any public money paid to a debarred subcontractor by the Contractor shall be returned to the City. The

Contractor shall be responsible for the payment of wages to any workers of the debarred subcontractor who worked on the project.

G2.17 RELIEF OF BIDDERS. Pursuant to California Public Contract Code Section 5103, unless the City in its sole discretion elects otherwise, a bidder shall not be relieved of his bid nor shall any change be made in his bid because of mistake, but he may bring an action against the City in a court of competent jurisdiction in the county in which the bids were opened for the recovery of the amount forfeited, without interest or costs. In the event the bidder who brings an action against the City fails to recover a judgment, the bidder shall pay all costs incurred by the City in the suit, including reasonable attorneys' fees to be fixed by the court.

If the bidder brings such action it shall be his responsibility to establish that:

- a. A mistake was made;
- b. He gave the City written notice within five days after the opening of the Proposals of the mistake, specifying in the notice in detail how the mistake occurred;
- c. The mistake made the Proposal materially different than he intended it to be; and
- d. The mistake was made in filling out the Proposal and was not due to error in judgment nor to carelessness in inspecting the site of the work, nor in reading the Contract Documents.

G2.18 BID PROTEST PROCEDURE The City maintains written protest procedures that must be followed for all bid protests. All protests must clearly specify in writing the grounds and evidence on which the protest is based. Protests based upon restrictive specifications or alleged improprieties in the bidding procedure which are apparent or reasonably should have been discovered prior to the bid opening shall be filed in writing with the City Clerk, at least five (5) calendar days prior to bid opening. Protests based upon alleged improprieties that are not apparent or which could not reasonably have been discovered prior to bid opening shall be submitted in writing to the City clerk, within forty-eight (48) hours from receipt of notice from the City advising of the recommendation for award of contract.

Copies of the complete bid protest procedures are available at office of the City's Director of Public Works. (Administrative Standard Procedures Number 1-15)

Failure to comply with any of the requirements set forth in the City's written bid protest procedures may result in rejection of the protest.

SECTION 3

AWARD AND EXECUTION OF CONTRACT

G3.01 AWARD OF CONTRACT The City reserves, in its sole discretion, the right to reject any and all Proposals and to waive any informalities and irregularities in Proposals received, other provisions in the Contract Documents notwithstanding.

The Proposals will be compared on the basis of the Total Bid Price which is the sum of the lump sum bid items and, for unit price items, the sum of the products of the Engineer's Estimate of quantities shown in the Proposal multiplied by the unit bid price. In the event of a discrepancy between the unit bid price and the extension price, the unit price shall govern. Any mathematical errors that appear on the face of the bid shall be corrected by the City and the City will use the mathematically correct total bid price in determining the lowest monetary bidder. Where alternative bids are provided for, proposals will likewise be compared alternative against alternative, as more specifically described in the Special Provisions and or Proposal.

The award of the Contract, if it be awarded, will be made to the lowest responsible, responsive bidder.

G3.02 TIME OF AWARD Within sixty (60) days after the opening of Proposals, the City will either reject all Proposals or award the Contract to the lowest responsible, responsive bidder. If the lowest responsible, responsive bidder refuses or fails to execute the Contract and provide an acceptable Performance Bond, Payment Bond and insurance certificate(s), the City may award the Contract to the second lowest responsible, responsive bidder. Such award, if made, will be made within seventy-five (75) days after the opening of Proposals. If the second lowest responsible, responsive bidder refuses or fails to execute the Contract and provide an acceptable Performance Bond, Payment Bond and insurance certificate(s), the City may award the Contract to the third lowest responsible, responsive bidder. Such award, if made, will be made within ninety (90) days after the opening of Proposals. The periods of time specified above within which an award of Contract may be made shall be subject to extension for such further period as may be agreed upon in writing by the City and the bidder or bidders concerned.

G3.03 EXECUTION OF CONTRACT The successful bidder shall, within 15 days after having received notice that the Contract has been awarded, sign and deliver to the Owner a Contract in the form hereto attached together with the Contract Bonds and insurance certificates executed as required in the Contract Documents. Within 10 days (not including Saturdays, Sundays and legal holidays) after receiving the signed Contract with acceptable bonds and insurance certificates from the successful bidder, the City will sign the Contract. If the bidder is a corporation, it must be signed by two officers of the corporation consisting of (1) the chair of the board, president or vice-president; and (2) the secretary, assistant secretary, chief finance officer or assistant treasurer, or by a person authorized by the corporation to execute written contracts on its behalf, and the corporate seal affixed thereto. If the corporate seal is not affixed to the contract, or if it is executed by a person other than an officer, or by only one officer, there must be attached to the contract a certified copy of a resolution of the corporation authorizing such officer or person to execute written contracts for and on behalf of the corporation.

G3.04 CONTRACT BONDS The bidder to whom the Contract is awarded shall furnish the following bonds ("Contract Bonds"):

a. **Performance Bond**, in an amount not less than 100 percent of the Contract price, to secure faithful performance of the and in the amount of not less than 10 percent (10%) of the Contract price to guarantee the correction of work during the warranty period of two years from the date final acceptance of the work by the City.

b. **Payment Bond**, in an amount not less than 100 percent of the Contract price, to secure payment of all persons supplying labor or materials for the construction of the work.

Contract bonds shall be on the forms bound herewith and shall be executed by an admitted surety insurer authorized to transact business in the State of California, with a financial condition and record of service satisfactory to City. To verify the surety(ies) is(are) California admitted, the bidder shall submit a copy of the County Clerk's Certificate(s) showing the surety(ies) is(are) California admitted with an affidavit attesting to the validity of the Certificate(s)

All alterations, extensions of time, extra and additional work and other changes authorized by the Contract Documents may be made without securing the consent of the surety or sureties on the Contract Bonds.

G3.05 FAILURE TO EXECUTE CONTRACT Failure of a bidder to whom the Contract is awarded to promptly and properly execute the Contract or furnish acceptable Contract bonds, or certificates of insurance, shall be just cause for the annulment of the award and the forfeiture of such bidder's Proposal Guaranty. The Proposal Guaranty shall be retained by the City as liquidated damages and it is agreed that this sum is a fair estimate of the amount of damages the City will sustain in case the successful bidder fails to enter into a Contract.

G3.06 RETURN OF PROPOSAL GUARANTY Within 15 days after the award of the Contract, the City will return checks given as Proposal guaranties to bidders whose Proposals are not to be further considered in awarding the Contract. Retained Proposal guaranties will be held until seventy-five (75) days after opening of Proposals or until a Contract has been finally executed, whichever occurs last, after which all Proposal guaranties, other than Bidder's Bonds and any guaranties that have been forfeited, will be returned.

SECTION 4

SCOPE OF WORK

G4.01 INTENT OF CONTRACT DOCUMENTS The Contract Documents are complementary, and what is called for by one shall be as binding as if called for by all. The intent of the Contract Documents is to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. When the Contract Documents describe portions of the work in general terms, but not in complete detail, it is understood that the best general practice shall be followed and only materials and workmanship of the best standard quality shall be used. Any work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied, whether or not specifically called for. When words which have a well-known technical or trade meaning are used to describe work, materials or equipment, such words shall be interpreted in accordance with that meaning.

Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or laws or regulations in effect on the first published date of the Notice to Bidders, except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of City or Contractor, or any of their consultants, agents or employees from those set forth in the Contract Documents, nor shall it be effective to assign to City, or any of City's consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the work or any duty or authority to undertake responsibility contrary to the other provisions of the Contract Documents.

The Contract Documents are divided into parts, divisions and sections for convenient organization and reference. Generally, there has been no attempt to divide the specification sections into work performed by the various building trades, work by separate subcontractors, or work required for separate facilities in the project.

The City makes no warranty whatsoever, express or implied, with respect to the Contract Documents other than that the Contract Plans and Specifications were prepared by a professional engineer and/or professional architect registered to practice in the State of California and so endorsed.

G4.02 EXAMINATION AND VERIFICATION OF CONTRACT DOCUMENTS The Contractor shall thoroughly examine and become familiar with all of the various parts of these Contract Documents and determine the nature and location of the work, the general and local conditions, and all other matters which can in any way affect the work under this Contract. Failure to make an examination necessary for this determination shall not release the Contractor from the obligations of this Contract. No oral agreement or conversation with any officer, agent or employee of the Owner, or with the Engineer either before or after the execution of this Contract, shall affect or modify any of the terms or obligations herein contained.

G4.03 DIFFERING SITE CONDITIONS Pursuant to Public Contract Code Section 7104, the Contractor shall promptly, and before such conditions are disturbed, notify the Engineer in writing of: (1) material that the Contractor believes may be material that is hazardous waste, as defined in California Health and Safety Code Section 25117, that is required to be removed to a Class I, Class II or class III disposal site in accordance with provisions of existing law, (2) subsurface or latent physical conditions at the site differing materially from those indicated in this Contract, or (3) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract.

The Engineer shall promptly investigate the conditions. If the Engineer finds that such conditions do materially differ or do involve hazardous waste and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed as a result of such conditions, an equitable adjustment shall be made and the Contract modified in accordance with the change order procedures set forth herein. In the event of any dispute between the City and the Contractor over the significance or existence of the changed conditions, the Contractor shall not be excused from the scheduled completion date set forth herein, but shall retain such rights it may have as provided in these

Contract Documents.

No claim of the Contractor under this clause shall be allowed unless the Contractor has given the notice required by this Section, except that the City may extend the prescribed time. No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Contract.

G4.04 CHANGES; CONTRACT CHANGE ORDER The City may, without notice to the sureties, and without invalidating the Contract, at any time make alterations, deviations, additions to or deletions from the Contract Documents, and may increase or decrease the quantity of any item or portion of the work, or delete any item or portion of the work, and may require extra work, as determined by the City to be necessary or advisable. All such work shall be performed under applicable provisions of the Contract Documents, unless specifically provided otherwise at the time the change is ordered.

Any such changes will be set forth in a written Contract Change Order issued by the City. The Contract Change Order will specify: (1) the work to be done in connection with the change to be made; (2) the amount of the adjustment of the Contract price, if any, and the basis for compensation for the work ordered; and (3) the extent of the adjustment in the Contract time, if any. A Contract Change Order shall not become effective until it has been signed by the Engineer or the City Administrator; when signed by the Engineer or the City Administrator it is an "approved Contract Change Order."

No changes or deviations from the Contract Documents shall be made without the authority of an approved Contract Change Order, except that in cases of emergency the Engineer may direct a change in writing. Upon receipt of such written directive, the Contractor shall proceed with the ordered work and the Engineer will prepare a written Contract Change Order for approval and issuance to the Contractor as soon thereafter as practicable.

Upon receipt of an approved Contract Change Order, the Contractor shall promptly proceed with the ordered work, unless otherwise provided in the approved Contract Change Order.

When ordered by the Engineer, the Contractor shall halt work in the area affected by a proposed change. Whenever it appears to the Contractor that a change is necessary, the Contractor shall immediately, but no later than five (5) days after becoming aware of the need for a change, notify the Engineer of the change he believes necessary and the reasons for such change; however, work in the area affected shall not be discontinued unless ordered by the Engineer.

G4.05 REQUEST FOR QUOTATIONS FOR CHANGE IN WORK City may request Contractor to provide quotations for performing proposed changes to the work. Such requests for quotations shall not be considered authorization to proceed with the change prior to issuance of an approved Contract Change Order, nor shall such request justify any delay in executing existing work. Contractor shall, upon such a request, provide quotations for increases or decreases in the Contract Price and the Contract time associated with performing the proposed change within the timeframe specified by the Engineer. Quotations shall be in the form specified by the Engineer and shall include substantiating documentation with an itemized breakdown of Contractor and Subcontractor costs, including labor, materials, rentals, services, overhead and profit. The cost of preparing such quotations is included in the Contract price and Contractor shall not be entitled to any additional compensation for preparing them. Failure of the Contractor to submit a quotation in the timeframe or form specified by the Engineer shall limit the effect of any protest to an Approved Change Order as set forth in Section G4.09.

G4.06 PROPOSED CONTRACT CHANGE ORDER A Contract Change Order may be presented to the Contractor for his consideration prior to its having been approved. If the Contractor accepts the terms and conditions of such proposed Contract Change Order, and if the Contract Change Order is thereafter approved and issued to the Contractor, the Contract Change Order shall be considered to be an executed Contract Change Order for all purposes to the same extent as if the Contract Change Order had been initially issued to the Contractor as an approved Contract Change Order. The City need not present a proposed Contract Change Order to the Contractor for his review prior to issuing it as an approved Contract Change Order.

G4.07 EXECUTED CONTRACT CHANGE ORDER An approved Contract Change Order which has been signed by the Contractor is an "executed Contract Change Order." Compensation paid pursuant to Contract Change Orders shall comprise the total compensation for the work described in the Contract Change Order. By signing the Contract Change Order, the Contractor agrees that the specified compensation constitutes full compensation for the work or change, including but not

limited to payment for interruption of schedules, extended overhead, home office overhead, delay or any other "impact" claim or "ripple effect" claim, agrees that any change in contract time or completion date specified in the Change Order considers and compensates for all time impacts of the Change Order, and by signing, the Contractor specifically waives any reservation or claim for additional compensation or Contract time in respect to the Contract Change Order.

G4.08 CONTRACT PRICE ADJUSTMENT If a Contract Change Order provides for an adjustment to the Contract price, the increased payment to Contractor, or the deduction to the credit of the City, shall be determined by one of the following methods, or a combination thereof, as determined by the City and at its sole option:

A. Unit Prices. The unit prices set forth in the Proposal may be used where they are applicable. If the Contract Change Order increases or decreases the quantity of an item of work by more than twenty-five percent (25%), such that the application of unit prices in the Proposal will cause substantial inequity to the City or Contractor, unit prices will be adjusted by mutual agreement or, in the absence of agreement, as determined by the Engineer and subject to protest by the Contractor pursuant to Section G4.09. Unit prices for new items included in the Contract Change Order shall be as mutually agreed upon or, in the absence of agreement, as determined by the Engineer and subject to protest by the Contractor pursuant to Section G4.09.

Payment for any contract item of work which has a final total value of less than five percent of the total contract bid price will be made at the contract unit price regardless of increased or decreased quantities, if such unit price is to be used.

B. Lump Sum. A total lump sum addition or deduction from the Contract Price.

Lump sum quotations for changes to the work shall include substantiating documentation with an itemized breakdown of Contractor and Subcontractor costs, including labor, materials, equipment rental, approved services, overhead and profit, all as negotiated. The costs of a negotiated change order for work performed by Contractor's own forces shall be limited to a maximum markup of fifteen percent (15%) to include up to ten percent (10%) for overhead and up to five percent (5%) for profit. These percentages shall apply to subcontractor work also. Markups for items such as fringe benefits, liability insurance, social security and unemployment insurance, where proper and appropriate, shall be determined on the basis of actual costs as documented and supported by the contractor and subject to the approval of the Engineer. Where the whole or a part of the work under a negotiated change order is performed by a first tier subcontractor, the City shall limit the Contractor's markup on the direct costs of the subcontractor to a total of not more than eight percent (8%) to include up to five percent (5%) for overhead and three percent (3%) for profit. No markup will be considered or allowed for costs of a negotiated change order involving subcontractors below the first tier. The overhead markup percentages referenced above shall cover all overhead costs of the Contractor, including administrative, field office, home office, extended overhead and similar costs and expenses.

C. Force Account Payment. Payment for the work may be made on a time and expense basis, that is, on an accounting of the Contractor's forces, materials, equipment and other items of cost as required to do the work.

If compensation for work done under a Contract Change Order is to be made on a force account basis, the compensation will be calculated as set forth in Section G9.03, "Force Account Payment." Contractor agrees that the markups provided in Section G9.03 are adequate.

