

Recurring Special Provisions
Division 100 – General Provisions
City of Fort Wayne
Public Works

Table of Contents

100.01 General.....	1
101.02 Above Normal Inclement Weather Days.....	1
101.03 Blank City of Fort Wayne Created Pay Items.....	2
101.12 Contract	2
101.19 Department	3
101.27 Holidays.....	3
101.37 Performance Bond	3
101.41 Project	3
102.01 Prequalification and Bidding	4
103.01 Disadvantaged Business Enterprise Program	4
103.04 Insurance.....	4
103.06 Waiver of Damages	4
104.02 Changed Conditions.....	4
105.01 Authority of the Engineer/ Project Manager	5
105.04 Coordination of Plans, Standard Specifications, and Special Provisions.....	5
105.06 Coordination with Utilities	6
105.08 Construction Stakes, Lines, and Grades	7
105.09 Duties of Technician and Inspector	7
105.16 Notice of Changed Conditions and Claims	7
(c) Claim Resolution Process.....	7
1. Project Level Review.....	7
2. District Office Department Head Review	8
3. Central Office Review.....	9
106.01 Source of Supply and Quality Requirements.....	9
107.06 Equal Opportunity Trainees	9
107.08 Public Convenience and Safety	9
107.24 Governing Law	10
108.01 Subletting of Contract.....	10
108.03 Notice to Proceed.....	11
108.04 Prosecution of the Work.....	11
108.05 Pre-phase Site Construction Meetings	12
108.08 Determination and Extension of Contract Time	12
108.09 Failure to Complete on Time.....	15

109.05 Payment for Extra Work	15
109.05.1 Quality Adjustments	16
109.05.3 PG Asphalt Binder Material Cost Adjustments	16
109.07 Partial Payments	17
113 Partnering Overhead	18
114 Computer-Aided Design Files (“CAD Files”) Disclaimer	18

Section 100.01 General

Contractor shall follow the Current Standard Specifications by the Indiana Department of Transportation unless amended, supplemented, or replaced by recurring Special Provisions or Unique Special Provisions provided by the City of Fort Wayne in the following Technical Specifications/Special Provisions.

Anywhere in the Standard Specifications where “state” is used, it shall be in reference to both the State of Indiana and/or the City of Fort Wayne.

Anywhere in the Standard Specifications where “agency” is used, it shall be in reference to both INDOT and/or the Public Works Department of the City of Fort Wayne.

Anywhere in the Standard Specifications where “Engineer” is used, it shall be in reference to either the City Engineer or his assigned representative.

Anywhere in the Standard Specifications where “Highway” is used, it shall be synonymous with City Roadway.

Section 101 – Definitions and Terms

101.02 Above Normal Inclement Weather Days

Replace INDOT Spec 101.02 with the following:

Inclement weather shall be defined as any weather which prevents Contractor from making progress on the critical path Work. It is the Contractor’s responsibility to document the weather conditions from an approved weather service or as documented by the RPR on site, and to document the impacts to the critical path. If the number of days in which inclement weather delayed Contractor’s critical path progress exceeds the days in table 4.05.C.2. in any given month, then Contractor shall be given a no cost time extension to the contract duration.

Contractor shall plan for the following number of inclement weather days:	
January	7
February	6
March	6
April	8
May	5
June	3
July	3
August	3
September	3

October	4
November	5
December	6

Months in which the contract spans only a portion of the month shall utilize a pro-rated system based on the percentage of the month encompassed by the contract and the table above.

150 101.03 ~~Blank~~ City of Fort Wayne Created Pay Items

INDOT Pay Items with no changes and Fort Wayne Recurring Special Provisions that modify INDOT Pay Items will retain the same INDOT Pay Item number.

New City Created **Recurring** Special Provisions will have Pay Items coded:
(Section Number ###) – FWR##

Example:

City created Pay Item in Section 620 Brick Pavers of Recurring Special Provisions:
620-FWR01 Reset Brick Pavement, Utilizing Existing Brick

City created **Unique** Special Provisions will have Pay Items coded:
(Section Number, ###)-FWU##

Example:

City created Pay Item in Section Traffic Control Devices of Unique Special Provisions:
801-FWU01 Maintenance of Traffic

101.12 Contract

The written agreement between the Department and the Contractor setting forth the obligations of the parties thereto including, but not limited to, the performance of the work, the furnishing of labor and materials, and the basis of payment.

