

**SECTION 7**  
**LEGAL RELATIONS AND RESPONSIBILITY**

**7-1.01       Laws to be Observed.** The Contractor shall keep fully informed of all existing and future State and Federal laws and county and municipal ordinances and regulations which in any way affect those engaged or employed in the work, or the materials used in the work, or which in any manner affect the conduct of the work, and of all orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. The Contractor shall at all times observe and comply with, and shall cause all the Contractor's agents and employees to observe and comply with all existing and future laws, ordinances, regulations, orders and decrees of bodies or tribunals having any jurisdiction or authority over the work; and shall protect and indemnify the City of Los Altos, its elected and appointed boards, officers, employees and agents thereof connected with the work, including but not limited to the Engineer, against any claim or liability arising from or based on the violation of any work performed under the contract, or based on the violation of any law, ordinance, regulation, order, or decree, whether by the Contractor or the Contractor's employees. If any discrepancy or inconsistency is discovered in the plans, drawings, specifications, or contract for the work in relation to any law, ordinance, regulation, order or decree the Contractor shall forthwith report the same to the Engineer in writing.

**7-1.01A       Labor Code Requirements.** Attention is directed to the following requirements of the Labor Code:

**7-1.01A(1)   Hours of Labor.** Eight hours labor constitutes a legal day's work. The Contractor shall forfeit, as a penalty to the City, \$50 for each worker employed in the execution of the contract by the Contractor or any subcontractor under the Contractor for each calendar day during which that worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of the Labor Code, and in particular, Section 1810 to Section 1815, thereof, inclusive, except that work performed by employees of Contractor in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon compensation for all hours worked in excess of 8 hours per day at not less than one and one-half times the basic rate of pay, as provided in Section 1815 thereof.

**7-1.01A(2)   Prevailing Wage.** The Contractor shall comply with Labor Code Sections 1774 and 1775. Pursuant to said Section 1775 the Contractor shall forfeit to the City a penalty of not more than fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of Industrial Relations for the work or craft in which the worker is employed for any public work done under the contract by the Contractor or by any subcontractor under the Contractor in violation of the provisions of the Labor Code and in particular, Labor Code Sections 1770 to 1780, inclusive. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of the Contractor's mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages, or the previous record of the Contractor in meeting the Contractor's prevailing wage obligations, or a Contractor's willful failure to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if the Contractor had knowledge of the obligations under the Labor Code. In addition

to the penalty and pursuant to said Labor Code Section 1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the Contractor.

Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the City has obtained the general prevailing rate of wages (which rate includes employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provided for in Section 1773.8 of the Labor Code, apprenticeship or other training programs authorized by Section 3093 of the Labor Code, and similar purposes) applicable to the work to be done, for straight time, overtime, Saturday, Sunday and holiday work. The holiday wage rate listed shall be applicable to all holidays recognized in the collective bargaining agreement of the particular craft, classification or type of workers concerned. These wage rates are on file in the office of the City Clerk at the City of Los Altos.

The wage rates determined by the Director of Industrial Relations refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, said published rate of wage shall be in effect for the life of the contract. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the Department of Industrial relations, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to the contract in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of the contract, each successive predetermined wage rate shall apply to the contract on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of the contract, such wage rate shall apply to the balance of the contract.

Pursuant to Section 1773.2 of the Labor Code, general prevailing wage rates shall be posted by the Contractor at a prominent place at the site of the work.

The City will not recognize any claim for additional compensation because of the payment by the Contractor of any wage rate in excess of the prevailing wage rate set forth in the contract. The possibility of wage increases is one of the elements to be considered by the Contractor in determining the bid, and will not under any circumstances be considered as the basis of a claim against the City on the contract.

**7-1.01A(2)(a) Travel and Subsistence Payments.** Attention is directed to the requirements of Section 1773.8 of the Labor Code. The Contractor shall make travel and subsistence payments to each worker, needed to execute the work, in accordance with the requirements in Labor Code Section 1773.8.

**7-1.01A(3) Payroll Records.** The Contractor is responsible for complying with Labor Code Section 1776, and regulations implementing that code. The Contractor shall be responsible for compliance by the Contractor's subcontractors.

**7-1.01A(4) Labor Nondiscrimination.** Attention is directed to Section 1735 of the Labor Code, which reads as follows:

"No discrimination shall be made in the employment of persons upon public works because of the race, religious creed, color, national origin, ancestry, physical disability, medical disability, medical condition, marital status, or sex of such persons, except as provided in Section 12940 of the Government Code, and every contractor for public works violating this section is subject to all the penalties imposed for a violation of this chapter."

**7-1.01A(5) Apprentices.** Attention is directed to Sections 1777.5, 1777.6 and 1777.7 of the California Labor Code and Title 8, California Administrative Code Section 200 et seq. To insure compliance and complete understanding of the law regarding apprentices, and specifically the required ratio there under, each contractor or subcontractor should, where some question exists, contact the Division of Apprenticeship Standards, State of California, 455 Golden Gate Avenue, San Francisco, CA 94102, or one of its branch offices, prior to commencement of work on the public works contract. Responsibility for compliance with this Section 7-1.01A(5) lies with the Contractor.

**7-1.01A(6) Workers' Compensation.** Pursuant to the requirements of Section 1860 of the Labor Code, the Contractor will be required to secure the payment of workers' compensation to the Contractor's employees in accordance with the provisions of Section 3700 of the Labor Code. Before beginning the work, the Contractor shall furnish to the City, in triplicate, satisfactory proof that the Contractor has taken out, for the period covered by the work under the contract, full compensation insurance for all persons whom the Contractor may employ directly or through subcontractors, in carrying out the work contemplated under the contract, in accordance with the Workers' Compensation and Insurance Act", Division IV of the Labor Code of the State of California and any acts amendatory thereof. Such insurance shall be maintained in full force and effect during the period covered by the contract.

If the Contractor fails to maintain such insurance, the City may take out compensation insurance covering any claims which the City might be liable to pay under the provisions of the Act by reason of any employee of the Contractor being injured or killed, and deduct and retain the amount of the premiums for such insurance from any sums due the Contractor.

Prior to performing the work of the contract, the Contractor shall also sign and file with the City the certification required by Section 1860 of the Labor Code.

If any injury occurs to any employee of the Contractor for which the employee, or the employee's dependents, in the event of the employee's death, is entitled to compensation from the City under the provisions of said Act, or for which compensation is claimed from the City, the City may retain from the sums due the Contractor under the contract an amount sufficient to cover such compensation as fixed by said Act, until such compensation is paid, or until it is determined that no compensation is due, and if the City is compelled to pay such compensation, it will deduct and retain from such sums the amount so paid.