In any case in which the method of payment cannot be agreed upon prior to the beginning of the work, the City may direct that the work be done on a unit price, lump sum or force account basis depending on the nature of the work and at the sole discretion of the City.

G4.09 PROTEST PROCEDURE If the Contractor disagrees with any terms or conditions set forth in an approved Contract Change Order which he has not executed, he shall submit a written protest to the Engineer within 15 calendar days after receipt of such approved Contract Change Order. The protest shall state the points of disagreement, Contract Document references, quantities and costs involved, contract time impacts and shall propose a modification of the items with which he does not agree. Such protest shall not be considered complete or acceptable unless and until the quotation requested pursuant to Section G4.05 has been received by the Engineer in satisfactory form. If a written protest is not submitted within this 15-day period, payment will be made as set forth in the approved Contract Change Order without right of further protest. Approved Contract Change Orders which are not protested within 15 days or protests not supported by the requested quotation

in satisfactory form within 15 days of request will be considered as executed Contract Change Orders and such payment will constitute full compensation for all work included therein or required thereby and so will any changes in contract time or completion date.

When the protest of an approved Contract Change Order relates to compensation, the Contractor shall keep full and complete records of such work and shall permit the City and the Engineer to have access to all records relating to the protested Contract Change Order to determine the compensation payable. The Contractor shall cooperate with the Engineer to reach agreement at the earliest practical date on the terms of compensation for the Contract Change Order. When agreement has been reached, a revised Contract Change Order may be approved by the City and issued to the Contractor for signature. Unless and until the City and Contractor agree upon other terms of compensation incorporated in a revised executed Contract Change Order, the compensation shall be as specified under the protested approved Contract Change Order.

When the protest of an approved Contract Change Order relates to the adjustment of Contract Time for the completion of the work, the time will be determined in accordance with the provisions of Section G8.11.

G4.10 CONTINUANCE OF CONSTRUCTION Disagreement by the Contractor with the City's determination of the need for, or amount of, an adjustment in Contract price or Contract time associated with an approved Contract Change Order (or disagreement by the Contractor with the City's determination that a change has not occurred and no Contract Change Order is needed) shall not, under any circumstances, relieve the Contractor from its obligation to promptly begin and diligently prosecute the work, including the change, as described in the approved Contract Change Order.

G4.11 FIELD CHANGES Conditions may arise during the prosecution of the work on construction necessitating minor variations in the contract plans and/or specification. In order to address these conditions, the City may without notice to the sureties and without invalidating the contract, make minor alterations, deviations or changes to the Contract, including the plans or specifications, without affecting any of the material or basic terms of the contract, including the contract price, schedule for performance, the basic design, or other terms. Such minor alterations, deviations or changes shall be documented in a Field Change on a form provided by the City and executed by the Engineer and the Contractor. By execution of the Field Change, Contractor agrees to make the specified change at no additional cost and without an alteration in the schedule of performance or other terms and conditions of the Contract including no change in Contract time.

G4.12 DETOURS When required by the Special Provisions, Technical Specifications, or shown on the Contract Plans, or required by responsible public agencies, the Contractor shall construct, maintain and remove detours for the use of public pedestrian and vehicular traffic, without additional cost to the City, unless separate payment is specified in the Special Provisions or Technical Specifications.

The failure or refusal of the Contractor to construct and maintain detours at the proper time shall be sufficient cause for closing down the work until such detours are in satisfactory condition for use by public pedestrian and vehicular traffic.

G4.13 ARCHAEOLOGICAL DISCOVERIES All articles of archaeological interest which may be uncovered by the Contractor during the progress of the work shall be reported immediately to the Engineer. The further operations of the Contractor with respect to the find will be decided under the direction of the Engineer. Contractor shall acquire no interest in any such discoveries unless granted by the City in its sole discretion.

G4.14 PRESERVATION AND CLEANING The Contractor shall clean up the work at frequent intervals and at other times when directed by the Engineer to maintain the job site in a clean and sanitary condition. While finish work is being accomplished, floors shall be kept clean, free of dust, construction debris and trash.

Before final inspection of the work, the Contractor shall clean the project site, material sites, surrounding roadways and all ground occupied by him in connection with the work, of all rubbish, excess materials, falsework, temporary structures and equipment. All parts of the work shall be left in a neat and presentable condition. Final cleaning shall include washing, dusting and sweeping, as applicable, of exposed architectural finish surfaces. 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.

G4.15 GUARANTY OF WORK Notwithstanding inspections and acceptance by the City of work furnished

under this Contract, the Contractor warrants to the City that all materials and equipment furnished under the Contract, including that provided pursuant to Change Orders, will be of good quality and new, that the work will be free from defects in material or workmanship, and that the work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective.

This warranty by the Contractor is in addition to any warranties or guarantees required by the Special Provisions or Technical Specifications for specified items of equipment or materials. This warranty shall be in effect notwithstanding any disclaimers, or limiting or conditional terms contained in such separate warranties furnished by manufacturers or suppliers.

G4.16 CORRECTION OF WORK DURING WARRANTY PERIOD If, within two years after the date of final acceptance of the work by the City, any of the work is found not to be in accordance with the Contract Documents, specifically including Section G4.15 ("Guaranty of Work"), the Contractor shall correct it promptly after written notice from the City to do so, and pay for any damage to other property resulting from such non-conforming work. If the Contractor fails to make the repairs or replacements promptly, or in an emergency when delay could cause risk of damage or loss, the City may have the non-conforming work removed, replaced or corrected at the expense of the Contractor and his surety. If the amount of the performance bond is insufficient to cover the cost of such work, the Contractor shall be liable to pay any such deficiency on demand by the City. Non-conforming work which is remedied under this Section shall be subject to an extended warranty obligation, identical in terms to that provided by Section G4.15 and this Section for a period of two years after the non-conforming work has been remedied.

The City's records setting forth the fair and reasonable cost of repairing, replacing or restoring the damage or defects when performed by any party other than the Contractor shall be binding and conclusive as to the amount thereof upon the Contractor.

Nothing contained in this Section G4.16 shall be construed to establish a period of limitation with respect to other obligations which the Contractor may have under the Contract Documents. Establishment of the period of two years as described in this Section relates only to the specific obligation of the Contractor to correct the work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the work.

G4.17 VALUE ENGINEERING The Contractor may submit to the Engineer, in writing, value engineering proposals for modifying the plans, specifications or other requirements of the Contract for the sole purpose of reducing the total cost of construction. The value engineering 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.

Value engineering proposals shall contain the following information:

- (1) Description of the existing contract requirements which are involved in the value engineering proposal.
- (2) Description and justification of the proposal.
- (3) An itemization of the contract requirements that must be changed if the proposal is adopted.
- (4) A detailed estimate of the cost of performing the work under the existing contract and under the proposed change.
- (5) A detailed estimate of additional costs to the Project attributable to the proposal on the construction, operation, and maintenance of the project.
- (6) A statement of the time within which the Engineer must make a decision thereon.
- (7) 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 value engineering proposal which may be submitted.

The City will not be liable to the Contractor for failure to accept or act upon any value engineering proposal submitted pursuant to this section nor for any delays to the work attributable to any such proposal. If a value engineering 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 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 an executed change order, incorporating the value engineering proposal has been issued. If any executed change order has not been issued by the date upon which the Contractor's value engineering proposal specifies that a decision thereon should be made, or such other date as the Contractor may subsequently have specified in writing, such value engineering proposal shall be deemed rejected.

The Engineer shall be the sole judge of the acceptability of a value engineering 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 share in the City's costs of investigating a value engineering proposal submitted by the Contractor as a condition of considering such proposal. Where such a condition is imposed the Contractor shall indicate his acceptance in writing, and such acceptance shall constitute full authority for the City to deduct amount payable to the City from any monies due or that may become due to the Contractor under the Contract.

If the Contractor's value engineering proposal is accepted in whole or in part, such acceptance will be by a contract 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 value engineering proposal or such parts 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 value engineering proposal effectuated by the change order and shall further provide that the Contractor be paid 50% of said estimated net savings amount. The Contractor's cost of preparing the value engineering proposal and the City's costs of investigating a value engineering proposal, including any portion thereof paid by the Contractor, shall be excluded from consideration in determining the estimated net savings in construction costs. The cost to the City for any required redesign associated with a value engineering proposal will be taken into account and added in determining the value of such proposal.

Acceptance of the value engineering proposal and performance of the work thereunder shall not extend the time of completion of the contract unless specifically provided for in the contract change order authorizing the use of the proposal.

The amount specified to be paid to the Contractor in the change order, which effectuates a value engineering proposal shall constitute full compensation to the Contractor for the proposal and the performance of the work thereof pursuant to the said change order.

The City expressly reserves the right to adopt a value engineering 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 value engineering 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 him prior to submission of the accepted value engineering proposal and as to which such value engineering proposal is also submitted and accepted. Value engineering 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 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 value engineering proposal without obligation or compensation of any kind to the

Contractor.

SECTION 5

CONTROL OF WORK

G5.01 AUTHORITY OF ENGINEER The Engineer shall decide all questions which may arise as to the quality or acceptability of materials furnished and work performed and as to the manner of performance and rate of progress of the work; all questions which may arise as to the interpretation of the Contract Documents; all questions as to the acceptable fulfillment of the Contract on the part of the Contractor; and all questions as to compensation and contract time. The Engineer will have authority to reject work which does not conform to the Contract Documents. His decision shall be final and he shall have authority to enforce and make effective such decisions and orders which the Contractor fails to carry out promptly.

G5.02 CONTRACT DRAWINGS The Contract Drawings 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 Drawings shall be in writing.

Upon written request, the City will furnish to the Contractor for his use, at no expense to the Contractor, five (5) copies of all Contract Documents, including the Contract Drawings unless otherwise specified in the Special Provisions. Additional copies may be obtained at cost.

G5.03 SHOP DRAWINGS The Contract Drawings shall be supplemented by shop drawings furnished by the Contractor. Shop drawings shall have been approved by the Engineer before any work involving such drawings is performed. No change shall be made by the Contractor in any shop drawing after it has been approved by the Engineer.

Shop drawing submittals shall contain adequate information to permit the Engineer to evaluate each submission for conformance with the Contract Documents. Each submittal shall be complete; partial submittals will not be reviewed. All drawings shall include a graphical scale and indicate the amount of reduction used, if any. The quality of lettering and draftsmanship shall be such as to insure easily read reproductions by microfilming process.

Each shop drawing submitted by the Contractor (including any provided by suppliers and/or subcontractors) shall bear the approval stamp of the Contractor, and shall be clearly and conspicuously marked to indicate any deviation in the shop drawing from the requirements of the Contract Documents. By approving and submitting shop drawings, the Contractor thereby represents that he has determined and verified all field measurements, field construction criteria, materials, catalog numbers and similar data, and that he has checked and coordinated each shop drawing with the requirements of the work and the Contract Documents. Where applicable, shop drawings will be certified for construction by the manufacturer. City review of any shop drawing shall not constitute a change to the Contract. Contract changes can be effected through Change Orders only.

Each submittal shall be accompanied by a transmittal letter in the form specified by the Engineer from the Contractor stating the name of the material or equipment items as shown on the Contract Documents, a specification reference consisting of a section number, and any proposed deviations from the Contract Documents requested or shown on the submittal.

Review of shop drawings is only for general conformance with the design concept of the project and general compliance with the information given in the Contract Documents. Review and approval of the Contractor's shop drawings shall not relieve Contractor of any of his responsibility for the successful completion of the work in conformity with the requirements of the Contract Documents. The Contractor is responsible for conformance with all requirements of the Contract Documents, including, but not limited to, dimensions which shall be conformed and correlated at the job site, fabrication processes and techniques of construction, coordination of work with that of all others, and satisfactory performance of all work. Approval of shop drawings shall not waive any requirement of the Contract Documents and defective work may be rejected notwithstanding such approval.

It is the Contractor's responsibility to submit shop drawings and other submittals so as to allow sufficient time for review, for securing necessary approvals, and for possible revisions and resubmittal. Minimum review time by the Engineer shall be 30 calendar days; complex submittals may require up to 45 days. Review time periods shall not begin until a complete submittal with Contractor's approval stamp is received with properly completed transmittal documentation. Incomplete, unstamped or

otherwise improper submittals may be rejected without further comment for correction and proper submittal. The Contractor shall schedule his shop drawing submittals so that this anticipated shop drawing review time does not delay his work.

City will make its best efforts to review submittals within the time period scheduled by the Contractor, provided it is consistent with the minimum time period specified in the preceding paragraph, but the City's inability to do so shall not automatically entitle the Contractor to additional time to complete the Contract. If the Engineer fails to complete his review of shop drawing submittals within a reasonable time (not to be less than the time period specified in this section), and if the Contractor's controlling operation is delayed by reason of the delay in review, an extension of time commensurate with the delay in completion of the work thus caused will be granted pursuant to Section G8.11, but no additional compensation will be allowed for such delay.

Shop drawings reviewed by the Engineer will be returned to the Contractor. The Engineer's action on each submittal will consist of one of the following: "No Exceptions Taken," "Exceptions Taken as Noted," "Revise and Resubmit" or "Rejected" unless otherwise specified in the Special Provisions are/or transmittal forms to be used. When shop drawings are required to be resubmitted, the revisions are to be clearly defined on the revised drawings. Resubmittals will be reviewed in accordance with the provisions applicable to initial submittals and the time period for the Engineer's review shall be equal to that for initial submittals.

Submittal and processing of shop drawings shall conform to the requirements of the Special Provisions and Technical Specifications.

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.

When the shop drawings have been completed to the satisfaction of the Engineer, the Contractor shall carry out the construction in strict accordance therewith. Any further changes will require a resubmittal of the drawings.

G5.04 CONFORMITY WITH CONTRACT DOCUMENTS Work and materials shall conform to the lines, grades, cross sections, dimensions and material requirements, including tolerances, shown on the Contract Drawings 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 Contract Drawings and Specifications, and his decision as to any allowable deviations therefrom shall be final.

G5.05 COORDINATION AND INTERPRETATION OF CONTRACT DOCUMENTS The General Conditions, Special Provisions, Technical Specifications, Contract Drawings, Contract Change Orders and all supplementary documents are essential parts of the Contract, and a requirement occurring in one is as binding as though occurring in all. They are intended to be complimentary, and to describe and provide for a complete work.

In the event of inconsistencies between requirements contained in different components of the Contract Documents, and unless otherwise specified in the Special Provisions, the order of precedence to govern interpretation is as follows: (1) Special Provisions, (2) General Conditions, (3) Technical Specifications, and (4) Contract Drawings. In case of differences between small and large scale drawings, the large scale drawings shall govern. Schedules on drawings shall take precedence over conflicting notations on drawings. In the event of discrepancy between any drawing and the figures written thereon, the figures, unless otherwise directed, will govern over scaled dimensions.

Should it appear that the work to be done or any of the matters relative thereto is not sufficiently detailed or explained in the Contract Documents, the Contractor shall apply to the Engineer for such further written explanations as may be necessary and shall conform to them as part of the Contract. In the event of any doubt or question arising respecting the true meaning of the Contract Documents, clarification shall be sought from the Engineer, whose decision thereon shall be final.

G5.06 ORDER OF WORK When required by the Special Provisions or Contract Drawings, the Contractor shall follow the sequence of operations as set forth therein.

Full compensation for conforming with 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.

G5.07 SUPERINTENDENCE The Contractor shall supervise and direct the work using his best skill and attention and shall keep at the project site competent supervisory personnel at all times while work is in progress. The Contractor shall designate, in writing, before starting work, a project superintendent who shall be an employee of Contractor and shall have complete authority to represent and act for the Contractor. The Contractor shall notify the Engineer in writing prior to any change in superintendent assignment.

