

SECTION 8 PROGRESS OF WORK

8-1 BEGINNING OF WORK - The Contractor shall begin work within ten (10) calendar days after the notice to proceed and shall diligently prosecute the same to completion within the time limit provided in the Contract Agreement, or Contract Special Provisions.

Should the Contractor begin work in advance of the notice to proceed, any work performed by him in advance of the said date of approval shall be considered as having been done by him at his own risk and as a volunteer unless said Contract is so approved.

8-2 PROGRESS SCHEDULE - Unless otherwise specified in the Contract Special Provisions, the Contractor shall, within five (5) calendar days after receiving the notice to proceed, submit to the Engineer a practicable schedule showing the order in which the Contractor proposes to carry out the work, the dates on which he will start the several salient features of the work (including procurement of materials, plant and equipment), and the contemplated dates for completing the said salient features. Contractor shall update schedule every week, or as required by the Engineer. The schedule shall be a bar chart or Critical Path Method (CPM).

At anytime that Work is not, in the opinion of the Engineer, proceeding in accordance with the schedule a revised schedule may be required. When so requested the revised schedule shall be submitted to the Engineer within three (3) calendar days. No progress payment will be made for any work until a revised schedule, satisfactory to the Engineer, has been submitted.

8-3 TEMPORARY SUSPENSION OF WORK - In the event the Engineer shall determine that the work or any portion of the work is not proceeding in accordance with the Contract Documents or any applicable laws, rules, or regulations, the Engineer may order the cessation of further work, either in part or total, until the work proceeds in compliance with such requirements. All delays in the work occasioned by such stoppage shall not relieve the Contractor of any duty to perform the work or serve to extend the time for its completion. Any and all necessary corrective work done in order to comply with the plans and specifications shall be done at no cost to the City.

The Engineer shall also have authority to suspend the work wholly or in part for such period as he may deem necessary, due to unsuitable weather, or to such other conditions as are considered unfavorable for the suitable prosecution of the work. Such temporary suspension of work will be considered as justification for time extensions to the contract in an amount equal to the delay, as determined by the Engineer to the current controlling operation of work.

The Engineer may also, temporarily suspend the work upon the written request of the Contractor and upon just showing in writing by the Contractor that such request is reasonable and necessary due to delays beyond the Contractor's control and further provided that there is no resulting increase in costs to the City.

In the event that a suspension of work is ordered as provided in this section, the Contractor, at his expense, shall do all work necessary to provide a safe, smooth and unobstructed passageway through the construction area for use by public, pedestrian and vehicular traffic, during the period of such suspension. Should the Contractor fail to perform the work as specified, the City may perform such work and the cost thereof will be charged against the Contractor and will be deducted from monies due or to become due the Contractor under the Contract.

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 those days are working days within the meaning set forth by Section 8-9, "Time of Completion."

The Contractor shall not be entitled to any claim for additional time or compensation for any delays due to any suspension lawfully ordered by a duly authorized State, Federal or other officer having jurisdiction of safety, health, labor or environmental statute violation.

8-4 TERMINATION OF CONTROL - The failure of the Contractor to commence with the work in accordance with the City's "Notice to Proceed" or to perform any covenant or condition contained in the Contract documents within the time period specified shall constitute a material breach of this Contract entitling the City to terminate the Contractor's control unless the Contractor applies for, and receives, an extension of time in accordance with Section 8-9, "Time of Completion," of these General Provisions.

Failure to supply adequate working force, or material of proper quality, or failure to comply with Section 10262 of the State Contract Act, or in any respect to prosecute the work with the diligence and force specified by the Contract, is grounds for termination of the Contractor's control over the work and for taking over the work by the City as provided in the State Contract Code.

Upon receiving notice from the Engineer of such termination of the Contractor's control, the Contractor shall discontinue said work, or such parts of it as the Engineer may designate. Upon such termination, the Contractor's control shall terminate and thereupon the City Council or its duly authorized representative may take possession of all or any part of the Contractor's materials, tools, equipment, and appliances, and plant. The City may buy such additional materials and supplies; or may employ other parties or workmen to carry the Contract to completion. The City may substitute other machinery or materials and purchase the materials contracted for, in such manner as the City may deem proper.