**7-1.01A(7) Suits to Recover Penalties and Forfeitures.** Attention is directed to Sections 1730 to 1733, inclusive, of the Labor Code concerning suits to recover amounts withheld from payment for failure to comply with requirements of the Labor Code or contract provisions based on those laws.

Those sections provide that a suit on the contract for alleged breach thereof in not making the payment is the exclusive remedy of the Contractor or the Contractor's assignees with reference to amounts withheld for such penalties or forfeitures; and that the suit must be

commenced and actual notice thereof received by the awarding authority prior to 90 days after completion of the contract and the formal acceptance of the job.

Submission of a claim under Section 9-1.07B, "Final Payment and Claims," for the amounts withheld from payment for those penalties and forfeitures is not a prerequisite for those suits and those claims will not be considered.

**7-1.01B (Blank)**

**7-1.01C Contractors' Licensing Laws.** Attention is directed to the provisions of Chapter 9 of Division 3 of the Business and Professions Code concerning the licensing of contractors.

All bidders and contractors shall be licensed in accordance with the laws of this State at the time of the bid in the classification set forth in these contract documents and any bidder or contractor not so licensed is subject to the penalties imposed by those laws and rejection of their bid.

Attention is also directed to the provisions of Public Contract Code Section 10164.

In all projects where federal funds are involved, the Contractor shall be properly licensed at the time the Contract is awarded.

**7-1.01D Vehicle Code.** Pursuant to the authority contained in Vehicle Code Section 591, the City has determined that within those areas that are within the limits of the project and are open to public traffic, the Contractor shall comply with all the requirements set forth in Divisions 11, 12, 13, 14 and 15 of the Vehicle Code. The Contractor may submit in writing to the City a request for exception to any of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. This request shall be submitted prior to the start of work.

Attention is directed to the statement in said Section 591 that this Section 7-1.01D shall not relieve the Contractor or any person from the duty of exercising due care. The Contractor shall take all necessary precautions for safe operation of their equipment and the protection of the public from injury and damage from such equipment.

**7-1.01E Trench Safety.** Attention is directed to the provisions of Section 6705 of the Labor Code concerning trench excavation safety plans.

**7-1.01F Air Pollution Control.** The Contractor shall comply with all air pollution control rules, regulations, ordinances and statutes which apply to any work performed pursuant to the contract.

Unless otherwise provided in the Special Provisions or Technical Provisions, material to be disposed of shall not be burned, either inside or outside the project right of way.

**7-1.01G Water Pollution.** The Contractor shall exercise every reasonable precaution to protect the storm drain system, creeks, and bay, from pollution and shall conduct and schedule operations so as to prevent polluting of storm drain system, creeks, and bay. Care shall be exercised to preserve vegetation beyond the limits of construction. The storm drain system is herein defined as the system of gutters, catch basin inlets, pipes and channels used to collect and convey storm water.

Water pollution control work is intended to provide prevention, control, and abatement of water pollution to the storm drain system, creeks, bay, and other bodies of water, and shall

consist of constructing those facilities which may be shown on the plans, specified herein or in the Special Provisions or Technical Provisions, or directed by the Engineer.

In order to provide effective and continuous control of water pollution, it may be necessary for the Contractor to perform the contract work in small or multiple units, on an out of phase schedule, and with modified construction procedures. The Contractor shall provide temporary water pollution control measures, including but not limited to, dikes, basins, ditches, and applying straw and seed, which become necessary as a result of the Contractor's operations. The Contractor shall coordinate water pollution control work with all other work done on the contract.

Before starting any work on the project, the Contractor shall prepare and implement a program to control water pollution effectively during construction of the project. The document shall be made available to the Engineer upon request. The program shall include a schedule for the erosion control work included in the contract and for all water pollution control measures which the Contractor proposes to take in connection with construction of the project to minimize the effects of the operations upon adjacent storm drain system, creeks, and bay. The Contractor shall not perform any clearing and grubbing or earthwork on the project, other than that specifically authorized in writing by the Engineer, until the program has been implemented.

If the measures being taken by the Contractor are inadequate to control water pollution effectively, the Engineer may direct the Contractor to revise the operations and the water pollution control program. These directions will be in writing and will specify the items of work for which the Contractor's water pollution control measures are inadequate. No further work shall be performed on these items until the water pollution control measures are adequate and, if also required, a revised water pollution control program has been implemented.

The City will not be liable to the Contractor for any delays to the work due to the Contractor's failure to implement an acceptable water pollution control program.

Nothing shall relieve the Contractor from responsibility for compliance with the provisions of this Section 7-1.01G. Waiver of the requirement for a written program for control of water pollution will not preclude requiring submittal of a written program at a later time if the Engineer deems it necessary because of the effect of the Contractor's operations.

Where erosion which will cause water pollution is probable due to the nature of the material or the season of the year, the Contractor's operations shall be so scheduled that permanent erosion control features will be installed concurrently with or immediately following grading operations.

Nothing in the terms of the contract nor in the provisions of this Section 7-1.01G shall relieve the Contractor of the responsibility for compliance with Sections 5650 and 12015 of the Fish and Game Code, or other applicable statutes relating to prevention or abatement of water pollution.

The requirements of this Section 7-1.01G shall apply to all work performed under the contract.

The Contractor shall also conform to the following provisions:

A. Where working areas encroach on live streams, barriers adequate to prevent the flow of muddy water into streams shall be constructed and maintained between working areas and creeks, and during construction of the barriers, muddying of streams shall be held to a minimum.

B. Removal of material from beneath a flowing stream shall not be commenced until adequate means, such as a bypass channel, are provided to carry the creek free from mud or silt around the removal operations.

C. Should the Contractor's operations require transportation of materials across live creeks, the operations shall be conducted without muddying the creek. Mechanized equipment shall not be operated in the creek channels of the live creeks except as may be necessary to construct crossings or barriers and fills at channel changes.

D. Water containing mud or silt from aggregate washing or other operations shall be treated by filtration, or retention in a settling pond, or ponds, adequate to prevent muddy water from entering the storm drain system or creeks.

E. Oily or greasy substances originating from the Contractor's operations shall not be allowed to enter or be placed where they will later enter the storm drain system or creeks.

F. Portland cement or fresh portland cement concrete shall not be allowed to enter the storm drain system or creeks.

G. When operations are completed, the flow of streams shall be returned as nearly as possible to a meandering thread without creating possible future bank erosion, and settling pond sites shall be graded so they will drain and will blend in with the surrounding terrain.

H. Material shall not be deposited in a live stream channel where it could be washed away by high stream flows.

I. Where there is possible migration of anadromous fish in streams affected by construction on the project, the Contractor shall conduct work operations so as to allow free passage of the migratory fish.

