

## DOCUMENT 00821

**INSURANCE AND INDEMNIFICATION**

## 1. INSURANCE REQUIREMENTS

At or before the date specified in Document 00200 (Instructions to Bidders), Contractor shall furnish to Port satisfactory proof that Contractor has in force continuously for the entire period covered by the Contract the following classes of insurance in the form and with limits and deductibles specified below:

- A. Comprehensive or Commercial General Liability Insurance covering claims for personal injury, bodily injury and property damage arising out of the Work and in a form providing coverage not less than that of a standard Commercial General Liability Insurance policy ("Occurrence Form"). Such insurance shall provide for all operations and include independent contractors, products liability, completed operations for one year after Final Completion of the last Phase to be completed and acceptance of the final payment for the Work, contractual liability, and coverage for, collapse. The limits of such insurance shall not be coverage of less than [\$1,000,000] each occurrence, [\$2,000,000] general aggregate limit, and [\$2,000,000] aggregate for products and completed operations. Any deductible or self-insured retention should not exceed \$25,000. The policies shall be endorsed to provide Broad Form Property Damage Coverage.
- B. Comprehensive Automobile Liability Insurance covering all owned, non-owned, and hired vehicles. Such insurance shall provide coverage not less than the standard Comprehensive Automobile Liability policy with limits not less than [\$1,000,000] each person Bodily Injury, [\$1,000,000] each occurrence Bodily Injury and [\$1,000,000] each occurrence Property Damage (or [\$1,000,000] combined single limit, each accident).
- C. All-Risk Course of Construction Insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against debris removal and demolition occasioned by enforcement of Laws, and provide all risk coverage including earthquake and flood in the amount of 100 percent of the completed value of the Work to be performed under this Contract. Deductible shall not exceed [\$25,000]. Each loss shall be borne by Contractor.
- D. Workers' Compensation for all persons whom the Contractor may employ or subcontract in carrying out Work contemplated under Contract Documents, in accordance with the Act of Legislature of State of California, known as "Workers' Compensation Insurance and Safety Act," approved May 26, 1913, and all acts amendatory or supplemental thereto, in the statutory amount.
- E. Workers' Compensation including coverage under United States Longshoreman's and Harbor Worker Act, for all persons whom the Contractor may employ or subcontract in carrying out Work contemplated under Contract Documents, in accordance with the Act of Legislature of State of California, known as "Workers' Compensation Insurance and Safety Act," approved May 26, 1913, and all acts amendatory or supplemental thereto, in the statutory amount.
- F. Employer's Liability with limits no less than \$1,000,000 Bodily Injury by Accident and \$1,000,000 Bodily Injury by Disease.
- G. Umbrella or Excess Liability insurance with limits of not less than \$5,000,000 per occurrence and annual aggregate, except per occurrence only for Automobile Liability. Coverage is to be excess of Commercial General Liability, Automobile Liability and Employers Liability.
- H. Railroad Protective Insurance with coverage of at least \$3,000,000 per occurrence and \$6,000,000 annual aggregate for work pursuant to this Agreement. The coverage under this policy shall be in effect during the construction. The policy shall be issued on a standard ISO form CG 00 35 or equivalent.

