

ARTICLE 3. AWARD AND EXECUTION OF CONTRACT; BONDS AND INSURANCE

Section 3.01. Consideration of Bids.

After the Bids have been opened and read, they will be checked for accuracy and compliance with the Notice to Contractors, these General Provisions and the Special Provisions.

In the event that the product of a unit price and an Estimated Quantity does not equal the extended amount quoted, the unit price shall govern, and the correct product of the unit price and the Estimated Quantity shall be deemed to be the amount bid. If the sum of two or more items in a bidding schedule, or the sum of two or more bidding schedules does not equal the total amounts quoted, the individual items or schedule amounts shall govern, and the correct total shall be deemed to be the amount bid. If the Bid is missing the unit price, then it may be deemed included and the Bid may be rejected. When a price is quoted in both words and figures, the words shall prevail in case of a discrepancy.

The City reserves the right to reject any and all proposals and to waive any irregularity in a Bid.

Section 3.02. Award of the Contract.

Award of the Contract will be to the lowest, responsive, responsible Bidder whose Bid complies with the specified requirements. The award, if made, will be made within 45 days after the opening of Bids, unless otherwise specified. If the lowest responsive, responsible Bidder refuses or fails to execute the Contract or to provide required bonds and/or insurance certificates, the City may award the Contract to the second lowest responsive, responsible Bidder. The specified period of time within which the award may be made may be subject to extension for further periods as agreed upon in writing by the City and the Bidder.

The City reserves the right to award the Contract based on any combination of base bid and Alternates as determined by the City. This process is conducted by the City in a "blind selection" format, i.e., without knowledge of the identity of any of the Bidders before ranking of all Bidders from lowest to highest has been determined. All awards will be made in the City's best interest.

Section 3.03. Performance and Payment Bonds.

The format of the Performance Bond and Payment Bond forms shall be those contained in these Specifications. As part of the execution of the Contract, the successful Bidder shall furnish the following corporate surety bonds to the benefit of the City. Bonds shall be executed by a surety company authorized to do business in the State of California. When the amount to be paid to the Contractor is based upon units of work to be performed or items to be provided, the term Contract Sum as used below for the purpose of posting Performance and Payment Bonds shall be computed on the basis of the unit price bid multiplied by the Estimated Quantities of work to be performed.

A. Performance Bond.

The Performance Bond, to guarantee the performance of all covenants and stipulations of the Contract, shall be on the form provided by the City and shall be in a sum not less than one hundred percent (100%) of the original Contract Sum as set forth in the Contract.

1 The bond shall contain a provision that the surety thereon waives the provisions of
2 California Civil Code sections 2819 and 2845.

3 B. Payment Bond.

4 The Payment Bond, to guarantee the payment of wages and of bills contracted for
5 materials, supplies, or equipment used in the performance of the Contract, shall be on the
6 form provided by the City and shall be in a sum not less than one hundred percent
7 (100%) of the original Contract Sum as set forth in the Contract. The bond shall be in
8 accordance with the provisions of California Civil Code section 3225, 3226 and 3247 to
9 3252, inclusive, and any acts mandatory thereof, and shall, by its terms, inure to the
10 benefit of all persons, companies, or corporations entitled to file claims under California
11 Civil Code section 3181 and California Unemployment Insurance Code section 13020.
12 Said bond shall also contain a provision that the surety waives the provisions of California
13 Code of Civil Procedure section 2819 and 2845.

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15 Section 3.04. Additional Bonding Requirements.

16 All bonds submitted shall include the following:

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18 A. Full name and address of the Contractor, Surety, and the City;

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20 B. Contract Date;

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22 C. Exact Contract Sum;

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24 D. Project name and address;

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26 E. Signature of the Contractor;

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28 F. Corporate seal if applicable;

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30 G. Signature of authorized Surety representative;

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32 H. Notarization of the Contractor and Surety;

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34 I. Power of Attorney; and

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36 J. Local contact for surety, with name, phone number, and address to which legal notices
37 may be sent.

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39 Section 3.05. Bond Costs in Bids.

40 All costs for applicable Bid Bonds, Performance Bonds, Payment Bonds, and any other bonds
41 specially required by the Contract shall be included in the Bid.

