

**SECTION 7
MEASUREMENT AND PAYMENT**

7.01 MEASUREMENT OF QUANTITIES

- A. Where the Contract provides for payment on a lump sum price basis, no measurement of quantity will be made. Where the Contract provides for payment on a unit price basis, the quantities of work performed will be computed by the Engineer on the basis of measurements taken by the Engineer, and these measurements shall be final and conclusive.
- B. All quantities of work computed under the Contract shall be based upon measurements by the Engineer according to United States Measurements and Weights.
- C. Methods of measurement are specified herein and in the Technical Specifications.
- D. Mobilization shall be measured and payment issued according to Section 11 of the State Standard Specifications.

7.02 SCOPE OF PAYMENT

- A. 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 Specifications and Plans. 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.
- B. No compensation will be made in any case for loss of anticipated profits. Increased or decreased work involving supplemental agreements will be paid for as provided in such agreements.
- C. The Work includes the preparatory work and operations needed for mobilization and demobilization of the Project. The Work, however, does not include establishing the Engineer's field facility(s) of utility work and connections needed for these facilities.

7.03 PROGRESS ESTIMATE

For each calendar month of Contract work, the Engineer will prepare a progress estimate of all work performed under the Contract. Within the first ten (10) days of each succeeding calendar month, the Engineer will prepare in writing an estimate which in the Engineer's opinion is a fair approximation of the value of all work done under the Contract, including any amounts due the Contractor for Extra Work and Change Orders. In arriving at the value of the Work done, the Engineer will give consideration to the value of labor and materials which have been incorporated into the permanent work by the Contractor during the preceding month. Consideration will not be given to preparatory work done or for materials or equipment on hand.

In order to assist the Engineer, the Contractor shall furnish the Engineer with copies of invoices for all such items delivered to the job site.

7.04 PROGRESS PAYMENTS

- A. The City will pay the Contractor ninety (90%) percent of the amount of each progress estimate within 30 days after receipt of an undisputed and properly submitted progress estimate from the Contractor. If the City fails to pay an undisputed progress estimate within the allotted thirty (30) days, the City shall pay interest to the Contractor equivalent to the legal rate set forth in subdivision (A. of section 685.010 of the Code of Civil Procedure. Ten (10%) percent of the amount of each estimate shall be retained by the City until final completion and acceptance of all work under the Contract.
- B. Upon receipt of a payment request, the City shall act in accordance with both of the following:
 1. Each payment request shall be reviewed by the City as soon as practicable after receipt for the purpose of determining that the progress estimate is a proper payment request.
 2. Any payment request determined not to be a proper payment request suitable for payment shall be returned to the Contractor as soon as practicable, but not later than seven (7) days, after receipt. A request returned pursuant to this Section shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.
- C. The number of days available to the City to make a payment without incurring interest pursuant to this Section shall be reduced by the number of days by which the City exceeds the seven-day return requirement set forth in paragraph (ii) of subdivision (B).
- D. The Contractor may, in accordance with the provisions of Public Contracts Code section 22300, substitute securities for any monies which the City may withhold to insure performance under the Contract.
- E. When, in the judgment of the Engineer, the Work is not proceeding in accordance with the provisions of the Contract, or when in the Engineer's judgment the total amount of the Work done since the last estimate amounts to less than one-thousand (\$1,000) dollars, no pay estimate will be prepared and no progress payment will be made.

- F. No progress estimate or payment shall be considered to be an approval or acceptance of any work, materials or equipment. Estimated amounts and values of work done and materials and equipment furnished will be conformed with actual amounts and values as they become available in subsequent progress estimates, progress payments and the final estimate and payment. All estimates and payments will be subject to correction in subsequent progress estimates and payments and the final estimate and payment.
- G. It is mutually agreed between the parties to the Contract that no payments made under the Contract, including progress payments and the final payment shall be evidence of the performance of the Contract, either wholly or in part, and no payment shall construed to be an acceptance of any defective or incomplete work or improper materials.

