

General Conditions For Public Works Projects

September 2011





Public Works - Engineering

CITY OF ROSEVILLE GENERAL CONDITIONS FOR BUILDINGS AND GROUNDS

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SECTION	\ \begin{align*} 1	I
DEFINIT	IONS AND TERMS	1
1-1.01	GENERAL	
1-1.01	ACCEPTANCE	
1-1.02	ACCEPTANCE ADDENDUM	
1-1.03		
	BIDDER	
1-1.05	BIDDING DOCUMENTS	
1-1.06	CHANGE ORDER	
1-1.07	CITY	
1-1.08	CITY ATTORNEY	
1-1.09	CITY CLERK	
1-1.10	CONTRACT	
1-1.11	CONTRACT CONDITIONS	
1-1.12	CONTRACT DOCUMENTS	
1-1.13	CONTRACTOR	
1-1.14	DAYS	2
1-1.15	DEPARTMENT	2
1-1.16	DIRECT COSTS	2
1-1-17	DIRECTOR	4
1-1.18	DRAWINGS	4
1-1.19	GENERAL NOTES	5
1-1.20	LABORATORY	5
1-1.21	LIQUIDATED DAMAGES	
1-1.22	Overhead	
1-1.23	Owner	6
1-1.24	PROJECT MANUAL	
1-1.25	Premises	
1-1.26	PRIVATE ENGINEER OR ARCHITECT.	
1-1.27	SPECIFICATIONS	
1-1.28	SUPPLEMENTAL CONDITIONS	
1-1.29	WORK	
1-1.20	WORK SITE	
SECTION	V 2	1
CONTRA	A AND GOODE OF THE WORK	_
CONTRO	L AND SCOPE OF THE WORK	l

2-1.01	AUTHORITY OF DIRECTOR	1
2-1.02	INTENT OF CONTRACT DOCUMENTS	
2-1.03	COORDINATION AND INTERPRETATION OF CONTRACT DOCUMENTS	1
2-1.04	SUBMITTALS	2
2-1.04	A Shop Drawings	Ĵ
2-1.04	B Descriptive Data	Ĵ
2-1.04	1	
2-1.04	33	
2-1.04		
2-1.05	PRESERVATION AND CLEANING	
2-1.06	LIMITATIONS ON WORK SITE AND PREMISES	
2-1.07	DUST CONTROL	
2-1.08	SANITATION	
2-1.09	NIGHT WORK AND NORMAL WORKING HOURS	
2-1.10	LINES AND GRADES	
2-1.11	PRESERVATION OF MONUMENTS	
2-1.12	FINAL CLEANUP	
2-1.13	AS-BUILT PLANS	
2-1.14	SUPERINTENDENCE	
2-1.15	CHARACTER OF WORKMEN	
2-1.16	INSPECTION	
2-1.17	REMOVAL OF REJECTED AND UNAUTHORIZED WORK	11
SECTION	3	1
CHANGE	S IN THE WORK	1
3-1.01	CHANGES	1
3-1.01	ORDINARY CHANGE ORDERS	
3-1.02	EMERGENCY AND INDETERMINATE TYPE CHANGE ORDERS	
3-1.04	AGREED COST FOR CHANGE ORDERS	
3-1.05	FAILURE TO AGREE TO THE COST OF CHANGE ORDERS	
3-1.06	ALLOWABLE COSTS FOR CHANGE ORDERS	
3-1.06		
<i>3-1.06</i>		
<i>3-1.06</i>		
<i>3-1.06</i>	· / 1 1	
	(E) General Limitations	
	4	
SECTION	4	J
CONTRO	L OF MATERIALS	1
4-1.01	MATERIALS	1
4-1.01 4-1.02	PRODUCT AND REFERENCE STANDARDS	
4-1.02 4-1.03	SAMPLING AND TESTING OF MATERIALS	
	CERTIFICATES OF COMPLIANCE	c

SECTION	N 5	1
LEGAL E	RELATIONS AND RESPONSIBILITY	1
5-1.01	LAWS TO BE OBSERVED	
5-1.02	HOURS OF LABOR	
5-1.03	NONDISCRIMINATION	
5-1.04	PREVAILING WAGE TRAVEL AND SUBSISTENCE PAYMENTS	
5-1.05		
5-1.06	PAYROLL RECORDS	
5-1.07	SAFETY	
5-1.08	APPRENTICES	
5-1.09	FAIR LABOR STANDARDS ACT	
5-1.10	WORKERS' COMPENSATION	
5-1.11	AIR POLLUTION CONTROL AND ASBESTOS	
5-1.12	Use of Pesticides	
5-1.13	SOUND CONTROL REQUIREMENTS	
5-1.14	ENVIRONMENTAL CLEARANCES; MITIGATION MONITORING PROGRA	
5 1 15	REGULATORY AGENCY PERMIT REQUIREMENTS	
5-1.15	PERMITS AND LICENSES	
5-1.16	WATER POLLUTION	
5-1.17	PROTECTION AND USE OF PROPERTY	
5-1.18	RESPONSIBILITY FOR DAMAGE	
5-1.19	INSURANCE COVERAGE	
	9(A) Other Insurance Provisions	
5-1.20	THIRD PARTY BENEFICIARY	
5-1.21	OCCUPANCY BY THE DEPARTMENT PRIOR TO ACCEPTANCE	
5-1.22	RIGHT TO OPERATE UNSATISFACTORY EQUIPMENT	
5-1.23	CONTRACTOR'S RESPONSIBILITY FOR THE WORK	
5-1.24	RESPONSIBILITY FOR UTILITIES	
5-1.25	PROPERTY RIGHTS IN MATERIALS	
5-1.26	COURT ORDERED DELAY	
5-1.27	No Personal Liability	
	PATENTS	
5-1.29	PAYMENT OF TAXES	
5-1.30	COOPERATION	25
SECTION	N 6	1
PROSEC	UTION AND PROGRESS	1
6-1.01	SUBLETTING AND SUBCONTRACTING	
6-1.02	ASSIGNMENT	
6-1.03	BEGINNING OF WORK	
6-1.04	PROGRESS SCHEDULE	
6-1.05	SCHEDULE OF VALUES	
6 1 06	TEMPODADY SUSPENSION OF WORK	ر۵

TIME OF COMPLETION	10
LIQUIDATED DAMAGES	12
CLAIMS FOR EXTRA COMPENSATION FOR DELAYS	14
TERMINATION	14
OA Termination of Contract - "Convenience of City\	14
OB Termination of Control - "Default of Contractor"	19
T 7	1
ANCE AND PAYMENT	1
PAYMENT FOR MATERIALS AND EQUIPMENT ON HAND	4
PAYMENT OF WITHHELD FUNDS	6
FINAL PAYMENT AND CLAIMS	6
CLERICAL ERRORS	6
GUARANTEE	7
WARRANTY OF TITLE	8
	LIQUIDATED DAMAGES CLAIMS FOR EXTRA COMPENSATION FOR DELAYS TERMINATION OA Termination of Contract - "Convenience of City\

SECTION 1

DEFINITIONS AND TERMS

1-1.01 **General:** 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.

1-1.02 **Acceptance:** Formal Acceptance by resolution by the Roseville City Council of the Contract when completed in all respects in accordance with the Contract Documents and any modifications previously approved.

1-1.03 **Addendum:** Document or written communication issued by the Department during the bidding period which modifies, supersedes, or supplements the Contract Documents.

1-1.04 **Bidder:** Individual, firm, copartnership, association, or any combination thereof, submitting a Proposal for the Work, acting directly, or through a duly authorized representative.

1-1.05 **Bidding Documents:** Includes the Notice to Bidders, Bidding Requirements, Contract Conditions, Drawings and Addenda.

1-1.06 **Change Order:** Any additions, deletions, or modifications of the Work to be done after the Agreement has been signed.

1-1.07 **City:** The City of Roseville.

1-1.08 **City Attorney:** The City Attorney of the City.

1-1.09 **City Clerk:** The City Clerk of the City.

- 1-1.10 **Contract:** Agreement relating to the Work to be performed, the labor, materials, and equipment to be furnished, and the payment to be made therefor. The Contract incorporates all of the Contract Documents.
- 1-1.11 **Contract Conditions:** Include the General Conditions, Supplemental Conditions, and Specifications.
- 1-1.12 **Contract Documents:** Include the Bidding Documents, the Bid or Proposal, Contract Bonds, the Contract, all required insurance certificates or endorsements, all required certifications or statements, Change Orders, any Contract Amendment, any City Standard which is incorporated by reference and these City of Roseville General Conditions for Buildings and Grounds.
- 1-1.13 **Contractor:** Individual, firm, co partnership, corporation, association, or any combination thereof, who has entered into the Contract with City.
- 1-1.14 **Day or Days:** Unless otherwise designated, Day or Days as used in the Contract Documents will be understood to mean calendar Day or Days.
- 1-1.15 **Department:** The Department for Contract Administration, as identified in the Supplemental Conditions.
- 1-1.16 **Direct Costs:** Those cost items (including labor, materials, equipment and any subcontractor's work) that are used in the actual performance of, and are specifically and uniquely attributable to the Work or changed Work. Direct Costs do not include Overhead. Direct Costs include but are not limited to:
- A. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by City and Contractor. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of

their time spent on the Work. Payroll costs shall include salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, sick leave, vacation and holiday pay applicable thereto. Such employees may include superintendents and foremen at the site. The expenses of performing work after regular working hours, on Saturday, Sunday or legal holidays shall be included in the above only to the extent authorized by City in writing.

- B. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and suppliers' field services required in connection therewith. All trade discounts, rebates and refunds and all returns from sale of surplus materials and equipment shall accrue to City, and Contractor shall make provisions so that they may be obtained.
- C. Payments made by Contractor to the subcontractors for work performed by subcontractors. If required by City, Contractor shall obtain competitive bids from subcontractors acceptable to Contractor and shall deliver such bids to City who will then determine which bids will be accepted. If a subcontract provides that the subcontractor is to be paid on the basis of cost of the work plus a fee, the subcontractor's cost of the work shall be determined in the same manner as Contractor's cost of the work. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.
- D. Costs of special consultants (including engineers, architects, testing laboratories, surveyors, and accountants) employed for services specifically, and only, related to the Work.
 - E. Supplemental costs including the following:

- The proportion of necessary transportation, travel and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
- 2. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value of such items used but not consumed which remain the property of Contractor.
- 3. Rentals of all construction equipment and machinery and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by City, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof, all in accordance with terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.
- 4. Sales, consumer, use or similar taxes related to the Work, and for which Contractor is liable, imposed by laws and regulations.
 - 5. The cost of utilities, fuel and sanitary facilities at the site.
- 6. Cost of premiums for additional bonds and insurance required because of changes in the Work.
- 1-1-17 **Director:** Director of the Department for Contract Administration or his or her designee.
- 1-1.18 **Drawings:** The official Drawings including plans, elevations, sections, detail Drawings, diagrams, plated, General Notes, information and schedules thereon, or exact

reproductions thereof, showing the location, character, dimension, and details of the Work. The Drawings include any Drawings or plates bound within the Supplemental Conditions.

- 1-1.19 **General Notes:** The written instructions, provisions, conditions or other requirements appearing on the Drawings and so identified thereon, which pertain to the performance of the Work.
- 1-1.20 **Laboratory:** Established professional laboratories authorized by the City to test materials and Work involved in the Contract.
- 1-1.21 **Liquidated Damages:** The amount prescribed in the Supplemental Conditions to be paid to the City or to be deducted from any payments due or to become due the Contractor for each day's delay in completing the whole or any specified portion of the Work beyond the time allowed in the Supplemental Conditions.
- 1-1.22 **Overhead:** Business or administrative expenses (including but not limited to office expenses, administrative staff, rent, insurance, utilities) not chargeable to a particular part of the Work. The term "overhead" shall include any of the following:
- A. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expediters, timekeepers, clerks and other personnel employed by Contractor whether at the site or in Contractor's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in section 1-1.17, all of which are to be considered administrative costs covered by the Contractor's fee.
- B. Expenses of Contractor's principal and branch offices other than Contractor's office at the site.

- C. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
- D. Cost of premiums for all bonds and for all insurance whether or not Contractor is required by the Contract Documents to purchase and maintain the same, except as provided in section 1-1.16.
 - E. Other overhead or general expense costs of any kind.
 - 1-1.23 **Owner:** City of Roseville.
 - 1-1.24 **Project Manual:** A book containing all Contract Documents.
- 1-1.25 **Premises:** Shall mean the area within construction easements, easements, rights of entry and City owned property which surrounds the Work Site, limited by the property lines thereof. In some cases Premises may coincide with the Work Site.
- 1-1.26 **Engineer or Architect:** Private Engineer or Architect as a person, firm or corporation retained by the City of Roseville for this Work or portions thereof.
- 1-1.27 **Specifications:** The technical Specifications for the Work prepared by the Director or a Engineer or Architect describing in detail the nature of the Work, its components, any performance standards, and how the Work is to be constructed.
- 1-1.28 **Supplemental Conditions:** The Supplemental Conditions are specific clauses modifying or supplementing these General Conditions.
- 1-1.29 **Work:** The furnishing of all labor, and the furnishing and installing of all materials, articles, supplies and equipment as specified, designated, or required by the Contract Documents.

1-1.30 **Work Site:** All or portion of the Premises that the Work is limited to as shown on the Drawings or designated by the Director. Public streets are not included unless Work is being done within the street right-of-way.

