

## **SECTION 2 - SCOPE AND CONTROL OF THE WORK**

### **2-1 AWARD AND EXECUTION OF CONTRACT**

Award and execution of contract will be as specified in the bidding requirements.

### **2-2 ASSIGNMENT OF PAYMENT**

Contractor agrees he/she will not assign the payment of any monies due him/her from the City under the terms of this Contract to any other individual(s), corporation(s), or entity(s). The City retains the right to pay any and all monies due Contractor directly to Contractor.

### **2-3 SUBCONTRACTS**

As provided in Sections 4100 to 4113 inclusive of the Public Contract Code of the State of California, each bidder shall file with his/her bid the name and location of the place of business of each Subcontractor who will perform Work or labor in an amount in excess of one-half of one percent of the amount of the total bid. Only one subcontractor shall be listed for each portion of the Work, which portion shall be defined in the bid proposal. In each instance, the nature and extent of the Work to be sublet shall be described. The failure of the bidder to specify a Subcontractor, or the listing of more than one Subcontractor for the same portion of the Work, constitutes an agreement by the bidder that he/she is fully qualified to perform that portion himself/herself, and that, if awarded the contract, he/she shall perform that portion himself/herself.

The Contractor shall not substitute any subcontractor in place of the subcontractors designated in the original bid, without the consent of the City and approval of the Engineer.

The subletting or subcontracting of any Work for which there was no subcontractor designated in the original bid and which is more than one-half of one percent of the Work, may be permitted only in cases of public emergency or necessity, and then only after a finding reduced to writing of the City setting forth the facts contributing to the emergency or necessity.

Violation of any of the above provisions will be considered a violation of the contract, and the City may cancel the contract or assess the Contractor a penalty of not more than 10 percent of the subcontract involved. Where required, notice and hearing shall be given pursuant to Public Contract Code Section 4110.

All persons engaged in the Work, including subcontractors, will be considered under responsible control of the Contractor. The Contractor will be held responsible for their Work. The City will deal directly with, and make all payments solely to the Contractor.

The Contractor shall be responsible for the coordination of all trades, subcontractors, and materialmen engaged upon the Work. Neither the City nor the Engineer will undertake to settle any differences between the Contractor and its Subcontractors or between Subcontractors.

When subcontracted Work is not being prosecuted in a manner satisfactory to the Engineer, the contractor shall be notified to take corrective action within a specified time. If timely correction is not made, on receipt by the Contractor of written instructions from

the Engineer the subcontractor shall be removed immediately from the Work. The Subcontractors shall not be reemployed on the Work.

## **2-4 CONTRACT BONDS**

Before execution of the contract by the City, the Contractor shall file with the City surety bonds approved by, and in the form provided by the City in the amounts and for the purposes noted below. Bonds shall be duly executed by good and sufficient surety. The Contractor shall pay all bond premiums, costs, and incidentals.

Each bond shall be signed by both the Contractor and Surety, and the signature(s) of the surety notarized.

The Contractor shall provide two good and sufficient surety bonds.

1. The "Payment Bond" shall be for not less than 100 percent of the Contract price, to satisfy claims of material suppliers and of mechanics and laborers employed by Contractor on the Work. The bond shall be maintained by the Contractor in full force and effect until the Work is completed and accepted by the City, and until all claims for material and labor are paid, and shall otherwise comply with Chapter 7, Title XV, Part 4, Division 3 of the California Civil Code.
2. The "Faithful Performance Bond" shall be for 100 percent of the Contract price to guarantee faithful performance of all Work, within the time prescribed, in a manner satisfactory to the City, and that all materials and Workmanship will be free from original or developed defects.

Changes in the Work, or extensions of time, made pursuant to the Contract, shall not release the Contractor or Surety from their obligations. Notice of such changes or extensions shall be waived by the Surety.

## **2-5 PLANS AND SPECIFICATIONS**

### **2-5.1 General**

The Contractor shall keep at the Work-site a copy of the approved, signed, and stamped Plans and Specifications, to which the Engineer shall have access at all times. Note any field changes, positions of utilities, etc.

The Plans, Specifications and other contract documents will govern the Work. Anything in the Specifications and not on the Plans, or on the Plans and not in the Specifications, shall be as though shown or mentioned in both. Reference specifications and standard plans are a part of the contract documents.

While it is believed that much of the information pertaining to physical conditions which may affect the cost of the proposed Work will be shown on the Plans or indicated in the Specifications, the City does not warrant the completeness or accuracy of such information. It is the contractor's responsibility to ascertain the existence of any such conditions affecting the cost of the Work which would have been disclosed by reasonable examination of the site.

No test, investigation, statement or estimate of a factual situation not incorporated or incorporated in the contract shall be relied on by the Contractor. Any test, investigation statement or estimate of fact incorporated in the contract shall be considered by the Contractor to be a suggestion only and he shall request access to the underlying or background informative material or source and shall arrive at his own opinion thereon, including his determination of how reliable might be any conclusion appearing in (or inferred from) the Contract.

When the Contractor has obtained or actually viewed any "as-built" or similarly final or accepted drawing or map of any facility constructed for and under inspection by the City, the Contractor may rely upon the drawing or map. No drawing or map obtained from, through or by the City of any facility installed on or off of public property by a private person or utility, and not by and for the City, may be relied on by the Contractor; the accuracy of such documents must be questioned.

For convenience, these Specifications are arranged in the several sections indicated, but such separation shall not be considered as the limits of the Work required of any separate trade. The terms and conditions of such limitations are wholly between the Contractor and his subcontractors.

In general, the drawings will indicate dimensions, position and kind of construction and the written Specifications will indicate qualities and methods. Any Work indicated on the drawings and not mentioned in the written Specifications, or vice versa, shall be furnished as though fully set forth in both. Work not particularly detailed, marked or specified, shall be as similar parts that are detailed, marked or specified.

Figured dimensions on the scale drawings and the full size details shall govern.

Contractor represents to City that prior to submitting its bid and in a timely manner to allow for resolution by an addendum, Contractor (i) exercised due diligence in performing a constructability review of the Contract Documents in accordance with industry standards; (ii) submitted on the Bid Question Form in the Instruction to Bidders, for resolution by addendum, a request for clarification and stating in detail any lack of definition and all errors, omissions, conflicts and insufficiencies in the Contract Documents discovered during such constructability review; and (iii) obtained written assurances from each of his/her Subcontractors that they exercised the same due diligence in performing such a constructability review and submitted a Bid Question Form in accordance with the foregoing, either directly or through the Contractor. Prior to the commencement of the Work, the Contractor and each of his/her Subcontractors shall submit to the Engineer a written, signed report stating in detail any lack of definition, errors, omissions, conflicts and insufficiencies in the Contract Documents discovered since said constructability review and not reasonably discoverable in such a review. The report covering any subdivision of Work assigned to a Subcontractor shall be prepared and submitted by such Subcontractor through the Contractor, who shall execute on such report his/her approval thereof and shall submit it to the Engineer with the Contractor's report. If no deficiencies were discovered by the Contractor or any Subcontractor, a report shall be filed nevertheless, stating that fact. It shall be the duty of the Contractor to require each Subcontractor to comply with this subparagraph.

After receipt of the reports required by the subparagraph above, the Engineer shall promptly deliver his/her written instructions to the Contractor, resolving all deficiencies

mentioned in the reports. The Contractor shall not proceed with any Work affected by any such deficiency prior to receipt by the Contractor of said written instructions.

If, during the course of the Work, any further errors, omissions, conflicts or insufficiencies in the Contract Documents shall be discovered by the Contractor or any subcontractor, it shall be the Contractor's duty to report them promptly in writing to the Engineer and obtain his/her written instructions resolving such deficiencies before proceeding further with the Work affected thereby.

If the Contractor shall proceed with any Work affected by any deficiency required to be reported pursuant to this paragraph, after the discovery thereof and prior to receipt of or without complying with the Engineer's written instructions resolving such deficiency, the Contractor shall make any and all corrections in or replacement of such Work, and shall repair all damage to other Work caused by such correction or replacement, as shall be required, in the Engineer's opinion and at his order, to bring the Work into compliance with the Contract Documents as amended by the Engineer's written instructions, without claim against the City for additional compensation or additional time for completion of the entire Work.

Failure of the Contractor or any subcontractor to discover and report, in the manner required by this paragraph, any deficiency in the Contract Documents affecting the Work, which, in the fulfillment of the Contractor's obligation under the Contract to have carefully reviewed all of the Contract Documents prior to submitting the bid, or which in the prosecution of the Work in the required thorough and first-class manner, would necessarily have been discovered, shall not relieve the Contractor of responsibility, but as to any Work proceeded with under such deficient specification after the time when, in the exercise of the required diligence as aforesaid, such deficiency should have been discovered, the Contractor shall be liable for the correction or replacement thereof and the repair of any damage caused thereby to same extent and subject to the same terms as for Work corrected or replaced under the subparagraph next above.

The Engineer will furnish additional details where necessary to more fully explain the Work, and same shall be considered a part of the contract. Full size details shall take precedence over scale drawings. Any Work done before receipt of such details, if not in accordance with same, shall be removed and replaced or adjusted, as directed, without expense to the City. Should any such details be, in the opinion of the Contractor, more elaborate than scale drawings and written specifications warrant, written notice thereof shall be given to the Engineer within five days of receipt of same. The notice will then be considered, and if justified, in the opinion of the Engineer, the details will be amended or the extra Work authorized.

#### **2-5.2 Precedence of Contract Documents.**

The order of precedence of documents shall be:

1. Rules and Regulations of Federal Agencies relating to the source of funds for a project.
2. Permits from other agencies as may be required by law.
3. Supplemental Agreements, Change Orders, or Contract the one dated later having precedence over another dated earlier.
4. Special Conditions.

5. General Conditions.
6. Technical Specifications.
7. Plans.
8. Standard Specifications.
9. Standard Plans.

Change orders, supplemental agreements and approved revisions to plans and specifications will take precedence over documents listed above. Detailed plans shall have precedence over general plans.

Whenever any conflict appears in any portions of the contract, it shall be resolved by application of the order of precedence.

### **2-5.3 Shop Drawings**

When shop drawings are required by the Specifications or requested by the Engineer, they shall be prepared in accordance with modern engineering practice at the Contractor's expense. Unless otherwise specified, six copies of shop drawings shall be submitted to the Engineer for approval or correction at least 30 days before approved drawings will be required for the Work. One set will be returned to the contractor marked "approved" or "approved as corrected". If changes are required, 6 copies of corrected shop drawings shall be delivered to the Engineer.

Shop drawings shall be of a size and scale to clearly show all necessary details.

For items requiring shop drawings, no materials shall be furnished or Work done before approval of the drawings.

Approval of shop drawings by the Engineer is interpreted to mean that there is substantial and acceptable conformance with the contract plans, but details of design may not necessarily be checked for adequacy or accuracy. Such approval shall not relieve the contractor from the responsibility for errors or omissions in the shop drawings or from deviations from the contract documents unless such errors, omissions, or deviations were specifically called to the attention of the Engineer. The Contractor shall be responsible for the correctness of the shop drawings, for shop fits and field corrections, and for the results obtained by use of such shop drawings.

### **2-6 WORK TO BE DONE**

The Contractor shall perform all Work necessary to complete the contract in a satisfactory manner. Unless otherwise provided, the Contractor shall furnish all materials, equipment, tools, labor and incidentals necessary to complete the Work.

### **2-7 SUBSURFACE DATA**

All soil and test hole data, water table elevations, and soil analyses shown on the drawings or included in the specifications apply only at the location of the test holes and to the depths indicated. Soil test reports for test holes which have been drilled are available for inspection at the office of the Engineer. Any additional subsurface exploration shall be done by bidders or the Contractor at their own expense.

The indicated elevation of the water table is that existing at the date the test whole data was determined. It is the Contractor's responsibility to determine and allow for the

elevation of ground water at the date of performing the Work. A difference in elevation between ground water shown in soil boring logs and ground water actually encountered during construction will not be considered as a basis for extra Work.

See Section 2-5.1 concerning reliance on data, tests and analyses.

## **2-8 RIGHT OF WAY**

Rights of way or easements for the improvement as shown on the Plans will be provided by the City. Unless otherwise provided, the Contractor shall make his own arrangements, pay for, and assume all responsibility for acquiring, using, and disposing of additional Work areas and facilities temporarily required by him. He shall indemnify and hold the City harmless from all claims for damages occasioned by such actions.

## **2-9 SURVEYING**

### **2-9.1 Permanent Survey Markers**

The Contractor shall not disturb permanent survey monuments or bench marks without the consent of the Engineer, and shall bear the expense of replacing any that may be disturbed without permission. Replacement shall be done only by an Engineer hired by the Contractor.

When a change is made in the finished elevation of the pavement of any roadway in which a permanent survey monument is located the Contractor's Engineer will adjust the monument cover to the new grade unless otherwise specified.

### **2-9.2 Lot Stakes**

The Contractor shall preserve property line and corner survey markers except where their destruction is unavoidable, and the Contractor is proceeding in accordance with accepted practice. Markers that otherwise are lost or disturbed by his operations shall be replaced at the Contractor's expense by a Registered Civil Engineer allowed to reset property corners or by a Licensed Land Surveyor.

### **2-9.3 Survey Service**

Surveying adequate for construction will be done by the Contractor. The Contractor shall be responsible for preserving construction survey stakes and marks for the duration of their usefulness.

### **2-9.4 Private Engineers**

Surveying by private engineers on Work under the control of the City shall conform to the quality and practice required by the Engineer. The Engineer shall be notified before the stakes are set. Private engineers are required to furnish cut sheets to the Engineer immediately upon the setting of the grades.

### **2-9.5 Line and Grade**

All completed Work shall conform to the lines, elevations and grades shown on the plans.

Three consecutive points set on the same slope shall be used together so that any variation from a straight grade can be detected. Any such variation shall be reported to

the Engineer. In the absence of such report, the Contractor shall be responsible for any error in the grade of the finished Work.

Grades for underground conduits will be set at the surface of the ground. The Contractor shall transfer them to the bottom of the trench.

## **2-10 CITY SUPERVISION AND INSPECTION**

The Work will be done under the supervision of the Engineer. The Engineer may specify the Work sequence to obtain the best results and to protect the City's interests. The contractor shall promptly comply with instructions from the Engineer or his authorized representative.

The Engineer's approval of the construction schedule will be given only if he is satisfied that the Contractor's construction schedule is sufficiently detailed to clearly show the Work to be completed during each month and, if adhered to, will be substantially sufficient to assure the completion of the Work within the time for completion set forth in the Specifications, and only if, in his opinion, the cost breakdown fairly apportions the contract price to the value of the Work and is in sufficient detail to provide a workable basis for progress payments. When the specific conditions require, the Contractor's construction schedule, in the form and content as finally approved by the Engineer, shall be incorporated in and be thereafter a part of the Specifications, and shall be the schedule on which the Work shall progress, and all progress payments shall be computed on the basis of the cost breakdown therein. The Contractor agrees to complete each monthly segment of the Work no later than the date specified in the construction schedule for completion thereof and the Contractor agrees not to deviate from said schedule without having first obtained the written approval of the Engineer.

All Work and materials are subject to inspection and approval of the Engineer. The Contractor shall notify the Engineer before noon of the working day before inspection is required. Unless otherwise authorized, work shall be done only in the presence of the Engineer or his authorized representatives. Any work done without proper inspection will be subject to rejection. The Engineer and his authorized representatives shall at all times have access to the work during its construction at shops and yards as well as the project site. The Contractor shall provide every reasonable facility for ascertaining that the materials and workmanship are in accordance with these specifications. Inspection of the Work shall not relieve the Contractor of the obligation to fulfill all conditions of the Contract.

No oral or telephonic agreement or conversation with any elected official, officer, agent, or employee of the City or the Engineer, or with the Engineer, either before or after execution of the Contract, shall affect or modify any of the terms or obligations contained in any of the Contract Documents.

The Contractor shall pay the City for all overtime inspection costs, unless the charges for such inspection have been expressly waived in the Special Conditions.

Overtime inspection charges will be made for all inspections on Saturdays, Sundays, and City holidays, and hours Worked by the inspector other than those of the normal City Working day.