COMPENSATION & PAYMENT PROVISIONS (TIME & MATERIAL) CONTRACT
Note:

Articles flagged with an asterisk (*) are Flow-down requirements as defined in Article SUBCONTRACTORS AND SUPPLIERS in Contract Document GENERAL CONDITIONS.

CP-1 BASIS OF COMPENSATION (TIME-AND-MATERIALS AND LABOR-HOUR CONTRACTS)

Metro will pay the Contractor as follows upon the submission of invoices or vouchers approved by the Contracting Officer:

A. Hourly rate

1. The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the Form of Contract by the number of direct labor hours performed. The rates shall include wages, indirect costs, general and administrative expense, and profit. Fractional parts of an hour shall be payable on a prorated basis. Vouchers may be submitted once each month (or at more frequent intervals, if approved by the Contracting Officer), to the Contracting Officer. The Contractor shall substantiate vouchers by evidence of actual payment and by individual daily job timecards, or other substantiation approved by the Contracting Officer. Promptly after receipt of each substantiated voucher, Metro shall, except as otherwise provided in this contract, and subject to the terms of (E) of this section, pay the voucher as approved by the Contracting Officer.

2. Unless otherwise prescribed in the Form of Contract, the Contracting Officer shall withhold 5 percent of the amounts due under this paragraph (a), but the total amount withheld shall not exceed $50,000. The amounts withheld shall be retained until the execution and delivery of a release by the Contractor as provided in paragraph (f) of this section.

3. Unless the Form of Contract prescribes otherwise, the hourly rates in the Form of Contract shall not be varied by virtue of the Contractor having performed work on an overtime basis. If no overtime rates are provided in the Form of Contract and overtime work is approved in advance by the Contracting Officer, overtime rates shall be negotiated. Failure to agree upon these overtime rates shall be treated as a dispute under the Disputes clause of this contract. If the Form of Contract provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Contracting Officer.

B. Materials and subcontracts

1. The Contracting Officer will determine allowable costs of direct materials in accordance with Subpart 31.2 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract. Direct materials, as used in this clause, are those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product.
2. Metro will reimburse the Contractor for items and services purchased directly for the contract only when payments of cash, checks, or other forms of payment have been made for such purchased items or services.

   a. Metro will reimburse the Contractor for costs of subcontracts that are authorized under the Consent to Subcontract clause of this contract, provided that the costs are consistent with paragraph (B)(3) of this clause.

   b. Metro will limit reimbursable costs in connection with subcontracts to the amounts paid for items and services purchased directly for the contract only when the Contractor has made payments of cash, checks, or other forms of payment to the subcontractor

      1. In accordance with the terms and conditions of a subcontract or invoice; and

      2. Ordinarily prior to the submission of the Contractor’s next payment request to Metro.

   c. Metro will not reimburse the Contractor for any costs arising from the letting, administration, or supervision of performance of the subcontract, if the costs are included in the hourly rates payable under paragraph (A)(1) of this clause.

3. To the extent able, the Contractor shall:

   a. Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and

   b. Take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the benefits, the Contractor shall promptly notify the Contracting Officer and give the reasons. The Contractor shall give credit to Metro for cash and trade discounts, rebates, scrap, commissions, and other amounts that have accrued to the benefit of the Contractor, or would have accrued except for the fault or neglect of the Contractor. The Contractor shall not deduct from gross costs the benefits lost without fault or neglect on the part of the Contractor, or lost through fault of Metro.

   c. Segregate and separately identify sales tax paid on materials purchased for and billed to this contract.
C. Total cost.

It is estimated that the total cost to Metro for the performance of this contract shall not exceed the ceiling price set forth in the Form of Contract and the Contractor agrees to use its best efforts to perform the work specified in the Form of Contract and all obligations under this contract within such ceiling price. If at any time the Contractor has reason to believe that the hourly rate payments and material costs that will accrue in performing this contract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 85 percent of the ceiling price in the Form of Contract, the Contractor shall notify the Contracting Officer giving a revised estimate of the total price to Metro for performing this contract with supporting reasons and documentation. If at any time during performing this contract, the Contractor has reason to believe that the total price to Metro for performing this contract will be greater or substantially less than the then stated ceiling price, the Contractor shall so notify the Contracting Officer, giving a revised estimate of the total price for performing this contract, with supporting reasons and documentation. If at any time during performing this contract, Metro has reason to believe that the work to be required in performing this contract will be substantially greater or less than the stated ceiling price, the Contracting Officer will so advise the Contractor, giving the then revised estimate of the total amount of effort to be required under the contract.