7.05 LIENS AND STOP NOTICES

The Contractor agrees to keep the Work, the site of the Work and all monies held by the City free and clear of all liens and stop notices related to labor and materials furnished in connection with the Work, if permitted by law. Furthermore, the Contractor waives any right it may have to file any type of lien or stop notice in connection with the Work. Notwithstanding anything to the contrary contained in the Contract Documents, if any such lien or stop notice is filed or there is evidence to believe that lien or stop notice may be filed at any time during the progress of the Work or within the duration of this Contract, the City may refuse to make any payment otherwise due the Contractor or may withhold any payment due the Contractor a sum sufficient in the opinion of the City to pay all obligations and expenses necessary to satisfy such lien or stop notice. The City may withhold such payment unless or until the Contractor, within ten days after demand therefor by the City, shall furnish satisfactory evidence that the indebtedness and any lien or stop notice in respect thereof has been satisfied, discharged and released of record, or that the Contractor has legally caused such lien or stop notice to be released of record pending the resolution of any dispute between the Contractor and any person or persons filing such lien or stop notice. If the Contractor shall fail to furnish such satisfactory evidence within ten days of the demand therefor, the City may discharge such indebtedness and deduct the amount thereof, together with any and all losses, costs and damages suffered or incurred by the City from any sum payable to the Contractor under the Contract documents, including but not limited to final payment and retained percentage. This Section shall be specifically included in all Subcontracts and purchase orders entered into by the Contractor.

7.06 FINAL ACCEPTANCE AND DATE OF COMPLETION

Whenever the Contractor shall deem all Work under this Contract to have been completed in accordance therewith, he shall so notify the Engineer in writing, and the Engineer shall promptly ascertain whether the Work has been satisfactorily completed and, if not, shall advise the Contractor in detail and in writing of any additional work required. When all the provisions of the Contract have been fully complied with, to the satisfaction of the Engineer, the Engineer shall proceed with all reasonable diligence to determine accurately the total value of all Work performed by the Contractor at the prices set forth in the Contract or fixed by Change Orders, and the total value of all extra work, all in accordance with the Contract. The Engineer will then certify to said final estimate and to the completion of the Work, and will file copies thereof with the City and the Contractor. The date of completion shall be the date of formal acceptance of the work by City Council. All guarantees, warranties, and securities securing said guarantees and warranties, shall commence on said date.

7.07 RIGHT TO WITHHOLD PAYMENTS

- A. In addition to all other rights and remedies of the City hereunder and by virtue of the law, the City may withhold or nullify the whole or any part of any partial or final payment to such extent as may reasonably be necessary to protect the City from loss on account of:
1. Defective work not remedied, irrespective of when any such work be found to be defective;
 2. Claims or liens filed or reasonable evidence indicating probable filing of claims or liens including, but not limited to claims under Sections 1775, 1776, or 1777.7 of the Labor Code;
 3. Failure of the Contractor to make payments properly for labor, materials, equipment, or other facilities, or to subcontractors and/or suppliers;
 4. A reasonable doubt that the Work can be completed for the balance then unearned;
 5. A reasonable doubt that the Contractor will complete the Work within the agreed time limits;
 6. Costs to the City resulting from failure of the Contractor to complete the Work within the proper time; or
 7. Damage to work or property.

B. Whenever the City shall, in accordance herewith, withhold any monies otherwise due the Contractor, written notice of the amount withheld and the reasons therefor will be given the Contractor. After the Contractor has corrected the enumerated deficiencies, the City will promptly pay to the Contractor the amount so withheld. When monies are withheld to protect the City against claims or liens of mechanics, material men, Subcontractors, etc., the City may at its discretion permit the Contractor to deliver a surety bond in terms and amount satisfactory to the City, indemnifying the City against any loss or expense, and upon acceptance thereof by the City, the City shall release to the Contractor monies so withheld.

7.08 FINAL PAYMENT

Within ten (10) days after the date of completion, the City will file in the Office of the County Recorder, a Notice of Completion of the Work herein agreed to be done by the Contractor. On the expiration of thirty-five (35) days after the recordation of such Notice of Completion, the difference between said final estimate and all payments theretofore made to the Contractor shall be due and payable to the Contractor, subject to any requirements concerning the furnishings of a maintenance bond, and excepting only such sum or sums as may be withheld or deducted in accordance with the provisions of this Contract. All prior certifications upon which partial Payments may have been made, being merely estimates, shall be subject to correction in the final certificate.

7.09 FINAL RELEASE

Final payment to the Contractor in accordance with the final estimate is contingent upon the Contractor furnishing the City with a signed written release of all claims against the City arising by virtue of the Contract. Disputed Contract claims in stated amounts may be specifically excluded by the Contractor from the operation of the release. The release shall be in substantially the following form:

WAIVER AND RELEASE UPON FINAL PAYMENT

The undersigned has been paid in full by the City for all labor, services, equipment and material furnished to the City on the _____ (name of project) located at _____ and does hereby waive and release the City, its officers, agents, and employees, from all claims and liability to the Contractor arising out of, or in any way connected with, the Contract, except for the disputed contract claims specified below:

Notice of Disputed Claim Amount of Claim

\$

Dated:

(Name of Contractor)

By _____
(Title)

7.10 WAIVER OF INTEREST

The City shall have no obligation to pay and the Contractor hereby waives the right to recover interest with regard to monies which the City is required to withhold by reason of judgment, order, statute or judicial process.