ARTICLE 5. CONTROL OF WORK AND MATERIALS

Section 5.01. Authority of the City.
The City will decide all questions regarding the quality and acceptability of materials furnished, work performed, and rate of progress of the Work. The City will decide all questions regarding the interpretation and fulfillment of the Contract on the party of the Contractor, and all questions as to the rights of different prime contractors involved with the Work. The City will determine the amount and quality of the Work performed and materials furnished for which payment is to be made under the Contract.

The City will administer its authority through a duly designated representative identified at the pre-construction conference. The Contractor and the City's designated representative (the Owner's Representative) shall make good faith attempts to resolve disputes that arise during the performance of the Work.

Any order given by the City not otherwise required by the Contract to be in writing shall be given or confirmed by the City in writing at the Contractor's request. Such request shall state the specific subject of the decision, order, instruction, or notice and, if it has been given orally, its date, time, place, author and recipient.

Any plan or method suggested to the Contractor by the City, the Architect or Consulting Engineer, or the Owner's Representative, but not specified or required in writing, if adopted or followed in whole or in part by the Contractor, shall be used at the risk and responsibility of the Contractor. The City assumes no responsibility.

Section 5.02. Supervision Procedures.
The Contractor shall supervise and direct the Work using its best skill and attention. The Contractor shall be solely responsible for all construction means, methods, techniques, and procedures and for coordinating all portions of the Work under the Contract.

The Contractor shall be responsible to the City for the acts and omissions of its employees, Subcontractors and their agents and employees and other persons performing any of the Work.

The Contractor shall not be relieved from its obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Architect, Consulting Engineer or the Owner's Representative in their administration of the Contract or by inspections, tests or approvals (or the lack thereof) required or performed under the Contract Documents by persons other than the Contractor.

Section 5.03. Personal Attention and Superintendence; Contractor's Agent.
The Contractor shall supervise the work to the end that it shall be faithfully prosecuted. The Contractor shall employ a competent superintendent who is fully empowered to act as agent for the Contractor on the Site. The Contractor shall advise the City in writing of its agent prior to the start of any work. The Contractor shall provide résumés for all of the Contractor's supervisory employees to be assigned to the Project for City review, and the City may reject any supervisory

employees not deemed to be qualified at the sole discretion of the City. The Contractor shall be responsible for the faithful observation of all instructions delivered to its authorized agent(s). No additional compensation will be paid by the City for any work performed by the superintendent.

Section 5.04. Skilled Labor.
All non-apprentice labor shall have the skills of a journeyman in the applicable trade. All workmanship shall be of the highest quality and finish in all respects.

Section 5.05. Dismissal of Unsatisfactory Employees.
All employees engaged in the Work will be considered employees of the Contractor.

The Contractor shall at all times enforce strict discipline and good order among all employees and shall not employ on the Work any unfit person or anyone not skilled in the assigned task. The Contractor shall remove, or cause a Subcontractor to remove from the Project, any incompetent employee, or any employee not skilled for the type of work required. If any person employed by the Contractor or any Subcontractor shall fail or refuse to carry out the directions of the City or the provisions of the Contract Documents, or is, in the opinion of the City, incompetent, unfaithful, intemperate, or disorderly, or is acting or working in a manner that compromises the safety of the Work or persons or property involved with the Work, or is otherwise unsatisfactory, the Contractor shall, when requested by the City, remove the worker from the Work immediately, and shall not again employ the removed worker on the Work except with the written consent of the City.

Section 5.06. No Tenancy.
All workers, contractors, or contractors' representatives are admitted to the Site only for the proper execution of the Work, and have no tenancy.

Section 5.07. Separate Contracts.
The City reserves the right to do other work in connection with the Project by separate contract or otherwise. The Contractor shall at all times conduct its work so as to impose no hardship on the City or others engaged in the Work. The Contractor shall afford other contractors reasonable opportunity for the delivery and storage of materials and the execution of their work. The Contractor shall adjust, correct and coordinate its work with the work of others so that no delays or discrepancies shall result in the whole Project.

It shall be the duty of the Contractor and its Subcontractors, before beginning any work, to examine all construction and work of other contractors and/or Subcontractors that may affect their work, and to satisfy themselves that everything is in proper condition to receive such work. The Contractor shall notify the Owner's Representative in writing prior to starting work of any discrepancies or conditions which deviate from the Contract Documents or are otherwise unsuitable for proper execution and results. Failure on the part of the Contractor to so inspect and promptly notify the Owner's Representative shall constitute an acceptance by the Contractor and all Subcontractors of all construction in place as being suitable in all respects to receive further work by the Contractor or Subcontractors, unless defects develop in the other contractor's work after the execution of the Contractor's Work.

Section 5.08. Cooperation with Other Contractors.

The City or adjacent property owners may perform work adjacent to or within the Work areas concurrent with the Contractor's operations. The Contractor shall conduct operations to minimize interference with the work of other forces or contractors.
Any disputes or conflicts between the Contractor and other forces or contractors retained by the City which create delays or hindrance to each other shall be referred to the City for resolution.

Section 5.09. Contractor's Equipment.
The Contractor shall provide adequate and suitable equipment, labor and means of construction to meet all the requirements of the Work, including completion with the Contract Time. Only equipment suitable to produce the quality of work required will be permitted to operate on the Project. Specific types of equipment may be requested by the City on component parts of the Work.

The City may, at the City's option, permit the use of new or improved equipment. If such permission is granted, it is understood that it is granted for the purpose of testing the quality and continuous attainment of work produced by the equipment, and the City shall have the right to withdraw such permission at any time that the City determines that the alternative equipment is not producing work that is equal in all respects to that specified in the Contract.

