

## **INSURANCE AND BONDS**

### **I. INSURANCE REQUIREMENTS**

1. At the same time as execution of this Contract, the Contractor must furnish the City a certificate of insurance on a standard insurance industry ACORD form. The ACORD form must be issued by an insurance company authorized to transact business in the State of Arizona possessing a current A.M. Best, Inc. rating of A-7, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to City. Provided, however, the A.M. Best rating requirement may not be deemed to apply to required Worker's Compensation coverage.
2. The Contractor and any of its Subcontractors must procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, the insurances set forth below.
3. The insurance requirements set forth below are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract.
4. The City in no way warrants that the minimum insurance limits contained in this Contract are sufficient to protect Contractor from liabilities that might arise out of the performance of the Contract services under this Contract by Contractor, its agents, representatives, employees, or Subcontractors and the Contractor is free to purchase any additional insurance as may be determined necessary.
5. Failure to demand evidence of full compliance with the insurance requirements in this Contract or failure to identify any insurance deficiency will not relieve the Contractor from, nor will it be considered a waiver of its obligation to maintain the required insurance at all times during the performance of this Contract.
6. Use of Subcontractors: If any Work is subcontracted in any way, the Contractor must execute a written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements as the City requires of the Contractor in this Contract. The Contractor is responsible for executing the Contract with the Subcontractor and obtaining Certificates of Insurance and verifying the insurance requirements.

### **II. MINIMUM SCOPE AND LIMITS OF INSURANCE**

1. The Contractor must provide coverage with limits of liability not less than those stated below.
  - A. Commercial General Liability-Occurrence Form. Contractor must maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$2,000,000 for each occurrence, \$4,000,000 aggregate. Said insurance must also include coverage for products and completed operations, independent contractors, personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this paragraph, the Excess

insurance must be "follow form" equal or broader in coverage scope than underlying insurance.

- B. Automobile Liability-Any Automobile or Owned, Hired and Non-Owned Vehicles. Contractor must maintain Business/Automobile Liability insurance with a limit of \$1,000,000 each accident on Contractor owned, hired, and non-owned vehicles assigned to or used in the performance under this Contract. If any Excess or Umbrella insurance is utilized to fulfill the requirements of this paragraph, the Excess or Umbrella insurance must be "follow form" equal or broader in coverage scope than underlying insurance.
- C. Workers Compensation and Employers Liability Insurance. Contractor must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor employees engaged in the performance of Work under this Contract and must also maintain Employers' Liability insurance of not less than \$1,000,000 for each accident and \$1,000,000 disease for each employee.
- D. Builders' Risk/Installation Floater Insurance. The Contractor bears all responsibility for loss to all equipment or Work under construction. Unless waived in writing by the City the Contractor will purchase and maintain in force Builders' Risk/Installation Floater insurance on the entire Work until completed and accepted by the City. This insurance will be Special Causes of Loss policy form, (minimally including perils of fire, flood, lightning, explosion, windstorm and hail, smoke, aircraft and vehicles, riot and civil commotion, theft, vandalism, malicious mischief, and collapse), completed value, replacement cost policy form equal to the contract price and all subsequent modifications. The Contractor's Builders' Risk/Installation Floater insurance must be primary and not contributory.
  - a. Builders' Risk/Installation Floater insurance must cover the entire Work including reasonable compensation for architects and engineers' services and expenses and other "soft costs" made necessary by an insured loss. Builders' Risk/Installation Floater insurance must provide coverage from the time any covered property comes under the Contractor's control and or responsibility, and continue without interruption during course of construction, renovation and or installation, including any time during which any Project property or equipment is in transit, off Site, or while on Site for future use or installation. Insured property must include, but not be limited to, scaffolding, false work, and temporary buildings at the Site. This insurance must also cover the cost of removing debris, including demolition as may be legally required by operation of any law, ordinance, regulation or code.

- b. Builders' Risk/Installation Floater Insurance must be maintained until whichever of the following first occurs: (i) final payment has been made; or, (ii) until no person or entity, other than the City, has an insurable interest in the property required to be covered.
- c. The Builders' Risk/Installation Floater insurance must be endorsed so that the insurance will not be canceled or lapse because of any partial use or occupancy by the City.
- d. The Builders Risk/Installation Floater insurance must include as named insureds, the City, the Contractor, and all tiers of Subcontractors and others with an insurable interest in the Work who will be named as additional insureds unless they are able to provide the same level of coverage with the City and Contractor named as additional insureds. Certificates must contain a provision that the insurance will not be canceled or materially altered without at least 30 Days advance notice to the City. The City must also be named as a Loss Payee under the Builders' Risk/Installation Floater coverage.
- e. The Builders Risk/Installation Floater insurance must be written using the Special Causes of Loss policy form, replacement cost basis.
- f. All rights of subrogation under the Builders Risk/Installation Floater insurance are, by this Contract/Agreement, waived against the City, its officers, officials, agents and employees.
- g. The Contractor is responsible for payment of all deductibles under the Builders' Risk/Installation Floater insurance policy.

### **III. ADDITIONAL POLICY PROVISIONS REQUIRED**

1. Self-Insured Retentions or Deductibles. Any self-insured retentions and deductibles must be declared and approved by the City. If not approved, the City may require that the insurer reduce or eliminate any deductible or self-insured retentions with respect to the City, its officers, officials, agents, employees, and volunteers.
2. The Contractor's insurance must contain broad form contractual liability coverage.
3. The Contractor's insurance coverage must be primary insurance with respect to the City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, agents, and employees will be in excess of the coverage provided by the Contractor and must not contribute to it.
4. The Contractor's insurance must 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. Coverage provided by the Contractor must not be limited to the liability assumed under the indemnification provisions of this Contract.
6. The policies must contain a severability of interest clause and waiver of subrogation against the City, its officers, officials, agents, and employees, for losses arising from Work performed by the Contractor for the City.

