

**DATE:** May 20, 2008

**TO:** Mayor and City Council

**FROM:** Director of Public Works

**SUBJECT:** Adoption of the 2006 State Standard Plans and Specifications with City Amendments and the 2008 City Standard Details, and Authorization for the Director of Public Works to Make Updates to the City Standard Details and Adopt Future State Standard Plans and Specifications, as Necessary

### **RECOMMENDATION**

That Council adopts the attached resolution adopting the 2006 State Standard Plans and Specifications with City Amendments and the 2008 City Standard Details; and authorizing the Director of Public Works to update the City Standard Details and adopt future State Standard Plans and Specifications, as necessary.

### **BACKGROUND**

Since 1977, staff has presented to Council for adoption about eight editions of the State Standard Plans and State Standard Specifications. These documents form the boiler plate or basic frame work for all public work contracts and reduce the amount of specification writing needed for each project. Many other cities also use Caltrans documents for their public works contracts. Over the years, Council has also adopted various updates to the City Standard Details, which are referenced in each contract and development approval. Council last acted on the State Standard Plans, State Standard Specifications, and City Standard Details on May 27, 2003. In all cases, Council adopted these technical engineering specifications without changes or comment.

Caltrans published a new edition in May 2006, since the last Council action. There has been at least one required change in the state and federally-legislated Americans with Disabilities Act (ADA) standard detail for accessible ramps. Additionally, there have been numerous technological developments with relevance to City Capital Improvement Program (CIP) projects and private developments that have yet to be officially reflected in the adopted Standard Details and Specifications.

### **DISCUSSION**

Because the State Standard Specifications are written for Caltrans projects and not cities, it has always been necessary to modify and amend the State Standard Specifications to make them applicable to City requirements and procedures. All of the amendments, additions, and deletions to the State Standard specifications are carried over from the previous resolution with some minor corrections, except for Sections 1-1.25, 3-1.025, 3-1.03, 7-1.12, and 9-1.04. Section 1-1.25, "Laboratory," is amended to

redefine the reference to the name. Section 3-1.025, "Insurance Policies," is amended to delete the requirements that are different from City's insurance policies. Section 3-1.03, "Execution of Contract," is amended to change the requirement from mandatory to optional in submitting the insurance policies with the submission of contract. Section 7-1.12, "Indemnification and Insurance," is amended to delete the reference to insurance policies. Section 9-1.04, "Notice of Potential Claim," is amended to refer the requirements to existing City amendment and the applicable Public Construction Act for Local Agencies in lieu of State Contract Act.

In the past, staff brought every edition and technical change to these documents to Council for adoption. Each action identified a revision or modification to a section of the State Standard Plans and Specifications, covering hundreds of pages in each document and requiring a significant amount of staff time for preparation of reports. Because of continual changes in technology and new developments in construction materials and methods, with significant cost and safety implications, immediate revision of the Standard Specifications and Details is sometimes necessary. It is impractical to seek Council action every time a technical change or development transpires.

Changes affecting the Building Code, State and Federal laws, and mandates, such as those made by the ADA, often require immediate implementation, necessitating revision of the City's Standard Details and Specifications to limit City liability. In addition, City contractors and consultants with more experience in specific areas have advised staff of better and less-costly methods and materials than those specified in prior versions of the details and specifications.

In an effort to simplify the process for adoption and use, staff is recommending that Council authorize the Director of Public Works in consultation with the City Attorney to adopt future editions of the State Standard Plans and Standard Specifications with City Amendments, and update the City Standard Details from time to time, to keep up with changing state and federal regulations, design and construction practices, public safety, and technology. Staff believes the City stands to benefit if the Director of Public Works is granted this authority.

In addition, for the latest changes and to facilitate the development, design, and construction of new City development and the City's CIP, staff recommends that Council adopts with City Amendments the 2006 State Standard Plans and Standard Specifications for use on public works construction projects; and adopts the 2008 City Standard Details. Council will continue to approve, as part of the advertisement of each project, the engineering plans, and specifications, including the applicable sections of the City Standard Details, Standard Plans, and Standard Specifications.