The contract may include, but is not limited to, the Proposal book, Bid Documents, Schedule of Pay Items, contract form, bid bond, performance and payment bond,

200 specifications, special provisions, information to bidders, instructions to bidders, general and detailed plans, notice to proceed, and any change orders and agreements that are required to complete the construction of the work in an acceptable manner, including authorized extensions thereof, all of which constitute one instrument.

101.19 Department

The Indiana Department of Transportation and/or the City of Fort Wayne as constituted under the laws of Indiana for the administration of highway and roadway work.

270 **101.27 Holidays**

Holidays are considered to be:

- All Sundays
 - New Year's Day
 - Martin Luther King Day
 - ~~Lincoln's Birthday~~
 - ~~Washington's Birthday~~
 - ~~Good Friday~~
 - ~~Primary Election Day~~
 - 280 Memorial Day
 - Independence Day
 - Labor Day
 - ~~Columbus Day~~
 - ~~Election Day~~
 - Veteran's Day
 - Thanksgiving Day
 - Friday after Thanksgiving Day
 - Christmas Day
 - Day before/or after Christmas Day
-

330 **101.37 Performance Bond**

The approved form of security, furnished and executed by the bidder and its surety or sureties, guaranteeing complete execution of the contract, as defined herein, and for the payment of all legal debts pertaining to the construction of the project. The performance bond will be in effect after both parties have signed the contract and the contract has been approved by the Attorney General of the State Board of Public Works.

101.41 Project

The specific section of the highway roadway where work is to be performed under the contract.

SECTION 102 Bidding Requirements and Conditions**102.01 ~~Prequalification and Bidding~~**

~~The bidder will be required to prequalify and follow the bidding procedures as set out in the rules for Prequalification of Contractors and Bidding, 105 IAC 11, now on file with the Indiana Secretary of State, copies of which are available upon request in the Contract Administration Division.~~

10 If apparent errors, discrepancies, or unclear statements are found in the contract documents prior to letting, the ~~District Construction Engineer for the district~~ **Project Manager** shown on the Proposal sheet shall be contacted by telephone, email, or fax.

SECTION 103 – Award and Execution of Contract**103.01 Disadvantaged Business Enterprise Program**

This section is not applicable to City Specifications

103.04 Insurance

This section is not applicable to City Specifications

103.06 Waiver of Damages

This section not applicable to City Specifications

SECTION 104 – Scope of Work**104.02 Changed Conditions****(b) Suspensions of Work Ordered by the Engineer/**Project Manager****

80 If the performance of all or any portion of the work is suspended or delayed by the Engineer/**Project Manager** in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the Contractor believes that additional compensation, and/or contract time is due as a result of such suspension or delay, the Contractor shall submit to the Engineer in writing a request for

adjustment within seven calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.

90 Upon receipt, the Engineer/**Project Manager** will evaluate the Contractor's request. If the Engineer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the Contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the Engineer will make an adjustment (excluding profit) and modify the contract in writing accordingly. The Contractor will be notified of the Engineer's/**Project Manager's** determination whether or not an adjustment of the contract is warranted.

No contract adjustment will be allowed unless the Contractor has submitted the request for adjustment within the time prescribed in accordance with 105.16.

No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided or excluded under any other term or condition of this contract.

(c) Significant Changes in the Character of Work

The Engineer/**Project Manager** reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the Contractor agrees to perform the work as altered.

260

104.03 Extra Work

Unforeseen work, for which there is no price included in the contract, shall be performed whenever it is deemed necessary to fully complete the contract within its intended scope, or it is in the best interest of the **State City** to complete the unforeseen work under the contract. Work Allowances are stipulated amounts available as reserve for sole use by Owner to cover unanticipated costs for extra work. Such work shall be performed in accordance with the specifications and as directed, and will be paid for in accordance with 109.05 in the City of Fort Wayne Recurring Special Provisions.

SECTION 105 – Control of Work

105.01 Authority of the Engineer/Project Manager

The Engineer/Project Manager will decide all questions which may arise as to the quality and acceptability of materials furnished and work performed and as to the rate of progress of the work; which may arise as to the interpretation of the plans and specifications; and as to the acceptable fulfillment of the contract on the part of the Contractor.

