

ITEM 109 ACCEPTANCE, MEASUREMENT, AND PAYMENT

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109.01 Measurement of Quantities. The City will measure the quantities of Work and calculate payments based on the method of measurement and basis of payment provisions provided in these Specifications. When the following units of measure are specified, the City will measure quantities as described below unless otherwise specified in the Contract Documents.

Lump Sum. Describes payment as reimbursement for all resources necessary to complete the Work. When a complete structure or structural unit is specified as the unit of measurement, the unit will include all necessary fittings and accessories. Partial payments of work bid as a lump sum may be made based upon an agreed percentage of work completed or an approved Schedule of Values.

Each. Measured by the number of individual items of Work completed.

Foot (Meter). Measured parallel to the longitudinal base or foundation upon which items are placed, or along the longitudinal surface of the item. Measured vertically to the nearest 0.1 foot (0.01 m).

Square Yard or Square Foot (Square Meter). Measured by a two-dimensional area method on the surface of the item.

Cubic Yard (Cubic Meter). Measured by a three-dimensional volume method. Measure all “loose material” or material “measured in the vehicle” by the cubic yard (cubic meter). Haul material “measured in the vehicle” in approved vehicles and measure in the vehicle at the point of delivery. For this purpose, use approved vehicles of any type or size satisfactory to the Engineer, provided the vehicle’s bed is of such type that the actual contents are readily and accurately determined. Unless all approved vehicles on a job are of uniform capacity, each approved vehicle must bear a legible identification mark indicating the specific approved capacity. The Inspector may reject all loads not hauled in such approved vehicles.

Cubic Yard (Cubic Meter) for Asphalt Concrete. Measure as specified in 401.21.

Acre (Hectare). Measured by a two-dimensional area method on the surface to the nearest 0.1 acre (0.05 ha).

Pound (Kilogram). Measured by actual item net weight avoirdupois (mass).

Ton (Metric Ton). The term “ton” means the short ton consisting of 2000 pounds avoirdupois. The term “metric ton” means 1000 kilograms. Weigh all materials that are proportioned by weight on accurate and approved scales that are operated by competent, qualified personnel at locations approved by the Engineer. However, car weights will not be acceptable for materials to be passed through mixing plants. If trucks are used to haul material being paid for by weight, weigh the empty truck at least once daily and as the Engineer directs and only if the weight of the truck is used in determining the ticket weight. Place a plainly legible identification mark on each truck bearing the weight of the truck.

For Work on a tonnage basis, file with the Engineer receipted freight bills for railroad shipments and certified weight-bills when materials are received by any other method, showing the actual tonnage used. For Work on a volume basis, itemize evidence of the volume used.

Gallon (Liter). Measured by actual item liquid volume. The City will measure the following materials by the gallon (liter) at the following temperatures:

Temperatures	Items
60 °F (16 °C)	Creosote for Priming Coat, Creosote Oil, Creosote Solutions for Timber Preservatives, Asphalt Primer for Water-proofing, and Liquefier
100 °F (38 °C)	RC, MC Asphalt Emulsions, CBAE, Primer 20, and Primer 100
300 °F (149 °C)	Asphalt Binder

Measure tank car outage of asphalt material at its destination before any material has been removed from the tank car according to City’s Supplement 1060.

Convert the net weight of asphalt material shipments to gallons (liters) at the specified pay temperature according to City’s Supplement 1060.

Convert the gallons (liters) at the measured temperature to gallons (liters) of asphalt material at the specified pay temperature according to City’s Supplement 1060.

Thousand Board Feet, MBF (Cubic Meter). Measure timber by MBF (cubic meter) actually incorporated in the structure. Base the measurement on nominal widths, thicknesses, and the extreme length of each piece.

Standard Manufactured Items. When standard manufactured items are specified such as fence, wire, plates, rolled shapes, pipe conduit, etc., and these items are identified by size, unit weight, section dimensions, etc., such identification will be to nominal weights or dimensions set by the industry.

109.02 Measurement Units. The City will measure using either English or metric units as indicated in the Contract Documents. Use the appropriate factor provided in the IEEE/ASTM SI 10.

109.03 Scope of Payment. The Contractor shall receive and accept compensation provided for in the Contract as full payment for performing all Work under the Contract in a complete and acceptable manner and for all risk, loss, damage, or expense of

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whatever character arising out of the nature of the Work or the prosecution thereof, except as otherwise provided in 104.02, 104.03 and 107.16.