In the event of such termination, all money due the Contractor or retained under the terms of his Contract shall be forfeited to the City. The Contractor and his sureties will be credited with any surplus remaining, if any, after subtracting all costs incurred by the City to complete the work. Any cost in excess of the amount retained by the City will be charged against the Contractor and his sureties, who will be liable therefore. Such forfeiture will not release the Contractor or Contractor's sureties from liability for failing to fulfill the Contractor's obligations under the Contract.

Should the Contractor's control of the work be terminated, or if the Contractor abandons the work, and the Contract work is completed in conformance with the provisions of Section 10255 of the State Contract Act, any dispute concerning the amount to be paid to the Contractor or the Contractor's surety, or to be paid to the City by the Contractor or the Contractor's surety, under the provisions of Section 10258 of the State Contract Act; shall be subject to arbitration in accordance with the provisions of Section 10, "Claims and Protests by the Contractor," of these General Provisions.

8-5 RIGHT OF WAY DELAYS - If through the failure of the City to acquire or clear rights of way, except for utility delays, the Contractor sustains loss which could not have been avoided by the judicious handling of forces, equipment, supplies and plant; the Contractor shall upon written request be entitled to an amount as the Engineer may find to be fair and reasonable compensation for such part of the Contractor's actual loss as, in the opinion of the Engineer, was unavoidable. Any such compensation will be made in accordance with Section 9-3, "Extra Work," of these General Provisions, and as modified herein.

Actual loss shall be understood to include no items of expense other than idle time of rental equipment and the cost of extra moving of equipment, with no markup in any case for overhead or profit.

If performance of the Contractor's work on the current controlling operation is delayed as the result of the failure of the City to acquire or clear such right of way, except for utility delays, an extension of time determined pursuant to the provisions of these specifications will be granted upon written request. The Engineer shall make the determination on the number of additional working days to be granted.

The current controlling operation or operations as used in the above paragraph is to be construed to include any feature of the work, considered at the time by the Engineer, which if delayed will delay the time of completion of the Contract.

8-6 CONTRACT CHANGES, CHANGE ORDERS

8-6.1 General - A Contract Change Order is a written order from the Engineer to the Contractor, covering changes in the plans or specifications, or quantities, within the scope of the project, and establishing the basis of payment and time adjustments for the work affected by such changes.

The City reserves the right to delete any bid item in its entirety from the contract at no cost to the City. The City also reserves the right to make such alterations, deviations, additions to or deletions from the drawings and specifications, including the right to increase or decrease the quantity of any item or portion of work or to omit any item or portion of the work, and to require such changes in the work as are determined by the Engineer to be necessary or advisable for proper completion or construction of the entire work contemplated.

The City may change the Contract Plans, Specifications, character of the work, or quantity of work without adjustment of the Contract Unit Bid Prices provided the total arithmetic dollar value of all such changes, both additive and deductive, does not exceed twenty-five (25) percent of the total Contract Price. Should it become necessary to exceed this limitation, the Contractor and City shall have the right to negotiate a change in Contract Unit Prices of those Bid

Items for which the increase or decrease in the value of the Bid Item exceeds twenty-five (25) percent of the total contract price.

8-6.2 Change Orders - Changes will be set forth by Contract Change Orders. If the work to be done or change to be made causes an increase or decrease in the Contractor's cost of performance of the Contract, an equitable adjustment may be made as determined by the Engineer. The Contract Change Order will specify the payment to be made or credit to be taken and adjustment of the Contract time, if any. Payment in accordance with the terms and conditions set forth in a Contract Change Order shall constitute full compensation for all work included therein or required thereby. Contractor's attention is directed to Section 9-3, "Extra Work," of these General Provisions.

