

SECTION 8 PROSECUTION AND PROGRESS

8-1.01 Subcontracting. The Contractor shall give personal attention to the fulfillment of the contract and shall keep the work under the Contractor's control.

No subcontractor will be recognized by City as such and all persons engaged in the work of construction will be considered by City as employees of the Contractor and the Contractor will be held responsible for their work, which shall be subject to the provisions of the contract and specifications.

Subcontracts shall include provisions that the contract between the City and the Contractor is part of the subcontract, and that all terms and provisions of said contract are incorporated in the subcontract. Subcontracts shall also contain certification by the subcontractor that said subcontractor is experienced in and qualified to do, and knowledgeable about, the subcontracted work. Copies of subcontracts shall be available to the Engineer upon written request, and shall be provided to the Engineer at the time any litigation against the City concerning the project is filed.

The Contractor shall submit with the bidding documents a written statement showing the work to be subcontracted, the names of the subcontractors and the description of each portion of the work to be so subcontracted in excess of one-half of 1 percent of the prime contractor's total bid, or ten thousand dollars (\$10,000), whichever is greater.

When a portion of the work which has been subcontracted by the Contractor is not being prosecuted in a manner satisfactory to the City, the subcontractor shall be removed immediately on the request of the Engineer and shall not again be employed on the work.

Nothing contained in the specifications or plans shall be construed as creating any contractual relationship between any subcontractor and the City. The divisions or sections of the specifications are not intended to control the Contractor in dividing the work among subcontractors or to limit the work performed by any trade.

The Contractor shall be fully responsible to the City for the acts and omissions of subcontractors, and of persons employed by the Contractor.

The Contractor shall be responsible for the coordination of trades, subcontractors, and suppliers engaged upon this work.

Any and all subcontractors or material suppliers at any tier shall be bound by the provisions of these specifications.

8-1.02 Assignment. The performance of the contract may not be assigned, except upon the written consent of the City. Consent will not be given to any proposed assignment which would relieve the Contractor or the original Contractor's surety of their responsibilities under the contract nor will the City consent to any assignment of a part of the work under the contract.

The Contractor may assign moneys due or to become due the Contractor under the contract and the assignment will be recognized by the City, if given proper notice thereof, to the extent permitted by law, but any assignment of moneys shall be subject to all proper set-offs in favor of the City and to all deductions provided for in the contract and particularly all money withheld, whether assigned or not, shall be subject to being used by the City for the completion of the work in the event that the Contractor should be in default therein.

8-1.03 Beginning of Work. Upon written notification to the Contractor by the Engineer, the Contractor shall promptly begin the work under the contract and all portions of the project delineated in the plans and specifications. The work shall be begun and so prosecuted that it shall be completed and ready for full use within the number of working days specified in the Special Provisions and Technical Provisions, the first day of which shall be the date specified in the Engineer's "Notice to Proceed".

The Contractor shall notify the Engineer, in writing, of the Contractor's intent to begin work at least 72 hours before work is begun. The notice shall be delivered to the Engineer and shall specify the date the Contractor intends to start. Under no circumstances shall the Contractor enter the site of the work until the first date of work specified in the Notice to Proceed.

Should the Contractor begin work in advance of the first date of work specified in the Notice to Proceed, any such work shall be considered as having been done by the Contractor's own risk and expense and as a volunteer. Should any work be performed prior to the date specified in the Notice to Proceed, the work shall be subject to inspection and acceptance by City as provided for elsewhere in these contract documents.

8-1.04 Progress Schedule. Immediately after execution and delivery of the contract, and before commencing work, the Contractor shall deliver to the City a construction progress schedule in a form satisfactory to the City, showing the proposed dates of commencement and completion of each of the various subdivisions of work required under the contract.

The progress schedules submitted shall be consistent in all respects with the time and order of work requirements of the contract.

The City retains the right to reject any and all construction schedules submitted by the Contractor, in the City's sole discretion, or when the City determines that the Contractor has too many items on the critical path or the logic of the schedule is in error.

Subject to the above provisions, nothing herein shall preclude the Contractor from early completion of the project.

8-1.05 Temporary Suspension of Work. The Engineer shall have the authority to suspend the work wholly or in part, for any time period as the Engineer deems necessary, due to unsuitable weather, or to such other conditions considered unfavorable for the suitable prosecution of the work, or for any time period as the Engineer deems necessary due to the failure on the part of the Contractor to carry out orders given, or to perform any provision of the contract. The Contractor shall immediately comply with the written order of the Engineer to suspend the work wholly or in part. The suspended work shall be resumed when conditions are favorable and methods are corrected, as ordered or approved in writing by the Engineer.