Each unit price "Basis of Payment" clause in the Specifications includes any essential work or material described in the Specification unless specifically covered under any other pay item.

109.04 Compensation for Altered or Eliminated Quantities. When the accepted quantities of Work vary from the quantities in the Proposal, the Contractor shall accept as payment in full, payment at the original contract unit prices for the accepted quantities of work done, unless a request for an adjustment is made in accordance with 104.02.D.

The adjustment permitted by 104.02.D shall apply only for the quantities in excess of 125% of the estimated quantity stated in the Contract. For those excess quantities the adjustment shall replace the unit price with a new unit or lump sum price, based upon the reasonable verifiable cost of performance of the excess quantities and calculated in accordance with 109.05.

For decreased quantities below 75% of the estimated quantities in the Contract, the adjustment shall apply to the total actual quantity and shall consist solely of an adjustment for the portion of fixed costs, actually incurred and reasonably allocable to the affected pay item, that the Contractor would have otherwise recovered at the contract unit price if 75% of the estimated quantity had been performed.

The Contract adjustment for payment for eliminated items shall be at the original Contract unit price for such eliminated item, subject to the Contractor making a timely demand for additional adjustment if there is a significant change. The City will not apply a deduction from such payment for maintaining traffic, mobilization, and construction layout stakes items for eliminated items, unless there is a significant change as defined by 104.02.D.

In no event shall allowances be made for loss of anticipated profits suffered or claimed by the Contractor resulting directly or indirectly from such increased, decreased or eliminated quantities or from unbalanced allocation among the Contract items, or from any other cause.

109.05 Extra Work.

A. General. If City revises the Contract, City will pay for changes and Extra Work with a Change Order using the sequence provided in 109.05.B through 109.05.D that constitutes payment in full for all changes and Extra Work.

B. Negotiated Prices. Prior to the Extra Work being performed, Engineer and Contractor may negotiate agreed unit or lump sum prices using one or more of the following methods:

1. Original Contract prices for similar work but adjusted for:
 - a. increased or decreased material costs.
 - b. increased or decreased labor costs.
 - c. increased or decreased equipment costs.
2. Prices computed by the Engineer.

3. Cost analysis of labor, material, equipment, and mark ups as allowed in 109.05.C.
4. Cost analysis for compensable delays shall be prepared by the Contractor and approved by the Engineer.

Negotiated prices for changes and Extra Work shall be comparable to prices that would have resulted from a competitively bid contract.

If the City negotiates with the Contractor but does not agree on a lump sum or unit price adjustment, Engineer may direct the Contractor to perform all or part of the revised Work under Force Account or Unilateral Change Order.

C. Force Account.

1. General. Force account procedures shall only be used when necessary, such as when agreement cannot be reached with the Contractor on the price of a new work item, when the extent of work is unknown or is of such character that a price cannot be determined to a reasonable degree of accuracy, or when in the best interest of the City. The reason or reasons for using force account procedures shall be documented. When directed by the Engineer, the Contractor shall submit a cost estimate and written description of the Work, including the planned equipment, materials, labor, and work schedule.

If the Contractor performs any work that it submits for payment as a force account, it must notify the Engineer in writing before beginning the work such that the City may track the materials, labor, and equipment in order to verify the Contractor's quantities. If the Contractor fails to notify the Engineer in writing before beginning force account work, the work performed by the Contractor shall be paid for under the original contract sum. However, the Contractor shall not be entitled to any compensation for force account work if it is later determined that the work was otherwise included in the original contract or determined to be otherwise non-compensable under the Contract. The Engineer will provide documentation stating the reasons that the work is non-compensable under the Contract.

2. Labor. For all labor and for all foremen in direct charge of the specific operations, the Contractor shall receive the rate of wage and fringe benefits currently in effect at the time the work is performed for each and every hour that said labor and foremen are actually engaged in such work, to which may be added an amount equal to 38 percent of the sum thereof. In addition to the above the Contractor shall itemize the actual cost of Social Security Tax, Worker's Compensation and State and Federal Unemployment Insurance. In lieu of itemizing these 4 items, 22 percent of the sum of wages and fringe benefits may be added.

