



PARMA TOPICS

Note: This model language is for informational purposes only. It is designed to be used as a guide to the District and its legal counsel in drafting of sound risk transfer provisions. The actual drafting of these provisions should be done in consultation with the District's legal counsel.

MODEL RISK TRANSFER CLAUSES CONSTRUCTION CONTRACTS

AGREEMENTS

Workers' Compensation Insurance - By his/her signature hereunder, contractor certifies that he/she is aware of the provisions of Section 3700 of the California 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 he/she will comply with such provisions before commencing the performance of the work of this contract.

Indemnification - To the fullest extent permitted by law, contractor shall indemnify and hold harmless and defend District, its directors, officers, employees, or volunteers, and each of them from and against:

- a. Any and all claims, demands, causes of action, damages, costs, expenses, losses or liabilities, in law or in equity, of every kind and nature whatsoever for, but not limited to, injury to or death of any person including District and/or contractor, or any directors, officers, employees, or volunteers of District or contractor, and damages to or destruction of property of any person, including but not limited to, District and/or contractor or their directors, officers, employees, or volunteers, arising out of or in any manner directly or indirectly connected with the work to be performed under this agreement, however caused, regardless of any negligence of District or its directors, officers, employees, or volunteers, except the sole negligence or willful misconduct or active negligence of District or its directors, officers, employees, or volunteers;
- b. Any and all actions, proceedings, damages, costs, expenses, penalties or liabilities, in law or equity, of every kind or nature whatsoever, arising out of, resulting from, or on account of the violation of any governmental law or regulation, compliance with which is the responsibility of contractor;
- c. Any and all losses, expenses, damages (including damages to the work itself), attorneys' fees, and other costs, including all costs of defense, which any of them may incur with respect to the failure, neglect, or refusal of contractor to faithfully perform the work and all of the contractor's obligations under the contract. Such costs, expenses, and damages shall include all costs, including attorneys' fees, incurred by the indemnified parties in any lawsuit to which they are a party.

Contractor shall defend, at contractor's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against District or District's directors, officers, employees, or volunteers.

Contractor shall pay and satisfy any judgment, award or decree that may be rendered against District or its directors, officers, employees, or volunteers, in any such suit, action or other legal proceeding.

Contractor shall reimburse District or its directors, officers, employees, or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

Contractor agrees to carry insurance for this purpose as set out in the specifications. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the District, or its directors, officers, employees or volunteers.

GENERAL CONDITIONS

Laws, Regulations and Permits - The contractor shall give all notices required by law and comply with all laws, ordinances, rules and regulations pertaining to the conduct of the work. The contractor shall be liable for all violations of the law in connection with work furnished by the contractor. If the contractor observes that the drawings or specifications are at variance with any law or ordinance, rule or regulation, he/she shall promptly notify the District engineer in writing and any necessary changes shall be made by written instruction or change order. If the contractor performs any work knowing it to be contrary to such laws, ordinances, rules or regulations and without giving notice to the District engineer, the contractor shall bear all costs arising therefrom.

Safety - The contractor shall execute and maintain his/her work so as to avoid injury or damage to any person or property. The contractor shall comply with the requirements of the specifications relating to safety measures applicable in particular operations or kinds of work.

In carrying out his/her work, the contractor shall at all times, exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed, and be in compliance with all federal, state and local statutory and regulatory requirements including California Department of Industrial Relations (Cal/OSHA) regulations; and the U.S. Department of Transportation Omnibus Transportation Employee Testing Act (as applicable). Safety precautions as applicable shall include, but shall not be limited to, adequate life protection, and life saving equipment; adequate illumination for underground and night operations; instructions in accident prevention for all employees such as machinery guards, safe walkways, scaffolds, ladders, bridges, gang planks; confined space procedures; trenching and shoring; fall protection; and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents, injuries, or illnesses; and adequate facilities for the proper inspection and maintenance of all safety measures.

The contractor shall be responsible for the safeguarding of all utilities. At least two working days before beginning work, the contractor shall call the Underground Service Alert (USA) in order to determine the location of sub-structures. The contractor shall immediately notify the District and the utility owner if he/she disturbs, disconnects, or damages any utility.