The Contractor shall be solely responsible for and have control over construction means, methods, techniques and procedures for providing adequate safety precautions and coordinating all portions of the work under the Contract, unless the Contract Documents give other specific instructions concerning these matters.

G5.08 LINES AND GRADES Only such primary control lines, monuments and bench marks will be set by the Engineer as he determines to be necessary to control establishment of the lines and grades required for the completion of the work. In general, these will consist of the primary horizontal and vertical control points shown on the Contract Drawings. The Contractor shall notify Engineer a minimum of five (5) working days before such stakes or marks are needed.

Monuments, stakes and marks set by the Engineer shall be carefully preserved by the Contractor. If such monuments, stakes or marks are destroyed or damaged, they will be replaced by the Engineer at his earliest convenience. The Contractor shall be charged for the cost of replacing or restoring monuments, stakes and marks destroyed or damaged by reason of his operations including failure to protect such points from other normal activity in the project area that can be reasonably anticipated. This charge will be deducted from any monies due or to become due the Contractor unless the Contractor has agreed in writing, with the approval of the Engineer, to otherwise directly pay the party doing the work and has provided satisfactory evidence that such payment has been properly made.

The Contractor shall temporarily suspend work at such points and for such reasonable times as the Engineer may require for transferring or setting monuments, stakes or marks, and the Contractor shall not be entitled to any additional compensation or extension of time therefor.

All other stakes or marks required to establish the lines and grades required for the completion of the work shall be the responsibility of the Contractor. Payment for such work shall be considered as included in the prices paid for the various Contract items of work and no additional compensation will be allowed therefor.

Contractor shall take field measurements and verify field conditions consistent with prudent construction industry standards and shall carefully compare such field measurements and conditions and other information known to Contractor with the Contract Documents before commencing construction activities on the work site. Errors, inconsistencies or omissions in the Contract Documents discovered by Contractor shall be reported to the Engineer at once.

G5.09 INSPECTION The Engineer, and all authorized representatives of the City, shall at all times have safe access to the work during its construction, 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 the Contract Documents. All work done and all materials furnished shall be subject to the Engineer's on-site and off-site inspection.

The inspection and observation of the work or materials by the Engineer shall not relieve the Contractor of any obligations to fulfill his Contract as prescribed. Work and materials not meeting such requirements shall be corrected, and unsuitable work or materials may be rejected, notwithstanding that such work or materials have been previously inspected by the Engineer, or that payment therefor has been included in a progress estimate.

Re-examination of questioned work may be ordered by the Engineer at any time before final acceptance. If so ordered, the work shall be uncovered by the Contractor. If such work is found to be in accordance with the Contract Documents, the City will pay for the cost of uncovering, removal, recovering and replacing of the parts removed; but if such work so exposed or examined is not in accordance with the Contract Documents, the uncovering, removal, recovering and replacement shall be at the Contractor's expense. Work which has been covered prior to observation by the Engineer does not qualify as re-examined work; the City may order it uncovered for observation without payment of costs.

The Contractor shall give due notice to the Engineer before backfilling so that the Engineer may observe the materials and installation.

The Contractor shall notify the Engineer in advance as to those times when no construction activities will take place. Absent such notification, all costs incurred by the City as a result of attending to the project site at times when no construction is taking place will be charged to the Contractor.

Whenever the Contractor intends to perform work on Saturday, Sunday, or a legal holiday, he shall give notice to the Engineer of such intention 24 hours prior to performing such work, or such longer period as may be specified, so that the Engineer may make necessary arrangements.

The observations and inspections performed by the Engineer shall not relieve the Contractor of his responsibility to conduct comprehensive inspections of the work and to furnish materials and perform work in conformance with the Contract Documents.

G5.10 DOCUMENTS ON JOB SITE The Contractor shall keep one copy of all Contract Documents (including Change Orders), approved Shop Drawings, material test results and approved progress payments on the job site, in good order, available to the Engineer and all authorized representatives of the City. Other requirements may be specified in the Special Provisions.

G5.11 CORRECTION, REMOVAL OF REJECTED WORK The Contractor shall promptly correct work rejected by the Engineer as failing to conform to the requirements of the Contract Documents, whether or not fabricated, installed or completed, so that it does comply with the Contract Documents. The Contractor shall bear the costs of correcting such rejected work, including additional testing, inspections and compensation for the Engineer's services and expenses made necessary thereby.

The Contractor shall remove, at his cost, from the site portions of the work which are not in accordance with the Contract Documents or which are not corrected by the Contractor.

The Contractor shall correct, at his cost, damaged or destroyed construction, whether completed or partially completed, of the City or separate contractors caused by the Contractor's correction or removal of work which is not in accordance with the requirements of the Contract Documents.

Any work done beyond the lines shown on the Contract Drawings or established by the Engineer, and all extra work done without written authority, will be considered as volunteer or unauthorized work. Upon order of the Engineer, unauthorized work shall be remedied, removed or replaced at the Contractor's cost.

If the Contractor fails to promptly correct non-conforming or rejected work, or to comply promptly with any order of the Engineer under this Section, the City may cause such work to be remedied, removed or replaced and the costs thereof will be deducted from any monies due or to become due the Contractor.

Failure on the part of the Engineer to reject non-conforming work shall not be construed to imply acceptance of such work.

G5.12 EQUIPMENT AND PLANTS The Contractor shall use or permit only equipment and plants suitable to produce the quantity and quality of work and materials required, and meeting all State and federal safety requirements.

Plants shall be designed and constructed in accordance with general practice for such equipment and shall be of sufficient capacity to insure the production of materials needed to complete the work in accordance with the Contractor's schedule and the Contract time.

When ordered by the Engineer, the Contractor shall remove unsuitable equipment from the work and discontinue the operations of unsafe or unsatisfactory plants.

All vehicles used on existing structures, highways and streets shall be equipped with pneumatic tires unless otherwise permitted in writing by the Engineer.

G5.13 CHARACTER OF WORKERS The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons nor persons not properly skilled or unskilled in tasks assigned to them.

G5.14 FINAL INSPECTION When the work has been completed, the Engineer will make the final inspection. The Contractor shall notify the Engineer in writing when it considers the work complete and shall request a final inspection.

G5.15 SUBMITTAL OF AS-BUILT DATA The Contractor shall maintain up-to-date a separate, neat and legible set of construction drawings showing as-built conditions. The intention is that a separate full-size set of the construction drawings will be neatly and accurately marked in red pencil to show any condition, dimension, installation or location that is different from that originally shown. Change Orders; deviations from the contract documents including drawings; the locations of installations of utilities and services, mechanical and electrical lines; details; and other work shall be incorporated and accurately shown on this set. The locations of installed underground and hidden utilities will be shown and dimensioned to appropriate reference points. No work shall be permanently concealed until the required information has been recorded. The requirement is that these as-built construction drawings and the "as-built" material and equipment drawing submittals provided will reflect the complete as-built condition of the project.

Where the contract drawings are not of sufficient size, scale, or detail, the Contractor shall furnish his own drawings for incorporation of details and dimensions. In such cases, the Contractor shall provide a reproducible set of his drawings, suitably cross-referenced to the contract drawings.

The as-built drawings will be maintained up to date on a "day by day" basis. That is, information will be recorded as it is known. Prior to any progress payments, the Engineer will review the status of the as-built construction drawings. The Engineer may withhold approval of progress payments until such time as the as-built drawings are brought up to date.

Prior to the completion of the contract, the Contractor shall furnish a satisfactory as-built construction drawing record and certify on each drawing that conditions shown are as-built. Submittal of the as-built record is made a condition for acceptance of the project and final payment under the contract.

G5.16 EMERGENCIES In an emergency affecting the safety of life, the work, or adjoining property, the Contractor, without special instructions or authorization from the Engineer, shall act at his discretion to prevent such threatened loss or injury. In such an emergency, the Contractor shall perform such additional work as is required. Any compensation claimed by the Contractor on account of emergency work and determined by the Engineer to be warranted shall be determined in accordance with the provisions of Section 9 unless a more appropriate method is determined by the Engineer in his sole discretion.

G5.17 RIGHTS-OF-WAY The City will provide the rights-of-way over private lands or the site for permanent works or installations, and right-of-way for access thereto, unless otherwise indicated. The Contractor will be permitted to use such land for construction purposes, but any additional right-of-way or land desired by the Contractor for construction purposes shall be provided by the Contractor without expense to the City.

SECTION 6

CONTROL OF MATERIALS

G6.01 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 Specifications to be furnished by the City and materials furnished by the City in accordance with force account work as described in Section G9.03. As used in this Section, the term "materials" shall mean materials and equipment furnished for incorporation in the work.

Notwithstanding any prior inspection, only materials conforming to the requirements of the Contract Documents shall be incorporated in the work.

The materials furnished and used shall be new, except as may specifically 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 submit to the Engineer a list of his sources of materials and the locations at which such materials will be available for inspection. The list shall be submitted in sufficient time to permit proper inspection and testing of materials to be furnished from such listed sources in advance of their use. The Contractor shall assure that the Engineer or his authorized representative has free access at all times to the material to be inspected, sampled or tested. The Engineer may inspect, sample or test materials at the source of supply or other locations. 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 his suppliers of responsibility for quality control.

Manufacturers' warranties, guaranties, instruction sheets and parts lists, which are furnished with certain materials incorporated in the work, shall be delivered to the Engineer in organized, indexed, neat and adequately bound volumes that are marked as to content before acceptance of the Contract.

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

G6.02 CITY-FURNISHED MATERIALS Materials furnished by the City will be available at locations designated in the Specifications, or if not designated in the Specifications, they will be available at the City Office. They shall be hauled to the site of the work by the Contractor, at his own expense, including any necessary loading and unloading that may be involved. The cost of handling and placing City-furnished material shall be considered as included in the price paid for the Contract item involving such City-furnished material.

The Contractor shall be held responsible for all materials furnished to him, and he shall pay all demurrage and storage charges. City-furnished materials lost or damaged from any cause whatsoever shall be replaced by the Contractor, at his expense. The Contractor will be liable to the City for the cost of replacing City-furnished material, and such costs may be deducted from any monies due or to become due the Contractor. All City-furnished materials that are not used on the work shall remain the property of the City and will be delivered to the City corporation yard.

G6.03 STORAGE OF MATERIALS Materials shall be stored by the Contractor in such a manner as to ensure their security and the preservation of their quality and fitness for the work and to facilitate inspection.

G6.04 DEFECTIVE MATERIALS All Contractor-furnished materials not conforming to the requirements of the Contract Documents may be rejected, whether in place or not. They shall be removed immediately from the site of the work unless otherwise permitted by the Engineer. No rejected material, the defects of which have been subsequently corrected, shall be used in the work unless approval in writing has been given by the Engineer. Upon failure of the Contractor to comply promptly with any order of the Engineer made under the provisions of this Section, the Engineer may cause the removal,

disposal and replacement of rejected material and deduct the cost thereof from any monies due or to become due the Contractor.

G6.05 TRADE NAMES AND ALTERNATIVES For convenience in designation in the Contract Documents, certain articles or materials to be incorporated in the work may be designated under a trade name or the name of a manufacturer and his catalog information. Except in those instances where the product is designated to match others in use in a particular improvement, either completed or in the course of completion, the use of an alternative article or material which is of equal quality and of the required characteristics for the purpose intended may be permitted, subject to the following requirements:

1. The Contractor shall submit his Proposal for an alternative in writing. Such request shall be made in ample time to permit review and approval without delaying the work.

2. No such Proposal will be considered unless accompanied by complete information and descriptive data necessary to determine the equality of the offered materials, articles, or equipment. Samples shall be provided when requested by the Engineer. The Contractor shall satisfy the Engineer as to the comparative quality, suitability or performance of the offered materials, articles or equipment. In the event that the Engineer rejects the use of such alternative materials, articles or equipment, ("material") then one of the particular products designated by brand name will be furnished.

3. The burden of proof as to the quality and suitability of alternatives shall be upon the Contractor and he shall furnish all information necessary as required by the Engineer. The Engineer shall be the sole judge as to the quality and suitability of alternative articles, equipment or materials and his decisions shall be final. Where use of an alternative material, article or equipment involves redesign of, or changes to, other parts of the work, the cost and the time required to effect such redesign or changes will be considered in evaluating the suitability of the alternative material, article or equipment. Cost of redesign by the Engineer will be borne by the Contractor.

4. Whenever classification, rating or other certification by a body such as UL or NEMA is a part of the specification for any material, proposal for use of alternative materials shall be accompanied by reports from the listed or equivalent recognized and industry accepted independent testing laboratory indicating compliance with specification requirements. The cost of all testing required to prove equality of the material proposed shall be borne by the Contractor. Approval of an alternative material shall be only for the characteristics or use named in such approval, and shall not be used to change or modify any Contract requirement.

G6.06 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 his authorized representative shall have free entry at all times to such parts of the plant as concern the manufacture or production of the materials. Adequate facilities shall be furnished free of charge to make the necessary inspection. The Engineer assumes no obligation to inspect materials at the source of supply. The responsibility of incorporating satisfactory materials in the work rests entirely with the Contractor, notwithstanding any prior inspections or tests.

G6.07 PRODUCT AND REFERENCE STANDARDS When descriptive catalog designations, including manufacturer's name, product brand name or model number are referred to in the Contract Documents, such designations shall be considered as being those found in industry publications in effect on the day the Notice to Bidders for the work is dated.

G6.08 SAMPLES After the award of the Contract, the Contractor shall furnish to the Engineer samples indicated in the Specifications or requested by the Engineer. Samples shall be submitted without charge, with shipping charges prepaid. Materials for which samples are required shall not be used in the work until approved in writing by the Engineer.

Each sample shall be submitted in duplicate unless otherwise directed, and shall be labeled with the following data: name of project; name of Contractor; material represented and location in the project including specification reference; and producer information including brand, model, place of origin, and other pertinent information.

The Contractor shall forward a transmittal letter to the Engineer with each shipment of samples containing the information required in the previous paragraph. Approval of a sample shall be only for the characteristics and use named in the submittal and approval shall not be construed to change or modify any Contract requirement. Before submitting samples, the Contractor shall

assure himself that the materials or equipment will be available in the quantities required in the project, as no change or substitution will be permitted after a sample has been approved unless approved by the Engineer in writing.

Samples of material from local sources shall be taken by or in the presence of the Engineer if so required by the Engineer; otherwise the samples will not be considered for testing.

Approved samples not damaged in testing may be incorporated in the finished work if marked for identification and approved by the Engineer. Materials incorporated in the work shall match the approved samples.

Failure of any material to pass the specified tests will be sufficient cause for refusal to consider under this Contract any further samples of the same brand, make or source of that material. The Engineer reserves the right to disapprove any material which has previously proven unsatisfactory in service.

Samples of material delivered on the site or in place may be taken by the Engineer for testing. Failure of samples to meet Contract requirements will annul previous approvals of the item tested.

G6.09 TESTING OF MATERIALS OR WORK Materials to be used in the work will be subject to inspection and tests by the Engineer or his designated representative. The Contractor shall furnish, without charge, such samples as may be required and make available locations for required in place testing.

Materials and work shall be tested in accordance with the methods in use by the State of California, Department of Transportation, or by nationally recognized testing organizations or as specified in the Contract Documents. The Engineer will make or approve all testing. Unless otherwise noted in the Specifications, testing will be made at the expense of the Contractor. In any case, in the event that any materials and work fail to pass tests, the cost of subsequent testing of similar materials and work as may be required by the Engineer shall be borne by the Contractor.

