

SECTION 01292 PARTIAL PAYMENTS

1.1 THE REQUIREMENT

A. General

1. The quantities listed in the Bid schedule will not govern final payment. Payment to the CONTRACTOR will be made only for actual quantities of Contract items constructed in accordance with the Plans and Specifications. Upon completion of construction, if the actual quantities show either an increase or decrease from the quantities given in the Bid schedule, the Contract Unit Prices will prevail subject to the provisions of the GENERAL REQUIREMENTS Section 01254 – PAYMENT FOR CHANGES AND EXTRA WORK.
 2. The unit and lump sum prices to be paid shall be full compensation for the items of work and all appurtenant work, including furnishing all materials, labor, equipment, tools, and incidentals.
 3. Payment will not be made for materials wasted or disposed of in a manner not called for under the Contract. This includes rejected material not unloaded from vehicles, material rejected after it has been placed, and material placed outside of the Plan lines. No compensation will be allowed for disposing of rejected or excess material.
 4. Payment for work performed or materials furnished under an Assessment Act Contract will be made as provided in particular proceedings or legislative act under which such Contract was awarded.
 5. Whenever any portion of the Work is performed by the CITY at the CONTRACTOR'S request, the cost thereof shall be charged against the CONTRACTOR, and may be deducted from any amount due or becoming due from the CITY.
 6. Whenever immediate action is required to prevent injury, death, or property damage, and precautions which are the CONTRACTOR'S responsibility have not been taken and are not reasonably expected to be taken, the CITY may, after reasonable attempt to notify the CONTRACTOR, cause such precautions to be taken and shall charge the cost thereof against the CONTRACTOR, or may deduct such cost from any amount due or becoming due from the CITY. CITY action or inaction under such circumstances shall not be construed as relieving the CONTRACTOR or its Surety from liability.
 7. Guarantee periods shall not be affected by any payment, but shall commence on the date equipment or material is placed into service at the direction of the CITY. In the event such items are not placed into service, prior to partial or final acceptance of the project, the guarantee period will commence on the date of such acceptance.
- B. Unless otherwise prescribed by law, three (3) working days prior to the last work day of each month, or other such date mutually agreed upon by the CONTRACTOR and the INSPECTOR, the CONTRACTOR shall prepare and submit to the INSPECTOR, an estimate of the cumulative amount and value of

acceptable Work performed by the CONTRACTOR at the Jobsite up to that date. Said amount shall also include the value of all acceptable materials and equipment for the Contract that have been delivered and suitably stored but not yet used in the Work, subject to the requirements of PAYMENT FOR MATERIALS OR EQUIPMENT DELIVERED AND STORED ON THE JOB SITE, and PAYMENT FOR MATERIALS OR EQUIPMENT STORED OFF THE JOB SITE of these GENERAL REQUIREMENTS.

- C. Upon verification and approval by the INSPECTOR, such estimate shall be processed by the INSPECTOR in accordance with the provisions of the California Public Contracts Code.
- D. The CITY may retain a portion of the amount otherwise due to the CONTRACTOR, as follows:
 - 1. Retention of ten percent (10%) will be held on the original Contract value on each approved payment claim until the amount paid of the original Contract equals fifty percent (50%). The CITY may then, at its sole discretion discontinue further retention on the original Contract value for all subsequently approved payment claims.
 - 2. At any time during the course of the Contract, the CITY may, at its sole discretion, reinstate the ten percent (10%) retention.
- E. Additional deductions will be made from each monthly payment request for amounts due the CITY as follows:
 - 1. Equipment or materials furnished by the CITY.
 - 2. Services rendered to the CONTRACTOR by the CITY.
 - 3. Amounts due the CITY for liquidated damages under the terms of the Contract.
 - 4. Amounts required to be deducted by federal, state, or local governmental authority or other provisions of these Contract Documents.
- F. From the balance thus determined will be deducted the amount of all previous payments, and the remainder shall constitute the monthly payment due the CONTRACTOR. Within thirty (30) calendar days after receipt of the INSPECTOR'S recommendation of the monthly payment due the CONTRACTOR and subject to the deductions provided, herein, the CITY will pay the amount found due.
- G. On lump-sum Contracts the INSPECTOR'S estimate of the monthly payment due the CONTRACTOR will not be required to be made by strict measurement, and an approximate estimate will suffice.
- H. The monthly payments may be withheld or reduced, for the following reasons:
 - 1. If the CONTRACTOR is not diligently or efficiently complying with the express intent of the Contract.
 - 2. If there are unresolved Notices of Non-Compliance.

3. If Technical Manuals are not submitted.
 4. If Record Drawings are not kept up-to-date.
 5. If progress photographs are not submitted, and
 6. If construction schedules are not submitted in accordance with these General Requirements.
- I. The CONTRACTOR shall promptly submit the following in response to requests by the INSPECTOR:
1. All information and records necessary to determine the cost of the Work for purposes of estimating monthly payment.
 2. All itemized statements, in a form satisfactory to the INSPECTOR, of the actual cost of all acceptable materials delivered by the CONTRACTOR to the site.
- J. The making of any payment to the CONTRACTOR shall not relieve the CONTRACTOR from Contractual obligations. These payments shall not be construed as the transfer of ownership of any equipment or materials to the CITY.
- K. Responsibility of ownership shall remain with the CONTRACTOR who shall be obligated to store, protect, repair, replace, rebuild or otherwise restore any fully or partially completed work or structure for which payment has been made. The CONTRACTOR shall replace any materials or equipment required to be provided under the Contract which, may be damaged, lost, stolen, or otherwise degraded in any way prior to acceptance of the Work under the Contract.
- L. At its own expense, the CONTRACTOR has the option to substitute for any money being withheld by the CITY, securities equivalent to the amount being withheld. Securities eligible for such substitution are bank or savings and loans certificates of deposit or such securities eligible for investment pursuant to California Government Code. Any such security or securities so substituted for monies withheld shall be owned by the CONTRACTOR who shall receive earned interest.
- M. Such security shall, at the request and expense of the CONTRACTOR, be deposited with CITY or with a State or Federally Chartered Bank as the escrow agent who shall pay such monies to the CONTRACTOR upon notification by the CITY that payment can be made. Such notification will be given at the expiration of sixty (60) calendar days from the date of acceptance of the Work by the BOARD, or as prescribed by law, provided, however, that there will be a continued retention of necessary securities to cover such amounts as are required by law to be withheld by properly executed and filed notices to stop payment, or as may be authorized by the Contract to be further retained.
- N. Any escrow agreement entered into pursuant to this provision shall contain as a minimum, the following provisions: the amount of securities to be deposited; the terms and conditions of conversion to cash in case of the default of the CONTRACTOR; and the termination of the escrow upon completion of the Contract and the other requirements as hereinabove provided.

(END OF SECTION)