

SECTION 9 MEASUREMENT AND PAYMENT

9-1.01 Measurement of Quantities. All work to be paid for at a contract price per unit of measurement will be measured by the Engineer in accordance with United States Standard Measures. A ton shall consist of 2,000 pounds avoirdupois.

At a time designated by the Engineer after the completion of construction and before the issuance of a final payment estimate, a representative of the Contractor and of the City shall measure and determine the final quantities. Quantities shall be measured in the units shown in the Contract.

When material is to be measured and paid for on a volume basis and it is impractical to determine the volume by the specified method of measurement, or when requested by the Contractor in writing and approved by the Engineer in writing, the material will be weighed and such weights will be converted to volume measurement for payment purposes. Factors for conversion from weight measurement to volume measurement will be determined by the Engineer and shall be agreed to by the Contractor before such method of measurement of pay quantities will be adopted.

Quantities of material wasted or disposed of in a manner not called for under the contract, or rejected loads of material, including material rejected after it has been placed by reason of the failure of the Contractor to conform to the provisions of the contract, or material not unloaded from the transporting vehicle, or material placed outside of the lines indicated on the plans or established by the Engineer, or material remaining on hand after completion of the work; will not be paid for. No compensation will be allowed for hauling and disposing of rejected material.

Full compensation for all expense involved in conforming to the requirements specified in this Section 9-1.01 shall be considered as included in the unit prices paid for the materials being measured or weighed and no additional compensation will be allowed therefor.

9-1.02 Scope of Payment. The Contractor shall accept the compensation provided in the contract as full payment for furnishing all labor, materials, tools, equipment, and incidentals necessary to the completed work and for performing all work contemplated and embraced under the contract; also for loss or damage arising from the nature of the work, or from the action of the elements, or from any unforeseen difficulties which may be encountered during the prosecution of the work until the acceptance by the City and for all risks of every description connected with the prosecution of the work, also for all expenses incurred in consequence of the suspension or discontinuance of the work as provided in the contract; and for completing the work according to the plans and specifications. Neither the payment of any estimate nor of any retained percentage shall relieve the Contractor of any obligation to make good any defective work or material.

No compensation will be made in any case for loss of anticipated profits.

Any payment to the Contractor for work performed under this contract, whether a partial progress payment or final payment, shall not waive City's right to demand that the Contractor correct defects in the Contractor's work, whether or not defects were known to the Engineer, the City, its agents or employees at the time such payment was made.

Whenever it is specified or indicated in the contract documents, that the Contractor is to do work, or furnish materials for which no price is fixed in the contract, it is understood and agreed, that there is included in each lump sum or unit price bid, the entire cost of all work, incidental to the completion of that part of the work covered by each lump sum or unit price bid,

or if not directly incidental to any specific bid items, the cost thereof has been distributed among those bid items deemed most appropriate by the Contractor.

9-1.03 Change Order Payment. When extra work is to be paid for on basis of change order, the labor, materials and equipment used in the performance of such work shall be subject to the approval of the Engineer and compensation will be determined as follows:

9-1.03A Work Performed by Contractor. The Contractor will be paid as follows: a price may be agreed upon, or, failing such an agreement in price, an amount equal to the sum of the following five items shall be used as the full and proper compensation therefore; and such amount shall be added to or subtracted from, as the case may be, the price fixed by the terms of the contract for the part of the work affected:

A. The necessary reasonable cost to the Contractor of the material required for the work as furnished by the Contractor and delivered by him at the site of the work.

B. The necessary cost to the Contractor of the labor (including foremen devoting their exclusive attention to the work in question) required to incorporate all of said material into the work and to finish the work in accordance with directions.

C. The necessary reasonable cost to the Contractor of equipment used for the work.

D. The cost of worker's compensation insurance premiums, State Unemployment and Federal Social Security payments on the labor included in Item b.

E. Fifteen per cent (15%) of the sums of Items A., B., C., and D., which shall be considered as covering all other expenses and profits, with the exception that all work performed by subcontractors shall be paid for by an increase of 5% above the Contractor's cost.

The compensation provided for in each and every change order shall include all costs and taxes applicable thereto, and the City shall not be liable for any increase in taxes during the term of change order work.

The overhead and profit markup on each and every change order shall include full compensation for all costs incurred by the contractor for any additional time required to complete change order.

In order that a proper estimate may be made by the Engineer of the net cost of labor and materials entering into extra work, in accordance with the procedure just stated, the Contractor shall furnish daily an itemized statement of materials and labor supplied, together with the cost of such material and the wages paid, and shall furnish vouchers for quantities and prices of such labor, material or work. In case the Contractor fails to comply with the above provisions, the Contractor shall have no claim for compensation against the City.