In accordance with Section 6705 of the California Labor Code, the contractor shall submit to the District specific plans to show details of provisions for worker protection from caving ground during excavations of trenches of five feet or more in depth. The excavation/trench safety plan shall be submitted to and accepted by the District prior to starting excavation. The trench safety plan shall have details showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground. If such a plan varies from the shoring system standards established by the Construction Safety Orders of the California Department of Industrial Relations (Cal/OSHA), the plan shall be prepared by a California registered civil or structural engineer. As part of the plan, a note shall be included stating that the registered civil or structural engineer certifies that the plan complies with the Cal/OSHA Construction Safety Orders, or that the registered civil or structural engineer certifies that the plan is not less effective than the shoring, bracing, sloping or other provisions of the Safety Orders. In no event shall the contractor use a shoring, sloping, or protective system less effective than that required by said Construction Safety Orders. Submission of this plan in no way relieves the contractor of the requirement to maintain safety in all areas. If excavations or trench work requiring a Cal/OSHA permit are to be undertaken, the contractor shall submit his/her permit with the excavation/trench work safety plan to the District before work begins.

The names and telephone numbers of at least two medical doctors practicing in the vicinity and the telephone number of the local ambulance service shall be prominently displayed adjacent to telephones.

Commercial General Liability and Automobile Liability Insurance - The contractor shall provide and maintain the following commercial general liability and automobile liability insurance:

Coverage - Coverage for commercial general liability and automobile liability insurance shall be at least as broad as the following:

1. Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 0001)
2. Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto)

Limits - The contractor shall maintain limits no less than the following:

1. General Liability - One million dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the project/location (with the ISO CG 2503, or ISO CG 2504, or insurer's equivalent endorsement provided to the District) or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability - One million dollars (\$1,000,000) for bodily injury and property damage each accident limit.

Required Provisions - The general liability and automobile liability policies are to contain, or be endorsed to contain the following provisions:

1. The District, its directors, officers, employees, or volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the contractors; 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 coverage shall contain no special limitations on the scope of protection afforded to the District, its directors, officers, employees, or volunteers.
2. For any claims related to this project, the contractor's insurance shall be primary insurance as respects the District, its directors, officers, employees, or volunteers. Any insurance, self-insurance, or other coverage maintained by the District, its directors, officers, employees, or volunteers shall not contribute to it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the District, its directors, officers, employees, or volunteers.
4. 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.
5. Each insurance policy required by this clause shall state or be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days (10 days for non-payment of premium) prior written notice by U.S. mail has been given to the District.

Such liability insurance shall indemnify the contractor and his/her sub-contractors against loss from liability imposed by law upon, or assumed under contract by, the contractor or his/her sub-contractors

for damages on account of such bodily injury (including death), property damage, personal injury and completed operations and products liability.

The general liability policy shall cover bodily injury and property damage liability, owned and non-owned equipment, blanket contractual liability, completed operations liability, explosion, collapse, underground excavation and removal of lateral support.

The automobile liability policy shall cover all owned, non-owned, and hired automobiles.

All of the insurance shall be provided on policy forms and through companies satisfactory to the District.

Deductibles and Self-Insured Retentions - Any deductible or self-insured retention must be declared to and approved by the District. At the option of the District, either the insurer shall reduce or eliminate such deductibles or self-insured retentions.

Acceptability of Insurers - Insurance is to be placed with insurers having a current A.M. Best's rating of no less than A-.VII or equivalent or as otherwise approved by the District.

Workers' Compensation and Employer's Liability Insurance - The contractor and all sub-contractors shall insure (or be a qualified self-insured) under the applicable laws relating to workers' compensation insurance, all of their employees working on or about the construction site, in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any Acts amendatory thereof. The contractor shall provide employer's liability insurance in the amount of at least \$1,000,000 per accident for bodily injury and disease.

Builder's Risk Insurance - The Contractor shall provide and maintain builder's risk insurance (or installation floater) covering all risks of direct physical loss, damage or destruction to the work in the amount specified in the General Conditions, to insure against such losses until final acceptance of the work by the District. Such insurance shall include¹ explosion, collapse, underground excavation and removal of lateral support. The District shall be a named insured on any such policy. The making of progress payments to the contractor shall not be construed as creating an insurable interest by or for the District or be construed as relieving the Contractor or his/her subcontractors of responsibility for loss from any direct physical loss, damage or destruction occurring prior to final acceptance of the work by the District.