- 10 The Engineer/Project Manager will have the authority to suspend the work wholly or in part for failure to carry out provisions of the contract; for failure to carry out orders; for such periods as may be deemed necessary due to unsuitable weather; for conditions considered unsuitable for prosecution of the work; or for any other condition or reason deemed to be in the public interest. Any contract adjustments for suspension of work will be in accordance with 104.02(b). Work shall not be suspended without written authority from the Engineer.

100 105.04 Coordination of Plans, Standard Specifications, and Special Provisions

The Standard Specifications, the plans, special provisions, and all supplementary documents are essential parts of the contract. A requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete work. In case of discrepancy, calculated dimensions will govern over scaled dimensions. ; and the following relationships apply:

~~Instruction to Bidders and description of pay items listed~~

~~in the Schedule of Pay Items~~ ————— hold over:

~~Unique Special Provisions~~

~~Plans~~

~~Recurring Special Provisions~~

~~Standard Specifications~~

~~Unique Special Provisions~~

~~hold over: ————— Plans~~

~~Recurring Special Provisions~~

~~Standard Specifications~~

~~Plans~~ — hold over:

~~Recurring Special Provisions~~

~~Standard Specifications~~

~~Recurring Special Provisions~~

~~hold over: ————— Standard Specifications~~

- 110 ~~In case of discrepancy relative to other contract documents, the list of approved or Prequalified Materials will be regarded the same as Recurring Special Provisions. Notes on the plans which are not also included in either the special provisions or among the~~

~~general notes portion of the plans, and refer to payment, non payment, or cost to be included in that of other pay items, will not govern over specifications. The precedence outlined herein shall not absolve the Contractor of its responsibility in accordance with 107.17.~~

120 Advantage shall not be taken of any apparent error or omission in the plans or specifications. In the event such an error or omission is discovered, the Engineer shall be notified immediately. Such corrections and interpretations as may be deemed necessary for fulfilling the intent of the plans and specifications will then be made.

105.06 Cooperation with Utilities

170 The contract documents identify each known utility and describe all known necessary work and an anticipated schedule for completion. However, if a utility fails to relocate or adjust their facilities as provided for in the contract documents and the Contractor sustains delays, losses, or both, that could not have been avoided by the Contractor's judicious handling of forces, equipment, and plant or by reasonable revisions to the schedule of operations, and the Contractor has documented its utility coordination efforts and sustained delays and losses, and if the sustained delays and losses were not caused by the negligence of the Contractor, the Contractor may pursue appropriate compensation and/or extension under 104.02 or from the documented offending party in accordance with Public Law 35-2005. If the Contractor is delayed and it provides the aforementioned information to the Engineer, the time for completion may be extended in such amount as the conditions justify or the Contractor may be compensated for an accelerated
180 construction schedule.

105.08 Construction Stakes, Lines, and Grades

(a) Construction Engineering by the State

Not applicable to City Specifications.

400 105.09 Duties of Technician and Inspector

The technicians and inspectors employed by the Department are stationed on the work to:

- (a) keep the Engineer/Project Manager informed as to the progress of the work and the manner in which it is being done;
-

105.16 Notice of Changed Conditions and Claims

(c) Claim Resolution Process

1. Project Level Review

720 The Contractor shall submit the claim to the Engineer at the project level. The Engineer will review the claim and make an effort to resolve the claim at the project level within 30 days of receipt of the claim, or other time as mutually agreed. Meetings may be requested by either the Engineer or the Contractor to discuss the claim in an effort to reach resolution. The Engineer will make a project level ruling on the claim and notify the Contractor in writing of the ruling.

730 If the Contractor disagrees with the project level ruling or if a ruling is not issued within the specified or agreed upon time, a written request for a ~~District Office~~ a Department Head review may be submitted to the Engineer within 30 days of receipt of the project level ruling or the end of the time for the ruling to be issued. Failure to submit a request for District Office review within the specified time will constitute an acceptance of the project level ruling by the Contractor and a contract adjustment will be made in accordance with the ruling. The contract adjustment will be considered as full and complete compensation for the changed condition and the Contractor shall waive any right to further contest the ruling.

When a ~~District Office~~ Department Head review of the project level ruling is requested, the claim will be sent from the Project Manager office to the ~~District Office~~ Department Head for the review. The Contractor shall not modify the basis of the claim or the method for calculating the amount claimed after submittal to the ~~District Office~~ Department Head.

740 2. ~~District Office~~ Department Head Review

The Engineer will review the claim as submitted to the ~~District Office~~ Department Head. Meetings may be requested by either the Engineer or the Contractor to discuss the claim in an effort to reach resolution.