In any case where the use of a particular type or piece of equipment has been banned, or in cases where the City has condemned for use on the Work any piece or pieces of equipment, the Contractor shall promptly remove such equipment from the site of the Work. Failure to do so within a reasonable time may be considered a breach of contract.

Section 5.10. Submittals.
The Contractor, at its sole cost and expense, shall furnish to the Owner's Representative all Submittals and other descriptive material as are required by the specifications or requested by the Architect or Consulting Engineer to demonstrate fully that the materials and equipment to be furnished and the methods of work comply with the provisions and intent of the Plans and Specifications. Submittals shall include, but not be limited to, all mechanical and electrical equipment and systems, reinforcing steel, fabricated items and piping details.

Shop Drawings shall be done with sufficient detail to adequately describe items proposed to be furnished or methods of installation to enable the City and Architect or Consulting Engineer to determine compliance with the Specifications and with the design and arrangement shown on the Working Drawings.

Electrical, instrumentation, control and communication system drawings shall include elementary and loop diagram drawings, functional single line system layout drawings, connection drawings, interconnection drawings, panel/cabinet fabrication drawings, and detailed circuit board and component drawings. Detailed circuit schematics and circuit board layout drawings shall be provided which clearly show, locate and identify all components and wiring. Each circuit board component shall be identified by the component's original manufacturer name and part number. Industry standard part numbers shall be used. Component values, voltage/current levels, setpoint, and timing values shall be defined.

Complete annotated software/firmware source code listings and program documentation shall be provided for all electronic/electrical systems, subsystems, assemblies, parts, components and equipment which incorporate programmable devices. All instructions and hardware necessary to load, store, modify and activate software/firmware source codes and programs shall be provided. The Contractor shall check and coordinate all Submittals with the work of all trades involved before they are submitted. The Contractor shall review each submittal for conformance with the requirements of the Contract Documents.

Unless otherwise provided in the Contract Documents, all Submittals for the Project shall be made within thirty-five (35) Calendar Days of the Notice to Proceed; however, the Contractor shall have the additional responsibility to coordinate the schedule of its Submittals with the requirements of the Contract Schedule so as not to delay the Project. No delay claims related to Submittals will be entertained on the Project for any Submittal originally received after the 35 day submittal period. The City shall not accept limitations in materials, colors, quality, or any other aspect of products or materials due to the Contractor's failure to provide Submittals as required. At the City's discretion, the Contractor may be directed to furnish and install temporary materials until the City selected material is available.

Contractor shall submit a schedule of Submittals organized by specification section required for the Project. It shall delineate whether product data, installation instructions, shop drawings, samples, extra stock or mock-ups are required. This schedule of Submittals shall be submitted prior to the issuance of the Notice to Proceed. Any omissions or inaccuracies shall not relieve the Contractor of the obligation for conforming to the requirements in the Contract Documents. The Contractor's submittal schedule shall provide sufficient time for delivering the Submittal to the Architect or Consulting Engineer, the Architect's or Consulting Engineer's review of each Submittal, delivering the Submittal to the Contractor and re-submittal as necessary. In no case shall the Contractor allow fewer than twenty-one (21) Calendar Days, exclusive of delivery time, for the Owner's Representative and the Architect or Consulting Engineer to review each Submittal. In certain cases, the Contract Documents also may require City review of Submittals. In those cases, in addition to the time allowed for review by the Owner's Representative and the Architect or Consulting Engineer, the Contractor shall allow no fewer than fourteen (14) additional Calendar Days for that City review.

A. Submission of Submittals.

The Contractor shall submit no less than one reproducible and six (6) copies of all Submittals, two (2) of which shall be returned after review. The Submittals shall be accompanied by a letter of transmittal, to the Owner's Representative, listing the identifying number of the Submittals submitted and cross-referencing them to the page or sheet in the Specifications and/or Working Drawings to which they are related.

Where any items of the Works is required to be installed in accordance with the manufacturer's installations recommendations, the Contractor shall furnish six (6) complete sets of the manufacturer's installation recommendations to the Owner's Representative prior to starting the installation. These submittals will be retained by the City.

All Submittals must be marked with the name of the Project and the name of the Contractor and shall be numbered consecutively and complete in every respect.

By approving and submitting Submittals, the Contractor represents that it has determined and verified all materials, field measurements and field construction criteria related thereto and that it has checked and coordinated the information contained within those Submittals with the requirements of the Work and to the Contract Documents. The Contractor shall adhere to any supplementary processing and scheduling instructions pertaining to Submittals as may be issued by the Owner's Representative.

The Owner's Representative will not accept Submittals which are not sufficiently dimensioned and detailed to demonstrate compliance with the Contract Documents.

B. Submittals Containing Proprietary Information.

All required information shall be provided even though some or all of such information may be considered proprietary. If any of the information required herein is considered proprietary, the City's standard proprietary agreement shall be executed between the City and the Contractor, stipulating that all such information will be supplied by the Contractor and kept confidential by the City. All proprietary data shall be identified as part of the Contractor's bid and the City's standard proprietary agreement shall be executed before award of the Contract. Proprietary information is defined as any information or data describing or defining a product, process or system which (1) was developed at the expense of the Contractor, a subcontractor or supplier; (2) is not generally available in the industry; and (3) is kept secret by its owner for purposes of preventing its use by others. Application software and all other documentation, or any other product, prepared by the Contractor, Subcontractor or supplier at the expense of the City for specific use on the facility being construction under the Contract Documents shall not be considered proprietary.

Not more than seventy percent (70%) of all electronic/electrical work shall be paid for until all proprietary information has been submitted and approved.

All submitted proprietary information shall describe the final record Work. No part of the Work covered by the proprietary agreement shall be modified after proprietary submittal acceptance until updated proprietary information has been submitted by the Contractor and accepted by the City. Updated proprietary information shall fully document all modifications to be implemented. All proprietary data shall be marked "PROPRIETARY" by the Contractor.

