

**SECTION 5
LEGAL RELATIONS AND RESPONSIBILITY**

5.01 COMPLIANCE WITH LAWS – PERMITS, REGULATIONS, TAXES

The Contractor is an independent contractor and shall, at the Contractor's sole cost and expense, comply with all laws, rules, ordinances and regulations of all governing bodies having jurisdiction over the Work, obtain all necessary permits and licenses therefore, pay all manufacturers' taxes, sales taxes, use taxes, processing taxes, and all federal and state taxes, insurance and contributions for social security and unemployment which are measured by wages, salaries or any remuneration paid to Contractor's employees, whether levied under existing or subsequently enacted laws, rules or regulations. The Contractor shall also pay all property tax assessments on materials or equipment used until acceptance by the City. If any discrepancy or inconsistency is discovered in the Plans or Specifications, or in this Contract in relation to any such law, rule, ordinance, regulation, order or decree, the Contractor shall forthwith report the same to the Engineer in writing. He shall also protect, defend and indemnify the City, the Engineer, and all of the City's officers, agents, and servants against any claim or liability arising from or based upon the violation of any such law, rule, ordinance, regulation, order or decree, whether by the Contractor himself or by his employees. Particular attention is called to the following:

- A. Without limitation, materials furnished and performance by Contractor hereunder shall comply with Safety Orders of the Division of Industrial Safety, State of California, Federal Safety regulations of the Bureau of Labor, Department of Labor; and any other applicable Federal regulations.
- B. The Contractor, upon request shall furnish evidence satisfactory to the City and Engineer that any or all of the foregoing obligations have been or are being fulfilled. The Contractor warrants to the City that he is licensed by all applicable governmental bodies to perform this Contract and will remain so licensed throughout the progress of the Work, and that he has, and will have, throughout the progress of the Work, the necessary experience, skill and financial resources to enable him to perform this Contract.
- C. Contractor is required to insure that material safety data sheets (MSDS's) for any material requiring a material safety data sheet pursuant to any federal or state law are available in a readily accessible place on the Project premises. Contractor is also required to insure:
 - 1. The proper labeling of any substance brought onto the Project premises by Contractor or any subcontractors and

2. That the person(s) working with the material, or within the general area of the material, are appropriately informed about the hazards of the substance and follow proper handling and protection procedures.
- D. Contractor is required to comply with the provisions of California Health and Safety Code Section 25249.5 et seq. (Prop. 65), which requires the posting and giving of notice to persons who may be exposed to any chemical known to the State of California to cause cancer.

5.02 PREVAILING WAGE

- A. The Contractor shall forfeit as penalty to the City the amount specified by law for each calendar day or portion thereof for each worker (whether employed by the Contractor or Subcontractor) paid less than the stipulated prevailing rates for any work done under the Contract in violation of the provisions of the Labor Code and in particular, Section 1775. A copy of the provisions of Labor Code Sections 1771, 1775, 1776, 1777.5, 1813 and 1815 is attached to the Contract Documents.
- B. The City will not recognize any claims for additional compensation because of the payment of the wages set forth in the Contract Documents. The possibility of wage increases is one of the elements to be considered by the Contractor in determining his proposal, and will not under any circumstances be considered as the basis of a claim against the City or the Engineer.

5.03 PREVAILING WAGE RECORDS

- A. The Contractor and each subcontractor shall keep an accurate payroll record which shows the name, address, social security number, correct work classification (in accordance with the wage decision), both straight and overtime worked each day and week, and hourly rate of pay, gross wages earned, deductions made and net wages paid to each journeyman, apprentice, worker or other employee paid by the Contractor/subcontractor in connection with the Work.
- B. These payroll records shall be certified and shall be made available at Contractor's principal office. These records shall be maintained during the course of the Work. The Contractor and all subcontractors shall make the certified payroll records available for inspection by City representatives upon request and shall permit such representatives to interview employees during the work hours on the job site.

- C. The City shall notify the Contractor in writing of any discrepancies or violations that are discovered during such inspections. Written notification pursuant to this Section shall include the actions that will be necessary to resolve the discrepancies and/or violations. The Contractor shall be held entirely responsible for the prompt resolution of all non-compliances with the prevailing wage laws, including those pertaining to all subcontractors and any lower-tier subcontractors.
- D. Weekly Certified Payroll Reports and basic records relating thereto (e.g. timecards, canceled payroll checks) shall be maintained during the course of the work. The contractor and all subcontractors shall make the records available for inspection by City representatives upon request and shall permit such representatives to interview employees during the work hours on the job site.

The original copy of all payroll reports, including those of all Subcontractors, shall be submitted to the City weekly by the Contractor. The copy of each payroll shall be accompanied by a “statement of compliance”. The statement of compliance shall be executed with an original signature by the employer (owner, partner, corporate officer) or designated payroll officer. The City will not accept any payrolls that have been endorsed with a signature stamp.

Each payroll shall contain for each employee: name, address, and social security number; the correct work classification (in accordance with the wage decision); the actual daily and weekly hours worked on this project; the hourly rate of pay; the gross wages earned; the deductions made; and the net wages paid.

Payroll submissions must be kept up-to-date. The payrolls for any given week must be submitted not later than fourteen (14) days following the close of the corresponding pay week.

During the course of the work the City will review the payrolls and related submissions. The Contractor will be notified in writing of any discrepancies or violations that are disclosed on the review, and of the actions that will be necessary to resolve the discrepancies and/or violations. The Contractor shall be held entirely responsible for the prompt resolution of all non-compliances, including those pertaining to all Subcontractors and any lower-tier Subcontractors.

- E. The Project will not be accepted as complete by the City nor final payment made until all items of non-compliance are corrected or until appropriate provision is made by depository agreement to assure the ultimate resolution and payment of any back wages that may be found due.

5.04 LABOR DISCRIMINATION

Attention is directed to Section 1735 of the Labor Code, which reads as follows:

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

5.05 EIGHT-HOUR DAY LIMITATION

- A. In accordance with the provisions of the Labor Code, and in particular, Sections 1810 to 1815 thereof, inclusive, eight hours labor shall constitute a day's work, and no worker, in the employ of said Contractor, or any Subcontractor, doing or contracting to do any part of the work contemplated by this Contract, shall be required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of those provisions; provided that subject to Labor Code Section 1815, a worker may perform work in excess of either eight (8) hours per day or forty (40) hours during any one week upon compensation for all hours worked in excess of eight (8) hours per day or forty (40) hours during any one week at not less than one and one-half times the basic rate of pay.
- B. The Contractor and each Subcontractor shall also keep an accurate record showing the names and actual hours worked of all workers employed by them in connection with the Work. This record shall be open at all reasonable hours to the inspection of the City, State and Federal officers and agents. It is hereby further agreed that, except as provided in 5.05A above, the Contractor shall forfeit as a penalty to the City the sum of twenty-five dollars (\$25) for each worker employed in the performance of this Contract by the Contractor or by any of its Subcontractors for each calendar day during which such worker is required or permitted to labor more than eight (8) hours in and one calendar day and forty (40) hours in any one calendar week in violation of Sections 1810 through 1815.

5.06 COMPLIANCE WITH STATE REQUIREMENTS FOR EMPLOYMENT OF APPRENTICES

The Contractor's attention is directed to Section 1777.5 of the Labor Code. Provisions of said Section pertaining to employment of registered apprentices are hereby incorporated by reference into these Specifications. As applicable, the Contractor or any Subcontractor employed by the Contractor in the performance of the Work shall take such actions as necessary to comply with the provisions of Section 1777.5.

5.07 UNDERGROUND UTILITIES

- A. In accordance with Government Code Section 4215, the Contractor shall be compensated for the costs of locating, repairing damage not due to the failure of the Contractor to exercise reasonable care, and removing or relocating existing main or trunkline utility facilities which are not indicated in the Contract Plans and Specifications with reasonable accuracy, and for the equipment on the Project necessarily idled during such work, provided that the Contractor shall first notify the Engineer before commencing work on locating, repairing damage to, removing or relocating such utilities. Contractor shall not be assessed liquidated damages for delays in completing the Work when such delays are due to the failure of either the City or the owner of the utility to provide for removal or relocation of such utility facilities.
- B. The Contractor shall take all precautions necessary to protect the existing utilities within the project area. Any utilities damaged due to the Contractor's negligence shall be repaired or restored to their original condition at the Contractor's sole expense. Existing utilities shall be kept in service during the life of the Contract unless relocation, reconstruction, abandonment, or outage is specifically authorized by the Engineer.
- C. The Contractor shall provide and maintain such temporary supports as may be necessary to preserve the functions of the various utility systems. No wires, conduits and/or pipes shall be removed until all services therein have been made inoperable.
- D. The Contractor shall notify the Engineer and appropriate Regional Notification Center for operators of subsurface installations at least two (2) working days, but not more than fourteen (14) calendar days, prior to performing excavation or other work close to any underground pipeline, conduit, duct, wire and other structures. The Contractor shall provide updated information to the Notification Center as required and on a periodic basis. The Regional Notification Center includes but is not limited to the Underground Service Alert-Northern California (USA) at 1-800-642-2444.
- E. The Contractor is advised that the State of California does not participate in USA. The Contractor is required to notify CalTrans Permits Branch (530) 741-4036 for the location of State facilities.
- F. The Contractor shall not proceed with work until utility facilities involved have been located, disconnected, or otherwise adjusted by utility representatives.

G. The City Utility Maintenance Division will make repairs to all water service laterals and water mains damaged by the Contractor during the course of construction unless directed otherwise by the Engineer. Except as otherwise provided in this Section, the Contractor shall be required to pay all labor, material and equipment costs incurred by the City Utilities Maintenance Division for the repairs made to damaged water service laterals and water mains. The City will bill the Contractor for the repairs and the bills will be paid by the Contractor prior to either the next monthly progress payment or prior to the final payment, whichever comes first. The Contractor shall provide to the Engineer proof of payment of the repair bills prior to the issuance of either the monthly progress payment or final payment. The current labor and equipment rates for the City Utility Maintenance Division will be made available to the Contractor at the preconstruction conference. The City shall have the right to deduct the total amount of any unpaid City repair bill from the money due or to become due the Contractor.

5.08 WATER POLLUTION

The Contractor shall exercise every reasonable precaution to protect streams, lakes, reservoirs, and canals from pollution with fuels, oils, bitumens, calcium chloride, and other harmful materials and shall conduct and schedule his operations so as to avoid or minimize muddying and silting of said streams, lakes, reservoirs, and canals. Care shall be exercised to preserve vegetation beyond the limits of construction. The Contractor shall comply with Section 5650 of the California Fish and Game Code and all other applicable statutes and regulations relating to the prevention and abatement of water pollution.

5.09 PAYMENT OF TAXES

The Contract prices paid for the Work shall include full compensation for all taxes, which the Contractor is required to pay, whether imposed by Federal, State, or local governments.

5.10 PERMITS AND LICENSES

The Contractor shall procure all permits and licenses, pay all charges and fees, and give all notices necessary and incident to the lawful prosecution of the work. All permits and licenses shall be obtained in sufficient time to prevent delays to the Work. The Contractor shall, at a minimum, possess and maintain the licenses and permits set forth in the Contract Provisions.

5.11 PATENTS

The Contractor shall assume all costs arising from the use of patented materials, equipment, devices, or processes used on or incorporated into the Work, and agrees to indemnify, defend and save harmless the City, the Engineer, and their duly authorized representatives, from all suits at law, or actions of every nature for, or on account of, the use of any patented materials, equipment, devices, or processes.

5.12 PUBLIC CONVENIENCE

This section defines the Contractor's responsibility with regard to convenience of the public and public traffic in connection with its operations.

- A. The Contractor shall so conduct its operations as to offer the least possible obstruction and inconvenience to the public. The Contractor shall have under construction no greater length or amount of work than can be properly prosecuted with due regard to the rights of the public.
- B. Unless otherwise provided in the Contract Documents, all public traffic shall be permitted to pass through the Work with as little inconvenience and delay as possible. In order to expedite the passage of public traffic through or around the work, the Contractor shall install as appropriate signs, lights, flares, barricades, and other facilities for the sole convenience and direction of public traffic. Also, where directed by the Engineer, the Contractor shall provide and station competent flagpersons whose sole duties shall consist of directing the movement of public traffic through or around the Work. The cost of furnishing and installing such signs, lights, flares, barricades, and other facilities, and the cost of providing and stationing such flagpersons, all for the convenience and direction of public traffic, will be considered as included in the Contract price and no additional compensation will be allowed.
- C. Spillage resulting from hauling operations along or across any publicly traveled way shall be removed immediately by the Contractor at its expense.
- D. Construction operations shall be conducted in such a manner as to cause as little inconvenience as possible to abutting property owners.
- E. Convenient access to driveways, houses and buildings along the line of the work shall be maintained and temporary approaches to crossings or intersecting highways shall be provided and kept in good condition. When the abutting property owner's access across the right-of-way line is to be eliminated, or to be replaced under the Contract by other access facilities, the existing access shall not be closed until the replacement access facilities are usable.
- F. Water shall be supplied if ordered by the Engineer for the alleviation or prevention of dust nuisance as provided in the Contract Documents. Any water obtained from a fire hydrant within the City of West Sacramento shall be subject to a fire hydrant permit issued by the Engineering Division of the City of West Sacramento.
- G. Flagpersons and guards, while assigned to traffic control, shall perform their duties and shall be provided with the necessary equipment in accordance with the current "Instructions to Flagmen" of the California Department of Transportation. The equipment shall be furnished and kept clean and in good repair by the Contractor at his expense.
- H. All traffic control shall be in accordance with State of California Standard Specifications, January 1992 Section 7-1.08 (Public Convenience) and Section 7-1.09 (Public Safety), the State of California, Department of Transportation Manual of Traffic Control for Construction and Maintenance Work Zones (1990) and this Section 5.12.

1. Traffic Control Plans

Traffic Control Plans shall be developed for the project to assure that adequate consideration is given to the safety and convenience of motorists, pedestrians, and workers during construction. The Traffic Control Plans shall include, but not be limited to, signing, pavement markings, construction scheduling, permanent barricades, methods and devices for delineation and channelization, placement and maintenance of devices, roadway lighting, traffic regulations, surveillance and inspection. The Traffic Control Plans shall be approved by the Engineer a minimum of two (2) working days prior to start of any work. Non-compliance with any stipulation of this Section will be justification for the City to stop work.

2. Traffic Control Devices and Procedures

Traffic control devices and procedures shall conform to the State of California, Department of Transportation, Manual of Traffic Controls for Construction and Maintenance Work Zones (1990). Special attention shall be given to the design and placement of construction signs and channelization devices, proper training and use of flagmen, and Section 5-08 "Principles of Work Zone Traffic Control". Non-compliance with any stipulation of this Section will be justification for the City to stop work.

3. Elimination of On-Street Parking

The Contractor shall place notification for the elimination of on-street parking, if required, at least forty-eight (48) hours, but not more than seventy-two (72) hours prior to the start of work. The notification shall include the Contractor's phone number, the City of West Sacramento Community Development Department phone number 373-5854, and the phrase "VEHICLES WILL BE TOWED PURSUANT TO CVC SECTION 22651 (L)". This notice shall be affixed to a Type II barricade that is placed in the lane of the road (max. 200 ft. spacing) used for on-street parking. No other location or method of placement is acceptable. The notification shall be in a form approved by the Engineer. Non-compliance with any stipulation of this section will be justification for the City to stop work.

4. Lane Closures

All lane closures shall be included in the Traffic Control Plans, and shall both conform to Section 5.12H2 above, and be approved by the Engineer. Total road closures will not be allowed for the Project.

5. Measurement and Payment

Unless specifically shown as an item of work on the proposal form, all traffic control shall be considered included in other items of work and no additional compensation will be made for labor, materials or equipment needed.

5.13 CONTINUOUS OPERABILITY OF FACILITIES

Absent written permission by the Engineer, the continuous operation of all existing facilities is required and shall in no way be affected by the Work.

5.14 SAFETY

A. General

1. The Contractor shall be solely and completely responsible for the conditions of the job Site, including safety of all persons and property during performance of the Work. This requirement shall apply continuously and not be limited to normal working hours. Safety provisions shall conform to all applicable Federal, State, and local laws, ordinances, and codes, and to the rules and regulations established by the California Division of Industrial Safety, and to other rules of law applicable to the Work.
2. The services of the Engineer 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, and shall not be construed as supervision of the actual construction nor make the Engineer or the City responsible for providing a safe place for the performance of work by the Contractor, Subcontractors, or suppliers; or for access, visits, use work, travel or occupancy by any person.
3. 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 instruction as is necessary to prevent injury to personnel and damage to property. Special care shall be exercised relative to electrical work, work involving excavation and in sump pump work.
4. All work and materials shall be in strict accordance with all applicable State, Federal and local laws, rules, regulations, and codes.
5. Nothing in this Contract is to be construed to permit work not conforming to governing law. When Contract Documents differ from governing law, 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 law, this shall be provided.
6. The Contractor shall submit a safety plan and/or narrative description to the Engineer prior to commencement of the Work. This safety plan and/or narrative description shall describe all first aid, safety clothing, etc. to be used at the Project Site.

B. Shoring and Trench Safety Plan

1. Attention is directed to Section 832 of the Civil Code of the State of California relating to lateral and subjacent support, and the Contractor shall comply with this law.
2. In accordance with Section 6705 of the State Labor Code, the Contractor shall submit to the City specific plans to show details of provisions for worker protection from caving ground. Not less than thirty (30) days before beginning excavation for any trench or trenches five feet or more in depth required under this Contract, the Contractor shall furnish to the Engineer working drawings of his trench safety plan. The trench safety plan working drawings shall be detailed plans showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground. If such plan varies from the shoring system standards established by the Construction Safety Orders of the California Division of Industrial Safety or the Federal Safety and Health Regulations for Construction of the Occupational Safety and Health Administration, Department of Labor, the plan shall be prepared by a registered civil or structural engineer. In no event shall the Contractor use a shoring, sloping, or protective system less effective than that required by said Construction Safety Orders, or less effective than that required by said Federal Safety Standards. Submission of this plan in no way relieves the Contractor from the requirement to maintain safety in all operations performed by him or his Subcontractors.

5.15 BLASTING

Except for exceptional circumstances, blasting shall be prohibited. Accordingly, Bids should be prepared on the basis that no blasting will be permitted. Should blasting be required and expressly approved by the City, the City will issue a Change Order for blasting work.

5.16 INTOXICATING LIQUORS AND NARCOTICS

The Contractor shall not sell, permit or suffer the introduction or use of intoxicating liquors or narcotics upon or about the Site.

5.17 PROTECTION OF PERSONS AND PROPERTY

- A. The Contractor shall take whatever precautions are necessary to prevent damage to all existing improvements, including above ground and underground utilities, trees, shrubbery that is not specifically shown to be removed, fences, signs, mailboxes, survey markers and monuments, buildings, structures, the City's property, adjacent property, and any other improvements or facilities within or adjacent to the work. If such improvements or property are injured or damaged by reason of the Contractor's operations, they shall be replaced or restored, at the Contractor's expense, to a condition at least as good as the condition they were in prior to the start of the Contractor's operations.

- B. The Contractor shall adopt all practical means to minimize interference to traffic and public inconvenience, discomfort or damage. The Contractor shall protect against injury to any pipes, conduits or other structures crossing the trenching or encountered in the Work and shall be responsible for any injury done to such pipes or structures, or damage to property resulting therefrom. The Contractor shall support or replace any such structures without delay and without any additional compensation to the entire satisfaction of the Engineer. All obstructions to traffic shall be guarded by barriers illuminated at night. The Contractor shall be responsible for all damage to persons and property directly or indirectly caused by his operations and, under all circumstances, he must comply with the laws and regulations of the State of California relative to safety of persons and property and the interruption of traffic and the convenience of the public within the respective jurisdictions.
- C. The Contractor is cautioned that it must replace all improvements in rights-of-way and within the public streets to a condition at least equal to what existed prior to his entry onto the job.
- D. Type and time of construction required at any road subject to interference by the work will be determined by those authorities responsible for maintenance of said road. It shall be the responsibility of the Contractor to determine the nature and extent of all such requirements, including provision of temporary detours as required; however, the construction right-of-way obtained by the City at affected roadways will be adequate for provision of all required detours. As required at any road crossing, the Contractor shall provide all necessary flagpersons, guardrails, barricades, signals, warning signs and lighting to provide for the safety of existing roads and detours. Immediately after the need for temporary detours ceases, or when directed, the Contractor shall remove such detours and perform all necessary cleanup work, including replacement of fences, and removal of pavement. Included shall be all necessary replacement of existing roadway appurtenances, grading work, soil stabilization and dust control measures, as required and directed.
- E. The Contractor shall examine all bridges, culverts, and other structures over which he will move his materials and equipment, and before using them, he shall properly strengthen such structures where necessary. The Contractor shall be responsible for any and all injury or damage to such structures caused by reason of its operations.

5.18 RESPONSIBILITY FOR REPAIR OF FACILITIES

All public or private facilities, including but not limited to, gravel surfacing at existing canals, structures, telephone cables, roadways, curbs, gutters, parking lots, private drives, levees and embankments for creeks, ponds and reservoirs disturbed during construction of the work shall be repaired and/or replaced by the Contractor to match facilities existing prior to construction. In addition, the Contractor shall be responsible for any settlement damage to such facilities or adjoining areas for a period of one year after acceptance of such required facilities.

5.19 CITY'S REPAIR

In the event the Contractor refuses or neglects to make good any loss or damage for which he is responsible under this Contract, the City may itself or by the employment of others, make good any such loss or damage, and the cost and expense of doing so, including any reasonable engineering, legal and other consultant fees, and any costs of administrative and managerial services, shall be charged to the Contractor. Such costs and expenses may be deducted by the City from claims for payment made by the Contractor for work completed or remaining to be completed.

5.20 ANTITRUST CLAIM ASSIGNMENT

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

5.21 WAIVER OF RIGHT TO RESCIND FOR MATERIAL BREACH

The Contractor agrees that it can be adequately compensated by money damages for any breach of this Contract which may be committed by the City and hereby agrees that no default, act, or omission of the City or the Engineer, shall constitute a material breach of the Contract entitling the Contractor to cancel or rescind the provisions of this Contract or (unless the City shall so consent or direct in writing) to suspend or abandon performance of all or any part of the Work. The Contractor hereby waives any and all rights and remedies to which it might otherwise be or become entitled, save only its right to money damages.

5.22 CONTRACTOR'S LICENSE NOTICE

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSE BOARD. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO:

REGISTRAR CONTRACTORS' STATE LICENSE BOARD
9821 BUSINESS PARK DR.
SACRAMENTO, CALIFORNIA 95827

MAILING ADDRESS:
P.O. BOX 26000
SACRAMENTO, CALIFORNIA 95826

5.23 HISTORICAL, SCIENTIFIC AND ARCHEOLOGICAL DISCOVERIES

All articles of historical or scientific value, including but not limited to coins, fossils, and articles of antiquity which may be uncovered by the Contractor during the progress of work, shall become City property. Such findings shall be reported immediately to the Engineer who will determine the method of removal, where necessary, and the final disposition thereof.