- I. Professional Liability insurance for licensed professionals performing work pursuant to this Agreement in an amount of at least \$3,500,000 per claim and per policy aggregate covering the licensed professionals' errors and omissions. Any deductible or self-insured retention should not exceed \$25,000.
- J. Pollution Legal Liability – providing bodily injury and property damage with limits of not less than \$5,000,000 per occurrence. Such insurance shall include coverage for any environmental damage and related remediation and cleanup costs. Any deductible or self-insured retention should not exceed \$25,000. The coverage shall be in effect for the duration of the Project and for not less than 2 years following Final Completion of the Project.
- K. All policies of insurance shall be placed with insurers acceptable to Port. The insurance underwriter(s) must be duly licensed to do business in the State of California and (other than for workers' compensation) must have an A. M. Best Company rating of A-, VII or better. Required minimum amounts of insurance may be increased should conditions of Work, in opinion of Port, warrant such increase. Contractor shall increase required insurance amounts upon direction by Port.
- L. Required Endorsements: The policies required under paragraphs 1.A, 1.B, 1.C, 1.D, 1.F and 1.J of this Document 00821 shall be endorsed, in a form and manner acceptable to Port, as follows:
  1. Name Port of Stockton, its Board of Commissioners and their employees, representatives, consultants (including without limitation Architect/Engineer and Project Manager), and agents, as additional insured's, but only with respect to liability arising out of the activities of the named insured.
  2. Each such policy shall apply separately to each insured against whom claim is made or suit is brought.
  3. Insurance shall be primary and no other insurance or self-insured retention carried or held by Port shall be called upon to contribute to a loss covered by insurance for the named insured.
  4. Insurance shall contain a provision requiring the insurance carriers to waive their rights of subrogation against Port and all additional insured's, as well as other insurance carriers for the Work
  5. Declarations Pages Required. Contractor or its insurance broker shall submit a copy of the Declarations page for each policy under Sections 1.A thru 1. J above. The page shall include the name of the carrier, the policy number, the types of coverage and limits, the effective dates of the policy, and the broker's name and license number.
- M. Declarations Page and endorsements shall have clearly typed thereon Port Contract Number and title of Contract Documents. Written notice of cancellation, non-renewal, or reduction in coverage of any policy shall be mailed to Port (Attention: Development & Planning Department) at the address listed in Document 00520 (Agreement), 30 Days in advance of the effective date of the cancellation, non-renewal, or reduction in coverage. Contractor shall maintain insurance in full force and effect during entire period of performance of Contract Documents. Contractor shall keep insurance in force during warranty and guarantee periods, except that Contractor may discontinue All-Risk Course of Construction Insurance after Final Payment, completion of project and sign off by the Port of Stockton. At time of making application for extension of time, and during all periods exceeding the Contract Time resulting from any cause, Contractor shall submit evidence that insurance policies will be in effect during requested additional period of time. Upon Port's request, Contractor shall submit to Port, within 30 Days, copies of the actual insurance policies or renewals or replacements.
- N. Contractor shall pay all insurance premiums, including any charges for required waivers of subrogation or the endorsement of additional insured's. If Contractor fails to maintain insurance, Port may take out comparable

insurance, and deduct and retain amount of premium from any sums due Contractor under Contract Documents.

- O. If injury occurs to any employee of Contractor, Subcontractor or sub-subcontractor for which the employee, or the employee's dependents in the event of employee's death, is entitled to compensation from Port under provisions of the Workers' Compensation Insurance and Safety Act, as amended, or for which compensation of any kind is claimed from Port, Port may retain out of sums due Contractor under Contract Documents, amount sufficient to cover such compensation, as fixed by the Act, as amended, until such compensation is paid, or until it is determined that no compensation is due. If Port is compelled to pay compensation, Port may, in its discretion, either deduct and retain from the Contract Sum the amount so paid, or require Contractor to reimburse Port.
- P. Nothing in this Document 00821 shall be construed as limiting in any way the extent to which Contractor or any Subcontractor may be held responsible for payment of damages resulting from their operations.
- Q. All Subcontractors shall maintain the same insurance required in 1.A, 1.B, 1.D, 1.E (if applicable) and 1.I (if applicable) to be maintained by Contractor with respect to their portions of the Work, and Contractor shall cause the Subcontractors to furnish proof thereof to Port within ten Days of Port's request.
- R. The following provisions apply to each Principal Designer, and any other licensed professional engaged by Contractor to perform portions of the Work ("Professional").
  - 1. Each Professional shall maintain the following insurance at its sole cost and expense:
    - a. Provided such insurance is customarily required by Port when professionals engaged in the profession practiced by Professional directly contract with Port, Professional Liability Insurance, insuring against professional errors and omissions arising from Professional's work on the Project, in an amount not less than \$3,500,000 combined single limit for each occurrence. Any deductible or self-insured retention should not exceed \$25,000. If Professional cannot provide an occurrence policy, Professional shall provide insurance covering claims made as a result of performance of Work on this Project and shall maintain such insurance in effect for not less than three years following Final Completion of the Project.
    - b. All insurance required by paragraphs 1.A, 1.B, 1.D, 1.E (if applicable), and 1.F of this Document 00821. Professional shall satisfy all other provisions of this Document 00821 relating to that insurance, including without limitation providing required insurance certificates (containing the required endorsements) and declarations pages before commencing its Work on the Project.

