

## **SECTION 4 PROGRESS AND COMPLETION OF WORK**

### **4.01 PROGRESS SCHEDULE**

The Contractor shall submit within ten (10) days after execution of the Contract a detailed work schedule(s) which shall detail the actions of the Contractor and Subcontractors working at the Site. This schedule(s) shall both show the dates at which the Contractor will start and complete and conform to the completion time specified in the Contract.

The Contractor shall review and, if necessary, revise the progress schedule at least once a month. In any event, Contractor shall submit, at any time during the contract period, a current schedule to the Engineer at the Engineer's request.

No progress payments will be made for any work performed until a satisfactory schedule has been submitted and approved by the Engineer. An updated schedule shall be required from the Contractor if the project falls ten (10) working days behind schedule.

If the Work falls behind the accepted schedule, the Contractor shall promptly take whatever actions are necessary to put the project back on schedule. For delays or portions of delays for which the Contractor is responsible, no payment will be made or time extension allowed for increase in work force, equipment, and working hours needed to put the project on schedule.

### **4.02 COMMENCEMENT AND PROGRESS OF THE WORK AND TIME OF COMPLETION**

#### **A. Commencement**

The Contractor shall begin the Work after receiving a Notice to Proceed within the period of time set forth in the Contract Provisions. Thereafter, Contractor shall diligently prosecute the Work to completion as specified in the Contract Documents. The Engineer shall have the right to specify the locations where Contractor shall start and proceed with the Work.

A preconstruction conference will be convened after the Contractor has delivered the necessary bonds, insurance certificates and signed agreement in proper form as required in the invitation to bid, bid proposal and general conditions of these specifications. Prior to any work, the Contractor shall provide the Engineer with a list of key personnel assigned to the project and the telephone numbers where they may be reached at any time. The list shall be made available in sufficient copies and presented at the preconstruction conference.

Notwithstanding any other provisions of the Contract, the City shall not be obligated to accept or pay for any work furnished by the Contractor prior to the issuance of the Notice to Proceed whether or not the City has knowledge of the furnishing of such work. The Contractor shall not commence with work on this project until his Contract bonds and evidence of insurance comply with all Contract requirements and a Notice to Proceed has been issued.

The Contractor shall notify the Engineer in writing two (2) working days (48 hours) prior to commencement of work on the Project or scheduling work for a Saturday, Sunday, or City Holiday. Failure to provide said notification will void the City's obligation to provide inspection. Any work done in the absence of the City's Inspector shall be subject to rejection.

**B. Completion**

All work under this Contract shall be completed within the period of time set forth in the Contract Provisions. The Contract shall be deemed completed when the Engineer has certified the completion of the Project as provided in Section 7.06, of these General Conditions.

**4.03 SUSPENSION OF WORK**

- A. The Engineer may at any time, by notice in writing to the Contractor, suspend any part of the Work for such period of time as may be necessary to prevent improper execution of the Work on the project by the Contractor, his Subcontractors or agents, and the Contractor shall have no claim for damages or additional compensation on account of any such suspension.
- B. The City may at any time suspend any part or all of the Work upon ten (10) days written notice to the Contractor, who shall thereupon discontinue all work suspended except for all operations to prevent loss or damage to work already executed as may be directed by the Engineer. Work shall be resumed by the Contractor after such suspension on written notice from the City.
- C. In the event of any suspension of the Work in whole or in part under subsection (B) above, the Contractor shall be entitled to an extension of time wherein to complete the Work to the extent of the delay caused to the Contractor thereby.

D. In the event the entire work shall be suspended by order of the City, as herein above provided, and shall remain so suspended for a period of sixty (60) consecutive days, through no fault of the Contractor, and notice to resume the Work shall not have been served on the Contractor as herein above provided, Contractor may, at his option, by written notice to the City, terminate the Contract in the same manner as if the termination had been initiated by the City, and the City shall have no claim for damages because of such termination of the Contract.

#### **4.04 DELAY IN THE WORK – TIMELY EXTENSION**

The Contractor shall at all times employ such force, plant, materials, and tools as will be sufficient, in the opinion of the Engineer, to prosecute the Work at not less than the rates fixed under the terms of the Contract and to complete the Work thereof within the time limits fixed therein. If the Contractor refuses or fails to prosecute the Work, or any separable part thereof, with such diligence as will ensure the completion within the time specified in the Contract, or any extension thereof, or fails to complete said work within such time, the City may exercise the termination provisions set forth in Section 4.05, below.