750 ~~For claims with a total value less than or equal to \$150,000, 20% of the original contract amount and 100 days of contract time extension, the Engineer will review the project level ruling and issue a written District Office ruling within 45 days, or other time as mutually agreed, of the Contractor's request for a District Office claim review. A claim review by the District may affirm, overrule, or modify the project level ruling. The District ruling will specify the portions, if any, of the project ruling that are being overruled or modified and the rationale supporting the portions overruled or modified.~~

The Contractor may accept or reject a claim review ruling made by the ~~District Office~~ Department Head. If the Contractor accepts the ruling, it will be considered as the final decision by the Department and a contract adjustment will be made in accordance with the ruling.

760 If a ~~District~~ **Department Head** ruling is rejected, the Contractor may submit a written request for a final hearing before a ~~District Claim Review Board~~ **the City Engineer**. The request shall be submitted to the **Chief City** Engineer within 30 days of the Contractor's receipt of the ~~District~~ **Department Head** ruling. The **Chief City** Engineer will respond in writing to the Contractor and will convene a ~~Board~~ **hearing** to review the claim. Failure to submit a request for a hearing within the specified time will constitute an acceptance of the ~~District Office~~ **Department Head** ruling by the Contractor and a contract adjustment will be made in accordance with the ruling. The contract adjustment will be considered as full and complete compensation for the changed condition and no further claim shall be made for the circumstances that gave rise to the claim.

770 ~~The District Claim Review Board will consist of three Department personnel selected by the Chief Engineer and will include one member from District Construction in the District involved in the claim and two members from the Division of Construction Management. The Chief Engineer will assign one member as the chairperson who will then schedule a hearing with the Contractor at a mutually agreed time and location. The Contractor will be given sufficient time at the hearing to present arguments and exhibits in support of the claim. The Board will issue a written decision within 30 days of the hearing and the decision will be considered as the final decision by the Department and no further appeal will be considered by the Department. A contract adjustment will be made in accordance with the decision of the Board and will be considered as full and complete compensation for the changed condition and no further claim shall be made for~~
780 ~~the circumstances that gave rise to the claim.~~

~~For claims with a total value greater than \$150,000 or 20% of the original contract amount or 100 days of contract time extension, the District will forward the claim, along with the project level ruling and a District Office written opinion to Central Office for a ruling. The Contractor shall not modify the basis of the claim or the method for calculating the amount claimed after submittal to Central Office.~~

3. Central Office Review

Not applicable to City Specifications.

Section 106 – Control of Material

106.01 Source of Supply and Quality Requirements

(b)

3. Payment Procedures

If the Contractor does not provide the necessary documentation for the materials, such materials will not be paid for. The Engineer will notify the Contractor of those materials held from the estimate with the justification for withholding payment. If corrective action

has not been taken within six weeks of the materials delivery to the project site, the entire estimate payment may be withheld.

80

(c) Buy America Requirement

Not applicable to City Specifications.

107.06 Equal Employment Opportunity Trainees

Section not applicable to City Specifications

107.08 Public Convenience and Safety

(a) Worker Safety

All workers within the right-of-way who are exposed either to traffic or construction equipment within the work area shall wear high visibility safety apparel in accordance with Section 6D.03 of the MUTCD.

760 **107.24 Governing Law**

This contract shall be construed by the laws of the State of Indiana. Suit, if any, shall be brought in the State of Indiana. The courts located in Allen County, Indiana shall be the exclusive courts of jurisdiction and venue for any proceedings between the parties that are brought or may rise out of or in connection with this Agreement.

SECTION 108 – PROSECUTION AND PROGRESS

108.01 Subletting of Contract

10

The contract, contracts, or portions thereof; or the right, title, or interest therein shall not be sublet, sold, transferred, assigned, or otherwise disposed of without written consent. In case such consent is given, the Contractor will be allowed to sublet a portion thereof, but shall perform with its own organization, work amounting to not less than 50% of the original or revised contract amount, whichever is less. All items designated in the contract as specialty items may be performed by subcontract. The cost of such specialty items so performed by subcontracts may be deduced from the total cost before computing the amount of work required to be performed by the Contractor with its own organization. No subcontracts or transfer of contracts will release the Contractor of liability under the contract and bonds. Approved subcontractors will not be allowed to further subcontract their work.