The City will pay, without mark up, the actual itemized cost of fees and dues paid to labor unions or to business associations when they are based on payroll hours and required by a collective bargaining agreement. The City will not pay for wages or benefits for personnel connected with the Contractor's forces above the classification of foreman that have only general supervisory responsibility for the force account work. (Proration of hours between force and non-force account work also is required.)

The City will pay the prevailing wage and fringe rates that apply to the Project for the classifications required for Extra Work. The Contractor must provide payroll records for

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pay rates higher than the prevailing wages and establish that the higher than prevailing rates are paid for original Contract Work. The City will pay for foremen and time keepers not covered by prevailing wages not more than the salaried rate they receive when engaged in original Contract Work.

3. Materials. The City will pay Contractor's actual invoice costs, including applicable taxes and actual freight charges, for Engineer-approved materials that the Contractor uses in force account work. The City will pay an additional 15 percent mark up on these costs. Freight or hauling costs charged to the Contractor and not included in unit prices shall be itemized and supported by invoices. The cost of owned or rented equipment used to haul materials to the Project shall not be part of the materials cost. The Contractor shall submit invoices to support the quantities of materials used, unit prices paid and transportation charges.

If the Contractor uses materials from the Contractor's stock and original receipted invoices for the materials and transportation charges do not exist, the City and the Contractor will agree on a price that represents the actual cost to the Contractor.

4. Equipment.

a. General. The City will pay the Contractor's costs for equipment the Engineer deems necessary to perform the force account work for the time directed by the Engineer or until the Contractor completes the force account work, whichever happens first. The City will pay the Contractor the Blue Book established rates for equipment only during the hours that it is operated, except as otherwise allowed elsewhere in the Specifications. The City will pay for non-operating hours at the idle equipment rate as specified in 109.05.C.4.c. Established equipment rates in the Specifications include compensation for overhead and profit except as otherwise specified.

The City will not pay rental for small tools or equipment that show a daily rate less than \$5.00 or for unlisted equipment that has a value of less than \$400.00, unless such equipment is shown to be specialized to a specific area of work and not normally included in Blue Book. Traffic control devices used in maintaining traffic and owned by the Contractor will be treated as owned equipment. Allowed rates for common traffic control devices and concrete barrier that are not listed in the Blue Book will be as determined by City.

For force account work the Contractor may use Engineer-approved equipment in good working condition and providing normal output or production. The Engineer may reject equipment not in good working condition or not properly sized for efficient performance of the force account work. For each piece of equipment used, whether owned or rented, the Contractor shall provide the Engineer with the following information:

- (1) Manufacturer's name or trademark
- (2) Equipment type
- (3) Year of manufacture
- (4) Model number
- (5) Type of fuel used
- (6) Horsepower rating
- (7) Attachments required, together with their size or capacity
- (8) All further information necessary to determine the proper rate

- (9) Dates, daily hours, total hours of actual operation and idle time
- (10) Blue Book rate with reference or category
- (11) Quantity
- (12) Applicable Blue Book hourly operating cost
- (13) Invoices for all rental equipment

b. Hourly Owned Equipment Rates. For any machinery or special equipment other than small tools which it may be deemed necessary or desirable to use for the force account work, the Contractor shall receive payment for such equipment actually engaged in such work (hourly, daily, weekly or monthly).

For all machinery or special equipment already employed on the Project site at the time of the force account work, the Rental Rate Blue Book shall apply. The monthly rate will be divided by 176 to arrive at the hourly rate. The Contractor will be compensated at that rate for the working hours, which includes only those hours the equipment is actually in operation performing force account work. Base rate for the machine and attachments represent the major cost of equipment ownership, such as depreciation, interest, taxes, insurance, storage, and major repairs. The hourly operating rate represents the major costs of equipment operation, such as fuel and oil lubrication, field repairs, tires, expendable parts, and supplies.

Compensation for equipment normally used on a 24 hours per day basis will not exceed the monthly rate plus adjustments and operating costs. The rate adjustment factor assigned to any attachment will be the yearly factor as determined for the base equipment.

c. Hourly Idle Equipment Rate. For equipment that is in operational condition, on site, and necessary for force account work, but is idle, the City will pay an hourly idle equipment rate. If rented equipment necessary for force account work is idle and with the Engineer's approval, the City will pay the Contractor for all equipment that was idled. The hourly rate of compensation for any idle equipment will be the monthly rental rate times a factor of 0.50 divided by 176 hours per month with no operating costs added.

