

**SECTION 5 -- CONTROL OF WORK AND MATERIALS**  
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## **SECTION 5 CONTROL OF WORK AND MATERIALS**

### **5-1 AUTHORITY OF AGENCY**

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

The Agency will administer its authority through a duly designated representative identified at the preconstruction meeting. The Contractor and the Agency representative shall make good faith attempts to resolve disputes that arise during the performance of the Work.

Any order given by the Agency not otherwise required by the Contract to be in writing will be given or confirmed by the Agency 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.

### **5-2 ATTENTION AND COOPERATION OF CONTRACTOR**

The Contractor shall comply with any instruction delivered to the Contractor or the Contractor's authorized representative.

### **5-3 SUGGESTIONS TO CONTRACTOR**

Any plan or method suggested to the Contractor by the Agency, 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 Agency assumes no responsibility.

### **5-4 SEPARATE CONTRACTS**

The Agency reserves the right to award other Contracts in connection with the Work. The Contractor shall afford other contractors reasonable opportunity for the delivery and storage of their materials and the execution of their work and shall properly connect and coordinate their work with the other contractors.

If any part of the Contractor's work depends upon the work of any other contractor for proper execution or results, the Contractor shall inspect and promptly report to the Agency any defects in such work that render it unsuitable for proper execution and results. The Contractor's failure to so inspect and promptly report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of the Contractor's work, unless defects develop in the other contractor's work after the execution of the Contractor's work.

### **5-5 COOPERATION WITH OTHER CONTRACTORS**

The Agency or adjacent property owners may perform work adjacent to or within the Work area 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 Agency which create delays or hindrance to each other shall be referred to the Agency for resolution. If the Contractor's work is delayed because of the acts or omissions of any other force or contractor, the Contractor shall have no claim against the

Agency other than for an extension of time (see Section 7-18, "Extension of Time", of these Specifications).

#### **5-6 CONTRACTOR'S DISMISSAL OF UNSATISFACTORY EMPLOYEES**

If any person employed by the Contractor or any Subcontractor shall fail or refuse to carry out the directions of the Agency or the provisions of the Contract, or is, in the opinion of the Agency, incompetent, unfaithful, intemperate, or disorderly; or uses threatening or abusive language to any person on or associated with the Work; 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 Agency, 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 Agency.

#### **5-7 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 within 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 Agency on component parts of the Work.

The Agency may, at the Agency'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 Agency shall have the right to withdraw such permission at any time that the Agency determines that the alternative equipment is not producing work that is equal in all respects to that specified, or will not complete the Work in the time 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 Agency 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.

#### **5-8 CONTRACTOR'S SUBMITTALS**

##### **5-8.01 Submittals - General**

The Contractor shall furnish all working drawings, plans, specifications, descriptive data, certificates, samples, tests, methods, schedules, and manufacturer's instructions as required in the Contract, and any other information required to demonstrate that the materials and equipment to be furnished and the methods of work comply with the provisions and intent of the Contract. Submittals shall be submitted by the dates specified in the Contract or a per diem fine will be levied until the appropriate submittals are properly submitted.

Submittals for systems shall be bound together and include all information for the system.

Six (6) copies of all submittals shall be furnished, two (2) of which will be returned after review. Depending on the complexity of the submittal, the number of submittals, and the express needs of the Contractor, the submittal will be returned to the Contractor within thirty (30) days, exclusive of any time awaiting clarification or further information. Submittals shall be transmitted using submittal transmittal forms provided by the Agency. Where any item of the work is required to be installed in accordance with the manufacturer's recommendations, the Contractor shall furnish six (6) complete sets of the manufacturer's installation recommendations to the Agency prior to starting the installation. These submittals will be retained by the Agency.