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43 Section 3.06. Notification of Surety Companies.

44 The surety companies shall be familiar with all the provisions and conditions of the Contract. It
45 is understood and agreed that the surety companies waive notice of change, extension of time,
46 alteration or addition to the terms of the Contract or to the work to be performed thereunder or to

the specifications accompanying the same, or any other act or acts by the City or the City's authorized agents under the terms of the Contract; and failure to so notify the surety companies of changes shall in no way relieve the surety or sureties of their obligations under the Contract.

Section 3.07. Return of Bid Guarantees.

After Bids have been received and reviewed by the City, bid guarantees will be returned to the respective Bidders except those submitted by the three lowest responsive, responsible Bidders.

Bid guarantees for Bids not to be further considered in executing the Contract will be returned within ten (10) days after the award of the Contract. The Bid Guarantees of the three lowest responsive, responsible Bidders will be returned within ten (10) Calendar Days after the successful Bidder has filed satisfactory bonds and proof of insurance as specified and the Bidder and the City have executed the Contract.

If all Bids are rejected and no award is made, all bid guarantees will be returned within ten (10) days of the decision of the City not to award the Contract.

Section 3.08. Execution of the Contract.

The Contract shall be executed by the successful Bidder in triplicate. All three copies of the Contract, together with the Performance Bond, Payment Bond, certificates of insurance and insurance endorsements shall be returned to the City within ten (10) Calendar Days of the Bidder's receipt of the documents. When required by the Special Provisions, Affirmative Action Certifications will also be provided. Insurance certificates shall be signed by a person authorized by the insurer to bind coverage on its behalf and shall be accompanied by copies of all endorsements required by these Specifications. When requested by the City, the successful bidder shall furnish complete, certified copies of all required insurance policies, including endorsements specifically required by these Specifications. After execution by the City, a full set of documents will be returned to the Contractor.

Section 3.09. Failure to Execute Contract.

If the Bidder to whom the Contract is awarded fails to execute the Contract and file acceptable bonds, insurance certificates and insurance endorsements as provided herein within ten (10) Calendar Days from the time the Contract forms are received by the Bidder, the award may be annulled and the Bidder's Bid Guarantee forfeited to the City. At the City's discretion, the Contract may then be awarded to the next lowest responsive, responsible Bidder.

If the City awards the Contract to the second lowest responsive, responsible Bidder, the amount of the lowest responsive, responsible Bidder's bid guarantee shall be applied by the City to the difference between the lowest Bid and the Bid of the second lowest responsive, responsible Bidder, and the surplus, if any, will be returned to the lowest responsive, responsible Bidder if a check or cash is used, or credited to the surety on the Bidder's Bond if a bond is used.

On refusal or failure of the second lowest responsive, responsible Bidder to execute the Contract, the City in its discretion may award it to the third lowest responsive, responsible Bidder. If the City awards the Contract to the third lowest responsive, responsible Bidder, in addition to application of the lowest Bidder's bid guarantee as aforesaid, the amount of the second lowest responsive, responsible Bidder's bid guarantee shall be applied by the City to the

difference between the Bid of the second lowest responsive, responsible Bidder and the Bid of the third lowest responsive, responsible Bidder, and the surplus, if any, shall be returned to the second lowest responsive, responsible Bidder if a check or cash is used, or credited to the surety on the second lowest Bidder's Bid Bond if a bond is used.

Section 3.10. Insurance.

The Contractor shall procure, maintain and keep in force at all times during the term of the Contract, at its sole cost and expense, the following insurance. Failure by the Contractor to maintain all required insurance during the entire Contract Time shall constitute a default entitling the City to all rights and remedies that exist in the Contract Documents and/or by law.