## **PUBLIC CONTACT**

Not applicable.

**FISCAL IMPACT**

There will be some efficiency and savings in staff time associated with the review and reporting to Council of changes to City Standard Details, State Standard Plans, Standard Specifications, and new developments in construction materials and methods as they occur. These savings will translate into savings to the General Fund.

Prepared by:



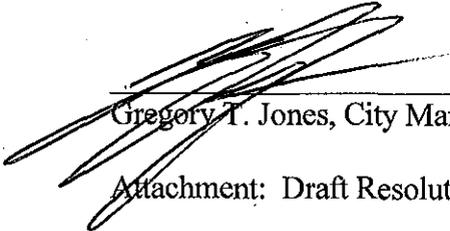
Morad Fakhrai, Deputy Dir. of Public Works

Recommended by:



Robert A. Bauman, Director of Public Works

Approved by:



Gregory T. Jones, City Manager

Attachment: Draft Resolution

**DRAFT** NH

5/1/08

HAYWARD CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_

Introduced by Council Member \_\_\_\_\_

RESOLUTION ADOPTING STANDARD PLANS, SPECIFICATIONS, AND DETAILS FOR PUBLIC WORKS CONSTRUCTION FOR THE CITY OF HAYWARD, AUTHORIZING THE DIRECTOR OF PUBLIC WORKS TO MAKE UPDATES TO THE CITY STANDARD DETAILS AND ADOPT FUTURE STATE STANDARD PLANS AND SPECIFICATIONS, AND REPEALING RESOLUTION NO. 03-079 AND ALL OTHER RESOLUTIONS IN CONFLICT HEREWITH

WHEREAS, by Resolution No.03-079, the City Council of the City of Hayward established the 2002 editions of the State of California Department of Transportation Standard Plans, Standard Specifications, and the City of Hayward Standard Details, 2002, as the standards for public works construction in the City of Hayward; and

WHEREAS, the City of Hayward Standard Details have now been updated and it is appropriate for the City to adopt that document along with the 2006 editions of said standard plans and specifications, with the changes noted below.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward does hereby adopt by reference that certain document entitled "Standard Plans, State of California Department of Transportation, May 2006," and "Standard Details, City of Hayward 2008," copies of which are on file in the office of the City Clerk, as the standard plans and standard details for public works construction in the City of Hayward.

BE IT FURTHER RESOLVED that the City Council does hereby adopt by reference that certain document entitled "Standard Specifications, State of California Department of Transportation, May 2006," a copy of which is on file in the office of the City Clerk, as the standard specifications for public works construction in the City of Hayward, with the following amendments, additions, and deletions. Title and section numbers are those of the 2006 State of California Department of Transportation Standard Specifications except for titles and numbers for new sections or for amended titles.

**SECTION 1  
DEFINITIONS AND TERMS**

Sec. 1-1.13 DEPARTMENT [Amendment]. The Department of Public Works of the City of Hayward.

Sec. 1-1.15 DIRECTOR [Amendment]. The Director of Public Works of the City of Hayward.

Sec. 1-1.18 ENGINEER [Amendment]. The City Engineer of the City of Hayward, acting either directly or through properly authorized agents, such agents acting within the scope of the particular duties entrusted to them.

Sec. 1-1.24 HIGHWAY [Amendment]. The streets of the City of Hayward, which shall include the total right-of-way or area which is reserved for and secured for use in constructing the roadway or street and its appurtenances.

Sec. 1-1.25 LABORATORY [Amendment]. The Division of Engineering Services - Materials Engineering and Testing Services and Division of Engineering Services - Geotechnical Services of the Department of Transportation of the State of California or the City of Hayward testing laboratory or laboratories authorized by the Engineer to test materials and work involved in the contract.

Sec. 1-1.255 LEGAL HOLIDAYS [Amendment]. For the purpose of calculating working days, legal holidays are: January 1, the third Monday in January, February 12, the third Monday in February, the last Monday in May, July 4, the first Monday in September, September 9, the second Monday in October, November 11, Thanksgiving Day, and December 25. When a legal holiday falls on a Sunday, the following Monday shall be a legal holiday.