In the event that a suspension of work is ordered as provided above, and should that suspension be ordered by reason of the failure of the Contractor to carry out orders or to perform any provisions of the contract; or by reason of weather conditions being unsuitable for performing any item or items of work, which work, in the sole opinion of the Engineer, could have been performed prior to the occurrence of the unsuitable weather conditions had the Contractor diligently prosecuted the work when weather conditions were suitable; the Contractor, at the Contractor's expense, shall do all the work necessary to provide a safe, smooth, and unobstructed passageway through construction for use by public traffic; and provide for proper and efficient operations of sewer, drainage, and other facilities within the site of the work

during the period of such suspension as provided in Sections 7-1.08, "Public Convenience," and 7-1.09, "Public Safety," and as specified in the Special Provisions and Technical Provisions for the work. In the event that the Contractor fails to perform the work above specified, the City will perform such work and the cost thereof will be deducted from moneys due or to become due to the Contractor.

If the Engineer orders a suspension of all of the work or a portion of the work which is the current controlling operation or operations, due to unsuitable weather or to such other conditions as are considered unfavorable to the suitable prosecution of the work, the days on which the suspension is in effect shall not be considered working days as defined in Section 8-1.06, "Time of Completion." If a portion of work at the time of such suspension is not a current controlling operation or operations, but subsequently does become the current controlling operation or operations, the determination of working days will be made on the basis of the then current controlling operation or operations.

If a suspension of work is ordered by the Engineer, due to the failure on the part of the Contractor to carry out orders given or to perform any provision of the contract, the days on which the suspension order is in effect shall be considered working days if such days are working days within the meaning of the definition set forth in Section 8-1.06, "Time of Completion."

In the event of a suspension of work under any of the conditions set forth in this Section 8-1.15, such suspension of work shall not relieve the Contractor of the Contractor's responsibilities as set forth in Section 7, "Legal Relations and Responsibility" the specifications including but not limited to the Contractor's maintenance of the project site in a safe condition.

8-1.06 Time of Completion. The Contractor shall complete all or any designated portion of the work called for under the contract in all parts and requirements within the time set forth in the Special Provisions and Technical Provisions.

A work day is defined in Section 1-1.49, "Working Day," of these specifications.

Should the Contractor prepare to begin work at the regular starting time of any day on which inclement weather, or the conditions resulting from the weather, or the condition of the work, prevents the work from beginning at the usual starting time and the crew is dismissed as a result thereof and the Contractor does not proceed with at least 75 percent of the normal labor and equipment force engaged in the current controlling operation or operations for at least 60 percent of the total daily time being currently spent on the controlling operation or operations, the Contractor will not be charged for a working day whether or not conditions should change thereafter during that day and the major portion of the day could be considered to be suitable for those construction operations.

The current controlling operation or operations is to be construed to include any feature of the work (e.g., an operation or activity, or a settlement or curing period) considered at the time by the Engineer and the Contractor, which, if delayed or prolonged, will delay the time of completion of the contract.

Determination that a day is a non-working day by reason of inclement weather or conditions resulting immediately therefrom, shall be made by the Engineer. The Contractor will be allowed 15 days from the issuance of the weekly statement of working days in which to file a written protest setting forth in what respects the Contractor differs from the Engineer, otherwise the decision of the Engineer shall be deemed to have been accepted by the Contractor as correct. The Engineer will furnish the Contractor a weekly statement showing the number of working

days charged to the contract for the preceding week, the number of working days of time extensions approved, the number of working days originally specified for the completion of the contract and the number of working days remaining to complete the contract, except when working days are not being charged in accordance with the provisions in Section 8-1.05, "Temporary Suspension of Work."

8-1.06A Saturday, Sunday, Holiday and Night Work. Unless otherwise provided in the Special Provisions or Technical Provisions, work shall not be done between the hours of 6:00 P.M. and 7:00 A.M. nor on Saturdays, Sundays or legal holidays except such work as is necessary for the proper care and protection of work already performed, or except in case of an emergency, and in any case, only with the prior permission of the Engineer.

It is understood, however, that night work may be established as a regular procedure by the Contractor if it first obtains the written permission of the Engineer, and that such permission may be revoked at any time by the Engineer if the Contractor fails to maintain at night, adequate force and equipment for reasonable prosecution and to justify inspection of the work.