A. General Liability.

General Liability insurance including, but not limited to, protection for claims of bodily injury and property damage liability; personal and advertising injury liability; products and completed operations liability; premises, operations and mobile equipment liability; and explosion, collapse and underground property damages. Coverage shall be at least as broad as "Insurance Services Office Commercial General Liability Coverage Form CG 0001" (occurrence). Claims made coverage is not acceptable. The limits of liability shall be not less than:

Each Occurrence	One Million Dollars (\$1,000,000)
Personal & Advertising Injury	One Million Dollars (\$1,000,000)
Products and Completed Operations Aggregate	Two Million Dollars (\$2,000,000)
General Aggregate	Two Million Dollars (\$2,000,000)
Fire Damage	One Hundred Thousand Dollars (\$100,000)

The insurance shall cover all operations of the Contractor and its Subcontractors, including, but not limited to, contractual liability insuring the obligations assumed by the Contractor and its Subcontractors under the Contract Documents, independent contractor's contingent coverage, broad form property damage liability endorsement, and personal injury liability endorsement.

The insurance shall provide coverage for claims arising out of subsidence.

The Products and Completed Operations coverage shall be maintained for at least two years after completion of the Contract.

B. Automobile Liability.

Automobile Liability insurance providing protection against claims of bodily injury and property damage arising out of ownership, operation, maintenance, or use of owned, hired and non-owned automobiles. Coverage shall be at least as broad as "Insurance Services Office Business Auto Coverage Form CA 0001" symbol 1 (any auto). The limits of liability per accident shall be not less than:

Bodily Injury and Property Damage, Combined Single Limit	One Million Dollars (\$1,000,000)
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If General Liability coverage, as required above, is provided by the Commercial General Liability form, the Automobile Liability policy shall include an endorsement providing automobile contractual liability.

C. Workers' Compensation.

In accordance with the provisions of Section 3700 of the Labor Code, the Contractor, and each Subcontractor, shall secure the payment of compensation to its employees. The Contractor and each Subcontractor shall provide workers' compensation insurance and occupational disease insurance as required by the State of California (unless the Contractor is a qualified self-insurer with the State of California), and Employer's Liability coverage. The limits of Employers' Liability coverage shall be not less than:

Each Accident	One Million Dollars (\$1,000,000)
Disease Each Employee	One Million Dollars (\$1,000,000)
Disease Each Policy Limit	One Million Dollars (\$1,000,000)

The Contractor shall sign and file with the City's Director of Finance the following certification prior to commencing performance of the work of the Contract:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this Contract."

The Contractor shall require each Subcontractor to file such statement prior to allowing that Subcontractor to commence work.

The Contractor shall furnish a certificate of insurance or a certificate of permission to self-insure under the Workers' Compensation and Employers' Liability Insurance statutes of the State of California. The certificate shall provide that at least thirty (30) days' prior written notice shall be served on City prior to the cancellation or change of such insurance or self-insurance. Said certificate shall also provide that the insurer shall waive all rights of subrogation against the City, its officers, officials, employees, agents or volunteers.

D. Insurance Required in the Special Provisions.

1. Excess or Umbrella Liability. If the Special Provisions require limits of general liability insurance of more than one million dollars (\$1,000,000) per occurrence, the Contractor shall carry excess or umbrella liability insurance providing excess coverage at least as broad as the underlying coverage for general, automobile and employer's liability with a limit equal to the amount stated in the Special Provisions per occurrence and aggregate.
2. Railroad Protective Liability. When stated as a requirement in the Special Provisions, the Contractor shall procure, maintain, and keep in force during the

term of the Contract, at the Contractor's sole expense, Railroad Protective Liability insurance with limits of liability as set forth in the Special Provisions.

3. Builder's Risk. When stated as a requirement in the Special Provisions, the Contractor shall procure, maintain, and keep in force at all times during the term of the Contract and until the date of transfer of the insurable interest to and acceptance by the City, at the Contractor's sole expense, Builder's Risk insurance with limits of liability equal to one hundred percent (100%) of the replacement cost of the Work.

a. Coverage shall be written on a completed value, non-reporting form, on a replacement cost basis, and shall cover the property against all risks of physical loss or damage including:

- i. land movement and flood
- ii. loss that ensues from design error, defective materials, or faulty workmanship
- iii. mechanical breakdown or electrical damage including testing, magnetic disturbance and changes in temperature or humidity.

The property covered shall include the Work, including any materials, equipment, or other items to be incorporated therein while the same are located at the construction site, stored offsite, while in transit or at the place of manufacture. The policy shall contain a provision that both the interests of the City and the Contractor are covered and that any loss shall be payable to the City and the Contractor as their interests may appear.