~~Unless the Department provides written consent, the Contractor shall not be entitled to any payment for subcontracted work or materials unless it is performed or supplied by a subcontractor approved on the contract prior to the work being performed.~~

20

~~The minimum wage for labor as stated in the Proposal book shall apply to all labor performed on all work sublet, assigned, or otherwise disposed of in any way.~~

The Contractor or subcontractor may enter into leases or rental agreements for equipment with operators or trucks with drivers. When certified payrolls are required, they shall be submitted for all such equipment operators and truck drivers who perform work. This payroll shall verify that these employees have been paid not less than the predetermined wage rate set out elsewhere in the contract for the classification of work performed.

30

The subcontractor shall be in accordance with the requirements of 105 IAC 11-2-10, Subcontractors.

~~The Contractor shall submit payment records through the Department's Subcontractor Payment Tracking System (<http://itap.indot.in.gov>) of all payments made to subcontractors and DBE firms approved by the Department. Reports shall be submitted no later than 10 days after the end of each month in which a subcontractor is paid for work on the contract. Reports shall include any release of retainage payments made to subcontractors.~~

40

108.03 Notice to Proceed

Unless otherwise provided, the Contractor will be expected to start active and continuous work on the contract within ~~45~~ 10 calendar days after the date of the notice to proceed. Work shall not begin prior to the date of the notice to proceed.

60

If a delayed starting date is indicated in the proposal, the ~~45~~ 10 calendar day limitation will be waived. Work day charges will then begin on a date mutually agreed upon, but not later than the delayed starting date specified. If the contract is canceled after an award has been made but prior to the issuing of the notice to proceed, no reimbursement will be made for any expenses accrued relative to this contract during that period.

If the contract involves demolition work, the Contractor shall not enter the parcel or proceed with the demolition without written authority from the Engineer. The Contractor will be compensated only for those houses and buildings which are actually removed from the right-of-way. Time of commencing demolition work and time of completion shall be in accordance with 108.08.

70 **108.04 Prosecution of the Work**

A pre-construction conference will be held at the earliest possible date, at which time it will be determined at what point the Contractor's operations will start.

The Contractor shall furnish the Engineer with a bar graph type schedule which shows the estimated times required to prosecute the major or critical items of work for acceptance unless the contract has less than 60 30 calendar days completion time, less than 35 22 work days, or less than 60 30 days between the date of the notice to proceed and the calendar completion date. This schedule shall incorporate all contract requirements regarding the order of performance of work and each activity. The schedule shall graphically show the calendar time for which each activity is scheduled for work. 80 The schedule may be used as the basis for establishing major construction operations and as a check on the progress of the work. Sufficient materials, equipment, and labor shall be provided to guarantee the completion of the project in accordance with the plans and specifications within the specified completion time. The Engineer shall be notified at least three days in advance of the date on which the work is expected to begin. The schedule shall be submitted at the pre-construction conference.

The Department Project Manager and the Contractor shall meet at least once each month to review actual and proposed schedules. The Contractor shall submit the correspondence to the district City after each monthly meeting addressing each item of work that is 90 behind schedule and as to what action will be taken to get the work back on schedule.

If, in the opinion of the Engineer Project Manager, construction progress has been or will be materially affected by changes in the plans or in the quantities of work, or if performance has failed to conform to the accepted schedule, a revised schedule shall be submitted when requested. Acceptance of the schedules will in no way justify them, but will simply indicate concurrence in their reasonableness and feasibility on the assumption that every effort shall be made to meet them. Existence of a current and accepted schedule will be a condition precedent to the processing and payment of a partial pay 100 estimate.

If the prosecution of the work is discontinued, the Engineer Project Manager shall be notified at least 24 h in advance of resuming operations.

During the progress of the work, the Engineer shall be notified at least 24 h in advance of undertaking construction operations. ~~This advance notification shall also apply anytime a DBE is scheduled to work on a project or deliver material or supplies to a project site.~~

108.05 Pre-phase Site Construction Meetings

A pre-phase site construction meeting shall be scheduled and conducted by the Contractor prior to the beginning of work on each major work phase, unless waived by the Project Manager. These meetings are intended to help improve the quality of construction, personnel safety on the project site, and safety of the traveling public. These meetings shall include all subcontractors connected with the particular phase. When the conditions described in 105.07 are possible during a particular phase, the other Contractors shall be invited to attend. The Department’s project staff and the Area Engineer shall be invited to attend.