D. Ceiling price

Metro shall not be obligated to pay the Contractor any amount in excess of the ceiling price in the Form of Contract, and the Contractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Form of Contract, unless and until the Contracting Officer shall have notified the Contractor in writing that the ceiling price has been increased and shall have specified in the notice a revised ceiling that shall constitute the ceiling price for performance under this contract. When and to the extent that the ceiling price set forth in the Form of Contract has been increased, any hours expended and material costs incurred by the Contractor in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.

E. Audit

At any time before final payment under this contract the Contracting Officer may request audit of the invoices or vouchers and substantiating material. Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices or vouchers, that are found by the Contracting Officer not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. Upon receipt and approval of the voucher or invoice designated by the Contractor as the “completion voucher” or “completion invoice” and substantiating material, and upon compliance by the Contractor with all terms of this contract (including, without limitation, terms relating to patents and the
terms of (F) and (G) of this section), Metro shall promptly pay any balance
due the Contractor. The completion invoice or voucher, and substantiating
material, shall be submitted by the Contractor as promptly as practicable
following completion of the work under this contract, but in no event later
than 1 year (or such longer period as the Contracting Officer may approve in
writing) from the date of completion.

F. Assignment

The Contractor, and each assignee under an assignment entered into under
this contract and in effect at the time of final payment under this contract,
shall execute and deliver, at the time of and as a condition precedent to final
payment under this contract, a release discharging Metro, its officers, agents,
and employees of and from all liabilities, obligations, and claims arising out of
or under this contract, subject only to the following exceptions:

1. Specified claims in stated amounts, or in estimated amounts if the
   amounts are not susceptible of exact statement by the Contractor.

2. Claims, together with reasonable incidental expenses, based upon the
   liabilities of the Contractor to third parties arising out of performing this
   contract, that are not known to the Contractor on the date of the
   execution of the release, and of which the Contractor gives notice in
   writing to the Contracting Officer not more than 6 years after the date of
   the release or the date of any notice to the Contractor that Metro is
   prepared to make final payment, whichever is earlier.

3. Claims for reimbursement of costs (other than expenses of the
   Contractor by reason of its indemnification of Metro against patent
   liability), including reasonable incidental expenses, incurred by the
   Contractor under the terms of this contract relating to patents.

G. Refunds.

The Contractor agrees that any refunds, rebates, or credits (including any
related interest) accruing to or received by the Contractor or any assignee,
that arise under the materials portion of this contract and for which the
Contractor has received reimbursement, shall be paid by the Contractor to
Metro. The Contractor and each assignee, under an assignment entered into
under this contract and in effect at the time of final payment under this
contract, shall execute and deliver, at the time of and as a condition
precedent to final payment under this contract, an assignment to Metro of
such refunds, rebates, or credits (including any interest) in form and
substance satisfactory to the Contracting Officer.
H. Progress Payments.

1. **Applicability**

This Article applies only if the Payment Schedule in the Contract provides for Progress Payments.

2. **Definition**

A Progress Payment is a payment of a portion to the Contract Price for partial completion of the Work based upon the Payment Schedule.

3. **Application for Progress Payment**

Contractor’s Applications for Progress Payments (“Applications”) shall contain:

a. The original and two copies of the invoice, dated and identifying the Contract Number;

b. A description of the Work completed;

c. Any other documentation Metro requires to process the Progress Payment;

d. The Contractor’s signature and certification that the Work has been performed in accordance with the Contract, using the form attached hereto as Attachment 1; and

e. Signature of Metro’s Authorized Representative acknowledging that the Work described in the Application has been done in accordance with the Contract.

4. **Certification for Request for Payment attached as Exhibit 1**

   a. **Terms of Payment**

      1. Contractor shall submit the Application to Metro, based on the Payment Schedule, not later than the 25th day of each month.

