

**SECTION 6
INSURANCE AND LIABILITY**

6.01 INSURANCE

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by the Contractor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the Contractor's bid.

- A. Neither the Contractor nor any Subcontractors shall commence any work until all required insurance has been obtained at their own expense. Such insurance must have the approval of the City as to limit, form, and amount, and shall be placed with insurers with a current A.M. Best's rating of no less than A:VII.
- B. Any insurance bearing on adequacy of performance shall be maintained after completion of the project for the full guarantee period.
- C. Prior to execution of the Contract, the Contractor shall furnish the City with original endorsements effecting coverage for all policies required by the Contract. The endorsements shall be signed by a person authorized by the insurer to bind coverage on its behalf. The endorsements are to be on forms provided or approved by the City. The City may require the Contractor or any subcontractor to furnish complete certified copies of all insurance policies affecting the coverage required by the Contract.
- D. All of the Contractor's policies shall contain an endorsement providing that written notice shall be given to the City at least sixty (60) calendar days prior to termination, cancellation, or reduction of coverage in the policy.
- E. Any policy or policies of insurance that the Contractor elects to carry as insurance against loss or damage to its construction equipment and tools shall include a provision therein providing a waiver of the insurer's right to subrogation against the City and the Engineer.
- F. The requirements as to the types, limits, and the City's approval of insurance coverage to be maintained by the Contractor are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Contractor under the Contract.
- G. In addition to any other remedy the City may have, if the Contractor or any of the subcontractors fails to maintain the insurance coverage as required in this Section, the City may obtain such insurance coverage as is not being maintained, in form and amount substantially the same as required herein, and the City may deduct the cost of such insurance from any amounts due or which may become due the Contractor under this Contract.

H. The Contractor and all Subcontractors shall, at their expense, maintain in effect at all times during the performance of work under the Contract not less than the following coverage and limits of insurance, which shall be maintained with insurers and under forms of policy satisfactory to the City. The maintenance by the Contractor and all Subcontractors of the following coverage and limits of insurance is a material element of this Contract. The failure of the Contractor or any Subcontractor to maintain or renew coverage or to provide evidence of renewal may be treated by the City as a material breach of this contract.

1. Worker's Compensation and Employer's Liability Insurance

a. Worker's Compensation

The Contractor and all Subcontractors shall maintain insurance to protect the Contractor or subcontractor from all claims under Worker's Compensation and Employer's Liability Acts, including Longshoremen's and Harbor Workers' Act. Such coverage shall be maintained, in type and amount, in strict compliance with all applicable State and Federal statutes and regulations. The Contractor shall execute a certificate in compliance with Labor Code Section 1861, on the form provided in the Contract Documents.

b. Claims Against City

If an injury occurs to any employee of the Contractor or any of the Subcontractors for which the employee or its dependents, in the event of its death, may be entitled to compensation from the City under the provisions of the said Acts, or for which compensation is claimed from the City, there will be retained out of the sums due the Contractor under this Contract, an amount sufficient to cover such compensation as fixed by said Acts, until such compensation is paid or it is determined that no compensation is due. If the City is required to pay such compensation, the amount so paid will be deducted and retained from such sums due, or to become due, the Contractor.

2. Commercial General and Automobile Liability Insurance

The Contractor shall maintain in effect at all times during the performance of the work hereunder not less than the following coverage's and limits of Commercial General and Automobile Liability insurance:

a. Form and Amount

The insurance shall include, but shall not be limited to, protection against claims arising from death, bodily injury, personal injury, or damage to property resulting from actions, failures to act, operations or equipment of the insured, or by its employees, agents or consultants, or by anyone directly or indirectly employed by the insured. The amount of insurance coverage shall not be less than \$1,000,000.00 per occurrence with an aggregate no less than two (2) times the required per occurrence limit applying to bodily injury, personal injury, and property damage, or any combination of the three. Any deductibles must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles as respects the entity, its officers, officials, employees and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration expenses, and defense expenses.

The commercial general and automobile liability insurance coverage shall also include the following:

b. Additional Requirements

i) Provision or endorsement naming the City, the Engineer and its consultants, and each of their officers, employees, and agents, each as additional insured's with respect to any potential liability arising out of the performance of any work under the Contract, and providing that such insurance is primary insurance as respects the interest of the City and Engineer, and its consultants, and each of their officers, employees, and agents and that any other insurance, risk pool membership, or other liability protection maintained by the City or maintained by the Engineer is excess to the insurance required hereunder, and will not be called upon to contribute to any loss unless and until all limits available under the contractor's and subcontractor's insurance policy/policies have been paid.

ii) "Cross Liability" or "Severability of Interest" clause.

iii) Broad Form Property Damage, Personal Injury, Contractual Liability, Protective Liability, and Completed Operations coverage's, and elimination of any exclusion regarding loss or damage to property caused by explosion or resulting from collapse of buildings or structures or damage to property underground, commonly referred to by insurers as the "XCU" hazards.

iv) Provision or endorsement stating that such insurance, subject to all of its other terms and conditions, applies to the liability assumed by the Contractor under the Contract, including, without limitation, that set forth in Section 6.02, Indemnity and Litigation Costs.

- v) Provision or endorsement stating that any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its officers, officials, employees, or volunteers.
- vi) The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

3. Builder's Risk or Installation Floater "All-Risk" Insurance

Before commencement of the Work, the Contractor shall submit written evidence that it has obtained for the period of the Contract, Builder's Risk "All-Risk" Completed Value Insurance and/or Inland Marine "All-Risk" Installation Floater Insurance, as may be applicable, upon the entire project which is the subject of this Contract, including completed work and work in progress. The policy or policies of insurance shall name the Contractor, City, and Engineer as insured's as their respective interests may appear, and shall include an insurer's waiver of subrogation rights in favor of each. Such insurance may have a deductible clause, but the amount of the deductible shall be subject to the approval of the City, except that the deductible on earthquake coverage may be in accordance with the underwriter's requirements.

6.02 INDEMNITY AND LITIGATION COST

- A. Promptly upon execution of the Contract, the Contractor specifically obligates himself and hereby agrees to protect, hold free and harmless, defend and indemnify the City, the Engineer and his consultants, and each of their officers, employees and agents, from any and all liability, penalties, costs, losses, damages, expenses, causes of action, claims or judgments, including attorney's fees, which arise out of or are in any way connected with the Contractor's, or his subcontractors' or suppliers', performance of work under this Contract or failure to comply with any of the obligations contained in the Contract. This indemnity shall imply no reciprocal right of the Contractor in any action on the contract pursuant to California Civil Code section 1717 or section 1717.5. To the fullest extent legally permissible, this indemnity, defense and hold harmless agreement by the Contractor shall apply to any and all acts or omissions, whether active or passive, on the part of the Contractor or his agents, employees, representatives, or Subcontractor's agents, employees and representatives, resulting in claim or liability, irrespective of whether or not any acts or omissions of the parties to be indemnified hereunder may also have been a contributing factor to the liability, except such loss or damage which was caused by the active negligence, the sole negligence, or the willful misconduct of the City.

- B. In any and all claims against the City, the Engineer and each of their consultants, officers, employees and agents by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Section shall not be limited in way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under Workers' Compensation statutes, disability benefit statutes or other employee benefit statutes.
- C. This indemnity shall not apply to fees and costs incurred by the City in prosecuting or defending against the Contractor in any proceeding under Sections 2.08 and 2.09 of these General Conditions.

6.03 PROTECTION OF WORK

- A. The Contractor shall be responsible for the care of all the Work until its completion and final acceptance. The Contractor shall, at its own expense, replace damaged or lost material and repair damaged parts of the Work or the same may be done at the Contractor's expense by the City and the Contractor and his sureties shall be liable therefor. The Contractor shall make its own provisions for properly storing and protecting all material and equipment against theft, injury, or damage from any and all causes. Damaged material and equipment shall not be used in the Work. The Contractor shall take all risks from floods and casualties except as provided by law, and shall make no charge for the restoration of such portions of the work as may be destroyed or damaged by flood or other casualties or because of danger from flood or other casualties or for delays from such causes. The Contractor may, however, be allowed a reasonable extension of time on account of such delays, subject to the conditions herein before specified. The Contractor shall not be responsible for the cost, in excess of 5% of the contracted amount, of repairing or restoring damage to the Work, if the damage was proximately caused by an earthquake in excess of a magnitude of 3.5 on the Richter Scale or by tidal waves; provided that the Work damaged was built in accordance with accepted and applicable building standards, and the plans and specifications of the City.

- B. The Contractor shall effectively secure and protect adjacent property and structures, livestock, crops and other vegetation. If applicable, the Contractor shall open fences on or crossing the right-of-way and install temporary gates of sound construction thereon so as to prevent the escape of livestock. Adjacent fence posts shall be adequately braced to prevent the sagging or slackening of the wire. Before such fences are opened, the Contractor shall notify the owner or tenant of the property and, where practicable, the opening of the fence shall be in accordance with the wishes of said owner or tenant. The Contractor shall be responsible that no loss or inconvenience shall accrue to the owner or tenant by virtue of their fences having been opened or the gate not having been either shut or attended at all times. Where special types of fences are encountered, the Contractor shall install temporary gates made of similar materials and of suitable quality to serve the purposes of the original fences. In all cases where the Contractor removes fences to obtain workroom, the Contractor shall provide and install temporary fencing as required, and on completion of construction shall restore the original fence to the satisfaction of the Engineer. All costs of providing, maintaining and restoring gates and fencing shall be borne by the Contractor. The Contractor shall provide and maintain all passageways, guard fences, lights and other facilities for protection required by public authority or local conditions.
- C. The Contractor shall use extreme care during construction to prevent damage from dust to crops and adjacent property. The Contractor, at its own expense, shall provide adequate dust control for the right-of-way and take other preventative measures as directed by the Engineer.
- D. The Contractor shall be responsible for all damage to any property resulting from trespass by the Contractor or his employees in the course of their employment, whether such trespass was committed with or without the consent or knowledge of the Contractor.
- E. The Contractor shall see that the Site is kept drained and free of all ground water and any other water, which may impede the progress or execution of the Work.
- F. The Contractor shall be responsible for any damage caused by drainage or water runoff from construction areas and from construction plant areas.
- G. In an emergency affecting the safety of life, the Work, or adjoining property, the Contractor, without special instruction or authorization from the Engineer, is hereby permitted to act at its discretion to prevent such threatened loss or injury, and the Contractor shall so act without appeal if so instructed or authorized. Any compensation claimed by the Contractor on account of emergency work shall be determined as specified under Section 2.03. Should the Engineer deem an emergency condition to exist, the Contractor shall immediately do those things and take those steps ordered by the Engineer. The decision of the Engineer in this respect shall be final and conclusive. Any claims for compensation made by the Contractor on account of emergency work shall be determined as specified under Section 2.03.

- H. Except as provided by Government Code Section 4215, the Contractor shall be responsible for the removal, relocation and protection of all public and private utilities, including irrigation facilities in the nature of utilities, located on the site of the construction project if and to the extent that the same are identified in the Contract Documents, and the Contractor shall not be entitled to any extension of time or claim for damages for extra compensation in connection therewith. If and to the extent that such utilities or facilities are not identified in the Contract Documents, as between the Contractor and the City, the City will be responsible for the cost of their removal, relocation or protection, as the case may be, but the Contractor shall perform any such work in conformance with applicable provisions of Sections 2.03 and 2.04, if so directed by the Engineer. In such situations the Contractor shall not be responsible for delay in completion of the project caused by the failure of the City or the owner of the utility to provide for such removal or relocation. If the Contractor, while performing the Contract, discovers utility or irrigation facilities not identified by the City in the Contract Documents, the Contractor shall immediately notify the Engineer in writing.
- I. Subject to the provisions of this Section, where the Work to be performed under the Contract crosses or otherwise interferes with existing streams, watercourses, canals, farm ditches, pipelines, drainage channels, or water supplies, the Contractor shall provide for such watercourse or pipelines and shall perform such construction during the progress of the Work so that no damage will result to either public or private interests, and the Contractor shall be liable for all damage that may result from failure to so provide during the progress of the Work.

6.04 ACCIDENTS

- A. The Contractor shall provide and maintain, in accordance with Labor Code Section 6708 and OSHA requirements, adequate emergency first-aid treatment for its his employees and anyone else who may be injured in connection with the Work.
- B. The Contractor shall promptly report in writing to the Engineer all accidents whatsoever arising out of or in connection with, the performance of the Work, whether on or adjacent to the site, which caused death, personal injury, or property damage, giving full details and statements of witnesses. In addition, if death or serious injury or serious damage are caused, the accident shall be reported immediately by telephone or messenger to the City and the Engineer.
- C. If any claim is made by anyone against the Contractor or any Subcontractor on account of any accident, the Contractor shall promptly report the facts in writing to the Engineer, giving full details of the claim.

6.05 NO PERSONAL LIABILITY

Neither the City, the Engineer, nor any of their other officers, agents, or employees shall be personally responsible for any liability arising under the Contract, except such obligations as are specifically set forth herein.