Contractor shall proceed with the ordered work, unless another starting date is specified. If the Contractor agrees with the terms and conditions of the Contract Change Order, he shall indicate his acceptance by signing the original copy and returning it the Engineer within five (5) working days. The five-(5) working days shall commence from the date of issuance of the Change Order by the Engineer. If the Contractor disagrees with the terms and conditions of such Contract Change Order, he shall proceed with the ordered work and shall submit a written protest in accordance with Section 8-6.3, "Protest Procedure," of these General Provisions. Should the Contractor fail to file a timely protest pursuant to said Section 8-6.3, the Contract Change Order shall be deemed as approved by the Contractor and shall take full effect.

Prior to issuing a Contract Change Order, the Engineer may request that the Contractor submit a proposal covering the proposed changes. The request will include a description of the work or revised drawings or specifications reflecting the changes proposed to be ordered. Within 10 calendar days after receiving the request, the Contractor shall submit his proposal to the Engineer, including any claim for extension of time and any and all compensation that may be necessary as a result of performing the changes. If the Engineer decides not to issue a Contract Change Order after requesting a proposal from the Contractor, the Contractor will be notified of such decision in writing. No additional compensation shall be allowed for submitting a proposal.

The Engineer may, in writing, order the Contractor to proceed with the work prior to the Contractor's receipt of a Contract Change Order therefor. In such case, the Engineer will as soon as practicable issue a Contract Change Order for the work and the provisions of Section 10, "Protest and Claims by Contractor," shall be fully applicable to such subsequently issued Contract Change Order. The Contractor shall keep full and complete records of the cost of the ordered work until the method of compensation is determined and the Contract Change Order is received, and shall permit the Engineer to have access to such records. A Contract Change Order shall supersede any previously issued written order covering the same work.

8-6.3 Protest Procedure - Should the Contractor disagree with any terms or conditions set forth in a Contract Change Order he shall submit a written protest to the Engineer within five (5) calendar days after the receipt of such Contract Change Order. The date of receipt the Contract Change Order shall be the date the change order was delivered to the Contractor's on site representative or the date the change order was faxed to the Contractor's primary office, whichever is earlier.

The protest shall state the points of disagreement, Contract references, quantities, and costs involved. The Engineer shall consider and investigate such protest. The Engineer shall notify the Contractor, in writing, within thirty (30) calendar days following the date of receipt of the Contractor's written protest. The Engineer's decision thereon shall be conclusive and binding against both parties to the Contract, except in the case of gross error. If a written protest is not submitted, adjustment of the Contract time and payment will be made as set forth in the Change Order and shall constitute full compensation for all work included therein or required thereby. A change order, not protested within the time limits specified, shall be deemed a fully executed Contract Change Order. Not signing a Change Order does not constitute a valid protest by the Contractor.

When the protest concerning a Contract Change Order relates to compensation, the Contractor shall keep full and complete records of the cost of such work and shall permit the Engineer to have such access thereto as may be necessary to assist in the determination of the compensation payable for such work.

When the protest concerning a Contract Change Order relates to the adjustment of Contract time for the completion of the work, the time to be allowed therefor will be determined as provided in the Contract Change Order.

8-6.4 Changes Requested by the Contractor - Changes requested in the plans and specifications shall be made in writing. Approved changes requested by the Contractor shall be made by change orders at a reduction in cost or at no

additional cost to the City. Nothing herein shall be construed as granting a right to the Contractor to demand acceptance of such changes.

8-6.5 Value Engineering Change Proposals (VECP)

8-6.5.1 General - This section applies to Contractor developed value engineering change proposals (VECPs) that:

1. Require a change to the existing Contract to implement.
2. Reduce the Contract price without impairing essential functions or characteristics.
3. Will not have an adverse financial impact on the City when the costs of operating and maintenance through the life cycle of the item are considered.
4. Are not based solely on changes in deliverable quantities.

The Contractor will share in the net Contract savings realized from accepted VECPs.

8-6.5.2 Definitions

Gross Savings: The difference between Contractor's estimated cost of performing the work in accordance with the existing requirements and Contractor's estimated cost of performing work in accordance with the proposed change. The cost of performing work may include overhead but not profit.

Contractor Development and Implementation Costs: Reasonable costs incurred by the Contractor in developing, testing, preparing, and submitting the VECP and costs incurred by the Contractor to make contractual changes required by City acceptance of the VECP.