The insurer shall waive all rights of subrogation against the District, its directors, officers, employees, or volunteers.

Evidences of Insurance - Prior to execution of the contract, the contractor shall file with the District a certificate of insurance (Accord Form 25-S or equivalent) signed by the insurer's representative. Such evidence shall include original copies of the ISO CG 2010, or ISO CG 2033, or insurer's equivalent additional insured endorsement signed by the insurer's representative. Such evidence shall also include confirmation that coverage includes or has been modified to include Required Provisions 1-5.

The contractor shall, upon demand of the District, deliver to the District all such policy or policies of insurance and the receipts for payment of premiums thereon.

Sub-Contractors - In the event that the contractor employs other contractors (sub-contractors) as part of the work covered by this agreement, it shall be the contractor's responsibility to require and confirm that each sub-contractor meets the minimum insurance requirements specified above.

1 - Addition of earthquake and flood should be considered if loss potential from these perils is significant.

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MODEL RISK TRANSFER CLAUSES LEASES

AGREEMENTS

Workers' Compensation Insurance - By his/her signature hereunder, lessee certifies that he/she is aware of the provisions of Section 3700 of the California 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 he/she will comply with such provisions in connection with any work performed on the premises. Any persons providing services with or on behalf of lessee shall be covered by workers' compensation (or qualified self-insurance).

Indemnification - To the fullest extent permitted by law, lessee shall indemnify and hold harmless and defend District, its directors, officers, employees, or volunteers, and each of them from and against:

- a. Any and all claims, demands, causes of action, damages, costs, expenses, losses or liabilities, in law or in equity, of every kind and nature whatsoever for, but not limited to, injury to or death of any person including District and/or lessee, or any directors, officers, employees, or volunteers of District or lessee, and damages to or destruction of property of any person, including but not limited to, District and/or lessee and their directors, officers, employees, or volunteers, arising out of or in any manner directly or indirectly connected with this lease, however caused, regardless of any negligence of District or its directors, officers, employees, or volunteers, except the sole negligence or willful misconduct of District or its directors, officers, employees, or volunteers;
- b. Any and all actions, proceedings, damages, costs, expenses, penalties or liabilities, in law or equity, of every kind or nature whatsoever, arising out of, resulting from, or on account of the violation of any governmental law or regulation, compliance with which is the responsibility of lessee.
- c. Any and all losses, expenses, damages (including damages to the work itself), attorneys' fees, and other costs, including all costs of defense, which any of them may incur with respect to the failure, neglect, or refusal of lessee to faithfully perform all of its obligations under the contract. Such costs, expenses, and damages shall include all costs, including attorneys' fees, incurred by the indemnified parties in any lawsuit to which they are a party.

Lessee shall defend, at lessee's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against District or District's directors, officers, employees, or volunteers.

Lessee shall pay and satisfy any judgment, award or decree that may be rendered against District or its directors, officers, employees, or volunteers, in any such suit, action or other legal proceeding. Lessee shall reimburse District and its directors, officers, employees, or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the

indemnity herein provided.

Lessee agrees to carry insurance for this purpose as set out in the specifications. Lessee's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the District, or its directors, officers, employees, or volunteers.

GENERAL CONDITIONS

Laws, Regulations and Permits - The lessee shall give all notices required by law and comply with all laws, ordinances, rules and regulations pertaining to the conduct of the premises. The lessee shall be liable for all violations of the law in connection the lease.

Safety & Environmental Protection - The lessee shall execute and maintain the premises so as to avoid injury or damage to any person or property. Lessee shall be responsible for security of the premises.

In carrying out his/her work, the lessee shall at all times, exercise all necessary precautions for the safety and environmental protection of premises, and be in compliance with all federal, state and local statutory and regulatory requirements including State of California, Division of Industrial Relations (Cal/OSHA) regulations, Cal/EPA, US/EPA and the US Department of Transportation Omnibus Transportation Employee Testing Act (as applicable).

