

## ARTICLE 8. MEASUREMENT AND PAYMENT

### Section 8.01. Schedule of Values.

Within ten (10) days after Notice to Proceed, the Contractor shall submit to the City a schedule of values broken down by phase in sufficient detail to evaluate progress at any point in the Work. In no event shall an individual line item on a schedule of values exceed five percent of the Contract Sum unless so approved in advance by the Owner's Representative. Labor, material, and subcontract costs shall be shown separately. Cost of contract closeout shall be shown as an individual line item.

The schedule of values, when approved, shall be used as a basis for the Contractor's applications for payment.

### Section 8.02. Basis and Measurement of Payment Quantities.

It is the Contractor's responsibility to measure and/or compute the quantities of work completed, subject to verification by the City, under the terms of the Contract Documents. In computing quantities, the length, area, solid contents, number, weight, or time as specified in the Contract Documents or the Schedule of Values shall be used.

#### A. Unit Price Contracts.

Payment for all work bid at a price per unit of measurement will be based upon the actual quantities of work as measured upon completion. The Estimated Quantities provided in the Bid Documents are for comparative bidding only. The City does not expressly or by implication agree that the actual amount of work or materials will correspond to the Estimated Quantities. The Contractor shall make no claim nor receive any compensation for anticipated profits, loss of profit, damages or any extra payment due to any difference between the amount of work actually done or materials furnished and the Estimated Quantities.

#### B. Lump Sum Contracts.

Items bid on a "Lump Sum" or "Job" basis shall result in a complete structure, operating plant or system in satisfactory working condition in respect to the functional purposes of the installation, and no extra compensation will be allowed for anything omitted but fairly implied. Progress payments will be based on the approved schedule of values.

#### C. Mobilization.

Mobilization shall consist of preparatory work and operations, including, but not limited to, those necessary for the movement of personnel, equipment, supplies, and incidentals to the Site; for the establishment of all offices, buildings, and other facilities necessary for the Work; and for all other work and operations which must be performed, or costs incurred, prior to beginning the Work.

Payment for mobilization will be as follows:

1. When the Contract does not include a separate pay item for mobilization, full compensation for mobilization will be included in the Contract lump sum price

or in the prices paid for the various items of work in a unit price contract, and no additional compensation will be paid.

2. When the Contract or proposed Schedule of Values includes a separate item for mobilization, payment for mobilization will include full compensation for the furnishing of all labor, materials, tools, equipment, administrative costs, and incidentals for mobilization. The City will pay no greater than five percent (5%) of the total Contract Sum as a separate pay item for mobilization. In the event the Contractor submits a mobilization pay item greater than five percent (5%) of the total Contract Sum, the City will pay any excess mobilization amount with the final Progress Payment.

Payment for mobilization will be prorated as follows:

- a. When the Progress Payment request is five percent (5%) or more of the original total Contract Sum (excluding mobilization), fifty percent (50%) of the contract item price for mobilization or two and one-half percent (2.5%) of the total Contract Sum, whichever is less, will be paid for mobilization.
- b. When the Progress Payment request is ten percent (10%) or more of the original total Contract Sum (excluding mobilization), seventy percent (70%) of the contract item price for mobilization or three and one-half percent (3.5%) of the total Contract Sum, whichever is less, will be paid for mobilization.
- c. When the Progress Payment request is twenty percent (20%) or more of the original total Contract Sum (excluding mobilization), ninety percent (90%) of the contract item price for mobilization or four and one-half percent (4.5%) of the total Contract Sum, whichever is less, will be paid for mobilization.
- d. When the Progress Payment request is fifty percent (50%) or more of the original total Contract Sum (excluding mobilization), one hundred percent (100%) of the contract item price for mobilization or five percent (5%) of the total Contract Sum, whichever is less, will be paid for mobilization.
- e. After final acceptance of the Contract, the amount, if any, of the Contract item price for mobilization in excess of five percent (5%) of the original total Contract Sum will be included for payment in the final estimate.