In the event that the Contractor must work Saturdays, Sundays, holidays and/or nights, expenses incurred by the City resulting from such work shall be borne by the Contractor unless stated otherwise in the Special Provisions or Technical Provisions.

8-1.07 Liquidated Damages. It is agreed by the parties to the contract that in case all the work called for under the contract in all parts and requirements is not finished or completed within the number of working days as set forth in the Special Provisions or Technical Provisions, damage will be sustained by the City, and that it is and will be impracticable and extremely difficult to ascertain and determine the actual damage which the City will sustain in the event of and by reason of the delay; and it is therefore agreed that the Contractor will pay to the City, the sum set forth in the Special Provisions or Technical Provisions per day for each and every calendar day's delay in finishing the work in excess of the number of working days prescribed; and the Contractor agrees to pay the liquidated damages herein provided for, and further agrees that the City may deduct the amount thereof from any moneys due or that may become due the Contractor under the contract.

It is further agreed that in case the work called for under the contract is not finished and completed in all parts and requirements within the number of working days specified, the Engineer shall have the right to increase the number of working days or not, as the Engineer may deem best to serve the interest of the City, and if the Engineer decides to increase the said number of working days, the Engineer shall further have the right to charge to the Contractor, or the Contractor's heirs, assigns or sureties and to deduct from the final payment for the work all or any part, as the Engineer may deem proper, of the actual cost of engineering, inspection, superintendence, and other overhead expenses which are directly chargeable to the contract, and which accrue during the period of the extension, except that cost of final surveys and preparation of final estimate shall not be included in the charges.

The Contractor will be granted an extension of time and will not be assessed with liquidated damages or the costs of engineering and inspection for any portion of the delay in completion of the work beyond the time named in the Special Provisions or Technical Provisions for the completion of the work caused by acts of God, or of the public enemy, fire, floods, firestorms, mud slides, debris flows, earthquakes, epidemics, quarantine restrictions, strikes, labor disputes, shortage of materials and freight embargoes, provided, that the Contractor shall

notify the Engineer in writing of the causes of delay within 15 days from the beginning of any that delay. The Engineer shall ascertain the facts and the extent of the delay, and the Engineer's findings thereon shall be final and conclusive.

No extension of time will be granted for a delay caused by a shortage of materials unless the Contractor furnishes to the Engineer documentary proof that the Contractor has made every effort to obtain the materials from all known sources within reasonable reach of the work in a diligent and timely manner, and further proof in the form of supplementary progress schedules, as required in Section 8-1.04, "Progress Schedule," that the inability to obtain the materials when originally planned, did in fact cause a delay in final completion of the entire work which could not be compensated for by revising the sequence of the Contractor's operations. The term "shortage of materials," as used in this Section 8-1.07, shall apply only to materials, articles, parts or equipment which are standard items and are to be incorporated in the work. The term "shortage of materials," shall not apply to materials, parts, articles or equipment which are processed, made, constructed, fabricated or manufactured to meet the specific requirements of the contract. Only the physical shortage of material will be considered under these provisions as a cause for extension of time. Delays in obtaining materials due to priority in filling orders will not constitute a shortage of materials.

If the Contractor is delayed in completion of the work by reason of changes made under Section 4-1.03, "Changes," or by failure of the City to acquire or clear right of way, or by any act of the Engineer or of the City, not contemplated by the contract, an extension of time commensurate with the delay in completion of the work thus caused will be granted and the Contractor shall be relieved from any claim for liquidated damages, or engineering and inspection charges or other penalties for the period covered by that extension of time; provided that the Contractor shall notify the Engineer in writing of the causes of delay within 15 days from the beginning of the delay. The Engineer shall ascertain the facts and the extent of the delay, and the Engineer's findings thereon shall be final and conclusive.

It is the intention of the above provisions that the Contractor shall not be relieved of liability for liquidated damages or engineering and inspection charges for any period of delay in completion of the work in excess of that expressly provided for in this Section 8-1.07.

8-1.07A No Pay for Delay. Except as provided in Section 7-1.28 "Archeological and Paleontological Rights", Section 8-1.10 "Utility and Non-Highway Facilities", and except as provided in Section 7102 of the Public Contract Code, the Contractor shall receive no additional compensation for any delay to the Contractor's work. Such delays are expressly contemplated by the parties hereto. The Contractor's sole remedy for such delay will be an appropriate extension of time to the contract completion of the project.