The lessee shall not use or allow anyone else to use the premises to generate, manufacture, refine, transport, treat, store, handle, recycle, release or dispose of any hazardous material, other than as reasonably necessary for the operation of the lessee's activities as contemplated under this agreement. The term "hazardous material" means any hazardous substance, material or waste, including but not limited to those listed in 49 CFR 172.101 (US Department of Transportation), the Cal/EPA Chemical Lists of lists or petroleum products and their derivatives. However, this shall not apply to the use of petroleum products and related substances incidental to operation of motorized equipment and vehicles whose operation on the premises is contemplated by this agreement.

The lessee shall immediately notify the District in writing upon becoming aware of any release of hazardous material, violation of any environmental law or actions brought by third parties against the lessee alleging environmental damage.

Commercial General Liability and Automobile Liability Insurance - The lessee shall provide and maintain the following commercial general liability and automobile liability insurance:

Coverage - Coverage for commercial general liability and automobile liability insurance shall be at least as broad as the following:

1. Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 0001)
2. *Insurance Services Office Form Number CA 0001 covering Automobile Liability, Symbol 1 (any auto)

Limits - The lessee shall maintain limits no less than the following:

1. General Liability - One million dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply to premises leased (with the ISO CG 2503, or ISO CG 2504, or insurer's equivalent endorsement provided to the District) or the general aggregate limit shall be twice the required occurrence limit.

2. *Automobile Liability - One million dollars (\$1,000,000) for bodily injury and property damage each accident limit.

*Applicable if exposure exists.

Required Provisions - The general liability and automobile liability policies are to contain, or be endorsed to contain the following provisions:

1. The District, its directors, officers, employees, or volunteers are to be covered as insureds as respects: liability arising out of premises leased by the lessee; or automobiles owned, leased, hired or borrowed by the lessee. The coverage shall contain no special limitations on the scope of protection afforded to the District, its directors, officers, employees, or volunteers.
2. For any claims related to this lease, the lessee's insurance shall be primary insurance as respects the District, its directors, officers, employees, or volunteers. Any insurance, self-insurance or other coverage maintained by the District, its directors, officers, employees, or volunteers shall not contribute to it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the District, its directors, officers, employees, or volunteers.
4. The lessee'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.
5. Each insurance policy required by this clause shall state or be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days (10 days for non-payment of premium) prior written notice by U.S. mail has been given to the District.

Such liability insurance shall indemnify the lessee and his/her contractors against loss from liability imposed by law upon, or assumed under contract by, the lessee or his/her contractors for damages on account of such bodily injury (including death), property damage, personal injury and completed operations and products liability.

The general liability policy shall cover bodily injury and property damage liability, owned and non-owned equipment, blanket contractual liability, completed operations liability, explosion, collapse, underground excavation, and removal of lateral support.

The automobile liability policy shall cover all owned, non-owned, and hired automobiles.

All of the insurance shall be provided on policy forms and through companies satisfactory to the District.

Deductibles and Self-Insured Retentions - Any deductible or self-insured retention must be declared to and approved by the District. At the option of the District, either the insurer shall reduce or eliminate such deductibles or self-insured retentions.

Acceptability of Insurers - Insurance is to be placed with insurers having a current A.M. Best's rating of no less than A-.VII or equivalent or as otherwise approved by the District.

Workers' Compensation and Employer's Liability Insurance - The lessee shall cover or insure under the applicable laws relating to workers' compensation insurance, all of their employees working on or about the event, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any Acts amendatory thereof. The lessee shall provide employer's liability insurance in the amount of, at least, \$1,000,000 per accident for bodily

injury and disease.

Property Insurance** - The lessee shall provide and maintain property insurance covering all risks of direct physical loss, damage or destruction to real, personal property and improvements and betterments in the amount specified [insert amounts] to insure against such losses. Such insurance shall include 1 explosion, collapse, underground excavation and removal of lateral support. The District shall be a named insured on any such policy.

The insurer shall waive all rights of subrogation against the District, its directors, officers, employees or volunteers. The lessee shall provide the District with a certificate of insurance for property insurance coverage. Lessee and District each release the other and waive their rights of recovery against the other for damage to their property arising from perils insured against.

Evidences and Cancellation of Insurance - Prior to execution of the contract, the lessee shall file with the District a certificate of insurance (Acord Form 25-S or equivalent) signed by the insurer's representative. Such evidence shall include original copies of the ISO CG 2011, or ISO CG 2024 (if land only), or insurer's equivalent signed by the insurer's representative and evidence of waiver of rights of subrogation against the District (if Property Insurance is applicable). Such evidence shall also include confirmation that coverage includes or has been modified to include Required Provisions 1-5.