SECTION 2

CONTROL AND SCOPE OF THE WORK

- 2-1.01 **Authority of Director:** The Contract shall be performed in a manner satisfactory to the Director who 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. The Director shall have authority to enforce and make effective such decisions and orders which the Contractor fails to carry out promptly.
- 2-1.02 **Intent of Contract Documents:** The intent of the Contract Documents is to prescribe the details for the construction and completion of the Work. Where the Contract Documents describe portions of the Work in general terms, but not in complete detail, it is understood that only the best general practice is to prevail and that only materials and workmanship of the first quality are to be used. Unless otherwise specified, the Contractor shall furnish all labor, materials, tools, equipment, and incidentals, and do all the Work involved in executing the Contract in a satisfactory and workmanlike manner.
- 2-1.03 Coordination and Interpretation of Contract Documents: All Contract 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 complementary, and to describe and provide for a complete Work.

The Supplemental Conditions shall govern over the General Conditions and the Drawings. In the event of any discrepancy, between any Drawing and the figures written thereon, the figures shall be taken as correct. Detail Drawings shall prevail over general Drawings and General Notes shall prevail over Drawings. The Specifications shall prevail over the Drawings. The Contract Conditions shall prevail over the Bidding Documents. The Contract shall prevail over the Contract Conditions.

Should it appear that the Work to be done or any of the matters relative thereto are not sufficiently detailed or explained in the Contract Documents, the Contractor shall apply to the Director for such further 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, reference shall be made to the Director. The decisions of the Director shall be final.

2-1.04 **Submittals:** It shall be the Contractor's responsibility to timely submit, so as to cause no delay in the Work, all shop Drawings, descriptive data, manuals, instructions, affidavits, samples for the various trades as required by the Supplemental and Technical Conditions, and offers of alternatives, if any. Such submittals shall be checked and coordinated by the Contractor with the Work of other trades involved before they are submitted to the Director for examination.

The Contractor shall deliver at least seven (7) copies of the Submittals to the Director.

Work requiring the submittal of working Drawings, descriptive data or samples shall not begin prior to approval of said submittal by the Director.

The time allowed for review of each submittal will be as indicated in the Supplemental Conditions. Review time will start upon receipt of the submittal by the Director and will end

upon the Director's mailing of the submittals to the Contractor. Defective, incomplete or partial submittals will be returned to the Contractor unreviewed.

Submittals shall be made by a letter of transmittal that shall contain a list of all matter submitted and identification of all variations from the Contract Documents contained in the submittal. The letter and all items accompanying the same shall be fully identified as to project name and location, Contractor's name, district, county, and Contract number, with ample cross-references to the Contract Documents, to facilitate identification of items and their location in the Work.

All shop Drawings and supporting data, catalogs, schedules, shall be submitted as the instruments of the Contractor, who shall be responsible for their accuracy and completeness. These submittals may be prepared by the Contractor, subcontractors, or suppliers, but the Contractor shall ascertain that submittals meet all of the requirements of the Contract Documents, while conforming to structural, space, and access conditions at the point of installation. The Contractor shall check all submittals before submitting them to the Director.

- 2-1.04A **Shop Drawings:** The Contractor shall submit at least seven (7) copies of all shop Drawings required by the Supplemental Conditions or Specifications. Two (2) copies will be returned to the Contractor either approved for use or returned for correction and resubmittal. Shop Drawings include any drawing, which requires execution by a draftsman as distinguished from printed matter. The size of shop Drawings shall not exceed twenty-four (24") inches by thirty-six (36") inches.
- 2-1.04B **Descriptive Data:** The Contractor shall submit seven (7) copies of each set of manufacturer's brochures or other data required by the Supplemental Conditions or

Specifications. The City will examine such submittals and return two (2) copies either approved for use or returned for correction and resubmittal.

2-1.04C **Samples:** The Contractor shall submit samples of articles, materials or equipment as required by the Supplemental Conditions or Specifications. The Work shall be in accordance with the approved samples. Samples shall be removed from City property when directed or may be incorporated in the Work if approved by the Director. Samples not removed by the Contractor will become the property of the City or, at the City's option, will be removed or disposed of by the City at the Contractor's expense.

2-1.04D Manuals, Instructions and Affidavits:

A. <u>Manuals and Instructions.</u> Where operation and maintenance manuals are required by the Supplemental Conditions, the Contractor shall submit three (3) sets of manuals, suitably bound, along with three (3) electronic copies in an approved format, to the Director within forty-five (45) Days after favorable review of the equipment or facilities. All manuals shall be marked to indicate the specific equipment furnished for this project and shall include:

- 1. Start-up instructions
- 2. Normal operation instructions
- 3. Trouble shooting instructions
- 4. Lubrication instructions
- 5. Maintenance and reinstallation instructions
- 6. Parts identification
- 7. List of spare parts recommended to have on hand
- 8. Operator safety

In addition, all operation and maintenance manuals for electrical equipment shall include:

- 9. Equipment ratings
- 10. Calibration curves and rating tables if appropriate

Operation and maintenance manuals for complex equipment shall also include:

- 11. Alternate specified operating modes
- 12. Emergency shutdown instructions
- 13. Normal shutdown instructions
- 14. Long term shutdown instructions

Operation and maintenance manuals for systems comprised of separate pieces of equipment shall include a system explanation of items 1, 2, 3, 11, 12, 13 and 14 as well as the instructions for the separate pieces of equipment.

B. <u>Affidavits.</u> Where required in the Supplemental Conditions or Specifications, manufacturers of equipment shall provide field service as a part of this project. Equipment shall not be considered ready for full time operation until after the authorized factory-trained and qualified manufacturer's representative for the specific equipment has checked and adjusted the equipment and certified by written affidavit that the equipment has been properly installed, tested, adjusted, lubricated, and calibrated, and is ready for full time operation. Acceptable affidavits shall be submitted prior to completion of the Work. Affidavits shall contain the following specific wording:

"The (Name of Equipment) has been properly installed, tested, adjusted, lubricated, and calibrated, and is ready for full time operation. The installation has been inspected and has been found to be in conformance with our (the manufacturer's) standards and requirements."

No amplification, dilution, or modification of this specific wording will be permitted.

- 2-1.04E Alternatives: For convenience in designation in the Contract Documents, certain materials, articles, or equipment may be designated by a brand or a trade name or the name of the manufacturer together with catalog designation or other identifying information, hereinafter referred to generically as "designated by brand name." An alternative material, article, or equipment which is of equal quality and of the required characteristics for the purpose intended may be proposed for use provided the Contractor complies with the following requirements:
- A. The Contractor shall submit his proposal for an alternative in writing. Such request shall be made in ample time to permit approval without delaying the Work.
- B. No such proposal will be considered unless accompanied by complete information and descriptive data, necessary to determine the equality of the offered materials. The Contractor shall satisfy the Director as to the comparative quality, suitability, or performance of the offered material, articles, or equipment. In the event that the Director rejects the use of such alternative materials, articles, or equipment, then one of the particular products designated by brand name shall be furnished.

The Director will examine, with reasonable promptness, such submittals, and return of submittals to the Contractor shall not relieve the Contractor from responsibility for deviations and alternatives from the Contract Documents, nor shall it relieve the Contractor from responsibility for errors in the submittals. A failure by the Contractor to identify in his or her letter of transmittal, material deviations from the Contract Documents shall void the submittal and any action taken thereon by the Director. When specifically requested by the Director, the Contractor shall resubmit such shop Drawings, descriptive data and samples as may be required.

If any mechanical, electrical, structural, or other changes are required for the proper installation and fit of alternative materials, articles, or equipment, or because of deviations from the Contract, such changes shall not be made without the approval of the Director and shall be made without additional cost to the City.

- 2-1.05 **Preservation and Cleaning:** The Contractor shall clean up the Work at frequent intervals and at other times when directed by the Director. While finish Work is being accomplished, floors, Work areas and finished areas shall be kept clean, free of dust, construction debris and trash. Upon completion of the Work, the Contractor shall remove from the Premises his construction equipment and any waste materials not previously disposed of, leaving the Premises thoroughly clean and ready for final inspection.
- 2-1.06 **Limitations on Work Site and Premises:** The Contractor shall limit his construction operations to the Work Site unless otherwise shown on the Drawings or specified. The Contractor shall perform no operation of any nature over or on the Premises except such operations as are authorized by the Contract Documents or as authorized by the Director.
- 2-1.07 **Dust Control:** During the performance of all Work under this Contract, the Contractor shall assume all responsibility for dust control and shall furnish all labor, equipment, and means required to carry out proper and efficient measures wherever and whenever dust control is necessary to prevent the operations from producing dust damage and nuisance to persons and property. Any claims resulting from dust damage or nuisance shall be borne solely by the Contractor. The Contractor shall comply with all applicable Air Quality Act requirements.
- 2-1.08 **Sanitation:** The Contractor shall provide sanitary facilities for all persons working on the Work.

2-1.09 Night Work and Normal Working Hours: Normal working hours at the construction site shall be between the hours of 7:00 a.m. and 7:00 p.m. Monday through Friday. Legal holidays are excluded. Certain utility connections and street operations are anticipated to require night Work by the Contractor during low usage periods. The Contractor may also be required to prosecute the Work at night if, at any time, the Director shall deem it necessary for the progress of the Work, or if emergencies arise. The Contractor shall promptly comply with any such requirements made in writing by the Director. The Contractor will also be permitted to Work at night if he or she shall satisfy the Director of the need therefor, in order to maintain the required progress or protect the Work from the elements. Certain activities are required to be performed at night for nominal progress of the Work and/or are specified to be performed at night by other portions of the Supplemental Conditions. When required, ordered, or permitted to Work at night, the Contractor shall provide sufficient and satisfactory lighting and other facilities therefor. The Contractor shall receive no extra payment for night Work, if specified or if required to be performed during the normal progress of the Work, but compensation shall be considered as having been included in the price stipulated for the Work.

If Contractor performs work during weekends, holidays or any non normal work hours, Contractor shall pay for required City Inspectors.

2-1.10 **Lines and Grades:** Unless otherwise provided in the Supplemental Conditions, the Contractor shall lay out all Work, including structures and pipelines, and shall be responsible for any errors resulting therefrom. In all questions arising as to proper location of lines and grades, the Director's decision will be final.

As part of the bid price for the construction of the improvements, the Contractor shall provide and be responsible for the layout of all Work on this project. The Contractor shall

provide all necessary surveys, field staking, and positioning for the construction of all components at the proper alignment, elevations, grades, and positions, as indicated on the Drawings and as required for the proper operation and function. The Contractor shall stake his Work area limits.

The Contractor's lay-out shall be based on existing structures, property lines, survey control, and bench marks established by the City. All structures and pipeline connections shall be installed based on actual elevation of existing structures to which connections are made.

The Contractor shall supply such labor as required, at no extra charge, to aid and assist the Director in checking location and grades of the Work as set by the Contractor if the Director desires to perform this checking. This shall include moving materials and equipment located between monuments and the construction Work.

- 2-1.11 **Preservation of Monuments:** Any monuments or bench marks disturbed by construction operations shall be repaired per the City's standard and promptly re-established by a registered land surveyor or civil engineer. A plat for each monument shall be furnished to the Director after the plat has been recorded with the County Recorder's Office at no additional cost to the City. The recorded plat shall serve as a record of the re-establishment of said existing survey points.
- 2-1.12 **Final Cleanup:** Prior to final Acceptance of the Work, the Contractor shall thoroughly clean the Premises, remove all temporary structures built by or for the Contractor, and remove all equipment and surplus construction material and debris from the area. The entire project, before Acceptance by the City, shall be left in a neat and clean condition. All Work areas and temporary construction areas shall be returned to essentially the same conditions existing before the commencing of project construction.

- 2-1.13 **As-Built Plans:** The Contractor shall maintain one set of the full size prints furnished by the City and mark thereon any deviations from plan dimensions, elevations, or orientations. Also, the Contractor shall locate on said prints, all underground facilities, such as piping, conduits and tanks by accurate field measurement from structure walls, corners, etc. The Contractor shall submit the prints and an electronic CD in good condition to the Director upon completion of the job as a condition of Acceptance of the project. Marked prints shall be updated at least once each week and shall be available to the Director for review as to currency prior to developing partial payment estimates. After the completion of testing, but prior to Acceptance, the Contractor shall submit as built electrical Drawings and an electronic CD showing all components and their wiring, and as specified in the Supplemental Conditions.
- 2-1.14 **Superintendence:** The Contractor shall designate in writing before starting Work, an authorized representative who shall have the authority to represent and act for the Contractor.

When the Contractor is comprised of two (2) or more persons, firms, partnerships, or corporations functioning on a joint venture basis, said Contractor shall designate in writing before starting Work, the name of one authorized representative who shall have the authority to represent and act for the Contractor.

Said authorized representative shall be present at the site of the Work at all times while Work is actually in progress on the Contract. When Work is not in progress and during periods when Work is suspended, arrangements acceptable to the Director shall be made for any emergency Work that may be required.

Whenever the Contractor or his or her authorized representative is not present on any particular part of the Work where it may be desired to give direction, orders will be given by the

Director, which shall be received and obeyed by the superintendent or foremen who may have charge of the particular Work in reference to which the orders are given.

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

- 2-1.15 **Character of Worker:** If any subcontractor or person employed by the Contractor shall appear to the Director to be incompetent or to act in a disorderly or improper manner, he or she shall be removed immediately on the requisition of the Director, and such person shall not again be employed on the Work.
- 2-1.16 **Inspection:** The Contractor shall at all times permit the Director to inspect the Work of any part thereof. The Contractor shall maintain proper facilities and provide safe access for such inspection by the Director to all parts of the Work, and to the shops where the Work is in preparation. Work shall not be covered up until authorized by the Director and the Contractor shall be solely responsible for notifying the Director where and when such Work is in readiness for inspection and testing. Should any such Work be covered without authorization, it shall, if so ordered, be uncovered at the Contractor's expense.