If the information furnished in a submittal shows any deviation from the Contract requirements, the Contractor shall, by a statement in writing accompanying the information, advise the Agency of the deviation and state the reasons. It shall be the Contractor's responsibility to ensure there is no conflict with other submittals and to notify the Agency in any case where the Contractor's submittal may concern work by another contractor or the Agency. The Contractor is solely responsible for coordination of submittals among all related crafts performing the Work. The Contractor shall verify that its Subcontractors' submittals are complete in every way and meet the requirements of the Contract.

The approval of the Contractor's submittals shall not relieve the Contractor of responsibility for any error or of any obligation for accuracy of dimensions and details, for agreement with and conformity to the Contract, or responsibility to fulfill the Contract as prescribed. Nor shall such approval be considered as approval of any deviation or conflict unless the Agency has been expressly advised of the same as set forth immediately above, and the Agency has expressly approved such deviation or conflict.

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 written approval by the Agency. Fabrication or other work performed in advance of approval shall be done entirely at the Contractor's risk.

Minimum requirements for submittals are contained in these Specifications. Additional and/or project-specific requirements may be contained in the Contract. The Contractor is responsible for identifying and providing all required submittals.

#### **5-8.02 Resubmittals**

Resubmittals shall address all comments from the Agency. Partial resubmittals may be returned "REJECTED". The Contractor is responsible for the Agency's review costs for each resubmittal in excess of the first resubmittal. These costs will be back charged to the Contractor and will be deducted from progress payments.

#### **5-8.03 Year 2000 Warranty and Indemnity**

Contractor shall warrant that any hardware, software, and/or embedded chip devices or firmware used by Contractor in the performance of services under the Contract, other than those owned or provided by Agency, shall accurately process without error date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000, and leap year calculations. Contractor's indemnification obligations to Agency under the Contract shall apply to claims, liability, loss, injury, or damage resulting from the failure of any such hardware, software, and/or embedded chip devices or firmware to perform in compliance with this standard. Nothing in the Warranty shall be construed to limit any rights or remedies otherwise available to the Agency under the Contract. The Warranty shall survive beyond the termination or expiration of the Contract.

#### **5-8.04 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, a Proprietary Information Agreement (see sample Agreement in Appendix A) shall be executed between the Agency and the Contractor, stipulating that all such information will be supplied by the Contractor and kept confidential by the Agency. All proprietary data shall be identified as part of the Contractor's Bid and the Agency'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 Agency for specific use on the facility being constructed under the Contract shall not be considered proprietary.

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 Agency. Updated proprietary information shall fully document all modifications to be implemented. All proprietary data shall be marked "PROPRIETARY" by the Contractor.

#### **5-8.05 Electrical, Instrumentation, Control, and Communication Systems**

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 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, setpoints, and timing values shall be defined. Drawings shall be in the latest version of AutoCAD or other electronic reproducible medium specified by the Agency.

Complete annotated software/firmware source code listings and program documentation shall be provided for all electronic/electrical systems, subsystems, assemblies, parts, components, and equipment that incorporate programmable devices. All instructions and hardware necessary to load, store, modify, and activate software/firmware source codes and programs shall be provided.

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 be that which describes the final as-built work. No part of the work covered by the proprietary agreement shall be modified after proprietary submittal acceptance until after updated proprietary information has been submitted by the Contractor and accepted by the Agency. Updated proprietary information shall fully document all modifications to be implemented. All proprietary data shall be marked "PROPRIETARY" by the Contractor.

#### **5-8.06 Maintenance and Operations (M&O) Submittals**

For use in subsequent maintenance and operations the Contractor shall furnish, unless otherwise provided for in the Special Provisions, one (1) original and five (5) copies, all bound and indexed, of maintenance and operation information, including all the highest level of factory maintenance manuals that are available to factory representatives with a three-year subscription to newsletters and updates supplied by the manufacturer covering all equipment and systems included in the Contract. The Agency may withhold up to thirty percent (30%) of the Total Contract Price until M&O submittals have been submitted and approved. The submittal shall include at a minimum:

- Drawings
- Illustrations
- Parts lists
- Wiring diagrams of systems
- Internal wiring diagrams and circuit board schematics and layout drawings
- Manufacturer's recommended spare parts lists
- Name, address and phone number of nearest parts and service agency
- Systems balance data
- Maintenance and service instructions
- Operation instructions

- Software including annotated source lists and programs

The submittal of maintenance and operation information is required for all mechanical, electrical, instrumentation, control, communications, sound, or special equipment and systems. The Contractor shall submit the required data for review at least thirty (30) Calendar Days prior to any required training or the final inspection date. Corrections, additions, and/or resubmittal of data shall be made as directed by the Agency.