The lessee shall, upon demand of the District, deliver to the District all such policy or policies of insurance and the receipts for payment of premiums thereon.

1 - Addition of earthquake and flood should be considered if loss potential from these perils is significant.

**Applicable if exposure exists.

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CONTRACTUAL LIABILITY COVERAGE

In a reversal of position, the Insurance Services Office (ISO) recently decided that the Commercial General Liability policy (CGL) does not automatically cover the defense costs of an indemnitee. This is important to public entities since contractors that do public works projects are usually insured under a CGL policy.

This interpretation means that the insurance carrier of an indemnitor (a contractor or sub contractor) does not owe a defense to the indemnitee (the City) when the indemnitee is sued by a third party injured from operations arising out of the contracted project.

Traditionally, one of the primary benefits of a City using a contractor has been that the indemnitor would indemnify and hold harmless the indemnitee from liability claims made against the indemnitee. This represents one of the cornerstones of risk management; e.g. risk transfer. The City transfers responsibility for liability to the contractor along with the work.

Insurance makes this process work since it helps to guarantee a source of payment for the indemnitee's defense and indemnity costs should it be sued.

The ISO's new position is not that the contract between the indemnitee and indemnitor is not binding between the parties. Rather, it is that the insurance contract between the indemnitor and carrier does not obligate the carrier to defend a suit against the indemnitee.

The ISO now takes the position that the indemnitee must be added to the policy as an "Additional Insured." Such an action will then assure that the insurance company owes a defense to the indemnitee.

The ISO has issued a new CGL policy in 1996 reflecting two significant changes:

- The defense obligation wording will be changed to read "...we will have the right and duty to defend the insured against any suit seeking those damages..." This change will include a defense obligation to any "additional insured." But an indemnitee relying on a hold harmless/indemnity agreement alone will not qualify.
- Even if the indemnitee does not have "additional insured" status, it may still be covered under the indemnitor's policy if the contract language includes not only coverage for damages but also for defense expense coverage. The ISO's exact working is "...liability to such party for or for the cost of that party's defense has also been assumed in the same insured contract."

The indemnitee must include language in the contract asking for coverage of damages and defense expense coverage. ISO's position is that if this language is present, then no alteration of the indemnitor's insurance is necessary; the coverage for defense costs is automatically there.

In the past, we have often relied on the insurance industry honoring "Certificates of Insurance." This was despite the fact that the certificate states on its face that it does not grant "additional insured" status to the "certificate holder." This may change with the issuance of the new CGL policy in 1996.

To cover all your bases in the future, you need to demand an "Additional Insured" endorsement

(versus the "Certificate of Insurance"), as well as include defense expense coverage wording in the contract.

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MODEL RISK TRANSFER CLAUSES CONSTRUCTION CONTRACTS WITH HAZARDOUS MATERIALS

AGREEMENTS

Workers' Compensation Insurance - By his/her signature hereunder, contractor certifies that he/she is aware of the provisions of Section 3700 of the California 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 he/she will comply with such provisions before commencing the performance of the work of this contract.

Indemnification - To the fullest extent permitted by law, contractor shall indemnify and hold harmless and defend District, its directors, officers, employees, or volunteers, and each of them from and against:

- a. Any and all claims, demands, causes of action, damages, costs, expenses, losses or liabilities, in law or in equity, of every kind and nature whatsoever for, but not limited to, injury to or death of any person including District and/or contractor, or any directors, officers, employees, or volunteers of District or contractor, and damages to or destruction of property of any person, including but not limited to, District and/or contractor or their directors, officers, employees, or volunteers, arising out of or in any manner directly or indirectly connected with the work to be performed under this agreement, however caused, regardless of any negligence of District or its directors, officers, employees, or volunteers, except the sole negligence or willful misconduct or active negligence of District or its directors, officers, employees, or volunteers;
- b. Any and all actions, proceedings, damages, costs, expenses, penalties or liabilities, in law or equity, of every kind or nature whatsoever, arising out of, resulting from, or on account of the violation of any governmental law or regulation, compliance with which is the responsibility of contractor.
- c. Any and all losses, expenses, damages (including damages to the work itself), attorneys' fees, and other costs, including all costs of defense, which any of them may incur with respect to the failure, neglect, or refusal of Contractor to faithfully perform the work and all of the contractor's obligations under the contract. Such costs, expenses, and damages shall include all costs, including attorneys' fees, incurred by the indemnified parties in any lawsuit to which they are a party.