Sec. 1-1.26 LIQUIDATED DAMAGES [Amendment]. The amount prescribed in the special provisions, pursuant to authority of California Government Code Section 53069.85, to be paid to the City of Hayward or to be deducted from any payments due or to become due to the contractor for each day's delay in completing the whole or any specified portion of the work beyond the time allowed in the special provisions.

Sec. 1-1.275 OFFICE OF STRUCTURE DESIGN [Amendment]. The office of the City Engineer of the City of Hayward. When the specifications require working drawings to be submitted to the Office of Structure Design, the drawings shall be submitted to: Office of City Engineer, 777 B Street, Hayward, CA 94541, Telephone (510) 583-4731.

Sec. 1-1.29 PLANS [Amendment to the third paragraph, "Standard Plans," only.] Standard Plans - The Standard Plans of the Department of Transportation dated May 2006 and the

Standard Details of the City of Hayward dated 2008. The Standard Details of the City of Hayward shall govern over both the State of California Department of Transportation Standard Plans and Standard Specifications.

Sec. 1-1.37 SPECIAL PROVISIONS [Amendment]. The special provisions are specific clauses setting forth conditions or requirements peculiar to the work and supplementary to these standard specifications. The Department of Transportation publications entitled "Labor Surcharge and Equipment Rental Rates" and "General Prevailing Wage Rates" are to be considered as part of the special provisions.

Sec. 1-1.40 CALIFORNIA PUBLIC CONTRACT CODE. STATE CONTRACT ACT [Amendment]. The provisions of the California Public Contract Code and of other applicable laws form and constitute a part of the provisions of this contract to the same extent as if set forth herein in full, except for those laws which are expressly made inapplicable herein, and except to the extent those laws are modified herein. The State Contract Act, being Chapter 1 (commencing with Section 10100) of Part 2, Division 2, California Public Contract Code, does not form or constitute any part of this contract. Section 20162 of the Public Contract Code does not apply to work performed by City work forces.

Sec. 1-1.49 ADDITIONAL WORDS AND PHRASES [Addition]. Any reference within the specifications to the State of California or a state agency, office, or officer shall be interpreted to refer to the City or its corresponding agency, office, or officer.

Sec. 1-1.50 STANDARD SPECIFICATIONS [Addition]. The Standard Specifications, State of California Department of Transportation, May 2006.

## SECTION 2 PROPOSAL REQUIREMENT AND CONDITIONS

Sec. 2-1.054 REQUIRED LISTING OF PROPOSED SUBCONTRACTORS [Amendment]. In accordance with the requirements of the Subletting and Subcontracting Fair Practices Act of the Public Contract Code, commencing with Section 4100, each bidder shall list in his or her proposal the name and the location of the place of business of each subcontractor who will perform work or labor or render service to the prime contractor in or about the construction of the work or improvement, or a subcontractor licensed by the State of California who, under subcontract to the prime contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of 1 percent of the prime contractor's total bid. Said list shall include a description of the portion of the work which will be done by each subcontractor. The prime contractor shall list only one subcontractor for each portion as is defined by the prime contractor in his or her bid.

A sheet for listing the subcontractors, as required, is included in the proposal.

Sec. 2-1.07 PROPOSAL GUARANTEE [Amendment].

The first paragraph of section 2-1.07 "Proposed Guarantee," is amended to read:

All bids shall be presented under sealed cover and accompanied by one of the following forms of bidder's security:

Certified or cashier's check, or a bidder's bond duly executed by a responsible corporate surety authorized to issue such bonds in the State of California, made payable to the City of Hayward.

Sec. 2-1.10 DISQUALIFICATION OF BIDDERS [Amendment]. More than one proposal from an individual, firm, partnership, corporation, or combination thereof under the same or different names will not be considered. If it appears that the same individual, firm, partnership, corporation, or combination thereof is interested in more than one proposal for the work contemplated, all such proposals shall be rejected. If there is reason for believing that collusion exists among the bidders, any or all proposals may be rejected. Proposals in which the prices obviously are unbalanced may be rejected. Being listed as a subcontractor does not constitute interest in bid.