Test methods developed by the State of California, Department of Transportation are identified by the prefix Calif., followed by the serial number. Copies of individual test methods are available at the Transportation Laboratory, Sacramento, California.

Whenever a reference is made in the Specifications to a test method by Calif. number, it shall mean the test method in effect on the date of the Notice to Bidders for the work. Whenever a reference is made in the Specifications to a specification or test designation of the American Society for Testing and Materials, the American Association of State Highway Officials, Underwriters' Laboratories, Inc., or any other recognized national organization, and the number accompanying the test designation representing the year of adoption of the test has been omitted, the reference shall mean the test method in effect on the date of the Notice to Bidders for the work.

Whenever the Contract Documents provide an option between two or more test methods, the Engineer will determine the test method to be used.

Whenever a 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 report shall supplement the inspection, sampling and testing provisions of this Section 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 his discretion, select random samples from the lot for testing. Testing 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 his expense. The number of such samples and test specimens shall be entirely at the discretion of the Engineer.

G6.10 CERTIFICATE OF COMPLIANCE A Certificate of Compliance shall be furnished prior to the use of any materials for which the Special Provisions or Specifications require that such Certificate be furnished. In addition, the Engineer may permit the use of certain materials prior to sampling and testing if accompanied by a Certificate of Compliance stating that the materials involved comply in all respects with the requirements of the Specifications. The Certificate shall be signed by the manufacturer of the material. A Certificate of Compliance shall be furnished with each lot of material delivered to the work and the lots 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 approved by the Engineer.

SECTION 7

LEGAL RELATIONS AND RESPONSIBILITIES

G7.01 LAWS TO BE OBSERVED The Contractor shall keep himself fully informed concerning all requirements of law, including but not limited to all State and Federal laws and county and municipal ordinances and regulations which in any manner affect those engaged or employed in the work, 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 shall cause all his agents and employees to observe, all such requirements of laws and shall protect, indemnify and hold harmless the City and the Engineer, and all of their respective officers, agents and employees against all claims and liabilities arising from or based on the violation of any such requirement of law whether by the Contractor or his employees. If any discrepancy or inconsistency is discovered in the Contract Documents for the work in relation to any such requirements of laws, the Contractor shall immediately report the same to the Engineer in writing. The Contract Documents shall be governed by the laws of the State of California.

G7.02 LABOR CODE REQUIREMENTS Attention is directed to the following requirements of the Labor Code:

A. Hours of Labor. Eight hours labor constitutes a legal day's work. The Contractor shall forfeit, as penalty to the City, \$25 for each workman employed in the performance of the Contract by the Contractor or by any subcontractor under him for each calendar day during which such workman is required or permitted to work more than eight hours in any one day and 40 hours in any one calendar week in violation of the provisions of the California Labor Code and in particular, Sections 1810 to 1815 thereof, inclusive, except that work performed by employees of the Contractor in excess of eight hours per day and 40 hours during any one week shall be permitted upon compensation for all hours worked in excess of eight hours per day at not less than one-and-one-half times the basic rate of pay, as provided in said Section 1815.

B. Labor Non-Discrimination. Attention is directed to Section 1735 of the Labor Code which provides the Contractor shall not discriminate against any employee who is employed on the work because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex or age of such persons, except as provided in Section 12940 of the Government Code.

C. Prevailing Wages. The Contractor shall comply with California Labor Code Sections 1770 to 1780, inclusive. In accordance with said Section 1775, the Contractor shall forfeit as a penalty to an amount determined by the Labor Commissioner not to exceed Fifty Dollars (\$50) for each calendar day or portion thereof for each workman paid less than stipulated prevailing wage rates for such work or craft in which such worker is employed for any work done under the Contract by him or by any subcontractor under him in violation of the provisions of the Labor Code and in particular, Labor Code Sections 1770 to 1780, inclusive. In addition to said penalty and pursuant to said Section 1775, the difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Contractor.

Pursuant to the provisions of Section 1773 of the Labor Code and to the extent available given the recent enactment of SB1999, the City is in the process of obtaining the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work applicable to the work to be done from the Director of the Department of Industrial Relations. Copies of the prevailing rates are on file at the City Office and are available to any interested party on request. Such wage rates must be prominently posted at the construction site.

Attention is directed to the requirements of Section 1773.8 of the Labor Code. The Contractor shall make travel and subsistence payments to each worker needed to execute the work in accordance with the requirements of said Section 1773.8.

The City will not recognize any claim for additional compensation because of the payment by the Contractor of any wage rate in excess of the prevailing wage rate set forth in the Contract. The possibility of wage increases is one of the elements to be considered by the Contractor in determining his bid, and will not under any circumstances be considered as the basis of a claim against the City on the Contract.

D. Payroll Records. The Contractor's attention is directed to the following provisions of Labor Code

Section 1776. The Contractor shall be responsible for the compliance with these provisions by his subcontractors.

(a) Each contractor and subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work.

(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the 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 his or her authorized representative on request.

(2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to the City, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations.

(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the City, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the Contractor, subcontractor and the entity through which the request was made. The public shall not be given access to such records at the principal office of the Contractor.

(c) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division.

(d) Each contractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.

(e) Any copy of records made available for inspection as copies and furnished upon request to the public or the City, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement 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 the Contractor shall not be marked or obliterated.

(f) The Contractor shall inform the City of the location of records enumerated under subdivision (a), including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.

(g) In the event of noncompliance with the requirements of this Section, the Contractor shall have ten days in which to comply subsequent to receipt of written notice specifying in what respects such Contractor must comply with this Section.

In the event that the Contractor fails to comply within the 10-day period, he/she shall, as a penalty to the State or the City, forfeit Twenty-Five Dollars (\$25.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due.

The penalties specified in subdivision (g) Labor Code Section 1776 for noncompliance with the provisions of said Section 1776 may be deducted from any monies due or which may become due to the Contractor.

The Contractor and each subcontractor shall preserve their payroll records for a period of 3 years from the date of completion of the Contract.

E. Apprentices. The Contractor shall fully comply with the requirements of Sections 1777.5 and 1777.6 of the California Labor Code and the regulations of the California Apprenticeship Council. In accordance with Section 1777.5,

the Contractor shall secure the necessary certificates and shall contribute to the apprenticeship fund or funds, as provided for therein. The Contractor shall require each subcontractor who will perform work or labor or render service to the Contractor in or about the construction of the work to comply fully with Sections 1777.5 and 1777.6 of the Labor Code. Information relative to apprenticeship standards, wage schedules and other requirements may be obtained from the State Division of Apprenticeship Standards and its branch offices.

F. **Workers' Compensation.** Pursuant to the requirements of Section 1860 of the California Labor Code, the Contractor will be required to secure the payment of workers' compensation to his employees in accordance with the provisions of Section 3700 of the Labor code.

Prior to commencement of work, the Contractor shall sign and file with the City, a certification in the following form:

"I am aware of the provisions of Section 3700 of the California 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 provisions before commencing the performance of the work of this contract."

Said certification is included in the Contract, and signature and return of the Contract as provided in Section G3.03, "Execution of Contract," of the General Conditions, shall constitute signing and filing of the said certificate.

G7.03 AIR POLLUTION CONTROL The Contractor shall comply with all air pollution control rules, regulations, ordinances and statutes which apply to any work performed pursuant to the Contract.

Material to be disposed of shall not be burned, either inside or outside the work site.

G7.04 WATER POLLUTION CONTROL 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 his operations so as to avoid or minimize the introduction of sediment into the stormwater system and muddy and silting of said streams, lakes, reservoirs, bays and coastal waters. Care shall be exercised to preserve roadside or other vegetation beyond the limits of construction. The use of the term "stream(s)" in this section shall also include and mean any and all stormwater collection and conveyance systems/facilities whether private or public except when such definition is not appropriate/does not make sense.

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 plans, specified herein or in the Special Provisions, or directed by the Engineer and instituting Best Management Practices and/or Performance Standards set forth in City's National Pollutant Discharge Elimination System Permit for the discharge of water into the waters of the State and/or conditions set forth in a project specific permit if so required by the State Water Resources Board/SF Regional Water Quality Board. Bidders and Contractor shall inform themselves of all relevant water pollution control requirements.

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, Best Management Practices and Performance Standards, including but not limited to, dikes, basins, ditches, and applying straw and seed, which become necessary as a result of his operations. 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 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 his 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 his operations and his 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 5 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.

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 nor in the provisions in this Section shall relieve the Contractor of the responsibility for compliance with Sections 5650 and 12015 of the Fish and Game Code, or other applicable statutes relating to prevention or abatement of water pollution.

The Contractor shall also conform to the following provisions:

1. Where working areas encroach on 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 streams, such operations shall be conducted without muddying the stream. Mechanized equipment shall not be operated in the stream channels of such 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 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 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 a meandering thread 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 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 his 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 his responsibility to comply with the other provisions of the Contract, in particular his responsibility for damage and for preservation or property.

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

G7.04A REMOVAL, RELOCATION OR PROTECTION OF EXISTING UTILITIES Pursuant to California Government Code section 4215, the City or other appropriate utility company shall identify and provide for the timely removal, relocation or protection of any existing main or trunkline utility facilities located on the site of the work to be completed with reasonable accuracy in the plans and specifications made part of the invitation for bids. If the contractor discovers utility facilities not identified by the City or others while performing the work, the Contractor shall immediately notify the City and owner of the utility in writing. For those utilities discovered by the Contractor, the City or other appropriate party as required will compensate the Contractor for the costs of locating, removing or relocating such utility facilities; repairing damage not due to the failure of the contractor to exercise reasonable care; and for equipment on the project necessarily idled during such work. The Contractor will not be assessed liquidated damages for delays in completion of the project due to the failure of the City or owner of the utility to provide for removal or relocation of such utility facilities.

G7.05 SOUND CONTROL REQUIREMENTS The Contractor shall comply with all local sound control and noise level rules, regulations and ordinances which apply to any work performed pursuant to the Contract.

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

G7.06 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 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, defoliants, desiccants, soil sterilants, 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 a plant regulator, defoliant or desiccant shall be considered as pesticide.

G7.07 WEIGHT LIMITATIONS Unless expressly permitted in the Technical Specifications, the Contractor shall not operate construction equipment or vehicles of any kind which, laden or unladen, exceed the maximum weight limits set forth in Division 15 of the Vehicle Code, over completed or existing base, surfacing, pavement or structures.

G7.08 PAYMENT OF TAXES The Contract prices paid for the work 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.

The Contractor shall withhold and pay any and all sales and use taxes, withholding taxes, whether State or Federal, Social Security taxes, State Unemployment Insurance charges and all other taxes which are now or hereafter may be required to be paid or withheld under any laws.

G7.09 PERMITS AND LICENSES The Contractor shall procure all permits and licenses (except those procured or to be procured by the City which are listed in the Special Provisions or Specifications), procure a City of Millbrae business license, pay all charges and fees, and give all notices necessary and incident to the due and lawful prosecution of the work.

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

The Contractor shall comply with permits obtained by the City for the work which are listed in the Special Provisions or Specifications.

G7.10 SUBSURFACE EXCAVATIONS, NOTIFICATION Attention is directed to Government Code Section 4216 to 4216.9, and in particular Section 4216.2 which provides, in part:

"Except in an emergency, every person planning to conduct any excavation shall contact the appropriate regional notification center at least two working days but no more than 14 calendar days prior to commencing that excavation, if the excavation will be conducted in an area which is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the excavator and, if practical, the excavator shall delineate with white paint or other suitable markings the area to be excavated. The regional notification center shall provide an inquiry identification number to the person who contacts the center and shall notify any member, if known, who has a subsurface installation in the area of the proposed excavation."

The Contractor shall contact the regional notification center, "Underground Service Alert," and schedule the work to allow ample time for the center to notify its members and, if necessary, for any member to field locate and mark its facilities.

G7.11 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 shall indemnify and save harmless the City, the Engineer, and their duly authorized representatives from all suits at law, or actions of every nature for, or on account of, the use of patented materials, equipment, devices or processes. In case such materials, equipment, devices or processes are held to constitute an infringement and their use enjoined, the Contractor, at his expense, shall: (a) secure for the City the right to continue using said materials, equipment, devices or processes by suspension of the injunction or by procuring a license or licenses, or (b) replace such materials, equipment, devices or processes, or (c) modify them so that they become noninfringing or remove the enjoined materials, equipment, devices or processes and refund the sums paid therefor without prejudice to any other rights of the City or the Engineer.

G7.12 SAFETY REQUIREMENTS The Contractor shall promptly and fully comply with and carry out, and shall without separate charge therefor to the City, enforce compliance with the safety and first aid requirements prescribed by applicable State and Federal laws and regulations, rules and orders and as may be necessary to the end that work shall be done in a safe manner and that the safety and health of the employees and the people of local communities is safeguarded. Compliance with the provisions of this Section by subcontractors shall be the responsibility of the Contractor. All installed material, equipment and structures, without separate charge therefor to the City, shall fully conform with all applicable State and Federal safety laws, rules, regulations and orders and it shall be the Contractor's responsibility to furnish only such material, equipment and structures, notwithstanding any omission in the Contract Documents thereof or that a particular material, equipment or structure was indicated.

Upon the failure of the Contractor to comply with any of the requirements of this Section, the Engineer shall have the authority, but not the duty, to stop any operations of the Contractor affected by such failure until such failure is remedied. No part of the time lost due to any such stop orders shall be made the subject of a claim for extension of time or for increased costs or damages by the Contractor. In no case shall the actions of the Engineer impose a "duty of care" on the City.

G7.13 TRENCH EXCAVATION SAFETY PLAN Attention is directed to California Labor Code Section 6705. At least five days in advance of excavation of any trench five feet or more in depth, the Contractor shall submit to the Engineer for acceptance a detailed plan showing the design of shoring, bracing, sloping and other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If such plan varies from the shoring system standards established by the State Construction Safety Orders, the plan shall be prepared and signed by a registered civil or structural engineer. Nothing in this Section shall be deemed to allow the use of a shoring, sloping or protective system less effective than that required by the Construction Safety Orders of the Division of Industrial Safety.

Nothing in this Section shall be construed to impose liability on the City, the Engineer or any of their employees.

G7.14 SANITARY PROVISIONS The Contractor shall conform to the rules and regulations pertaining to sanitary provisions established by the State, and to County, City and municipal laws and ordinances as may be applicable. Toilets for use of employees on the work shall be furnished where needed and shall be maintained by the Contractor. Their use shall be strictly enforced. City sanitary facilities will not be available for use by the Contractor's employees, except where specifically designated in writing by the Engineer.

G7.15 PUBLIC CONVENIENCE The Contractor shall so conduct his operations as to offer the least possible obstruction and inconvenience to the public and he shall have under construction no greater length or amount of work than he can prosecute properly with due regard to the rights of the public.

All public traffic shall be permitted to pass through the work with as little inconvenience and delay as possible. The Contractor shall obtain approval of his plans for the routing and control of traffic from the appropriate city, county or State agency. Where the temporary rerouting or closing to traffic of any public street or highway is necessary, the Contractor shall make all necessary arrangements with the appropriate city, county or State agency.

All trucks coming to the site or leaving the site with materials or loose debris shall be loaded in a manner which will prevent dropping of material or debris on public streets. Spillage resulting from hauling operations along or across any public traveled way shall be removed immediately at the Contractor's expense.

Construction operations shall be conducted in such a manner as to cause as little inconvenience as possible to owners of abutting property. Convenient access to driveways, houses and buildings along the line of work shall be maintained, and temporary approaches to roads or highways shall be provided and kept in good condition. Roadway excavations shall be conducted in such a manner as to provide a reasonably smooth and even surface satisfactory for use by public traffic at all times.