Net Savings: Gross savings less Contractor Development and Implementation Costs.

City Costs: Reasonable costs incurred by the City for evaluating and implementing the VECP, such as analyzing, testing, and redesign, where required. Does not include normal administrative costs of processing the VECP.

8-6.5.3 Contractor Request - After Notice to Proceed, Contractor may request a preliminary determination from the City that the proposed VECP does not impair an essential function or characteristic, and that a formal VECP **may** be accepted. Prior to Notice to Proceed, the City will not comment on any VECP.

A preliminary request should be submitted prior to any significant expenditure of time or effort to develop a VECP. Requests must be in writing and sufficiently detailed to enable a city determination.

The Contractor shall have the right to withdraw, in whole or in part, any VECP at any time prior to acceptance by the City

8-6.5.4 Documentation - The following information shall be submitted by the Contractor with each VECP:

- 1) Description of existing Contract requirements.
- 2) Description of proposed change
- 3) Discussion of differences between existing requirements and the proposed change. Give advantages and disadvantages of each, justify any changes to function or characteristics, and give effect of the change on performance of the item.
- 4) Analysis. Identify and describe each part of the existing requirements that must be changed to implement this VECP, and recommend how to make such change.
- 5) Life-Cycle Cost Effects. State the estimated effect of the proposed change on cost of operating and maintenance throughout the life cycle of the item.
- 6) Time for Implementation of this VECP. State the latest time for acceptance of this VECP by the City to obtain maximum cost reduction during remainder of Contract.
- 7) Time of Completion. State the effect on Contract completion if this VECP is accepted.
- 8) Detailed estimate of the cost of performing the work in accordance with the Contract requirements.
- 9) Detailed estimate of the cost of performing the work in accordance with proposed Contract change.
- 10) Gross Savings to the Contractor.
- 11) Implementation Costs

- 12) Estimated City Costs.
- 13) Estimated Net Savings

8-6.5.5 City Review - Until a VECP is accepted by the City and an implementing change order is issued by the Engineer and executed by the Contractor, the Contractor shall perform in accordance with the existing Contract.

The Engineer will evaluate the VECP. Final determination of the effect of the proposed change on essential functions and characteristics, of the effect of the proposed change on performance of the item, and of the life cycle costs and City implementation costs will be made by the Engineer.

The Engineer will notify the Contractor of the status of the VECP within (15) working days after receipt. If additional time is required, or additional information or data is needed the Engineer will notify the Contractor within the fifteen-(15) day period.

If the formal VECP is not accepted, the Engineer will notify the Contractor in writing. The City will not be liable for any delay in acting upon any VECP proposal submitted.

8-6.5.6 Acceptance by City - The City may accept or reject, in whole or in part, any VECP submitted. Acceptance will be by Contract Change Order.

The decision of the Engineer to accept or reject, in whole or in part, any VECP under this Contract, shall be final and shall not be subject to protest.

If a VECP submitted by the Contractor is not accepted, the Contractor will not be entitled to an extension of time or to any other compensation for the effort expended in developing and submitting the VECP.

8-6.5.7 Adjustment in Contract Price - If a VECP submitted by the Contractor is accepted, the Contract price will be reduced by an amount equal to 50% of Net Savings plus 50% of actual City Costs, expressed by the formula:

$$\text{Reduction} = 0.5 (\text{Net Savings}) + 0.5 (\text{City Costs})$$

8-6.5.8 Use of VECP Documents - The City reserves the right to duplicate, use, and disclose any part of a VECP or any part of the supporting data submitted by the Contractor

8-7 EMERGENCY WORK

8-7.1 During Working Hours - In case of an emergency which threatens loss or injury of property, and/or safety of life during working hours, the Contractor shall act, without previous instructions from the City, as the situation may warrant. He shall notify the Engineer of the emergency and the action taken immediately thereafter. Any compensation claimed by the Contractor, together with substantial documents in regard to expense, shall be submitted to the Engineer within (five) 5-calendar days after the emergency. Compensation, if allowed, will be paid for as extra work.