Sec. 2-1.105 PREVIOUS DISQUALIFICATION, REMOVAL OR OTHER PREVENTION OF BIDDING [Amendment]. A bid may be rejected on the basis of a bidder, any officer of such bidder, or any employee of such bidder who has a proprietary interest in such bidder, having been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local project because of a violation of law or a safety regulation.

Sec. 2-1.108 COMPLIANCE WITH ORDERS OF THE NATIONAL LABOR RELATIONS BOARD [Deletion]. This section is based on requirements of the State Contract Act and is not a part of these specifications.

Sec. 2-1.11 INELIGIBILITY TO CONTRACT [Deletion]. This section is based on requirements of the State Contract Act and is not a part of these specifications.

SECTION 3  
AWARD AND EXECUTION OF CONTRACT

Sec. 3-1.01 AWARD OF CONTRACT [Amendment].

The right is reserved to reject any and all proposals. The right is also reserved to waive any informalities or irregularities in bids received.

The award of the contract, if it be awarded, will be to the lowest responsible bidder who complies with all the requirements prescribed herein. Such award, if made, will be made within

45 days after the opening of the proposals. This period 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 Department and the bidder concerned.

All bids will be compared on the basis of the Engineer's Estimate of the quantities of work to be done.

**Sec. 3-1.02 CONTRACT BONDS [Amendment].**

The first two paragraphs of Section 3-1.02 "Contract Bonds," are amended to read:

Contractor shall provide, at the time of the execution of the contract agreement for the work, and at his or her own expense, a surety bond in an amount equal to at least 100 percent (may be reduced to 50 percent on projects greater than \$5 millions) of the contract price as security for the faithful performance of said agreement. Contractor shall also provide, at the time of the execution of the agreement or contract for the work, and at his or her own expense, a separate surety bond in an amount equal to at least 100 percent of the contract price as security for the payment of all persons performing labor and furnishing materials in connection with said contract agreement. Each of said bonds shall be executed by a corporate surety authorized to engage in such business in the State of California and shall be satisfactory to the City Attorney.

**Sec. 3-1.025 INSURANCE POLICIES [Deletion].**

Section 3-1.025, "INSURANCE POLICIES," of the Standard Specifications is hereby deleted.

**Sec. 3-1.03 EXECUTION OF CONTRACT [Amendment].**

The first paragraph of Section 3-1.03 "Execution of Contract," of the Standard Specifications is amended to read:

The contract shall be signed by the successful bidder and returned, together with the contract bonds and certificates of insurance, with documents to verify any self-insurance coverage, within 10 days, not including Saturdays, Sundays and legal holidays, after the bidder has received the contract for execution. At the discretion of the City Engineer, a copy of insurance policies, may be also required to be submitted with the submission of the certificate of insurance within a specified time period.

**SECTION 5  
CONTROL OF WORK**

**Sec. 5-1.01 AUTHORITY OF ENGINEER [Amendment].**

The Engineer shall decide all questions which may arise as to the quality or acceptability of materials furnished and work performed and as to the manner of performance and rate of

progress of the work; all questions which may arise as to the interpretation of the plans and specifications; all questions as to the acceptable fulfillment of the contract on the part of the contractor and all questions as to compensation. Except as stated hereinafter in this section, the Engineer's decision shall be final and he or she shall have authority to enforce and make effective such decisions and orders which the contractor fails to carry out promptly. Any decision of the Engineer as to the acceptability of substitute materials may be appealed to the City Council by the prime contractor or the principal suppliers of the materials in question. Any such appeal shall be made in writing and shall be delivered to the City Clerk within 10 days of the delivery or mailing to appellant of written notice of the Engineer's decision. The decision of the City Council on any such appeal shall be final.

## SECTION 7 LEGAL RELATIONS AND RESPONSIBILITY

### Sec. 7-1.01A (2) PREVAILING WAGE [Amendment].

The following sentence is added to the end of the third paragraph of Section 7-1.01A (2), "Prevailing Wage," of the Standard Specifications:

Any contractor who is awarded a public works project and intends to use a craft or classification not shown on the general prevailing wage determinations may be required to pay the wage rate of the craft or classification most closely related to it as shown in the general determinations in effect on the date of advertisement for the project.