C. Review of Submittals.

Following submission, the Submittals will be returned with one or more of five possible responses by the Owner's Representative, Architect or Consulting Engineer. These possible responses are as follows:

1. Unreviewed: If the Submittal is not required, or if it is not complete, or if it does not meet the form, format, and number requirements specified, it may be

returned unreviewed. If the Submittal is not required, work may commence; if the Submittal was returned due to form requirements, it shall be resubmitted and approval obtained prior to commencement of the work.

2. Approved, Reviewed, or No exceptions taken: In the event the Submittal is acceptable as submitted, it will be returned with this status. Work may proceed upon receipt of approved Submittal.
3. Make Corrections Noted: If the Submittal is acceptable except for certain items which have been noted by the Architect or Consulting Engineer, it will be so designated. Work may proceed with the corrections made, and no resubmittal is necessary.

4. Revise and Resubmit: This status indicates that revisions are noted on the Submittal, and an additional Submittal is required to reflect those revisions and/or additional information. Work may not commence until the resubmittal is approved.

5. Rejected: A Submittal may be rejected if it is not in compliance with the Contract Documents, or if it proposes an “or equal” or substitution which is not acceptable to the Architect or Consulting Engineer. A superseding Submittal shall be submitted and approved prior to commencement of the work.

Should the Contractor proceed with the work shown on a Submittal before approval is received, it shall remove and replace or adjust any work which is not in accordance with the Submittal as ultimately approved, and it shall be responsible for any resultant damage, defect, or added cost. The City shall be under no obligation to pay for work installed prior to approval of Submittals, until the Submittals are approved and the work in place is found to be in compliance with the Contract Documents.

The Contractor shall resubmit Submittals in categories 4 and 5 above after making any changes required so that Submittals will comply with the Contract Documents. When resubmitting, the Contractor shall direct specific attention to deficient areas. Resubmittals shall be made in the same number of copies as the original Submittal. Resubmittals shall be made within ten (10) Calendar Days of return of the previous Submittal, and in any event in sufficient time so as to avoid delay to the Work. No delay claims related to resubmittals will be entertained on the Project for any resubmittal originally received after the 10 days.

The Architect or Consulting Engineer shall determine the adequacy and completeness of all Submittals. Where the Architect or Consulting Engineer deems a Submittal to be inadequate, incomplete, or otherwise unsuitable for proper review, the Contractor shall submit all additional information requested by the Architect or Consulting Engineer. There shall be no change to the Contract Time or the Contract Sum when such additional information is required.

D. <u>Submittals Showing Variation from Contract</u>.

It shall be the responsibility of the Contractor to specifically point out any variation or discrepancy between the Submittals submitted and the Contract Documents.
The Contractor shall make specific mention of all variations, along with an explanation of why they are requested, in its letter of transmittal. Failure by the Contractor to identify in its letter of transmittal any variation, discrepancy, or conflict with the Contract Documents shall render the approval null and void, and the Contractor shall bear all risk of loss and reconstruction costs or delays.

If any modifications to the Work are required as a result of the approval of Submittals which deviate from or do not comply with the Contract Documents, those modifications shall be made without extra cost to the City, and without extension of the Contract Time. Any other resultant costs, including but not limited to design fees, construction management fees, costs incurred by other contractors, or inspection fees, shall be at the expense of the Contractor.

E. Effect of Approval of Submittals.
The approval of Submittals shall not relieve the Contractor of the obligation for accuracy of dimensions and details; for conforming the work to the requirements of the Contract Documents; or from responsibility to fulfill the Contract at no extra cost to the City, within the Contract Time.

The Contractor shall make no changes to any Submittal after it has been approved, and the equipment or materials shall not deviate in any way except with the written approval of the City.

F. Operations and Maintenance (O&M) Submittals.
For use in subsequent maintenance and operations the Contractor shall furnish, unless otherwise provided for in the Special Provisions, operation and maintenance ("O&M") information in accordance with Article 18 of these General Provisions. The City may withhold retention until O&M submittals have been submitted and approved.

Section 5.11. Equal Materials.
Unless otherwise provided in the technical specifications, whenever in the Contract Documents any systems, processes, products, or materials are indicated or specified by the name brand of the manufacturer, or by patent or proprietary names, those specifications shall be deemed to be a measure of quality and utility or a standard, and shall be deemed to be followed by the words, "or equal." It is the intent of this Article to comply with Public Contract Code Section 3400.

If the Contractor desires to use any other brand or manufacturer of equal quality and utility to that specified, it shall make application to the Owner's Representative in writing, within ten (10) business days after Notice to Proceed, and shall submit samples and all other information necessary to substantiate its claim of "or equal". Such application constitutes a certification that the Contractor:

A. Has investigated the proposed Equal and determined that it meets or exceeds, in all respects, the specified system, process, product, or material.

B. Will provide the same warranty for the proposed Equal as for the specified system, process, product or material.

C. Will coordinate installation and make other changes which may be required for work to be complete in all respects and at no additional cost to the City.

D. Waives claims for additional costs and/or Contract Time which may subsequently become apparent.

The Architect or Consulting Engineer then will determine whether or not the proposed system, process, product or material is equal in quality and utility to that specified, and its decision shall be final. The Architect or Consulting Engineer will render its decision within fourteen (14) business days after submission of all required information for the application. If the request is not accepted, the Contractor shall provide the specified system, process, product or material without an increase in the Contract Sum and/or Contract Time.

Neither the submission of a request for an Equal, nor the Architect's or Consulting Engineer's review of the application, will extend the time for submission of any required Submittals.
Requests for Equal systems, process, products or materials will be considered only when offered by the Contractor as required by this Article.