For work in public right-of-way, the Contractor shall comply with the rules and regulations of the State, County or local agency that owns the right-of-way.

All costs of complying with public convenience requirements of the City or other agencies shall be included in the Contract price.

The Engineer shall have the authority, but not the duty, to stop the Contractor from beginning new work until the provisions of this Section have been met.

G7.16 PUBLIC SAFETY The Contractor shall assume all responsibility for public safety during construction, and all costs arising therefrom shall be included in the Contract amount. Whenever the Contractor's operations create a condition hazardous to traffic or to the public, he shall furnish, erect and maintain, at his expense, such fences, 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. The Contractor shall also furnish such flagmen as are necessary to give adequate warning to traffic or to the public of any dangerous conditions. For work in public right-of-way, the Contractor shall comply with the rules and regulations of the State, County or local agency that owns the right-of-way.

G7.17 PRESERVATION OF PROPERTY Due care shall be exercised to avoid injury to existing improvements or facilities, utility facilities, adjacent property and trees, shrubs and other plants that are not to be removed.

Trees, shrubs and other plants that are not to be removed, and pole lines, fences, signs, survey markers and monuments, buildings and structures, conduits, pipe lines, sewer and waterlines, highway facilities, and any other improvements or facilities, under or above ground, that are within or adjacent to the work limit line shall be protected from injury or damage, and the Contractor shall provide and install suitable safeguards to protect such objects from injury or damage. If such objects are injured or damaged by reason of the Contractor's operations, they shall be replaced or restored at the Contractor's expense. 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 Specifications 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 monies due or to become due to the Contractor under the Contract.

The fact that any underground facility is not shown on the Contract Plans shall not relieve the Contractor of his responsibility under Section G8.14, "Non-City Facilities," of the General Conditions. 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 his 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 prices paid for the various Contract items of work and no additional compensation will be allowed therefor.

G7.18 RESPONSIBILITY FOR DAMAGE Neither City, nor any of its Councilmembers, officers, employees, the Engineer, representatives, consultants, engineers, attorney or insurers shall be liable, responsible, answerable or accountable in any manner from any of the following: (1) damage to the work itself or any part thereof, or any machinery, equipment, materials, supplies or facilities or appurtenances of any person or entity used in connection with the work hereunder; (2) personal injury (including, without limitation, physical injury, mental or emotional injury or distress and loss of consortium) or wrongful death to any person (including without limitation personal injury or wrongful death to any of the following (who shall hereinafter be referred to as "Potential Claimants"): Contractor; all subcontractors; consultants; the owners, lessees, sublessees, tenants and other occupiers of the property upon, over or in which the work hereunder is being performed or of any property near, adjacent thereto, or in the vicinity of such property, affected by such work or by construction of the project; the employees, agents, representatives, business invitees of any of the foregoing; any third persons and members of the public; and City and its Councilmembers, agents, employees and consultants; (3) property damage to the real, personal or intangible property of any person, firm or entity, including without limitation that of any Potential Claimant; (4) Business losses and business interruption losses suffered by any owners, lessees, sublessees, tenants or other occupiers of the real property upon, over or in which the work hereunder is being performed or of any property near, adjacent thereto, or in the vicinity of such property, affected by such work or by construction of the project. The matters from which City is absolved from liability or responsibility under the foregoing provisions of this Section G7.19 shall be referred to collectively as "Potential Liabilities and Claims."

To the maximum extent permitted by law, the Contractor shall be responsible for and shall indemnify, defend and save harmless the City, its Councilmembers, officers, employees, the Engineer, agents, representatives, engineers, consultants, attorneys and insurers ("Indemnitees") from and against any claims, demands, actions, causes of action, costs, expenses, liabilities, fines, penalties, judgments, liens, losses and damages of any kind whatsoever (including, without limitation, the Potential Liabilities and Claims), arising from any breach or failure of Contractor to perform its obligation or duties under this Agreement, from Contractor's activities, actions and conduct in performing the work hereunder or from any other cause whatsoever during the progress of the work or at any time before its final completion and acceptance. The duty of the Contractor to indemnify and save harmless includes the duties to defend (by legal counsel satisfactory to the City) as set forth in Section 2778 of the Civil Code and to pay attorney's fees and litigation costs required by such defense.

With respect to third party claims against Contractor, the Contractor waives any and all rights to any type of express or implied indemnity against the City, its Councilmembers, officers, employees, the Engineer, representatives, agents, consultants, engineers, attorneys and insurers. It is the intent of the parties that the Contractor's duties of defense and indemnity apply and are in full and undiminished force and effect hereunder regardless of the existence or degree of negligence or other fault on the part of the parties herein indemnified or on the part of any other person, firm or entity, save and except the active negligence or willful misconduct of City, its Councilmembers, consultants, engineers, officers, or employees and the Engineer. Should any part of the indemnity provisions of this Section G7.19 be held invalid or unenforceable, the Contractor shall nonetheless be responsible to indemnify and defend and save each of the Indemnitees hereunder harmless to the maximum extent provided by law. The requirements of this provision shall survive termination of the contract.

G7.19 RESPONSIBILITY FOR WORK AND MATERIALS. Until the acceptance of the contract, the contractor shall have the charge and care of the work and of the materials to be used therein, including materials for which he has received partial payment, 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 nonexecution of the work. Relief from maintenance and responsibility for a portion of the total work will not be granted by the City, unless specifically provided for in the Special Provisions. The Contractor shall rebuild, repair or restore all injuries, losses or damages to any portion of the work and materials occasioned by any cause before its completion and acceptance and shall bear the expense thereof. Should such injuries, losses or damages be caused by a third party, Contractor shall remain responsible and shall pursue on his own any proper response or

payment by such third party for the injury, loss or damage. Where necessary, the Contractor shall, at his expense, provide suitable drainage and erect such temporary structures as are necessary to protect the work and materials from damage. The suspension of the work from any cause whatever shall not relieve the Contractor of his responsibility for the work and materials as herein specified. The Contractor shall properly store materials which have been partially paid for 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.

G7.20 CONTRACTOR'S LIABILITY INSURANCE

A. Contractor shall purchase from and maintain in full force and effect from a company or companies lawfully authorized to do business in California (and acceptable to the City) policies of liability insurance as will protect the Contractor and the City, its Councilmembers, officers, agents, employees, the Engineer, representatives, engineers, consultants and attorneys from claims set forth below which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefits and any other similar employee benefit acts, statutes, rules or regulations which are applicable to the work;

2. claims for damage because of bodily injury, mental or emotional distress, occupational sickness or disease, or death of the Contractor's employees and loss of consortium claimed to be suffered by a spouse of such an employee;

3. claims for damages because of bodily injury, mental or emotional injury or distress, sickness or disease, loss of consortium or death of any person other than the Contractor's employees;

4. claims for damages insured by comprehensive personal injury liability coverage which are sustained by (1) a person as a result of an offense, act or omission directly or indirectly related to employment of such person by the Contractor, or (2) by another person;

5. claims for damages, other than to the work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

6. claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; and

7. claims arising from or covered by the Contractor's indemnity obligations under Section

B. The liability insurance required by Paragraph A shall include all major divisions of coverage and be on a comprehensive basis including:

1. Course of Construction/Property Damage/Premises Operations (Including X, C & U coverages)
2. Independent Contractors' Protective
3. Products and Completed Operations
4. Personal Injury Liability with Employment Exclusion deleted
5. Broad Form Blanket Contractual, including specified provision for Contractor's obligation under Section G7.19
6. Automobile liability coverage for Owned, Non-Owned and hired motor vehicles

7. Broad Form Property Damage, including Completed Operations.

C. The liability insurance required by Paragraph A shall be written for not less than the limits of liability specified in the Special Provisions or as required by law, whichever is greater. Coverages shall be written on an occurrence basis and shall be maintained without interruption from the date of commencement of work until the date of acceptance and final payment, and thereafter as may be required in the Special Provisions.

D. City, its Councilmembers, officers, employees, the Engineer, consultants, engineers, agents, and attorneys shall be named as additional insureds on the Contractor's and subcontractors liability coverage policies.

E. In the event any work is subcontracted, the Contractor shall require the subcontractors to provide statutory workers' compensation insurance and employer's liability insurance for all of the subcontractors' employees engaged in such work. In addition, the Contractor shall be responsible for any liability directly or indirectly arising out of the work performed by a subcontractor, to the extent such liability is not covered by the subcontractor's insurance.

F. Within fifteen (15) calendar days from date of the notice of award, Contractor shall furnish to the City certificates of each policy of insurance required hereunder, in form and substance satisfactory to City. Such certificates shall show the type, amount, class of operations covered, effective dates and date of expiration of policies and shall contain substantially the following statements:

1. That the insurance covered by this certificate shall not be canceled (or not renewed) and coverage will not be materially altered without 30 days' prior written notice to City.

2. That the City, its Councilmembers, officers, employees, agents, the Engineer, consultants, engineers, agents and attorneys are additional insureds on the policies.

3. That the policy is primary insurance and the company providing such policy shall be liable thereunder for the full amount of any claim or loss up to and including the total limits of liability, without right of contribution from any other insurance maintained by the City or the other additional insureds.

4. That the policy provides that inclusion of the City as an insured shall not affect the City's rights as respects any claim, demand, suit or judgment brought or recovered against the Contractor. Said policy shall protect Contractor and City in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase the company's liability as set forth in this policy beyond the amount shown or to which the company would have been liable if only one interest had been named as an insured.

5. That such policy applies separately to each insured or additional insured against whom claim is made or suit is brought.

6. That such policy shall provide for severability of interests.

7. That an act or omission of one of the insureds which would void or otherwise reduce coverage shall not do so as to as to any other insured.

Upon City's requirement, copies of each such policy of insurance and all endorsements shall also be promptly delivered to City.

G. The Contractor shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not be interpreted as relieving Contractor from any obligation under the Contract Documents. If any claim is made by any third person against the Contractor or any subcontractor on account of any accident, the Contractor shall promptly report the facts in writing to the insurance carrier and the City.

H. If Contractor fails to procure and maintain any insurance required under this Section, the City may take out and maintain, at the Contractor's expense, such insurance as the City may deem proper and deduct the cost thereof from any monies due the Contractor.

I. For projects located within public right of way, additional insurance requirements may be imposed by the owner of the right of way as a condition of issuing an encroachment or street opening permit to the Contractor. The Contractor shall provide such insurance at his sole cost and expense.

G7.21 PROPERTY INSURANCE Unless otherwise provided in the Special Provisions, the Contractor will purchase and maintain, in a company or companies lawfully authorized to do business in California, and acceptable to the City, property insurance upon the entire work, in the amount of the Contract price on a replacement cost basis. Such property insurance shall be maintained until final payment has been made.

Property insurance shall be on an all-risk policy form (commonly known as "Builder's Risk-All Risk") and shall insure against the perils of earthquake, landslide, flood, collapse, loss due to the result of faulty workmanship or design, and all other risks and shall cover reasonable compensation for Engineer's services and expenses required as a result of such insured loss. This insurance shall insure the interests of the Owner, the Contractor, and subcontractors in the work. Contractor and City will be named as additional insureds on the policy.

The property insurance may contain deductibles not to exceed the amounts specified in the Special Provisions. If no amounts are specified, the insurance shall be written without deductibles. The Contractor shall pay costs not covered because of such deductibles.

Complete copies of each policy of insurance and certificates of each policy, in form and substance satisfactory to City, shall be filed with City within fifteen (15) calendar days after date of notice of award. The policies and certificates shall provide:

- (1) that City is included as a named insured;
- (2) that losses shall be payable to Contractor and City as their interests appear; and
- (3) the policy will not be canceled, nor coverage materially altered, without 30 days' prior written notice to City.

G7.22 DISPOSAL OF MATERIAL OUTSIDE THE WORK SITE Unless otherwise specified in the Specifications, the Contractor shall make his own arrangements for disposing of materials outside the work site and he shall pay all costs involved.

When any material is to be disposed of outside the work site, the Contractor shall first obtain a written permit from the property owner on whose property the disposal is to be made and he shall file with the Engineer said permit 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 permit.

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.

G7.23 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 at any time, by the use of other forces.

When two or more contractors are employed on related or adjacent City work, each shall conduct his 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 operations, and for loss caused the other due to his unnecessary delays or failure to finish the work within the time specified for completion.

G7.24 OCCUPANCY PRIOR TO ACCEPTANCE The City reserves the right to occupy all or any part of the

project prior to completion of the entire Contract, upon written order therefor. In such event, the Contractor will be relieved of responsibility for any injury or damage to such part as results from such occupancy and use by the City.

If the Contractor carries insurance against damage to such premises or against liability to third persons covering the premises so used and occupied by the City, and if such occupancy results in increased premiums for such insurance, the City will pay to the Contractor the added cost for such insurance during the period of occupancy.

Such occupancy does not constitute acceptance by the City either of the complete work or of any portion thereof, nor will it relieve the Contractor of full responsibility for correcting defective work or materials found at any time before the formal written acceptance of the entire Contract by the City or during the full guarantee period after such acceptance.

G7.25 ACCEPTANCE OF THE WORK When the Engineer has made the final inspection as provided in Section G5.14 and determines that the work has been completed in all respects in accordance with the Contract Documents, he will recommend that the City formally accept the work. Immediately upon and after such formal written acceptance by the City, the Contractor will be relieved of the duty of maintaining the work as a whole, and he will not be required to perform any further work thereon except as provided in Sections G4.15, "GUARANTY OF WORK" and G4.16, "CORRECTION OF WORK DURING WARRANTY PERIOD."

G7.26 PROPERTY RIGHTS IN MATERIALS Nothing in the Contract shall be construed as vesting in the Contractor any right of property in the materials used after they have been attached or affixed to the work or soil or after partial payment has been made for material delivered on the ground or stored subject to or under the control of the City and unused. All such material shall become the property of the City upon being so attached or affixed or upon payment for materials delivered on the ground or stored subject to or under the control of the City and unused, as provided in Section 9.

G7.27 RIGHTS IN LAND AND IMPROVEMENTS The Contractor shall make no arrangements with any person to permit occupancy or use of any land, structure or building within the limits of the work, 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 buildings. The Contractor shall not occupy City-owned property outside the limit of the work as shown on the Contract Drawings unless he obtains prior written approval.

G7.28 ANTITRUST CLAIMS The Contractor's attention is directed to the following provision of Public Contract Code Section 7103.5(b) which shall be applicable to the Contractor and his 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 right, 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 acknowledgment by the parties."

G7.29 ACCESS TO THE WORK The Contractor shall satisfy himself that the jurisdictions through which his operations and haul routes pass will permit such operations with respect to type of vehicle, laden weights, frequency and dimensions of loads, hours of operation and required traffic control. All necessary permits, licenses or bonds shall be obtained and paid for by the Contractor.

G7.30 PERSONAL LIABILITY Neither the City's Councilmembers, City Administrator, City Clerk, Engineer, Officers, Agents, Representatives nor Employees shall be personally responsible for any liability arising under or by virtue of this Contract.

G7.31 THIRD PARTY RIGHTS Nothing in the Contract is intended to create the public or any member thereof a third party beneficiary hereunder.

G7.32 INDEPENDENT CONTRACTOR STATUS The Contractor shall independently perform all work

under this Contract and shall not be considered as an agent or employee of the City, nor shall the Contractor's subcontractors or employees be considered as subagents of the City.