A. Excusable Delays. Excusable delays shall be delays in the Contractor's work due to strikes, lockouts by others, fire, unusual delay in transportation, unavoidable casualties, adverse weather conditions which could not have been reasonably anticipated, or any other act(s) of God beyond the Contractor's control, or by delay authorized by the City, or by any cause which the City shall decide to justify the delay. Except as provided in Section 4.04F, below, in the event of an excusable delay, the time of completion shall be extended for such reasonable time as the City may decide. The Contractor's right to an extension of time for an excusable delay is expressly subject to Contractor's giving written notice of such claim within ten (10) days following the date the Contractor knew or should have known of the delay. Failure to give such notice shall be construed as a waiver of such right. It is understood and agreed that extensions of time shall be the Contractor's sole and exclusive remedy for excusable delays.

- B. Compensable delays. Compensable delays shall be delays in the Contractor's work due to acts or neglect of the City, its employees or those under it by contract or otherwise, or by changes ordered in the work. In the event of a compensable delay, the time of completion shall be extended for such reasonable time as the City may decide. In addition, the Contractor may recover its direct costs as provided in Section 2.04. The Contractor's remedies for compensable delays are expressly subject to Contractor's giving ten (10) days written notice of such claim from the date the Contractor knew or should have known of the delay. It is understood and agreed that the Contractor's sole and exclusive remedies for compensable delays shall be an extension of the time and recovery of its direct costs as compensable hereunder, but only in accordance with the provisions of the Contract Documents.
- C. Contractor and City understand and agree that the Contract time for the completion of this project is a very important part of the contract. Extensions of time will only be granted as provided above when events actually cause the Contractor to be delayed in the performance of the progress of the work. When acts or omissions occur which could cause delay, Contractor will take all reasonable means in order to be able to continue to work as scheduled without any delay, or as short a delay as possible. Additionally, if inclement weather causes accumulation of standing water on the work site or other conditions which might cause delay, Contractor shall take all measures reasonably necessary to permit work to continue as quickly as possible.
- D. If adverse weather conditions are the basis for a claim for additional time, such claim shall be documented by date substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse affect on the scheduled construction. Adverse weather conditions shall be considered only as those conditions that exceed the average annual number of rain days and rain quantities as established by the Annual Local Climatological Summary and NOAA National Technical Memorandum NWS WR-65 (Revised) as published by the United States Government, National Weather Service, National Climate Center, Asheville, North Carolina.

- E. The Engineer shall be responsible for determining when adverse weather conditions result in non-workable days. It shall be the Contractor's duty to stay informed of such determinations by the Engineer. The Contractor may object to such adverse weather determinations by filing with the Engineer a written notice of objection. The notice of objection shall state the basis of the objection and provide supporting documentation, which substantiates that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse affect on the scheduled construction. All such notices of objection shall be filed within three (3) days of the day in dispute. It is hereby agreed that the Contractor's failure to submit a written notice of objection within three (3) days of the Engineer's adverse weather determination shall constitute a waiver by the Contractor of all its rights to further protest, judicial or otherwise.
- F. The Engineer will, within a reasonable period of time, issue a ruling on the Contractor's notice of objection. All such rulings by the Engineer shall be final, unless the Contractor files a written protest within fifteen (15) days of the Engineer's ruling. This protest shall clearly state the basis of the dispute. Such protest will be forwarded promptly to the City, which will issue a decision on each such protest. The City decision will be final. Pending the City decision, the Contractor shall proceed with its work in accordance with the Engineer's ruling and/or instructions. It is hereby agreed that the Contractor's failure to file a protest within fifteen days (15) of the Engineer's ruling shall constitute a waiver by the Contractor of all its rights to further protest, judicial or otherwise.
- G. The number of days that are anticipated to be non-workable due to adverse weather conditions shall be as set forth in Section 4.04 of the Contract Documents. Days deemed non-workable by the Engineer in excess of such anticipated number shall be considered excusable delays.
- H. Unexcused delays shall be delays in the Contractor's work due to acts or neglect of the Contractor, its employees, subcontractors or those under it by contract or otherwise. In the event of an unexcused delay, the Contractor expressly agrees that it shall not be entitled to either an extension of time or recovery of its costs.
- I. A request for an extension of time, or the granting of an extension of time, shall not constitute a basis for any claim against the City for additional compensation or damages unless caused by the City or another contractor employed by the City.

#### **4.05 TERMINATION UPON DEFAULT**

- A. In the event of any default by the Contractor as described below, the City may, after giving ten (10) days' written notice to the Contractor, terminate the Contractor's right to proceed with the Work or any part of the Work in the City's sole discretion. Events of default include:
1. Failure or refusal to prosecute the Work, or any separable part thereof, with such diligence as will ensure the completion within the time specified in the Contract, or any extension thereof, or failure to complete said work within such time.
  2. Filing of bankruptcy by the Contractor, or the making of a general assignment for the benefit of its creditors, or appointment of a receiver on account of Contractor's insolvency without discharge of the receiver within ten (10) days after its appointment.
  3. Failure to make prompt payments to Subcontractors or suppliers.
  4. Persistent disregard of laws, ordinances, or the instructions of the Engineer, or other substantial violation of any provision of the Contract.
- B. The rights and remedies of the City provided in this Section are in addition to any of the rights and remedies provided by law or under this Contract.