This method of determining the price of work shall not apply to the performance of any work which is required or reasonably implied to be performed or furnished under the contract.

9-1.03B Work Performed by Special Forces or Other Special Services. When the Engineer and the Contractor, by agreement, determine that a special service or an item of extra work cannot be performed by the forces of the Contractor or those of any of the Contractor's subcontractors, that service or extra work item may be performed by a specialist. Invoices for the service or item of extra work on the basis of the current market price thereof may be accepted without complete itemization of labor, material, and equipment rental costs when it is impracticable and not in accordance with the established practice of the special service industry to provide a complete itemization.

In those instances wherein the Contractor is required to perform extra work necessitating a fabrication or machining process in a fabrication or machine shop facility away from the job site, the charges for that portion of the extra work performed in the facility may, by agreement, be accepted as a specialist billing.

To the specialist invoice price, less a credit to the City for any cash or trade discount offered or available, whether or not the discount may have been taken, will be added 5 percent in lieu of the percentages provided in Section 9-1.03A, "Work Performed by Contractor."

9-1.03C Records. The Contractor shall maintain records in such a manner as to provide a clear distinction between the direct costs of extra work paid for on a change order basis and the costs of other operations.

From the above records, the Contractor shall furnish the Engineer completed daily extra work reports, on forms acceptable to the Engineer, for each day's extra work to be paid on a change order basis. The daily extra work reports shall itemize the materials used, and shall cover the direct cost of labor and the charges for equipment rental, whether furnished by the Contractor, subcontractor, or other forces, except for charges described in Section 9-1.03B, "Work Performed by Special Forces or Other Special Services." The daily extra work reports shall provide names or identifications and classifications of workers, the hourly rate of pay and hours worked, and also the size, type and identification number of equipment, and hours operated.

Material charges shall be substantiated by valid copies of vendor's invoices. The invoices shall be submitted with the daily extra work reports, or if not available, they shall be submitted with subsequent daily extra work reports. Should the vendor's invoices not be submitted within 60 days after the date of delivery of the material or within 15 days after the acceptance of the contract, whichever occurs first, the City reserves the right to establish the cost of the materials at the lowest current wholesale prices at which those materials were available in the quantities concerned delivered to the location of work less any discounts as provided in Section 9-1.03A(2a).

Daily extra work reports shall be signed by the Contractor or the Contractor's authorized representative.

9-1.03D Payment. Payment as provided in Sections 9-1.03A, "Work Performed by Contractor," and 9-1.03B, "Work Performed by Special Forces or Other Special Services," shall constitute full compensation to the Contractor for performance of work paid for on a change order basis and no additional compensation will be allowed therefor. Such payment will be made in accordance with the provisions in Section 9-1.06, "Partial Payments."

9-1.04 Notice of Potential Claim. The Contractor shall not be entitled to the payment of any additional compensation for any act, or failure to act, by the Engineer, including failure or refusal to issue a change order, or for the happening of any event, thing, occurrence, or other cause, unless the Contractor shall have given the Engineer due written notice of potential claim as hereinafter specified.

The written notice of potential claim shall set forth the reasons for which the Contractor believes additional compensation will or may be due, the nature of the costs involved, and insofar as possible, the amount of the potential claim. The said notice as above required must have been given to the Engineer prior to the time that the Contractor shall have performed the

work giving rise to the potential claim for additional compensation, if based on an act or failure to act by the Engineer, or in all other cases within 15 days after the happening of the event, thing, occurrence, or other cause, giving rise to the potential claim. City may request additional information from Contractor regarding the Contractor's claim which shall be provided to City within 10 days of the request.

It is the intention of this Section 9-1.04 that differences between the parties arising under and by virtue of the contract be brought to the attention of the Engineer at the earliest possible time in order that such matters may be settled, if possible, or other appropriate action promptly taken. The Contractor hereby agrees that they shall have no right to additional compensation for any claim that may be based on any such act, failure to act, event, thing or occurrence for which no written notice of potential claim as herein required was filed.

9-1.05 Stop Payment Notices. The City may at its option and at any time retain out of any amounts due the Contractor, sums sufficient to cover claims filed pursuant to Section 3179 et seq of the Civil Code.

9-1.06 Partial Payments. The City, 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 to the time of such estimate, and the value thereof. The estimate shall also include any amounts payable for mobilization.

The City shall retain 5 percent of such estimated value of the work done.

The City shall pay monthly to the Contractor, while carrying on the work, the balance not retained, as aforesaid, after deducting therefrom all previous payments and all sums to be kept or retained under the provisions of the contract. No such estimate or payment shall be required to be made when, in the judgment of the Engineer, the work is not proceeding in accordance with the provisions of the contract.

No such estimate or payment shall be construed to be an acceptance of any defective work or improper materials.