Section 5.12. Substitutions.
Unless otherwise provided in the technical specifications, the Contractor may make proposals for Substitutions to systems, process, products or materials shown or specified only under one or more of the following conditions:

A. Unavailability: If the specified system, process, product, or material, or an Equal, is no longer available in the marketplace.

B. Delay: If obtaining the specified system, product, process or material, or an Equal, will delay completion of the Work through no fault of the Contractor.

C. Better system, process, product or material: If a better system, product, process or material is available at no additional cost.

D. Savings: If a system, process, product or material which meets all of the performance requirements of that specified is available at a savings to the City.

A proposal for Substitution shall include all information required by the Architect or Consulting Engineer to evaluate the substitute system, process, product or material. Such proposal constitutes a certification that the Contractor:

A. Has investigated the proposed Substitution and determined that it meets or exceeds the performance requirements of the specified system, process product or material.

B. Will provide the same or better warranty for the proposed Substitution as for specified system, process, product or material.

C. Will coordinate installation and make other changes which may be required for the work to be complete in all respects at no additional cost to the City.

D. Waives claims for additional costs and/or Contract Time, which may subsequently become apparent.

The Owner's Representative and the Architect or Consulting Engineer shall evaluate a timely Substitution request, and shall approve, deny, approve with conditions, or initiate the procedure for a change order in response to the Contractor's request. This decision shall be final. This decision will be rendered within fourteen (14) business days after submission of all required information for the proposal. If the request is not accepted, the Contractor shall provide the specified system, process, product or material without an increase in the Contract Sum and/or Contract Time.

Failure by the Contractor to identify all deviations from the Contract Documents in its request for substitution shall render any City action taken thereon null and void. The Contractor shall bear all costs resulting from any error in the request for Substitution.
Only one request for Substitution will be considered for each product.

Substitution proposals will not be considered prior to bidding. All requests for Substitutions shall be made within the same time requirement for initial Submittals. Failure to timely submit a Substitution request shall constitute a waiver by the Contractor and an acceptance of the specified systems, processes, products and materials. Late substitution requests may be considered only when the City consents in writing, and the City's best interests so require.

Neither the submission of a request for substituted systems, processes, products or materials, nor the Owner's Representative's and/or Architect's or Consulting Engineer's review of the application, will extend the time for submission of any required Submittals.

Section 5.13. Samples and Testing of Proposed Substitutions; Costs of Adapting to Work.
When the Owner's Representative or Architect or Consulting Engineer determines that samples and testing are required to evaluate a request for a Substitution, the Owner's Representative shall so advise the Contractor, and specify the systems, processes, products, materials or work to be sampled. The Contractor shall, at no cost to the City, provide samples as required by these General Conditions dealing with samples and testing, or the Technical Specifications.

The Contractor shall bear all costs of sampling and testing required to decide a request for Substitution, and if a Substitution is accepted, the Contractor shall bear all costs associated therewith, including the cost of the Owner's Representative's, Architect's and/or Consulting Engineer's services required to adapt the Substitution to the design to the complete satisfaction of the City, and all costs of mechanical, electrical, structural, or other changes needed to adapt the Substitution to the Work.

Section 5.14. Effect of Approval of Equal Materials or Substitution Request.

If an application for an Equal or Substitution request is approved, the Contractor shall be solely and directly responsible for setting approved Equal or Substitution systems, processes, products, materials and/or equipment into the available space, and for the proper operation of the Equal or Substitution systems, process, products, materials and/or equipment with all other systems, processes, products, materials and/or equipment with which it may be associated, all in a manner acceptable to the City.

No time extensions nor any increases in the Contract Sum shall be granted on account of an Equal or Substitution. In the event of a savings, the Contract Sum shall be adjusted by the price difference between the approved Equal or Substitution and the originally specified item.

Section 5.15. Surveys.

A. Contractor Surveys.

Except as set forth in the Special Provisions, the Contractor is responsible to do all necessary surveys to layout and control the Work to the locations, elevations, lines and dimensions shown or specified in the Contract Documents. Any deviations must receive prior approval of the City. All surveys affecting the line or elevation of underground drainage, sewers, or utilities, and all other work within public rights-of-way or easements shall be performed by or under the direction and supervision of a California Licensed Land Surveyor or a California Registered Civil Engineer authorized to practice land surveying.

The Contractor shall be responsible for protecting and perpetuating survey monuments affected by construction activities in accordance with Business and Professions Code section 8771. The Contractor shall be responsible for referring, resetting, and filing of corner records for all survey monuments disturbed or destroyed by construction activities in accordance with Business and Professions Code section 8771.

The Contractor shall be responsible for the accuracy of the Contractor's own layout work, and shall be liable for the preservation of all established lines and grades. Stakes damaged or destroyed by the operations of the Contractor shall be replaced at the Contractor's expense.

B. City-Furnished Surveys.

If the Special Provisions provide that surveys will be furnished by the City, the Contractor shall notify the City at least two (2) Working Days in advance of the time and places the Contractor will need lines, elevations, and reference points. Unless authorized by the City, any work done without line and grade will be done at the Contractor's risk.

Unless otherwise set forth in the Special Provisions, the City will furnish the following surveys:

1. For Streets and Highways:

Slope Stakes – One (1) line of slope stakes at fifty-foot (50') intervals for the construction of each pavement edge. The Contractor shall set back and reference the stakes.
Subgrade – One (1) line of blue tops at centerline or at a location directed by the City, for each of two (2) lanes of roadway at fifty-foot (50') intervals, and three (3) lines on super-elevated sections for each two (2) lanes. The Contractor shall reference subgrade stakes for the subbase and base layers.

Finish Base – One (1) line of blue tops at centerline or at a location directed by the City for each two (2) lanes of roadway at fifty-foot (50') intervals, and three (3) lines for each two (2) lanes on super-elevated and widened sections.