Whenever the Contractor intends to perform Work on Saturday, Sunday, or a legal holiday, he or she shall give notice to the Director of such intention forty-eight (48) hours prior to performing such Work, or such longer period as may be specified so that the Director may make necessary arrangements.

2-1.17 **Removal of Rejected and Unauthorized Work:** All Work which has been rejected shall be remedied, or removed and replaced by the Contractor in a manner acceptable to

the Director and no compensation will be allowed the Contractor for such removal, replacement, or remedial Work.

Any Work done beyond the lines shown on the Drawings or established by the Director, or any Work done without written authority will be considered as unauthorized Work and will not be paid for. Upon order of the Director, unauthorized Work shall be remedied, removed, or replaced at the Contractor's expense.

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

SECTION 3

CHANGES IN THE WORK

3-1.01 **Changes:** The Department reserves the right to order changes in the Contract at any time prior to the Acceptance of the Work by the Director, and the Contractor shall comply with such order. Department also reserves the right to use its own forces or to contract with others to accomplish changes in the Work at its discretion. Changes or deviations from the Contract shall not be made without authority in writing from the Director, and any change to the Work without the Director's written approval will be considered unauthorized Work and will not be paid for.

On the basis set forth in this Section 3, the Contract Lump Sum Price shall be adjusted for any ordered change, which results in a change in the cost of the Work.

When ordered by the Director, 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 notify the Director of the reasons for such change; however, Work in the area affected shall not be discontinued unless ordered by the Director.

For any approved change in the Work, the Contractor shall be entitled to an adjustment in time equal to the number of Days which completion of the entire Work is delayed due to the changed Work. The Contractor's cost estimate for the changed Work shall state the amount of extra time, if any, that he or she considers should be allowed for making the requested change. Failure to request additional time when submitting such estimate shall constitute a waiver of the

right to later claim any adjustment in time based upon changed Work. Disagreement as to time adjustments shall not affect Contract price adjustments, nor shall it be cause for not proceeding with the changed Work when ordered by the Director. The Contractor shall have the right, however, to further pursue a time adjustment in the event an agreement is not reached. The Contractor shall not be entitled to a time extension or adjustment for any Change Order or delays in activities not on the critical path unless the delay or change exceeds the total float of the activities being delayed or changed.

3-1.02 **Ordinary Change Orders:** The Contractor will be notified in writing of a proposed Change Order describing the intended change. Within fifteen (15) Days after receipt of a written request, the Contractor shall submit his proposed price to be added or deducted from the Contract price due to the change. The Contractor's proposed price to be added to or deducted from the Contract price shall be supported by a detailed estimate of cost prepared by the Contractor, vendor or supplier. The Contractor's proposed price submittal shall be accompanied by a statement of the time necessary for the changed Work, together with a description of how this time will be incorporated into the current Construction Schedule. The Contractor shall upon request by the Director permit inspection of his original Contract estimate, subcontract agreements or purchase orders relating to the change.

If agreement is reached on the adjustment in compensation as provided in Section 3-1.04, "Agreed Cost for Change Orders," of these General Conditions, the Contractor shall proceed with the Work as changed at the agreed price.

If the Contractor and the Director fail to agree as to the adjustment in compensation for the performance of the changed Work, the Contractor, upon written order from the Director, shall proceed immediately with the changed Work and the Contract price shall be adjusted in accordance with Section 3-1.05, "Failure to Agree to the Cost of Change Orders," of these General Conditions.

If the Contractor fails to submit his cost estimate within such fifteen (15) day period, the Contractor shall commence the Work as changed immediately upon receipt of written order of the Director, and the Contract price will be adjusted in accordance with the Director's cost estimate for the changed Work, unless the Contractor, within fifteen (15) Days following completion of changed Work, presents proof to the satisfaction of the Director that the Director's estimate of cost was in error.

3-1.03 Emergency and Indeterminate Type Change Orders: Changes in the Work made necessary by an emergency, as determined by the Director, or changes of a kind where the extent of the Work cannot be determined until completed, may be authorized by the Director in writing. The Change Order shall state that it is issued pursuant to this Section 3-1.03. Upon receipt of an authorized Change Order or other written order of the Director, the Contractor shall proceed with the ordered Work and the Director will maintain a daily job record containing a detailed summary of all labor, materials and equipment required for the changed Work.

Within fifteen (15) Days after receiving a written request, the Contractor shall submit a detailed estimate of cost for the change and any requested change in Contract time in the same manner as required for ordinary Change Orders in Section 3-1.02 of these General Conditions.

3-1.04 **Agreed Cost for Change Orders:** If the Director and the Contractor agree as to the adjustment in compensation for the performance of changed Work on the basis of the Contractor's proposed cost estimate of the Work, the Contract price will be adjusted accordingly. The agreement shall be in writing and executed by both parties.

3-1.05 Failure to Agree to the Cost of Change Orders: When a proposed Change Order decreases the cost of the Work and the Director and the Contractor fail to agree upon the decreased cost thereof, the Director's estimated decrease in cost shall be deducted from the Contract price. The Contractor will be allowed fifteen (15) Days after receipt of a Contract Change Order approved by the Director, in which to file a written protest setting forth in what respects he or she differs from the Director's estimate of decreased cost, otherwise the decision of the Director to deduct the estimate of decreased cost shall be deemed to have been accepted by the Contractor as correct.

In the event the Director and the Contractor fail to agree on the cost of a Change Order which increases the cost of the Work, the Director will maintain a daily job record containing a detailed summary of all labor, materials and equipment required by the ordered change. At the end of each day's Work, the Contractor shall review the Director's daily job record comparing with his own records, and after agreement is reached, the daily job record shall be signed by both the Director and the Contractor and shall become the basis for payment for the changed Work. Upon completion of the Work under the Change Order, the Contractor shall submit an invoice listing only those items of labor, materials and equipment that were agreed to by both the Director and the Contractor to be in addition to the requirements of the Contract, together with allowable markups.

When there is a failure to agree as to cost, no payment for the changed Work will be made to the Contractor until all Work called for in the Change Order has been completed, except that progress payments may be made on those portions of the changed Work which the Contractor and the Director agree as to cost.

- 3-1.06 **Allowable Costs for Change Orders:** The only costs which will be allowed because of changed Work and the manner in which such costs shall be computed are set forth in Sections 3-1.06(A) through 3-1.06(E) of these General Conditions. Where the term "actual cost" is used in the aforesaid sections, it shall be deemed to mean "estimated cost" where the adjustment in compensation is of a necessity based upon estimated costs.
- 3-1.06(A) Labor: The Contractor will be paid an amount based on the actual cost for labor and supervision directly required for the performance of the changed Work, including payments, assessment of benefits required by lawful labor union collective bargaining agreements; compensation insurance payments; contributions made to the State pursuant to the Unemployment Insurance Code, and for taxes paid to the Federal Government pursuant to the Social Security Act of August 14, 1935, as amended. No labor cost will be recognized at a rate in excess of the wages prevailing in the locality at the time the Work is performed, nor will the use of a labor classification, which would increase the cost, be permitted unless the Contractor establishes to the complete satisfaction of the Director the necessity for payment at a higher rate.
- 3-1.06(B) **Materials:** The Contractor will be paid an amount based on the actual cost of the materials directly required for the performance of the changed Work. Such cost of materials may include the costs of procurement, transportation and delivery if necessarily incurred. If a cash or trade discount by the actual supplier is available to the Contractor, it shall be credited to the City. If the materials are obtained from a supply or source owned wholly or in part by the Contractor, payment therefor will not exceed the current wholesale price for such materials. If, in the opinion of the Director, the cost of materials is excessive, or if the Contractor fails to furnish satisfactory evidence of the cost to him or her from the actual supplier, the cost of the materials shall be deemed to be the lowest current wholesale price at which

similar materials are available in the quantities required. The Department reserves the right to furnish such materials required by the Change Order as it deems advisable, and the Contractor shall have no claim for cost or markups on material furnished by the Department.

3-1.06(C) Equipment: The Contractor will be paid an amount based on the actual cost for the use of equipment directly required and approved by the Director in the performance of the changed Work. No payment will be made for time while equipment is inoperative due to breakdowns or on Days when no Work is performed. In addition, the rental time shall include the time required to move the equipment to the Work from the nearest available source of such equipment, and to return it to the source. If such equipment is not moved by its own power, then loading and transportation costs will be paid. Moving time, loading and transportation costs will only be paid if the equipment is used exclusively on the changed Work during the time between move in and move out. Individual pieces of equipment having a replacement value of One Hundred Dollars (\$100) or less shall be considered to be tools or small equipment, and no payment will be made therefore. For equipment owned, furnished, or rented by the Contractor, no cost therefore shall be recognized in excess of the rental rates established by distributors or equipment rental agencies in the locality where the Work is performed.

3-1.06(D) **Markups:** When a Change Order increases the cost of the Work, the Contractor may add the following maximum markups to its actual costs of labor, materials, or equipment rental:

15 percent for labor;

15 percent for materials; and

15 percent for equipment rental.

The above markups include full compensation for bonds, profit and Overhead and shall not include work done by a subcontractor. When a Change Order decreases the cost of the Work, the reduction in cost shall include a five percent (5%) markup on the estimated cost for furnishing the labor, materials and equipment, which would have been used on such Work, had the Change Order not been issued.

When a Change Order involves both added Work and deleted Work, the markup or markups to be used shall be as follows:

The actual costs of labor, materials, and equipment rental for added and deleted Work shall be calculated separately without adding markups. If the difference between the calculated costs for labor results in an increased cost, a markup of fifteen percent (15%) shall be applied to the increased cost. If the difference between the calculated costs of materials or equipment rental results in an increased cost, a markup of fifteen percent (15%) shall be applied to the increased costs of materials or equipment rental, as the case may be. If the difference between the calculated costs for labor, materials or equipment rental results in a decreased cost, a markup of five percent (5%) shall be applied to the decreased costs of labor, materials or equipment rental, as the case may be.

Contractor shall not add mark-ups on work performed and billed by City staff.

3-1.06(E) **General Limitations:** In no event shall any actual cost for added Work be recognized in excess of market values prevailing at the time of the change, unless the Contractor can establish to the satisfaction of the Director that he or she investigated all possible means of obtaining such Work at prevailing market values and that the excess cost could not be

avoided. The Director shall determine the necessity for incurring the costs enumerated above, and as to whether they are directly at the option of the Director. When a Change Order deletes Work from the Contract, the computation of the cost thereof shall be the values that prevailed at the time bids for the Work were opened.

When Change Order Work is performed by a subcontractor, Contractor's compensation shall be based on all Direct Costs as listed in the subcontractor's portion of the proposal and an amount determined by the Director not to exceed five percent (5%) to Contractor as Overhead and profit.

It is understood and agreed by the City and the Contractor that the Contractor will incur

Overhead costs for temporary facilities, superintendence, home office Overhead, and similar cost

items, and that the costs of such Overhead for the full Contract period through the specified

completion date are included in the Contractor's lump sum bid amounts included in his accepted

Proposal. No additional compensation will be made to the Contractor for claims of increased

Overhead costs occurring within the originally specified construction Contract period plus any

time extensions granted by Change Order.

3-1.07 If the Contract price increases by the issuance of Change Orders, the Contractor shall within ten (10) calendar Days provide a commensurate increase in the penal amounts of the bonds required.

SECTION 4

CONTROL OF MATERIALS

4-1.01 **Materials:** The Contractor shall furnish all materials required to complete the Work, except materials that are designated in the Supplemental Conditions to be furnished by the City and materials furnished by the City in accordance with Section 3, "Changes in the Work," of these General Conditions.

Unless otherwise specified in the Supplemental Conditions, materials furnished by the Contractor for incorporation into the Work shall be new. When the quality or kind of materials, articles, or equipment is not particularly indicated, then the quality or kind thereof shall be similar to those that are indicated.

Articles or materials to be incorporated in the Work shall be stored in such a manner as to insure the preservation of their quality and fitness for the Work, and to facilitate inspection.

All materials which do not conform to the requirements of the Contract Documents as determined by the Director, will be rejected whether in place or not. Rejected material shall be removed immediately from the site of the Work, unless otherwise permitted by the Director. 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 Director. Upon failure of the Contractor to comply promptly with any order of the Director made under these provisions, the Director shall have the authority to cause the removal and replacement of rejected material and to deduct the cost thereof from any moneys due or to become due the Contractor.

Manufacturer's warranties, guaranties, instruction sheets and parts lists, which are furnished with certain materials incorporated in the Work, shall be delivered to the Director before Acceptance of the Contract.

Unless otherwise designated in the Supplemental Conditions or Specifications, materials furnished by the City will be delivered to the job site. Materials furnished by the City that are designated in the Supplemental Conditions as available at locations other than the job site shall be hauled to the site of the Work by the Contractor at his expense, including any necessary loading and unloading that may be involved.

The Contractor will be held responsible for all materials furnished to him or her, and shall pay all demurrage and storage charges. City-furnished materials lost or damaged from any cause whatsoever shall be replaced by the Contractor. The Contractor will be liable to the Department for the cost of replacing City-furnished material and such costs may be deducted from any moneys due or to become due the Contractor.

4-1.02 **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 Contractors for the Work is dated.

When standards or test designations of the Federal Government, trade societies, or trade associations are referred to in the Contract Documents by specific date of issue, these shall be considered a part of the Contract. When such references do not bear a date of issue, the edition in effect on the day the Notice to Contractors for the Work is dated shall be considered as part of the Contract.

4-1.03 **Sampling and Testing of Materials:** Unless otherwise specified, all tests shall be performed in accordance with the methods used by the State Department of Transportation (CalTrans) and shall be made by the Director or his or her designated representative.