#### **4.06 TERMINATION FOR CONVENIENCE**

If at any time before completion of the Work, the City determines that it is either impossible or against the interests of the City to complete the Work, or if the Work is stopped by an injunction of a court of competent jurisdiction or by order of any competent authority, the City may, upon ten (10) days written notice to the Contractor, discontinue the Work and terminate the Contract. Upon service of such notice of termination, the Contractor shall discontinue the Work in such manner, sequence, and at such times as described below. The Contractor shall have no claim for damages for such discontinuance or termination, nor any claim for anticipated profits on the Work thus dispensed with, nor any other actually performed up to the time of discontinuance, including any Extra Work ordered by the Engineer to be done, nor for any claim for liquidated damages.

Termination of the Contract for convenience and the total compensation payable to the Contractor in the event of termination shall be governed by the following:

- A. The Engineer will issue the Contractor a written notice signed by the Engineer, specifying that the Contract is to be terminated. Upon receipt of said written notice and, except as otherwise directed in writing by the Engineer, the Contractor shall:

1. Stop all Work under the Contract except that specifically directed to be completed prior to Acceptance.
  2. Perform Work the Engineer deems necessary to secure the project for termination.
  3. Remove equipment from the site of the Work.
  4. Take such action as is necessary to protect materials from damage.
  5. Notify all Subcontractors and suppliers that the Contract is being terminated and that their contracts or orders are not to be further performed unless otherwise authorized in writing by the Engineer.
  6. Provide the Engineer with an inventory list of all material previously produced, purchased or ordered from suppliers for use in the Work and not yet used in the Work, including its storage location, and such other information as the Engineer may request.
  7. Dispose of material not yet used in the Work as directed by the Engineer. It shall be the Contractor's responsibility to provide the City with good title to all materials purchased by the City hereunder, including material for which partial payment has been made and with bills of sale or other documents of title for such materials.
  8. Subject to the prior written approval of the Engineer, settle all outstanding liabilities and all claims arising out of subcontracts or orders for material terminated hereunder. To the extent directed by the Engineer, the Contractor shall assign to the City all the right, title and interest of the Contractor under subcontracts or orders for materials terminated hereunder.
  9. Furnish the Engineer with the documentation required to be furnished by the Contractor under the provisions of the Contract including, on projects as to which Federal funds are involved, all documentation required under the Federal requirements included in the Contract.
  10. Take such other actions as the Engineer may direct.
- B. Termination of the Contract shall not relieve the Contractor of responsibility for damage to materials except as follows:
1. The Contractor's responsibility for damage to materials for which partial payment has been made and for materials furnished by the City for use in the Work and unused shall terminate when the Engineer certifies that such materials have been stored in the manner and at the locations he or she has directed.

2. The Contractor's responsibility for damage to materials purchased by the City subsequent to the issuance of the notice that the Contract is to be terminated shall terminate when title and delivery of such materials has been taken by the City.
  3. When the Engineer determines that the Contractor has completed the Work under the Contract directed to be completed prior to termination and such other Work as may have been ordered to secure the project for termination, he or she will recommend that the Engineer formally accept the Contract, and immediately upon and after such Acceptance by the Engineer, the Contractor will not be required to perform any further Work thereon and shall be relieved of his or her Contractual responsibilities for injury to persons or damage to property which occurs after the formal Acceptance of the project by the Engineer.
- C. The total compensation to be paid to the Contractor shall be determined by the Engineer on the basis of the following:
1. The reasonable cost to the Contractor, without profit, for all Work performed under the Contract, including mobilization, demobilization and Work done to secure the project for termination. Reasonable cost will include a reasonable allowance for project Overhead and general administrative Overhead not to exceed a total of seven (7%) percent of Direct Costs of such Work.
  2. A reasonable allowance for profit on the cost of the Work performed as determined under Section 4.06A, above, provided the Contractor establishes to the satisfaction of the Engineer that it is reasonably probable that he or she would have made a profit had the Contract been completed and provided further, that the profit allowed shall in no event exceed four (4%) percent of said cost.
  3. The reasonable cost to the Contractor of handling material returned to the vendor, delivered to the City or otherwise disposed of as directed by the Engineer.
  4. A reasonable allowance for the Contractor's administrative costs in determining the amount payable due to termination of the Contract.

All records of the Contractor and the Subcontractors, necessary to determine compensation in accordance with this Section shall be open to inspection or audit by representatives of the City at all times after issuance of the notice that the Contract is to be terminated and for a period of three (3) years, and such records shall be retained for that period.