All necessary line, location and elevation stakes for curb and gutter, inlets, pipes, drainage structures, signals, box culverts and other miscellaneous facilities.

2. For Sewer, Water and Drainage Facilities:
For all pipelines to be laid on grade – the City will establish an offset line at fifty-foot (50') intervals, furnish cut sheets and necessary land surveys, and establish bench marks, base lines and reference points for locating principal structures.

For drainage channels – the City will furnish slope stakes at fifty-foot (50') intervals. From this information, the Contractor shall develop and make all additional detail surveys and measurements necessary for the construction of the Work.

C. Survey Monuments.
On the Plans, the City shall show, to the best of its knowledge, the location and character of survey monuments located within the construction area. It is the Contractor's responsibility to arrange and pay for a diligent and thorough search for survey monuments. This work shall be performed by or under the direction of a California Licensed Land Surveyor or a California Registered Civil Engineer authorized to practice land surveying, prior to the beginning of construction or maintenance work that could disturb or destroy a survey monument. Any monuments found shall be referenced and reset by or under the direction of a California Licensed Land Surveyor or a California Registered Civil Engineer authorized to practice land surveying in accordance with Business and Professions Code section 8771. On thin surface treatments, such as chip seals, the monuments can be covered in advance of the maintenance treatment with a suitable material and then removed to expose the monument. When survey monuments not shown on the Plans are discovered, the Contractor shall bring them to the attention of the City prior to damaging them. Any damaged or destroyed City survey monuments shall be reset by the City at the Contractor's expense. Any other damaged or destroyed survey monuments shall be reset by the Contractor in accordance with the Land Surveyors Act, Business and Professions Code section 8700 et seq.

All survey monuments and references shall be set or reset by or under the direction of a California Licensed Land Surveyor or a California Registered Civil Engineer authorized to practice land surveying.

Section 5.16. Responsibility for Accuracy.
The Contractor shall obtain all necessary measurements for and from the Work, and shall check dimensions, elevations and grades for all layout and construction work and shall supervise such work, the accuracy for all of which the Contractor shall be responsible. The Contractor is responsible for adjusting, correcting and coordinating the work of all Subcontractors so that no discrepancies result.

Section 5.17. Quality of Materials and Products.
Unless otherwise allowed or required by the Special Provisions, all materials shall be new and of a quality at least equal to that specified. When the Contractor is required to furnish materials or manufactured articles for which no detailed specifications are set forth, the materials or manufactured articles shall be of the best grade in quality and workmanship obtainable in the market. If not ordinarily carried in stock, the articles shall conform to the usual standards for first-class materials or articles of the kind required. The work performed shall secure the best standard of construction and equipment of the work as a whole or in part.
The Contractor shall, if required by the Architect, Consulting Engineer, Project Inspector, or Owner's Representative, furnish satisfactory evidence as to the kind and quality of materials provided.

The Owner's Representative may require, and the Contractor shall submit if required, a list designating the source of supply of each item of materials incorporated into the Work, and in such event, those materials or products shall not be delivered to the Work nor installed therein until after the Owner's Representative has approved the list.

Contractor shall certify that the materials and equipment installed comply with the Contract Documents.

In the event that the Contractor furnishes a material, product, process, or article better than that specified in the Contract Documents, the difference in cost of that material, product, process, or article shall be borne by the Contractor.

All materials shall remain in their original packages or containers until ready for use. The labels of all packages or containers shall remain affixed, and kept legible. No product shall be stored in any container, the label of which does not accurately describe the contents of the container.

All materials furnished shall comply with industry standards as follows:

A. Any material specified by reference to the number, symbol, or title of a specified standard such as a Commercial Standard, a Federal Specification, a Trade Association Standard, or other similar standard, shall comply with the requirements in the latest revision thereof, including any amendments or supplements thereto, in effect on the date of the Bid, except as limited to type, class, or grade, or modified in that reference.

B. The standard referred to, except as modified in the specifications, shall have full force and effect as though printed in these specifications. These standards are not furnished to the bidder for the reason that the manufacturers and trades involved are assumed to be familiar with their requirements.

1. Where Federal Specifications are referred to as a measure of quality and standard, they refer to Federal Specifications established by the Procurement Division of the United States Government and are available from the Superintendent of Documents, U.S. Government Printing Office.

2. Where Federal Specification numbers are used, they refer to the latest edition including amendments thereto.

3. Where Commercial Standards (CS) or Product Standards (PS) are referred to as a measure of quality, standard, and method of fabrication, they refer to Commercial Standards and Product Standards issued by the U.S. Department of Commerce.

4. Where ASTM serial numbers are used, they refer to the latest tentative specifications, standard specifications, standard method or standard methods of testing, issued by the American Society for Testing Materials, unless specifically noted.

The Contractor shall protect the work, materials, and equipment from damage due to the action of the elements, trespassers, or other causes. The Contractor shall properly store materials and equipment and, when necessary, erect temporary structures to protect them from damage. The Contractor shall replace any items damaged as a result of improper protection at no expense to the City.

Section 5.18. Property Rights in Materials.
Nothing in the Contract Documents shall be construed as vesting in the Contractor any right of property in the materials used, after they have been installed, attached or affixed to the work, but all such materials shall be the property of the Contractor and the City jointly as their interest may appear and cannot be removed from the work without the consent of the City.

Section 5.19. Inspection.
All work done and all materials and equipment furnished shall be subject to the inspection and approval of the City. Neither the final inspection and payment, nor any interim inspection or progress payment shall relieve the Contractor of its obligation to fulfill the Contract as required by the Contract Documents. Any work, materials or equipment not meeting the requirements and intent of the Contract Documents may be rejected, and unsuitable work or materials shall be made good, notwithstanding the fact that such work or materials may previously have been inspected and/or payment therefor may have been made.