The State Department of Transportation has developed test methods for testing the quality of materials and Work. These test methods are identified by California Test followed by the serial number. Copies of individual tests are available at the State Department of Transportation Laboratory, Sacramento, California, and will be furnished to interested persons upon request.

Whenever a reference is made in the Supplemental Conditions to a California Test by number, it shall mean the California test in effect on the day the Notice to Contractors for the Work is dated.

Whenever the Supplemental Conditions provide an option between two (2) or more test methods, the Director will determine the test method to be used.

Whenever a Supplemental Condition, 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 Director. The manufacturer's test reports shall supplement the inspection, sampling and testing provisions of the Section 4-1.03 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 Director may at his or her 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 Supplemental Conditions and furnished by the Contractor at his or her expense. The number of such samples and test specimens shall be entirely at the discretion of the Director.

When requested by the Director, the Contractor shall furnish, without charge, samples of all material entering into the Work, and no material shall be used prior to approval by the Director, except as provided in Section 4-1.04, "Certificates of Compliance," of these General Conditions.

A. <u>Inspection and Access for Testing:</u> The Contractor shall provide safe access for the Director and his or her inspectors to adequately inspect the quality of Work and the conformance with the Supplemental Conditions. The Contractor shall provide adequate lighting, ventilation, ladders and other protective facilities as may be necessary for the safe performance of inspections.

The Contractor shall submit samples or specimens of such materials to be furnished or used in the Work as the Director may require. The Contractor shall furnish the Director all necessary labor and facilities for such things as excavation in the compacted fill to depths required to take samples.

Inspections, tests, or favorable review by the Director or others shall not relieve the Contractor from his or her obligations to perform the Work in accordance with the requirements of the Contract Documents.

Work covered without the favorable review or consent of the Director shall, if required by the Director, be uncovered for examination at the Contractor's expense.

If the engineer considers it necessary or advisable that covered Work be inspected or tested by others, the Contractor, at the Director's request, will uncover, expose or otherwise make available for observation, inspection or testing as the Director may require, that portion of the Work in question, furnishing all necessary labor, materials, tools, and equipment. If it is found that such Work is defective, the Contractor will bear all the expenses of such uncovering,

exposure, observation, inspection and testing and of satisfactory reconstruction. If, however, such Work is not found to be defective and the Work was not covered without favorable review of the Director, the Contractor will be allowed an increase in the Contract price or an extension of the Contract time, or both, to cover his or her costs directly attributable to such uncovering, exposure, observation, inspection, testing, and reconstruction and an appropriate Change Order shall be issued.

Whenever the Contractor varies the period during which Work is carried on each day, he or she shall give due notice to the Director so that proper inspection may be provided.

Any Work done in the absence of the Director may be subject to rejection. Proper facilities for safe access for inspection to all parts of the Work shall at all times be maintained for the necessary use of the Director and other agents of the City. Authorized representatives and agents of the Director shall be permitted access to inspect all Work and materials wherever it is required for preparation of progress reports, and the Contractor shall provide proper facilities for such access and inspection.

It is the Contractor's responsibility to supervise the Work and complete the project in accordance with the Contract Documents. In the course of managing that effort, the Contractor shall generate his or her own punch lists as deemed necessary. The Director may prepare punch lists for the Director's own use in communicating with the Contractor; however, the Director shall be under no obligation to prepare punch lists for the Contractor. In general, the Director will prepare punch lists only after the Contractor has given the Director written notice that the subject Work is completed and tested in accordance with the Contract Documents and is ready for operation and/or use and/or occupancy. Failure of the Director to include an

item in a punch list shall not relieve the Contractor of his duty to satisfactorily complete all Work required by the Contract Documents.

Upon final completion of the construction Work and request by the Contractor, the Director will conduct a final inspection as a basis for recommending to the City that the Work be accepted.

B. <u>Field and Materials Testing.</u> Where the Supplemental Conditions require Work to be specially field tested or approved, it shall be tested only in the presence of the Director after timely notice of its readiness for inspection and test, and the Work after testing shall be covered up only upon the consent thereto of the Director.

The results of any tests made are for the information of the Director. Regardless of any test results, the Contractor is solely responsible for the quality of workmanship and materials and for compliance with the requirements of the Drawings and Supplemental Conditions

Except as specifically required under detailed materials Supplemental Conditions for shop testing and inspection, all tests of materials furnished by the Contractor where tests will be made by the Director will be done in accordance with commonly recognized standards of national organizations. The Contractor shall furnish such samples of all materials as required by the Director without charge. No material shall be used unless it has been favorably reviewed by the Director.

Where such inspection and testing are to be conducted by an independent

Laboratory or agency, the sample or samples of materials to be tested shall be selected by such

Laboratory or agency, or the Director, and not by the Contractor.

C. <u>Costs of Testing</u>.

- 1. Initial Services: The City shall furnish and pay for all initial testing services required by the Contract Documents. When initial tests indicate non-compliance with the Contract Documents, the cost of initial tests associated with that non-compliance will be deducted by the City from the balance owed the Contractor. The Contractor shall furnish samples of materials for testing as may be required by the Director. Such samples shall be furnished without cost to the City.
- 2. Retesting: When initial tests indicate non-compliance with the Contract Documents, all subsequent retesting occasioned by the non-compliance shall be performed by the same testing Laboratory and the cost thereof will be deducted by the City from the balance owed the Contractor.

Contractor shall be billed for each additional test.

- Contractor Convenience Testing: Inspection or testing performed exclusively for the Contractor's convenience shall be the sole responsibility of the Contractor.
- 4. When in the opinion of the Director additional tests or inspections are required because of the manner in which the Contractor executes his Work, such tests and inspections shall be paid for by the City, but will be deducted from the Contract price. Examples of such tests and inspections are tests of materials substituted for previously accepted materials or substituted for specified materials, retests made necessary by failure of material to comply with the requirements of the Specifications, load tests made necessary because of portions of the structure not fully meeting Specifications or plan requirements, etc.

4-1.04 **Certificates of Compliance:** A Certificate of Compliance shall be furnished prior to the use of any materials for which the Supplemental Conditions require that such a Certificate be furnished. In addition, the Director may permit the use of certain materials or assemblies prior to sampling and testing if accompanied by a Certificate of Compliance. The Certificate shall be signed by the manufacturer of the material or the manufacturer of assembled materials and shall state that the materials involved comply in all respects with the requirements of the Supplemental Conditions. A Certificate of Compliance shall be furnished with each lot of such materials delivered to the Work and the lot so certified shall be clearly identified in the Certificate.

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

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

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

SECTION 5

LEGAL RELATIONS AND RESPONSIBILITY

5-1.01 Laws to be Observed: The Contractor shall keep informed of and observe, and comply with and cause all of his or her agents and employees to observe and comply with, all prevailing Federal and State laws, and rules and regulations made pursuant to said Federal and State laws, and county and municipal ordinances, and regulations, which in any way affect the conduct of the Contract. If any conflict arises between provisions of the Contract and any such law above referred to, the Contractor shall notify the Director at once in writing. The Contractor shall protect and indemnify the City or any of its officers, agents and servants against any claim or liability arising from or based on the violation of any such law, rule, or regulation, whether by him or herself or his or her agents or employees.

5-1.02 **Hours of Labor:** Eight (8) hours labor constitutes a legal day's work. The Contractor or subcontractor shall, as a penalty to City, forfeit Twenty-five (\$25) Dollars for each worker employed in the execution of the contract by the respective Contractor or subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one (1) calendar day and forty (40) hours in any one (1) calendar week in violation of the provisions of the Labor Code, and in particular, Section 1810 to Section 1815, thereof, inclusive, except that Work performed by employees of Contractors in excess of eight (8) hours per day, and forty (40) hours during any one (1) week, shall be permitted upon public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1-1/2) times the basic rate of pay, as provided in said Section 1815.

5-1.03 **Nondiscrimination**:

A. Attention is directed to Labor Code Section 1735, which reads as follows:

"A contractor shall not discriminate in the employment of persons upon public workson any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code. Every Contractor for public works who violates this section is subject to all the penalties imposed for a violation of this chapter."

- B. During the performance of this Contract, Contractor and its subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, medical disability, medical condition, marital status, age, sex or sexual orientation. The Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. The Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code §12900, et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, §7285.0 et seq.) and other applicable State and Federal regulations pertaining to nondiscrimination and affirmative action which are incorporated into this Agreement by reference and made a part hereof as if set forth in full. The Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- C. Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform Work under the agreement.

5-1.04 **Prevailing Wage:** The Contractor shall comply with Labor Code Sections 1770 et seq. In accordance with said Section 1775 the Contractor shall forfeit as a penalty to the City Fifty Dollars (\$50) for each calendar day or portion thereof, for each worker paid less than the prevailing rates for such Work or craft in which such worker is employed for any public work done under the Contract by the Contractor or by any subcontractor under the Contractor in violation of the provisions of the Labor Code and in particular, 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 shall be paid to each worker by the Contractor or subcontractor.

Pursuant to the provisions of California Labor Code Sections 1773, the Department has identified the source, stated below, of the General Prevailing Rate of Wages applicable to the Work to be done, for straight time, overtime, and holiday Work. The holiday wage rate listed shall be applicable to all holidays recognized in the collective bargaining agreement of the particular craft, classification or type of worker concerned. These wage rates may be obtained from the State Department of Industrial Relations and/or the following website address: http://www.dir.ca.gov/dlsr/DPreWageDetermination.htm, which is a part of this Contract.

Pursuant to Labor Code Section 1773.2, General Prevailing Wage Rates set forth above, which forms a part of this Contract, shall be posted by the Contractor at a prominent place at the site of the Work.

Prevailing Wage Rates to be posted at the job site will be furnished by the Department.

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 or her Bid, and will not under any circumstances be considered as the basis of a claim against the City or Contract.

- 5-1.05 **Travel and Subsistence Payments:** [Reserved]
- 5-1.06 **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 or her subcontractors.
- A. Each Contractor and subcontractor shall keep accurate and current payroll records, 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 a representative of the City, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations. The City reserves the right to

withhold any progress payments to the Contractor in the event of noncompliance with the subsection.

- (3) A certified copy of all payroll records enumerated in subdivision A shall be made available upon request by the public for inspection or for copies thereof.

 However, a request by the public shall be made through either the City, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. The public shall not be given access to such records at the principal 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 ten (10) Days after receipt of a written request.
- E. Any copy of the records made available for inspection as copies and furnished upon request to the public or any public agency by the City, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor awarded the Contract or subcontractor performing the Contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor- management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (Section 175a of Title 29 of the United States Code) shall be marked or obliterated only to prevent the disclosure of an individual's name and social security number. A joint labor management committee may maintain an action in a court of competent jurisdiction

against an employer who fails to comply with Section 1774. The court may award restitution to an employee for unpaid wages and may award the joint labor management committee reasonable attorney's fee and costs incurred in maintaining the action. An action under this subdivision may not be based on the employer's misclassification of the craft of a worker on its certified payroll records. Nothing in this subdivision limits any other available remedies for a violation of this chapter.

- F. The Contractor shall inform the City of the location of the records enumerated under subdivision (a), including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.
- G. The Contractor shall have ten (10) Days in which to comply subsequent to receipt of written notice requesting the records enumerated in subdivision (a). In the event that the Contractor or subcontractor fails to comply with the ten (10) day period, the Contractor shall, as a penalty to the State or City, forfeit twenty-five (\$25) Dollars 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, these penalties shall be withheld from progress payment or final payment then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.
- 5-1.07 **Safety**: It is the intent of the parties that the City is not an exposing, creating, controlling, or correcting employer under California Labor Code section 6400. In accordance with generally accepted construction practices and State law, the Contractor shall have the authority and be solely and completely responsible for conditions on the job site, including safety of all persons and property during performance of the Work. Moreover, the Contractor

shall be the controlling employer and has the authority and responsibility to enforce worksite safety. The Contractor shall be responsible for conducting daily safety inspections and assuring all hazards and violations are abated. The Contractor is responsible for assuring that all subcontractors adhere to the minimum CAL/OSHA safety requirements and that each subcontractor has an effective CAL/OSHA IIP (Illness and Injury Protection Program) in place that specifically addresses all potential exposures, such as, but not limited to, fall protection, confined space, and trenching/shoring. These requirements shall apply continuously and not be limited to normal working hours. The Contractor shall be responsible for any delay costs or damages in the event the progress of Work is slowed or stopped due to a safety violation.

Contractor shall inform CITY in advance of the quantity of chemical(s) to be used for the project and the total quantity of chemical(s) that will be brought onto City property. In addition, Contractor shall provide CITY with one copy of the Material Safety Data Sheet (MSDS) for each chemical expected to be used to complete the project.

The services of the Director in conducting construction review of the Contractor's performance is not intended to include review of the adequacy of the Contractor's Work methods, equipment, bracing or scaffolding, or safety measures, in, on, or near the construction site. If a City employee observes a safety violation, the City employee will report the violation to the Contractor who is then responsible for assuring the violation is abated.

The Contractor is hereby informed that Work on this project could be hazardous. The Contractor shall carefully instruct all personnel working in potentially hazardous Work areas as to potential dangers and shall provide such necessary safety equipment and instructions as are necessary to prevent injury to personnel and damage to property. Special care shall be exercised relative to Work underground.

All Work and materials shall be in strict accordance with all applicable State, City, County, and Federal Rules, Regulations, and Codes, and attention is drawn to the requirements of CAL/OSHA. The Contractor shall be solely responsible for compliance with all City, County and State blasting requirements and for any damages caused by his or her operations.