Attention is directed to the express prohibition against payment to unlicensed contractors contained in Public Contract Code Section 10164, the provisions of which are set forth in Section 7-1.01C, "Contractor's Licensing Laws."

The estimates of the Engineer shall be final and conclusive evidence of the amount of work performed by the Contractor under this contract, and shall be taken as full measure of compensation to be received by the Contractor.

Before any partial payment or the final payment is made, the Contractor may be required to submit satisfactory evidence that the Contractor is not delinquent in payments to employees or creditors for labor and materials incorporated into the work.

The Contractor shall maintain and provide to the City, upon request, with each partial payment request, certified payrolls for all of its employees and those employees of Contractor's subcontractors.

9-1.065 Payment of Withheld Funds. The Contractor may substitute securities for any moneys withheld by the City to ensure performance under this contract except where federal statutes, regulations or policies, or both, do not allow the substitution of securities. At the request and expense of the Contractor, securities equivalent to the amount withheld shall be

deposited with the City, or with a state or federally chartered bank as the escrow agent. The City shall then pay such withheld moneys to the Contractor.

Securities eligible for investment under this Section 9-1.065 shall include those listed in Section 16430 of the California Government Code, bank or savings and loans certificated of deposits, interest bearing demand deposit accounts, standby 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.

The escrow agreement used to implement this Section 9-1.065 shall be in a form satisfactory to the City.

9-1.07 Payment After Final Inspection. After the work has been accepted by the Engineer the final payment will be made to the Contractor subject to the provisions in this Section 9-1.07.

9-1.07A Payment of Final Estimate. Prior to acceptance of the work by the City, the Engineer will make a proposed final estimate in writing of the total amount payable to the Contractor, 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. All prior estimates and payments shall be subject to correction in the proposed final estimate. The City will make a final monthly payment based upon that estimate. The City will pay the balance thereon found to be due after deduction of all previous payments, all amounts to be kept or retained under the provisions of the contract, and such further amounts as the Engineer determines to be necessary.

9-1.07B Final Payment and Claims. Within 30 days after said proposed final estimate has been submitted to the Contractor, the Contractor shall submit to the Engineer written approval of said proposed final estimate or a written statement of all claims the Contractor has arising under or by virtue of the contract. No claim will be considered that was not included in said written statement of claims, nor will any claim be allowed as to which a notice of protest is required under the provisions in Sections 4-1.03, "Changes," 8-1.06, "Time of Completion," 8-1.07, "Liquidated Damages," 8-1.10, "Utility and Non-Highway Facilities," and 9-1.04, "Notice of Potential Claim," unless the Contractor has complied with the notice of protest requirements in said sections.

On the Contractor's approval, or if the Contractor files no claim within said period of 30 days, the Engineer will issue a final estimate in writing in accordance with the proposed final estimate submitted to the Contractor and within 30 days thereafter the City will pay the entire sum so found to be due. Such final estimate and payment thereon shall be conclusive and binding against both parties to the contract on all questions relating to the amount of work done and the compensation payable therefor, except as otherwise provided in Sections 9-1.03C, "Records."

If the Contractor within said period of 30 days files claims, the Engineer will issue a semifinal estimate in accordance with the proposed final estimate submitted to the Contractor and within 30 days thereafter the City will pay the sum so found to be due. Such semifinal estimate and payment thereon shall be conclusive and binding against both parties to the contract

on all questions relating to the amount of work done and the compensation payable therefor, except insofar as affected by the claims filed within the time and in the manner required hereunder and except as otherwise provided in Sections 9-1.03C, "Records."

The claims filed by the Contractor shall be in sufficient detail to enable the Engineer to ascertain the basis and amount of said claims. The Engineer will consider and determine the Contractor's claims and it will be the responsibility of the Contractor to furnish within a reasonable time such further information and details as may be required by the Engineer to determine the facts or contentions involved in the Contractor's claims. Failure to submit such information and details will be sufficient cause for denying the claims and shall constitute a waiver of such claims.

The Engineer will make the final written determination of any claims which remain in dispute after completion of claim review. The Engineer will review such claims and make a written recommendation thereon. The Contractor may meet with the City Manager to make a presentation in support of such claims.

Upon final determination of the claims, the Engineer shall then make and issue the Engineer's final estimate in writing and within 30 days thereafter the City will pay the entire sum, less all amounts to be kept or retained under provisions of the contract. Such final estimate shall be conclusive and binding against both parties to the contract on all questions relating to the amount of work done and the compensation payable therefor, except as otherwise provided in Sections 9-1.03C, "Records."

9-1.10 No Arbitration of Disputes. All disputes will be resolved by litigation, unless both parties agree to arbitration.

END OF SECTION