G7.33 HAZARDOUS CHEMICALS AND WASTES The Contractor shall bear full and exclusive responsibility for any release of hazardous or nonhazardous chemicals or substances during the course of performance of this Contract and for all proper and required reporting, cleanup and disposal and other activities as may be required by law or regulation. The Contractor shall immediately report any such release to the Engineer. The Contractor shall be solely responsible for all claims and expenses associated with the response to, removal and remediation of the release, including, without limit, payment of any fines or penalties levied against the City by any agency as a result of such release and shall hold harmless, indemnify and defend the City from any claims arising from such release. For purposes of this section only, the term "claims" shall include (i) all notices, orders, directives, administrative or judicial proceedings, fines, penalties, fees or charges imposed by any governmental agency with jurisdiction, and (ii) any claim, cause of action, or administrative or judicial proceeding brought against the City, its Councilmembers, officers, agents or employees, or for any loss, cost (including reasonable attorney's fees), damage or liability, sustained or suffered by any person or entity, including City.

If the performance of the work outlined by these contract specifications creates any hazardous wastes, those wastes shall be properly disposed of according to federal, state and local laws, at the expense of the Contractor. The Contractor shall dispose of the wastes under its own EPA Generator Number. In no event shall the City be identified as the generator. The contractor shall notify the Engineer of any such hazardous wastes and the City reserves the right to a copy of any tests conducted on the wastes and, at its cost, to perform additional tests or examine those wastes, prior to its disposition. The Contractor shall hold harmless, indemnify and defend the City from any claims arising from the disposal of the hazardous wastes, regardless of the absence of negligence or other malfeasance by Contractor.

G7.34 ATTORNEY'S FEES The City shall not pay any attorney's fees, costs or expenses of any other party in any action or proceeding brought to enforce the provisions of this contract.

SECTION 8

PROSECUTION AND PROGRESS

G8.01 SUBCONTRACTING . The Contractor shall give his personal attention to the fulfillment of the Contract and shall keep the work under his control.

No subcontractor will be recognized as such and nothing in the Contract Documents shall create any contractual relationship between the City and any subcontractor. The Contractor is as fully responsible to the City for the acts and omissions of his subcontractors and of persons either directly or indirectly employed by them as he is for the acts and omissions of persons directly employed by him.

The Contractor shall perform with his own organization Contract work amounting to not less than fifty percent (50%) of the original total Contract price unless otherwise specified in the Special Provisions. Where an entire item is subcontracted, the value of work subcontracted will be based on the Contract item bid price. When a portion of an item is subcontracted, the value of work subcontracted will be based on the estimated percentage of the Contract item bid price, determined from information submitted by the Contractor, subject to approval by the Engineer.

Attention is directed to the requirements of (commencing with California Public Contract Code Section 4100) the California Public Contract Code which are applicable to this Contract. Each bidder shall list in his Bid the name and business address of each subcontractor to whom the bidder proposes to subcontract a portion of the work, and shall list each subcontractor, licensed by the State of California, proposed by the bidder to specially fabricate and install a portion of the work. Said list shall include a description of the portion of the work which shall be done by each subcontractor. The bidder shall execute and submit with his Bid the "List of Subcontractors" on the form included in this book. Additional forms may be obtained from the Engineer. The Contractor shall not, without the consent of the City, either substitute any person as subcontractor in place of the subcontractor designated in the original List of Subcontractors, or sublet or subcontract any portion of the work in excess of one-half of one percent of the total amount of his proposal for which he did not originally designate a subcontractor.

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 subcontractor shall be removed immediately on the request of the City, and shall not again be employed on the work.

The on-site production of materials produced by other than the Contractor's forces shall be considered as subcontracted. The erection, establishment or reopening of on-site plants for production of materials and the operation thereof in the production of materials for use on the work, shall conform to the requirements relating to labor set forth in the Contract Documents.

The Contractor shall require, by written agreement, each subcontractor to be bound to the Contractor by terms of the Contract Documents and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by the Contract Documents, assumes toward the Owner, to the extent of the work to be performed by the subcontractor. Each subcontract agreement shall preserve and protect the rights of the City under the Contract Documents with respect to the work to be performed by the subcontractor, so that subcontracting will not prejudice such rights.

G8.02 ASSIGNMENT The performance of the Contract may not be assigned except upon the written consent of the City. Consent will not be given to any proposed assignment which would relieve the original Contractor or his surety of their responsibilities under the Contract nor will the City consent to any assignment of a part of the work under the Contract.

The Contractor may assign monies due or to become due him 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 monies 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.

G8.03 NOTICE TO PROCEED As soon as practicable after execution of the Contract by the City, approval by the City of Contract Bonds and all other documents listed in the Contract, and after receipt of acceptable insurance certificates

by the City and any other items as may be required in the Contract Documents, a written Notice to Proceed will be mailed to the Contractor. The effective date of the Notice to Proceed will be the date stated as such in the Notice to Proceed, provided that the effective date will not be earlier than the day following the issuance of the Notice to Proceed.

G8.04 BEGINNING OF WORK The Contractor is not authorized to perform any work until he has received a Notice to Proceed from the City. Within ten (10) days after the effective date of such Notice to Proceed, the Contractor shall commence work and shall diligently prosecute the same to completion within the time limit provided in the Special Provisions.

The Contractor shall notify the Engineer, in writing, of his intent to begin work at least 72 hours before work is begun and shall specify the date the Contractor intends to start. If the project has more than one location of work, a separate notice shall be given for each location.

Should the Contractor begin work in advance of receiving the Notice to Proceed and providing notice to the Engineer, any work performed by him in advance of such notice shall be considered as having been done by him at his own risk and as a volunteer.

G8.05 SCHEDULES AND PROGRESS REPORTS The Contractor shall, within the time specified in the Special Provisions after the effective date of the Notice to Proceed, submit to the Engineer the specified number of copies of a construction schedule covering his operations for the work. Failure to submit at any time a proper and adequate schedule as specified shall be adequate reason alone to delay approval of any partial payments as an improperly submitted payment request until such required schedule is submitted and accepted. The construction schedule shall be in the form required by the Special Provisions or Specifications. The schedule shall show the order in which the Contractor proposes to carry out the work and the dates on which he expects to start and finish each part or division of the work (including procurement of materials, plant and equipment). The construction schedule shall be consistent with the time and order of work requirements of the Contract Documents and shall provide for expeditious and practicable execution of the work; provided that it shall not show a completion date earlier than the date by which the Contract must be completed pursuant to Section G8.07 and the corresponding Special Provision unless this early completion date was submitted with the Contractor's Proposal and the Contractor agrees to sign a Change Order reducing the completion time to that proposed by his schedule. If the Contractor desires to revise his construction schedule, or if it becomes necessary to revise it due to major changes, he shall submit the specified number of copies of the revised schedule for review and comment by the Engineer.

The Contractor shall, within ten (10) days after the effective date of the Notice to Proceed, also submit to the Engineer three copies of a schedule of submittals which is coordinated with the Contractor's construction schedule and within the review times provided in the Contract Documents.

For a payment request to be complete and proper, the Contractor shall submit to the Engineer, at the time of submittal of the invoice for work completed (See Section G9.08), a schedule summary report in a form and of sufficient detail and character as specified in the Special Provisions. The schedule summary report shall include the updated current construction schedule and shall specify whether the project is on schedule and, if not, the reasons therefor and actions being taken to get back on schedule if work is behind schedule. The monthly schedule summary report shall also indicate the delivery status of major and critical items of purchased equipment and material, the status of shop drawings and field fabricated work and such other information as may be required and set out in the Special Provisions.

G8.06 SITE MEETINGS The Contractor shall schedule meetings with the Engineer and each active subcontractor at the work site weekly, or at such other frequency as specified in the Special Provisions. Each subcontractor shall have present a competent representative to report the conditions of his work and to discuss problems.

G8.07 TIME OF COMPLETION The Contractor shall complete all or any designated portion of the work called for under the Contract in all parts and requirements within the time set forth in the Special Provisions.

G8.08 ADDITIONAL SHIFT WORK The time limits specified for the completion of the work contemplated may be insufficient to permit completion of the work by the Contractor working a normal number of hours per day or week on a single shift basis. Where additional shifts or premium time pay are necessary to ensure that the work will be completed within the time limits specified, any resulting additional costs will be considered to be included in the price paid for the various Contract items of work and no additional compensation will be allowed therefor.

If the Contractor desires to carry on work at night or outside regular working hours, he shall give timely notice to the Engineer to allow satisfactory arrangements to be made for observing the work in progress.

G8.09 CITY'S RIGHT TO STOP THE WORK If the Contractor fails to promptly correct work which is not in accordance with the requirements of the Contract Documents or persistently fails to carry out work in accordance with the Contract Documents, the Engineer may, in writing, order the Contractor to stop the work, or any portion thereof, until the cause for such order has been eliminated. The Contractor shall immediately comply with a written order of the Engineer to stop the work. The work stopped shall be resumed as and when ordered by the Engineer.

G8.10 LIQUIDATED DAMAGES It is agreed by the parties to the Contract that in case all the work called for under the Contract in all parts and requirements is not completed within the number of days as set forth in the Special Provisions, damage will be sustained by the City and that it is and will be impracticable and extremely difficult to ascertain and determine the actual damage which the City will sustain in the event of and by reason of such delay; and it is therefore agreed that the Contractor shall pay to the City (as liquidated damages for delay and not as a penalty) the sum set forth in the Special Provisions per day for each and every calendar day's delay in finishing the work in excess of the number of days prescribed; and the Contractor agrees to pay said liquidated damages herein provided for, and further agrees that the City may deduct the amount thereof from any monies due or that may become due the Contractor under the Contract if the Contractor has not paid within seven (7) days any demand from the City for liquidated damages. If, based on the current approved progress schedule and rate of progress, it is determined by the Engineer that completion will exceed the Contract time, as extended by any change orders, the Engineer may prospectively assess and withhold liquidated damages from progress payments. If and at such time as progress improves to indicate timely completion, liquidated damages so withheld may be released at the next regular progress payment.

G8.11 DELAYS AND EXTENSIONS OF TIME The Contractor will be granted an extension of time and will not be assessed with liquidated damages or the cost of engineering and inspection for any portion of the delay in completion of the work beyond the time set forth in the Special Provisions caused by unforeseeable causes beyond the control and without the fault or negligence of the Contractor or subcontractor. Examples of such causes include acts of God or of the public enemy, fire, floods, epidemics, quarantine restrictions, strikes and other work stoppages caused by a labor dispute, shortage of materials as conditioned below, and freight embargoes, changes made under Section 4.04 ("Changes") or acts or neglect of the City or Engineer not contemplated by the Contract Documents. In all cases, any extension of time is conditioned on the following: (1) that the cause is not due in any respects to the fault of the Contractor or subcontractor and the Contractor has taken reasonable precautions to prevent delays due to such cause, (2) that the Contractor has developed and implemented work-around plans, schedules and actions to mitigate or avoid project completion delays to the extent practical and possible, (3) that any delayed activities are on the critical path and (4) that the Contractor notifies the Engineer in writing within 10 calendar days from the beginning of such delay specifying the nature of the delay, the number of days actually delayed or expected to be delayed and the measures taken to prevent, mitigate or minimize the delay. Failure to submit written notice within this time shall constitute an absolute waiver of any claim for a time extension; failure to submit all the required information shall be sufficient cause for denial of the request for a time extension; and failure to have a current and updated schedule on file with the Engineer at the time of request for a time extension or claim of delay shall be sufficient cause alone to reject a claim and deny a request for a time extension.

Further, no extension of time will be granted for a delay caused by a shortage of or delay in delivery of materials, unless the Contractor furnishes to the Engineer documentary proof that he has diligently made on a timely basis every effort to obtain such materials from all known sources within reasonable reach of the work and further proof, in the form of schedule data as required in Section G8.05, that the inability to obtain such materials when originally planned 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. Only the physical shortage of material will be considered as a cause for extension of time, and no consideration will be given to any claim that material could not be obtained at a reasonable, practical or economical cost or price, unless it is shown to the satisfaction of the Engineer that such material could have been obtained only at exorbitant prices entirely out of line with current rates, taking into account the quantities involved and the usual practices in obtaining such quantities.

The term "shortage of materials," as used in this Section, shall apply only to materials, articles, parts or equipment which are standard items and 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.

No extension of time will be granted for storms or adverse weather conditions which may reasonably be expected for the area in

which the work is being performed, based on official records of monthly precipitation and other historical data. The intensity alone of any single or series of storms shall not be the basis for a time extension. In submitting a bid the bidder is certifying his understanding of the conditions for any time extension for storms or adverse weather and that he has included full consideration of delays in work due to weather conditions that reasonably can be expected in the project area.

No extensions of time will be granted for delays which have no measurable impact on the completion of the total work under the Contract. When extensions of time are granted, they will be limited to the period equivalent to the actual number of workdays lost on the critical path or controlling operation of construction, taking into account the extent to which that delay could be decreased by reasonable mitigation and work around measures by the Contractor or its subcontractor. All requests for extensions of time must be supported with a critical path analysis showing the critical path and impacts to it.

Within a reasonable period of time after the Contractor submits the notice and information required by this Section, the Engineer will determine whether an extension of time is justified and, if so, the number of days for the extension.

The Contractor shall have no claim for damage or compensation for any delay or hindrance and shall be fully compensated by an extension of time provided as set forth in this Section. Notwithstanding the preceding sentence, the Contractor may submit a claim for delay caused by acts or omissions of the City but only if such acts or omissions (1) cause delay which is unreasonable in the circumstances and (2) are not such as to be within the contemplation of the parties. It is expressly agreed that delays by the City in providing access to the work site are not within the contemplation of the parties but that delays by the City in reviewing shop drawings and submittals and the risk of delays due to errors or omissions in the Contract Drawings are within the contemplation of the parties as expectable events in the construction process.

G8.12 TERMINATION OF RIGHT TO PROCEED If the Contractor should appear to the Engineer to be in default and the Contractor fails to remedy his default within 10 days after receipt from the Engineer of notice of such default, the City may terminate the Contractor's right to proceed with the work or that portion which the Engineer determines is most directly affected by the default.

The term "default" for purposes of this Section includes, but is not limited to, the performance of work in violation of the terms of the Contract; abandonment, assignment or subletting of the Contract without approval of the City; bankruptcy or appointment of a receiver for Contractor's property; refusal or failure properly to prosecute the work; use of materials, supplies, plant or equipment of improper quality or quantity; refusal or failure to use an adequate number of properly skilled workers; failure to provide proper workmanship; failure to take effective steps to end a prolonged labor dispute; and the performance of the Contract in bad faith.

Upon the City's termination of the Contractor's right to proceed with the work, or a portion of it, the City shall have the right to complete the work, or the portion involved, by whatever means and methods it deems expedient, including the hiring of others on such terms as the City deems advisable. The City shall have the right to take possession of the Contractor's materials, plant, tools, equipment and property of any kind provided by or on behalf of the Contractor for the purpose of the work, or a portion of them, without being responsible to the Contractor for fair wear and tear. The Contractor shall have no rights in such property during its use by the City. The City shall not be required to obtain the lowest prices for completing the work or a portion of it but shall make such expenditures as, in the City's sole judgment, best accomplish such completion.

The expense of completing such work or portion thereof, together with a reasonable charge for engineering, managerial and administrative services, as certified by the City, shall be charged to the Contractor, and the expense so charged shall be deducted by the City out of such monies as may be due or may at any time thereafter become due to the Contractor. In case such expense is more than the sum which otherwise would have been payable to the Contractor under the Contract, then the Contractor or his surety or sureties shall promptly pay the amount of such excess so due. The City may, in its sole discretion, withhold all or any part of any progress payments otherwise due the Contractor until completion and final settlement of the work covered by such notice of default.