3. The City will not pay additional mobilization compensation for work under a Contract Change Order. Payment for mobilization shall be subject to retention.

#### Section 8.03. Application for Payment.

- A. On the 25<sup>th</sup> of each month, the Contractor shall submit to the Owner's Representative its progress payment application, with an estimate of the total amount and value of work done, including that done under approved Change Orders or signed written directives, and the acceptable materials furnished and incorporated in the work through the 25<sup>th</sup> day of the

month. The Bid Form or schedule of values shall be used to prepare the progress payment application. The Owner's Representative, Architect or Consulting Engineer and Project Inspector will review the Contractor's proposed percentages of completion and agree on a final percentage to be paid for that month. After deducting all previous payments, retention and other withholdings as specified or allowed in the Contract Documents from the estimated total value, the City will pay the Contractor the balance.

No progress payment will be made unless all general conditions items demonstrate satisfactory progress.

B. Release of Liens: For each monthly application for payment, following agreement, the Contractor shall submit a conditional lien release warranting that title to all work, labor, materials and equipment covered by the application is free and clear of all liens, claims, security interests or encumbrances. Additionally, the Contractor shall submit unconditional lien releases for all work through the prior progress payment. For final payment, the Contractor and all of its Subcontractors and material suppliers shall submit final conditional and final unconditional lien releases.

C. No progress payment will be released until the Owner's Representative has received all of the following items in acceptable form: as-built updates, schedule updates, certified payroll and other required pay records, and lien releases.

D. Neither the payment, the withholding, nor the retention of all or any portion of any progress payment claimed to be due and owing to the Contractor shall operate in any way to relieve the Contractor from its obligations under this agreement; shall not constitute acceptance of the Work or any portion thereof; and shall in no way reduce the liability of the Contractor to replace unsatisfactory work or material, though the unsatisfactory character of such work or material may not have been apparent or detected at the time such payment was made. The Contractor shall continue diligently to prosecute the Work without reference to the payment, withhold, or retention of any progress payment. The payment, withhold, or retention of any progress payment shall not be grounds for an extension of the Contract Time.

#### Section 8.04. Work Done Without Direct Payment.

Compensation for any portion of the Work not specifically identified in the Bid Form or schedule of values is understood to be included in the price for other items, unless specified in the Special Provisions as extra work. No additional compensation is allowed for additional shifts or premium pay necessary to ensure that the Work is complied within the time limits specified in the Contract Documents.

#### Section 8.05. Payment for Stored Materials.

Payments may be made by the City, at its discretion, on account of materials or equipment not incorporated in the Work but delivered to the Site and suitably stored by the Contractor. Payments for materials or equipment stored shall only be considered upon submission by the Contractor of satisfactory evidence demonstrating that it has acquired title to such material, that the material will be used in the Work, that it is satisfactorily stored, protected and insured, and that

the Contractor has undertaken such other procedures satisfactory to the Owner's Representative, Project Inspector, and Architect or Consulting Engineer, to protect the City's interests. Materials stored off-site, to be considered for payment, shall, in addition to the above requirements, be stored in a bonded warehouse, fully insured, and available to the Architect or Consulting Engineer and Owner's Representative for inspection. The Owner's Representative shall have complete discretion as to the amount of material and equipment that may be stored on the Site at any given time.

Section 8.06. Payment; Retention.

There shall be reserved from the monies earned by the Contractor on estimates a sum equal to ten percent of such estimates.

Section 8.07. Posting Securities in Lieu of Withholds.

Pursuant to Public Contract Code Section 22300, at the request and expense of the Contractor, securities equivalent to the amount withheld pursuant to Section 12.04 shall be deposited with the City, State Treasurer or with a state or federally chartered bank in California as the escrow agent, who shall then pay the retainage to the Contractor. Upon satisfactory completion of the Contract, the securities shall be returned to the Contractor.

Alternatively the Contractor may request, pursuant to Public Contract Code Section 22300, and the City shall make payment of retentions under Section 12.04 directly to the escrow agent. The Contractor shall receive the interest earned on the investments upon the same terms provided for in Section 22300 for securities deposited by the Contractor. 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.