Compliance with the requirements of this Section 7-1.01G shall in no way relieve the Contractor from their responsibility to comply with the other provisions of the contract, in particular the responsibility for damage and for preservation of property.

Full compensation for conforming to the requirements of this Section 7-1.01G shall be considered as included in the prices paid for the various items of work and no additional compensation will be allowed therefor.

**7-1.01H Use of Pesticides.** The Contractor shall comply with all rules and regulations of the State of California, Department of Food and Agriculture, the State of California, Department of Health, the State of California, Department of Industrial Relations and all other agencies which govern the use of pesticides required in the performance of the work on the contract.

Pesticides shall include but shall not be limited to herbicides, insecticides, fungicides, rodenticides, germicides, nematocides, bactericides, inhibitors, fumigants, defoliant, desiccants, soil sterilants, and repellents.

Any substance or mixture of substances intended for preventing, repelling, mitigating, or destroying weeds, insects, diseases, rodents, or nematodes and any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant shall be considered a pesticide.

**7-1.01I Sound Control Requirements.** The Contractor shall minimize noise and comply with all local sound control and noise level rules, regulations and ordinances which apply to any work performed pursuant to the contract.

Each internal combustion engine, used for any purpose on the job or related to the job, shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the project without the muffler.

**7-1.01J Assignment of Antitrust Actions.** The Contractor's attention is directed to the following provisions of Public Contract Code 7103.5, which shall be applicable to the Contractor and the Contractor's subcontractors:

"In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sect. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgement by the parties.

"If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

"Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action."

**7-1.01K Time for Giving of Notice.** The terms of Code of Civil Procedure Section 1013 shall not apply to any notices given by City under this contract.

**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 California Government Code Sections 4216 through 4216.9, inclusive.

**7-1.02 Weight Limitations.** Unless expressly permitted in the Special Provisions or Technical Provisions, construction equipment or vehicles of any kind which, laden or unladen, exceed the maximum weight limitations set forth in Division 15 of the Vehicle Code, shall not be operated over completed or existing treated bases, surfacing, pavement or structures in any areas within the limits of the project, whether or not the area is subject to weight limitations under Section 7-1.01D, "Vehicle Code." The Contractor may submit in writing to the City a request for exception to any of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. This request shall be submitted prior to the start of work.

**7-1.03 Payment of Taxes.** The contract prices paid for the work shall include full compensation for all taxes which the Contractor is required to pay, whether imposed by Federal, State or local government, including, without being limited to, Federal excise tax. No tax

exemption certificate or any document designed to exempt the Contractor from payment of any tax will be furnished to the Contractor by the City, as to any tax on labor, services, materials, transportation, or any other items furnished pursuant to the contract.

**7-1.04 Permits and Licenses.** The Contractor shall procure all permits and licenses, pay all charges and fees, and give all notices necessary and incident to the due and lawful prosecution of the work in sufficient time to prevent delays to the work. The Contractor will be required to obtain a City Business License prior to the issuance of the Notice to Proceed. City permitting costs (from the Building Department) will be paid by the City.

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

In the event that the City has obtained permits, licenses or other authorizations, applicable to the work, the Contractor shall comply with the provisions of those permits, licenses and other authorizations.

**7-1.045 Copeland (Anti-Kickback Act).** The regulations of the Secretary of Labor applicable to contractors and subcontractors (29 CFR, Part 3), made pursuant to the Copeland Act, as amended (40 U.S.C.276c) and to aid in the enforcement of the Anti-Kickback Act (18 U.S.C.874) are made a part of the contract by reference. The Contractor will comply with these regulations and any amendments or modifications thereof and the Contractor will be responsible for the submission of affidavits required of subcontractors there under. The foregoing shall apply except as the Secretary of Labor may specifically provide for reasonable limitations, variations, tolerances, and exemptions.

**7-1.05 Patents.** The Contractor shall assume all costs arising from the use of patented materials, equipment, devices, or processes used on or incorporated in the work, and agrees to indemnify and hold harmless the City, its employees, duly authorized agents, officers, servants, and duly authorized representatives, from all suits at law, or actions of every nature for, or on account of the use of any patented materials, equipment, devices, or processes. All fees, royalties, or claims for any patented invention, article, or method that may be used upon or in any manner connected with the work under the contract shall be included in the price bid for the work. Before the final payment is made on account of the contract, the Contractor shall, if requested by the Engineer, furnish acceptable proof of a proper release of all such fees or claims for any patented invention, article, or method used in the project.

Should the Contractor, the Contractor's agents, servants or employees, or any of them, be enjoined from furnishing or using any invention, article, material or appliance supplied or required to be supplied or used under the contract, the Contractor shall promptly substitute other articles, materials or appliances, in lieu thereof, of equal efficiency, quality, finish, suitability and market value, and satisfactory in all respects to the Engineer. Or in the event that the Engineer elects, in lieu of such substitution, to have supplied, and to retain and use, any such invention, article, material or appliance, as may by the contract be required to be supplied, in that event the Contractor shall pay such royalties and secure such valid licenses as may be requisite and



necessary for the City, its officer, agents, servants and employees, or any of them to use such invention, article, material or appliance without being disturbed or in any way interfered with by any proceeding in law or equity on account thereof. Should the Contractor neglect or refuse to make the substitution promptly, or to pay such royalties and secure such licenses as may be necessary, then in that event, the Engineer shall have the right to make such substitution or the City may pay such royalties and secure such licenses and charge the cost thereof against any money due the Contractor from the City or recover the amount thereof from the Contractor or the Contractor's sureties notwithstanding final payment under the contract may have been made.

**7-1.06 Safety and Health Provisions.** The Contractor shall conform to all applicable occupational safety and health standards, rules, regulations and orders established by the Federal Government, State of California, County of Santa Clara and the City of Los Altos or any other government agency of competent jurisdiction.

All working areas utilized by the Contractor to perform work during the hours of darkness, shall be lighted to conform to the minimum illumination intensities established by California Division of Occupational Safety and Health Construction Safety Orders.

All lighting fixtures shall be mounted and directed in a manner precluding glare to approaching traffic.

Full compensation for conforming to the requirements of this Section 7-1.06 shall be considered as included in the contract prices paid for the various items of work involved and no separate payment will be made therefor.

**7-1.08 Public Convenience.** This Section 7-1.08 defines the Contractor's responsibility with regard to convenience of the public and public traffic in connection with the Contractor's operations.

Attention is directed to Section 4-1.04, "Detours," for provisions relating to the passage of traffic around the work over detours.

Attention is directed to Section 7-1.09, "Public Safety," for provisions relating to the Contractor's responsibility for the safety of the public. The requirements in Section 7-1.09, "Public Safety," are in addition to the requirements of this Section 7-1.08 and the Contractor will not be relieved of any responsibilities as set forth in Section 7-1.09, "Public Safety," by reason of conformance with any of the provisions in this Section 7-1.08.