The Agency, and such representatives as the Agency may designate, shall receive complete maintenance and operating instructions for all items included above prior to final inspection of the Work.

## **5-9 SURVEYS**

### **5-9.01 Agency-Furnished Surveys**

The Contractor shall notify the Agency, at least two (2) Working Days in advance, of the times and places the Contractor will need lines, elevations, and reference points. Unless authorized by the Agency, any work done without line and grade will be done at the Contractor's risk.

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

#### **5-9.01.A Streets and Highways**

- Slope Stakes -- One 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 line of blue tops at centerline or at a location directed by the Agency for each two (2) lanes of the 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.
- Finished Base -- One (1) line of blue tops at centerline or at a location directed by the Agency for each two (2) lanes of roadway at fifty-foot (50') intervals, and three (3) lines for each (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.

#### **5-9.01.B Sewer, Water, and Drainage Facilities**

- For all pipelines to be laid on grade: the Agency 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 Agency 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.

### **5-9.02 Survey Monuments**

The Agency shall show, to the best of its knowledge, the location and character of survey monuments on the construction plans 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 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 Agency prior to damaging them. Any damaged or destroyed Agency survey monuments shall be reset by the Agency 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 & Professions Code 8700 et seq.).

When the Special Provisions require that the Contractor provide all surveys, the Contractor shall be responsible for referencing, 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.

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.

### **5-9.03 Contractor Surveys**

Except as set forth in this Section or in the Special Provisions, the Contractor shall be responsible for performing all necessary surveys to lay out and control the Work to the locations, elevations, lines, and dimensions shown or specified in the Contract. Any deviations must receive prior written approval of the Agency. 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 Registered Civil Engineer authorized to practice land surveying or a California Licensed Land Surveyor. The Contractor shall be responsible for protecting and perpetuating survey monuments affected by construction activities in accordance with Business and Professions Code Section 8771(b). 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.

### **5-10 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.

### **5-11 DUTIES AND POWERS OF INSPECTORS**

Inspectors are the authorized representatives of the Agency. Their duty is to inspect materials and workmanship of those portions of the Work to which they are assigned, either individually or collectively, under instructions of the Agency, and to report all deviations from the Contract.

### **5-12 INSPECTION**

The inspection of the Work does not relieve the Contractor of the obligation to fulfill all Contract requirements. Any work, materials, or equipment not meeting the requirements and intent of the Contract will be rejected, and unsuitable work or materials shall be made good, notwithstanding the fact that such work or materials may have previously been inspected or approved and payment may have been made.



Reexamination of any part of the Work may be ordered by the Agency, and such part of the Work shall be uncovered by the Contractor. The Contractor shall pay the entire cost of such uncovering, reexamination, and replacement if the reexamined work does not conform to the Contract.

All work and materials furnished pursuant to the Contract shall be subject to inspection and approval by the Agency. The Contractor shall provide the Agency and Inspectors with access to the Work during construction and shall furnish every reasonable facility and assistance for ascertaining that the materials and the workmanship are in accordance with the requirements and intent of the Contract.

Unless authorized in writing by the Agency, any work done in the absence of an Inspector, whether completed or in progress, shall be subject to inspection. The Contractor shall furnish all tools, labor, materials, access facilities, and other facilities necessary to allow such inspection, even to the extent of uncovering or taking down completed portions of the Work. The Contractor shall pay all costs incurred, whether or not any defective work is discovered. The Contractor shall also be solely responsible for any costs associated with the removal of any defective work discovered during the inspection and the complete cost of reconstruction.

The Contractor shall notify the Agency of the time and place of any factory tests and submit test procedures for approval thirty (30) Calendar Days in advance for any tests that are required by the Contract. The Contractor shall report the time and place of preparation, manufacture or construction of any material for the Work, or any part of the Work, that the Agency wishes to inspect. The Contractor shall give five (5) Working Days notice in advance of the beginning of work on any such material or of the beginning of any such test to allow the Agency to make arrangements for inspecting and testing or witnessing.

### **5-13 QUALITY OF MATERIALS AND WORKMANSHIP**

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 or shall do work 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.

Materials shall be furnished in sufficient quantities and at such times to ensure uninterrupted progress of the Work. All required spare parts shall be delivered in new condition, not in a used or unknown condition, and with any certificates required. Materials, supplies, and equipment shall be stored properly and protected as required. The Contractor shall be entirely responsible for damage or loss by weather or other causes.

### **5-14 SUBSTITUTIONS**

Certain materials, articles, or equipment may be designated in the Contract by brand or trade name or manufacturer together with catalog designation or other identifying information. Substitute material, article, or equipment which is of equal quality and of required characteristics for the intended purpose may be proposed for use, provided the Contractor complies with the requirements of the following paragraphs.

#### **5-14.01 Written Request**

The Contractor shall submit any request for substitution in writing no later than five (5) Working Days after Bid opening.

### **5-14.02 Documentation**

If requested by the Agency, a proposal for substitution must be accompanied by complete information and descriptive data, including cost of operation, cost of maintenance, and physical requirements necessary to determine the equality of offered materials, articles, or equipment. The Contractor shall also submit such shop drawings, descriptive data, and samples as requested. The burden of proof of comparative quality, suitability, and performance of the offered proposal shall be upon the Contractor. The determination of equal quality suitability, and performance shall be at the sole discretion of the Agency. The Agency will examine such submittals with reasonable promptness. If the Agency rejects the request for such substitution, then one of the particular products designated by brand name in the Contract shall be furnished. Acceptance of substitution by the Agency shall not relieve the Contractor from responsibility for deviations from the Plans and Specifications or from responsibility for errors in submittals. Failure by the Contractor to identify deviations in the request material from the Plans and Specifications shall void the submittal and any action taken thereon by the Agency.

If mechanical, electrical, structural or other changes are required for proper installation and fit of substitute materials, articles or equipment, or because of deviations from the Contract, such changes shall not be made without the written consent of the Agency and shall be made by the Contractor without additional cost to the Agency. The Contractor shall pay the costs of design, drafting, architectural or engineering services and building alterations of the construction required to accommodate any Contractor substitution or construction error to maintain the original function and design.

### **5-15 PREPARATION FOR TESTING**

The Contractor shall maintain proper facilities and provide safe access for inspection by the Agency to all parts of the Work and to the shops wherein parts of the Work are in preparation. Where the Contract requires work to be tested or approved, such work shall not be tested or covered up without at least a five (5) Working Day notice to the Agency of its readiness for inspection, unless the written approval of the Agency for such testing or covering is first obtained.

### **5-16 MATERIALS SAMPLING AND TESTING**

Materials to be used in the Work will be subject to sampling and tests by the Agency. The Contractor shall furnish the Agency with a list of the Contractor's sources of materials and the locations at which such materials will be available for inspection. The list shall be submitted on an Agency form and shall be furnished to the Agency in time to permit the inspection and testing of materials in advance of their use.

Testing shall be done to such standards as set forth in the Plans, Specifications, or Special Provisions. References made in these documents to standard methods of testing materials shall make such standards a part of the Specifications.

Whenever a reference is made in the Specifications to a specification or test designation of any recognized national organization or State of California agency, and the number or other identification representing the year of adoption or the latest revision is omitted, it shall mean the specification or test designation in effect on the date of the original Notice to Contractors for the Work.

When requested by the Agency, samples or test specimens of the proposed materials shall be prepared at the expense of the Contractor and furnished by the Contractor in such quantities and sizes required for proper examination and tests, and with complete information describing type, kind, or size of material, and its source. All samples shall be submitted in time to permit the making of proper tests, analyses, or examinations before incorporating the materials into

the Work. No material shall be used in the Work unless or until it has been approved by the Agency. All material tests shall be made by the Agency in accordance with recognized standard practice. The Contractor shall pay the cost of the second retest and any subsequent retest of any area or material. The Agency will secure and test samples whenever necessary.

## **5-17 APPROVAL OF MATERIALS**

### **5-17.01 Sources Of Supply**

The Agency's approval at the source of supply may be required prior to procurement. Such approval shall not prevent subsequent disapproval or rejection of materials by the Agency if the quality is less than required by the Contract.

### **5-17.02 Plant Inspection**

The Agency assumes no obligation to inspect materials at the source of supply. The Contractor is responsible for incorporating satisfactory materials into the Work, notwithstanding any prior inspections or tests.

The Agency will inspect materials at the source if the Contractor submits a written request and if the Agency deems the inspection necessary. The Contractor and the supplier will cooperate with and assist the Agency while performing the inspection. The Agency shall have access to all production areas of the plant.

## **5-18 PROVISIONS FOR EMERGENCIES**

The Agency may provide necessary labor, material and equipment to correct any emergency resulting from the Contractor's operation including noncompliance with the Contract, public convenience, safety, traffic control, and protection of work, persons and property. The nature of the emergency may prevent the Agency from notifying the Contractor prior to taking action. The costs of such labor, material, and equipment will be deducted from progress payments.

The performance of such emergency work under the direction of the Agency shall not relieve the Contractor from any damages resulting from the emergency.

## **5-19 RIGHT TO RETAIN IMPERFECT WORK**

If any portion of the work done or materials furnished under the Contract shall prove defective or not in accordance with the Contract, and if the defect in the work or materials is not of sufficient magnitude or importance to make the work dangerous or undesirable, or if the removal of such work or materials is impracticable or will create conditions which are dangerous or undesirable, the Agency shall have the right and authority to retain the work or materials instead of requiring it to be removed and reconstructed or replaced. Progress payment deductions will be made as described in Section 8-9, "Deductions for Imperfect Work", of these Specifications.

## **5-20 REMOVAL OF REJECTED MATERIALS OR WORK**

The Contractor shall remove all rejected or condemned materials or structures brought to or incorporated in the Work within two (2) Working Days of the Agency's written order. No such rejected or condemned materials shall again be offered for use in the Work. The Contractor shall, at the Contractor's expense, bring into Contract compliance all rejected material or work in a manner acceptable to the Agency.

The Agency may bring into Contract compliance the rejected material if the Contractor fails to comply with this Section. All costs will be deducted from the Progress Payment.

## **5-21 TEMPORARY SUSPENSION OR DELAY OF WORK**

The Agency has the authority to suspend or delay the Work, wholly or in part, for any period the Agency deems necessary. The Contractor shall immediately comply with the Agency's written order to suspend or delay the Work. The suspended or delayed work shall be resumed only when conditions are favorable or methods are corrected, as ordered or approved in writing by the Agency. Public safety and convenience must be maintained throughout the suspension or delay in accordance with Sections 6-12, "Public Convenience and Safety", and 6-13, "Public Safety and Traffic Control", of these Specifications.

Delays due to suspension of work shall be classified as Avoidable or Unavoidable Delays in accordance with Section 7-12, "Delays", of these Specifications.

Such suspension shall not relieve the Contractor of the Contractor's responsibilities as described in the Contract.

## **5-22 TERMINATION OF CONTRACT**

### **5-22.01 Reasons for Termination**

The Board reserves the right to terminate the Contract for any of the reasons listed below:

#### **5-22.01.A Contractor Bankrupt**

If the Contractor is adjudged bankrupt or makes an assignment for the benefit of the Contractor's creditors, or if a receiver is appointed because of the Contractor's insolvency, the Board may terminate the Contractor's control over the Work and so notify the Contractor and the Contractor's sureties.

#### **5-22.01.B Completion Delay**

The Board may terminate the Contract if the Contractor has not completed the Work on or before the completion date adjusted by Contract Change Order. The Contractor is not entitled to any compensation and is liable to the Agency for liquidated damages for all time beyond such Contract completion date until the Work is completed, if the Agency chooses to complete the Work.

#### **5-22.01.C Abandonment and Unsatisfactory Performance**

The Board may give the Contractor and the Contractor's surety written notice that the Contract will be terminated if the following breaches are not corrected:

- The Contractor abandons the Work.
- The Work or any portion is sublet or assigned without the Agency's consent.
- The rate of progress is not in accordance with the Contract.
- Any portion of the Work is unnecessarily delayed.
- The Contractor willingly violates any terms or conditions of the Contract.
- The Contractor does not supply sufficient materials or properly skilled labor.
- The Contractor fails to promptly pay its Subcontractors.
- The Contractor disregards laws, ordinances, or Agency orders.
- The Contractor fails to respond to defective work notices.

The Contractor shall cease and terminate the Work if satisfactory arrangement for correction is not made within ten (10) Calendar Days from such notification.

#### **5-22.01.D Termination of Contract for Convenience**

The Board may terminate the performance of work in whole or in part for any of the following reasons:

- Issuance of an order of a court or other public authority having jurisdiction.

- An act of government, such as a declaration of national emergency, causing material to be unavailable.
- Conditions encountered during the Work make it impossible or impractical to proceed.
- Such termination is in the best interest of the Agency.

**5-22.02 Notice of Termination**

The Board may give written Notice of Termination of at least five (5) Calendar Days to the Contractor and the Contractor's sureties that the Contractor's control over the Work will be terminated for the reasons stated in the Notice of Termination. The surety shall have the right to take over and perform the Work. The Agency may take over the Work at the Contractor's expense if the surety does not commence performance within thirty (30) Calendar Days from the date of mailing the Notice of Termination. The Contractor shall be liable for any excess cost incurred by the Agency.

Immediately upon receipt of a Notice of Termination, except as otherwise directed in writing by the Agency, the Contractor shall:

1. Stop work under the Contract on the date and to the extent specified in the Notice of Termination.
2. Place no further orders or subcontracts for materials, services, or facilities except as necessary to complete the portion of the Work that is not terminated.
3. Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination.
4. Assign to the Agency, in the manner, at the times, and to the extent directed by the Agency, all of the rights, titles, and interests of the Contractor under the orders and subcontracts so terminated. The Agency shall have the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
5. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts with the approval or ratification of the Agency. The Agency's approval or ratification shall be final.
6. Transfer title to the Agency, and deliver in the manner, at the times, and to the extent directed by the Agency, fabricated or unfabricated parts, work in process, completed work, supplies, other material produced as a part of, or acquired in connection with, the terminated work, and the completed or partially completed drawings, information, and other property that, if the Contract had been completed, would have been submitted to the Agency.
7. Sell, in the manner, at the times, to the extent, and at the price that the Agency directs or authorizes, any property of the types referred to in Item 6 of this Section (Section 5-22.02). The Contractor is not required to extend credit to any purchaser, and may acquire any such property under the conditions prescribed and at a price approved by the Agency. The proceeds of any such transfer or disposition shall be used to reduce any payments made to the Contractor under the Contract or be credited to the cost of the work covered by the Contract or paid as the Agency directs.
8. Complete performance of the Work not terminated by the Notice of Termination.
9. Take necessary action, or as the Agency directs, to protect and preserve the property related to the Contract in which the Agency has an interest.