The City will not pay idle equipment costs for more than eight hours in a 24-hour day or forty hours in a week. The City will not pay for inoperable equipment. Compensation for idle equipment will stop at the completion of the force account work or at the end of the suspension of work.

d. Rented Equipment. If the Contractor rents or leases equipment from a third party exclusively for force account work, the City will pay the actual invoiced amount. The actual invoiced rates must be reasonably in line with the Blue Book and approved by the Engineer. The City will pay a 15 percent mark up for overhead and profit for all rented equipment costs supported by the actual invoices. Blue Book hourly operating cost will be added to the marked up actual invoiced rates only for the time the rented equipment was used on the Force Account work.

If the Contractor uses rented equipment currently on the Project for original Contract Work to perform force account Work, then determine the hourly equipment rate as described in 109.05.C.4.b.

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The City will not compensate for rental rates that exceed the Blue Book rates unless approved in advance of the work by the Engineer.

5. Foreman's Transportation. The City will pay a flat rate of \$4.50 for every hour the foreman's truck is on the force account work. This rate includes equipment cost, fuel and lubricants, overhead, and profit.

6. Subcontract Work. For Work performed by an approved subcontractor, City will pay the approved subcontractor invoice plus 5 percent mark up for administrative costs. The administrative cost for subcontract work shall not exceed \$5,000.00. No additional mark-up is allowed for work of a subsubcontractor or trucking services employed by a subcontractor.

7. Payment for Force Account Work. The compensation to the Contractor as provided 109.05.C shall constitute payment in full for Extra Work done on a force account basis, including administration, superintendence, overhead, use of tools and equipment for which no rental is allowed, profit, taxes other than sales tax, premium on insurance, and any other expense incidental to performing the force account work. Sales tax will not be allowed on any item for which tax exemption may be obtained.

8. Force Account Records. The Contractor's representative and the Engineer's or City's representative shall compare records daily of the extra work done as ordered on a force account basis. Daily Force Account Records shall be signed by both City and Contractor daily. In the event the Contractor declines to sign the Daily Force Account Record, the City's records shall govern. Any resulting dispute must be pursued in accordance with 104.03.

City and Contractor personnel will document the labor and equipment used on the Force Account work on a Daily Force Account Record. At the end of each Workday, City and Contractor personnel will compare and sign the Daily Force Account Record. The City will make no Force Account payment before the Contractor submits an itemized statement of the costs for that work. The Engineer will examine and, if found to be acceptable, approve all rates and costs submitted by Contractor.

Final payment will not be made for Work performed on a force account basis until the Contractor has furnished the Engineer with itemized statements of the costs of such force account work detailed as follows:

- a. Name, classification, date, daily hours, total hours, rate, and extension for each laborer and supervisor.
- b. Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment.
- c. Quantities of materials, prices, and extensions.
- d. Transportation of materials.

Statements shall be accompanied and supported by proper invoices for all materials used and transportation charges, and rented equipment performing work on force account operations. However, if materials used on the force account work are not specifically purchased for such work but are produced by the Contractor or taken from the Contractor's stock, then in lieu of the invoices the Contractor shall furnish an affidavit certifying that such materials were produced by or taken from the Contractor's

stock, that the quantity claimed was actually used, and that the price and transportation claimed represent the actual cost to the Contractor. Statements shall be filed not later than thirty days following the period in which the work was actually performed.

D. Delay Costs.

1. **General.** If the City agrees that it is responsible for a delay as defined by 108.06, the City will pay for the costs specified in 109.05.D, unless these costs have been previously paid. Such payment constitutes full compensation for any and all delay costs.

Submit an itemized statement of applicable costs in the time period specified in 109.05.C.8 and that includes the content specified in 109.05.C.8 for the applicable items in this subsection and the following:

- a. Proof of cost of Superintendent, or other project staff salaries, wages, and payroll taxes and insurance.
- b. Proof of cost of office rent, utilities, land rent, and office supplies.
- c. Proof of escalated cost for labor and material.
- d. Proof of material storage costs.