When stated as a requirement in the Special Provisions, Builders Risk insurance shall include Delay in Opening coverage with limits of liability, and for the period of time, as set forth in the Special Provisions. Coverage shall include interest and/or principal payments that become due and payable by the City upon completion of construction or other date as set forth in the Special Provisions, debt service, expense, loss of earnings or rental income or other loss incurred by the City, without deduction, due to the failure of the project being completed on schedule.

b. The maximum deductible for land movement and flood allowable under this policy shall be five percent (5%) of replacement value per unit, including foundations, at the time loss or five hundred thousand dollars (\$500,000), whichever is less, per occurrence and in the aggregate. Unit shall be defined in the policy as (1) each separate building or structure; (2) contents of each separate building or structure; or (3) property in each separate yard. The maximum deductible for all other perils allowable under this policy shall be one hundred thousand dollars (\$100,000). All deductibles shall be borne solely by the Contractor, and the City shall not be responsible to pay any deductible, in whole or in part.

c. The Contractor waives all rights against the City and the City's officers, officials, employees and agents for loss or damage to the extent reimbursed by Builders' Risk insurance or any other property or equipment insurance applicable to the Work, except such rights as it may have to the proceeds of such insurance. If the policies of insurance referred to in this section require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed to obtain such consent.

d. If not covered by Builders' Risk insurance or any other property or equipment insurance required by this Contract, the Contractor shall procure, maintain, and keep in force at all times during the term of the Contract, at the Contractor's sole expense, property insurance for portions of the Contractor's work and/or equipment to be incorporated therein stored offsite or in transit.

4. Environmental Liability Insurance. When stated as a requirement in the Special Provisions, the Contractor shall procure, maintain, and keep in force at all times during the term of the Contract, at the Contractor's sole expense, Environmental Liability insurance which includes coverage for sudden and accidental pollution arising out of the handling of hazardous materials or hazardous wastes, and coverage for liability arising out of the handling of asbestos. Coverage for asbestos shall contain a provision limiting coverage to a specific length of time (i.e., "sunset clause"). If coverage for Environmental Liability insurance is written on a claims-made form, the following provisions apply:

a. The "Retro Date" must be shown, and must be on or before the date of the Contract or the beginning of the Work.

b. Insurance must be maintained and evidence of insurance must be provided for at least two (2) years after completion of the Contract.

c. If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the Contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of two (2) years after completion of the Contract.

E. Subcontractor's Insurance.

The Contractor shall not allow any Subcontractor to commence work on its subcontract until the Subcontractor has provided the insurance specified above. The Contractor shall require each of its Subcontractors to procure and to maintain, during the life of the subcontract, bodily and personal injury liability and property damage insurance, and workers' compensation insurance, of the type and in the same amount as specified herein.

1 It shall be the responsibility of the Contractor to ensure that all Subcontractors comply with
2 this provision, and to verify their compliance when requested by the City.
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4 If requested by the City, the Contractor shall deliver certificates of insurance or copies of
5 the insurance policies and endorsements of all Subcontractors; provided, however, that this
6 authority shall not relieve the Contractor of its obligation to ascertain the existence of such
7 insurance.
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10 F. Effective Date of Policies.

11 The insurance required by these General Provisions and by the Special Provisions shall
12 be maintained by the Contractor in full force and effect at all times during prosecution of
13 the Work and until two (2) years after the final completion and acceptance thereof by City.
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15 G. Other Provisions.
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- 17 1. The Contractor's General Liability, Automobile Liability, and any Excess or
18 Umbrella Liability, shall contain the following provisions:
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20 a. The City, its officers, officials, employees and agents shall be covered as
21 additional insureds as respects liability arising out of the activities performed by
22 or on behalf of the Contractor, products and completed operations of the
23 Contractor, premises owned, occupied, or used by the Contractor, or
24 automobiles owned, leased, hired, or borrowed by the Contractor. The policy
25 shall contain no special limitations on the scope of coverage afforded to the
26 City, its officers, officials, employees and agents.
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28 b. For any claims related to this Contract, the Contractor's insurance coverage
29 shall be primary insurance as respects the City, its officers, officials, employees
30 or agents. Any insurance or self-insurance maintained by the City, its officers,
31 officials, employees or agents shall be excess of the Contractor's insurance
32 and shall not contribute with it.
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34 c. Any failure to comply with reporting or other provisions of the policies on the
35 part of the Contractor, including breaches of warranties, shall not affect
36 coverage provided to the City, its officers, officials, employees, and/or agents.
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- 38 2. The Contractor's General Liability and any Excess or Umbrella Liability
39 Insurance policies shall contain an endorsement stating that any aggregate
40 limits shall apply separately to the Work.
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- 42 3. The Contractor's insurance shall apply separately to each insured against
43 whom claim is made or suit is brought, except with respect to the limits of the
44 insurer's liability.
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4. Each insurance policy shall state by separate endorsement that the insurer agrees to waive all rights of subrogation against the City, its officers, officials, employees or agents.
5. Each insurance policy shall state that coverage shall not be suspended, voided, cancelled by the Contractor or the City, reduced in scope of coverage or in limits, non-renewed, or materially changed unless the insurer(s) provide thirty (30) days written notice by certified mail to the City prior to such change. Ten (10) days prior written notice by certified mail shall be given to the City in the event of cancellation due to nonpayment of premium.
6. All of the Contractor's insurance coverage, except as noted below, shall be placed with insurance companies with a current A.M. Best rating of at least A-:VII.

Exceptions:
 - a. Underwriters at Lloyd's of London, which are not rated by A.M. Best.
 - b. Workers' Compensation that is provided through a State Compensation Insurance Fund or a qualified self-insurer for Workers' Compensation under California law.
 - c. Environmental Liability insurance shall be placed with insurance companies with a current A.M. Best rating of at least B+:VII.
7. Any Contractor that self-insures its general and/or automobile liability losses must have a minimum net worth of at least ten million dollars (\$10,000,000).
8. The City, at its discretion, may require new types of insurance coverage or increase the limits of insurance coverage required hereunder at any time during the term of the Contract by giving thirty (30) days written notice to the Contractor. Contractor shall immediately procure such insurance or increase the limits of coverage and provide certificates of insurance, including copies of all required endorsements, to the City within thirty (30) days of receipt of the City's request.
9. The required insurance coverage shall be subject to the approval of the City, but any acceptance of insurance certificates by the City shall in no way limit or relieve the Contractor of its duties and responsibilities in this Contract.
10. If the Contractor fails to procure or maintain insurance as required by this Section and any Special Provisions, or fails to furnish the City with proof of such insurance, the City, at its discretion and in addition to its other remedies under the Contract and at law for the Contractor's default, may procure any or all such insurance. Premiums for such insurance procured by the City shall be deducted and retained from any sums due the Contractor under the Contract.

1 Failure of the City to obtain such insurance shall in no way relieve the
2 Contractor from any of the Contractor's responsibilities under the Contract. Any
3 failure of the Contractor to maintain any item of the required insurance is
4 sufficient cause for termination of the Contract.
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6 11. The making of progress payments to the Contractor shall not be construed as
7 relieving the Contractor of responsibility for loss or damage, or destruction
8 occurring prior to final acceptance by the City.
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10 12. The City is authorized to execute amendments and waivers, with or without
11 conditions, to the insurance requirements of the Contract. The City will provide
12 such amendments or waivers in writing to the Contractor.

13 13. The failure of the City to enforce in a timely manner any of the provisions of this
14 Section 3.10 shall not act as a waiver to enforcement of any of these provisions
15 at any time during the term of the Contract.
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17 H. Notification of Accident or Occurrence.

18 The Contractor shall report by telephone to the City within twenty-four (24) hours and also
19 report in writing to the City within fifteen (15) Calendar Days after the Contractor or any
20 Subcontractors or agents have knowledge of any accident or occurrence involving death
21 of or injury to any person or persons, or damage in excess of ten thousand dollars
22 (\$10,000) to the Work, property of the City or others, arising out of any work done by or
23 on behalf of the Contractor as part of the Contract. Such report shall contain:
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- 25 1. the date and time of the occurrence;
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- 27 2. the names and addresses of all persons involved; and
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- 29 3. a description of the accident or occurrence and the nature and extent of injury
- 30 or damage.
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