The sixth paragraph in Section 7-1.01A (2), "Prevailing Wage," of the Standard Specifications is amended to read:

Pursuant to Section 1773.2 of the Labor Code, general prevailing wage rates that are in effect on the date of the advertisement for the project and by reference are made a part of the contract, shall be posted by the contractor at a prominent place at the site of the work.

The seventh paragraph in Section 7-1.01A (2), "Prevailing Wage," of the Standard Specifications is amended to read:

Changes in general prevailing wage determinations, which conform to Labor Code Section 1773.6 and Title 8, California Code of Regulations Section 16204, shall apply to the project when issued by the Director of Industrial Relations by the date of advertisement for the project.

The fourth paragraph in Section 7-1.01A (2), "Prevailing Wage," of the Standard Specifications is amended to read:

The general prevailing wage rates and any applicable changes to these wage rates will be available at the office of the City Engineer, 2<sup>nd</sup> floor, Hayward City Hall, 777 B Street, Hayward, CA 94541-5007. General prevailing wage rates are also available from the California Department of General Industrial Relations' Internet Web Site at: <http://www.dir.ca.gov>.

Sec. 7-1.01A(3), "PAYROLL RECORDS"[Amendment]:

The second sentence of the first paragraph of Section 7-1.01 A(3), "Payroll Records," of the Standard Specifications is amended to read:

Regulations implementing said Section 1776 are located in Sections 16000 et seq of Title 8, California Code of Regulations.

The first sentence of the third paragraph of Section 7-1.01A(3), "Payroll Records," of the Standard Specifications is amended to read:

Two copies of all payrolls shall be submitted weekly to the Engineer.

Sec. 7-1.01A (4) LABOR NONDISCRIMINATION [Amendment].

The contractor's 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.'

The contractor is directed to Section 6, "City Requirements," or Section 14, "Federal Requirements," of the special provisions for the Nondiscrimination and Affirmative Action Provisions.

Sec. 7-1.01C CONTRACTOR'S LICENSING LAWS [Amendment].

The third paragraph of Section 7-1.01C, "Contractor's Licensing Laws," of the Standard Specifications is amended to read:

In all City projects, the Contractor shall be properly licensed at the time the contract is awarded.

Sec. 7-1.12 INDEMNIFICATION AND INSURANCE [Amendment]:

The Contractor's Indemnification and insurance indemnification and Responsibility for damage

responsibility of obligations regarding indemnification of the City of Hayward shall conform to the provisions Sections 7-1.12A, "Indemnification," of this Section 7-1.12.

Section 7-1.12 B, "Insurance," of the Standard Specifications is amended to read:

After award of contract, the Contractor shall promptly obtain, at its own expense, all the insurance required by this section and shall submit a completed copy of the Certificate of Insurance signed by the Contractor's agent or broker with documents to verify any self-insurance coverage to the Public Works Department for review and approval by the City. The Certificate of Insurance shall clearly identify the project name and number in the space labeled "Description of Operations/Locations/Special Items" on the form. The insurance requirements must be met within the same 10-day period allowed for contract execution as provided in the Directions to Bidders in the proposal.

The notice to proceed with the work under this contract will not be issued, and the Contractor shall not commence work, until such insurance has been approved by the City. The Contractor shall not allow any subcontractor to commence work on its subcontract until all similar insurance required of the subcontractor has been obtained. Such insurance shall remain in full force and effect at all times during the prosecution of the work and until the final completion and acceptance thereof.

(1) Workers' Compensation and Employer's Liability Insurance

The Contractor shall take out and maintain during the life of the contract, Statutory Workers' Compensation and Employer's Liability Insurance with limits not less than One Million Dollars (\$1,000,000.00) for all of its employees to be engaged in the work on the project under the Contract. Should any work be sublet, the Contractor shall require the subcontractor similarly to provide Workers' Compensation and Employer's Liability Insurance, all in strict compliance with State laws and to fully protect the City from any and all claims arising out of occurrences on the work.