Attention is directed to Caltrans Specifications Section 12, "Construction Area Traffic Control Devices," for requirements concerning flagging and traffic-handling equipment and devices used in carrying out the provisions of this Section 7-1.08 and said Section 7-1.09, "Public Safety;" delete the first paragraph of Caltrans Specifications Section 12-2.02 "Flagging Costs."

In the event of a suspension of the work, attention is directed to Section 8-1.05, "Temporary Suspension of Work."

The Contractor shall so conduct operations as to offer the least possible obstruction and inconvenience to the public and shall have under construction no greater length or amount of work than can be prosecuted properly with due regard to the rights of the public.

Unless otherwise provided in the Special Provisions or Technical Provisions, all public traffic shall be permitted to pass through the work with as little inconvenience and delay as possible. Where possible, public traffic shall be routed on new or existing paved surfaces.

Spillage resulting from hauling operations along or across any public traveled way shall be removed immediately by the Contractor at the Contractor's expense.

Existing traffic signals and street lighting shall be kept in operation for the benefit of the traveling public during progress of the work, and other forces will continue routine maintenance of existing systems.

Construction operations shall be conducted in such a manner as to cause as little inconvenience as possible to abutting property owners.

Convenient access to driveways, houses, and buildings along the line of the work shall be maintained and temporary approaches to crossings or intersecting streets shall be provided and kept in good condition. When the abutting property owner's access across the right of way line is to be eliminated, or to be replaced under the contract by other access facilities, the existing access shall not be closed until the replacement access facilities are usable.

The Contractor may be required to cover certain signs which regulate or direct public traffic to roadways that are not open to traffic. The Engineer will determine which signs shall be covered.

Upon completion of rough grading at the grading plane, or placing any subsequent layer thereon, the surface of the roadbed shall be brought to a smooth, even condition free of humps and depressions, satisfactory for the use of public traffic.

Water or dust palliative shall be applied if ordered by the Engineer for the alleviation or prevention of dust nuisance as provided in Caltrans Specifications Section 10, "Dust Control."

In order to expedite the passage of public traffic through or around the work and where ordered by the Engineer, the Contractor shall install signs, lights, flares, temporary railing (Type K), barricades, and other facilities for the sole convenience and direction of public traffic. Also where directed by the Engineer, the Contractor shall furnish competent flaggers whose sole duties shall consist of directing the movement of public traffic through or around the work.

Whenever a section of surfacing, pavement, or the deck of a structure has been completed, the Contractor shall open it to use by public traffic if the Engineer so orders or may open it to use by public traffic if the Engineer so consents. In either case the Contractor will not be allowed any compensation due to any delay, hindrance, or inconvenience to the Contractor's operations caused by such public traffic, but will thereupon be relieved of responsibility for damage to completed permanent facilities caused by public traffic, within the limits of such use. The Contractor will not be relieved of any other responsibility under the contract nor will the Contractor be relieved of cleanup and finishing operations.

Except as other wise provided in the Special Provisions or Technical Provisions, full compensation for conforming to the requirements in this Section 7-1.08 and in the Special Provisions and Technical Provisions shall be considered as included in the prices paid for the various contract items of work and no additional compensation will be allowed therefor.

**7-1.09 Public Safety.** It is the Contractor's responsibility to provide for the safety of traffic and the public during construction.

Attention is directed to Section 7-1.12, "Responsibility for Damage."

Attention is directed to Section 7-1.08, "Public Convenience," for provisions relating to the Contractor's responsibility for providing for the convenience of the public in connection with the Contractor's operations.

Attention is directed to Caltrans Specifications Section 12, "Construction Area Traffic Control Devices," for requirements concerning flagging and traffic-handling equipment and

devices used in carrying out the provisions of Section 7-1.08, "Public Convenience," and this Section 7-1.09; delete the first paragraph of Caltrans Specifications Section 12-2.02 "Flagging Costs."

Whenever the Contractor's operations create a condition hazardous to traffic or to the public, the Contractor shall, at the Contractor's expense and without cost to the City, furnish, erect and maintain those fences, temporary railing (Type K), barricades, lights, signs and other devices and take such other protective measures as are necessary to prevent accidents or damage or injury to the public.

The Contractor shall also furnish such flaggers as are necessary to give adequate warning to traffic or to the public of any dangerous conditions to be encountered.

Signs, lights, flags, and other warning and safety devices and their use shall conform to the requirements set forth in the current Caltrans Manual of Traffic Controls. Signs or other protective devices furnished and erected by the Contractor shall not obscure the visibility of, nor conflict in intent, meaning and function of either existing signs, lights and traffic control devices or any construction area signs and traffic control devices. Signs furnished and erected by the Contractor shall be approved by the Engineer as to size, wording and location.

The installation of general roadway illumination shall not relieve the Contractor of any responsibility for furnishing and maintaining any of the protective facilities hereinbefore specified.

Construction equipment entering and leaving roadways shall move in the direction of public traffic. All movements of workers and construction equipment on or across lanes open to public traffic shall be performed in a manner that will not endanger public traffic.

When leaving a work area and entering a roadway carrying public traffic, the Contractor's equipment, whether empty or loaded, shall in all cases yield to public traffic.

Lanes and shoulders shall be closed in accordance with the details shown on the plans, the provisions of Caltrans Specifications Section 12, "Construction Area Traffic Control Devices," and as provided in the Special Provisions and Technical Provisions; delete the first paragraph of Caltrans Specifications Section 12-2.02 "Flagging Costs."

No material or equipment shall be stored where it will interfere with the free and safe passage of public traffic, and at the end of each day's work and at other times when construction operations are suspended for any reason, the Contractor shall remove all equipment and other obstructions from that portion of the roadway open for use by public traffic.

Temporary facilities which the Contractor uses to perform the work shall not be installed or placed where they will interfere with the free and safe passage of public traffic.

Except as otherwise provided in this Section 7-1.09 or in the Special Provisions or Technical Provisions, full compensation for conforming to all of the provisions in this Section 7-1.09 and in the Special Provisions and Technical Provisions shall be considered as included in the prices paid for the various contract items of work or in the lump sum bid and no additional compensation will be allowed therefor.

Should the Contractor be negligent or fail to furnish and/or maintain warning and protective facilities as required herein, the City may furnish and/or maintain such facilities and charge Contractor therefore by deducting the cost thereof from periodic progress payments due the Contractor as such costs are incurred by City.

In the event the Contractor does not provide such flaggers and guards as are required by this Section 7-1.09, the Engineer may request that the Los Altos Police Department provide for

public safety and that the costs related thereto shall be deducted from any periodic progress payments due the Contractor.