8-1.09 Right of Way Delays. If the performance of the Contractor's work is delayed as the result of the failure of the City to acquire or clear right of way, an extension of time determined pursuant to the provisions in Section 8-1.07, "Liquidated Damages," will be granted.

8-1.095 Easement Construction. Rights-of way and easements will be provided in accordance with Section 8-1.09, "Right of Way Delays," of these specifications. The Contractor shall make every effort to restrict operations to areas within the easements provided. The Contractor shall caution all employees not to trespass or operate equipment outside the easements provided without first obtaining written permission from adjacent property owners. A

copy of the written permission is to be submitted to the Engineer prior to any such encroachment.

8-1.10 Utility and Non-Highway Facilities. Attention is directed to Section 7-1.11, "Preservation of Property," Section 7-1.12, "Responsibility for Damage," and Section 7-1.01L, "Compliance with the Underground Notification System." To the extent they apply to the Contractor's work, the Contractor shall comply with the requirements of Government Code Sections 4216 through 4216.9, inclusive.

The Contractor shall protect from damage utility and other non-highway facilities that are to remain in place, be installed, relocated or otherwise rearranged.

The right is reserved to the City and the owners of facilities, or their authorized agents, to enter upon the work site for the purpose of making such changes as are necessary for the rearrangement (as used herein, rearrangement includes installation, relocation, alteration, or removal) of their facilities or for making necessary connections or repairs to their properties. The Contractor shall cooperate with forces engaged in such work and shall conduct operations in such a manner as to avoid any unnecessary delay or hindrance to the work being performed by such other forces. Wherever necessary, the work of the Contractor shall be coordinated with the rearrangement of utility or other non-highway facilities, and the Contractor shall make arrangements with the owner of such facilities for the coordination of the work.

Attention is directed to the possible existence of underground main or trunk line facilities not indicated on the plans or in the Special Provisions or Technical Provisions and to the possibility that underground main or trunk lines may be in a location different from that which is indicated on the plans or in the Special Provisions or Technical Provisions. The Contractor shall ascertain the exact location of underground main or trunk lines whose presence is indicated on the plans or in the Special Provisions or Technical Provisions, the location of their service laterals or other appurtenances, and of existing service lateral or appurtenances of any other underground facilities which can be inferred from the presence of visible facilities such as buildings, meters and junction boxes prior to doing work that may damage any of such facilities or interfere with their service.

If the Contractor discovers underground main or trunk lines not indicated on the plans or in the Special Provisions or Technical Provisions, the Contractor shall immediately give the Engineer and the Utility Company written notification of the existence of such facilities. Such main or trunk lines shall be located and protected from damage as directed by the Engineer.

Where it is determined by the Engineer that the rearrangement of an underground facility is essential in order to accommodate the improvement and the plans and specifications do not provide that such facility is to be rearranged, the Engineer will provide for the rearrangement of such facility by the City or the owner of the facility.

Should the Contractor desire to have any rearrangement made in any utility facility, or other improvement, for the Contractor's convenience in order to facilitate construction operations, which rearrangement is in addition to, or different from, the rearrangements indicated on the plans or in the Special Provisions or Technical Provisions, the Contractor shall make whatever arrangements are necessary with the owners of such utility or other non-highway facility for such rearrangement and bear all expenses in connection therewith.

The Contractor shall immediately notify the Engineer of any delays to operations as a direct result of underground main or trunk line facilities which were not indicated on the plans or in the Special Provisions or Technical Provisions or were located in a position substantially

different from that indicated on the plans or in the Special Provisions or Technical Provisions, or as a direct result of utility or other non-highway facilities not being rearranged as herein provided (other than delays in connection with rearrangements made to facilitate construction operations or delays due to a strike or labor dispute). Any such delays will be considered right of way delays within the meaning of Section 8-1.09, "Right of Way Delays." The Contractor shall be entitled to no compensation for any such delay.

Notwithstanding any other provisions of the contract, plans, specifications, Special Provisions or Technical Provisions, the City shall, as between the City and Contractor, assume the responsibility and the cost therefor for the location, repair of damage not due to the Contractor's failure to exercise reasonable care, removal, or relocation of existing main and trunk line utility facilities located on the site of the work, if such facilities are not identified in the plans or specifications made a part of the Notice to Contractors inviting bids for the work, and for equipment on the project necessarily idled during such location, repair, removal or relocation. If the Contractor, while performing the contract, discovers utility facilities not identified by the City in the plans or specifications, the Contractor shall immediately notify the Engineer and the utility in writing. The public utility, where it is the owner of an affected utility, shall have the sole discretion to perform repairs, removal or relocation work or permit the Contractor to do such repairs, removal or relocation work on the affected utility at a reasonable price.

