

SECTION 7: LEGAL RELATIONS AND RESPONSIBILITY

7-01 LAWS TO BE OBSERVED. The Contractor shall keep fully informed of all existing and future State and Federal laws and municipal ordinances and regulations which in any manner affect those engaged or employed in the Work, or the materials used in the Work or which in any way affect the conduct of the Work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. Contractor shall at all times observe and comply with, and shall cause all Contractor's agents and employees to observe and comply with, all such existing and future laws, ordinances, regulations, orders and decrees; and shall protect and indemnify the City, the Engineer and all of their officers, agents and servants against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order or decree, whether by himself/herself or his/she employees. If any discrepancy or inconsistency is discovered in the Contract Documents for the Work in relation to any such law, ordinance, regulation, order or decree, the Contractor shall forthwith report the same to the Engineer in writing.

a. Labor Nondiscrimination. 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 work because of the race, religious creed, color, national origin, ancestry, physical handicap, 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."

b. Wage Rate. The City will not recognize any claim for additional compensation because of the payment by the Contractor of any increase in wage rate. The possibility of wage increases is one of the elements to be considered by the Contractor in determining Contractor's bid, and will not under any circumstances be considered as the basis of a claim against the City on the Contract.

c. Registration of Contractors. Before submitting bids, all contractors shall be licensed in accordance with the laws of the State of California.

d. Apprentices. Attention is directed to Sections 1776, 1777.5, 1777.6 and 1777.7 of the California Labor Code and Title 8, California Administrative Code, Sections 200 *et seq.* **RESPONSIBILITY FOR COMPLIANCE WITH THIS SUBSECTION LIES WITH THE CONTRACTOR.** To ensure compliance and complete understanding of the law regarding apprentices, and specifically the required ratio thereunder, each Contractor or subcontractor, especially if a question exists, contact the State of California Department of Transportation Division of Apprenticeship Standards,

455 Golden Gate Avenue, San Francisco, California, or one of its branch offices prior to commencement of work on the public works contract.

7-02 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 due and lawful prosecution of the Work.

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

In the event that the City has obtained permits, licenses or other authorizations applicable to the Work, in conformance with the requirements in said Environmental Quality Act, the Contractor shall comply with the provisions of said permits, licenses and other authorizations.

7-03 PATENTS. The Contractor shall assume all costs arising from the use of patented materials, equipment, devices or processes used on or incorporated in the Work, and agrees to indemnify and save harmless the City, 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.

7-04 PUBLIC CONVENIENCE. This article defines the Contractor's responsibility with regard to providing for the passage of public traffic through the Work during construction.

The Contractor shall so conduct Contractor's operations as to offer the least possible obstruction and inconvenience to public traffic, and he/she shall have under construction no greater length or amount of work than he/she can prosecute properly with due regard to the rights of the public. Where existing roads are not available for use as detours, unless otherwise provided in the Special Provisions, all traffic shall be permitted to pass through the Work with as little inconvenience and delay as possible. At no time, as a result of Contractor's efforts solely or in combination with other projects that might be underway, shall access to any portion of the City be unduly limited. The Engineer, at Engineer's discretion, may stop or postpone Work, as necessary, to avoid or correct such conditions.

Convenience of abutting owners along the road shall be provided for as far as practicable. 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.

At locations where traffic is being routed through construction during grading operations, roadway excavation and the construction of embankments shall be conducted in such a manner as to provide a reasonably smooth and even surface satisfactory for the use of public traffic at all times; and if ordered by the Engineer, roadway cuts shall be excavated in lifts and embankments constructed part width at a time, construction being alternated from one side to the other and traffic routed over the side opposite the one under construction. The road bed shall be sprinkled with water, if necessary, to prevent dust nuisance. Upon completion of the rough grading, the surface of the roadbed shall be brought to a smooth, even condition free from humps and depressions and made satisfactory for the use of traffic.

After the rough grading has been completed and the surface of the roadbed has been brought to a smooth and even condition as above specified, and before subgrade operations are commenced, any blading necessary for the accommodation of public traffic will be paid for as extra work, as provided in Paragraph 4-03, "Extra Work."

In order that all unnecessary delay to the traveling public may be avoided where ordered by the Engineer, the Contractor shall provide and station competent person whose sole duties shall consist of directing the movement of public traffic either through or around the Work.

7-05 PUBLIC SAFETY. This article defines the Contractor's responsibility with regard to providing for the safety of the public during construction.

Attention is directed to Paragraph 7-07, "Responsibility for Damage," of this Section.

The Contractor shall furnish, erect and maintain such fences, barriers, lights and signs as are, in the opinion of the Engineer, necessary to give adequate warning to the public at all times that the Work is under construction and of any dangerous conditions to be encountered as a result thereof. The warning signs, lights and other safety devices shall conform to and follow the requirements of Section 21400 of the Vehicle Code and of any sign manual issued or to be issued by the Department of Transportation.

Where ordered by the Engineer, the Contractor shall provide and station competent person whose sole duties shall consist of directing the movement of public traffic either through or around the Work.

At any and all points along the Work where the nature of construction operations in progress and the Contractor's equipment and machinery in use is of such character as to endanger passing traffic, the Contractor shall provide such lights and signs and station such guards as may appear necessary to prevent accidents and avoid damage or injury to passing traffic.

No material or equipment shall be stored where it will interfere with the free and safe passage of public traffic.

At the end of each day's work and at other times when construction operations are suspended for any reason, the Contractor shall remove all equipment and other obstructions from that portion of the roadway open for use by public traffic.

Full compensation for carrying out the precautionary and safety measures above specified shall be considered as included in the prices paid for the various contract items of work.

7-06 PRESERVATION OF PROPERTY. Due care shall be exercised to avoid injury to existing roadway improvements or facilities, utility facilities, adjacent property and roadside trees and shrubbery that are not to be removed.

Roadside trees and shrubbery that are not to be removed and pole lines, fences, signs, survey markers and monuments, buildings and structures, conduits, pipe lines under or above ground, sewer and water lines, all roadway facilities, and any other improvements or facilities within or adjacent to the roadway shall be protected from injury or damage and, if ordered by the Engineer, the Contractor shall provide and install suitable safeguards approved by the Engineer, to protect such objects from injury or damage. If such objects are injured or damaged by reason of the Contractor's operations, they shall be replaced or restored, at the Contractor's expense, to a condition as good as when the Contractor entered upon the Work, or as good as required by the Contract Documents, if any such objects are a part of the Work being performed under the Contract.

The fact that any such pipe or other underground facility is not shown upon the Plans shall not relieve the Contractor of Contractor's responsibility under this article. It shall be the Contractor's responsibility to ascertain the existence of any underground improvements or facilities which may be subject to damage by reason of Contractor's operations.

Full compensation for furnishing all labor, materials, tools and equipment and doing all the work involved in protecting property as above specified, shall be considered as included in the prices paid for the various contract items of work, and no additional compensation will be made therefor.

7-07 RESPONSIBILITY FOR DAMAGE. The Contractor must properly guard against all injuries and damages to persons and property. The City, its officers and employees thereof connected with the Work including, but not limited to, the Engineer, shall not be answerable or accountable in any manner: for any loss or damage that may happen to the Work or any part thereof; for any loss or damage that may happen to the materials or other things used or employed in performing the Work; for injury to or

death of any person, either workers or the public; or for damage to property from any cause which might have been prevented by the Contractor, or workers or anyone employed by him/her.

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

The Contractor shall indemnify and save harmless the City and all officers and employees thereof including, but not limited to, the Engineer from all claims, suits or actions of every name, kind and description, brought forth, or on account of, injuries to or death of any person including, but not limited to, workmen and the public, or damage to property resulting from the performance of a contract, except as otherwise provided by statute. The duty of the Contractor to indemnify and save harmless includes the duties to defend as set forth in Section 2778 of the Civil Code.

It is the intent of the parties that the Contractor will indemnify and hold harmless the City, its officers and employees from any and all claims, suits or actions as set forth above regardless of the existence or degree of fault or negligence on the part of the City, the Contractor, the subcontractor or employee of any of these, other than the active negligence of the City, its officers and employees.

With respect to third party claims against the Contractor, the Contractor waives any and all rights to any type of express or implied indemnity against the City, its officers or employees.

In case of any suits, claims or actions, and in addition to any other remedies allowed by law, the City may retain as much of the money due the Contractor under the Contract as the City deems necessary until final disposition of the suits, claims or actions.

Further, the Contractor shall be responsible for any liability imposed by law and for injury to or death of any person and for damage to property, and shall indemnify, defend and save harmless any county or other incorporated city, its officers and employees, within the limits of which county or incorporated city highway work is being performed hereunder, all in the same manner and to the same extent as provided above for the protection of the City, except that no retention of money due the Contractor under and by virtue of the Contract will be made by the City pending disposition of suits or claims for damages brought against the county or other city.

7-08 DISPOSAL OF MATERIALS. Material disposal shall be in accordance with Section 13, "Excess Material," of these Standard Provisions.

7-08.01 Nonpoint Source Pollution Control. In compliance with State and Federal regulations on construction storm water management and nonpoint source pollution control, no pollutants will be allowed to enter the storm drainage system. The Contractor shall be responsible for containing and removing any waste from the Contractor's construction operation using the appropriate Best Management Practices (BMP) and shall properly dispose the waste from the site. The Contractor shall be responsible for cleaning catch basins if solid and liquid waste material originating from the Contractor's operation enters the storm drain. Violation of this provision shall cause the City to issue a stop-work notice and take necessary action to require the Contractor to correct and comply with the regulations. All costs related to the stop-work action and corrective work to come into compliance shall be fully borne by the Contractor.

All construction projects occurring within City limits shall be conducted in a manner which prevents the release of hazardous materials or hazardous waste to the soil or groundwater, and minimizes the discharge of hazardous materials, hazardous wastes, polluted water and sediments to the storm drain system in accordance with City Code Section 35.32.101(T). Practices which may be implemented to meet the intent of this requirement are described in the City of Mountain View's document "Stormwater Pollution Prevention Guidelines for Construction Projects" and "It's in the Contract! (but not in the Bay) - Pollution prevention specifications for construction contractors and maintenance crew supervisors working in the City of Mountain View".

7-09 COOPERATION BETWEEN CONTRACTORS. Where two or more contractors are employed on related or adjacent work, each shall conduct Contractor's operations in such a manner as not to cause any unnecessary delay or hindrance to the other. In the event that agreement cannot be reached between contractors performing related work, the required degree of cooperation shall be established by the Engineer, whose decision shall be final.

7-10 CONTRACTOR'S RESPONSIBILITY FOR WORK. Until a formal written Notice of Completion or Notice of Cessation of the Work is adopted by the City Council and recorded with the County Recorder, the Contractor shall have the charge and care thereof and shall bear the risk of injury or damage to any part thereof by the action of the elements or from any other cause including, but not limited to, vandalism, whether or not arising from the execution of the Work. The Contractor shall rebuild, repair, restore and make good all injuries or damages to any portion of the Work occasioned by any of the above causes before its completion and acceptance and shall bear the expense thereof, except for such injuries or damages as are directly and proximately caused by acts of the Federal Government or the public enemy.

In case of suspension of work from any cause whatever, the Contractor shall be responsible for the Work as above specified. Where necessary to protect the Work

from damage, the Contractor shall, at Contractor's own expense, provide suitable drainage of the roadway and erect such temporary structures as are necessary to protect the Work from damage during any period of a suspension of Work.

7-11 PROPERTY RIGHTS IN MATERIALS. Nothing in the Contract shall be construed as vesting in the Contractor any right of property in the materials used after they have been attached or affixed to the work or the soil, or after payment has been made for fifty percent (50%) of the value of materials delivered to the site of the Work, whether or not they have been so attached or affixed. All such materials shall become the property of the City upon being so attached or affixed.

7-12 NO PERSONAL LIABILITY. Neither the Engineer, nor any other officer or authorized employee of the City, nor any officer or employee of any county, city or district shall be personally responsible for any liability arising under or by virtue of the contract.