**7-1.10 Use of Explosives.** The use of explosives is expressly prohibited unless specifically provided for in the Special Provisions and Technical Provisions.

**7-1.11 Preservation of Property.** Attention is directed to Section 7-1.12, "Responsibility for Damage," and to Section 8-1.10, "Utility and Non-Highway Facilities." Due care shall be exercised to avoid injury to existing improvements or facilities, utility facilities, adjacent property, and roadside trees, shrubs, and other plants that are not to be removed.

Trees, shrubs, and other plants that are not to be removed, and pole lines, fences, signs, markers and monuments, buildings and structures, conduits, pipelines under or above ground, sewer and water lines, all facilities, and any other improvements or facilities within or adjacent to the work site shall be protected from injury or damage, and if ordered by the Engineer, the Contractor shall provide and install suitable safeguards, approved by the Engineer, to protect the objects from injury or damage. If the objects are injured or damaged by reason of the Contractor's operations, they shall be replaced or restored at the Contractor's expense. The facilities shall be replaced or restored to a condition as good as when the Contractor entered upon the work, or as good as required by the specifications accompanying the contract, if any of the objects are a part of the work being performed under the contract. The Engineer may make or cause to be made the temporary repairs that are necessary to restore to service any damaged facility. The cost of the repairs shall be borne by the Contractor and may be deducted from any monies due or to become due to the Contractor under the contract.

The fact that any underground facility is not shown upon the plans shall not relieve the Contractor of any responsibility under Section 8-1.10, "Utility and Non-Highway Facilities." It shall be the Contractor's responsibility, pursuant thereto, to ascertain the location of those underground improvements or facilities which may be subject to damage by reason of the Contractor's operations.

Full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all the work involved in protecting or repairing property as specified in this Section 7-1.11, shall be considered as included in the prices paid for the various contract items of work and no additional compensation will be allowed therefor.

**7-1.115 Liability of Contractor.** The Contractor shall do all of the work and furnish all labor, materials, tools, and appliances, except as otherwise herein expressly stipulated, necessary or proper for performing and completing the work required in the manner and within the time herein specified. The mention of any specific duty or liability imposed upon the Contractor shall not be construed as a limitation or restriction of any general liability or duty imposed upon the Contractor by the contract, said reference to any specific duty or liability being made herein merely for the purpose of explanation.

**7-1.12 Responsibility for Damage.** The City and all agents, officers and employees thereof, including but not limited to the Engineer, shall not be answerable or accountable in any manner: for any loss or damage that may happen to the work or any part thereof; for any loss or damage to any of the materials or other things used or employed in performing the work; for injury to or death of any person, either workers or the public; or for damage to property from any

cause which might have been prevented by the Contractor, or the Contractor's workers, or anyone employed by the Contractor.

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

The Contractor shall be responsible for repair and replacement of damage due to any vandalism prior to acceptance of the work.

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

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

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

**7-1.121 Protection of Contractor's Work and Property.** The Contractor shall protect its work, supplies and materials from damage due to the nature of the work, the action of the elements, trespassers, or any cause whatsoever which is under the Contractor's control, until the completion and acceptance of the work. Neither the City nor any of its agents assumes any responsibility for collecting indemnity from any person or persons causing damage to the work of the Contractor.

**7-1.122 Insurance Requirements.** Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damage to property as set forth in the Special Provisions and Technical Provisions which may arise from or in connection with the performance of the work hereunder by the Contractor, the Contractor's agents, representative, employees or subcontractors, including work performed pursuant to Section 8-1.05, "Temporary Suspension of Work." The cost of such insurance shall be included in the Contractor's bid.

**7-1.122A Insurance During Termination and/or Suspension.** If the City elects to suspend the contract work as provided for in these Specifications, it shall be the Contractor's obligation to keep all insurance policies required under the contract documents in place and effective during the period of such suspension.

If the City should elect to terminate the contract, it shall be the Contractor's obligation to keep all insurance required under the contract documents in place and in effect until the acceptance of the project by the Engineer.

**7-1.125 Legal Actions Against the City.** In the event litigation is brought against the City concerning compliance by the City with State, Federal, regional, or local laws, ordinances, rules or regulations applicable to the work, the provisions of this Section 7-1.125 shall apply.

(A) If, pursuant to court order, the City prohibits the Contractor from performing all or any portion of the work, the delay will be considered a right of way delay within the meaning of Section 8-1.09, "Right of Way Delays," unless the contract is terminated as hereinafter provided.

(B) If, pursuant to court order (other than an order to show cause) the City is prohibited from requiring the Contractor to perform all or any portion of the work, the City may, if it so elects, eliminate the enjoined work pursuant to Section 4-1.03, "Changes," or terminate the contract.

(C) If the final judgment in the action prohibits the City from requiring the Contractor to perform all or any portion of the work, the City will either eliminate the enjoined work pursuant to Section 4-1.03, "Changes," or terminate the contract.

(D) If the contract is to be terminated, the termination and the determination of the total compensation payable to the Contractor shall be governed by the provisions of Section 8-1.11, "Termination of Contract."

(E) If any legal action is filed involving the project, the City may, in its sole discretion, elect to terminate the contract for convenience or suspend the contract, as provided elsewhere in these specifications.

**7-1.13 Disposal of Material Outside the Project Limits.** If the Contractor elects to dispose of materials the Contractor shall make arrangements for disposing of the materials outside the project limits and the Contractor shall pay all costs involved. Arrangements shall include, but not be limited to, entering into agreements with property owners and obtaining necessary permits, licenses, complying with truck routes, and environmental clearances. Before disposing of any material outside of the project limits, the Contractor shall furnish to the Engineer satisfactory evidence that the Contractor has entered into agreements with the property owners of the site involved and has obtained the permits, licenses and clearances.

Any arrangements for disposal of materials are not a part of the contract and it is expressly understood and agreed that the City assumes no responsibility to the bidder or Contractor whatsoever in respect to the arrangements made with the property owner to dispose of materials thereon and that the Contractor shall assume all risks in connection with the use of the property, the terms upon which the use shall be made, and there is no warranty or guaranty, either express or implied, as to the quantity or types of materials that can be disposed of on the property.

Before acceptance of the contract, the Engineer may require the Contractor to submit written evidence that the property owner of the disposal site is satisfied that the Contractor has satisfactorily complied with the provisions of either - (1), the arrangement between the City and the owner, or (2) the agreement between the property owner and the Contractor, as the case may be.

Full compensation for all costs involved in disposing of materials as specified in this Section 7-1.13, including all costs of hauling, shall be considered as included in the prices paid for the contract items of work involving the materials and no additional compensation will be allowed therefor.