The Project Inspector shall be considered to be a representative of the City and shall be designated at the pre-construction conference. It is the Project Inspector's duty to inspect the Work.

Where the Contract Documents, instructions by the Project Inspector, Owner's Representative or the Architect or Consulting Engineer, laws, ordinances, or any public authority having jurisdiction require work to be inspected, tested or approved before the Work proceeds, such work shall not proceed, nor shall it be covered up without inspection. If any part of the Work is covered prior to inspection, the City may order the work to be uncovered so that inspection may be accomplished. The Contractor shall bear all expenses of such examination and satisfactory reconstruction.

The Contractor shall provide written notice to the Project Inspector at least twenty-four (24) hours in advance of the readiness for inspection.

All work shall be available for inspection and the Project Inspector shall have full access to review all work during all working times. The Contractor shall provide all necessary means of safe access (e.g. ladders) for the Project Inspector to perform his/her duties. The Contractor shall furnish the Project Inspector with any information necessary to fully inform him/her of conditions.

The Project Inspector shall have the authority to order the work designated for inspection stopped if a determination is made that work is proceeding in violation of the Contract Documents or any orders issued by the City, its representatives, or the Architect or Consulting Engineer. The failure of the Project Inspector to order the work stopped does not excuse the Contractor from complying with the Contract Documents for that work. Upon issuing a stop work notice, the Project Inspector shall notify the Architect or Consulting Engineer, who shall inspect the work in question and determine whether it does or does not comply with the Contract Documents. The decision of the Architect or Consulting Engineer shall be final. The Contractor shall thereafter comply with the instructions of the Architect or Consulting Engineer regarding corrections needed to cure the defect. The suspended work shall be resumed only when the instructions are fulfilled. The Contractor shall not be entitled to an extension of time in the event of such suspension of work.

Should the Owner's Representative or the Architect or Consulting Engineer determine that it is necessary or advisable to make an inspection of work already completed at any time before final inspection and acceptance of the Work, by removing or exposing any work, the Contractor shall, upon instruction of the Owner's Representative, promptly furnish all necessary facilities, labor, and materials to do so. If the work is found to be defective in any respect due to the fault of the Contractor or any Subcontractor, the Contractor shall bear all expenses of such examination and satisfactory reconstruction. If, however, the work is found to meet the requirements of the Contract Documents, the additional cost of labor and material necessarily involved in the examination and replacement shall be allowed the Contractor and a change order shall be issued for such cost and any time extension justified by delays to the critical path.

Whenever the Contractor arranges to work at night or any time when work is conducted other than the normal 40-hour week, or to vary the period during which work is carried on each day, it shall give the Owner's Representative and the Project Inspector a minimum of 48-hours notice so that inspection may be provided. Additional inspection costs incurred because of overtime or shift

work shall be paid by the City. If this overtime work is necessitated by the Contractor's error or failure to perform, the cost of inspection will be borne by the Contractor.

Section 5.20. Plant Inspection.

The City may inspect the production of materials or manufacture of products at the source of supply. Plant inspection, however, will not be undertaken until the City is assured of the cooperation and assistance of both the Contractor and the material producer. The City or the Contractor's authorized representative shall have free entry at all time to such parts of the plant as concerns the manufacture or production of the materials. Adequate facilities shall be furnished free of charge to make the necessary inspection and tests.

The City assumes no obligation to inspect materials at the source of supply. The responsibility of incorporating satisfactory materials in the Work rests entirely with the Contractor, notwithstanding any prior inspections or tests.

Section 5.21. Samples and Testing.

The City reserves the right to require the Contractor to provide samples, and to perform tests on any materials, articles, equipment, installations, or construction performed by the Contractor in addition to those specified in the Contract Documents. The City shall assume the cost of sampling and testing materials only when the Contract Documents do not require the Contractor to do so.

All tests shall be performed under the supervision of the testing laboratory or consultant employed by the City and at such times as are convenient to the City. The Contractor shall provide written notice to the Owner's Representative at least 24 hours prior to the need for off-site tests or inspections, and the Owner's Representative will arrange such tests or inspections. The Contractor shall bear all expenses of tests performed where the Contractor failed to provide this minimum notice.

The Contractor shall, at its sole cost and expense, repair all damage resulting from testing specified in the Contract Documents. The City shall issue a Change Order for repair of damage due to sampling or testing other than specified in the Contract Documents.

The Contractor shall not make any tests upon portions of the Project already completed, except with the prior written consent and under the direction and supervision of the Owner's Representative.

If as a result of any test, whether originally specified or not, any material or work is found to be unacceptable, it shall be rejected, and all further sampling and testing required by the City or the Owner's Representative shall be at the Contractor's expense.

All samples and specimens for testing shall be selected by the Project Inspector or by the testing laboratory, but not by the Contractor.

The Contractor shall, at the Contractor's sole cost and expense, furnish, package, mark, and deliver all samples to be tested at locations other than the Site. Samples shall be delivered either

to the Project Inspector or to the testing laboratory or such other address specified in the Contract Documents.

Delivery of all samples to the testing laboratory shall be made in ample time to allow the test to be made without delaying construction. No extra time will be allowed for the completion of the Work by reason of delay in testing samples required by the Contract Documents or due to the Contractor's request for substitution.

The Contractor shall allow free access at all times to the representatives of the testing laboratory to the Work, and shall point out the sources from which samples are taken.
All test reports shall be sent to all parties specified in the Contract Documents.

No materials or work of which samples and/or tests are required shall be used or covered until the Owner's Representative or the Project Inspector informs the Contractor that such samples and/or tests have been approved. If the Contractor installs, uses, or covers any such material, article, or work prior to testing and approval, such shall be at the Contractor's sole risk and expense, and it shall bear all costs of uncovering, repair, and replacement thereof.