180

At each meeting, the Contractor shall indicate its current schedule for the phase, discuss maintenance of traffic control, project site personnel safety, compliance with the plans and specifications including quality construction, and all other pertinent subjects.

The number of pre-phase site construction meetings will be determined at the pre-construction conference. No additional payment will be made for these meetings.

108.08 Determination and Extension of Contract Time

The number of days allowed for the completion of the work included in the contract will be stated in the Proposal book/Bid Documents and will be known as the contract time.

..... SKIP AHEAD IN SECTION TO HOLIDAY PERIODS

Contractors shall not work during the following holiday periods unless prior written approval is received from the Engineer. All deliveries and traffic coming from suppliers shall cease during the Department-ordered suspensions of work listed below. No time extensions to closure periods, intermediate completion dates, or contract completion dates will be granted for suspending work during these holiday periods.

340

(a) New Year’s Day. If New Year’s Day falls on a Sunday, work shall be suspended from ~~noon~~ 5 PM December 31 until sunrise January 3. If New Year’s Day falls on a Monday through Saturday, work shall be suspended from ~~noon~~ 5 PM December 31 until sunrise January 2.

~~(b) Good Friday. Work shall be suspended from noon on Good Friday until sunrise Monday.~~

350

(c) Memorial Day. Work shall be suspended from ~~noon~~ 5 PM the Friday before Memorial Day until sunrise Tuesday, the day after Memorial Day.

(d) Independence Day. If Independence Day falls on a:

Sunday - Work shall be suspended from ~~noon~~ 5 PM
Friday, July 2, until sunrise Tuesday, July 6.

360 Monday - Work shall be suspended from ~~noon~~ 5 PM
Friday, July 1, until sunrise Tuesday, July 5.

Tuesday - Work shall be suspended from ~~noon~~ 5 PM
Friday, June 30, until sunrise Wednesday, July 5.

Wednesday - Work shall be suspended from sunset on
Tuesday, July 3, until sunrise Thursday, July 5.

370 Thursday - Work shall be suspended from ~~noon~~ 5 PM
Wednesday, July 3, until sunrise Monday, July 8.

Friday - Work shall be suspended from ~~noon~~ 5 PM
Thursday, July 3, until sunrise Monday, July 7.

Saturday - Work shall be suspended from ~~noon~~ 5 PM
Thursday, July 2, until sunrise Monday, July 6.

(e) Labor Day. Work shall be suspended from ~~noon~~ 5 PM the Friday before Labor
Day until sunrise Tuesday, the day after Labor Day.

380 (f) Thanksgiving Day. Work shall be suspended from ~~noon~~ 5 PM the
Wednesday before Thanksgiving Day until sunrise the Monday after
Thanksgiving Day.

(g) Christmas Day. Work shall be suspended from ~~noon~~ 5 PM
December 24 until sunrise December 27.

..... SKIP AHEAD TO LINE 440 OF SECTION

440 Not all of the parcels shown in the Schedule of Pay Items will be available for demolition
at the time of the letting. Houses and buildings shall be removed as soon as they are
vacated in accordance with the procedure as follows:

(a) The ~~45~~ 10 calendar days limitation after the date of notice to proceed as specified
in 108.03 will not apply.

510

(b) Excusable, Compensable Delays

Excusable, compensable delays are delays that are not the fault or responsibility of the Contractor and are the fault or responsibility of the Department. The following are excusable, compensable delays:

1. Delays due to differing site conditions in accordance with 104.02(a), significant changes in the character of work in accordance with 104.02(c), or extra work in accordance with 104.03.

520

2. Delays due to suspension of work ordered by the Engineer in accordance with 104.02(b).

3. Delays due to work that utilities or other third parties perform within the project limits.

The Department will extend the contract time for completion. ~~and will pay for delay costs covered under item 1 above in accordance with 104.03.~~

530 The Department will make payment for delay costs under items 2 and 3 above in accordance with 109.05.2.

108.09 Failure to Complete on Time

For each calendar day, as specified, that work shall remain incomplete during the months of April through November inclusive, after the control time specified for the completion of the work provided for in the contract, the sum specified in the schedule below will be deducted, as liquidated damages, from any money due the Contractor. Account will be taken of adjustment of the contract time for completion of the work granted in accordance with 108.08. Calendar days will not be charged while waiting for final inspection as defined in 105.15 provided all contract work has been satisfactorily completed. However, five work days will be allowed after notification from the Department to complete all corrective or clean up work necessary for final inspection. Thereafter, time will be charged for each day the work remains uncompleted. Further, 10 calendar days will be allowed after notification by the Department to remove all construction signs and temporary traffic control devices. Thereafter, time will be charged for each day the signs and devices remain.

