

# **SPECIAL PROVISIONS**

## **SECTION 1**

### **SPECIFICATIONS AND PLANS**

The work embraced herein shall be done in accordance with the City of San Jose Standard Specifications (July 1992) and the City of San Jose Standard Details (July 1992) insofar as the same may apply and in accordance with the following special provisions.

#### ***AMENDMENTS TO THE JULY 1992 STANDARD SPECIFICATIONS***

**Section 1** of the Standard Specifications (page 1-6) shall have the following paragraph added:

**1-1.278 Partnering.** - The development of team-based relationships between the Contractor and City in which: (1) trust and open communications are encouraged and expected from participants, (2) parties address and resolve issues and problems promptly and at the lowest possible level, (3) parties seek to develop solutions that are agreeable and meet the needs of everyone involved, (4) all parties have identified common goals for the partnerships and at the same time are aware of and respect each other's goals and values, and (5) parties seek input from each other in an effort to find better solutions for the problems and issues at hand, thus creating synergy in the relationship that fosters cooperation and improves the productivity of the partnership. The term is not intended to have any legal significance or to be construed as denoting a legal relationship of agency, partnership, or joint venture between the City and Contractor.

**Section 2-1.095** of the Standard Specifications (pages 2-4 and 2-5) shall be revised to read as follows:

**2-1.095 Relief of Bidders.** - After the time set for the opening of bids, no bidder shall be relieved of a bid, unless the City consents, and there shall be no change made in any bid because of a mistake. However, if such relief is not granted and the bid guarantee declared forfeit, the bidder may bring an action against the City in a court of competent jurisdiction in Santa Clara County for the recovery of the amount forfeited, without interest or costs.

The complaint shall be filed, and summons served on the Director of Public Works of the City of San Jose, within 90 days after the opening of the bid; otherwise, the action shall be dismissed.

To be relieved of its bid without forfeiture of its bid security, the bidder shall establish to the satisfaction of the City, determined in its sole and absolute discretion, that:

- (1) A mistake was made.

- (2) The Contractor gave the City written notice within five working days after the opening of the bids of the mistake, specifying in detail in the notice how the mistake occurred.
- (3) The mistake made the bid materially different than the Contractor intended it to be.
- (4) The mistake was made in filling out the bid and not due to an error in judgment or to carelessness by the Contractor in inspecting the site of the work, or in reading the plans or specifications.

Other than the above described notice to the City, no claim is required to be filed by the bidder before bringing a legal action against the City under this Section to recover a forfeited bid guarantee.

A bidder who claims a mistake and is relieved of its bid or who forfeits its bid guarantee shall be prohibited from participating in further bidding on the contract for the public work on which the mistake was claimed or security forfeited.

**Section 2-1.10** of the Standard Specifications shall be revised to read as follows:

**2-1.10 Disqualification of Bidders.** – The City may disqualify a bidder and reject the bidder’s bid for any one or more of the following causes:

1. The bidder is barred from bidding on City projects under the provisions of Chapter 4.10 of the San Jose Municipal Code.
2. More than one proposal from an individual, firm, partnership, corporation, or combination thereof under the same or different names is received; all such proposals will not be considered.
3. Evidence of collusion among bidders.
4. Lack of competency as revealed by any financial statement, as may be required by the special provisions, or by experience or plant and equipment statements submitted.
5. Lack of responsibility as shown by past work on any Public Works project for the City or any other public entity judged from the standpoint of workmanship and/or progress.
6. Incomplete work on any Public Works project for the City or any other public entity which, in the judgment of the City, might hinder or prevent the bidder from promptly completing additional work if awarded.
7. Being in arrears on any existing Public Works contract for the City or any other public entity, in litigation with the City, or having defaulted on a previous contract with any public entity.
8. Failure of the bidder to have a valid Contractor's license in the class specified in the Notice to Contractors at the time of

- bid opening, except as provided for projects where federal funds are involved as specified in Section 7-1.01.
9. Failure of the bidder to provide prices for all items in the proposal, including alternatives, or submitting an incomplete or otherwise non-responsive proposal.
  10. The bidder has engaged in any activity constituting grounds for debarment under the provisions of Section 4.10.355 of the San Jose Municipal Code.
  11. Any other ground which the Engineer determines would significantly impair the ability of the bidder to perform the proposed work. In making this determination, the Engineer may consider, without limitation, items such as any previous or current prevailing wage violations by the bidder, the number of stop notices on previous public works projects performed by the bidder, and the existence of past or current agreements with other public entities to not bid on public works projects.

