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## **SECTION 3 – AWARD AND EXECUTION OF CONTRACT**

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### **3-1 AWARD OF CONTRACT**

The award of the Contract, if the Contract is to be awarded, will be to the lowest responsive, responsible Bidder. In addition to price in determining the lowest responsive, responsible Bidder, consideration will be given to:

- the ability, capacity and skill of the Bidder to perform the Work;
- the ability of the Bidder to perform the Work within the time specified, without delay;
- the ability of the Bidder to perform the Work in a safe manner;
- the character, integrity, reputation, judgment, experience and efficiency of the Bidder; and
- the quality of the Bidder's performance on previous work with the City.

If an alternate or alternates are selected by the City, unless otherwise specified in the Contract, award will be based on the lowest total price for the sum of the base bid price plus the bid prices of the selected alternate or alternates.

### **3-2 TIME OF AWARD**

The award, if made, will be made within sixty (60) calendar days after the Bid Opening. If the lowest responsive, responsible Bidder refuses or fails to execute the Contract, the City shall award the Contract to the second lowest responsive, responsible Bidder. The specified period of time within which the award of the Contract shall be made shall be subject to extension for further periods as agreed upon in writing by the City and the Bidder.

### **3-3 CONSIDERATION OF BIDS**

After the Bids have been opened and read, they will be checked for accuracy and compliance with the Specifications.

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 item 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 shall be deemed incomplete and the Bid shall be rejected.

After the City has made any necessary corrections in mathematical errors appearing on the face of the Bid, all Bids will be compared based on the bid form.

### **3-4 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 and listed in the current Federal Department of Treasury Circular 570. When the amount to be paid to the Contractor is based upon units of work

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to be performed or items to be provided, the term “Total Contract Price” 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.

### **3-4.01 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 Total Contract Price as set forth in the Contract.

### **3-4.02 Payment Bond**

The Payment Bond, to guarantee the payment of wages and of bills contracted for materials, supplies, or equipment used in the performance 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 Total Contract Price as set forth in the Contract.

## **3-5 NOTIFICATION OF SURETY COMPANIES**

The surety company shall be familiar with all the provisions and conditions of the Contract. It is understood and agreed that the surety company waives notice of change, extension of time, 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 company of changes shall in no way relieve the surety company of its obligations under the Contract.

## **3-6 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, not counting Saturdays, Sundays, and holidays, after the award of the Contract. The Bid Guarantees of the three lowest responsive, responsible Bidders will be returned within ten (10) days, not counting Saturdays, Sundays, and holidays, 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, not counting Saturdays, Sundays, and holidays, of the decision of the City Council to not award the Contract.

## **3-7 EXECUTION OF CONTRACT**

The Contract shall be executed by the successful Bidder and returned to the City, together with the Performance Bond, Payment Bond and certificates of insurance within ten (10) days, not counting Saturdays, Sundays, and holidays, of the Bidder’s receipt of the documents. 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 Section 3-9 in this Section of 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 Section 3-9. After execution by the City, one copy of the Contract, bonds, and certificates of insurance will be returned to the Contractor.

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**3-8 FAILURE TO EXECUTE CONTRACT**

If the Bidder to whom the Contract is awarded fails to execute the Contract and file acceptable bonds and insurance certificates as provided herein within ten (10) days, not counting Saturdays, Sundays, and holidays, from the time the Contract forms are received by the Bidder, the award shall be annulled and the Bidder's Bid Guarantee forfeited to the City. At the City's discretion, the Contract shall 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 shall 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.

**3-9 INSURANCE**

Unless otherwise stated in the 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, the following insurance:

**3-9.01 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, and products and completed operations liability. Coverage shall be at least as broad as "Insurance Services Office Commercial General Liability Coverage Form CG 0001" (occurrence). 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 policy shall cover contractual liability applicable to the Contractor's assumed liability under this Contract. The policy 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.

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**3-9.02 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 shall not be less than:

|   |                                   |
|---|-----------------------------------|
| Bodily Injury and Property<br>Damage Combined Single<br>Limit | One Million Dollars (\$1,000,000) |
|---|-----------------------------------|

**3-9.03 Workers' Compensation**

Workers' Compensation insurance, with coverage as required by the State of California (unless the Contractor is a qualified self-insurer with the State of California), and Employers' Liability coverage. The limits of Employers' Liability shall not be less than:

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

The Workers' Compensation policy required hereunder shall be endorsed to state that the Workers' Compensation carrier waives its right of subrogation against the City, its officers, officials, employees, agents or volunteers.