Contractor shall defend, at contractor's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against District or District's directors, officers, employees, or volunteers.

Contractor shall pay and satisfy any judgment, award or decree that may be rendered against District or its directors, officers, employees, or volunteers, in any such suit, action or other legal proceeding.

Contractor shall reimburse District or its directors, officers, employees, or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

Contractor agrees to carry insurance for this purpose as set out in the specifications. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the District, or its directors, officers, employees, or volunteers.

GENERAL CONDITIONS

Laws, Regulations and Permits - The contractor shall give all notices required by law and comply with all laws, ordinances, rules and regulations pertaining to the conduct of the work. The contractor shall be liable for all violations of the law in connection with work furnished by the contractor. If the contractor observes that the drawings or specifications are at variance with any law or ordinance, rule or regulation, he/she shall promptly notify the District engineer in writing and any necessary changes shall be made by written instruction or change order. If the contractor performs any work knowing it to be contrary to such laws, ordinances, rules or regulations and without giving notice to the District engineer, the contractor shall bear all costs arising therefrom.

Safety - The contractor shall execute and maintain his/her work so as to avoid injury or damage to any person or property. The contractor shall comply with the requirements of the specifications relating to safety measures applicable in particular operations or kinds of work.

In carrying out his/her work, the contractor shall at all times, exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed, and be in compliance with all federal, state and local statutory and regulatory requirements including California Department of Industrial Relations (Cal/OSHA) regulations; and the U.S. Department of Transportation Omnibus Transportation Employee Testing Act (as applicable). Safety precautions as applicable shall include, but shall not be limited to, adequate life protection, and life saving equipment; adequate illumination for underground and night operations; instructions in accident prevention for all employees such as machinery guards, safe walkways, scaffolds, ladders, bridges, gang planks; confined space procedures; trenching and shoring; fall protection; and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents, injuries, or illnesses; and adequate facilities for the proper inspection and maintenance of all safety measures.

The contractor shall be responsible for the safeguarding of all utilities. At least two working days before beginning work, the contractor shall call the Underground Service Alert (USA) in order to determine the location of sub-structures. The contractor shall immediately notify the District and the utility owner if he/she disturbs, disconnects, or damages any utility.

In accordance with Section 6705 of the California Labor Code, the contractor shall submit to the District specific plans to show details of provisions for worker protection from caving ground during excavations of trenches of five feet or more in depth. The excavation/trench safety plan shall be submitted to and accepted by the District prior to starting excavation. The trench safety plan shall have details showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground. If such a plan varies from the shoring system standards established by the Construction Safety Orders of the California Department of Industrial Relations (Cal/OSHA), the plan shall be prepared by a California registered civil or structural engineer. As part of the plan, a note shall be included stating that the registered civil or structural engineer certifies that the plan complies with the Cal/OSHA Construction Safety Orders, or that the registered civil or structural engineer certifies that the plan is not less effective than the shoring, bracing, sloping or other provisions of the Safety Orders. In no event shall the contractor use a shoring, sloping, or protective system less effective than that required by said Construction Safety Orders. Submission of this plan in no way relieves the contractor of the requirement to maintain safety in all areas. If excavations or trench work requiring a Cal/OSHA permit are to be undertaken, the contractor shall submit his/her permit with the excavation/trench work safety plan to the District before work begins.

The names and telephone numbers of at least two medical doctors practicing in the vicinity and the telephone number of the local ambulance service shall be prominently displayed adjacent to telephones.

Commercial General Liability, Automobile Liability, and Environmental Impairment Liability Insurance - The contractor shall provide and maintain the following commercial general liability, automobile liability, and environmental impairment liability insurance:

Coverage - Coverage for commercial general liability, automobile liability, and environmental impairment liability insurance shall be at least as broad as the following:

1. Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 0001)
2. Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto)
3. Coverage for Environmental Impairment Liability appropriate for the hazardous material/waste activity contemplated in the agreement. The retroactive date (if any) is to be no later than the effective date of this agreement.