*Issue Date: April 4, 2006*

**Section 3-1.01 Award of Contract** of the Standard Specifications (page 3-1) shall be revised as follows:

**3-1.01 Award of Contract** - The City will compare all proposals on the basis of the Engineer's Estimate of the quantities of work to be done.

The City, in its sole discretion, reserves the right to reject any or all proposals. If the City awards the contract, the award will be to the lowest responsive and responsible bidder whose proposal complies with all the requirements prescribed. If two (2) or more bids are the same and the lowest, the City may accept either bid it chooses in its sole discretion.

Depending upon the circumstances, the rejection of any or all proposals, or the award of a proposal, may be done by either the City Council or the Director of Public Works.

**3-1.01A Timing of Award** - If the City awards the contract, it will award the contract no earlier than five (5) working days after the opening of the proposals and no later than ninety (90) calendar days after the opening of the proposals.

If the lowest responsible bidder refuses or fails to execute the contract, the City may award the contract to the second lowest responsive and responsible bidder. Such award, if made, will be made within 105 calendar days after the opening of the proposals. If the second lowest responsible bidder refuses or fails to execute the contract, the City may award the contract to the third lowest responsive and responsible bidder. Such award, if made, will be made within 120 calendar days after the opening of the proposals. The Department of Public Works may proceed in like manner until the Director either finds a responsible and responsive bidder

willing to be awarded the contract or determines that it is not in the best interest of the City to proceed further.

The periods of time specified above within which the award of contract may be made shall be subject to extension for such further period as may be agreed upon in writing between the Director and the bidder concerned.

**3-1.01B Notice of Intended Award** - If the City intends to award a contract, the City will provide each bidder by hand delivery, fax or e-mail with a written notice indicating to which bidder it intends to award the contract. The City also will post this notice on the Public Works Bid Hotline, along with results of the bid.

**3-1.01C Protest of Bid Award** - A bidder may protest the City's proposed award of a contract. A protesting bidder shall submit its protest in writing. The protest shall provide a full and complete statement specifying in detail the ground(s) of the protest and the facts supporting the protest.

A protesting bidder shall deliver its written protest to the project manager at the address shown on the front cover of the bid specifications on or before 5 p.m. of the fifth working day following the day upon which the City issued the notice described in Section 3-1.01B.

The procedure and time limits set forth in this section 3-1.01C are mandatory and the bidders' sole and exclusive remedy in the event of protest. Failure to comply with these procedures shall constitute a waiver of any right to further pursue the protest, including filing a Government Code claim or legal proceedings.

**Section 4-1.03E** of the Standard Specifications (page 4-5) shall be revised to read as follows:

**4-1.03E Revocable Contract Items.** - Items noted as "Revocable" in the Proposal may be deleted entirely or in part or added to at the sole discretion of the City. The provisions of Section 4-1.03B, "Increased or Decreased Quantities", shall not apply to entire or partial deletion of or addition to Revocable items.

**Section 5** of the Standard Specifications (page 5-12) shall have the following paragraphs added:

**5-1.17 Partnering.** - The City and Contractor will use good faith efforts to promote the formation of a successful Partnering relationship in order to effectively complete the Contract to the benefit of both parties. The purpose of this relationship is to establish and maintain cooperative communication and to mutually resolve conflicts at the lowest responsible management level. The establishment of a Partnering relationship will not change or modify the terms and conditions of the Contract and will not relieve either party of the legal requirements of the Contract.

The City and Contractor will engage in either Formal Partnering or Informal Partnering, depending upon the size of the project.

**5-1.17A Formal Partnering.** - In Formal Partnering the City and the Contractor implement the Partnering relationship through at least one pre-construction partnering workshop conducted by an independent facilitator. The

purpose of the initial pre-construction workshop is to mutually develop a strategy for forming a successful partnering relationship. The City and Contractor may participate in additional facilitated workshops during the life of the project as they mutually agree is necessary and appropriate.