560

For each calendar day, as specified, that any work shall remain incomplete during the months of December through March inclusive, liquidated damages will be deducted. However, when the project is open for its intended purpose or modified for safe use, liquidated damages will not be deducted, and payment for the field office and field

laboratory, if set out as a pay item in the itemized proposal, will not be made. Intended purpose will include all pavement lanes, sidewalks, trails, drainage features, and all safety appurtenances. The Contractor may be required to make temporary repairs to the pavement or structures. Liquidated damages will be assessed until temporary repairs are made. No payment will be made for such temporary repairs.

570

If the contract is not completed, or the pavement or structure is not opened to traffic within the stipulated time as set out in the Proposal book/~~Bid Documents~~, the Department may reduce the qualified rating of the Contractor for bidding on future contacts.

See Section 4.05 of EJCDC C-520 Agreement between Owner and Contractor for Construction Contract (Stipulated Price) for Information on Failure to Complete on Time.

SECTION 109 – Measurement and Payment

109.05 Payment for Extra Work

650 A Change Order Request form, ~~available on the Department's website~~, shall be submitted for review for all extra work prior to the Engineer drafting a change order. The form shall describe any unique circumstances and shall include unit prices or lump sum prices utilizing standard Department pay items.

Extra work performed in accordance with 104.03 will be paid for by one of the following methods:

(a) Agreed Price

660 Extra work will be paid for at agreed upon unit prices or lump sum prices as documented on approved change orders. The Department will perform a cost analysis of the Contractor's unit price or lump sum price indicated on the Change Order Request form.

Based on the results of the cost analysis, the Engineer may direct the Change Order Request form to be amended to incorporate additional information, including:

1. A Detailed explanation of unique circumstances of the extra work.
2. The effect of the circumstances on the requested price
3. A breakdown of the estimated costs for the categories of labor, equipment, and materials in sufficient detail to enable the Engineer to determine the basis and amount of the requested price.

670

(b) Force Account

The Department may require the Contractor to perform extra work on a force account basis when a price cannot be agreed upon in accordance with 109.05(a). ~~The City will not pay overtime costs unless agreed to in writing prior to the start of work.~~

680 The Contractor shall, when directed, submit a written proposal for the extra work prior to the start of the work. When directed, the proposal shall include the planned labor, materials, equipment, and schedule for the work. Extra work performed by force account will be documented ~~on an approved change order~~ and will be compensated in the following manner: Change Order.

109.05.1 Quality Adjustments

This section not applicable to City Specifications at this time.

109.05.3 PG Asphalt Binder Material Cost Adjustments

This section not applicable to City Specifications at this time.

1020 **109.07 Partial Payments**

The contract may contain more than one project. Partial payments may be made once each month as the work progresses ~~or twice each month~~ if it is determined that the amount of work performed is sufficient to warrant such payment. These payments will be based on estimates, prepared by the Engineer, of the value of the work performed and materials complete in place in accordance with the contract. No partial payment will be made or estimates will not be submitted when the total value of the work done since the last estimate amounts to less than \$500.

1030 Except as set out in 105 IAC 11-3-8 of the Rules For Prequalification of Contractors and Bidding, the balance, less all previous payments and less amounts claimed which are required to be held by the Department in accordance with Indiana Code 8-23-9-26 through 8-23-9-39, will be certified for payment.

Within 10 business days of receipt of payment for any such estimate, the Contractor shall make payment to all subcontractors, including lessors and material suppliers, for the value of their work performed and materials complete in place in accordance with the contract. Failure to comply with this clause shall constitute a material breach of the contract and may result in sanctions under the contract.

1040 Any delay or postponement of payment among the parties may take place only for good cause, with the Department's written approval. The explanation from the Contractor shall be made in writing to the Department.

Upon receipt of a claim under Indiana Code 8-23-9-26, the Department will retain out of the amount due the Contractor the amount of the claim. The amount to be retained will be withheld from partial payment estimates until the total amount of the claim has been retained.