In accordance with State Labor Code Section 6705, the Contractor shall submit to the City specific plans to show details of provisions for worker protection from caving ground. This in no way relieves the Contractor from the requirement of maintaining safety in all operations performed by the Contractor or the Contractor's subcontractors. The detailed Plan showing design of shoring, bracing, sloping or other provisions shall be prepared by a registered civil or structural engineer in the State of California as required. Acceptance by the City or its designated agent only constitutes acknowledgment of the submission and does not constitute review or approval of the designs, design assumptions or criteria, completeness of submissions, applicability to areas of intended use, nor implementation of the Plans, which are solely the responsibility of the Contractor and his or her registered engineer.

Notwithstanding any classifications relative to the Tunnel Safety Orders, Work within confined spaces on this project is subject to the definitions and applicable provisions of California Code of Regulations Section 8400 et seq., Title 8.

The Contractor shall so perform its Work as not to expose personnel to, or to discharge into the atmosphere from any source whatever, smoke, dust, asbestos, toxic chemicals or other air contaminants in violation of the laws, rules, and regulations of the governmental entities having jurisdiction. Contractors or subcontractors removing one hundred (100') or more square feet of asbestos must be "Certified" in accordance with State law. All Work involving exposure

to asbestos and all other hazardous materials shall be performed with protection of personnel in compliance with all applicable regulations and safety requirements.

Nothing in these General Conditions is to be construed to permit Work not conforming to governing codes. When Contract Documents differ from governing codes, the Contractor shall furnish and install the higher standards called for without extra charge. All equipment furnished shall be grounded and provided with guards and protection as required by safety codes. Where vapor tight or explosion proof electrical installation is required by code, this shall be provided. In accordance with the provisions of Labor Code Section 6707, the Contractor shall provide adequate sheeting, shoring and bracing for employee protection, as provided in his proposal as separate Bid Items.

5-1.08 **Apprentices:** Attention is directed to Labor Code Sections 1777.5, 1777.6 and 1777.7 and Title 8, California Code of Regulations Section 200 et seq. To insure compliance and complete understanding of the law regarding apprentices, and specifically the required ratio thereunder, each Contractor or subcontractor should, where some questions exist, contact the Division of Apprenticeship Standards, 455 Golden Gate Avenue, San Francisco, California, or one of its branch offices prior to commencement of Work on the public works Contract. Responsibility for compliance with this section lies with the prime Contractor.

It is State and City policy to encourage the employment and training of apprentices on public works Contracts as may be permitted under local apprenticeship standards.

5-1.09 **Fair Labor Standards Act:** Attention is invited to the fact that the City has been advised by the Wage and Hour Division, U.S. Department of Labor, that Contractors engaged in construction Work are required to meet the provisions of the Fair Labor Standards Act of 1958 and as amended (52 Stat. 1060).

5-1.10 **Workers' Compensation:** Pursuant to the requirements of Labor Code Section 1860, the Contractor will be required to secure the payment of workers' compensation to his employees in accordance with the provisions of Labor Code Section 3700.

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

"I am aware of the provisions of Labor Code Section 3700 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."

5-1.11 **Air Pollution Control and Asbestos:** The Contractor shall comply with all air pollution control rules, regulations, ordinances and statutes which apply to any Work performed pursuant to the Contract, including any air pollution control rules, regulations, ordinances and statues, specified in Government Code Section 11017.

In the absence of any applicable air pollution control rules, regulations, ordinances or statutes governing solvents, all solvents, including but not limited to the solvent portions of paints, thinners, curing compounds, and liquid asphalt used on the project shall comply with the applicable material requirements of the applicable Air Quality Management District. All containers of solvent, paint, thinner, curing compound or liquid asphalt shall be labeled to indicate that the contents fully comply with said requirements.

Unless otherwise provided in the Supplemental Conditions, material to be disposed of shall not be burned, either inside or outside the Premises.

The Contractor shall comply with all rules, regulations, statutes and ordinances regarding asbestos removal and disposal, including but not limited to, 42 U.S.C. Sections 7401, 7412 and 7601 and 40 C.F.R. Part 61, Subpart M.

If the Contractor discovers that a building to be demolished or renovated contains asbestos containing material, the Contractor shall immediately cease Work and notify the City.

5-1.12 **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 weed, 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.

5-1.13 **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. Work shall not begin before 7 a.m. nor occur after 7 p.m.

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

5-1.14 Environmental Clearances; Mitigation Monitoring Programs; and Regulatory Agency Permit Requirements: The Department will obtain all environmental clearances and other authorizations necessary for this project as set forth in the Contract Documents. The Contractor shall comply with the provisions, including giving notices during construction when required, of said authorizations. In the event the obtaining of said authorizations delays completion of all or any portion of the Work, an extension of time determined pursuant to the provisions in Section 6-1.08, "Liquidated Damages," of these General Conditions will be granted.

Contractor shall comply with: 1) all mitigation identified in the mitigation monitoring program (attached to and adopted as a component of the mitigated negative declaration or Environmental Impact Report) to mitigate impacts to protected natural resources; and 2) all related permit requirements issued by the regulatory agencies authorizing the project. Contractor shall defend, indemnify, and save and hold harmless the CITY, its officers, agents, and employees from any fines, claims, suits, actions or regulatory sanctions of every name, kind and description brought forth, or on account of, damage to protected natural resources from or arising out of Contractor's negligence or willful misconduct in the performance of this Agreement.

- 5-1.15 **Permits and Licenses:** The Contractor shall procure all permits and licenses in coordination with the Director and give all notices necessary and incident to the due and lawful prosecution of the Work. All permits and licenses shall be obtained in sufficient time to prevent delays to the Work. All fees and connection charges specifically related to the Work shall be paid by City. The Contractor shall obtain and maintain a City business license.
- 5-1.16 **Water Pollution:** The Contractor shall comply with all water pollution control rules, regulations, ordinances and statutes which apply to any Work performed pursuant to the

Contract, including any water pollution control rules, regulations, and statutes, specified by the most current State of California NPDES General Permit for Stormwater Discharges Associated with Construction Activity.

The Contractor shall take all necessary precaution to protect streams, vernal pools, ponds, and lakes from pollution with fuels, oils, bitumen, and other harmful materials as consistent with the law. Also, the Contractor shall conduct and schedule operations so as to avoid discharging pollutants, such as but not limited to: sediment and silt to the storm drain system. The storm drain system consists of all facilities that are designed to convey stormwater to the Waters of the State as defined in the California Water Code. The storm drain system includes, but is not limited to, all streets, gutters, drain inlets, roadside ditches, streams, vernal pools, ponds, and lakes.

5-1.17 **Protection and Use of Property:** The Contractor shall be responsible for and provide and maintain all proper temporary walks, roads, guards, railings, lights, warning signs, and take precaution at all times to avoid injury or damage to any person or any property, and upon completion of the Work, or at other times as directed, restore Premises and adjacent property to a proper condition. In the even of such injury or damage, Contractor shall report such injury and damage to City within 48 hours of occurrence.

The Contractor shall protect adjoining property and nearby buildings, including City buildings, City roads, and public streets or roads, from dust, dirt, debris, or the nuisance arising out of the Contractor's operations or storage practices, and, if ordered by the Director, the Contractor shall provide and install suitable safeguards, approved by the Director, to protect such objects from damage. If such objects are damaged by reason of the Contractor's operations, they shall be replaced or restored at the Contractor's expense.

If the Contractor damages any buildings, roads or other property which belong to the City, or any Department or agency thereof, then the Director, at his or her option, may retain from the money due under the Contract an amount sufficient to insure repair of the damage.

The Director may make or cause to be made such temporary repairs as are necessary to restore to service any such damaged facility. The cost of such repairs shall be borne by the Contractor and may be deducted from any moneys due or to become due the Contractor under the Contract.

5-1.18 **Responsibility for Damage:** The City of Roseville, its officers, agents, volunteers and employees, including but not limited to the Director and the City Director, shall not be answerable or accountable in any manner: for any loss or damage that may happen to the Work or any part thereof; for any loss or damage to any of the materials or other things used or employed in performing the Work; for injury to or death of any person, either workers or the public; or for damage to property from any cause which might have been prevented by the Contractor, his or her workers, or anyone employed by the Contractor or the Contractor's subcontractors.

The Contractor shall be responsible for any liability imposed by law and for injuries to, or death of, any person including, but not limited to, workers and the public, or damage to property resulting from defects or obstructions, or from any cause whatsoever during the progress of the Work or at any time before its completion and final Acceptance.

The Contractor shall defend, indemnify, and save harmless the City of Roseville, and its officers, Directors, agents, subcontractors, and employees from all claims, suits or actions of every name, kind and description, brought forth, or on account of, injuries to or death of any person including, but not limited to, workers and the public, or damage to property resulting

from the performance of the Contract, except as otherwise provided by statute. The duty of the Contractor to indemnify and save harmless includes the duties to defend as set forth in Civil Code Section 2778.

The Contractor waives any and all rights to any type of express or implied indemnity against the City, its officers, agents, volunteers or employees.

It is the intent of the parties that the Contractor will defend, indemnify, and hold harmless the City of Roseville, and its officers, agents, volunteers and employees, from any and all claims, suits or actions as set forth above regardless of the existence or degree of fault or negligence whether active or passive, primary or secondary on the part of the City, the Contractor, the subcontractor or employee of any of these, except where the claims, suits or actions arise from the sole active negligence of the City. The parties intend this indemnity to be broadly construed.

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

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

- A. The City will give the Contractor thirty (30) Days notice of its intention to retain funds from any partial payment which may become due to the Contractor prior to Acceptance of the Contract. Retention of funds from any payment made after Acceptance of the Contract may be made without such prior notice to the Contractor.
- B. No retention of additional amounts out of partial payments will be made if the amount to be retained does not exceed the amount being withheld from partial payments pursuant to Section 7-1.05, "Partial Payments," of these General Conditions.

C. If the City has retained funds and it is subsequently determined that the City is not entitled to be indemnified and saved harmless by the Contractor in connection with matter for which such retention was made, the Department shall be liable for interest on the amount retained at the legal rate of interest for the period of such retention.

5-1.19 **Insurance Coverage:**

- A. Evidence of Maintenance Required. The Contractor shall, at all times, maintain in full force and effect the insurance required by this section; and the Contractor shall not allow any subcontractor to commence Work until similar insurance required of the subcontractor has been obtained and filed. A Certificate of Insurance, and copies of all required endorsements, all in a form approved by the City Attorney, evidencing all required coverage or policies shall be filed after the award of the bid and prior to approval of the Contract by the City Council. The Certificate shall provide that at least thirty (30) Days prior written notice of any reduction of coverage limits or cancellation of the coverage or policies shall be given to the City of Roseville as Certificate holder.
- B. <u>Qualifying Insurers.</u> With the exception of the State Compensation Insurance Fund, all required insurance policies shall be issued by companies licensed to do business in the State of California and who hold a current policy holders alphabetic and financial size category rating of not less than AVII according to the most recent issue of Best's Insurance Reports.
- C. <u>Insurance Required.</u> Commercial General Liability, automobile liability, and workers' compensation insurance shall be maintained as follows:

1. Commercial General Liability

Bodily Injury: \$1,000,000 each occurrence

\$2,000,000 aggregate Property Damage:

\$1,000,000 each occurrence

Personal Injury:

\$1,000,000 each occurrence

\$2,000,000 aggregate

The Commercial General Liability policy shall include coverage or endorsements for:

a. Completed operations.

- b. Losses related to independent contractors, products and equipment.
- c. Explosion, collapse and underground hazards.

The Commercial General Liability insurance shall include the following endorsements, copies of which shall be provided:

- Inclusion of the City of Roseville, and its officers, agents, volunteers and employees, as additional insured as respects services or operations under the Contract.
- b. Cross liability and severability of interest clauses providing that the insurance applies separately to each insured except with respect to the limits of liability.
- c. Stipulation that the insurance is primary insurance and that neither the City nor its insurers will be called upon to contribute to a loss.
- d. Such insurance shall specifically cover the contractual liability of the CONTRACTOR.
- e. The CONTRACTOR shall furnish a certificate for the period covered.

SPECIAL NOTICE - CLAIMS MADE COVERAGE:

Liability insurance coverage may not be written on a "claims made" basis. The Certificate of Insurance must clearly provide that the coverage is on an "occurrence" basis.

- 2. <u>Comprehensive Automobile Liability</u> for bodily injury (including death) and property damage which provides total limits of not less than One Million Dollars (\$1,000,000) combined single limits per accident, applicable to all owned, non-owned, and hired vehicles.
- 3. <u>Statutory Workers' Compensation and Employer's Liability Insurance,</u> including a Broad Form "All-States" Endorsement; for all employees engaged in services or operations under the Contract. The employer's liability insurance shall provide limits of not less than One Million Dollars (\$1,000,000) per occurrence. Both the workers' compensation and employer's liability policies shall contain the Insurer's waiver of subrogation in favor of the City, its officers, agents, and employees.
- 4. <u>Builder's Risk/Course of Construction Insurance:</u> The Contractor shall be responsible for all loss, damage or destruction whatsoever to the Work called for by this Contract until the approval of a Notice of Completion. The Contractor shall secure "All Risk" type of builder's Risk Insurance of the type covering one hundred percent (100%) of the value of the Work performed under this Contract (the value is presumed to be the Contract amount unless otherwise stated in Supplemental Conditions) and all materials, equipment, or other items to be incorporated therein while the same are located at the construction site, a bonded warehouse, or its place of manufacture. At any time, the policy shall cover the value of the Work completed. The policy shall cover hazards

including the losses due to fire, explosion, hail, rain, lightning, flood (separate insurance as needed), vandalism, malicious mischief, wind, collapse, aircraft, and smoke.