For all projects in which the engineer's estimate for the entire project prior to advertising for bids is \$10 million or more, the City and Contractor shall participate in Formal Partnering.

For all projects in which the engineer's estimate for the entire project prior to advertising for bids is \$1 million or above but less than \$10 million dollars, the Contractor may elect to require the parties to participate in Formal Partnering. The Contractor shall elect Formal Partnering by submitting a request in writing to the Engineer after approval of the Contract.

The scheduling of a partnering workshop, selection of the partnering facilitator and workshop site, and other administrative details shall be as agreed to by both parties. The parties shall use good faith efforts to schedule the initial, pre-construction partnering workshop and to select the facilitator for the workshop as soon as reasonably possible following award of the Contract where Formal Partnering is mandatory or as soon as reasonably possible following a Contractor's election to require Formal Partnering for all other projects.

The costs of Formal Partnering involved in providing the pre-construction partnering workshop, any subsequent, additional partnering workshops, and the facilitator for the partnering workshops shall be borne equally by the City and Contractor. These costs may be provided elsewhere in this Contract either as an allowance item or a specific bid item. If not, then the Engineer may issue a change order in the amount of one-half of the estimated cost of the facilitator and the partnering workshops.

The division of cost for the facilitator and partnering workshops will be made by determining the cost in conformance with the provisions in Section 9-1.03B, "Work Performed By Special Forces or Other Special Services," of the Standard Specifications, and paying to the Contractor one-half of that costs, except no markups will be allowed.

All other costs associated with Formal Partnering will be borne separately by the party incurring the costs, such as wages and travel expenses, and no additional compensation will be allowed therefor.

**5-1.17B Informal Partnering.** In Informal Partnering the City and the Contractor will implement the Partnering relationship through partnering discussions that are not conducted by an independent facilitator. The City and Contractor may participate in additional unfacilitated partnering meetings during the life of the project as they mutually agree is necessary and appropriate.

The City and Contractor will engage in informal partnering as follows: (1) on all projects in which the Engineer's estimate for the entire project prior to advertising for bids is below \$1 million, and (2) on all projects in which the engineer's estimate for the entire project prior to advertising for bids is \$1 million or above but less than \$10 million and the Contractor has not elected Formal Partnering.

**Section 7-1.01A (4)** of the Standard Specifications (page 7-5) shall be revised to read as follows:

**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 handicap, 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.”

**Section 7-1.04 Permits and Licenses** of the Standard Specifications (page 7-14) shall have the following paragraph added:

“The Contractor shall defend, indemnify, and hold harmless the City, its employees, and its agents from all legal claims, losses, actions in law or equity civil and/or criminal, arising from any and all acts, omissions, or negligence of the Contractor in violation of any permit or license issued.”

**Section 7-1.22 Provisions of Law and Venue** of the Standard Specifications (page 7-30) shall have the following paragraph added:

“All depositions, document production, mediations, arbitrations, and any other meetings will take place in the City of San Jose.”

**Section 8-1.06B** of the Standard Specifications (page 8-4) shall be added as follows:

**8-1.06B Annual Holiday Closure.** - At the option of the Engineer, the contractor may be required to suspend all work and activities during the City’s annual Holiday Closure in late December and early January of each year. No work shall be done during this suspension except such work as is necessary for the proper care and protection of work already performed, or except in case of an emergency, and in any case, only with the prior written permission of the Engineer.

This suspension of work will be at no cost to the City. Working days will not be assessed during this suspension of work.

