

**SUPPLEMENTARY CONDITIONS - INSURANCE AND INDEMNIFICATION
(Design-Build)**

1 DBE PROVIDED INSURANCE

1.1 General

- 1.1.1 DBE shall procure and maintain for the duration of this Contract at its sole cost and expense, insurance against claims which may arise from, or in connection with, the performance of the Work by, or on behalf of (whether directly or indirectly), the DBE.
- 1.1.2 Each insurance policy required by this Contract shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the Owner, except that ten (10) days' prior written notice shall apply in the event that cancellation for non-payment of premium.

1.2 Builder's Risk/Course of Construction.

- 1.2.1 DBE shall procure and maintain in effect a Builders' Risk (course of construction) insurance for completed value of the Work. No deductible shall exceed \$100,000, per occurrence. Builder's Risk Policies shall contain the following provisions:
 - (1) Owner shall be named as loss payee; and
 - (2) Coverage shall contain a waiver of subrogation in favor of the Owner, its officials, employees, agents, and design or engineering professionals.

1.3 Contractor's Pollution Insurance

- 1.3.1 Contractor's Pollution Liability Insurance on an occurrence basis, with limits of at least \$10,000,000 per occurrence and \$10,000,000 policy term aggregate for bodily injury, property damage, cleanup costs and claim expenses, arising at or emanating from the Project Site arising from all operations performed on behalf of the Owner.
- 1.3.2 Such insurance shall provide liability coverage for both sudden and gradual releases arising from the Work. CPL policy shall name Owner, Design-Build Entity and all Subcontractors of all tiers as insureds.
- 1.3.3 Contractor shall be responsible at its own expense for an obligation for each loss payable under this insurance that is attributable to the Design-Build Entity's acts, errors, or omissions, or the acts, errors, or omissions of any of its Subcontractors, or any other entity or person for whom Design-Build Entity may be responsible. The amount of the obligation shall be based on the amount of the initial Contract Price, as follows:
- 1.3.4 The portion of the obligation applying to the Design-Build Entity or Subcontractor shall be the responsibility of the Design Build Entity and shall remain uninsured. Design Build Entity shall promptly pay its charge pertaining to any loss. The Owner, in addition to its other remedies, may back charge Design-Build Entity for the obligation and deduct the back-charged amount from Design-Build Entity's next progress payment or final payment.

1.4 Professional Liability Errors and Omission insurance for all professional services

1.5 Waivers

- 1.5.1 Owner and Design-Build Entity waive all rights against each other and any of their consultants (including without limitation Construction Manager, Bridging Architect and their consultants), separate contractors, if any, Subcontractors, Designers, agents and employees, each of the other, and any of their contractors, subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by Builder's Risk insurance obtained pursuant to paragraph 1.2 above, or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner in good faith. Owner or Design-Build Entity, as appropriate, shall require of the separate contractors, if any, and the Subcontractors, Designers, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium directly or indirectly, and (c) whether or not such individual or entity had an insurable interest in the property damaged. The only exceptions to this waiver of subrogation are for claims that may be covered by any Professional Liability insurance to the extent that insurance responds to any loss.
- 1.5.2 Owner waives subrogation rights under the Contractor's Pollution Liability Policy, to the greatest extent permitted by law, against all other project participants, including Design-Build Entity and Subcontractors of any tier.

2 RESPONSIBILITY OF DESIGN-BUILDER AND INDEMNIFICATION

2.1 Design-Build Entity's Responsibility for the Work.

- 2.1.1 Except for damage caused by the sole negligence, willful misconduct or active negligence of Owner or its agents, Design-Build Entity 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.
- 2.1.2 Owner and each of its officers, employees, departments, officials, representatives, inspectors, consultants and agents including, but not limited to the Board, Construction Manager, Bridging Architect and each Owner Representative, (all together, **Owner Parties**), 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 Design-Build Entity releases all of the foregoing persons and entities from any and all such claims.
- 2.1.3 With respect to third-party claims against Design-Build Entity, Design-Build Entity waives any and all rights to any type of express or implied indemnity against each of the Owner Parties.

2.2 Claims Arising From the Work.

- 2.2.1 To the furthest extent permitted by law (including without limitation California Civil Code Section 2782), Design-Build Entity shall assume defense of, and indemnify and hold harmless, each of the Owner Parties, from and against 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 Design-Build

Entity, Subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

2.2.2 Design-Build Entity'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 Owner or other indemnified party to the extent of its active negligence.

2.2.3 In the event that a court of competent jurisdiction determines that California Civil Code Section 2782.8 applies to Design-Build Entity's indemnity and defense obligations under this paragraph 2.2, as to the design-related services provided by Design-Build Entity or its Subcontractors, then, with respect to such design-related services only, Design-Build Entity shall assume defense of, and indemnify and hold harmless, each of the Owner Parties, from and against 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, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Design-Build Entity or its Subcontractors in connection with the Work, Contract, or Project. However, irrespective of the applicability of California Civil Code Section 2782.8 as to design-related services, with respect to any non-design-related services (including without limitation construction services), Design-Build Entity shall assume defense of, and indemnify and hold harmless, each of the Owner Parties, in accordance with the other provisions of this paragraph 2.2.

2.3 Scope of Indemnification Obligation.

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

2.4 Scope of Contract Limitations of Liability.

2.4.1 To the furthest extent permitted by law (including, without limitation, Civil Code Section 2782), 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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