(2) Commercial General and Automobile Liability Insurance

The Contractor shall take out and maintain in the name of the Contractor and, as an additional insured, the City, during the life of the Contract, such Commercial General and Automobile Liability Insurance as shall protect the Contractor, the City, its officials, officers, directors, employees and agents, from claims which may arise from operations under this contract, whether such operations be by the Contractor, by the City, its officials, officers, directors, employees and agents, any subcontractors, or by anyone directly or indirectly employed by any of them. Such coverage shall be at least as broad as: Insurance Service Office Commercial General Liability coverage (occurrence Form CG0001) and Insurance Service Office Form Number CA0001 (Ed. 1/87) covering Automobile Liability, Code 1 (any auto). This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from the Contractor's or subcontractor's operations, including the use of owned or non-owned automobiles, products, and

completed operations. The amounts of insurance shall not be less than the following:

**Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.**

**Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.**

The following endorsements must be attached to the policy:

(a) If the insurance policy covers on an "accident" or a "claims made" basis, it must be changed to "occurrence."

(b) The policy must cover Personal Injury as well as Bodily Injury.

(c) The policy must cover complete contractual liability. Exclusions of contractual liability as to bodily injuries, personal injuries and property damages **MUST BE ELIMINATED** from the basic policy endorsements. This endorsement may be satisfied by amending the definition of "incidental contract" to include written contract.

(d) Broad form property damage liability must be afforded. Permission is granted for deductible, which shall not exceed \$10,000 without special approval of the City.

(e) The City must be named as an additional named insured under the coverage afforded with respect to the work being performed under the contract.

(f) A certificate shall be provided which states that the coverage is **PRIMARY INSURANCE** and that no other insurance effected by the City will be called upon to contribute to a loss under this coverage.

(g) The policy must include a cross liability or severability of interests clause.

(h) Any failure of the Contractor to comply with the reporting provisions of the policies shall not affect coverage provided to the City, et al.

(i) Notice of cancellation, non-renewal, reduction in limits, or material change, shall be sent to the City with at least thirty (30) days prior written notice by certified mail.

(j) Insurance is to be placed with California Admitted Insurers with a Best's rating of no less than A: XI.

### (3) Builders Risk Insurance

The Contractor shall effect and maintain, in the name of the Contractor and the City,

Builders' Risk "All-Risk" completed value insurance coverage upon the entire project, which is the subject of this contract, and including completed work and work in progress providing that the insurance premium for this specific requirement is a separate bid item. Such insurance shall either include as Additional Named Insureds: the City; the Architect; the Engineer; and its consultants; and each of their officers, employees, and agents and any other persons with an insurable interest designated by the City as an Additional Named Insured, or otherwise establish that such parties already provide the requisite coverage. Such insurance may have a deductible clause but not to exceed \$1,000. (Include this paragraph only if "Builders Risk Insurance" is a bid item.)

Should any such insurance policy be materially changed before final completion of the work, and the Contractor fail to procure other insurance as herein required, immediately, the City may procure such insurance and deduct the cost thereof from any amounts due the Contractor.

Sec. 7-1.17 ACCEPTANCE OF CONTRACT [Amendment]. When the Engineer has made the final inspection as provided in Section 5-1.13, "Final Inspection," of the standard specifications and determines that the contract work has been completed in all respects in accordance with the plans and specifications, he or she will prepare a written statement of final quantities of the total amount of work complete under the contract, including therein an itemization of said amount, segregated as to contract item quantities, extra work, and any other basis for payment for approval by the contractor. All prior estimates shall be subject to correction in the statement of final quantities.

Upon approval of the statement of final quantities by the contractor, or if contractor approval is not received within 10 days, the Engineer may recommend to the Director that the City formally accept the work under the contract as complete. The Engineer will then prepare a final estimate of the total sum due the contractor based on the statement of final quantities, including therein an itemization of said amount, segregated as to contract item quantities, extra work and any other basis for payment, and shall also show therein all deductions made or to be made for prior payments and amounts to be kept or retained under the provisions of the contract.