**7-1.14 Cooperation.** Should construction be under way by other forces or by other contractors within or adjacent to the limits of the work specified or should work of any other nature be under way by other forces within or adjacent to those limits, the Contractor shall cooperate with all the other contractors or other forces to the end that any delay or hindrance to other contractors or other forces work will be avoided. The right is reserved to perform other or additional work at or near the site (including material sources) at any time, by the use of other forces.

When two or more contractors are employed on related or adjacent work, or obtain materials from the same material source, each shall conduct their operations in such a manner as not to cause any unnecessary delay or hindrance to the other.

Each contractor shall be responsible to the other for all damage to work, to persons or property caused by the other by their operations, and for loss caused the other due to their unnecessary delays or failure to finish the work within the time specified for completion. The Contractor shall conduct, adjust, correct and coordinate its work with the work of others so that no discrepancies shall result in the whole work and shall defend, indemnify and hold the City harmless against any claims arising therefrom. The Contractor, including sub-contractors at any tier, shall keep informed of the progress and the detail work of other contractors and shall notify the Engineer immediately of lack of progress or defective workmanship on the part of other contractors, where such delay or such defective workmanship will interfere with the Contractor's own operations. Failure of a Contractor to keep informed of the work progressing on the site and failure to give notice of lack of progress or defective workmanship by others shall be construed as acceptance by the Contractor of the status of the work as being satisfactory for proper coordination with the Contractor's work. If the work of the Contractor is delayed because of any acts or omissions of any other contractor, the Contractor shall on that account have no claim against the City other than for an extension of time.

**7-1.145 Mutual Responsibility of Contractors.** If the Contractor or any of the Contractor's subcontractors or employees cause loss or damage to any other contractor, and if such other contractor makes a claim against the City, its employees or agents, on account of any loss so sustained, the City shall notify the Contractor, who shall defend, indemnify and save harmless the City, its employees and agents against any such claims, expense or judgment arising there from.

**7-1.15 Acceptance of Portions of Work.** Upon the request of the Contractor, the City may accept certain portions of the work as described below, which have been completed in all respects in accordance with the requirements of the contract and to the satisfaction of the Engineer, and thereafter except with the Contractor's consent, the Contractor will not be required to do further work thereon. In addition, the action by the Engineer will relieve the Contractor of responsibility for injury or damage to the completed portions of the work resulting from the use by public traffic or from the action of the elements or from any other cause but not from injury or damage resulting from the Contractor's own operations or from the Contractor's negligence.

Portions of the work accepted by the City as provided in the above paragraph include but are not limited to the following:

A. The completion of a section of roadway including the traveled way, shoulders, drainage control facilities, planned roadway protection work, lighting, and any required traffic control and access facilities.

- B. A bridge or other structure of major importance.
- C. A complete unit of a traffic control signal system or of a lighting system.
- D. Facilities constructed for other agencies.
- E. Storm or sanitary sewer facilities as designated by the Engineer.

However, nothing in this Section 7-1.15 shall relieve the Contractor from providing the Maintenance Bond as required by Section 7-1.245, "Maintenance Bond" or for making good any defective work or materials found at any time before or after the formal written acceptance of the entire contract by the City.

The Contractor hereby agrees to provide reasonable access for the City's maintenance forces to properly maintain those areas accepted by the City.

**7-1.16 Contractor's Responsibility for the Work and Materials.** Until the acceptance of the contract, the Contractor shall have the charge and care of the work and of the materials to be used therein (including materials which have been furnished by the City) and shall bear the risk of injury, loss, or damage to any part thereof by the action of the elements or from any other cause, whether arising from the execution or from the non-execution of the work, except as provided in Sections 7-1.08, "Public Convenience," and 7-1.15, "Acceptance of Portions of Work." The Contractor shall rebuild, repair, restore, and make good all injuries, losses, or damages to any portion of the work or the materials occasioned by any cause before its completion and acceptance and shall bear the expense thereof, except as otherwise expressly provided in Section 7-1.165, "Damage by Storm, Flood, Earthquake, Firestorm, Mud Slide or Debris Flows," and in Caltrans Specifications Section 19-2.04, "Slides and Slipouts," and except for those injuries, losses, or damages that are directly and proximately caused by acts of the Federal, State, regional, or local Government or the public enemy. Where necessary to protect the work or materials from damage, the Contractor shall, at the Contractor's expense, provide suitable drainage of the work and erect those temporary structures that are necessary to protect the work or materials from damage. The suspension of the work from any cause whatever shall not relieve the Contractor of any responsibility for the work and materials as herein specified. If ordered by the Engineer, the Contractor shall, at the Contractor's expense, properly store materials which have been furnished by the City. Storage by the Contractor shall be on behalf of the City and the City shall at all times be entitled to the possession of the materials, and the Contractor shall promptly return the material to the site of the work when requested. The Contractor shall not dispose of any of the materials so stored except upon written authorization from the Engineer.

The City reserves the right to use or occupy any portion or all of the work prior to completion. Upon occupying or commencing use of that portion or all of the work prior to completion, the Contractor shall not be relieved of any duty for maintaining and protecting said work and the Contractor shall be required thereafter to complete said work. The Contractor shall be fully responsible for coordinating with the City for the completion of that work such that said work will cause the least interference with the City's use and/or occupancy.

**7-1.165 Damage by Storm, Flood, Earthquake, Firestorm, Mud Slide, or Debris Flows.** Attention is directed to Section 7-1.16, "Contractor's Responsibility for the Work and Materials." In the event damage to the work is caused by a storm, flood, earthquake, firestorm, mud slide or debris flow, or other natural disaster which constitutes an "Occurrence," as hereinafter defined, the provisions of this Section 7-1.165 shall be applicable and the Contractor



may apply in writing to the Engineer for the City to pay or participate in the cost of repairing damage to the work from that cause or, in lieu thereof, and at the sole discretion of the City, terminate the contract and relieve the Contractor of further obligation to perform the work, subject to the following:

A. Occurrences--"Occurrence" shall include earthquakes in excess of a magnitude of 3.5 on the Richter Scale, storms, floods, firestorms, mud slides, or debris flows and other natural disasters as to which the Governor has proclaimed a state of emergency when the damaged work is located within the territorial limits to which the proclamation is applicable or, which were, in the opinion of the Engineer, of a magnitude at the site of the work sufficient to have caused such a proclamation had they occurred in a populated area or in an area in which such a proclamation was not already in effect.

B. Application by Contractor--The Contractor's written request for the City to pay or to participate in the cost of rebuilding, repairing, restoring or otherwise remedying the damage to the work caused by the Occurrence shall be submitted to the Engineer before performing any work other than emergency work, including emergency work necessary to provide for the passage of public traffic.