G8.13 TERMINATION OF CONTRACT

A. Termination for Cause. The City may terminate the Contract if the Contractor:

1. persistently or repeatedly fails or refuses to supply enough properly skilled workers or proper materials;
2. fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between the Contractor and subcontractor;
3. persistently disregards laws, ordinances or rules, regulations or orders of a public authority having jurisdiction; or
4. otherwise is guilty of a substantial breach of a provision of the Contract Documents. A "default" as defined in Section G8.12 shall constitute a substantial breach of the Contract Documents.

When any of the above reasons exist, the City may, without prejudice to any other rights or remedies of the City under this Contract or otherwise, upon 10 days' written notice, terminate the Contract and may:

1. take possession of the site and of all materials, equipment, tools and construction equipment and machinery thereon owned by the Contractor;
2. finish the work by whatever means the City deems expedient.

When the City terminates the Contract under this Section, the Contractor shall not be entitled to receive any further payments to which the Contractor is actually due until the work is completed and accepted by the City and the Contractor is properly due further payment.

The provisions of the last two paragraphs of Section G8.12 shall apply if the City terminates the Contract.

The City will issue the Contractor a written notice specifying that the Contract is to be terminated. Upon receipt of said written notice and, except as otherwise directed in writing by the Engineer, 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 from the site of work, as directed by the Engineer;
4. take such action as is necessary to protect the work and 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 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 G9.10, "Partial Payments," of these General Conditions 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 rights, 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 state and/or federal funds are involved, all documentation required under the state and/or federal requirements included in the Contract;
10. take such other actions as the Engineer may direct.

B. Termination for Convenience. The City may terminate this contract in whole, or from time to time in part, at any time and for any reason, whenever the City shall determine that such termination is in the best interests of the City. Any termination which is not based on the circumstances set forth in Subsection A above, shall be effected by delivery to the Contractor of a notice of termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective. In such event, Contractor shall be paid for all actual substantiated direct costs of materials furnished and work performed up to the date of termination and such additional compensation as the City deems proper and reasonable to effect termination.

Upon Contractor's receipt of a written notice of termination for convenience, the Contractor shall cease work as to those portions of the project so terminated and shall undertake the steps outlined in Subsection A above.

In the event that the City terminates this Contract under Subsection A above and it is determined for any reason that there was not sufficient cause to do so, the City's termination automatically will convert to a termination for convenience under this Subsection B and the terms and conditions outlined in this Subsection automatically will be applied to effectuate the Contract termination.

G8.14 CITY AND NON-CITY FACILITIES The Contractor shall protect from damage those utilities and City and non-City facilities that are to remain in place, be installed, relocated or otherwise arranged.

Attention is directed to the possible existence of facilities not shown, and of facilities in a location different from that which is indicated. The Contractor shall take steps to ascertain the exact location of all facilities prior to doing work which may damage such facilities or interfere with their service. Where the location of a facility is not indicated or is in doubt, the Contractor shall make such excavations and explorations as are necessary to ascertain the correct location. The cost of such excavations and explorations will be considered as a part of the cost of other items of work and no additional payment will be made. Such excavations and exploratory work shall not entitle the Contractor to an extension of time.

Where it is determined by the Engineer that the rearrangement of an underground facility, the existence of which is not shown on the drawings, is essential in order to accommodate the work, the Engineer will provide for the rearrangement of such facility by other forces or, when so ordered by change order, such rearrangement shall be performed by the Contractor and will be paid for as provided under the change order.

The Contractor shall maintain all utility facilities placed by him in temporary locations, and all utilities within the construction area not required to be relocated but which are required to be shored or supported during the construction period. The cost of such shoring, supports and maintenance shall be borne by the Contractor and no other compensation shall be due the Contractor for this work.

The cost of providing and maintaining all necessary or required temporary structures, of making any necessary repairs, replacements, or similar operations, or furnishing indemnity or other bonds, if required, and all costs required by this Section shall be paid by the Contractor and shall be included in the prices bid in the schedule for other items of work.

G8.15 TEMPORARY UTILITIES The Contractor shall make his own arrangements with utility companies for any services he may require in performance of the work of this Contract and shall pay all costs of these services directly to these utility organizations.

SECTION 9

MEASUREMENT AND PAYMENT

G9.01 MEASUREMENT OF QUANTITIES 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 Measures unless otherwise specified in the Special Provisions or Bid Schedule.

G9.02 SCOPE OF PAYMENT The Contractor shall accept the compensation provided in the Contract as full payment for furnishing all labor, materials, tools, equipment and incidentals necessary to the completed work and for performing all work contemplated and embraced under the Contract; also for loss or damage arising from the nature of the work, or from the action of the elements, or from any unforeseen difficulties which may be encountered during the prosecution of the work until the acceptance by the City; and for all risks of every description connected with the prosecution of the work, also for all expense incurred in consequence of the suspension or discontinuance of the work as herein specified; and for completing the work according to the Contract Documents. Neither the payment of any estimate nor of any retained percentage shall relieve the Contractor of any obligation to make good any defective work or materials.

No compensation will be made in any case for loss of anticipated profits.

Except as specifically provided otherwise, no separate payment will be made for work covered in any of these General Conditions nor in the Special Provisions or the Division 1 Sections (01000 series), if used, of the Technical Specifications, and the cost thereof will be considered as included in the prices paid for the various Contract items included in the Bid.

If the "payment" clause in the Contract Documents relating to any unit price in the bid schedule requires that the said unit price cover and be considered compensation for certain work or material essential to the item, this same work or material will not also be measured nor paid for under any other pay item which may appear elsewhere in the Contract Documents.

G9.03 FORCE ACCOUNT PAYMENT When extra work or other work done pursuant to a Change Order 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 approval of the Engineer and compensation will be determined as follows:

A. **Work Performed by Contractor.** The Contractor will be paid the direct costs for labor, materials and equipment used in performing the work determined as hereafter provided in Sections 9.03A(1), "Labor," 9.03A(2), "Materials," and 9.03A(3), "Equipment Rental," except where agreement has been reached to pay in accordance with Section 9.03B, "Work Performed by Special Forces or Other Special Services."

To the total of the direct costs computed as provided in Sections 9.03.A(1), "Labor," 9.03.A(2), "Materials" and 9.03.A(3), "Equipment Rental," there will be added a markup of 33 percent to the cost of labor, 15 percent to the cost of materials, 15 percent to the cost of Contractor-owned equipment, and 15 percent to rented equipment.

The above markups shall constitute full compensation, covering the cost of general supervision, overhead, profit and any other general expense not specifically designated as cost or equipment rental in Sections 9.03.A(1), (2) and (3). The total payment made as provided above shall be deemed to be the actual cost of such work and shall constitute full compensation therefor.

When work paid for on a force account basis is performed by subcontractor(s), the Contractor shall reach agreement with subcontractor(s) as to the distribution of the payment made by the City for such work. No additional payment therefor will be made by the City by reason of the performance of the work by a subcontractor(s) or other forces.

(1) Labor. The Contractor will be paid the cost of labor for the workmen (including foremen when authorized by the Engineer), used in the actual and direct performance of the work. The cost of labor, whether the employer is the Contractor, subcontractor or other forces, will be the sum of the following:

(la) Actual Wages. The actual wages paid shall include any employer payments to or on

behalf of the workmen for health and welfare, pension, vacation and similar purposes.

(1b) Labor Surcharge. To the actual wages, as defined in Section 9.03A(1a), will be added a labor surcharge set forth in the 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. Said labor surcharge shall constitute full compensation for all payments imposed by State and Federal laws and for all other payments made to, or on behalf of, the workmen, other than actual wages as defined in Section 9.03A(1a) and subsistence and travel allowance as specified in Section 9.03A(1c).

(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 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:

(2a) If a cash or trade discount by the actual supplier is offered or available to the purchaser, it shall be credited to the City notwithstanding the fact that such discount may not have been taken.

(2b) 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.

(2c) 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, less any discounts as provided in Section 9.03A(2a).

(2d) 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 9.03A(2a).

(2e) If the Contractor does not furnish satisfactory evidence of the cost of such materials from the actual supplier thereof within 60 days after the date of delivery of the materials or within 15 days after acceptance of the Contract, whichever occurs first, 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 9.03A(2a).

(3) Equipment Rental. The Contractor will be paid for the use of equipment at the rental rates listed for such equipment in the 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 any rental or other agreement, if such may exist, for the 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 9.03A(3a), "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 the 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 9.03A(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 rating 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.

(3a) 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 of the extra work on other than such extra work. Loading and transporting costs will be allowed, in lieu of moving time, when the equipment is moved by means other than its own power, except that no payment will be made if the equipment is used at the site of the extra work on other than such 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 to be 1/2 hour of operation.
- (2) When daily rates are listed, less than 4 hours of operation shall be considered to be 1/2 day of operation.

(3b) Equipment Not on the 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 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 9.03A(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 will 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.
- (5) The rental period shall begin at the time the equipment is unloaded at the site of the extra work or the extra work is available to be accomplished whichever occurs later, 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 or its further use is unnecessary. The rental time to be paid per day will be in accordance with the following:

<u>Hours Equipment is in Operation</u>		<u>Hours to be Paid</u>
0		4
0.5		4.25
1		4.5
1.5		4.75
2		5
2.5		5.25
3		5.5
3.5		5.75
4		6
4.5		6.25
5		6.5
5.5		6.75
6		7
6.5		7.25
7		7.5
7.5		7.75
8		8
Over 8	hours in operation	

The hours to be paid for equipment which is operated less than eight (8) hours due to breakdown shall not exceed eight (8) less than the number of hours the equipment is inoperative due to breakdowns.

When hourly rates are listed, less than thirty (30) minutes of operation shall be considered to be one-half ($\frac{1}{2}$) hour of operation.

When daily rates are listed, payment for one-half ($\frac{1}{2}$) day will be made if the equipment is not used. If the equipment is used, payment will be made for one (1) day.

The minimum rental time to be paid for the entire rental period on an hourly basis shall not be less than eight (8) hours or if on a daily basis, shall not be less than one (1) day.

(6) 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.

(7) Payment for transporting, and 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.

(3c) **Owner-Operated Equipment.** When owner-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:

Payment for the equipment will be made in accordance with the provisions in Section 9.03A(3), "Equipment Rental."

Payment for the cost of labor and subsistence or travel allowance will be made at the rates paid by the Contractor to other workmen operating similar equipment already on the project, or, in the absence of such other workmen, at the rates for such labor established by collective bargaining agreements for the type of workman 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 9.03A(1b), "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 9.03A, "Work Performed by Contractor."

(3d) Dump Truck Rental. Dump truck rental shall conform to the provisions of Section 9.03A(3), "Equipment rental," 9.03A(3a), "Equipment on the Work," and 9.03A(3b), "Equipment not on the Work," except as follows:

Fully maintained and operated rental dump trucks used in the performance of extra work paid for on a force account basis will be paid for at the same hourly rate paid by the Contractor for use of fully maintained and operated rental dump trucks in performing contract item work.

In the absence of contract item work requiring dump truck rental, the Engineer will establish an hourly rental rate to be paid. The Contractor shall provide the Engineer with complete information on the hourly rental rates available for rental of fully maintained and operated dump trucks.

The provisions in Section 9.03A(1), "Labor," shall not apply to operators of rented dump trucks.

The rental rates listed for dump trucks in the Department of Transportation publication entitled Labor Surcharge And Equipment Rental Rates shall not apply.

To the total of the rental costs for fully maintained and operated dump trucks, including labor, there will be added a markup of 15 percent. No separate markup will be made for labor.

The provisions of Section 9.03A(3c), "Owner-Operated Equipment," shall not apply to dump truck rentals.

B. 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 his 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, materials 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 15 percent in lieu of the percentages provided in Section 9.03A, "Work Performed by Contractor."

G9.04 FORCE ACCOUNT RECORDS The Contractor shall maintain his 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. The records and extra work reports shall be maintained and prepared for specific scopes of work provided by the Engineer. The Engineer may establish a Not to Exceed cost for a specific scope of work. In such cases the Contractor shall maintain records so as to ensure that the Not to Exceed cost is not exceeded but that the Engineer is advised in writing ahead of time if it is anticipated that the cost will be exceeded so that the Engineer may consider action to increase the Not to Exceed cost or modify the scope of work. The City shall not pay for any costs above the Not to Exceed cost if the Contractor has not provided such notice in writing at least 7 calendar days in advance of the date the Contractor anticipates reaching the Not to Exceed cost.

From the above records, the Contractor shall furnish the Engineer completed daily extra work reports, on forms furnished by the City or on computerized facsimiles of the City's forms acceptable to the Engineer, for each day's extra work to be paid for on a force account basis. The daily reports shall itemize the materials used whether invoices are or are not available that day 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 G9.03.B, "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. With each daily extra work report submitted to the Engineer, the Contractor shall compile the total cost of the extra work accomplished to date for a specific scope of work and compare it to the Not to Exceed cost if one has been established by the Engineer.

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 clearly and distinctly noting the previous daily report(s) to which they pertain. Should vendor's invoices not be submitted within sixty (60) days after the date of use of the materials or within fifteen (15) days after the acceptance of the Contract, whichever occurs first, the City reserves the right to establish the cost of such materials at the lowest current wholesale prices at which said materials are available in the quantities concerned delivered to the location of the work, less any discounts provided in Section G9.03.A.

The daily extra work reports shall be signed by the Contractor or his authorized representative. The daily reports shall be turned in to the Engineer no later than by the close of business on the working day following the day of the report. Failure to turn in reports on this schedule shall be the basis for denying payment and/or using the Engineer's records only as the final and indisputable basis for payment. Reports must be complete as noted above.

The Engineer will compare his 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, except for delinquent reports as noted above, said reports shall become the basis of payment for the work performed, but shall not preclude subsequent adjustment based on the 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 insure 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 reasonable notice of the time when such audit is to begin.

Payment as provided in Sections 9.03A, "Work Performed by Contractor," and 9.03B, "Work Performed by Special Forces or Other Special Services," shall constitute full compensation to the Contractor for performance of work paid for on a force account basis and no additional compensation will be allowed therefor. Such payment will be made in accordance with the provisions for "Partial Payments."

G9.05 NOTICE OF POTENTIAL CLAIM The Contractor shall not be entitled to the payment of any additional compensation for any cause, including any act, or failure to act, by the Engineer (including the failure or refusal to issue a Change Order), or the happening of any event, thing or occurrence, unless he shall have given the Engineer due written notice of potential claim as hereinafter specified, provided, however, that compliance with this Section shall not be a prerequisite as to matters within the scope of the Contract Change Order protest provisions in Section G4.09, "Protest Procedure," or the notice provisions in Section G8.11, "Delays and Extension of Time," nor to any claim which is based on differences in measurement or errors of computation as to correct quantities.

The written notice of potential claim shall set forth the reasons for which the Contractor believes additional compensation will or may be due, all relevant facts associated with the claim, the nature of the costs involved and, insofar as possible, the amount of the potential claim. If based on an act or failure to act by the Engineer or the City, such notice shall be given to the Engineer prior to the time that the Contractor has started performance of the work giving rise to the potential claim for additional compensation. In all other cases, notice shall be given within 10 days after the happening of the event or occurrence giving rise to the potential claim. Should a claim not be adequate or complete in content as set out above, the Engineer will reject and return the claim for Contractor's reconsideration and resubmission if so decided by Contractor. Any resubmission shall be made within 7 days of return by the Engineer to be considered timely unless a longer time frame is allowed by the Engineer.

It is the intention of this Section that differences between the parties arising under and by virtue of the Contract shall 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 he 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 a written notice of potential claim as herein required was not timely filed or not complete as to required content noted above.

G9.05A DISPUTE RESOLUTION To accomplish the intent of early resolution of differences between the parties, the following procedures shall be followed for any Notice of Potential Claim submitted in full compliance with Section 9.05.