2. **Allowable Delay Costs.**

a. Extended Labor. Compute labor costs during delays as specified in 109.05.C.2 for all non-salaried personnel remaining on the Project as required under collective bargaining agreements or for other Engineer-approved reasons.

b. Escalated Labor. To receive payment for escalated labor costs, demonstrate that the delay forced the Work to be performed during a period when labor costs were higher than planned at the time of the Proposal. The City will pay wages and fringes with a 20% mark-up to cover administrative costs.

c. Idle Equipment or Equipment Demobilization. The City will pay the Contractor according to 109.05.C.4.c for idle equipment, other than small tools, that must remain on the Project during the delay period. With prior approval, the City will pay the Contractor's transportation costs to remove and return equipment not required on the Project during the delay period. No other equipment costs shall be recoverable as a result of delay.

d. Material Escalation or Material Storage. The City will pay the Contractor for increased material costs or material storage costs due to the delay. Obtain the Engineer's approval before storing materials due to a delay. Payment will be based upon the accepted quantity of work performed during the period for which escalated costs have been approved. The City will pay increased material costs with an 8% mark-up to cover administrative costs and any material waste inherent to the Work.

e. Overhead and Profit. City will pay a 15% mark up on all direct costs as all inclusive compensation of all other Contractor costs, including but not limited to, (a) home office overhead, unabsorbed home office overhead, extended home office overhead, and all other overhead costs for which payment is not provided for in 109.05.D.2 and (b) profit.

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E. Unrecoverable Costs. The Contractor shall not be entitled to additional compensation for any costs not specifically allowed or provided for in 109.05, including, but not limited to, the following:

1. Loss of anticipated profit.
2. Consequential damages, including loss of bonding capacity, loss of bidding opportunities, insolvency, and the effects of force account work on other projects, or business interruption.
3. Impact, Disruption, Loss of Efficiency, Loss of Productivity.
4. Indirect costs.
5. Attorneys fees, claim preparation expenses, and the costs of litigation.

F. Damages for Termination for Convenience. If the Contract is terminated in accordance with 108.08.B, Termination for Convenience, the City will compensate the Contractor costs:

1. **Payment for Completed Work.** All completed items of Work as of the date of termination will be paid for at the Contract bid price. Payment for partially completed Work at the time of termination will be based upon actual costs incurred up to the date of termination and payment will be made either at agreed prices or by force account methods for extra work change order. The reasonable costs of the termination of convenience, may include accounting, clerical and other expenses, reasonable storage, transportation as set forth herein and the cost of demobilization which cannot exceed the price bid item and other reasonable and verifiable costs incurred in connection with the protection or disposition of materials obtained for this Project

2. **Materials.** Payment for materials included in the material inventory will be made at actual cost delivered to the project or City designated storage site, including transportation charges to which 15 percent for all overhead and profit markup will be added but shall not exceed the unit bid price for the referenced number involved. If the material is not turned over to the City, the City will pay the Contractor a restocking charges or actual disposal costs supported by paid invoices and an additional 5 percent mark up on the overhead and profit. In addition hauling costs if not included in the restocking charges for returned material and for material delivered to the City are compensable.

3. **Idle Equipment.** Claims for idle equipment time, if any, following termination of the Contract are limited to a maximum of thirty days and may not include any operating expenses. In the case of rented or leased equipment, the Contractor shall recover the lesser of the actual rental costs or fair market rental costs as established in 109.05.C and the amount shall not exceed thirty days rental.

4. **Overhead and Profit.** The mark-up for overhead and profit will comply with 109.05.C, except as provided in 109.05.F. In no event, however, shall consequential damages, loss of overhead, loss of overhead contribution or absorption of any kind, or loss of anticipated profits on Work that was not performed be compensable or considered as part of any settlement.

109.06 Directed Acceleration. The Contractor shall always have the obligation to complete the Work in the time frames set forth in the Contract, provided, however, the

Engineer, in writing, may order the Contractor, or may approve the Contractor's written request, to accelerate the Work to avoid or mitigate delay or associated costs or to complete the Project earlier than the Contract Completion Date. For purposes of this Section, lack of express written direction or approval by the Engineer shall never be construed as consent or direction to accelerate the Work.

