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## SECTION 8 – MEASUREMENT AND PAYMENT

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### **8-1 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. To determine quantities the Contractor shall use the length, area, solid contents, number, weight, or time as specified in the Contract or the Schedule of Values.

#### **8-1.01 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 of Elk Grove does not express or imply 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 completed, or materials or equipment furnished, and the Estimated Quantities. See also Sections 9-8.02, "Unit Prices" and 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 City 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 City of Elk Grove, the Contractor shall furnish full copies of Subcontracts showing actual costs. The Schedule of Values shall be consistent with the baseline progress schedule prepared by the Contractor pursuant to Section 7-5.01, "Progress Schedule", of these Specifications.

#### **8-1.03 Payment for 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, as well as all demobilization costs.

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.

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Measurement and payment shall be as specified in Section 9-1.16D “Mobilization” of the State Standard Specifications.

### **8-2 SCOPE OF PAYMENT**

#### **8-2.01 General**

Compensation under the terms of the Contract shall be 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 and 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 twenty-five percent (25%), see Section 9-8.02, “Payment for Changes – Unit Prices”, of 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 shall be paid for as specified in Section 9-1.02C, “Final Pay Item Quantities”, of the State Specifications.

#### **8-2.05 Allowances**

Allowances may be included in the Bid Form for materials and/or work that 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 City of Elk Grove. Whenever costs of the Work included in the Allowance item are more or less than the specified Allowance amount, the Total Contract Price will be adjusted accordingly by Contract Change Order. 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 completed, or materials or equipment furnished, and the Estimated Quantities for the Allowance.

#### **8-2.06 Payment for Material Not Incorporated in the Work**

No Progress Payments will be made for materials and equipment not incorporated in the Work, unless specifically set forth in the Special Provisions or authorized by the Engineer.

### **8-3 WORK TO BE 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

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Special Provisions as extra work. 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 City of Elk Grove 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 City of Elk Grove”, in this Section of these Specifications. When the City of Elk Grove 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 City of Elk Grove, 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 meeting or identified in the Special Provisions, on the 20th of each month the Contractor shall submit in writing for City 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 shall 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”, in this Section of these Specifications, and other withholdings as specified in the Contract from the estimated total value, the City will pay the Contractor the balance.

The payment of a Progress Payment or the acceptance thereof 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 City has the right to correct any error made in any Progress Payment.

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

No inspection, order, measurement, approval modification, 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 thereof shall be a waiver of any of the terms and conditions of the Contract, the powers reserved by the City, or any right of the City to damages or to reject the Work in whole or part. No breach of this Contract shall be construed a waiver of any other or subsequent breach. All remedies provided in the Contract shall be cumulative and shall be in addition to all other rights and remedies that may exist at law or in equity.

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### **8-7 RETENTION**

#### **8-7.01 Retention to Ensure Performance**

As described in Section 8-11, “Final Estimate and Payment”, in this Section of these Specifications, the City will retain five percent (5%) of each Progress Payment to ensure performance under the Contract until thirty-five (35) days after filing of the Notice of Completion.

#### **8-7.02 Non-Compliance**

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

#### **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 City withholding the retention defined in Section 8-7.01, “Retention to Ensure Performance”, in this Section of these Specifications, the Contractor may: 1) substitute a deposit of securities at least equivalent to the retention to be paid, or 2) request the City of Elk Grove pay retention directly to an escrow agent.

The Contractor and City of Elk Grove shall enter an escrow agreement in the exact form specified by the City. All forms or correspondence pertaining to Security Deposit in Lieu of Withhold shall be addressed to:

CITY OF ELK GROVE  
DEPARTMENT OF FINANCE  
8401 LAGUNA PALMS WAY  
ELK GROVE, CA 95758

### **8-8 WITHHOLDINGS/DENIAL OF PROGRESS PAYMENT REQUEST**

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

- cover any unpaid claims filed pursuant to Civil Code Sections 3179 et seq.;
- protect the City’s interest; and/or
- pay any fines levied against the Work by the City or other entities.

The City may also deny a Progress Payment request and/or withhold money, or modify any previous Progress Payment, as necessary to protect the City from loss due to or affecting enforcement of:

- Defective work not remedied.
- Stop notices filed.
- Failure of the Contractor to make payments properly to Subcontractors for labor, materials, or equipment.
- Evidence that the Work cannot be completed for the unpaid balance of the Contract sum.

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- Evidence that the Work will not be completed within the Contract time.
- Damage to the City of Elk Grove 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 City as a result of the Contractor’s actions.
- If Notices of Correction or Non-Compliance are outstanding and not satisfied.

When, under the provisions of the Contract, the City charges any sum of money against the Contractor, the City 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 City charges against the Contractor, the City 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 City will deduct from a Progress Payment a just and reasonable amount as determined by the Engineer.

### **8-10 LIQUIDATED DAMAGES FOR DELAY**

All parties to the Contract agree that time is of the essence, and that the Work shall 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 City. 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 shall pay to the City the sum set forth in the Special Provisions for each and every calendar days delay beyond the time prescribed in the Contract, and the Contractor further agrees that the City 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, “Final Inspection and Field Acceptance”, of these Specifications, the Contractor shall provide a proposed Final Payment request, segregated as to Contract item and Contract Change Order work.

The City 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 and Public Contract Code Section 7107, shall create the Final Payment request. All Progress Payments shall be subject to correction in the Final Payment. Within fifteen (15) calendar days after the proposed Final Payment request is returned to the Contractor, the Contractor shall submit to the City a written approval of said request or a written statement of exceptions. The Contractor’s statement of exceptions shall be in sufficient detail for the City to ascertain the basis and amount of the exceptions; failure to provide the detail shall be sufficient cause for denial of the exceptions. Any claim of the Contractor or the Contractor’s Subcontractors or suppliers with

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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 City will infer acceptance of the Final 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 City will approve for payment the entire sum due, including the release of any retention.

### **8-12 FINAL PAYMENT TO TERMINATE LIABILITY OF CITY OF ELK GROVE**

Payment of the final amount due under the Contract shall release the City, and the City'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 shall constitute denial by the City of any unresolved claim of the Contractor not specifically excepted in writing by the Contractor. The Contractor's acceptance of the Final Payment shall release the City and the City'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 City 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 City will be final.