Either alternative under this Section may be exercised only if requested in writing by the Contractor within five (5) Calendar Days after its execution of the Contract. The Contractor shall notify its Subcontractors in writing within fifteen (15) Calendar Days of exercising this option.

Securities eligible for investment under this Section shall include those listed in Government Code Section 16430 or bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, stand-by letters of credit, or any other security mutually agreed to by the Contractor and the City.

The Contractor shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon.

Section 8.08. Withholding Additional Amounts; Grounds.

In addition to the retention amounts to be withheld, the City may withhold a sufficient amount from any payment or payments otherwise due to the Contractor as in the City's sole discretion may be necessary to protect the City in the event of the following:

- A. Third party claims filed or reasonable evidence indicating probable filing of such claims;
- B. Defective work not remedied;

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2 C. Failure of the Contractor to make proper payments to any of its Subcontractors or for  
3 labor, materials or equipment;  
4 D. The occurrence of reasonable doubt that the Contract can be completed for the balance  
5 of payments then unpaid to the Contractor, or in the time remaining until expiration of the  
6 Contract Time;  
7  
8 E. Failure of the Contractor to comply with any lawful or proper direction concerning the  
9 Work given by any City representative authorized to have given such instruction;  
10  
11 F. Claims and/or penalties which state law assesses against the Contractor for violation of  
12 such law;  
13  
14 G. Any claim or penalty asserted against the City by virtue of the Contractor's failure to  
15 comply with the provisions of all governing laws, ordinances, regulations, rules, and orders;  
16  
17 H. Any reason specified elsewhere in the Contract Documents as grounds for a retention  
18 or withholding, or that would legally entitle the City to a set-off.  
19

20 In order to adequately protect the City, the Contractor agrees that the basic standard to determine  
21 the amount to be withheld pursuant to this Section shall be one hundred fifty percent (150%) of the  
22 amounts claimed or the value of the work not done or defectively done; provided, however, that  
23 City reserves the authority to retain greater sums should such sums be necessary in the City's  
24 discretion to adequately protect it.  
25

26 Section 8.09. Disbursement of Withheld Amounts.

27 The City, in its sole discretion, may apply any withheld amount or amounts to the payment of any  
28 claim resulting in a withhold. The Contractor agrees and hereby designates the City as its agent  
29 for such purposes, and any payment so made by the City shall be considered as a payment made  
30 under this Contract by the City to the Contractor. The City shall not be liable to the Contractor for  
31 any payments made in good faith. Such payments may be made without a prior judicial  
32 determination of the claim or claims. The City shall render to the Contractor a proper accounting  
33 of any funds disbursed on behalf of the Contractor.  
34

35 Prior to disbursing any amounts, the City shall afford the Contractor an opportunity to present  
36 good cause, if it has any, why the claim or claims in issue are not valid or just claims against the  
37 Contractor. The City reserves the right then to take such further steps as are appropriate, in its  
38 sole discretion, including, but not limited to, seeking a judicial resolution of the controversy.  
39

40 Section 8.10. Correction of Statement and Withholding of Payment.

41 No inaccuracy or error in any statement provided by the Contractor shall operate to release the  
42 Contractor or any surety from the error, or from damages arising from such work, or from any  
43 obligation imposed by the Contract Documents. The City shall retain the right subsequently to  
44 correct any error made in any previously issued claim for the progress payment, or progress  
45 payment issued, by adjustments to subsequent payments.  
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1 Section 8.11. Final Payment.

2 When the Contractor determines that all of the Work on the Project is complete and all items on  
3 the punch list have been satisfied, or contends that such items are not required by the Contract  
4 Documents, the Contractor shall submit an application for final payment.

5 Simultaneously with the Contractor's request for final payment, the Contractor shall submit the  
6 following items to the Owner's Representative:

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8 A. Record Documents.

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10 B. All O&M submittals not previously submitted and approved.