In the event of an Engineer ordered or approved acceleration, the Engineer and the Contractor shall negotiate and agree on acceleration costs in advance of any acceleration work being started. To the extent, however, that the direction or approval to accelerate was due to delay caused by the fault or responsibility of the Contractor, the Contractor shall not be entitled to any additional time or costs associated with the acceleration. To the extent that the acceleration was directed for the benefit of the City or for a reason not the fault or responsibility of the Contractor, the Contractor will be entitled to a time or cost adjustment as provided by 108.06 and 109.05.

109.07 Estimates (Partial Payments). If satisfactory progress is being made, the Contractor will receive monthly payments based on the value of the Work completed and the materials in place and for materials delivered as specified in 109.10 as determined by the Engineer. The monthly payment is approximate only, and all partial estimates and payments shall be subject to correction in the Final Estimate and payment. Pay estimates must be signed by the Contractor and approved by the Engineer.

Payment for Work and materials shall not, in any way, prevent later rejection when defective Work or material is discovered, or constitute acceptance under 109.11. No estimate or payment shall be construed as acceptance of unacceptable Work or non-conforming materials. The City will not pay the adjusted Final Estimate until the Contractor remedies all unacceptable work, defective work, and accepted work damaged by the Contractor's operations.

Before the second partial payment estimate is processed and for each subsequent partial estimate thereafter, the Contractor shall submit a notarized affidavit confirming that all bills for materials and for subcontracted Work represented by the previous partial payment have been paid. The City will not pay an estimate until the Contractor certifies to the Engineer that the Work for which payment is being made was performed in accordance with the Contract Documents. Certification will be made on forms provided by the City.

Should any unacceptable Work, non-conforming material, or acceptable Work that has been damaged by the Contractor's operations be discovered prior to final acceptance thereof or should a reasonable doubt arise prior to final acceptance as to the integrity of any part of the completed Work, the estimate and payment for such defective or questioned Work shall not be allowed until the defect has been remedied and cause for doubt removed, by and at the expense of the Contractor.

Partial payments may, at any time, be withheld, if in the opinion of the Engineer, any Work will not be completed in accordance with the Contract Documents.

109.08 Project Contingency. Project Contingency is identified in the Proposal. This amount shall be included in the Contract Sum and shall be included in the coverage of the Proposal Guaranty. During the Contract, this pay item shall be utilized by the City as a resource for funding necessary changes in the Work. Project Contingency shall not, however, be considered a sum to which the Contractor has any entitlement, except as

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portions of it are assigned for payment by Change Order, and as progress is made by the Contractor upon the Work under such Change Order.

Upon completion of the Work under this Contract, any portion of the Project Contingency which has not been assigned for payment by Change Order shall be deducted by the final Contract Modification. Thereafter, such deducted amount may be deleted from the Contractor Bond, warranty, guarantee, and other applicable coverages.

109.09 Retainage. Ten percent of the Estimates may be retained by the City until fifty percent of the Work has been completed. When more than fifty percent of the Work has been completed, the amount retained may be reduced to five percent for all Work completed to the date of the estimate. When more than ninety percent of the Work has been completed and approved for payment, the amount retained may be reduced to 2.5%. The Engineer may also, at any time, increase retainage by any amount needed to protect the City's interests with respect to any incomplete, defective or unsatisfactory Work; costs or damages incurred by the City that are subject to the Contractor's indemnification obligations; or back charges that the City may assess against the Contractor.

The Contractor is hereby put on notice that the City will neither deposit retainage in an escrow account, nor pay interest on such retainage.

109.10 Payment for Material on Hand. The City may pay, up to 75 percent of the applicable contract item, for the invoiced cost of the delivered and approved materials before they are incorporated into the Work, when delivered on the Project or stored in acceptable storage places. Delivered cost shall be evidenced by supplier's or manufacturer's invoice bearing the statement that all previous invoices have been paid.

The Contractor shall make application for payment for materials on hand or stored on a form provided by the City. Information will be required as to the cost of the materials, when such materials will be incorporated in the Work and such other information that will be considered for approval of such payment. Consideration will be given only as to materials for major items of the Contract.

No partial payment will be made on living or perishable plant materials.

109.11 Final Inspection and Acceptance.

A. Final Inspection. The Final Inspection shall be a limited visual review of the Work and shall only serve as the City's verification that the Work appears substantially complete. Final Inspection does not waive any available rights or remedies of the City, nor divest the Contractor of any responsibility for compliance with the Contract Documents or liability for damages.