      2. Metro will make Progress Payments within thirty (30) days after it’s receipt of an undisputed and properly submitted Application. Upon receipt of an Application, Metro shall:

         b. Review the Application to determine if it is complete and meets Contractual requirements.

         c. Return any Application that is not complete or does not meet Contractual requirements, setting forth in writing the reasons for the determination.
d. No Progress Payments shall be made for Work not performed in accordance with the Contract.

I. The terms of this clause that govern reimbursement for materials furnished are considered to have been deleted.

**CP-2 LIMITATION OF COST NOTICE**

The Contractor shall notify the Contracting Officer in writing whenever it has reason to believe that the costs it expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the total amount so far allotted to the contract by Metro. The notice shall include the following:

1. Date on which the Contractor expects to reach this one hundred percent (100%) level; and

2. Contractor’s best judgment of whether the Work can be completed within the Total Estimated Cost and/or approved Schedule.

3. If, however, the Work cannot be completed within the Total Estimated Cost and/or Schedule, the Contractor shall provide its best estimate of:
   a. The additional cost and/or time required to complete all Work;
      
      Cost includes:
      
      - Direct labor
      - ODCs
      - Indirect cost
      - Reimbursed Subcontractor Costs
   
   b. Proposed changes to the Work which would allow the Work to be completed within the Total Estimated Costs and/or Schedule; and
   
   c. A statement setting forth in detail the reasons why the Work cannot be completed within the Total Estimated Cost and/or Schedule.

**CP-3 RETENTION**

(USE THE FOLLOWING PARAGRAPH FOR CONSTRUCTION CONTRACTS ONLY)

Metro shall retain from each Progress Payment FIVE percent (5%) of the Progress Payment as part security for the fulfillment of the Contract by the Contractor. The total retention withheld shall not exceed FIVE percent (5%) of the contract price, as amended, or as adjusted by change orders.
(USE THE FOLLOWING PARAGRAPH FOR NON-CONSTRUCTION CONTRACTS)

Metro will deduct and retain a maximum of ten percent (10%) from each progress payment until a total of five percent (5%) of the Total Contact/Price is reached. Such amounts will be retained until thirty (30) days after Metro has determined the Contractor has completed and Metro has accepted the Work. However, if in the opinion of Metro, progress on the Work is unsatisfactory, deductions will be reinstated in such amounts as to cause the total retention to equal ten percent (10%) of the Total Contract/CWO Price. Upon Final Acceptance, the Contractor shall submit an Invoice for release of retention in accordance with the terms of the Contract.

To meet the requirements set forth above, the Contractor may select one of the following methods for withholding the required amount of funds:

1. Escrow account utilizing Contractor funds, securities, etc., bearing interest and subject to Metro’s accessibility.

2. Retention bonds, subject to Metro’s approval.

3. Letters of Credit, subject to Metro’s approval.

CP-4 INVOICING*

The Contractor shall submit a monthly Invoice covering those costs incurred by the Contractor in the previous months for the Work completed. The Invoice shall be prepared in a form acceptable to Metro. The Invoice shall list all of the Contractor’s, direct labor costs by individual, respective labor category, labor category rate and the number of hours performed by each worker on each Statement of Work task. It shall include all materials provided with copies of supplier invoices. Contractor shall separately identify sales tax paid. Each Invoice shall be accompanied by a certified statement, signed by an authorized officer of the Contractor, identical to the Certification for Request for Payment (Attachment 2) that the Invoice is a true and correct statement of those Reimbursable Costs incurred by the Contractor and that Subcontractors and Suppliers have been paid from the previous payment.

The final invoice is to be marked FINAL and a copy sent to the cognizant Contract Administrator.

CP-5 PAYMENT TO SUBCONTRACTORS

A. Requirements

Pursuant to 49 Code of Federal Regulations (CFR) Part 26, the Contractor shall pay each Subcontractor under this Contract for satisfactory performance of its Contract, other than a Subcontractor Design Professionals (SDP), no later than seven (7) days after receipt of each Progress Payment received from Metro. The Contractor shall pay to each Subcontractor all amounts it has retained from
payments under the Subcontract within seven (7) days after the Subcontractor’s work is satisfactorily completed. Any delay of payment beyond the seven (7) day time limit shall be only for good cause, and only upon the prior written approval of Metro.