## 2. RESPONSIBILITY OF CONTRACTOR AND INDEMNIFICATION

### A. Contractor's Responsibility for the Work.

- 1. Except for damage caused by the sole negligence, willful misconduct or active negligence of Port or its agents, Contractor shall be solely responsible for any loss or damage that may happen to any part of the Work, materials or other things used in performing the work, injury, sickness, disease, or death of any person as a result of the Work, or resulting damage to property.
- 2. Port and each of its officers, employees, consultants and agents including, but not limited to the Board, Architect/Engineer and each Port Representative, shall not be liable or accountable in any manner for loss or damage that may happen to any part of the Work; loss or damage to materials or other things used or employed in performing the Work; injury, sickness, disease, or death of any person as a result of the Work; or damage to property resulting from any cause whatsoever except their sole negligence, willful

misconduct or active negligence, and Contractor releases all of the foregoing persons and entities from any and all such claims.

3. With respect to third-party claims against Contractor, Contractor waives any and all rights to any type of express or implied indemnity against Port and each of its officers, employees, consultants and agents including, but not limited to Port, the Board, Architect/Engineer and each Port representative.
4. Contractor also waives subrogation rights under applicable insurance policies, to the greatest extent permitted by law, and will require this same waiver of subrogation by its subcontractors, in all policies of insurance, against all other project participants, to include Contractor, Subcontractors, Port, Architect Engineer, each Port representative, government agencies and inspectors.

**B. Claims Arising From the Work**

1. To the furthest extent permitted by law (including without limitation California Civil Code Section 2782 and, if and to the extent applicable, California Civil Code Section 2782.8), Contractor shall assume defense of, and indemnify and hold harmless, Port and each of its officers, employees, consultants and agents, including but not limited to the Board, Architect/Engineer and each Port representative, from claims, suits, actions, losses and liability of every kind, nature and description, including but not limited to claims and fines of regulatory agencies and attorney's fees and consultant's fees, directly or indirectly arising out of, connected with or resulting from performance of the Work, failure to perform the Work, or condition of the Work which is caused in whole or part by any act or omission of Contractor, Subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.
2. Contractor's indemnity obligation shall not apply to any indemnified party to the extent of its sole negligence or willful misconduct; nor shall it apply to Port or other indemnified party to the extent of its active negligence.

**C. Scope of Indemnification Obligation.**

Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Contractor, its Subcontractors of any tier, or the officers or agents of any of them. In the event of loss, however, Contractor shall give all required notices to all insurance carriers, and shall require its subcontractors to do the same. Port may, in its discretion, request evidence of such notices from Contractor.

**D. Scope of Contract Limitations of Liability.**

To the furthest extent permitted by law (including, without limitation, Civil Code Section 2782 and, if and to the extent applicable, Civil Code section 2782.8), the indemnities, releases of liability and limitations of liability, claims procedures, and limitations of remedy expressed throughout Contract Documents shall apply even in the event of breach of contract, negligence (active or passive), fault or strict liability of the party(is) indemnified, released, or limited in liability, and shall survive the termination, rescission, breach, abandonment, or completion of the Work or the terms of the Contract Documents.

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