Approval of the Engineer's estimate of final quantities by the contractor shall not forfeit the contractor's right to file claims against the City as provided for in the special provisions.

The contractor's attention is directed to section 9-1.04, "Notice of Potential Claim," of the standard specifications regarding giving the Engineer timely written notice regarding potential claims against the City.

Upon formal acceptance by the City, the contractor will be relieved of the duty of maintaining and protecting the work as a whole, and he or she will not be required to perform

any further work thereon; and the contractor shall be relieved of this responsibility for injury to persons or property or damage to the work which occurs after the formal acceptance by the City, except for injuries or damages arising out of latent defects.

## SECTION 8

### PROSECUTION AND PROGRESS

#### Sec. 8-1.01 SUBCONTRACTING [Amendment].

The third paragraph of Section 8-1.01, "Subcontracting," of the Standard Specifications, which requires the Contractor to perform not less than 50 percent of the original total contract price with the Contractor's own organization is deleted. (Include this amendment in building type projects.)

The first sentence of the third paragraph of Section 8-1.01, "Subcontracting," of the Standard Specifications is amended to read:

The Contractor shall perform, with the Contractor's own organization, contract work amounting to not less than 50 percent of the original total contract price, less the administrative change order and any designated "Specialty Items" that may be performed by subcontract. The amount of any such "Specialty Items" so performed and the amount for administrative change order shall be deducted from the original contract price before computing the amount of work required to be performed by the Contractor with the Contractor's own organization. (Include this amendment in all projects except building type projects.)

Sec. 8-1.08 TERMINATION OF CONTROL [Amendment]. Failure to supply an adequate working force, or material or proper quality or in any other respect to prosecute the work with diligence and force specified by the contract, or failure to make prompt payments to subcontractors for material or labor, is grounds for the termination of the contractor's control over the work and for taking over of the work by the City.

Notice thereof in writing will be served upon the contractor, and should he or she neglect or refuse to provide means for satisfactory compliance with the contract as directed by the Engineer within the time specified in such notice, the City Council, in any such case, shall have the power to suspend the operation of the contract. Upon receiving notice of such suspension, the contractor shall discontinue said work or said parts of it as the City Council may designate.

Upon such suspension, 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 upon the premises and use the same for the purpose of completing said contract; and hire such force and buy or rent such additional machinery or tools, appliances, and equipment, and buy such additional material and supplies at the contractor's expense as may be necessary for the proper conduct of the work, and for the completion thereof; or may employ other parties to continue the contract to completion, employ the necessary workers, substitute the machinery or materials, and purchase the materials contracted for in such manner as the City Council may deem proper.

The City Council may annul and cancel the contract and relet the work or any part thereof. Any excessive cost arising therefrom over and above the contract price will be charged against the contractor and his or her sureties who will be liable therefor.

In the event of such suspension, all monies due the contractor or retained under the terms of this contract are to be forfeited to the City, but such forfeiture will not release the contractor or his or her sureties from liability for failure to fulfill the contract.

Upon completion of the contract work taken over by the City as provided for above, any surplus contract funds remaining after all just claims have been paid will be credited to the contractor. In the event the total cost of the contract work, including work taken over by the City exceeds the contract amount, the contractor and his or her sureties shall be liable for the excess cost over the contract amount.

In making the determination as to whether there has been non-compliance with the contract so as to warrant the suspension or annulment thereof, the decision of the City Council shall be binding on all parties to the contract.

## SECTION 9 MEASUREMENT AND PAYMENT

### Sec. 9-1.04 NOTICE OF POTENTIAL CLAIM [Amendment].

The last paragraph of Section 9-1.04, "Notice of Potential Claim," of the Standard Specifications is amended to read:

Failure of the Contractor to conform to specified dispute procedures shall constitute a failure to pursue diligently and exhaust the administrative procedures in the contract, and is deemed as the Contractor's waiver of the potential claim and a waiver of the right to a corresponding claim for the disputed work in the administrative claim process in conformance with Section 9-1.07B, "Final Payment of Claims."