The Contractor shall not be assessed liquidated damages for delay in completion of the project when such delay was caused by the failure of the City to provide for removal or relocation of such utility facilities.

Nothing herein shall be deemed to require the City to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the site of the construction project can be inferred from the presence of other visible facilities, such as buildings, meter and junction boxes, on or adjacent to the site of the construction.

Nothing herein shall preclude the City from pursuing any appropriate remedy against the utility for delays which are the responsibility of the utility.

Nothing herein shall be construed to relieve the utility from any obligation as required either by law or by contract to pay the costs of removal or relocation of existing utility facilities.

8-1.105 Treatment of Trees. When directed by the Engineer, the contractor shall employ a certified arborist to advise in the care of trees to avoid damage. Contractors must be made aware of the potential long term results from work done improperly today. Prior to the start of work, contractors shall record all trees with a diameter greater than 2" on the site map. Contractors should tag each tree with a numbered tag; identify the species; measure the trunk diameter; evaluate the tree health; note any significant structural characteristics; and assess the trees suitability for preservation. Contractors shall install protective fencing in a circle that is a minimum of 2/3 of the tree's canopy to prevent soil compaction and damage to the tree's structure. Operating or parking equipment or storing materials under a tree's canopy shall not be allowed. When heavy equipment is to operate within 6' of the trees canopy, the contractor shall place a layer of mulch or wood chips to a depth of at least 6" to prevent soil compaction or root damage. Where practical, trenching or digging under trees shall be done by hand to prevent damage to roots. Grade cuts or fills around the base of trees should not occur within 6' of the trunk and be a maximum of 6" beyond that point. All tree roots encountered in the process of excavating or trenching shall be trimmed with a clean cut at the edge of the excavation or trench. Also, construction water run off shall be controlled in such a way as to avoid disturbing the soil

of the trees to be preserved. Tree limbs overhanging the line of work shall be trimmed by a certified arborist or tree worker in accordance with ANSI A300 tree trimming standards. At the end of construction, fertilizer/water soil injections treatments should be completed around the drip line of the trees to allow air, water, and fertilizer back into the soil to reduce the effects of construction.

8-1.11 Termination of Contract. The contract may be terminated by the Engineer when termination is authorized by Section 7-1.125, "Legal Actions Against the City," Section 7-1.165, "Damage by Storm, Flood, Earthquake, Firestorm, Mud Slide or Debris Flows," or by other provisions of the contract which authorize termination. The City also reserves the right to terminate the contract at any time upon a determination by the Engineer, in the Engineer's sole discretion, that termination of the contract is in the best interest of the City.

If the City elects to terminate the contract, the termination of the contract and the total compensation payable to the Contractor shall be governed by the following:

A. The City will issue the Contractor a written notice signed by the Engineer, specifying that the contract is terminated. Upon receipt of the written notice, the Contractor will be relieved of further responsibility for damage to the work (excluding materials) as specified in Section 7-1.16, "Contractor's Responsibility for the Work and Materials," and, except as otherwise directed in writing by the Engineer, the Contractor shall:

1. Immediately, stop all work under the contract except that specifically directed to be completed prior to acceptance.
2. Immediately, perform work the Engineer deems necessary to secure the project for termination.
3. Immediately, remove equipment and plant from the site of the work.
4. Immediately, take such action that is necessary to protect materials from damage.
5. Within 24 hours, notify all subcontractors and suppliers that the contract is being terminated and that their contracts or orders are not to be further performed unless otherwise authorized in writing by the Engineer.
6. Provide the Engineer with an inventory list of all materials previously produced, purchased or ordered from suppliers for use in the work and not yet used in the work, including its storage location, and such other information as the Engineer may request.
7. Dispose of materials not yet used in the work as directed by the Engineer. It shall be the Contractor's responsibility to provide the City with good title to all materials purchased by the City hereunder and with bills of sale or other documents of title for those materials.
8. Subject to the prior written approval of the Engineer, settle all outstanding liabilities and all claims arising out of subcontracts or orders for materials terminated hereunder. To the extent directed by the Engineer, the Contractor shall assign to the City all the right, title and interest of the Contractor under subcontracts or orders for materials terminated hereunder.
9. Furnish the Engineer with the documentation required to be furnished by the Contractor under the provisions of the contract including, on projects as to which Federal and State funds are involved, all documentation required under the Federal and State requirements included in the contract.
10. Take such other actions as directed by the Engineer.