~~In order to retain an amount when required by Indiana Code 8-23-9-26, the Engineer will apply a negative quantity to the contract liens pay item for the actual dollar amount of the claim. Upon resolution of the claim, the Engineer will post a positive quantity to the contract liens pay item equal to the amount originally retained. The final quantity of the contract liens pay item will be zero prior to final payment.~~

~~The contract unit price for contract liens will be \$1.00.~~

Payment will be made under:

Pay Item	Pay Unit Symbol
Contract Liens	DOL

No allowance will be made for materials received which have not been incorporated into the work except in accordance with 111.

SECTION 113 – Partnering Overhead

This section not applicable to City Specifications at this time.

SECTION 114 – Computer-Aided Design Files (“CAD Files”) Disclaimer

114.01 Use of CAD Files

The Contractor understands that the CAD Files may be provided to the Contractor for the sole and exclusive purpose of modeling projects for bidding and construction. The CAD Files are provided to the Contractor only as a matter of convenience, and neither the City of Fort Wayne its engineers, designers, employees nor other outside party who may have created or generated the information shall be held responsible for subsequent uses of the data by the Contractor, its agents, employees and/or subcontractors. Any such use by the Contractor, its employees, agents or subcontractors shall be at the sole risk of the Contractor(s) and its full legal responsibility. By the Contractor's use of the CAD Files, the Contractor is not relieved of any duty, including, and without limitation,

the need to check, confirm and coordinate all dimensions and details, take field measurements, verify field conditions, and coordinate Contractor's work with that of others.

114.02 Confidentiality of Information.

The Contractor understands and agrees that the CAD Files and all data, materials, and information disclosed to the Contractor within the CAD Files may contain confidential, proprietary and/or protected information. The Contractor agrees that all files, data, material, and information gathered, based upon or disclosed to the Contractor will not be disclosed nor discussed with third parties without the prior written consent of the City of Fort Wayne. If any confidential or sensitive information is disclosed by Contractor to any third party without the City of Fort Wayne's consent, Contractor shall pay all costs of the notice of disclosure of a breach of the security of the system in addition to any other claims and expenses resulting from the disclosure, directly or indirectly.

114.03 Ownership of Documents and Materials

Except as otherwise provided herein, all CAD Files, information and other data provided to the Contractor for the Project are and shall remain the property of the City of Fort Wayne. Use of these materials by the Contractor for any purpose other than those enumerated in 114.01, without the prior written consent of the City of Fort Wayne, is prohibited. However, the Contractor understands and agrees that the CAD files may contain proprietary information not owned by the CITY. Such proprietary information remains the property of the consultant or other outside party who created or generated the information. The Contractor shall be solely responsible to ensure that it and all its employees, agents and subcontractors comply with any and all terms of use and access to such proprietary information.

114.04 Disclaimer

The CAD Files that may be provided in "as is" condition, and are not the official plan set for the Project. The Contractor must still refer to the official plan set for the Project. The CAD Files are not intended to represent precise locations of natural or man-made features, either planned or pre-existing, nor are they intended to be record "as-built" documents for any work or structures that may already be in place. Because data stored on electronic media can deteriorate undetected or be modified without the City of Fort Waynes's knowledge, the City of Fort Wayne shall not be held liable for the completeness or correctness of the CAD Files or information contained therein. The City of Fort Wayne makes no warranties or guarantees concerning the accuracy of the data contained within the CAD Files. Further, makes no warranties, either express or implied as to any other matter whatsoever, including the condition of any product, or its fitness for any particular purpose, or the compatibility of the CAD Files with the Contractor's hardware or software systems. In no event shall the City of Fort Wayne incur any liability whatsoever for any payment of any consequential, incidental, indirect, special or tort damages of any kind, including any loss of profits arising out of reliance on the CAD Files or the information contained therein. Further, the use of the CAD Files or any information or data contained therein shall not relieve the Contractor of any liability or obligations arising out of any existing or potential future contracts with the City of Fort Wayne, nor does it entitle the Contractor to

compensation for damages or loss which could be attributed to the Contractor's use of the CAD Files.

114.05 Indemnification

The Contractor agrees to indemnify, defend, and hold harmless the CITY, its engineers, designers, employees and consultants who may have prepared or generated the CAD Files or information from all claims, suits, liabilities, damages, charges, settlements, and other expenses or losses of any kind or character including court costs, costs of defense, and attorney's fees, caused, directly or indirectly, by any act or omission of the Contractor, its agents, employees or subcontractors, or arising out of the Contractor's use or possession of the CAD Files provided under this Release. The CITY shall not provide such indemnification to the Contractor.