The approval of any samples shall be for the characteristics thereof, or for the uses named in such approval, and no other. No approval of any samples shall be deemed a change or modification in any requirement of the Contract Documents. Upon testing of any sample of material or work, no additional sample shall be considered. All material or work installed after the sampling and testing is performed and approved shall be equal to or better than the approved sample in all respects and shall be accompanied by documentary proof that the material and work sampled is actually representative of that installed.

The City assumes no obligation, and the Contractor shall not be relieved of any obligation undertaken pursuant to the Contract Documents by virtue of sampling and testing specified in this Article.

The responsibility for incorporating satisfactory materials and workmanship which meet the Contract Documents in the work rest entirely with the Contractor, notwithstanding any prior samples or tests.

Section 5.22. Rejection of Materials and Workmanship.
The City shall have the right to reject materials and workmanship which are determined by the Owner's Representative, the Architect, Consulting Engineer, or the Project Inspector to be defective or fail to comply with the Contract Documents. Rejected workmanship shall be promptly corrected to the satisfaction of the City and/or Architect or Consulting Engineer, and rejected materials shall be removed from the premises and replaced, all without added cost to the Owner and/or an increase in the Contract Time.

If the Contractor does not correct such rejected work and/or materials within a reasonable time, fixed by the Owner's Representative or the Architect or Consulting Engineer in a written notice to the Contractor, the City may correct the same and charge the expense to the Contractor, and deduct such expense from the next progress payment otherwise payable to the Contractor.

If the City determines that it is in its best interest not to correct defective workmanship and/or materials, or work not done in accordance with the Contract Documents, the Contractor agrees that an equitable deduction from the Contract Sum shall be made therefor, and deducted from the next progress payment.

Section 5.23. Correction of Work.
The Contractor shall promptly correct all work rejected by the Owner's Representative, Project Inspector or the Architect or Consulting Engineer as defective or as failing to conform to the Contract Documents, whether observed before or after final completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected work including compensation for the Architect's, Consulting Engineer's Project Inspector's and the Owner's Representative's additional services.

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within three (3) days after receipt of written notice from the City to commence and continue correction of the default or neglect with diligence and promptness, the City may, without prejudice to any other remedy it may have, correct the deficiencies and may further elect to complete that portion of the Work through such means as the City may select, including the use of a new contractor. In such case, an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting the deficiencies, and any other appropriate costs, including compensation for the Architect's or Consulting Engineer's, the Project Inspector's and the Owner's Representative's additional services made necessary by the default, neglect or failure. If the payments then or thereafter due the Contractor are not sufficient to cover that amount, the Contractor shall pay the difference to the City.

If within two (2) years after the Date of Completion and acceptance of the Work or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct any or all such work, together with any other work which may be displaced in so doing, without expense to the City, promptly after receipt of a written notice from the City unless the City has previously given the Contractor a written acceptance of such condition. The City shall issue a correction notice promptly after discovering the condition. The Contractor shall notify the City upon completion of repairs. This obligation shall survive termination of the Contract with respect to work in place prior to termination.

The Contractor shall bear the cost of making good work destroyed or damaged by such correction or removal.

Nothing contained in this Section shall be construed to establish a period of limitation with respect to any other obligations which the Contractor might have under the Contract Documents or by operation of law. The establishment of the time period of two (2) years after the Date of Completion, or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents, relates only to the specific obligation of the Contractor to correct the Work and has no relationship to the time within which an action may be

commenced to establish the Contractor's liability with respect to its obligations other than specifically to correct the work.

Section 5.24. Termination for Convenience.

The City may at any time and for any reason, terminate, in whole or in part, Contractor's Work at the City's convenience. Termination shall be by written notice to Contractor. Upon receipt of such notice, Contractor shall, unless the notice directs otherwise, immediately discontinue Contractor's work and the placing of orders for materials, facilities and supplies in connection therewith, and shall, if requested, make every reasonable effort to procure cancellation of all existing orders or contracts upon terms satisfactory to the City, or at the option of the City, the City shall have the right to assume those obligations directly, including all benefits to be derived therefrom. Contractor hereby assigns to the City all of its interest in said orders and/or contracts, and the assignment of said orders and/or contracts shall be effective upon notice of acceptance by the City in writing, and only as to those orders and/or contracts which the City designates in writing. Following receipt of notice of termination, Contractor shall thereafter do only such work as may be necessary to preserve and protect portions of its work already in progress and to protect materials and equipment on or in transit to the Project.

Upon such termination, Contractor shall be entitled to payment only as follows: (1) Contractor's direct, actual cost of the Work allocable to the portion of the Work completed in conformity with the Contract, but in no event to exceed the amount of the Contract Sum allocable to the portion of the Work completed in conformity with the Contract; plus (2) previously unpaid costs of any items delivered to the Project Site which were fabricated for subsequent incorporation in the Work, but in no event to exceed the portion of the Contract Sum allocable to said items; plus (3) an allowance of ten percent (10%) of the foregoing costs for Contractor's overhead and profit; plus (4) any proven losses with respect to materials and equipment directly resulting from the termination; plus (5) reasonable demobilization costs. The costs referred to in this Section shall be calculated and documented as required for a Change Order under Article 9 of these General Provisions, except that markup shall be only as allowed by this Section. There shall be deducted from such sums the amount of any payments made to Contractor prior to the date of the termination of this Contract. Contractor shall not be entitled to any claim or claim of lien against the City for any additional compensation or damages in the event of such termination and payment beyond that provided for in this Section.