C. Protecting the Work from Damage--Nothing in this Section 7-1.165 shall be construed to relieve the Contractor of the responsibility to protect the work from damage. The Contractor shall bear the entire cost of repairing damage to the work caused by the Occurrence which the Engineer determines was due to the failure of the Contractor to comply with the requirements of the Plans and Specifications, take reasonable and adequate measures to protect the work or exercise sound engineering and construction practices in the conduct of the work, and those repair costs shall be excluded from consideration under the provisions of this Section 7-1.165.

D. Repair Work--Repair of damaged work under the provisions of this Section 7-1.165 shall be pursuant to a contract change order issued hereunder and specifying the repair work to be performed on the damaged facility. The repair work shall consist of restoring the in-place construction (for the purposes of this Section 7-1.165 erected falsework and formwork shall be considered in-place construction) to the same state of completion to which the work had advanced prior to the Occurrence. Emergency work which the Engineer determines would have been part of the repair work if it had not previously been performed, will be considered to be part of the repair work.

The City reserves the right to make changes in the plans and specifications applicable to the portions of the work to be repaired, and if those changes will increase the cost of repairing the damage over the Engineer's estimate of the cost of repair without the changes, the Contractor will be paid for the increased costs in accordance with Subsection E and the increased costs amount shall not be considered in determining the cost of the repair to be borne by the Contractor under Subsection F.

Nothing in this Section 7-1.165 shall be construed to relieve the Contractor of full responsibility for the risk of injury, loss or damage to materials not yet incorporated in the work and to materials, tools and equipment (except erected falsework and formwork) used to perform the work, or to relieve the Contractor of any responsibility under Section 7-1.12, "Responsibility for Damage." The provisions of this Section 7-1.165 shall not be applicable to the repair of damage caused by an Occurrence to any portion of the work as to which the Contractor has been granted relief from maintenance and responsibility pursuant to Section 7-1.15, "Acceptance of Portions of Work," or to the removal of slides and slipouts or the repair and restoration of

damage to the work resulting from slides and slipouts pursuant to Caltrans Specifications Section 19-2.04, "Slides and Slipouts."

E. Determination of Costs--Unless otherwise agreed between the Engineer and the Contractor, the cost of the work performed pursuant to this Section 7-1.165 will be determined in accordance with the provisions in Section 9-1.03, "Change Order Payment," except there shall be no markup allowance pursuant to Section 9-1.03A, "Work Performed by Contractor," unless the Occurrence that caused the damage was a earthquake. The cost of emergency work, which the Engineer determines would have been part of the repair work if it had not previously been performed, will be determined in the same manner as the authorized repair work. The cost of repairing damaged work which was not in compliance with the requirements of the plans and specifications shall be borne solely by the Contractor, and those costs shall not be considered in determining the cost of repair under this Subsection E.

F. Payment for Repair Work--When the Occurrence that caused the damage was an earthquake, the City will pay the cost of repair determined as provided in Subsection E, that exceeds 5 percent of the amount of the Contractor's bid for bid comparison purposes.

When the Occurrence that caused the damage was a storm, flood, firestorm, mud slide, debris flow, or other natural disaster, the City will participate in the cost of the repair determined as provided in Subsection E in accordance with the following:

1. On projects for which the amount of the Contractor's bid for bid comparison purposes is \$2,000,000 or less, the City will pay 90 percent of the cost of the repair that exceeds 5 percent of the amount of the Contractor's bid for bid comparison purposes.

2. On projects for which the Contractor's bid for bid comparison purposes is greater than \$2,000,000, the City will pay 90 percent of the cost of repair that exceeds \$100,000.

G. Termination of Contract--If the City elects to terminate the contract, the termination and the determination of the total compensation payable to the Contractor shall be governed by the provisions of Section 8-1.11, "Termination of Contract."

**7-1.166 Substantial Completion.** When the Contractor considers the work or a designated portion thereof substantially complete as defined in Section 1-1.425, "Substantial Completion," the Engineer shall prepare for the Contractor a list of items to be completed or corrected. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all work in accordance with the contract documents. The Contractor shall obtain and submit to the City, prior to the date of acceptance, all necessary permits for occupancy. If desired by the City, portions of the work, as completed, may be placed in service. The Contractor shall give proper access to the work for this purpose. Such use and operation shall not constitute an acceptance of the work or that portion placed in service. The Contractor shall be liable for defects due to faulty construction.

Upon acceptance of the contract, or designated portion thereof, the City shall make payment, reflecting adjustment in retainage, if any, for such work or portion thereof as provided in the contract.

Liquidated damages shall continue to accrue until the date of acceptance. Warranties shall begin to run upon acceptance of the contract by the City.

**7-1.17 Acceptance of Contract Work.** When the Engineer has made the final inspection as provided in Section 5-1.13, "Final Inspection," and determines that the contract work has been completed in all respects and in its entirety, including punch list work, and in

accordance with the plans and specifications, the Engineer will recommend that the City formally accept the contract, and immediately upon and after such acceptance by the City, and recordation of the Notice of Completion and Acceptance by the County Recorder's office, the Contractor will be relieved of the duty of maintaining and protecting the work as a whole, and except for warranty, the Contractor will not be required to perform any further work thereon.

Before the acceptance can be made, the Contractor shall also submit to the Engineer all record drawings, catalogue data, warranties and guarantees, including maintenance bonds described in Section 7-1.245, "Maintenance Bond" operation and maintenance instruction sheets, and other items as required by the contract documents.

**7-1.18 Property Rights in Materials.** Nothing in the contract shall be construed as vesting in the Contractor any right of property in the materials used after they have been installed for their intended use. All such material shall become the property of the City upon being so attached or affixed.

**7-1.19 Rights in Land and Improvements.** Nothing in these specifications shall be construed as allowing the Contractor to make any arrangements with any person to permit occupancy or use of any land, structure, or building within the limits of the contract for any purpose whatsoever, either with or without compensation, in conflict with any agreement between the City and any owner, former owner, or tenant of the land, structure, or building.

The Contractor shall not occupy City-owned property outside the right of way as shown on the plans or outside the expressly designated areas in the contract documents unless the Contractor enters into a rental agreement with the City. The agreement will be based on fair rental values.

**7-1.20 Personal Liability.** Neither the Engineer, nor any other officer or authorized employee of the City nor any officer or employee of any county, city or district shall be personally responsible for any liability arising under or by virtue of the contract.

**7-1.21 Repair of Equipment.** The work of installing, assembling, repairing or reconditioning, or other work of any nature on machinery, equipment, or tools used in or upon the work shall be considered a part of the work to be performed under the contract and any laborers, workers, or mechanics working on the machinery, equipment, or tools, unless employed by bona fide commercial repair shops, garages, blacksmith shops, or machine shops, which have been established and operating on a commercial basis for a period of at least two months prior to the award of the contract, shall be subject to all the requirements relating to labor set forth in these specifications and in the Special Provisions and Technical Provisions.