When the Contractor completes all or portions of the Work to be accepted by the City, a request by the Contractor for a Final Inspection shall be made. If the Engineer agrees the Work is complete, then within ten business days the Inspector will inspect the Work and categorize it as one of the following:

1. Unacceptable or not complete.
2. Substantially complete with punch list items found by the Inspector.
3. Substantially complete.

If the Inspector finds the Work substantially complete or substantially complete with punch list items, then the Contractor's maintenance responsibilities end on the day of the Final Inspection, except for any maintenance related to unfinished punch list items. This shall not relieve the Contractor of responsibility to correct defective Work or repair damage caused by the Contractor or waive any other remedy to which the City is entitled under the Contract, applicable law, in equity, or otherwise. The Inspector will issue a Final Inspection Report that will document the findings of the inspection and start any guarantee and warranty period(s).

B. Punch List. As provided in this Section, the Inspector will issue to the Contractor a written punch list of work required as a condition of acceptance. The Inspector's punch list will stipulate a reasonable time to complete the required work unless the Contractor can demonstrate to the Inspector that completion of the punch list work within the Inspector's time frame is unreasonable.

Notify the Engineer in writing when all of the punch list items are complete.

C. Finalization. The Contractor will receive the Engineer's list of final quantities within forty-five Calendar Days from the date that the Work is determined to be substantially complete by the Inspector. The Contractor shall accept the final quantities as determined by the Engineer or provide a written notice indicating the reason for disagreement within thirty Calendar Days of receiving the Engineer's list of final quantities. The prescribed 30 Calendar Day period can be modified by mutual agreement of the Contractor and the Engineer. If no notice of disagreement is received, then the final estimate shall be based on the Engineer's list of final quantities.

Within sixty Calendar Days from receipt of the Engineer's list of final quantities, the Contractor shall supply Final Project Documents for Project closeout, to include, but not be limited to:

1. Material certificates
2. Payrolls
3. Wage affidavits
4. DBE/MBE/WBE affidavits, if applicable
5. As-built drawings as required
6. Warranties
7. O&M Manuals
8. Lien Waivers
9. Final Force Account Statement(s)
10. Surety Consent for Final Payment
11. Spare Parts List
12. Certificate of Completion
13. Bond Rider (Check with the bond form)
14. Affidavit of Final Payment

Failure to submit these acceptably completed documents will result in an administrative fee of \$100.00 per Calendar Day deducted from the Final Pay Estimate for every day that any of the required documents remain delinquent, starting with thirty Calendar Days after receipt of written notification from the Engineer of a document deficiency.

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D. Final Acceptance/Project Closeout Process. After the Final Inspection and the issuance of the Punch List, the Contractor must complete the items on the Punch List in the stipulated time frame. After completing the items on the punch list, the Contractor shall notify the Engineer to confirm that the items have been completed. When the work noted on the Punch List has been confirmed to be complete, the Engineer will issue a Notice of Final Acceptance.

Final Acceptance of the Work does not waive any available rights or remedies of the City under the Contract, applicable law, in equity, or otherwise, and shall not discharge the Contractor from any obligations it has under the Contract, including, but not limited to: unsettled liens and claims against the City; faulty, defective, or nonconforming work discovered or appearing after Final Acceptance; failure of the Work to comply with the requirements of the Contract Documents; the terms of any warranties or guarantees contained in or required by the Contract Documents; any indemnification rights including damages or costs incurred by the City resulting claims or lawsuits brought against the City based on actions on the part of the Contractor, its subcontractors, sub-subcontractors, suppliers, or any of their employees, representatives or agents; fraud or bad faith committed by the Contractor or any subcontractor or supplier during performance of Work, but discovered by the City after Final Payment; and the City's audit and adjustment rights under the Contract.

E. Final Estimate. Final payment to the Contractor is based on:

1. The agreed final quantities or as determined by the Engineer;
2. Finding of Final Acceptance by the Engineer;
3. Receipt of acceptable Final Project Documents; and
4. Contractor certification that the Work was performed in accordance with the Contract Documents.

As soon as practical after the Final Acceptance of the Work by the City and after approval of the final Change Order, or the final Contract Modification if the final Contract Amount exceeds the amount authorized by City Council, there shall be issued a final estimate for payment based upon the actual quantities of completed and accepted Work performed under the Contract. Compensation will not be made for any Work that was not authorized.