**Section 9-1.07C** of the Standard Specifications (page 9-18) shall be added as follows:

**9-1.07C Claims Certification.** - All claims submitted by the contractor shall include the following personal certification:

“I, \_\_\_\_\_, BEING THE \_\_\_\_\_ (MUST BE AN OFFICER) OF \_\_\_\_\_ (GENERAL CONTRACTOR), DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA, AND DO PERSONALLY CERTIFY AND ATTEST THAT: I HAVE THOROUGHLY REVIEWED THE ATTACHED CLAIM FOR ADDITIONAL COMPENSATION AND/OR EXTENSION OF TIME, AND KNOW ITS CONTENTS, AND SAID CLAIM IS MADE IN GOOD FAITH; THE SUPPORTING DATA IS TRUTHFUL AND ACCURATE; THAT THE AMOUNT REQUESTED ACCURATELY REFLECTS THE CONTRACT ADJUSTMENT FOR WHICH THE CONTRACTOR BELIEVES THE OWNER IS LIABLE; AND, FURTHER, THAT I AM FAMILIAR WITH CALIFORNIA PENAL CODE SECTION 72 AND CALIFORNIA GOVERNMENT CODE 12650, ET SEQ, PERTAINING TO FALSE CLAIMS, AND FURTHER KNOW AND UNDERSTAND THAT SUBMISSION OR CERTIFICATION OF A FALSE CLAIM MAY LEAD TO FINES, IMPRISONMENT, AND/OR OTHER SEVERE LEGAL CONSEQUENCES.”

By: \_\_\_\_\_  
Title

**Section 10** of the Standard Specifications (page 10-1) shall have the following paragraphs added:

## **10-2 STORM WATER POLLUTION PREVENTION**

**Section 10-2 Storm Water Pollution Prevention.** - Storm Water Pollution Prevention will be applicable to any construction activity that involves **one acre or more of Total Area to be Disturbed**. For projects involving linear construction (such as installation of sewer pipeline and conduits), the following formula may be used to calculate the total area to be disturbed including the trenching activity:

$$\text{Total Area to be Disturbed} = [(A + B) \times C] + D + E$$

*A = Width of disturbance (including trench width)*

*B = Immediate access width*

*C = Length of pipe diameter*

*D = Areas of project-related activity (such as equipment and material storage) occur*

*E = Number of bore holes x (Bore hole diameter + 'B')*

**10-2.01 Plan Preparation and Compliance.** – The Contractor shall conform to Section 7-1.01 G, “Water Pollution,” of the City of San Jose Standard Specifications and these Special Provisions.

Within thirty (30) calendar days after execution of the contract, the Contractor shall submit a Storm Water Pollution Prevention Plan (SWPPP) and a draft of the Notice of Intent (NOI) to be filed by the City with the California State Water Resources Control Board (SWRCB). The annual permit fee(s) shall be paid by the City.

The SWPPP shall conform to Provisions in Section 7-1.01G, "Water Pollution," of the Standard Specifications, the details, operating procedures, and maintenance guidelines of the California Regional Water Quality Control Board San Francisco Bay Region's "Guidelines for Construction Projects" (Guidelines), the California Regional Water Control Board San Francisco Bay Region's "Erosion and Sediment Control Field Manual" (Manual), the project plans and these Special Provisions. Upon the Engineer's review and acceptance of the SWPPP, the SWPPP shall be deemed to fulfill the requirements set forth in Section 7-1.01G of the Standard Specifications for development and submittal of a Water Pollution Control Program.

The Notice to Proceed may be withheld until the Engineer has reviewed and accepted the SWPPP, the State Notice of Intent has been filed, and a NOI receipt letter is received from the SWRCB authorizing coverage of this project under the Construction Activity General Permit.

**10-2.02 Construction Requirements.** – The Contractor shall implement and maintain the SWPPP for the project in full compliance with the revised state regulations to control the discharge of storm water pollutants. The Contractor shall provide the monitoring or reporting required to comply with all the state regulations regarding the SWPPP for the project.

**10-2.02A Storm Water Pollution Prevention Plan.** – The SWPPP shall identify construction activities that may adversely affect the quality of storm water discharges associated with the project and shall identify water pollution control measures, hereinafter referred to as control measures, to be constructed, implemented, and maintained in order to reduce, to the maximum extent feasible, storm water discharges from the construction site both during and after construction is completed under this contract.

