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SECTION 8 - MEASUREMENT AND PAYMENT

8-1 **BASIS AND MEASUREMENT OF PAYMENT QUANTITIES**

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

8-1.01 **Unit Price Contracts**

Payment for work bid at a price per unit of measurement will be based upon the actual quantities of work measured upon completion. The Estimated Quantities provided in the Bid are for bidding only, and the Agency does not express or imply that the actual amount of work or materials will correspond to the Estimated Quantities. The Contractor will not receive any compensation for anticipated profits, loss of profit, damages, or any extra payment due to any difference between the amount of work actually completed, or materials or equipment furnished, and the Estimated Quantities. See also Section 9-14, "Contract Change Order (CCO)," of these Specifications.

8-1.02 **Lump Sum or Job Contracts**

Progress Payments will be based on the Schedule of Values prepared by the Contractor and approved by the Agency prior to acceptance of the first Progress Payment request (see Section 8-5, "Progress Payment Procedures," in this Section of these Specifications). If requested by the Agency, the Contractor must furnish full copies of Subcontracts showing actual costs. The Schedule of Values must correspond to the baseline schedule prepared by the Contractor pursuant to Section 7-5.02, "CPM Schedule – Major Projects," of these Specifications.

8-1.03 **Payment for Mobilization**

Mobilization consists 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 for costs incurred, prior to beginning the Work.

Payment for mobilization will be as follows:

8-1.03.A **Mobilization Not a Pay Item**

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.

8-1.03.B **Mobilization a Pay Item**

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.

1. Unless otherwise noted in the Special Provisions, the Agency will pay no greater than 5 percent of the Total Contract Price as a separate pay item for mobilization
2. Payment for mobilization will be prorated as follows:
 - a. When the Progress Payment request is 5 percent or more of the original Total Contract Price (excluding mobilization), 50 percent of the contract item price for mobilization will be paid.
 - b. When the Progress Payment request is 10 percent or more of the original Total Contract Price (excluding mobilization), 70 percent of the contract item price for mobilization will be paid.
 - c. When the Progress Payment request is 20 percent or more of the original Total Contract Price (excluding mobilization), 90 percent of the contract item price for mobilization will be paid.
 - d. When the Progress Payment request is 50 percent or more of the original Total Contract Price (excluding mobilization), 100 percent of the contract item price for mobilization will be paid.
3. The Agency will not pay additional mobilization compensation for work under a Contract Change Order unless necessitated solely for the performance of Contract Change Order work and prior written approval is obtained from the Agency. Payment for additional mobilization is subject to retention per Section 8-7, "Retention," of these Specifications.

8-2 SCOPE OF PAYMENT

8-2.01 General

Compensation under the terms of the Contract is full payment for the Work, including loss or damage arising from the nature of the Work, action of the elements, or unforeseen difficulties encountered during the prosecution of the Work until its final acceptance; and all risks connected with the prosecution of the Work.

8-2.02 Unit Price Contract

Progress Payments will be made based on the unit price bid and measured quantities for work completed, plus work completed on approved Change Orders. For compensation for alterations in quantities of work, including deviations greater than 25 percent, see Section 2- 1.01, "Unit Price Bid," in these Specifications.

8-2.03 Lump Sum or Job Contract

Progress Payments will be based on the approved Schedule of Values for work completed, plus work completed on approved Change Orders.

8-2.04 Final Pay Items

An item designated as a Final Pay Item in the Contract will be paid for as specified in the State Specifications except to the extent these Specifications provide otherwise.

8-2.05 Allowances

Allowances may be included in the Bid for materials and/or work that cannot be accurately quantified at bid time or may be added during the course of the Contract. The Allowance may be used in whole, in part, or not at all as determined by the Agency. Payment under an allowance item will only be made upon acceptance and approval of quantities of work, invoices or other appropriate documentation as determined by the Agency. Whenever costs of the Work included in the Allowance item are more than the specified Allowance amount, the Total Contract Price will be adjusted accordingly by Contract Change Order. The Contractor will not receive any compensation for anticipated profits, loss of profit, damages, or any extra payment due to any difference between the amount of work actually completed, or materials or equipment furnished, and the Estimated Quantities for the Allowances.

8-2.06 Payment for Material Not Incorporated into the Work

Unless set forth in the Special Provisions or authorized by the Agency, Progress Payments will not be made for materials and equipment not incorporated into the Work. The Agency may impose additional requirements for insurance, storage, handling, security, etc., that the Contractor must comply with if payment is to be made for materials not incorporated into the Work.

8-3 WORK TO BE DONE WITHOUT DIRECT PAYMENT

Unless otherwise specified in the Special Provisions, 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 paid for other reasonably related items. No additional compensation is allowed for additional shifts or premium pay necessary to ensure that the Work is completed within the time limits specified in the Contract.