8-7.2 Outside of Working Hours - Whenever in the opinion of the City there shall arise, outside of the regular working hours, an emergency involving a danger or potential danger to public, the City's forces may handle such emergency work if the Contractor fails to **immediately** respond to an emergency call out from the City. If such emergency arises out of or is the result of operations by the Contractor, the cost of the corrective measures will be billed to the Contractor and deducted from progress payments. The charge to the Contractor per City response shall be \$500.00 or actual costs of labor, equipment and materials plus a twenty-(20) percent administrative charge, whichever is greater.

8-7.3 By City Forces - The performance of any emergency work by City forces will not relieve the Contractor of any of his responsibilities, obligations, or liabilities under the Contract. This provision shall not relieve the Contractor from monitoring and maintaining public safety at all times.

8-8 WORKING HOURS - Without prior approval of the Engineer, and except for emergency work and traffic safety work, work or activity of any kind shall be limited to the hours from 7:30 a.m. to 6:00 p.m. Monday through Friday. Work on weekends, when approved by the Engineer, shall not commence prior to 9:00 a.m. and shall not continue beyond 5:00 p.m.

Work in excess of eight hours per day, on Saturdays, on Sundays, or on City holidays, requires prior consent of the Engineer and is subject to Cost of Overtime Construction Inspection plus a twenty-(20) percent administrative charge.

CITY HOLIDAYS ARE:

New Year's Day	(January 1 st)
Martin Luther King Day	(3 rd Monday in January)
President's Day	(3 rd Monday in February)
Memorial Day	(Last Monday in May)
Independence Day	(July 4 th)
Labor Day	(1 st Monday in September)
Columbus Day	(2 nd Monday in October)
Veteran's Day	(November 11 th)
Thanksgiving Day	(4 th Thursday in November) and the Friday after
City Furlough Recess	(December 24 th through January 1 st of the following calendar year)

Any holiday falling on a weekend day shall be observed either on the Friday before or Monday after. No work shall be performed on these days without prior approval of the City.

8-9 TIME OF COMPLETION - The Contractor shall complete all work called for under the Contract within the number of days set forth in the Contract Special Provisions, notwithstanding any additional working days added by virtue of Contract Charge Order. Completion of contract work is defined as final completion of all items listed in the bid schedule and any issued contract change orders for the project, including punch list work. Completion of contract work is not achieved upon substantial completion, beneficial use, occupancy, or possession of any part or all of the project.

Contract working days shall continue to be counted for the purpose of determining time of completion and liquidated damages until final completion of the contract's entire scope of work, including punch list work.

Failure of the City to insist upon the performance of any covenant or condition within the time period specified in the Contract documents shall not constitute a waiver of the Contractor's duty to complete performance within the designated periods unless the waiver is in writing.

The City's agreement to waive a specific time provision or to extend the time for performance shall not constitute a waiver of any other time provisions contained in the Contract documents.

Failure of the Contractor to complete performance promptly within the additional time authorized in the waiver or extension of time agreement shall constitute a material breach of this Contract entitling the City to terminate the Contract.

A working day is defined as any day, except as follows:

- 1) Saturday, Sundays or City Holidays; or
- 2) Days on which the Contractor, by inclement weather or conditions resulting immediately therefrom and adverse to the current controlling operation or operations, as determined by the Engineer, is prevented from proceeding with at least 75 percent of the normal labor and equipment force engaged on that operation or operations for at least 60 percent of the total daily time being currently spent on the controlling operation or operations.

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 shall be allowed three (3) Calendar 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.

Except during temporary suspensions of work the Engineer will furnish the Contractor a weekly statement showing the number of:

- 1) Working days charged to the Contract for the preceding week, and
- 2) Working days of time extensions approved, and
- 3) Working days originally specified for the completion on the Contract, and
- 4) The extended date for completion thereof.

Failure of the Engineer to provide the Contractor with a statement or statements of working days shall not in and of itself be considered cause for an extension nor extend the required completion date of the work under the Contract.