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12 C. Hazardous material documentation if required.

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14 D. Other items as required in the Special Provisions.

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16 No payment will be processed unless accompanied by the listed documents in acceptable form.

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18 A. Final Payment Process.

19 Upon receipt of the submittals required by this Article and the Contractor's final payment  
20 application, and upon verification that all of the Work is complete, including all punch list  
21 items, the Owner's Representative shall either (1) recommend to the City that the payment  
22 application be accepted, which recommendation shall be made within five (5) business  
23 days of receipt of the Contractor's final payment application, or (2) send a notice to the  
24 Contractor rejecting the payment application, stating the basis therefor, and submitting a  
25 written estimate of the sum due to the Contractor, which written estimate shall be provided  
26 to the Contractor within twenty (20) Calendar Days of the Owner's Representative's receipt  
27 of the Contractor's final payment application. The Owner's Representative's estimate shall  
28 take into account the Contract Sum, as adjusted by any Change Orders; amounts already  
29 paid; and sums to be retained for incomplete work, liquidated damages, and for any other  
30 cause under the Contract Documents. Any protest by the Contractor of the Owner's  
31 Representative's estimate shall be as set forth below.

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33 The Architect or Consulting Engineer shall prepare a statement of final inspection, stating  
34 that the Work has been given a final inspection, that the Contractor has submitted the  
35 required documents, setting forth with detail any deviations in the Work as completed from  
36 the Contract Documents, and estimating the cost of correction of such deviations.

37  
38 The Architect's or Consulting Engineer's statement shall be transmitted to the City, along  
39 with the Contractor's application for final payment approved by the Owner's  
40 Representative, Architect or Consulting Engineer and Project Inspector. The Owner's  
41 Representative shall provide a copy of the Architect's or Consulting Engineer's statement of  
42 final inspection to the Contractor.

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44 B. Protest of the Owner's Representative's Estimate.

45 If the Contractor contests the estimate of sums due prepared by the Owner's  
46 Representative, the Contractor may file a claim in writing with the Owner's Representative

1 in accordance with Article 9 and setting forth in detail all grounds alleged by the Contractor  
2 to justify an adjustment to the Owner's Representative's estimate. The Contractor's claim  
3 shall be certified under penalty of perjury and in compliance with the California False  
4 Claims Act. Failure to include these required certifications will constitute grounds for  
5 immediate rejection of the claim.

6 Failure to file a timely claim shall constitute a waiver and acceptance by the Contractor of  
7 the Owner's Representative's estimate, which shall then become final and be forwarded to  
8 the City for approval of payment.  
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10 C. Approval of Final Payment.

11 Following acceptance of the Work, the City shall authorize final payment to the Contractor  
12 of the undisputed sums found due, subject to retentions for stop notices. This final  
13 payment shall be made within sixty (60) Calendar Days after completion, as defined in  
14 Section 7.30 above, and recordation of the Notice of Completion.  
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16 Section 8.12. Withholding for Stop Notices.

17 The City may, in its sole discretion, and at any time, withhold from the Contractor any unpaid  
18 claims alleged in Stop Notices filed pursuant to Civil Code Section 3179 et seq. The City reserves  
19 all remedies it may have in the event of a stop notice dispute. The basic standard to determine a  
20 sufficient withholding in the event of a Stop Notice shall be one hundred fifty percent (150%) of the  
21 total of all stop notices filed; provided, however, the City reserves the right to withhold different or  
22 greater sums in its discretion.  
23

24 Section 8.13. Non-Waiver.

25 Neither acceptance of, nor payment for, the Work or any part thereof, nor any extension of time,  
26 nor any possession taken by City shall operate as a waiver of any of the provisions of this  
27 Contract, nor shall a waiver of any breach of this Contract be held to be a waiver of any other or  
28 subsequent breach. In addition, recordation of a Notice of Completion shall not be deemed an  
29 acceptance of latent defects, nor shall it constitute a waiver of any of the provisions of this  
30 agreement.