The policies providing such insurance shall name the City as a loss payee as its respective interests may appear, and certified copies of such policies shall be filed with the City. The maximum deductible allowable under the Builder's All Risk policy shall be five percent (5%) of the Contract amount.

5-1.19(A) **Other Insurance Provisions:**

- A. The requirements of the Contract Conditions as to types and limits of insurance coverage to be maintained by the Contractor, and any approval of insurance by the City, are not intended to, and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to the Contract, including, but not limited to, the provisions concerning indemnification, nor preclude the City from taking any other action available to it under any other provision of the Contract or law.
- B. The City acknowledges that some insurance requirements contained in the Contract Conditions may be fulfilled by self-insurance on the part of the Contractor. However, this shall not in any way limit liabilities assumed by Contractor under the Contract. Any self-insurance must be approved in writing by the City, in its sole discretion.
- C. Should any of the Work under the Contract be sublet, the Contractor shall require each of its subcontractors of any tier to provide the aforementioned coverage, or the Contractor may insure subcontractor(s) under its own policy.
- D. The City, its officers, officials, employees and volunteers are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the contractor; and with respect to liability arising out of work or operations

performed by or on behalf of the contractor including materials, parts or equipment furnished in connection with such work or operations. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under California Insurance Code Section 11580.04.

- E. THE CITY RESERVES THE RIGHT TO WITHHOLD ANY PROGRESS PAYMENTS TO THE CONTRACTOR IN THE EVENT OF NONCOMPLIANCE WITH ANY INSURANCE REQUIREMENTS.
- 5-1.20 **Third Party Beneficiary:** Nothing in the Contract is intended to make the public or any member thereof a third party beneficiary hereunder, nor is any term and condition or other provision of the Contract intended to establish a standard of care owed to the public or any member thereof.
- 5-1.21 Occupancy by the Department Prior to Acceptance: The Department 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 Department. 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 Department, and of such occupancy results in increased premiums for such insurance, the Department will pay to the Contractor the added cost for such insurance during the period of occupancy.

Such occupancy does not constitute Acceptance by the Director 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 Director or during the full guarantee period after such Acceptance, as provided in Section 7-1.09, "Guarantee," of these General Conditions.

5-1.22 **Right To Operate Unsatisfactory Equipment**: If, after installation, the operation or use of the facilities or equipment to be furnished under this Contract proves to be unsatisfactory to the Director, the City shall have the right to operate and use such facilities until they can, without damage to the City, be taken out of service for correction or replacement. Such period of use of the defective facilities, pending correction or replacement, shall in no way decrease the guarantee period required for the acceptable corrected or replaced items of materials or equipment.

5-1.23 Contractor's Responsibility for the Work: Except as otherwise provided herein, the Contractor shall have the charge and care of the Work and shall bear the risk of injury or damage to any part of the Work by the action of the elements or from any other cause whether arising from the execution or from the nonexecution of the Work until the Acceptance of the Contract by the Director. The Contractor shall rebuild, repair, restore, and make good all injuries or damages to any portion of the Work occasioned by any cause before its completion and Acceptance, and shall bear the expense thereof. In case of suspension of Work from any cause whatever, the Contractor shall be responsible for the Work and he shall also be responsible for all materials, and shall properly store them if necessary, and shall provide suitable drainage and erect temporary structures where necessary.

The Contractor will be relieved of responsibility for any injury or damage to the Work caused by the following:

A. An earthquake in excess of a magnitude of 3.5 on the Richter Scale or a tidal wave, when the effect of such has been proclaimed a disaster or state of emergency by the

Governor of the State of California or by the President of the United States, or was of such magnitude at the site of the Work as to have been sufficient to have caused a proclamation of disaster or state of emergency, had it occurred in a populated area.

- B. Occupancy and use by the Department or the public prior to the completion of the entire project.
 - C. Acts of the Federal Government or the public enemy.
- 5-1.24 **Responsibility for Utilities:** The Contractor shall be responsible at his or her own cost for any and all Work, expense or special precautions caused or required by the existence or proximity of utilities encountered in performing the Work, including without limitation, repair of any or all damage and all hand or exploratory excavation required. The Contractor is cautioned that such utilities may include communication cables or electrical cables which may be high voltage, and when working or excavating in the vicinity of such cables, or the ducts enclosing such cables, the Contractor shall observe at his or her own cost any special precautions required. Suitable warning signs, barricades, and safety devices shall be erected as necessary or required.

However, if during the course of the Work the Contractor encounters utility installations which are not shown or indicated in the Contract Documents or which are found in a location substantially different from that shown, and such utilities are not reasonably apparent from visual examination, then the Contractor shall promptly notify the Director in writing. Where necessary for the Work of the Contract, the Director shall issue a written order to the Contractor to make such adjustments, rearrangement, repair, removal, alteration, or special handling of such utility, including repair of the damaged utility. The Contractor shall perform the Work described in such written order, and compensation therefor will be made in accordance with Section 3 of

these General Conditions relating to changes in the Work. Except for the items of cost specified in said Section 3, the Contractor shall receive no compensation for any other cost, damage delay, interference, or hindrance to him or her due to the presence of such utility. If the Contractor fails to give the notice specified above and thereafter acts without instructions for the Director, then he or she shall be liable for any or subsequent to discovery thereof, and he or she shall repair and make good such damage at his or her own cost.

The precise location of underground facilities can only be determined by careful probing or hand digging in compliance with Article 6 of the OSHA Construction Safety Orders which states in part:

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

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

The Contractor shall exercise extreme caution in working in the area adjacent to the existing pipelines and utility services. It is essential that all the existing facilities be maintained in service. Construction of the connections between the existing facilities and the new facilities shall be at times and during periods acceptable to the City. The Contractor shall advise the Director in writing of his proposed construction schedule for these connections at least forty-eight (48) hours in advance.

The Contractor shall uncover all piping and conduits, to a point one foot (1') below the pipe, where crossings, interferences, or connections are shown on the Drawings, prior to trenching or excavating for any pipe or structures, to determine actual elevations. New pipelines shall be laid to such grade as to clear all existing facilities which are to remain in service. If the Contractor does not expose all required utilities, he shall not be entitled to additional compensation for Work necessary to avoid interferences nor for repair to damaged utilities. Excavations around underground electrical ducts and conduits shall be performed using extreme caution to prevent injury or damage to workers and to the electrical ducts or conduits.

5-1.25 **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 as provided in Section 7-1.05, "Partial Payment," of these General Conditions 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 said Section 7-1.05.

- 5-1.26 **Court Ordered Delay:** If, pursuant to court order, the Department temporarily suspends performance of all or any portion of the Work, an extension of time determined pursuant to the provisions in Section 6-1.08, "Liquidated Damages," of these General Conditions will be granted.
- 5-1.27 **No Personal Liability:** Neither the Director, nor any other officer or authorized employee of the City shall be personally responsible for any liability arising under the Contract.
- 5-1.28 **Patents:** The Contractor shall assume all costs arising from the use of patented materials, equipment, devices, or processes used on or incorporated in the Work, and agrees to indemnify and save harmless the City, and its duly authorized representatives, from all suits at law, or in equity, and actions of every nature for, or on account of the use of any patented materials, equipment, devices or processes.
- 5-1.29 **Payment of Taxes:** The Contract price 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 Department, as to any tax on labor, services, materials, transportation, or any other items furnished pursuant to the Contract.
- 5-1.30 **Cooperation:** Should construction be under way by City forces or other forces or by other Contractors within or adjacent to the limits of the Work or should Work of any other nature be under way by such forces within or adjacent to said limits, the Contractor shall cooperate with all such forces to the end that any delay, interference 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 such forces.

- 5-1.31 **Digging Trenches or Other Excavations:** In the event any work involves digging trenches or other excavations that extend deeper than four feet below the surface City and Contractor shall comply with the following:
- A. The Contractor shall promptly, and before the following conditions are disturbed, notify City in writing of any:
- 1. Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
- 2. Subsurface or latent physical conditions at the site differing from those made available to Contractor for inspection as provided in the project proposal.
- 3. Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in the contract.
- B. The City shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the Work shall issue a Change Order under the procedures described in the contract.
- C. In the event that a dispute arises between the City and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for by the contract, but shall proceed with all work to be performed under the contract. The Contractor shall retain any and

all rights provided either by contract or by law which pertain to the resolution of disputes and
protests between the contracting parties.

SECTION 6

PROSECUTION AND PROGRESS

6-1.01 **Subletting and Subcontracting:** The Contractor shall be responsible for all Work performed under the Contract. All persons engaged in the Work will be considered as employees of the Contractor. The Contractor shall give his or her personal attention to the fulfillment of the Contract and shall keep the Work under his or her control. When any subcontractor fails to prosecute a portion of the Work in a manner satisfactory to the Director, that subcontractor shall not again be employed on the Work. Although the sections of the Contract may be arranged according to various trades, or general grouping of the Work, the Contractor is not obligated to sublet the Work in such manner. The Director will not arbitrate disputes among subcontractors or between Contractor and one or more subcontractors concerning responsibility for performing any part of the Work.

The Contractor shall not substitute any person as subcontractor in place of a subcontractor listed on his bid proposal without the written approval of the Director.

Substitutions must be in accordance with the provisions of the "Subletting and Subcontracting Fair Practices Act" beginning with Public Contract Code Section 4100. Violations of this Act by the Contractor may subject him or her to penalties which may include cancellation of Contract, assessment of ten percent (10%) of the subcontractor's bid, and disciplinary action by the State Contractors' License Board.

6-1.02 **Assignment:** The performance of this Contract may not be assigned, except upon the written consent of the City Council of the City of Roseville. 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 Director consent to any assignment of a part of the Work under the Contract.

The Contractor may assign moneys due or to become due to him or her under the Contract and such assignment will be recognized by the Department, if given proper notice thereof, to the extent permitted by law, but any assignment of moneys shall be subject to all proper set-offs in favor of the Department 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 Department for the completion of the Work in the event that the Contractor should be in default therein.

6-1.03 **Beginning of Work:** The Contractor shall begin Work within fifteen (15) Days after receiving Notice to Proceed from the Director and shall diligently prosecute the same to completion within the time limit provided in the Supplemental Conditions.

The Contractor shall notify the Director, in writing, of his or her intent to begin Work at least seventy-two (72) hours before Work is begun. The notice shall be delivered to the Director 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 notice that the Contract has been approved as above provided, any Work performed by him or her in advance of the said date of approval shall be considered as having been done by the Contractor at his or her own risk and as a volunteer unless said Contract is so approved.

6-1.04 **Progress Schedule:**

- A. <u>Preliminary Progress Schedule:</u> The Contractor shall submit to the Director, within twenty (20) Days after date of the Notice to Proceed, a Preliminary Progress Schedule covering the Contractor's activities over the first three (3) months of operation in detail and the remainder of the project in summary. The Preliminary Progress Schedule shall schedule the project within the calendar Days set forth above for completion of the Work, and shall be subject to favorable review by the Director.
- B. <u>CPM Schedule:</u> The Contractor shall submit an acceptable Critical Path Method (CPM) Schedule to the Director within thirty (30) Days after the receipt of the Notice to Proceed. Subsequent revisions to said schedule shall be submitted as set forth hereinafter. The requirement for the CPM schedule is included to allow for adequate planning and execution of the Work, to determine the critical nature of delays, and to assist the Director in appraising the reasonableness of the proposed schedule and evaluating progress of the Work. The CPM schedule submitted under this Section shall utilize a critical path method (CPM) format, either the precedence or arrow diagramming method. The definitions of CPM terms and functions shall be as provided in the Associated General Contractors of America book "CPM in Construction, A Manual for General Contractors," or a favorably reviewed alternative publication or reference. No progress payment will be made prior to submission and Acceptance of the CPM Schedule.
- 1. The CPM schedule system shall consist of diagrams and accompanying mathematical analyses. The diagrams shall show elements of the project in detail and an entire project summary. Diagrams shall show the order and interdependence of activities and sequence in which the Work is to be accomplished as planned by the Contractor. The basic concept of a network analysis diagram shall be followed to show how the start of a given activity is

dependent on the completion of preceding activities and its completion restricts the start of following activities. Detailed network activities shall include, in addition to construction activities, the submittal and favorable review of samples of material and shop Drawings, the procurement of critical materials and equipment, fabrication of special material and equipment, and their installation and testing. All activities of the City and the Director that affect progress and required Contract dates for completion of all or parts of the Work shall be shown. The selection and number of activities shall be subject to favorable review by the Director. Summary networks shall be time scaled. Durations shall be in Days and shall not exceed fifteen (15) Days, except for submittal and delivery items. Where the duration of continuous Work exceeds fifteen (15) Days, Work items in the construction schedule shall be subdivided by location, approximate stationing or other sub-element of the Work.

The graphic network diagram shall include for each activity, the description, activity number, the estimated duration in Days, and all activity relationship lines. The network diagram shall be drawn for the early start of activities. All significant submittals shall be scheduled along with manual submittals and training on all large or critical pieces of equipment. If the precedence technique is utilized, the schedule project shall include a calendar in Work Days, a network report sorted by early start and a logic table report sorted by preceding Work item. If the arrow technique is utilized, the schedule report shall include a calendar in Work Days, a network report sorted by early start, a network report sorted by I-J numbers, and a network sorted by slack time and I-J numbers.

2. The critical path shall be shown on all reports and on the graphic network diagram. The activities which constitute the critical path shall be identified.