Limits - The contractor shall maintain limits no less than the following:

1. General Liability - One million dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the project/location (with the ISO CG 2503, or ISO CG 2504, or insurer's equivalent endorsement provided to the District) or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability - One million dollars (\$1,000,000) for bodily injury and property damage each accident limit.
3. Environmental Impairment Liability - One million dollars (\$1,000,000) per claim; and two million dollars (\$2,000,000) annual aggregate.

Required Provisions - The general liability, automobile liability and environmental impairment liability policies are to contain, or be endorsed to contain the following provisions:

1. The District, its directors, officers, employees, or volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the contractors; 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 coverage shall contain no special limitations on the scope of protection afforded to the District, its directors, officers, employees, or volunteers.
2. For any claims related to this project, the contractor's insurance shall be primary insurance as respects the District, its directors, officers, employees, or volunteers. Any insurance, self-insurance, or other coverage maintained by the District, its directors, officers, employees, or volunteers shall not contribute to it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the District, its directors, officers, employees, or volunteers.
4. 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.

5. Each insurance policy required by this clause shall state or be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days (10 days for non-payment of premium) prior written notice by U.S. mail has been given to the District.

Such liability insurance shall indemnify the contractor and his/her sub-contractors against loss from liability imposed by law upon, or assumed under contract by, the contractor or his/her sub-contractors for damages on account of such bodily injury (including death), property damage, personal injury and completed operations and products liability.

The general liability policy shall cover bodily injury and property damage liability, owned and non-owned equipment, blanket contractual liability, completed operations liability, explosion, collapse, underground excavation and removal of lateral support.

The automobile liability policy shall cover all owned, non-owned, and hired automobiles. The policy shall be endorsed to delete pollution related exclusions (including lead and asbestos).

All of the insurance shall be provided on policy forms and through companies satisfactory to the District.

Deductibles and Self-Insured Retentions - Any deductible or self-insured retention must be declared to and approved by the District. At the option of the District, either the insurer shall reduce or eliminate such deductibles or self-insured retentions.

Acceptability of Insurers - Insurance is to be placed with insurers having a current A.M. Best's rating of no less than A:VII or equivalent or as otherwise approved by the District.

Workers' Compensation and Employer's Liability Insurance - The contractor and all sub-contractors shall cover or insure under the applicable laws relating to workers' compensation insurance, all of their employees working on or about the construction site, in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any Acts amendatory thereof. The contractor shall provide employer's liability insurance in the amount of, at least, \$1,000,000 per accident for bodily injury and disease.

Builder's Risk Insurance - The contractor shall provide and maintain builder's risk insurance (or installation floater) covering all risks of direct physical loss, damage or destruction to the work in the amount specified in the General Conditions, to insure against such losses until final acceptance of the work by the District. Such insurance shall include explosion, collapse, underground excavation and removal of lateral support. The District shall be named as an additional primary insured on any such policy. The making of progress payments to the contractor shall not be construed as creating an insurable interest by or for the District or be construed as relieving the contractor or his/her sub-contractors of responsibility for loss from any direct physical loss, damage or destruction occurring prior to final acceptance of the work by the District.

The insurer shall waive all rights of subrogation against the District, its directors, officers, employees, or volunteers. **Evidences of Insurance** - Prior to execution of the contract, the contractor shall file with the District a certificate of insurance (Acord Form 25-S or equivalent) signed by the insurer's representative. Such evidence shall include original copies of the ISO CG 2010, or ISO CG 2033, or insurer's equivalent signed by the insurer's representative and evidence of waiver of rights of subrogation against the District (if Builder's Risk Insurance is applicable). Such evidence shall also include confirmation that coverage includes or has been modified to include Required Provisions 1-5.

The contractor shall, upon demand of the District, deliver to the District all such policy or policies of insurance and the receipts for payment of premiums thereon.

Sub-Contractors - In the event that the contractor employs other contractors (sub-contractors) as part of the work covered by this agreement, it shall be the contractor's responsibility to require and confirm that each sub-contractor meets the minimum insurance requirements specified above.

1 - Addition of earthquake and flood should be considered if loss potential from these perils is significant.

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