

A. SPECIFICATIONS CONFLICT:

1. All applicable laws, ordinances, codes, and local building codes shall govern over any drawings, over City of Anaheim written specifications, and referred to specifications.
2. Any issued addendums as part of the bid specifications shall govern over its predecessor.
3. City will determine precedence in the event of any conflict or ambiguity with the preceding.

B. LEGAL AND BEST PRACTICE REQUIREMENTS:

1. Be self-informed, abide by, and comply with all, current and applicable, local, county, state, federal or other legal requirements and best practices at all times.
2. Do not cause, allow to be caused, or permit the continuance of any violation of any legal requirements or best management practices.
3. Perform all maintenance and related activities performed under resultant contract shall be conducted in conformance with all applicable Drainage Area Management Plan (DAMP) and its companion document, Anaheim's Local Implementation Plan (LIP). These requirements include but are not limited to adherence of the following:
 - A) Contractor shall properly train all personnel to a level equal or greater than the prescribed LIP.
 - B) Contractor's personnel shall perform all field activities in accordance with this training which should include, at a minimum, applicable Best Management Practices (BMP's) (referenced in LIP and found online at <http://www.cabmphandbooks.com/Municipal.asp>), specifically SC-41 and SC-43.
 - C) Anaheim Municipal Code Section 10.09: more specifically contractor activities shall not cause or contribute to the discharge of a pollutant to the storm drain system (street, catch basins or ribbon gutter, etc.), including mop water, or wash-water of any kind.
 - D) Other applicable State and Federal Water Quality Regulations.
 - E) Should contractor perform any work that is contrary to any laws, ordinances, codes, rules or regulations, or fail to perform work which is required to comply with any laws, ordinances, codes, rules or regulations, the contractor shall bear all costs and expenses arising from and associated with such work, actions and or violations, including fines or related penalties
4. Be responsible and bear all associated costs should any work be performed in contrary to any laws, ordinances, codes, rules, or regulations.

C. PREVAILING WAGES (NOT REQUIRED):

1. Under **article XI, section 5 of the California Constitution**, a chartered city 'may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws.' Where a public works project is completely within the realm of the **chartered city's** 'municipal affairs,' then **it is exempted from the California's prevailing wage laws.**
2. According to the City of Anaheim Resolution No. 98R-94 and as "...is defined in Section 1211 of the **Charter of the City of Anaheim...**", Public Works "...excludes maintenance and repair..." This work either is or has been determined by the Public Works Department to **be within the realm of maintenance and repair** and the project is **completely within the realm of City**; therefore, the requirement "...to pay the prevailing rates of wages..." does not apply.

D. PAYMENTS:

1. Note that payments will NOT be made for any unsatisfactory work until the work deficiencies have been fully corrected.
2. Note that City may exercise the following measures should Contractor fail to correct any deficiencies within 5 calendar days of notification:
 - A) Deduct amount from the Contractor's payment required to correct the deficiency.
 - B) Utilize City forces or an alternate source, to correct the deficiency and deduct from the Contractor's payment the total cost, including City overhead.

E. TERMINATION:

1. If, in the opinion of City, Contractor fails to perform or provide prompt, efficient service, City shall have the right to terminate or cancel the Agreement upon 5-day's written notice, and pay Contractor for the value of actual work satisfactorily performed to the date of termination.
2. City shall have the right to terminate or cancel the Agreement upon 30-day's written notice without cause and pay Contractor for the value of actual work satisfactorily performed to the date of termination.
3. These rights are in addition to any other rights that City may have available.

F. LIQUIDATED DAMAGES:

1. Note that force majeure applies only when delays are clearly beyond the control of or could not have been anticipated by Contractor. City will grant an extension in time equivalent to the exact number of working days that were caused by the force majeure incident(s).
2. To ensure that the Contractor performs all of the required work and since City cannot accurately determine the exact amount of a given deficiency, City will assess liquidated damages (TABLE: LIQUIDATED DAMAGES) for all work performance deficiencies.
3. City will notify Contractor in writing each time service requirements are unsatisfactory and corrective action is necessary. Should the Contractor fail to correct any deficiencies within three business days after receipt of notification, the City may exercise the following measures:
 - A) Deduct from the Contractor's payment the amount necessary to correct the deficiency.
 - B) Withhold payment.
 - C) Utilize City forces or an alternate source, to correct the deficiency and deduct from the Contractor's payment the total cost, including City overhead not to exceed 15%.
4. Liquidated damages are cumulative, for example: Meetings attendance; should contractor fail to meet for over a month, then Contractor would be assessed four weekly violations of \$250.00 each occurrence for \$1,000.00 and for one monthly violation of \$250.00 for each occurrence for a total of \$1,250.00.
5. City has the sole right to waive any liquidated damages (TABLE: LIQUIDATED DAMAGES) without regards to any and all precedents wherein City may have waived past violations.
6. After 2nd recurring violation, contractor must meet with City Management to discuss deficiency issues and a subsequent correction notice will be issued; additional liquidated damages may apply.
7. After 3rd recurring violation, contractor must meet with City Management and City of Anaheim Purchasing to discuss violations and remedies including additional liquidated damages, suspension, or termination of contract for failure to meet contract obligations.