**5-22.03 Payments to Contractor Upon Termination of Contract**

The Contractor and the Agency may agree upon the amount paid to the Contractor for the total or partial termination of the Work. The amount may include those items specified in

Section 9, “Changes and Claims”, of these Specifications. However, such agreed amount shall not exceed the Total Contract Price, reduced by the amount of payments already made and the Contract price of work not terminated. The Contract shall be amended accordingly, and the Contractor shall be paid the agreed amount.

If the Contractor and the Agency fail to agree on the amount to pay the Contractor because of the termination of work under this Section, the Agency shall determine the amount due the Contractor.

If the work is completed as provided in Section 5-22.02 in this Section of these Specifications, the Contractor is not entitled to receive any portion of the amount to be paid under the Contract until it is fully completed. After completion, if the unpaid balance exceeds the sum of the amount expended by the Agency in finishing the work, plus all damages sustained or to be sustained by the Agency, plus any unpaid claims on account of labor, materials, tools, equipment, or supplies contracted for by the Contractor for the Work, provided that sworn statements of said claims shall have been filed as required by Section 9, “Changes and Claims”, of these Specifications, the excess not otherwise required by these Specifications to be retained shall be paid to the Contractor. If the sum so expended exceeds the unpaid balance of the Total Contract Price, the Contractor and the Contractor's surety are liable to the Agency for the amount of such excess. If the surety completes the Work as provided above, such surety shall be subrogated to money due under the Contract and to money which shall become due in the course of completion by the surety.

The Contractor shall submit to the Agency any termination claim in the form and with the certification that the Agency prescribes. Such claim shall be submitted no later than ninety (90) Calendar Days from the effective date of termination unless the Agency grants one or more extensions, in writing, upon Contractor's written request transmitted within such ninety (90) day period or authorized extension. If the Contractor fails to submit a termination claim within the time allowed, the Agency may determine the amount, if any, due the Contractor because of the termination. The Agency will then pay the Contractor that amount.

**5-22.04 Agency Completion**

In the event of termination of the Contract, the Agency may take possession of and use all or any part of the Contractor's materials, tools, equipment, and appliances on the premises to complete the Work. The Agency assumes the responsibility for returning such equipment in as good condition as when it was taken over, reasonable wear and tear excepted. The items shall be returned when the Work is complete or sooner, at the Agency's discretion. The Agency agrees to pay a reasonable amount for the use of such materials and equipment.

The Agency may direct all or any part of the Work be completed by day labor and/or other contractors.

**5-22.04.A Payment for Agency Completion**

If the Agency completes the Work, no payment will be made to the Contractor until the Work is complete. All costs of completing the Work, including, but not limited to, legal expenses, Agency forces, administration and management, direct and indirect, shall be deducted from any sum due the Contractor. If the cost of completing the Work exceeds sums due the Contractor, the Contractor and the Contractor's surety shall, upon demand, pay the Agency a sum equal to the difference. If the Agency completes the Work and there is a sum due the Contractor after the Agency deducts the costs of completing the Work, the Agency will pay such sum to the Contractor and/or the Contractor's surety, as appropriate.

**5-22.04.B Agency Completion Not a Waiver of Agency Rights**

No act by the Agency before the Work is finally accepted shall operate as a waiver or estop the Agency from acting upon any subsequent event, occurrence or failure by the Contractor to fulfill the terms and conditions of the Contract. The rights of the Agency pursuant to this

Section are in addition to all other rights of the Agency pursuant to the Contract, and at law or in equity.

**5-23 TERMINATION OF UNSATISFACTORY SUBCONTRACTS**

When any portion of the Work subcontracted by the Contractor is not prosecuted in a satisfactory manner, the Contractor shall immediately terminate the subcontract upon written notice from the Agency. The Subcontractor shall not again be employed for any portion of the work on which the Subcontractor's performance was unsatisfactory.