**7-1.22 Material Plants.** The construction, erection, and operation of material production, proportioning, or mixing plants from which material is used wholly on the contract or on contracts under the supervision of the City shall be considered a part of the work to be performed under the contract and any laborers, workers, or mechanics working on the plants shall be subject to all of the requirements relating to labor set forth in these specifications and in the Special Provisions and Technical Provisions.

**7-1.23 Provisions of Law and Venue.** It is specifically provided that this contract is to be interpreted pursuant to California Law and subject to all the provisions of law regulating and controlling the performance of work for the City, and that the rules of law shall prevail over any provision contained in any of the contract documents which may be in conflict or inconsistent therewith.

Each and every provision of law and clause required by law to be inserted in these contract documents shall be deemed to be inserted herein and the contract documents shall be read and enforced as though it were included herein, and if through mistake or otherwise, any such provisions is not inserted, or is not correctly inserted, then upon application of either party, the contract documents shall forthwith be physically amended to make such insertion or correction at no additional cost to the City.

The parties to this contract hereby expressly agree that any contrary provisions of this contract notwithstanding, any action to interpret the terms of the Contract or resolve any dispute arising under this Contract by the Contractor, subcontractors at any tier, and material suppliers at any tier, shall be filed exclusively in the Superior Court of Santa Clara County or where otherwise appropriate in the United States District Court for the Northern District of California located in San Jose, California, having proper jurisdiction. There is no express or implied agreement between the parties to mediate and/or arbitrate in any forum any matter arising under this Contract.

The Contractor is hereby advised that these contract documents, including the Contractor's Proposal, are subject to the California Public Records Act and become documents available to the general public.

In the event that a particular City public works contract is funded or required to be approved in whole or in part by the state or federal government and any provision contained herein is inconsistent with any applicable state or federal statutes, rules or regulations, orders or controlling policies pertaining to such funding or approval, such provisions to the extent that it is inconsistent shall not apply to said City public works contract.

**7-1.24 Final Guarantee.** Unless otherwise specified, all work shall be guaranteed by the Contractor against defects resulting from the use of inferior materials, equipment, or workmanship for one year from the date of final acceptance of the contract. The Contractor unqualifiedly guarantees the first-class quality of all workmanship and of all material, apparatus, and equipment used or installed by Contractor or by any subcontractor or supplier in the project which is the subject of this work, unless a lesser quality is expressly authorized in the Plans and Specifications, in which event the Contractor unqualifiedly guarantees such lesser quality; and that the work as performed by the Contractor will conform with the Plans and Specifications or any written authorized deviations therefrom.

If, within any guarantee period, repairs or changes are required in connection with guaranteed work, which, in the opinion of the Engineer, is rendered necessary as the result of the use of materials, equipment, or workmanship which are inferior, defective, or not in accordance with the terms of the contract, the Contractor shall, promptly upon receipt of notice from the Engineer, and without expense to the City, (1) place in satisfactory condition in every particular all of such guaranteed work, correcting all defects therein; (2) make good all damage to the structure, site or work, or equipment or contents thereof, which, in the opinion of the Engineer, is the result of the use of materials, equipment, or workmanship which are inferior, defective, or not in accordance with the terms of the contract; and (3) make good any work or material, or the

equipment and contents of said structures, site or work disturbed in fulfilling any such guarantee. If the Contractor, after notice, fails to proceed promptly to comply with the terms of the guarantee, the City may have the defects corrected and the Contractor and the Contractor's surety shall be liable for all expense incurred.

**7-1.245 Maintenance Bond.** As a condition precedent to the completion of the contract, the Contractor shall furnish, in triplicate, a bond of a surety company acceptable to the City in an amount equal to 10% of the total contract price to hold good for one year after the completion and acceptance of the work, to protect the City against the results of defective materials, workmanship and the equipment during that time. This bond shall be delivered to the City before final payment under the contract will be made.

**7-1.25 Legal Address of Contractor.** Both the address given in the Proposal and the Contractor's office in the vicinity of the work, if any, are hereby designated as places to either of which drawings, samples, notices, letters or other articles or communications to the Contractor may be mailed or delivered. The delivery at either or these places of any such thing from the City or its agents to the Contractor shall be deemed sufficient service thereof upon the Contractor, and the date of such service shall be the date of such delivery; any thing given to Contractor's representative at the job site, at City Hall, or at the Contractor's office, or delivered to the Contractor's office in the Contractor's absence shall be deemed to have been given to the Contractor. The address set forth in the Proposal may be changed at any time by notice in writing from the Contractor to the City. Nothing herein contained shall be deemed to preclude or render inoperative the service of any drawings, sample, notice, letter or other article or communication to or upon the Contractor personally.

**7-1.26 Material Storage.** The Contractor shall store materials only within the limit of work and Material Storage Areas designated in the plans. Should these areas prove inadequate, the Contractor shall make arrangements for and pay all fees in connection with the use of property other than the site for storage of materials or other purpose.

**7-1.27 Waiver by the City.** The Contractor hereby agrees that waiver by the City of any breach or violation or any term or condition of this contract agreement shall not be deemed to be a waiver or any other term or condition contained herein or a waiver of any subsequent breach or violation of the same term or condition of the contract. Payment for or acceptance by City of any work or services by Contractor performed under this contract shall not be deemed to be a waiver of any term or condition of this contract even if at the time of such payment or acceptance the City was aware of the Contractor's failure to comply with any term or condition of the contract.

**7-1.28 Archeological and Paleontological Rights.** Notwithstanding any other provisions of this contract, in the event any archeological or paleontological objects within the project are discovered during the course of the work, the Contractor shall halt the work within the area affected, and the City shall have and retain all right, title and interest to such objects and shall have the further right, during the course of the contract, to examine or cause to have examined, the site of the work for any such objects and to perform or have performed

archeological or paleontological excavations and all other related work to explore for, discover, recover and remove such objects from the site of the work.

In the event the work of archeological or paleontological examination and related work delays the Contractor's work, the Contractor shall be entitled to an extension of time to complete the work equal to the number of days thus delayed. 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 other compensation for any Archeological and Paleontological delays.

**7-1.29 Emergencies.** In an emergency affecting the safety of persons or property the Contractor shall act reasonably to prevent threatened damage, injury or loss. The Contractor shall immediately notify the City in writing of such actions. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall be determined as provided in Section 4-1.03, "Changes."

**7-1.30 Integration Clause.** The contract, including these general and any special or technical specifications as defined herein, constitutes the entire agreement between the parties. There are no prior or contemporaneous oral agreements between the parties not set forth in the contract. Any modification to the contract or these specifications must be in writing in order to be effective and binding on the parties to the contract.

**END OF SECTION**