PUNCH LIST ITEMS

Upon issuance of a punch list by the Engineer, Contractor shall complete the items thereon within thirty (30) working days. Failure to commence the work, or failure to complete the work within the time specified without supplying an adequate work force and making a diligent effort and continued progress shall constitute a material breach of contract and shall entitle the City to terminate the Contractor's control as specified in Section 8-4, "Termination of Control." The Contractor shall forfeit a portion or all of the money due or retained as specified in said Section 8-4.

8-10 LIQUIDATED DAMAGES - In accordance with Section 53069.85 of the Government Code, it is agreed by the parties to the Contract that time is of the essence in the completion of this work and that in case all the work called for under the Contract is not completed before or upon the expiration of the time limit as set forth in the Contract, damage will be sustained by the City. It is further agreed by the parties to the Contract that it is impracticable to determine the actual damage which the City will sustain in the event of and by reason of such delay; and it is therefore agreed that the Contractor will pay to the City the sum set forth herein, per day for each and every calendar day's delay beyond the time required to complete the work. The Contractor agrees that the City may deduct the amount thereof from any money 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 within the number of Contract days specified, the Engineer shall have the right to increase the number of Contract days, or not, as may be deemed best to serve the interests of the City. Should the Engineer elect to extend the number of working days required to complete the work, he shall further have the right to charge to the work all or any part, as he may deem proper, of the actual cost of engineering, inspection, superintendence and other overhead which the City incurred during the period of such extension.

Unless such liquidated damages are specified in the Contract Special Provisions differently, the amount per calendar day shall be as follows:

Amount of Contract	Liquidated Damages Per Day
Less than \$50,000	\$ 250.00
\$ 50,000 to \$ 99,999.99	\$ 500.00
\$ 100,000 to \$ 499,999.99	\$ 750.00
\$ 500,000 to \$ 999,999.99	\$1,000.00
\$1,000,000 and Over	\$1,500.00

The Contractor will be granted an extension of time and will not be assessed a penalty or the cost of engineering and inspection for any portion of the delay in completion of the work beyond the time named in the Contract for the completion of the work when delays are caused by: acts of God; a public enemy; labor strikes; shortage of materials; freight embargoes; or for fire or flood not caused or preventable by the Contractor, subject to the provisions and provided the Contractor notifies the Engineer in writing of the causes of the delay within five (5) calendar days from the beginning of any such delay. The Engineer shall ascertain the facts and the extent of the delay, and his findings and action 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 he has diligently made every effort to obtain such materials from all known sources within reason and further proof in the form of supplementary progress schedules, that the inability to obtain such 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. Only the physical shortage of material will be considered under these provisions as a cause for extension of time. No consideration will be given to any claim that material could not be obtained at a reasonable, practical, or economical cost or price.

If the Contractor is delayed in completion of the work by reason of changes made by any act of the Engineer 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 such extension of time; provided that the Contractor shall notify the Engineer in writing of the causes of delay within five (5) calendar days from the beginning of any such delay. The Engineer shall ascertain the facts and the extent of the delay, and his findings and actions 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 period of delay in completion of the work in excess of that provided for herein. Excusable delays shall not entitle Contractor to additional compensation. The sole remedy of the Contractor shall be to seek an extension of time.

8-11 COMPLETION OF WORK/CITY COUNCIL ACCEPTANCE - When the Engineer or his authorized representative has made the final inspection and determines that the Contract has been completed in all respects in accordance with the plans and specifications, and other Contract Documents, the Engineer will recommend that the City Council formally accepts the work as complete. Immediately upon and after such acceptance by the Council, the Contractor will be relieved of the duty of maintaining and protecting the work as a whole. The Contractor will not be required to perform any further work thereon, except as required under the warrantee provisions of the Contract or for work specifically required by the Contract provisions, such as landscape maintenance.

Except as provided for herein, the Contractor shall be relieved of his responsibility for injury to persons or damage to property, which occurs after acceptance, by the City Council. The Contractor's responsibility for injury to persons or damage to property shall fully apply to the Contractor's correction of defects; or faulty work, or other work, such as landscape maintenance, performed after acceptance by the City Council.