In the event the Contractor is self-insured, the Contractor shall furnish a Certificate of Permission to Self-Insure by the Department of Industrial Relations Administration of Self-Insurance, Sacramento.

**3-9.04 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.

**3-9.04.A Contractor's Equipment**

The Contractor, and each of its Subcontractors, shall separately insure its own equipment for loss and damage. The Contractor's Property and Inland Marine policies shall include, or be endorsed to include, a waiver of subrogation against the City, its officers, officials, employees, agents, and volunteers which might arise by reason of damage to the Contractor's property or equipment (owned, leased or borrowed) in connection with work performed under this Contract by the Contractor.

**3-9.04.B Railroad Protective Liability**

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, Railroad Protective Liability insurance with limits of liability as set forth in the

Special Provisions.

**3-9.04.C Builder's Risk 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 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 off site, 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 shall 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 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 at the time loss or one hundred thousand dollars (\$100,000), whichever is less, per occurrence and in the aggregate. The maximum deductible for all other perils allowable under this policy shall be ten thousand dollars (\$10,000). 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 City and the Contractor waive all rights against each other and against all other contractors 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 they shall 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

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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.

### **3-9.04.D 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. If coverage for Environmental Liability insurance is written on a claims-made form, the following provisions apply:

1. The "Retro Date" must be shown, and must be on or before the date of the Contract or the beginning of the Work.
2. Insurance must be maintained and evidence of insurance must be provided for at least one (1) year after completion of the Contract.
3. 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 one (1) year after completion of the Contract.

### **3-9.04.E Other Provisions**

1. The Contractor's General Liability, Automobile Liability, and any Excess or Umbrella Liability, shall contain the following provisions:
  - a. The City, its officers, officials, employees, agents, and volunteers shall be covered as additional insureds as respects liability arising out of the activities performed by or on behalf of the Contractor, products and completed operations of the Contractor, premises owned, occupied, or used by the Contractor, or automobiles owned, leased, hired, or borrowed by the Contractor. The policy shall contain no special limitations on the scope of coverage afforded to the City, its officers, officials, employees, agents, or volunteers.
  - b. For any claims related to this Contract, the Contractor's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, agents, or volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
  - c. Any failure to comply with reporting or other provisions of the policies on the part of the Contractor, including breaches of warranties, shall not affect coverage provided to the City, its officers, officials, employees, agents, or volunteers.
2. The Contractor's General Liability and any Excess or Umbrella Liability insurance policies shall contain an endorsement stating that any aggregate limits shall apply separately to the Work.
3. The Contractor's insurance shall apply separately to each insured against whom

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claim is made or suit is brought, except with respect to the limits of the insurer's liability.

4. 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.
5. 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-:X.

Exceptions:

a. Underwriters at Lloyd's of London, which are not rated by A.M. Best.

b. Workers' Compensation which is provided through a State Compensation Insurance Fund or a qualified self-insurer for Workers' Compensation under California law.

c. For liability insurance required under Section 3-9.04D (Environmental Liability insurance), insurance requirements shall be placed with insurance companies with a current A.M. Best rating of at least B+:VII.

6. The Contractor shall sign and file with the City 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 worker's compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the Work of this Contract.”

Said certification is included in the Contract, and signature and return of the Contract shall constitute signing and filing of the said certification.

7. The City, at its discretion, shall 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.
8. 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.
9. 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, shall 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. Failure of the City to obtain such insurance shall in no way relieve the Contractor from any of the Contractor's responsibilities under

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the Contract. Any failure of the Contractor to maintain any item of the required insurance is sufficient cause for termination of the Contract.

10. The making of progress payments to the Contractor shall not be construed as relieving the Contractor of responsibility for loss or damage, or destruction occurring prior to final acceptance by the City.
11. The City is authorized to execute amendments and waivers, with or without conditions, to the insurance requirements of the Contract. The City will provide such amendments or waivers in writing to the Contractor. The failure of the City to enforce in a timely manner any of the provisions of this Section shall not act as a waiver to enforcement of any of these provisions at any time during the term of the Contract.

#### **3-9.05 Notification of Accident or Occurrence**

The Contractor shall report by telephone to the City within twenty-four (24) hours and also report in writing to the City within fifteen (15) days after the Contractor or any subcontractors or agents have knowledge of any accident or occurrence involving death of or injury to any person or persons, or damage in excess of ten thousand dollars (\$10,000) to the Work, property of the City or others, arising out of any work done by or on behalf of the Contractor as part of the Contract. Such report shall contain:

1. the date and time of the occurrence,
2. the names and addresses of all persons involved, and
3. a description of the accident or occurrence and the nature and extent of injury or damage.