The Engineer will review and analyze each claim within the timeframe established by the Engineer based on the nature and complexity of the claim and advise the Contractor of his findings and determinations. The Contractor shall provide supplemental information as may be reasonably requested by the Engineer in the course of his review/analysis, and be available for discussions with the Engineer on the matter. Failure of the Contractor to provide such information on a timely basis or be available for discussions shall be sufficient cause to deny the claim.

Within 10 calendar days of receipt of the Engineer's written findings and determinations the Contractor shall either indicate in writing agreement and acceptance or shall advise the Engineer in writing of any disagreement setting forth clearly and completely the basis for such disagreement and stating what the Contractor's position is on the issue(s) in disagreement. Failure to submit any response within the 10 calendar days shall be conclusively construed as Contractor acceptance of the Engineer's determinations and no further claim shall be allowed.

Upon receipt of Contractor's notice of acceptance or a non response within 10 calendar days the Engineer will take appropriate action to document resolution of the claim and make any needed adjustments to the contract. Should the Contractor express any disagreement he shall document it in writing to the Engineer and provide any additional documentation supporting his claim. The Engineer will conduct a review and analysis of the Contractor's documentation in the same fashion and under the same conditions as set forth for the original claim and render his final determinations and decision. The Engineer then will take appropriate actions to adjust the Contract as may be required by his final determinations and decision.

The procedures set forth above are not intended to abrogate or replace the Public Contract Code requirements referred to in General Condition G9.12. If after participating in the dispute resolution procedures set forth above, the Contractor intends to proceed with submission of a claim, then the Contractor must formally resubmit the claim following the procedures in General Condition G9.12 and identifying that the claim is resubmitted pursuant to General Condition G9.12.

G9.06 STOP NOTICES The City may, at its option and at any time, retain out of any amounts due the Contractor sums sufficient to cover claims filed pursuant to Section 3179 et seq. of the California Civil Code.

G9.07 PAYMENT SCHEDULES The Contractor shall submit a Schedule of Anticipated Contract Payments and a Schedule of Pay Items for review and approval by the Engineer prior to the initial partial payment to the Contractor. The Schedule of Pay Items shall be prepared by the Contractor in a format approved by the Engineer and shall include such detail as directed by the Engineer. The Schedule shall be sufficiently clear and detailed so as to facilitate an accurate and realistic appraisal of monthly progress for the purpose of making partial payments. The value for each bid item shall total the bid amount. The cost breakdown shall include only actual work items. No amounts will be allowed for mobilization and other overhead costs such as bonds and insurance unless specifically provided for in the Special Provisions or bid schedule. Unless otherwise provided, costs of these items shall be spread uniformly over the actual items of work. The values in the Schedule will be used only for determining partial payments.

The Schedule of Anticipated Contract Payments shall be coordinated with the Contractor's construction schedule submitted pursuant to Section G8.05 and shall show the anticipated monthly Contract payments for each of the pay items covered in the Schedule for Pay Items, the total of monthly payments and cumulative total of payments for each month. If the construction schedule is revised, the Schedule of Anticipated Contract Payments shall also be revised and resubmitted for the Engineer's review and approval as circumstances indicate to ensure that the schedule coincides with actual progress. No partial payment will be made until the Engineer has approved the Schedules required by this Section.

G9.08 PROGRESS ESTIMATES AND INVOICES FOR WORK COMPLETED Once each month, at a

time, place and location mutually agreeable, the Contractor and Engineer shall meet to discuss the amount of work completed satisfactorily during the work period since the last invoice for partial payment was prepared. The first such estimate will be of the value of the work done after the Contractor commenced the performance of the contract, and every subsequent estimate, except the final estimate, will be of the value of the work done after that included in the last preceding estimate. Such estimates need not be based on strict measurements, but may be approximate only, and will be in due proportion to the whole amount of money, including payments previously made, that will have become due according to the contract when all work required under the contract shall have been completed. A draft invoice for work completed shall be prepared by the Contractor or Engineer as determined by the Engineer; the Engineer's judgment will be final if disputes occur regarding the amount of work completed or its value. Following the meeting, the Contractor shall formally submit the invoice for work completed in a form acceptable to the Engineer. The invoice will certify, and be supported by evidence if required by the Engineer, that the work invoiced has been done and that the materials listed have been incorporated into the work. The invoice may include the amount and value of such acceptable material as has been furnished and incorporated into the work. No payment or allowance shall be made for equipment or materials stored within the general work area or elsewhere but not yet satisfactorily incorporated in the work except as may be provided in the Special Provisions.

G9.09 RETENTION In addition to amounts, if any, withheld pursuant to any other provision of these General Conditions, including the City's right to withhold for the estimated or actual costs of correcting defective work and amounts claimed by the City as liquidated damages or other offsets, the City will retain an amount equal to 10 percent of the estimated value of the work done as part security for the fulfillment of the Contract by the Contractor. Any time after 50 percent of the work has been completed, if the Engineer finds that satisfactory progress is being made, the City may (but need not) reduce the total amount being retained from payment to as little as 5 percent of the value of the total estimated value of said work and materials.

In addition, when the Engineer determines that the contract is 95 percent complete, the City may reduce the amount withheld from payment to such lesser amount as the City determines is adequate security for the fulfillment of the balance of the work and other requirements of the contract, but in no event will said amount be reduced to less than 125 percent of the estimated value of the work yet to be completed as determined by the Engineer. In agreeing to any of the above referenced revised method(s) of progress payments, the City reserves the right to return to the original method of progress payments in the amount of 90 percent of work completed, if at any time, the Engineer finds that either the Contractor is not making satisfactory progress or there is a specific cause for greater withholding.

G9.10 PARTIAL PAYMENTS. Upon receipt of a progress payment invoice the Engineer/City will review it as soon as practicable for the purpose of determining whether or not it is proper in both form and content. If a progress payment invoice is determined not to be proper, such as not including schedule information or failure to submit a proper and adequate schedule as set forth in Section G8.05, it shall be returned to the Contractor as soon as practicable but in any event within seven days after receipt together with a written statement why it is not proper. The City will make progress payments within 30 days after receipt of an undisputed and properly submitted progress payment invoice. Attention is directed to Section 20104.50 of the Public Contract Code. No such payment will be made when, in the judgment of the Engineer, (a) the work is not proceeding in accordance with the provisions of the Contract; (b) the Contractor is not complying with the requirements of the Contract; or (c) when the total value of the work done as shown on the invoice does not exceed Three Hundred Dollars (\$300.00).

No such invoice or payment will be construed to be an acceptance of any work or materials. Before any progress payment or the final payment is made, the Contractor may be required to submit satisfactory evidence that he is not delinquent in payments to his employees, subcontractors, suppliers or other creditors for labor and materials incorporated into the work.

Pursuant to Public Contract Code Section 20104.50, if the City fails to make a progress payment in a timely manner, it shall pay interest to the Contractor at the legal rate set forth in Section 685.010(a) of the California Code of Civil Procedure.

G9.11 PAYMENT OF WITHHELD FUNDS.

Pursuant to Public Contract Code Section 22300, the Contractor may request to deposit securities in escrow equivalent to the amount of funds withheld from progress payments by the City as described in Section G9.09, with the City or a bank acceptable to the City as a substitution for funds withheld by the City. Alternatively, the contractor may request to have the City make payment of the funds withheld from progress payments as described in section G9.09 directly to an escrow agent and direct the investment of such funds into securities. The Contractor shall be the beneficial owner of any securities and shall receive interest thereon. Upon the satisfactory completion of the contract, the Contractor shall receive all securities, interest and

payments. The Contractor may make this request only upon the following conditions.

- a. the request to substitute securities or to have payments made directly to an escrow agent shall be at the sole expense of the Contractor;
- b. securities eligible for investment shall include securities pursuant to California Government Code section 16430, bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letter of credit, or any other security mutually agreed upon by the City and Contractor;
- c. the Contractor shall enter into an escrow agreement which shall be substantially similar to the agreement form provided in Public Contract Code Section 22300;
- d. the Contractor shall obtain the written consent of the surety to such agreement; and
- e. the Contractor who elects or receive interest on funds withheld by the City shall, at the request of any subcontractor performing more than five percent (5%) of the Contractor's total bid, make the option available to the subcontractor to receive interest on any funds withheld in retention by the Contractor from the subcontractor. The subcontractor shall receive interest in accordance with Public Contract Code section 22300(d)(1). Alternatively, the Contractor who elects to substitute securities in lieu of retention by the City, shall by mutual consent between the Contractor and subcontractor allow any subcontractor performing more than five percent (5%) of the Contractor's total bid to substitute securities in lieu of funds withheld by the Contractor.

G9.12 FINAL PAYMENT After the work has been accepted by the City, as provided in Section G7.26, "Acceptance of Work," payment will be made to the Contractor in accordance with the provisions of this Section. Upon acceptance, the City will record a Notice of Completion covering the project.

Within 35 days after acceptance by the City, the Contractor shall prepare and submit a proposed final invoice in writing, prepared in a form acceptable to the Engineer. The proposed final invoice will show the proposed total amount of compensation payable to the Contractor, including an itemization of that amount segregated as to Contract item quantities, extra work and other bases for payment. The proposed final invoice will also show all deductions made or to be made for prior payments and amounts to be kept or retained under the Contract.

The Contractor shall also submit, at the same time as the proposed final invoice is submitted, a statement of all claims he has arising under or by virtue of the Contract, or a statement that he does not intend to file any such claims. All claims shall be submitted as specified herein. No claim for which a notice of potential claim or protest is required under Section G9.05, "Notice of Potential Claim," Section G4.09, "Protest Procedure," or Section G8.11, "Delays and Extension of Time," will be considered unless the Contractor has fully complied with the notice or protest requirements in said sections and the resolution process set out to Section G9.05A.

Claims filed by the Contractor shall be in sufficient detail to enable the Engineer to ascertain the basis and amount of said claims.

The Engineer will review the proposed final invoice and claims and will submit his recommendation to the City as to the final estimate of the amount due the Contractor and the disposition of all claims. All prior invoices and payments are subject to correction in connection with review of the proposed final invoice.

The City will submit any changes or corrections to the proposed final invoice to the Contractor for his consideration. Within 10 days thereafter, the Contractor shall submit a final invoice, in a form acceptable to the Engineer, incorporating any changes or corrections made by the City, together with any additional claims resulting therefrom. Upon approval by the City, this will become the approved final invoice. The Contractor shall submit with the final invoice, certificates of any insurance required to be maintained after acceptance of the work.

If the Contractor files no claims within 30 days after acceptance of the work by the City, and agreement is reached on all

questions regarding the final invoice, the City will pay the entire sum found due upon the final invoice, except that the City will withhold sums sufficient to pay all unsettled claims for which stop notices have been filed pursuant to Section 3179 et seq. of the California Civil Code, together with the costs of administering such claims.

If the Contractor does file claims within 30 days after acceptance of the work by the City, then upon final determination of all the Contractor's claims, the City will pay the entire sum found due upon the final invoice, including the amount, if any, allowed on claims, except that the City will withhold sums sufficient to pay all unsettled claims for which stop notices have been filed pursuant to Section 3179 et seq. of the California Civil Code, together with the costs of administering such claims. In any suit filed under Section G9.12, the City shall pay interest at the legal rate on any arbitration award or judgement. The interest shall begin to accrue on the date the suit is filed in a court of law.

Before final payment can be made, the Contractor shall furnish the Engineer with the following:

- (a) All drawings, catalogues, instruction sheets and information as required by the Contract;
- (b) One signed copy of the Release as discussed below in this Section and on a form furnished by the City; and
- (c) Guarantee Bond, if not already incorporated in the Performance Bond.

Final payment will be made within 30 days after receipt of an approved final invoice and other required submittals referenced above and determination of all Contractor's claims, or 60 days after acceptance of the work by the City, whichever is later, provided, however, that if a final invoice has not been submitted and approved within 60 days after acceptance of the work by the City, the City may elect to make payment of sums not in dispute without prejudice to the right of either the City or the Contractor in connection with any disputed sums.

The acceptance by the Contractor of final payment shall constitute a waiver and release of all claims by the Contractor against the City related to the work, except for claims previously made in writing and identified as unsettled by the Contractor at the time of submission of the final invoice. The making of final payment, however, shall not operate to release the Contractor or his sureties from obligations arising under this Contract, the Contract bonds and warranties as herein provided. Specifically, the making of final payment shall not constitute a waiver and release of claims by the City arising from (a) unsettled or future liens, (b) failure of the work to comply with the requirements of the Contract Documents, (c) the terms of any warranties required by or contained in the Contract Documents, (d) the right to any insurance proceeds or the right to make any insurance or bond claims, (e) any claims with respect to Contractor's obligation of indemnity provided for in the Contract Documents, or (f) any latent defects or fraud.

G9.13 CLAIMS PROCEDURES Claims up to \$375,000 are subject to the provisions of Public Contract Code Sections 20104-20104.6. For claims subject to the provisions of that law, the following procedures apply.

- (1) (a) For claims of fifty thousand dollars (\$50,000) or less, the City shall respond in writing to any written claim within forty-five (45) days of receipt of the claim, or may request, in writing, within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims the City may have against the Contractor.
- (b) If additional information is thereafter required, it shall be requested and provided pursuant to this provision, upon mutual agreement of the City and the Contractor.
- (c) The City's written response to the claim, as further documented, shall be submitted to the Contractor within fifteen (15) days after receipt of the further documentation or within a period of time no greater than that taken by the Contractor in producing the additional information, whichever is greater.

- (2) (a) For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the City shall respond in writing to all written

claims within sixty (60) days of receipt of the claim, or may request, in writing, within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims the City may have against the Contractor.

- (b) If additional information is thereafter required, it shall be requested and provided pursuant to this provision, upon mutual agreement of the City and the Contractor.
- (c) The City's written response to the claim, as further documented, shall be submitted to the Contractor within thirty (30) days after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.

(3) (a) 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 fifteen (15) days of receipt of the City's response or within fifteen (15) days of the City's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the City shall schedule a meet and confer conference within thirty (30) days for settlement of the dispute.

(4) If following the meet and confer conference the claim or any portion remains in dispute, the Contractor may file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the Contractor submits his or her written claim until the time the claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

(5) This Section does not apply to tort claims nor shall it be construed to change the time periods for filing tort claims under the California Government Code.

(6) Public Contract Code Section 20104.4 establishes procedures for civil actions filed to resolve claims subject to this Section. These procedures include mandatory submission of the matter to nonbinding mediation followed, if necessary, by mandatory submission to judicial arbitration.

A. Claims of more than \$375,000

- (1) For claims of more than \$375,000, the City shall respond in writing to any written claim within sixty (60) calendar days after receipt of the claim, or may request in writing, within thirty (30) calendar days after receipt of the claim, any additional documentation supporting the claim or relating to any defenses or claims the City may have against Contractor. The written response of City shall be submitted to Contractor within thirty (30) calendar days after receipt of the additional documentation, or within a period of time no greater than that taken by Contractor to produce the additional information, whichever is greater, but in no case shall the City's response be due in fewer than sixty (60) days.
- (2) If Contractor disputes the Owner's written response, the parties hereby agree to endeavor to settle the dispute in an amicable manner by nonbinding mediation under the Construction Industry Mediation Rules of the American Arbitration Association, or under any other rules for mediation as agreed by both parties. Mediation shall commence as quickly as possible, with the goal of resolving the dispute within one hundred and twenty (120) calendar days following Contractor's submission of his completed claim documentation.

- (3) In the event that the dispute is not resolved by mediation within this one hundred and twenty (120) day time, Contractor may commence a civil action against the City, provided that contractor has first complied with the requirements of Government Code Sections 900 et. seq.