8-4 PAYMENT FOR USE OF COMPLETED PORTIONS OF WORK

If the Agency accepts a completed or partially completed portion of the Work under Section 4-10, "Use of Completed Portions," of these Specifications, the Contractor will be compensated in accordance with Sections 8-11, "Final Estimate and Payment," and 8-12, "Final Payment to Terminate Liability of Agency," of these Specifications. When the Agency accepts a completed or partially completed portion of the Work, the warranty period for that portion commences, and the Contractor will be relieved of any further maintenance and protection of that portion. The Contractor will not be relieved of the Contract requirements for repairing or replacing defective work and materials.

8-5 PROGRESS PAYMENT PROCEDURES

No Progress Payment will be made when, in the judgment of the Agency, the Work is not proceeding in accordance with the provisions of the Contract, or when the total work done since the last Progress Payment amounts to less than one thousand dollars (\$1,000). Unless otherwise agreed to at the preconstruction conference or identified in the Special Provisions, on the 20th of each month, the Contractor must submit in writing for Agency review an estimate of the total amount and value of work done, including that done under approved Change Orders, and the acceptable materials furnished and incorporated in the Work through the 20th day of the month. The Bid Form or Schedule of Values will be used to prepare a Progress Payment request for the items, or portions of items, of the Work completed during the monthly progress period. After deducting all previous payments, the retention, as described in Section 8-7, "Retention," of these Specifications, and other withholdings (see Section 8-8 of these Specifications) or deductions specified in the Contract, the Agency will pay the Contractor the balance.

The payment of a Progress Payment or the acceptance of payment by the Contractor does not constitute acceptance of any portion of the Work and does not reduce the Contractor's liability to replace unsatisfactory work, material, or equipment. An inadvertence or error in an approved

Progress Payment request will not release the Contractor or the Contractor's surety from damages arising from the work covered by the approved payment request or from enforcement of every provision of the Contract. The Agency has the right to correct any error made in any Progress Payment.

8-6 INSPECTION AND PROGRESS PAYMENTS NOT A WAIVER OF CONTRACT PROVISIONS

Inspection, measurement, payment, acceptance of work or material (including, but not limited to, acceptance of the entire Work), time extension, or possession of the Work or any part of the Work does not waive any of the terms and conditions of the Contract, the powers reserved by the Agency, or any right of the Agency to damages or to reject the Work in whole or part. No breach of this Contract is a waiver of any other or subsequent breach. All remedies provided in the Contract are cumulative and in addition to all other rights and remedies that exist at law or in equity.

8-7 RETENTION

8-7.01 Retention to Ensure Performance

Unless noted otherwise in the Special Provisions, 5 percent of each progress payment will be retained. In accordance with Public Contract Code Section 7107, retention will be released within 60 days of Field Acceptance or completion of the Work, as such term is defined in Section 7107, whichever occurs earlier. (See Section 7-21, "Final Inspection and Field Acceptance," of these Specifications.)

8-7.02 Non-Compliance

The Agency may also retain portions of a Progress or Final Payment for Contract non-compliance in an amount deemed appropriate by the Agency.

8-7.03 Substitution of Securities

At the request and expense of the Contractor, in accordance with California Public Contract Code Section 22300, in lieu of the Agency withholding the 5 percent retention defined in Section 8-7.01, "Retention to Ensure Performance," in these Specifications, the Contractor may: 1) substitute a deposit of securities at least equivalent to the retention to be paid (Vendor Funded escrow account), or 2) request the Agency pay retention directly to an escrow agent (County funded escrow account).

The Contractor and Agency shall enter into an escrow agreement in the exact form set forth in Public Contract Code Section 22300. Sample forms are included in Appendix A of these Specifications. All forms or correspondence pertaining to security deposits in lieu of withholds shall be sent to the following address. Forms must be received prior to processing pay estimates to:

Department of General Services
Contract and Purchasing Services Division 9660
Ecology Lane
Sacramento, CA 95827

8-7.04 Earnest Deposit

An Earnest Deposit may be held from the final release of retention as described in Section 8-7.01 above for any of the reasons included in Section 8-8, "Withholdings/Denial of Progress Payment Request," of these Specifications. In the event of a dispute between the Agency and the Contractor, the Agency may hold in Earnest Deposit an amount equal to 150 percent of the disputed amount. All or a portion of the monies held in Earnest Deposit will be released upon satisfactory resolution of the dispute.

8-8 WITHHOLDINGS/DENIAL OF PROGRESS PAYMENT REQUEST

The Agency may deny a Progress Payment request and/or withhold money from any Progress Payment to:

- Cover any unpaid claims filed pursuant to Civil Code Section 3179 et seq.
- Protect the Agency's interest, as determined by the Agency; and/or
- Pay any fines levied against the Work by the Agency or other entities.