7. The Contractor, its successors and or assigns, are required to maintain Commercial General Liability insurance as specified in this Contract for a minimum period of 3 years following completion and acceptance of the Work. The Contractor must submit a Certificate of Insurance evidencing Commercial General Liability insurance during this 3-year period containing all the Contract insurance requirements, including naming the required Additional Insureds set forth herein.
8. If a Certificate of Insurance is submitted as verification of coverage, the City will reasonably rely upon the Certificate of Insurance as evidence of coverage, but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Contract.
9. Insurance Cancellation During Contract Term.
  - a. If any of the required policies expire during the life of this Contract, the Contractor must forward renewal or replacement Certificates to the City within 10 Days after the renewal date containing all the required insurance provisions.
  - b. Each insurance policy required by the insurance provisions of this Contract must provide the required coverage and must not be suspended, voided or canceled except after 30 Days prior written notice has been given to the City, except when cancellation is for non-payment of premium, then 10 Days prior notice may be given. Such notice must be sent directly to Chandler Law-Risk Management Department, Post Office Box 4008, Mailstop 628, Chandler, Arizona 85225. If any insurance company refuses to provide the require notice, the Contractor or its insurance broker must notify the City of any cancellation, suspension, non-renewal of any insurance within 7 Days of receipt of insurers' notification to that effect.
10. City as Additional Insured. The above-referenced policies are to contain, or be endorsed to contain, the following provisions:
  - a. The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions: The City, its officers, officials, agents, and employees are additional insureds with respect to liability arising out of activities performed by, or on behalf of, the Contractor including the City's general supervision of the Contractor; Products and Completed Operations of the Contractor; and automobiles owned, leased, hired, or borrowed by the Contractor.
  - b. The City, its officers, officials, agents, and employees must be additional insureds to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.

#### **IV. BONDS AND OTHER PERFORMANCE SECURITY**

1. Prior to execution of the Contract, Contractor must provide a Performance Bond and a Payment Bond, each in an amount equal to the full amount of the Contract Price.

2. Each such bond must be executed by a surety company or companies holding a Certificate of Authority to transact surety business in the State of Arizona, issued by the Director of the Arizona Department of Insurance and must be named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department. A copy of the Certificate of Authority must accompany the bonds. The Certificate must have been issued or updated within two (2) years prior to the execution of this Agreement. The bonds must be written or countersigned by an authorized representative of the surety who is either a resident of the state of Arizona or whose principal office is maintained in this state, as by law required.
3. The bonds must be made payable and be acceptable to City. The bond forms for the performance and payment bonds must be in the forms required under A.R.S. § 34-221, et. Seq., as in Appendices 4 and 5 of these General Conditions.
4. Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract Documents, Contractor must promptly furnish a copy of the bonds or must permit a copy to be made.
5. All bonds submitted for this Project must be provided by a company which has been rated AM Best rating of A- or better for the prior four quarters by the latest edition of the 'Results Best's Key Rating Guide (Property/Casualty)' published by the A.M. Best Company.
6. Personal or individual bonds are not acceptable.
7. If the surety on any Bond furnished by Contractor is declared a bankrupt or becomes insolvent, or Contractor's right to do business is terminated in any state where any part of the Project is located, or it ceases to meet the requirements of this Section 11.4, Contractor must within 5 Days thereafter substitute another Bond and surety, both of which must be acceptable to City.

#### **IV. INDEMNIFICATION**

- 1 To the fullest extent permitted by law, Contractor, its successors, assigns, and guarantors, must indemnify and hold harmless City and any of its elected or appointed officials, officers, directors, commissioners, board members, agents or employees from and against any and all allegations, demands, claims, proceedings, suits, actions, damages, including, without limitation, property damage, environmental damages, personal injury, and wrongful death claims, losses, expenses (including claim adjusting and handling expenses), penalties and fines (including, but not limited to, attorney fees, court costs, and the cost of appellate proceedings), judgments or obligations, which may be imposed upon or incurred by or asserted against the City by reason of this Contract or the services performed or permissions granted under it, or related to, arising from or out of, or resulting from any negligent or intentional actions, acts, errors, mistakes or omissions caused in whole or part by Contractor, or any of its

Subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, relating to the discharge of any duties or the exercise of any rights or privileges arising from or incidental to this Contract, including but not limited to, any injury or damages claimed by any of Contractor's and Subcontractor's employees. In consideration of the award of this Contract, the Contractor agrees to waive all rights of subrogation against City for losses arising from or related to this Contract. The obligations of the Contractor under this provision survive the termination or expiration of this Contract.

**V. DISPUTE RESOLUTION**

1. All disputes arising out of or relating to the Contract, the Work or the Project, other than termination under Section 10, will be resolved pursuant to the Dispute Resolution process set forth in Appendix 6 of these General Conditions, and not pursuant to MAG Specifications § 110.
2. Contractor agrees that during any dispute between the parties, Contractor will continue to perform its obligations under the Contract until such dispute is resolved.
3. Notwithstanding any other provision in this Contract, City has the right to immediately file in court and pursue an action for a temporary restraining order and injunctive relief against Contractor if City determines that such action is necessary to protect its interests under the Contract, to obtain specific performance of any provision of the Contract, to advance the completion of the Project, or to protect health, welfare and safety.