In connection with any termination for convenience, Contractor shall allow the City and any of its authorized representatives to inspect, audit, or reproduce any records to the extent necessary for the City to evaluate and verify the costs incurred by Contractor in performing the Work, including direct and indirect costs such as overhead allocations. Contractor will make this material available upon 48-hours' written notice from the City. The City may inspect and copy, from time to time and at reasonable times and places, any and all information, materials and data of every kind and character (hard copy, as well as computer readable data if it exists), including without limitation, books, papers, documents, subscriptions, recordings, estimates, price quotations, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers, monthly, quarterly, yearly or other financial statements, and any and all other information or documentation that may, in the judgment of the City have any bearing on or pertain to any matters, rights, duties, or

obligations under or covered by the Contract Documents. Such records shall include but not be limited to, the following: accounting records, payroll records, job cost reports, job cost history, margin analysis, written policies and procedures, subcontract files (contracts, correspondence, change order files, including documentation covering negotiated settlements), backcharge logs and supporting documentation, general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends, and any other documents customarily maintained by contractors performing work on public works projects or that the City otherwise deems necessary to substantiate charges related to a Termination.

If this Contract is terminated for default under Section 5.25, and if it is later determined that the default was wrongful, such default termination automatically shall be converted to and treated as a termination for convenience under this Section. In such event, Contractor shall be entitled to receive only the amounts payable under this Section, and Contractor specifically waives any claim for any other amounts or damages, including any claim for consequential damages or lost profits.

Section 5.25. Termination for Cause.

The City may terminate the Contract, pursuant to the provisions of this Article, for the following causes:

A. The Contractor is insolvent or has made a general assignment for the benefit of creditors, or a receiver has been appointed on account of the insolvency of the Contractor.

B. The Contractor or any of its Subcontractors violate any of the provisions of the Contract Documents or fail to perform the work within the time specified in the current Contract Schedule.

C. The Contractor or any of its Subcontractors should fail to make prompt payment to Subcontractors or material suppliers for material or for labor as required by statute.

D. The Contractor or a Subcontractor persistently disregards laws, ordinances, or the instructions of the Owner's Representative, Architect, Consulting Engineer or the City.

E. The Contractor fails to abide by a Stop Work Notice or fails to correct rejected work or materials as required.

F. The Contractor fails to provide and keep in full force and effect all required insurance, or fails to cause all Subcontractors to so comply.

G. The Contractor fails to supply a sufficient number of properly skilled workers or proper materials.

H. The Contractor commits any substantial violation of the terms and conditions of the Contract Documents which the City, in its sole discretion, finds to be a material breach of the Contract.

The City may, without prejudice to any other right or remedy, give written notice to the Contractor and its surety or sureties of its intention to terminate the Contract.

Unless within seven (7) Calendar Days of the delivery of such notice, the Contractor shall cease such violation and make satisfactory arrangements for a correction thereof, which arrangements are set forth in a written agreement signed by the Contractor and the City, the Contractor's right to complete the Work shall cease and terminate.

In the event of any such termination, the City shall immediately give written notice thereof to the surety and to the Contractor and the surety shall have the rights and obligations set forth in the performance bond. If the City is forced to take over the Work, it may prosecute the same to completion by contract or by any other method it may deem advisable, for the account and at the expense of the Contractor, and the Contractor and its sureties shall be liable to the City for any excess costs, including management, supervision, and design support, occasioned thereby. In such event, the City may, without liability, take possession of and utilize in completing the Work, the Contractor's materials whether stored at the Site or elsewhere, that are necessary for completion. Contractor hereby assigns to the City all of its interest in orders and/or contracts existing at the time of termination. The assignment of said orders and/or contracts shall be effective upon notice of acceptance by the City in writing, and only as to those orders and/or contracts which the City designates in writing. Whenever the Contractor's right to proceed is terminated, the Contractor shall not be entitled to receive any further payment until the Work is finished.

Section 5.26. Option in Event of a Loss.
In the event that any destruction or loss should exceed twenty percent (20%) of the value of the construction completed to date, as determined at the end of the preceding month, or is due to an "Act of God," the City shall have the option, at its sole discretion, to terminate this Contract.

Section 5.27. Provisions for Termination of Contract.
This Contract is subject to termination as provided by Sections 4410 and 4411 of the Government Code, being portions of the Emergency Termination of Public Contracts Act of 1949.

Section 5.28. Termination After Contract Time.
In addition to any rights it may have, the City may terminate this Contract at any time after the Contract Time, as adjusted by any extensions of time that the City may have granted.

Upon such termination, in addition to the Contractor's obligations under Section 5.29 and the other provisions of the Contract Documents, the Contractor shall not be entitled to receive any compensation for services rendered before or after such termination until the Work is completed, and the Contractor shall be liable to the City for liquidated damages for all periods of time from

such termination date until the Date of Completion, as well as for all losses incurred by the City in completing the Work.

Section 5.29. Survival of Obligations.
No termination of this Contract or of Contractor's Work shall excuse or otherwise relieve the Contractor of its responsibilities under the Contract Documents with respect to any Work performed prior to the date of termination, including, without limitation, its obligation to perform the Work in a good and workmanlike manner, free of defects, and in accordance with the Contract Documents, its warranty obligations with respect to the Work, and its obligation to make all payments due. All of Contractor's responsibilities under the Contract Documents with respect to the Work performed prior to the date of termination shall survive any termination.

Section 5.30. Termination of Unsatisfactory Subcontractors.
When any portion of the Work that has been subcontracted by the Contractor is not being prosecuted in a satisfactory manner, or when materials supplied do not conform to the Contract Documents, the City may direct the Contractor to discharge the Subcontractor or supplier. Any Subcontractor or supplier which is discharged shall not again be employed on this Project.

Any termination of a Subcontractor pursuant to this Section shall be in strict conformity with the requirements of the Subletting and Subcontracting Fair Practices Act, Part 1 of Division 2 of the Public Contract Code, commencing with Section 4100.