The Agency may also deny a Progress Payment request and/or withhold money or modify any previous Progress Payment as necessary to protect the Agency from loss due to or resulting from:

- Defective work not remedied.
- Stop notices filed. The County may at its discretion accept a bond in lieu of withholding funds for properly filed stop notices. However, the bond must be issued by a different surety than the one that issued the Contractor's Payment Bond for the project. The amount withheld for stop notices will be 125 percent of the stop notice amount.
- Failure of the Contractor to make prompt payments properly to Subcontractors for labor, materials, or equipment as required by Business and Professions Code Section 7108.5.
- Evidence that the Work cannot be completed for the unpaid balance of the Contract sum.
- Evidence that the Work will not be completed within the Contract Time.
- Damage to the Agency or another contractor.
- Failure to carry out the Work in accordance with the Contract.
- Any violation or non-compliance with Contractor's legal responsibilities (see Section 6, "Legal Relations and Responsibilities," of these Specifications), including withholds for wages adjustments in accordance with California Labor Code Section 1727 and any fines incurred by the Agency as a result of the Contractor's actions.

When, under the provisions of the Contract, the Agency charges any sum of money against the Contractor, the Agency will deduct and retain the amount of such charge from a Progress or Final Payment. If, on completion or termination of the Contract, sums due the Contractor are insufficient to pay the Agency charges against the Contractor, the Agency has the right to recover the balance from the Contractor or the Contractor's surety.

8-9 DEDUCTIONS FOR IMPERFECT WORK

For any portion of the Work retained in accordance with Section 5-19, "Right to Retain Imperfect Work," of these Specifications, the Agency will deduct from a Progress Payment a just and reasonable amount as determined by the Agency to cover Agency costs for additional maintenance, replacement or repair before the end of the anticipated useful life, or other unanticipated Agency costs. A deductive Contract Change Order for such costs will be issued in accordance with Section 9-14, "Contract Change Order (CCO)," of these Specifications.

8-10 LIQUIDATED DAMAGES FOR DELAY

All parties to the Contract agree that time is of the essence, and that the Work must be completed within the time stated in the Special Provisions, plus any time extensions as provided in Section 7-18, "Extension of Time," of these Specifications. The Contractor's failure to complete the Work within the time allowed will result in damages to the Agency. Because it is impracticable to determine the actual amount of damage by reason of such delay, the Contractor agrees that the sum(s) set forth in the Special Provisions is (are) a reasonable amount to be charged for liquidated damages. It is agreed that the Contractor will pay to the Agency the sum set forth in

the Special Provisions for each and every day's delay beyond the time prescribed in the Contract, and the Contractor further agrees that the Agency may deduct and retain the amount thereof from any monies due or to become due the Contractor under the Contract.

8-11 FINAL ESTIMATE AND PAYMENT

Subsequent to Field Acceptance as detailed in Section 7-21.02, "Field Acceptance," of these Specifications, the Contractor must provide a proposed Final Payment request, segregated as to Contract item and Contract Change Order work.

The Agency will review the proposed Final Payment request and, after deducting all previous payments and all amounts to be deducted, withheld, and/or retained under the provisions of the Contract, these Specifications, and Public Contract Code Section 7107, will create the Final Payment request. All Progress Payments shall be subject to correction in the Final Payment.

Within 15 Calendar Days after the proposed Final Payment request is returned to the Contractor, the Contractor must submit to the Agency a written approval of said request or a written statement of exceptions. The Contractor's statement of exceptions must be in sufficient detail for the Agency to ascertain the basis and amount of the exceptions and be accompanied by supporting documentation, if available; failure to provide the detail or such documentation is sufficient cause for denial of the exceptions. Any claim of the Contractor or the Contractor's Subcontractors or suppliers with respect to the performance or breach of the Contract or any alterations thereof (except for payment of the balance of the Contract price as set forth in the Final Payment request) not specifically set forth in the statement of exceptions, is waived by the Contractor. If the Contractor fails to file a statement of exceptions within the time allowed, the Agency will infer acceptance of the final Progress Payment request as submitted to the Contractor.

If no liens or claims have been filed against the Contractor after thirty-five (35) Calendar Days from the filing of Notice of Completion, the Agency will approve and process for payment the entire sum due.

8-12 FINAL PAYMENT TO TERMINATE LIABILITY OF AGENCY

Payment of the final amount due under the Contract releases the Agency, and the Agency's officers, officials, agents, employees, members, volunteers, affiliates, and their duly authorized representatives, from all claims or liability on account of work performed under the Contract. Tender of this payment constitutes denial by the Agency of any unresolved claim of the Contractor not specifically excepted in writing by the Contractor. The Contractor's acceptance of the Final Payment releases the Agency and the Agency's officers, officials, agents, employees, members, volunteers, affiliates, and their duly authorized representatives, from all claims or liability on account of work performed under the Contract or any alterations thereof, except unresolved items set forth in the statement of exceptions.

8-13 DISPUTED PAYMENTS

The Agency will decide disputes regarding payments under the Contract according to the procedures set forth in Section 9, "Changes and Claims," of these Specifications. The decision of the Agency will be final.