The Contractor shall amend the SWPPP, graphically and in narrative form, whenever there is a change in construction activities or operations which may affect the discharge of significant quantities of pollutants to surface waters, ground waters, municipal storm drain systems or when deemed necessary by the Engineer. The SWPPP shall be amended if, at any time, the implementation of the SWPPP is not effectively achieving the objective of maximum feasible reduction of pollutants in storm water discharges. Amendments shall show additional control measures or revised operations, including those in areas not shown in the initial SWPPP, which are required on the project to control water pollution effectively. Amendments to the SWPPP shall be dated and logged in the SWPPP and submitted to the Engineer within five (5) working days. Upon the Engineer's review and acceptance of the amendment, the Contractor shall implement the additional control measures or revised operations. In emergency situations that require immediate changes at the project site, the Contractor shall implement the necessary measures and notify the Engineer of the changes.

The Contractor shall give immediate notice to the Engineer of any planned changes in construction activity that may result in non-compliance with these Special

Provisions.

By the last day of each month, the Contractor shall submit an affidavit to the Engineer certifying conformance with the SWPPP. The monthly partial payment may be withheld if the affidavit is not received and accepted by the Engineer. If at any time the project is in non-compliance with the SWPPP, the Contractor shall submit a written report to the Engineer within two (2) days of identifying the non-compliance. The report shall specify the time and nature of the non-compliance and include a course of action to correct the deficiency.

The Contractor shall keep a copy of the State of California Construction Activity General Permit (SWRCB Order No. 99-08-DWQ), the SWPPP, and any approved amendments at the project site. The SWPPP shall be made available upon request of any representative of the Regional Water Quality Control Board, State Water Resources Control Board, United States Environmental Protection Agency, or any City representative. Public requests for copies of the SWPPP shall be directed to the Engineer.

**10-2.02B Erosion and Sediment Control.** – The facilities shown on the SWPPP are designed to control erosion and sediment during the Rainy Season, from October 15 to April 15. Facilities are to be operable prior to October 1 of each year (hereinafter “Rainy Season”). During the Non-Rainy Season, from April 16 to October 14 (hereinafter “Non-Rainy Season”), the Contractor shall use effective Best Management Practices (BMPs) at the project site.

- (1) Construction operations shall be carried out in such a manner that erosion and water pollution will be minimized. Contractor shall comply with state and local laws concerning pollution abatement.
- (2) Contractor shall be responsible for monitoring erosion and sediment control measures prior, during, and after storm events.
- (3) Reasonable care shall be taken when hauling any earth, sand, gravel, stone, debris, paper, or any other substance over any public street, alley or other public place. Should any material blow, spill, or track over and upon said public or adjacent private property, immediate remedy shall occur.
- (4) Inlet protection shall be installed at open inlets to prevent sediment from entering the storm drain system. Inlets not used in conjunction with erosion control are to be blocked to prevent entry of sediment.
- (5) During the Rainy Season, all paved areas shall be kept clear of earth material and debris. The site shall be maintained so as to minimize sediment-laden runoff to any storm drainage system, including existing drainage swales and watercourses.
- (6) Contractor shall install and maintain construction entrances prior to commencement of grading. All construction vehicle traffic entering onto the paved roads must cross stabilized construction entrance ways. Entrance ways may be

constructed of two-inch to six-inch drain rock, metal grating, or metal cattle-guard, or equivalent material, or may include vehicle wash stations as needed, in sufficient quantity and size to prevent tracking of mud and debris from the construction site. Any mud or debris tracked onto public streets, or onto adjacent public or private property, shall be removed immediately as required by the City.

- (7) Grading operations during the Rainy Season which leave denuded slopes shall be protected with erosion control measures immediately following grading on the slopes. If hydroseeding is not used or is not effective by October 10, then other immediate methods shall be implemented, such as erosion control blankets, blown straw, or a three-step application of 1) seed, mulch, fertilizer, 2) blown straw, and 3) tackifier and mulch.
- (8) Sanitary facilities shall be maintained on the site in a manner to prevent inadvertent discharge or leakage of sanitary wastes into the storm drain system either by placing sanitary facilities in locations that do not drain to the storm drain system or by providing secondary containment systems to capture leaked wastes.
- (9) Contractor shall provide dust control as required by the appropriate federal, state and City requirements and Section 10, "Dust Control," of the City of San Jose Standard Specifications.

The erosion and sediment control plan may not cover all the situations that may arise during construction due to unanticipated field conditions. Variations and additions may be made to the plan in the field. Notify the City Representative of any field changes.

