
SECTION 5 - CONTROL OF WORK AND MATERIALS

5-1 AUTHORITY OF CITY

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

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

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

5-2 ATTENTION AND COOPERATION OF CONTRACTOR

The Contractor shall comply with any written 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 City, but not specified or required in writing, if adopted or followed in whole or in part by the Contractor, shall be used at the risk and responsibility of the Contractor. The City assumes no responsibility.

5-4 SEPARATE CONTRACTS

The City 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 City any defects in such work that render it unsuitable for proper execution and results. The Contractor's failure to 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 City 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 City which create delays or hindrance to each other shall be referred to the City for resolution. If the Contractor's work is delayed because of the acts or omissions of any other force or contractor,

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the Contractor shall have no claim against the City 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 City or the provisions of the Contract, or is, in the opinion of the City, 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 City, remove the worker from the Work immediately, and shall not again employ the removed worker on the Work, or any work within the City jurisdiction, except with the written consent of the City.

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 City on component parts of the Work.

The City may, at the City's option, permit the use of new or improved equipment. If such permission is granted, it is understood that it is granted for the purpose of testing the quality and continuous attainment of work produced by the equipment, and the City shall have the right to withdraw such permission at any time that the City determines that the alternative equipment is not producing work that is equal in all respects to that specified, 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 City has condemned for use on the Work any piece or pieces of equipment, the Contractor shall promptly remove such equipment from the site of the work. Failure to do so within a reasonable time may be considered a breach of contract.

5-8 CONTRACTOR'S SUBMITTALS

5-8.01 Submittals - General

The Contractor shall furnish all shop 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 as directed by the Engineer.

The City may accept electronic submittals in an Adobe portable document format (pdf) if requested by the Contractor and approved by the Engineer. Acceptance of electronic submittal documents and review procedures will be addressed during the pre-construction meeting. Certain submittals will not be allowed to be submitted electronically, including material color samples, material samples, and mock-ups of material surface samples. Electronic submittals shall include a transmittal coversheet as part of the submittal similar to hard copy submittals. Time for review of electronic submittals will be the same as hard

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copy submittals as listed below.

Hard copy submittals for systems shall be bound together and include all information for the system. Three (3) copies of all submittals shall be furnished, one (1) 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 shall be returned to the Contractor within ten (10) days unless otherwise specified in the contract documents, exclusive of any time awaiting clarification or further information. Submittals shall be transmitted using submittal transmittal forms provided by the City or on a different form approved by the Engineer. Where any item of the work is required to be installed in accordance with the manufacturer's recommendations, the Contractor shall furnish three (3) complete sets of the manufacturer's installation recommendations to the City prior to starting the installation. These submittals will be retained by the City.

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 City 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 City in any case where the Contractor's submittal may concern work by another contractor or the City. 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 City has been expressly advised of the same as set forth immediately above, and the City has expressly approved such deviation or conflict in writing.

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 City. 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 City. Partial resubmittals may be returned "REJECTED". The Contractor is responsible for the City'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 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, an agreement shall be executed between the City and the Contractor,

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stipulating that all such information will be supplied by the Contractor and kept confidential by the City. All proprietary data shall be identified as part of the Contractor's Bid. Proprietary information is defined as any information or data describing or defining a product, process or system which 1) was developed at the expense of the Contractor, a Subcontractor or supplier; 2) is not generally available in the industry; and 3) is kept secret by its owner for purposes of preventing its use by others. Application software and all other documentation, or any other product, prepared by the Contractor, Subcontractor, or supplier at the expense of the City for specific use on the facility being 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 City. Updated proprietary information shall fully document all modifications to be implemented. All proprietary data shall be marked "PROPRIETARY" by the Contractor.

5-8.04 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 City.

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

5-8.05 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) set of all documents in pdf format electronically, one (1) paper original, and five (5) paper copies, all separately bound and indexed, of maintenance and operation information, including all the latest and highest level of factory maintenance manuals that are available to factory representatives with a three-

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year subscription to newsletters and updates supplied by the manufacturer covering all equipment and systems included in the Contract. The City 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 City
- 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 City.

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

5-9 SURVEYS

Unless otherwise specified 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 and as required by these specifications. Any deviations must receive prior written approval of the City. All surveys affecting the line or elevation of underground drainage, sewers, or utilities, and all other work within public rights-of-way or easements, shall be performed by or under the direction and supervision of a California 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.

5-9.02 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

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reference the stakes.

- Subgrade -- One line of blue tops for each two (2) lanes of the roadway at fifty (50) foot 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 for each two (2) lanes of roadway at fifty (50) foot 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.

5-9.03 Sewer, Water, and Drainage Facilities

- For all pipelines to be laid on grade: the Contractor will establish an offset line at fifty (50) foot 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 Contractor will furnish slope stakes at fifty (50) foot intervals. From this information, the Contractor shall develop and make all additional detail surveys and measurements necessary for the construction of the Work.

5-9.04 Survey Monuments

All survey monuments that are known to exist shall be shown on the improvement plans. It is the Contractor's responsibility to arrange and pay for a diligent and thorough search for these survey monuments. Prior to beginning work, the Contractor shall submit to the Engineer a statement of findings indicating all survey monuments as shown on the plans have been found.

Any monument(s) found that are not shown, or are not found, as shown on the plans shall be brought immediately to the attention of the Engineer and included in the statement of findings. This search 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 in the State of California, prior to the beginning of construction or maintenance work that could disturb or destroy a survey monument.

On thin surface treatments, such as slurry seals, the monuments can be covered in advance of the maintenance treatment with a suitable material that can be removed to expose the monument once construction activities are complete.

Any damaged or destroyed survey monuments shall be reset by the Contractor at the Contractor's sole expense. Monuments shall be reset in accordance with the Professional Land Surveyors' Act (Business & Professions Code 8700 et seq.).