After Termination of the Work by the Engineer, the Engineer may make payments on the basis of interim estimates pending issuance of the Final Statement, when in his or her opinion the amount thus paid, together with all amounts previously paid or allowed, will not result in total compensation in excess of that to which the Contractor will be entitled. All payments, including payment upon the Final Statement, shall be subject to deduction for prior payments and amounts, if any, to be kept or retained under the provisions of the Contract.

D. The provisions of this Section shall be included in all subcontracts.

#### **4.07 RIGHTS OF CITY UPON TERMINATION**

- A. In the event the right of the Contractor to proceed with the Work, or any portion thereof, has been terminated because of the fault of the Contractor and the Contractor has been given ten (10) days notice to cure such fault and has not done so, the City may take over the Work and prosecute the same to completion by contract or any other method the City deems expedient, and may take possession of and utilize in completing the Work such materials, appliances, equipment and plant as may be on the site of the Work and necessary therefore. In such event, the Contractor and its sureties shall be liable for all damages including costs of managerial and administrative services, engineering, legal and other consultant fees, and liquidated damages sustained or incurred by the City.
- B. Upon termination, the Contractor shall not be entitled to receive any further payment until the Work is finished. If upon completion of the Work the total cost to the City, including engineering, legal and other consultant fees, costs of managerial and administrative services, construction costs, and liquidated damages shall be less than the amount which would have been paid if the Work had been completed by the Contractor in accordance with the terms of the Contract, then the difference shall be paid to the Contractor in the same manner as the final payment under the Contract. If the total cost incurred by the City on account of termination of the Contract and subsequent completion of the Work by the City by whatever method the City may deem expedient shall exceed said amount which the Contractor would otherwise have been paid, the Contractor and his sureties shall be liable to the City for the full amount of such excess expense.
- C. The rights and remedies of the City provided in this Section are in addition to any of the rights and remedies provided by the law or under this Contract.

#### **4.08 FAILURE TO TIMELY COMPLETE THE WORK – LIQUIDATED DAMAGES**

- A. Liquidated Damages

1. It is agreed by the parties to this Contract that time is of the essence. In the event all the Work is not completed before or upon the expiration of the time limit as set in the Bid, Contract and/or Progress Schedule, or within any time extensions that may have been granted, damage will be sustained by the City; and that it may be impracticable to determine the actual amount of damage by reason of such delay. Accordingly, it is agreed that the Contractor shall pay to the City as damages the amount set forth for each and every day's delay in finishing the Work in excess of the number of days specified. Liquidated damages shall be paid at a rate of five-hundred dollars per day (\$500.00) unless otherwise stated in the Contract Documents. The parties expressly agree that the liquidated damage clause found in the Contract Documents is reasonable under the circumstances existing at the time the Contract was made. The City shall have the right to deduct the amount of liquidated damages from any money due or to become due the Contractor.
2. In addition, the City shall have the right to charge to the Contractor and to deduct from the final or progress payments for the Work the actual cost to the City of legal, engineering, inspection, superintendence, and other expenses, which are directly chargeable to the Contract and which accrue during the period of such delay, except that the cost of final inspection and preparation of the final estimate shall not be included in the charges.

#### B. Exclusions

Notwithstanding the provisions of section 4.08A, the Contractor shall not be liable for liquidated damages or delays caused by the removal or relocation of utilities when such removal or relocation is the responsibility of the City or the owner of the utility under Government Code Section 4215.

#### **4.09 CLEAN-UP**

During the progress of the Work, the Contractor shall maintain the Site and related structures and equipment in a clean, orderly condition and free from unsightly accumulation of rubbish. All waste materials shall be removed daily from the Site and disposed of by the Contractor by any proper means at his own expense unless designated otherwise on the plans. No waste materials shall be placed in the public street right-of-way. Unless otherwise specified, all existing piping, materials and/or equipment removed pursuant to this Contract shall become the Contractor's property.

Upon completion of the Work and before the final estimate is submitted, the Contractor shall, at its own cost and expense, remove from the vicinity of the Work all plants, buildings, rubbish, unused work materials, concrete forms, and temporary bridging and other like materials, belonging to the Contractor or used under the Contractor's direction during the construction, and in the event of the Contractor's failure to do so, the same may be removed by the City after ten (10) calendar days notice to the Contractor. Such removal shall be at the expense of the Contractor.

The Contractor shall use care in the removal of materials and equipment so as not to cause damage to existing facilities and structures. Contractor shall assume liability for all such damage. Where the construction has crossed yards or driveways, restoration shall be by the Contractor to the complete satisfaction of the Engineer, at the Contractor's expense.

The Contractor shall make its own arrangements for the disposal of waste materials. If the Contractor elects to dispose of such materials on private property, Contractor shall obtain written permission from all property owners involved.