Final Estimates shall be approved by the City, after which the City shall pay the entire sum found to be due, after deducting all previous payments under 109.07. All prior estimates are subject to correction in the Final Estimate.

F. Completion of Contract and Continuation of Contractor's Responsibility. The Engineer will issue a letter confirming completion of the Contract, noting any exception as provided in Items 659 and 661 and any guarantee or warranty.

The Contract is complete, except for items covered by any required bonds, when the Contractor receives final payment.

Neither Substantial Completion, Final Acceptance nor Completion of the Contract relieves the Contractor of any responsibilities to properly perform or correct the Work or to repair damage or waives any remedies to which the City is entitled under the Contract, at law, in equity, or otherwise.

109.12 Release of Liability. No person or corporation other than the signer of this Contract as Contractor, has any interest hereunder and no claim shall be made or be valid, and neither the City, nor any official or agent thereof, shall be liable for or be held to pay any money, except as provided in the Contract. The acceptance by the Contractor of final payment shall operate as and shall be a release to the City, and every officer and agent thereof, from all claims and liability to the Contractor for anything done or furnished for, or relating to the Work, or for any act or neglect of the City, or of any person relating to or affecting the Work.

109.13 Guarantee/Warranties. Unless otherwise noted in the Contract Documents, the guarantee period begins upon Final Acceptance of the Work by the City. The guarantee period extends for one year from the date of Final Acceptance.

Under the Contractor's guarantee the Contractor warrants to the City that materials and equipment furnished under the Contract are of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work is free from defects not inherent in the quality required or permitted; that the Work conforms to all requirements of the Contract Documents; that the Work is complete and fully functional; and that any failure to conform to these requirements or the occurrence of any defects or failures in the Work shall be remedied by the Contractor promptly and at no cost to the City.

In addition to the Contractor's guarantee and without in any way diminishing or changing it, the Contract Documents may also specify other express Contractor warranties or subcontractor, manufacturer or supplier warranties that apply during, or after, the Contractor's guarantee period. Notwithstanding the existence of other warranties, the Contractor shall remain as the responsible party to the City under the Contractor's guarantee for purposes of the City exercising its rights under this Section during the one-year guarantee period.

The guarantee provisions do not relieve the Contractor from completing the Work in accordance with the Contract and do not diminish any rights or remedies the City may have under the Contract, applicable law, in equity, or otherwise.

At any time during the guarantee period, the City may notify the Contractor that certain repairs or other actions are necessary. Within ten days after being so notified, the Contractor shall make such repairs or take such other actions as are declared necessary to restore the Work to a good and serviceable condition consistent with the requirements of the Contract Documents. In the event that the Contractor fails to comply with the order to repair or take other actions, such repairs may be made or other actions undertaken by the City and the Contractor agrees that it shall reimburse the City for any such expenses it incurs within ten days following the receipt of a statement rendered to the Contractor by the City for such expenses. Specifications for the Work performed under this Contract shall govern in the making of repairs or taking other action pursuant to this Section.

Upon the expiration of the one-year guarantee period, the Contractor shall take all steps necessary to transfer to the City all remaining rights and obligations that may exist under any other warranties from the Contractor, subcontractors, manufacturers or suppliers and shall continue to assist the City, as needed, to enforce such warranties.

109.14

109.14 Back charges. To the extent the City has the right to back charge the Contractor pursuant to the Contract, the City, at its option, may take one or more of the following actions: (i) require the Contractor to make payment to the City within ten days of the Contractor's receipt of the invoice; (ii) deduct the back charge from the next and subsequent pay estimates until the full amount of the back charge has been satisfied; or (iii) deduct the back charge from Retainage. The City's right to back charge is in addition to any or all other rights and remedies provided in the Contract, at law, in equity, or otherwise.

109.15 Right to Set-Off. The City shall have all of its contractual, common law, equitable, and statutory rights of set-off. These rights shall include, but not limited to, the City's option to withhold for the purposes of set-off (a) any monies due or that may become due to the Contractor under this Contract; (b) any monies due or owing under any other contract with the City Department that holds or funds this Contract; or (c) any monies due or owing the Contractor under any other contract with the City for tax delinquencies, fee delinquencies, or monetary penalties relative thereto. The City shall exercise its set-off rights pursuant to audit by the City Auditor, or its representative.