5-10 RESPONSIBILITY FOR ACCURACY

The Contractor shall obtain all necessary measurements for and from the Work, and shall check

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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 City. 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 City, 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. Any inspection of the work by the City is not a waiver of full compliance with these requirements.

Re-examination of any part of the Work may be ordered by the City, and such part of the Work shall be uncovered by the Contractor. The Contractor shall pay the entire cost of such uncovering, re-examination, 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 City. The Contractor shall provide the City 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.

The Contractor shall notify the City 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 City 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 City to make arrangements for inspecting and testing or witnessing.

5-13 QUALITY OF MATERIALS AND WORKMANSHIP

Unless otherwise allowed or required by the Contract, 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

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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 City, 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 City. The City will examine such submittals with reasonable promptness. If the City 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 City 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 requested material from the Plans and Specifications shall void the submittal and any action taken thereon by the City.

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 City and shall be made by the Contractor without additional cost to the City. 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 City to all parts of the Work and to the shops wherein parts of the Work are in preparation. Where the Contract or these Specifications require 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 City of its readiness for inspection, unless the written approval of the City for such testing or covering is first obtained.

5-16 MATERIALS SAMPLING AND TESTING

The Contractor shall submit to the City for approval a Quality Control Plan (QCP) for the material sampling and testing methods and procedures to be used on the Contract. The QCP shall

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include the following:

1. Names and qualifications of personnel involved with the inspection, sampling and testing
2. Testing laboratories' identification and certifications
3. Sampling frequencies and testing procedures for materials used
4. Record management process for sampling and tests performed
5. Summary reports of test results
6. Corrective actions taken to address any deficiencies

Materials to be used in the Work will be subject to the sampling and testing requirements of the approved QCP. All sampling and tests shall be performed by the Contractor at their sole expense. The Contractor shall furnish the City with a list of the Contractor's sources of materials and the locations at which such materials will be available for inspection, and shall be furnished to the City in time to permit the inspection and testing of materials in advance of their use should the City wish to inspect them.

Testing shall be done to acceptable industry standards as set forth in the Contract or as approved by the Engineer. References made in these documents to standard methods of testing materials shall make such standards a part of the Contract.

Whenever a reference is made in the Contract 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 City, 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 City. All material tests shall be performed by the Contractor. If testing criteria as noted in these Specifications are not met to the satisfaction of the Engineer, the City reserves the right to perform its own testing using at the Contractor's expense.

5-17 APPROVAL OF MATERIALS

5-17.01 Sources of Supply

The City'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 City if the quality is less than required by the Contract.

5-17.02 Plant Inspection

The City 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 City will inspect materials at the source if the Contractor submits a written request and if the City deems the inspection necessary. The Contractor and the supplier shall cooperate with and assist the City while performing the inspection. The City shall have

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access to all production areas of the plant.

5-18 PROVISIONS FOR EMERGENCIES

The City 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 City 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 City 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 City 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 City'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 City.

The City 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 City has the authority to suspend or delay the Work, wholly or in part, for any period the City deems necessary. The Contractor shall immediately comply with the City'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 City. 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 City Council 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 City Council 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 City Council 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 City for liquidated damages for all time beyond such Contract completion date until the Work is completed, if the City chooses to complete the Work.

5-22.01.C Abandonment and Unsatisfactory Performance

The City Council 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 City'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 City 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 five (5) calendar days from such notification.

5-22.01.D Termination of Contract for Convenience

The City Council 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.

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- Conditions encountered during the Work make it impossible or impractical to proceed.
- Such termination is in the best interest of the City.

5-22.02 Notice of Termination

The City Council 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 City 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 work not completed and any excess cost incurred by the City.

Immediately upon receipt of a Notice of Termination, except as otherwise directed in writing by the City, 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 City, in the manner, at the times, and to the extent directed by the City, all of the rights, titles, and interests of the Contractor under the orders and subcontracts so terminated. The City 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 City. The City's approval or ratification shall be final.
6. Transfer title to the City, and deliver in the manner, at the times, and to the extent directed by the City, 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 City.
7. Sell, in the manner, at the times, to the extent, and at the price that the City 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 City. 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 City directs.
8. Complete performance of the Work not terminated by the Notice of Termination.

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9. Take necessary action, or as the City directs, to protect and preserve the property related to the Contract in which the City has an interest.

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

The Contractor and the City 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 City fail to agree on the amount to pay the Contractor because of the termination of work under this Section, the City 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 City in finishing the work, plus all damages sustained or to be sustained by the City, 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 City 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 City any termination claims in the form and with the certification that the City prescribes. Such claim shall be submitted no later than ninety (90) calendar days from the effective date of termination unless the City 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 City may determine the amount, if any, due the Contractor because of the termination. The City will then pay the Contractor that amount.

5-22.04 *City Completion*

In the event of termination of the Contract, the City 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 City 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 City's discretion. The City agrees to pay a reasonable amount for the use of such materials and equipment.

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

SECTION 5 - CONTROL OF WORK AND MATERIALS

5-22.04.A Payment for City Completion

If the City 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, City 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 City a sum equal to the difference. If the City completes the Work and there is a sum due the Contractor after the City deducts the costs of completing the Work, the City will pay such sum to the Contractor and/or the Contractor's surety, as appropriate.

5-22.04.B City Completion Not a Waiver of City Rights

No act by the City before the Work is finally accepted shall operate as a waiver or stop the City 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 City pursuant to this Section are in addition to all other rights of the City 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, as deemed solely by the City, the Contractor shall immediately terminate the subcontract upon written notice from the City. The Subcontractor shall not again be employed for any portion of the work on which the Subcontractor's performance was unsatisfactory.