**10-2.03 Maintenance.** – The SWPPP shall include a plan for maintenance that shall include at a minimum:

- (A) Immediate repair of damage caused by soil erosion or construction.
- (B) Inspection of sediment traps, berms, rills, gullies, and swales after each storm event and repair or cleaning as needed.
- (C) Removal of sediment from sediment traps and restoration to original dimensions when sediment has accumulated to a depth of one foot. Sediment removed from trap shall be deposited in a suitable area and in such a manner that it will not erode.
- (D) Regular cleaning of gravel bag inlet protection so that sediment depth never exceeds a maximum of three inches.

**10-2.04 Payment.** – Payments for Storm Water Pollution Prevention will be

made as follows:

- (A) When the monthly partial payment estimate of the amount earned, not including the amount earned for Storm Water Pollution Prevention, is 5 percent or more of the original contract amount, 20 percent of the contract item price for Storm Water Pollution Prevention will be included in said estimate for payment.
- (B) When the monthly partial payment estimate of the amount earned, not including the amount earned for Storm Water Pollution Prevention, is 10 percent or more of the original contract amount, 30 percent of the contract item price for Storm Water Pollution Prevention less all previous payments will be included in said estimate for payment.
- (C) When the monthly partial payment estimate of the amount earned, not including the amount earned for Storm Water Pollution, is 20 percent or more of the original contract amount, 40 percent of the contract item price for Storm Water Pollution Prevention less all previous payments will be included in said estimate for payment.
- (D) When the monthly partial payment estimate of the amount earned, not including the amount earned for Storm Water Pollution Prevention, is 50 percent or more of the original contract amount, 60 percent of the contract item price for Storm Water Pollution less all previous payments will be included in said estimate for payment.
- (E) When the monthly partial payment estimate of the amount earned, not including the amount earned for Storm Water Pollution Prevention, is 90 percent or more of the original contract amount, 90 percent of the contract item price for Storm Water Pollution Prevention less all previous payments will be included in said estimate for payment.
- (F) After acceptance of the contract pursuant to Section 7-1.17, "Acceptance of Contract," the amount, if any, of the contract item price for Storm Water Pollution Prevention in excess of 10 percent of the original contract amount will be included for payment in the first estimate made in accordance with said Section 9-1.07.

The contract lump sum price paid for Storm Water Pollution Prevention shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all the work involved in Storm Water Pollution Prevention as specified herein. Measurement and payment shall be as specified in the project's Technical Specifications.

The City will not pay for erosion and sediment control items that are required due to the Contractor's negligence, carelessness, failure to properly install controls, or failure to abide by the provisions of the SWPPP, the Standard Specifications and

these Special Provisions. The Contractor shall install such work at no expense to the City.

All penalties from regulatory agencies attributable to the Contractor as a result of the Contractor's negligence, carelessness, failure to properly install controls, or failure to abide by the provisions of the SWPPP, the Standard Specifications and these Special Provisions shall be paid at Contractor's sole expense.

If the contract is extended to the next Rainy Season due to unanticipated field conditions and not due to Contractor's fault, payments will be made under a revocable item. Measurement and payment shall be as specified in the project's Technical Specifications.

**Section 20-5**, "Erosion Control," of the Standard Specifications (page 20-5) shall have the following added:

**20-5.06 Temporary Erosion and Sediment Control.** – Temporary erosion and sediment control within the total project shall conform to the Provisions in Section 20-5, "Erosion Control," of the Standard Specifications, these Special Provisions and the Plans.

The Contractor's attention is directed to Section 10-2, "Storm Water Pollution Prevention," of these Special Provisions.

Temporary erosion and sediment control work shall consist of applying erosion control materials to embankment slopes, excavation slopes and other areas designated on the plans, installing silt fence, inlet protection, gravel bags, headwall protection and stabilized construction entrance ways.

**20-5.07 Measurement and Payment.** – Full compensation for "Temporary Erosion and Sediment Control" shall be considered as included in the contract lump sum price for Storm Water Pollution Prevention (Section 10-2 of these Special Provisions) and no separate payment shall be made therefore.