- 3. The mathematical analysis of the network diagram shall include a tabulation of each activity. The following information shall be furnished as a minimum for each activity:
 - (a) preceding and following event numbers
 - (b) activity description and number
 - (c) estimated duration of activities
 - (d) earliest start date (by calendar date)
 - (e) earliest finish date (by calendar date)
 - (f) actual start date (by calendar date)
 - (g) actual finish date (by calendar date)
 - (h) latest start date (by calendar date)
 - (i) latest finish date (by calendar date)
 - (j) slack or float
 - (k) percentage of activity completed
- 4. The program shall be capable of accepting revised completion dates as modified by approved time adjustments and recomputations of all tabulation dates and float accordingly.
 - 5. Submission and review of the system shall be as follows:
 - (a) The complete network analysis system, consisting of the detailed network mathematical analysis and network diagrams, shall be submitted within thirty (30) calendar Days after receipt of Notice to Proceed.
 - (b) The Contractor shall participate in a review and evaluation of the proposed network diagrams and analysis by the Director. Any revisions

necessary as a result of this review shall be resubmitted for review by the Director within ten (10) calendar Days. When completed, the favorably reviewed schedule shall then be the schedule to be used by the Contractor for planning, organizing and directing the Work and for reporting progress. If the Contractor thereafter desires to make significant changes in his or her method of operating and scheduling, he or she shall notify the Director in writing stating the reasons for the change.

- (c) The Contractor shall submit at monthly intervals a report of the actual construction progress. Each monthly report shall cover a period of approximately thirty (30) Days ending around the 20th of each month. The monthly reports shall be submitted within ten (10) calendar Days of the end of the reporting period.
 - update report may consist of a marked-up copy of the graphical network diagram. This submittal shall clearly indicate the status of any minor shifts in sequence or schedule and the estimated completion date or percent complete of all activities currently in progress. The Contract completion date shall also be indicated. The Contractor shall submit a narrative report relating to status of construction, the schedule, and factors which may affect the remainder of the schedule. The report shall show the activities or portions of activities completed during the reporting period. The report shall state the percentage of the Work actually completed and

scheduled as of the report date and the progress along the critical path in terms of Days ahead or behind the allowable dates.

- (2) If, in the opinion of the Director, the project is behind schedule, the monthly report shall include a revised network diagram and/or mathematical analysis showing the Contractor's proposed revised schedule. An analysis of the effect that the delay has on progress along other paths shall also be included in the report. The Contractor shall also submit a narrative report with each updated analysis which shall include but not to be limited to a description of current and anticipated problem areas, delaying factors and their impact, and an explanation of corrective actions taken or proposed.
- (3) Periodic report shall be submitted in sufficient copies to cover Contractor needs plus five (5) copies and an available electronic copy to be retained by the Director.
- 6. To the extent that the favorably reviewed initial Construction Schedule, or revisions thereto, indicate anything not jointly agreed upon, it shall be deemed to be not favorably reviewed by the Director. Any omission of Work from the detailed schedule, otherwise required for Contract compliance, will not excuse the Contractor from completing such Work within any applicable completion date. The CPM schedule shall be generated by computer methods.
- C. <u>Schedule Review:</u> Once each month, on a date mutually agreed upon, but no later than seven (7) working Days after the monthly schedule progress report date, a jobsite meeting will be held to review the Construction Schedule and job progress. The Contractor shall also

attend weekly meetings scheduled by the Director to review the progress of the Work in the preceding week and in the subsequent week, coordinate the Work with public agencies or other Contractors as required, and allow the Director to plan his activities for testing, inspection, etc.

- D. <u>Schedule Revisions:</u> The conditions under which the Director will require revisions of the Construction Schedule include the following:
- 1. When delay in completion of any Work item or sequence of Work items results in an estimated extension of project completion by either twenty (20) working Days or by ten percent (10%) of the remaining duration of time to complete the Contract, whichever is less.
- 2. When delays in submittals or deliveries make replanning or rescheduling of the Work necessary.
- 3. When the schedule does not represent actual prosecution and progress of the Work.
- 4. When any change to the sequence of activities, the completion date for major portions of the Work, or when changes occur which affect the critical path.
- 5. When Contract Amendments or a Change Order necessitates schedule revision, the Contractor shall submit a schedule analysis of all Change Order Work with his or her proposal.
- E. <u>Cash Flow Projection:</u> A cash flow projection shall be submitted with the Construction Schedule. This cash flow projection shall be revised and resubmitted when revisions of the Construction Schedule will result in changes to the projected cash flow.
- F. Schedules showing project completion dates earlier than specified in the Supplemental Conditions will be rejected unless justification can be provided for early completion.

6-1.05 **Schedule of Values:** Prior to preparation of the first estimate for a progress payment, the Contractor shall submit for favorable review by the Director a detailed Schedule of Values or cost breakdown of the Work under each bid item awarded. The breakdown will then become the basis for partial payment determination. Elements of Work shall be grouped by structure, pipeline, system, etc. Within each grouping, Work should be itemized by readily measurable quantities of Work complete in place. For example, concrete should be in units of cubic yards including form Work and reinforcing steel. Move-on costs, bond and insurance costs, and Overhead costs shall not be considered an item of cost for this purpose but shall be prorated over items of Work. In the event the Schedule of Values is not favorable reviewed by the Director, another Schedule of Values shall be submitted that is mutually acceptable to the Contractor and the Director.

6-1.06 **Temporary Suspension of Work:** The Director shall have the authority to suspend the Work wholly or in part, for such period as he or she may deem necessary, due to unsuitable weather, or to such other conditions as are considered unfavorable for the suitable prosecution of the Work, or for such time as he or she may deem necessary due to the failure on the part of the Contractor to carry out orders given, or to perform any provision of the Contract.

The Contractor shall immediately comply with the written order of the Director to suspend the Work wholly or in part. The suspended Work shall be resumed when conditions are favorable and methods are corrected, as ordered or approved in writing by the Director.

If a suspension of Work is ordered by the Director, due to normal inclement weather, or due to the failure on the part of the Contractor to carry out orders given, or to perform any provision of the Contract, the Days on which the suspension order is in effect shall not entitle the Contractor to an extension of time.

If any delay to the current controlling operation or operations is caused the Contractor by specific order of the Director to stop Work due to any reason other than those described in the preceding paragraph, and such suspension of Work is without the fault or negligence of the Contractor, such delay, if it affects construction tasks which are considered to be "controlling" on the construction schedule, will entitle the Contractor to an equivalent extension of time, except as otherwise provided in the paragraphs herein covering "Termination of Contract."

Application for extension of time shall be presented in writing to the Director within fifteen (15) Days of start of delay and shall be accompanied by the formal consent of the Sureties, but an extension of time, whether with or without such consent, shall not release the Sureties from their obligation which shall remain in full force until the discharge of the Contract. The decision of the Director with regard to such requests shall be final.

In the event of a suspension of Work under any of the conditions set forth in this Section 6-1.06, such suspension of Work shall not relieve the Contractor of his or her legal responsibilities as set forth in these General Conditions.

6-1.07 **Time of Completion:** The Contractor shall complete the entire Work, including installation, repairs, startup, troubleshooting, painting, and touchup, training, submittal or record Drawings, and manuals, cleanup, demolization, and all other Work within the number of calendar Days set forth in the Supplemental Conditions. The time for completion includes an allowance for working time lost due to normal inclement weather.

Extensions of time may be allowed for unusual inclement weather under the provisions hereinafter described. Unusual inclement weather is weather which adversely affects "controlling" operations or the critical path of construction and which meets one of the following criteria:

- A. For the particular calendar month in question, the number of individual Days with rainfall exceeding 0.10 inches exceeds the average number of such Days for that month over the immediately preceding five (5) years of record by at least three (3) Days.
- B. For the particular calendar month in question, the total cumulative rainfall for that month exceeds the average cumulative rainfall for that month over the immediately preceding five (5) years of record by at least two (2") inches.

Rainfall shall be measured at a publicly operated, maintained, and reported station in reasonable proximity to the construction site. A claim for delay shall indicate the period of rainfall which is claimed as "unusual," the specific dates during which the unusual rainfall and subsequent wet soil conditions prevented Work, and the specific critical path tasks adversely affected by such unusual weather. A claim for delay due to unusual inclement weather shall be filed within ten (10) Days of the apparent end of the unusual inclement rainfall period, whether or not the monthly totals are available at that time. The burden of proof that weather meets the criteria for unusual weather shall be solely the responsibility of the Contractor.

It is the responsibility of the Contractor to order materials required for the Work properly and promptly on Notice to Proceed. If evidence presented demonstrates that, in spite of the Contractor's efforts, government-established priorities controls delay material deliveries, suitable extension of time will be made.

If performance of extra Work ordered by the City or failure of the City to provide the necessary site for installation affects construction tasks which are "controlling" or which are on the "critical path" of the construction schedule, suitable extensions of time will be made.

The Contractor shall not be entitled to a time extension for delays in activities on non-critical paths of the favorably reviewed schedule unless the duration of the excusable delay

exceeds the total float of the activities being delayed. If the duration of an excusable delay does exceed the total float of the activities affected by the delay, the Contractor shall be entitled to an extension equal to the difference.

C. Determination that a day is a non-working day by reason of inclement weather or conditions resulting immediately therefrom, shall be made by the Director or their designee.

6-1.08 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 finished or completed within the number of calendar Days as set forth in the Supplemental Conditions, 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 will pay to the City, the monetary amount indicated in the Supplemental Conditions in dollars (U.S.) per day for each and every calendar day of 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 Department may deduct the amount thereof from any moneys due or that may become due the Contractor under the Contract.

It is further agreed that in case the Work is not finished and completed in all parts and requirements within the number of Days specified, the Director shall have the right to increase the number of Days or not, as he or she may deem best to serve the interest of the City, and if he or she decides to increase the said number of Days, he or she shall further have the right to charge to the Contractor, his or her heirs, assigns or sureties and to deduct from the final payment for the Work all of any part, as he or she may deem proper, of the actual cost of engineering, inspection, superintendence, and other Overhead expenses which are directly

chargeable to the Contract, and which accrue during the period of such extension, except that cost of preparation of final statement shall not be included in such charges.

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 named in the Supplemental Conditions for the completion of the Work caused by acts of God or of the public enemy, fire, floods, tidal waves, earthquakes, epidemics, quarantine restrictions, strikes, labor disputes, shortage of materials, freight embargoes, and unusual inclement weather as described in Section 6-1.07; provided, that the Contractor shall notify the Director in writing of the causes of delay within fifteen (15) Days from the beginning of any such delay. The Director shall ascertain the facts and the extent of the delay, and his or her findings thereon shall be final and conclusive.

No extension of time will be granted for a delay caused by a shortage of materials unless the Contractor furnishes to the Director documentary proof that he or she has diligently made every effort to obtain such materials from all known sources within reasonable reach of the Work and further proof in the form of supplementary progress schedules, as required in Section 6-1.04, "Progress Schedule" of these General Conditions that the inability to obtain such materials when originally planned, did in fact cause a delay in final completion of the operations. Only the physical shortage of material will be considered under these provisions as a cause for extension of time.

If the Contractor is delayed in completion of the Work by reason of changes made under Section 3, "Changes in the Work," of these General Conditions or by any act of the Director or of the Department, not contemplated by the Contract, an extension of time commensurate with the delay in completion of the Work thus caused will be granted and the Contractor shall be

relieved from any claim for Liquidated Damages, or engineering and inspection charges or other penalties for the period covered by such extension of time; provided that the Contractor shall notify the Director in writing of the causes of delay within fifteen (15) Days from the beginning of any such delay. The Director shall ascertain the facts and the extent of the delay.

It is the intention of the above provisions that the Contractor shall not be relieved of liability for Liquidated Damages or engineering and inspection charges for any period of delay in completion of the Work other than that expressly provided for in this Section 6-1.08. Progress payments made after the completion date shall not be construed as a waiver of Liquidated Damages.

6-1.09 Claims For Extra Compensation For Delays: It is understood and agreed by the City and the Contractor that the Contractor will incur Overhead costs for temporary facilities, superintendence, home office Overhead, and similar cost items, and that the costs of such Overhead for the full Contract period through the specified completion date are included in the Contractor's lump sum bid amounts included in his accepted Proposal. No additional compensation will be made to the Contractor for claims of increased Overhead costs occurring within the originally specified construction Contract period plus any time extensions granted by Change Order.

6-1.10 **Termination:**

6-1.10A **Termination of Contract - "Convenience of City":** The Department reserves the right to terminate the Contract at any time if the Director determines that to do so would be in the best interest of the City.

Termination of the Contract and the total compensation payable to the Contractor in the event of termination shall be governed by the following:

- 1. The Director will issue the Contractor a written notice signed by the Director, specifying that the Contract is to be terminated. Upon receipt of said written notice and, except as otherwise directed in writing by the Director, the Contractor shall:
 - (a) Stop all Work under the Contract except that specifically directed to be completed prior to Acceptance.
 - (b) Perform Work the Director deems necessary to secure the project for termination.
 - (c) Remove equipment from the site of the Work.
 - (d) Take such action as is necessary to protect materials from damage.
 - (e) 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 Director.
 - (f) Provide the Director with an inventory list of all material 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 Director may request.
 - (g) Dispose of material not yet used in the Work as directed by the Director. It shall be the Contractor's responsibility to provide the City with good title to all materials purchased by the City hereunder, including material for which partial payment has been made as provided in Section

- 7-1.05, "Partial Payments," of these General Conditions and with bills of sale or other documents of title for such materials.
- (h) Subject to the prior written approval of the Director, settle all outstanding liabilities and all claims arising out of subcontracts or orders for material terminated hereunder. To the extent directed by the Director, the Contractor shall assign to the Department all the right, title and interest of the Contractor under subcontracts or orders for materials terminated hereunder.
- (i) Furnish the Director with the documentation required to be furnished by the Contractor under the provisions of the Contract including, on projects as to which Federal funds are involved, all documentation required under the Federal requirements included in the Contract.
 - (j) Take such other actions as the Director may direct.
- 2. Acceptance of the Contract as hereinafter specified shall not relieve the Contractor of responsibility for damage to materials except as follows:

The Contractor's responsibility for damage to materials for which partial payment has been made as provided in Section 7-1.05, "Partial Payments," of these General Conditions and for materials furnished by the City for use in the Work and unused shall terminate when the Director certifies that such materials have been stored in the manner and at the locations he or she has directed.