B. Failure to Comply

If Metro determines that the Contractor has failed to comply with this Article, Metro may give written notice to the Contractor and the Contractor’s Surety that if the default is not remedied within a specified period of time -- at least five (5) days -- the Contract may be terminated for cause in accordance with Article TERMINATION FOR DEFAULT in Contract Document GENERAL CONDITIONS.

CP-6 PAYMENT OF TAXES

The Contractor shall pay all taxes, assessments, and duties applicable to and assessable against any Goods, Work, processes, and operations incidental to or involved in the Contract, including but not limited to retail sales and use, transportation, export, import, business, and special taxes. The Contractor is responsible for determining all applicable taxes, assessments, and duties required to be paid under the Contract and paying them when due. The prices established in the Contract shall include compensation for any taxes, assessments and duties the Contractor is required to pay by laws and regulations in effect on the date the Qualification/Proposal was submitted or CWO issued. The Contractor will maintain auditable records subject to Metro reviews, confirming that tax payments are current at all times.
## ATTACHMENT 1 - SCHEDULE OF SUPPLIES AND SERVICES

<table>
<thead>
<tr>
<th>Line Item No.</th>
<th>Quantity</th>
<th>Item Description</th>
<th>Delivery Date</th>
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ATTACHMENT 2 - CERTIFICATION FOR REQUEST FOR PAYMENT

I hereby certify under penalty of perjury as follows:

That the claim for payment is in all respects true, correct; that the services mentioned herein were actually rendered and/or supplies delivered to Metro in accordance with the contract.

I understand that it is a violation of both the federal and California False Claims Acts to knowingly present or cause to be presented to Metro a false claim for payment or approval. A claim includes a demand or request for money. It is also a violation of the False Claims Acts to knowingly make use of a false record or statement to get a false claim paid. The term "knowingly" includes either actual knowledge of the information, deliberate ignorance of the truth or falsity of the information, or reckless disregard for the truth or falsity of the information. Proof of specific intent to defraud is not necessary under the False Claims Acts.

I understand that the penalties under the Federal False Claims Act and State of California False Claims Act are non-exclusive, and are in addition to any other criminal and/or civil remedies which Metro may have either under contract or law.
**ATTACHMENT 3 - EXAMPLE OF TIMESHEET**

**TIMESHEET FOR JOE BLOW, ABC COMPANY**

<table>
<thead>
<tr>
<th>DAY</th>
<th>TOTAL BILLABLE HRS.</th>
<th>ACTIVITIES</th>
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<tbody>
<tr>
<td><strong>MONDAY - 7/10/00</strong></td>
<td><strong>6.5</strong></td>
<td>8:00a - 9:00a: Meeting with Mr. Jones, Metro Staff Title to discuss strategy</td>
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<td>9:00a - 10:30a: Prepare for meeting with UTU</td>
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<td>10:30a - 11:30a: Phone conversation with N.Y. Office, with Mr. Smith, President of XYZ Corp. to discuss availability to meet with Metro on strategy.</td>
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<td>11:30a -1:00p: Lunch</td>
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<td>1:00p - 4:00p: Negotiate with UTU.</td>
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<td><strong>TUESDAY - 7/11/00</strong></td>
<td><strong>5.0</strong></td>
<td>8:00a - 11:00a: Continue negotiations from previous day</td>
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<td>11:00a - 1:00p: Lunch</td>
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<td>1:00p - 3:00p: Meeting with Mr. Jones and Mr. Doe to provide progress status</td>
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<td><strong>WEDNESDAY - 7/12/00</strong></td>
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<td><strong>THURSDAY - 7/13/00</strong></td>
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<td><strong>FRIDAY - 7/14/00</strong></td>
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**SIGNATURE:**

**DATE:**

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**METRO ARCHIVE #**

**TBD (IFB/RFP NO.):**

**ISSUED:** 00/00/00

**COMP & PAYMENT (T&M):**

**PRO FORM 081**

**REVISION DATE:** 05.05.15