B. Acceptance of the contract as hereinafter specified shall not relieve the Contractor of responsibility for damage to materials. The Contractor shall continue to be responsible for damage to materials after issuance of the Notice of Termination, except as follows:

1. The Contractor's responsibility for damage to materials for which payment has been made and for materials furnished by the City for use in the work and unused shall terminate when the Engineer certifies that those materials have been stored in the manner and at the locations the Engineer has directed.

2. The Contractor's responsibility for damage to materials purchased by the City subsequent to the issuance of the notice that the contract is to be terminated shall terminate when title and delivery of those materials has been taken by the City.

When the Engineer determines that the Contractor has completed the work under the contract directed to be completed prior to termination and such other work as may have been ordered to secure the project for termination, the Engineer will recommend that the City formally accept the contract to the extent performed, and immediately upon and after the acceptance by the City, the Contractor will not be required to perform any further work thereon and shall be relieved of the Contractor's contractual responsibilities for injury to persons or property which occurs after the formal acceptance of the project by the City.

C. Termination of the contract shall not relieve the surety of its obligation for any just claims arising out of the work performed.

D. The total compensation to be paid to the Contractor shall be determined by the Engineer on the basis of the following:

1. The reasonable cost to the Contractor, without profit, for all work performed under the contract, including mobilization, demobilization and work done to secure the project for termination. In determining the reasonable cost, deductions will be made for the cost of materials to be retained by the Contractor, amounts realized by the sale of materials, and for other appropriate credits against the cost of the work. Deductions will also be made, when the contract is terminated under the authority of Section 7-1.165, "Damage by Storm, Flood, Earthquake, Firestorm, Mud Slide, or Debris Flows," for the cost of materials damaged by the "occurrence."

When, in the opinion of the Engineer, the cost of a contract item of work is excessively high due to costs incurred to remedy or replace defective or rejected work, the reasonable cost to be allowed will be the estimated reasonable cost of performing that work in compliance with the requirements of the plans and specifications and the excessive actual cost shall be disallowed.

2. A reasonable allowance for profit on the cost of the work performed as determined under Subsection 1, provided the Contractor establishes to the satisfaction of the Engineer that it is reasonably probable that the Contractor would have made a profit had the contract been completed and provided further, that the profit allowed shall in no event exceed 4 percent of the cost.

3. The reasonable cost to the Contractor of handling material returned to the vendor, delivered to the City or otherwise disposed of as directed by the Engineer.

4. A reasonable allowance for the Contractor's administrative costs in determining the amount payable due to termination of the contract.

5. A reasonable credit to the City for defective or incomplete work not corrected.

All records of the Contractor and the Contractor's subcontractors necessary to determine compensation in accordance with the provisions of this Section 8-1.11, shall be open to inspection or audit by representatives of the City at all times after issuance of the notice that the

contract is to be terminated and for a period of 3 years, thereafter, and those records shall be retained for that period.

After acceptance of the work by the City, the Engineer may make payments on the basis of interim estimates pending issuance of the Final Estimate in accordance with Section 9-1.07B, "Final Payment and Claims," when, in the Engineer's opinion, the amount thus paid, together with all amounts previously paid or allowed, will not result in total compensation in excess of that to which the Contractor will be entitled. All payments, including payment upon the Final Estimate shall be subject to deduction for prior payments and amounts, if any, to be kept or retained under the provisions of the contract.

8-1.11A Continuation of Contract. If a dispute should arise between the Contractor and the City regarding work performed or to be performed or payment therefor, the Contractor hereby agrees that it will continue to perform the work called for under this contract and hereby expressly waives its rights, if any, to terminate or suspend work pending resolution of said dispute.

8-1.12 Concurrent Delays. Where there are concurrent delays to a controlling item of work no extension of time or additional compensation shall be granted to the Contractor where at least one of the delays is due, in part or in whole, to the Contractor's own acts.

8-1.13 City's Right to Carry Out the Work. If the Contractor defaults or neglects to carry out the work in accordance with the contract documents, and fails within seven days after receipt of written notice from the City to commence and continue correction of such default or neglect with diligence and promptness, the City may, after 7 days following receipt by the Contractor of an additional written notice and without prejudice to any other remedy the City may have, make good such deficiencies. In such case an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Engineer's additional services made necessary by such default, neglect or failure. Such action by the City and the amount charged to the Contractor are both subject to the prior approval of the Engineer. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the City.

END OF SECTION