The Contractor's responsibility for damage to materials purchased by the City subsequent to the issuance of the notice that the Contract is to be

terminated shall terminate when title and delivery of such materials has been taken by the City.

When the Director determines that the Contractor has completed the Work under the Contract directed to be completed prior to termination and such other Work as may have been ordered to secure the project for termination, he or she will recommend that the Director formally accept the Contract, and immediately upon and after such Acceptance by the Director, the Contractor will not be required to perform any further Work thereon and shall be relieved of his or her Contractual responsibilities for injury to persons or damage to property which occurs after the formal Acceptance of the project by the Director.

- 3. The total compensation to be paid to the Contractor shall be determined by the Director on the basis of the following:
 - (a) The reasonable cost to the Contractor, without profit, for all Work performed under the Contract, including mobilization, demobilization and Work done to secure the project for termination.

 Reasonable cost will include a reasonable allowance for project Overhead and general administrative Overhead not to exceed a total of seven percent (7%) of Direct Costs of such Work.
 - (b) A reasonable allowance for profit on the cost of the Work performed as determined under Subsection (a), provided the Contractor establishes to the satisfaction of the Director that it is reasonably probable that he or she would have made a profit had the Contract be completed

and provided further, that the profit allowed shall in no event exceed four percent (4%) of said cost.

- (c) The reasonable cost to the Contractor of handling material returned to the vendor, delivered to the Department or otherwise disposed of as directed by the Director.
- (d) A reasonable allowance for the Contractor's administrative costs in determining the amount payable due to termination of the Contract.

All records of the Contractor and the Contractor's subcontractors, necessary to determine compensation in accordance with this Section shall be open to inspection or audit by representatives of the Department at all times after issuance of the notice that the Contract is to be terminated and for a period of three (3) years, and such records shall be retained for that period.

After Acceptance of the Work by the Director, the Director may make payments on the basis of interim estimates pending issuance of the Final Statement, when in his or her opinion the amount thus paid, together with all amounts previously paid or allowed, will not result in total compensation in excess of that to which the Contractor will be entitled. All payments, including payment upon the Final Statement, shall be subject to deduction for prior payments and amounts, if any, to be kept or retained under the provisions of the Contract.

The provisions of this Section shall be included in all subcontracts.

6-1.10B **Termination of Control - "Default of Contractor":**

Failure to supply an adequate working force, or material of proper quality, or in any other respect to prosecute the Work with the diligence and force specified by the Contract, is grounds for termination of the Contractor's control over the Work and for taking over the Work by the City. Contractor shall take such action as is reasonably necessary to protect materials from damage and safely secure the site, as directed by City.

SECTION 7

ACCEPTANCE AND PAYMENT

7-1.01 **Acceptance:** The Contract will be accepted by Resolution of the City Council of the City of Roseville, and a Notice of Completion will be caused to be recorded by the City Clerk, when the whole shall have been completed in all respects in accordance with the provisions of the Contract Documents to the full satisfaction of the Department.

7-1.02 **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 Director and for all risks of every description connected with the prosecution of the Work, also for all expenses incurred in consequence of the suspension or discontinuance of the Work as provided in the Contract; and for completing the Work according to the Contract. 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 material.

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

7-1.03 **Notice of Potential Claim:** The Contractor shall not be entitled to the payment of any additional compensation for any act or failure to act by the Director, including failure or

refusal to issue a Change Order, or for the happening of any event, thing, occurrence or other cause unless he or she shall have given the Director due written Notice of Potential Claim as hereinafter specified, provided, however, that compliance with this Section 7-1.03 shall not be a prerequisite as to matters within the scope of the protest provisions in Section 3, "Changes in the Work," or Section 6-1.07, "Time of Completion," or the notice provisions in Section 6-1.08, "Liquidated Damages," of these General Conditions.

The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation will or may be due, the nature of the costs involved, and, insofar as possible, the amount of the potential claim. The said Notice as above required must have been given to the Director prior to the time that the Contractor shall have performed the Work giving rise to the potential claim for additional compensation, if based on an act or failure to act by the Director, or in all other cases within fifteen (15) Days after the happening of the event, thing, occurrence or other cause giving rise to the potential claim.

It is the intention of this Section 7-1.03 that differences between the parties arising under and by virtue of the Contract be brought to the attention of the Director 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 or she shall have no right to additional compensation for any claim that may be based on any such act, failure to act, event, thing or occurrence for which no written Notice of Potential Claim as herein required was filed.

The claims process specified in this Section 7-1.03 does not supplant the requirement to present a statutory claim as required by the Government Claims Act, Cal. Gov't Code § 905, prior to the filing of an action.

7-1.04 **Stop Notices:** The City, by and through the Department or other appropriate office or officers, may at its option and at any time retain out of any amounts due the Contractor, sums sufficient to cover claims, filed pursuant to Civil Code Section 3179 et seq..

7-1.05 **Partial Payments:** The Contractor, once in each month shall prepare a request for partial payments, for approval by the Director. The estimate shall include the total amount of Work done and acceptable materials, provided such acceptable materials meet the conditions set forth in Section 7-1.06.

The Department shall retain ten percent (10%) of such estimated value of the Work done and ten percent (10%) of the value of materials so estimated to have been furnished, delivered and unused or furnished and stored as described in Section 7-1.06, as partial security for the fulfillment of the Contract by the Contractor.

Contractor may submit a written request to the Director for a reduction in the above retention for up to a maximum of five percent (5%). The Director shall evaluate the request on the basis of, including but not limited to, the following guidelines:

- 1) the Surety of the Faithful Performance and the Labor & Materials bonds have consented, in writing, to the reduction of retention; and
 - 2) the Work is eighty percent (80%) complete; and
- 3) stop notice claims on file with City do not exceed twenty-five percent (25%) of the amount of the Contract; and
- 4) Contractor has filed valid stop notice release bonds with City for all outstanding stop notice claims; and
 - 5) the Work has proceeded without unreasonable delays; and
 - 6) no disputes relating to the Work exist between the City and Contractor; and

7) other work related considerations the Director deems appropriate.

The Director's determination shall be final and not subject to challenge or appeal.

The Department shall pay monthly to the Contractor, while carrying on the Work, the balance not retained, as aforesaid, after deducting therefrom all previous payments and all sums to be kept or retained under the provisions of the Contract. No such estimate or payment shall be required to be made when, in the judgment of the Director, the Work is not proceeding in accordance with the provisions of the Contract, or when in his or her judgment the total value of the Work done since the last estimate amounts to less than Three Hundred (\$300) Dollars.

No such estimate or payment shall be construed to be an Acceptance of any defective Work or improper materials.

Attention is directed to the express prohibition against payment to unlicensed Contractors, the provisions of which are set forth in Section 1-1.02, "Competency of Bidders," of the Instruction to Bidders.

7-1.06 **Payment For Materials And Equipment On Hand:** Partial payments may be made to the extent of seventy-five percent (75%) of the delivered cost of materials and equipment to be incorporated in the Work, provided that such materials meet the requirements of the Contract Documents and are delivered to acceptable sites on the plant site or at other sites in the vicinity that are acceptable to the City. Such delivered costs of stored or stockpiled materials may be included in the next partial payment after the following conditions are met:

A. Equipment and materials will only be eligible if given conditional or final Acceptance by the Director and are in apparent compliance with favorably reviewed shop Drawings.

- B. Only equipment or materials which have received favorable review of shop Drawings will qualify.
- C. The material or equipment has been stored or stockpiled adequately protected against damage in a manner acceptable to the Director at an approved site.
- D. The Contractor has furnished the Director with acceptable evidence of the quantity and the quality of such stored or stockpiled materials or equipment with identification of where they will be incorporated in project with Specification reference.
- E. The Contractor has furnished the Director with satisfactory evidence that the material and transportation costs have been paid.
- F. The Contractor has furnished the City legal title (free of liens or encumbrances of any kind) and lien releases to the material or equipment so stored or stockpiled.
- G. The Contractor has furnished the City evidence that the material or equipment so stored or stockpiled is insured against loss by damage to or disappearance of such materials at any time prior to use in the Work.

It is understood and agreed that the transfer of title and the City payment for such stored or stockpiled materials shall in no way relieve the Contractor of his or her responsibility for furnishing and placing such materials in accordance with the requirements of the Contract Documents.

In no case will the amount of partial payments for materials on hand exceed the Contract price for such materials or the Contract price for the Contract item in which the material is intended to be used.

No partial payment will be made for stored or stockpiled living or perishable plant materials.

The Contractor shall bear all costs associated with the partial payment of stored or stockpiled materials or equipment in accordance with the provisions of this Section.

7-1.07 **Payment of Withheld Funds:** Except as otherwise prohibited by law, the Contractor may elect to receive all payments due under the Contract pursuant to 7-1.05 of General Conditions without any retention. If the Contractor so elects, he or she and a City approved escrow company shall execute a City form retention agreement in a form approved by the City Attorney and meeting all requirements imposed by the City Attorney (copies of which are available in the Office of the City Attorney) by which the Contractor shall deposit with the escrow company securities with a value equivalent to the retention which would otherwise be withheld by the City. Said security and agreement shall be as provided in California Public Contracts Code Section 22300, and shall be approved by the City both as to sufficiency and form.

7-1.08 **Final Payment and Claims:** Final payment will be made within fifteen (15) working Days following the expiration of the thirty-five (35) day lien period. The start of this period is the date the County Recorder files the Notice of Completion. Notwithstanding the foregoing, the retention monies described in section 7-1.05, exclusive of stop notice withholds, shall be released in accordance with law.

7-1.09 **Clerical Errors:** Notwithstanding the provisions of Section 7-1.08, "Final Payment and Claims," of these General Conditions, for a period of three (3) years after Acceptance of the Work, all estimates and payments made pursuant to said Section 7-1.08, are subject to correction for clerical errors in the calculations involved in the determination of quantities and payments. The Contractor and the City agree to pay to the other any sum due

under the provisions of this Section 7-1.09, provided, however, if the total sum to be paid is less than \$100, no such payment shall be made.

7-1.10 **Guarantee:** The Contractor hereby unconditionally guarantees that the Work will be done in accordance with the requirements of the Contract, and further guarantees the Work of the Contract to be and remain free of defects in workmanship and materials for a period of one (1) year from the date of Acceptance of the Contract, unless a longer guarantee period is required by the Supplemental Conditions.

The Contractor hereby agrees to repair or replace any and all Work, together with any other adjacent Work which may be displaced in so doing, that may prove to be not in accordance with the requirements of the Contract or that may be defective in its workmanship or material within the guarantee period specified, without any expense whatsoever to the City, ordinary wear and tear and unusual abuse or neglect excepted.

The Contractor further agrees, that within ten (10) calendar Days after being notified in writing by the Department of any Work not in accordance with the requirements of the Contract or of any defects in the Work, the Contractor will commence and prosecute with due diligence all Work necessary to fulfill the terms of this guarantee, and to complete such Work within a reasonable period of time. In the event Contractor fails to comply, he or she does hereby authorize the Department to proceed to have such Work done at the Contractor's expense and the Contractor will honor and pay the cost and charges therefore upon demand. The Department shall be entitled to all costs and expenses, including reasonable attorney's fees, necessarily incurred upon the Contractor's refusal to honor and pay the above costs and charges.

Nothing in this section shall be construed to limit, relieve or release the Contractor's, subcontractor's and equipment supplier's liability to the City for damages sustained as the result

of latent defects in the equipment furnished caused by the negligence of the supplier's agents, employees or subcontractors. Stated in another manner, the warranty contained in this section shall not amount to nor shall it be deemed to be a waiver by the City of any rights or remedies (or time limits in which to enforce such rights or remedies) it may have against the supplier of the equipment to be furnished under the Contract Conditions for defective workmanship or defective materials or against the Contractor under the laws of this State pertaining to acts of negligence.

7-1.11 **Warranty of Title:** No material, supplies, or equipment for the Work under this Contract shall be purchased subject to any chattel mortgage, security agreement, or under a conditional sale or other agreement by which an interest therein or any part thereof is retained by the seller or supplier. The Contractor warrants good title to all material, supplies, and equipment installed or incorporated in the Work and agrees upon completion of all Work to deliver the Premises, together with all improvements and appurtenances constructed or placed thereon by him or her, to the City free from any claim, liens, security interest, or charges, and further agrees that neither the Contractor nor any person, firm, or corporation furnishing any materials or labor for any Work covered by this Contract shall have any right to a lien upon the Premises or any improvement or appurtenances thereon. Provided, that this shall not preclude the Contractor from installing metering devices and other equipment of utility companies, the title of which is commonly retained by the utility company. In the event of the installation of any such metering device or equipment, the Contractor shall advise the City as to the legal owner thereof. Nothing contained in this Paragraph, however, shall defeat or impair the right of such persons furnishing materials or labor under any bond given by the Contractor for their protection or any rights under any law permitting such persons to look to funds due the Contractor in the hands of the City.

The provisions of this Paragraph shall be inserted in all subcontracts and material Contracts, and notice of its provisions shall be given to all persons furnishing materials for the Work when no formal Contract is entered into for such materials.

[END OF GENERAL CONDITIONS]