### Sec. 9-1.06 PARTIAL PAYMENTS [Amendment].

The first paragraph of Section 9-1.06, "Partial Payments," of the Standard Specifications is amended to read:

The Department, once in each month, shall cause an estimate in writing to be made by the Engineer. The estimate shall include the total amount of work done. No partial payment will be made for any materials on hand which are furnished but not incorporated in the work. The estimate shall also include any amounts payable for mobilization. Daily extra work reports furnished by the Contractor less than 5 calendar days, not including Saturdays, Sundays, and legal holidays, prior to the preparation of the monthly progress estimate shall not be eligible for payment until the following month's estimate.

The first sentence of the third paragraph of Section 9-1.06, "Partial Payments," of the Standard Specifications is amended to read:

The Department shall retain 10 percent of such estimated value of the work done and 10 percent of the value of the materials so estimated to have been furnished and delivered and unused or furnished and stored as aforesaid as part security for the fulfillment of the contract by the Contractor, except that at any time after 80 percent of the work has been completed, if the Engineer finds that satisfactory progress is being made, and upon written request from the Contractor, the Department, at its discretion, may reduce the total amount being retained from payment pursuant to the above requirements to 5 percent of the total estimated value of said work and may also reduce the amount retained from any remaining partial payments to 5 percent of the estimated value of such work. The retention shall be paid in accordance to Section 5-1.14, "Payment after Acceptance."

Sec. 9-1.065 PAYMENT OF WITHHELD FUNDS [Amendment to second, third, fourth, fifth, and sixth paragraphs]

The second and fifth paragraphs of Sec. 9-1.065, "Payment of Withheld Funds," of the Standard Specifications are combined and amended to read:

The contractor may elect to receive 100 percent of payments due under the contract from time to time, without retention of any portion of the payment by the City, by depositing securities of equivalent value with the City in accordance with the provisions of Section 22300 of the Public Contract Code. All expenses of such substitute deposit shall be borne by the contractor. Securities eligible for investment under the section shall include those listed in section 16430 of the California Government Code or certificates of deposit of a bank or savings and loan association. The contractor shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon. Such securities, if deposited by the contractor, shall be valued by the City's Finance Director (Treasurer), whose decision on valuation of the securities shall be final.

The third paragraph of Sec. 9-1.065, "Payment of Withheld Funds," of the Standard Specifications is amended to read:

Upon satisfactory completion of the contract, the Contractor shall receive from the escrow agent all securities, interest and payments received by the escrow agent from the City,

pursuant to the terms in Section 22300 of the public Contract code.

The fourth paragraph is deleted.

The sixth paragraph of Sec. 9-1.065, "Payment of Withheld Funds," of the Standard Specifications is:

The escrow agreement used pursuant to this Section 9-1.065 shall be substantially similar to the "Escrow Agreement for Security Deposits In Lieu of Retention" in Section 22300 of the Public Contract Code, deemed as incorporated herein by reference.

Sec. 9-1.07 PAYMENT AFTER ACCEPTANCE [Amendment]. The City will record the Notice of Completion with the County Recorder within 10 days after formal acceptance by the City and, if no mechanic's lien is recorded within 30 days after the recording of the Notice of Completion with the County Recorder, the City will make a final payment of the entire sum due the contractor based on the Engineer's final estimate. Such final payment will be made within 10 days after the expiration of the aforementioned 30-day period.

Sec. 9-1.10 ARBITRATION [Amendment]. Attention is directed to the provisions of sections 20104 through 20104.6, inclusive, of the Public Contract Code concerning the procedures to be followed when filing claims against the City. All claims shall be filed with the City Clerk. Forms specifying the information to be contained in claims against the City may be obtained from the City Clerk.

BE IT FURTHER RESOLVED that the City Council does hereby authorize the Director of Public Works to make updates to the City Standard Details.

BE IT FURTHER RESOLVED that the City Council does hereby authorize the Director of Public Works to adopt the future State Standard Plans and Specifications, as necessary.

BE IT FURTHER RESOLVED that Resolution No. 03-079 and all other resolutions of the City of Hayward in conflict herewith, are hereby repealed.

IN COUNCIL, HAYWARD CALIFORNIA \_\_\_\_\_, 2008

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:  
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward