Excerpts from a Typical Construction Contract

ARTICLE 2 – PERFORMANCE OF THE WORK

2.01 PERFORMANCE OF WORK - GENERAL

Contractor shall, at its own cost and expense, furnish all necessary materials, labor, transportation, and equipment for doing and performing said work and the materials used shall comply with the requirements of the Contract documents. In addition, the Contractor shall perform, with its own organization, Contract work amounting to at least fifty percent (50%) of the Total Bid Amount. All work shall be performed and completed as required in the Contract documents, and subject to the approval of the Engineer, or his/her designated assistant.

2.02 NO ASSIGNMENT OR DELEGATION

Contractor shall not assign or delegate the duties or obligation under this Contract or his/her interest therein in whole or in part without the prior written consent of the City, which may be withheld at the City's sole discretion.

2.03 STANDARD OF PERFORMANCE

Contractor agrees that all services performed hereunder shall be provided in a manner commensurate with the highest professional standards and shall be performed by qualified and experienced personnel; that any work performed by Contractor under the Contract will be performed in the best manner; that any material furnished shall be subject to the approval of the Engineer; and that both work and materials will meet fully the requirements of these Plans and Specifications.

2.04 DEFECTIVE WORK

The Contractor shall remove and rebuild at his/her own expense any part of the work that has been improperly executed, even though it has been included in the monthly estimates. If he/she refuses or neglects to replace such defective work, prior to acceptance of the work, it may be replaced by the City at the expense of the Contractor, plus 15% for overhead expenses, and his/her sureties shall be liable therefore. (See Section 2.14 for curing defects after acceptance of the work.)

City of Glendale, California, "Article 2 – Performance of the Work." Copyright © in the public domain.

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2.05 COMMUNICATIONS REGARDING THE WORK

After award of the Contract, all communications regarding the work covered by these Specifications shall be addressed to the City Engineer, City of Glendale, and mailed or hand delivered to:

City of Glendale
City Engineer's Office
633 E. Broadway, Room 205
Glendale, California 91206

2.06 INDEPENDENT CONTRACTOR

The Contractor in the performance of the work hereunder will be acting in an independent capacity and not as an agent, employee, partner, or joint venturer of the City.

Editorial Note: Next section(s) deleted from original contract for educational purposes.

2.13 GUARANTEE OF WORK

A. The Contractor guarantees all materials and workmanship against defects for a period of one year, unless noted otherwise, from the date of final acceptance of all work performed under the Contract. The date of final acceptance will be established and confirmed in writing by the Engineer.

B. The Contractor assumes responsibility for a one-year guarantee, unless noted otherwise, for all work and materials provided or performed by subcontractors, manufacturers, or suppliers.

C. The Contractor hereby agrees that if, within a period of one year, unless noted otherwise, after final acceptance of the work done under the Contract, any portion of the work installed, constructed, or performed fails to fulfill any of the requirements of the Contract, he/she will, without delay and with the least practicable inconvenience and without further cost to the City, repair or replace defective or otherwise unsatisfactory work or materials. This Contract will not delay acceptance of the work or final payment.

D. Should the Contractor fail to act promptly in accordance with this requirement, or should the exigencies of the case require repairs or replacements to be made before the Contractor can be notified or can respond to notification, the City may at its option make the necessary repairs or replacements, or perform the necessary work, and the Contractor shall pay to the City the actual cost of such repairs plus 15 percent, or City may charge such costs to the Contractor's retention.

E. The Contractor shall be responsible for the full expense incidental to making good any and all of the above guarantees and Contracts. The above guarantees and Contracts are covenants, the performance of which shall be binding upon the Contractor and his/her sureties.

Editorial Note: Next section(s) deleted from original contract for educational purposes.

01/24/2019 - RS0000000000000000000001429657 - ROLE OF DESIGN PROFESSIONAL IN

COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK

A. NOTICE TO PROCEED

The Contractor is not authorized to perform any work under these Specifications until he/she has received from the City an official notification to commence work. The date on which the Contractor receives the notification is herein referred to as the Notice to Proceed. The Contractor shall commence work within 14 calendar days after Notice to Proceed. A copy of the Notice to Proceed is included in Exhibit C3.

The notification to commence wok will not be issued until the Contract is property executed, bonds are furnished and approved, and insurance has been submitted and approved.

B. PROSECUTION OF THE WORK

Work shall be continued at all times with such force and equipment as will be sufficient to complete it within the specified time. The Contractor expressly proposes that he/she has taken into consideration and made allowances for all ordinary delays and hindrances to the work to be performed and that he/she will complete the work within the specified time.

C. REQUIRED CONTRACT COMPLETION

The work must be completed in its entirety and made ready for service within Forty (40) working days following issuance of the Notice to Proceed.

3.02 CITY'S DISCRETION TO EXTEND TIME

In the event the work required hereunder is not satisfactorily completed in all parts and in compliance with the Contract Documents, the City shall have the sole right, in its discretion, to increase the number of working days or not, as may seem best to serve the interest of the City. A change order extending the Contract time only will be issued by the City should the City decide to increase the number of working days.

3.03 DELAYS AND EXTENSIONS OF TIME FOR CONTRACTOR

A. The Contractor shall take reasonable precautions to foresee and prevent delays to the work. In the event of any delay to the work, the Contractor shall revise his/her sequence of operations, to the extent possible under the terms of the Contract, to offset the delay.

B. If any delay to the work is caused by circumstances within the Contractor's control, it is not excusable and not compensable, and the Contractor will not be entitled to any extension of time or to any other compensation for damages resulting directly or indirectly therefrom.

C. If any delay having a direct effect on the work is caused by circumstances beyond the control of the Contractor except for causes of delay specified in Paragraph 3.03-D., such delay may be excusable and may entitle the Contractor to an equivalent extension of time, but not to any other compensation. Excusable but not compensable causes include but are not limited to labor disputes, weather conditions unfavorable for prosecution of the work, and force majeure.

01/24/2019 - RS0000000000000000000001429657 - ROLE OF DESIGN PROFESSIONAL IN

D. If any delay having a direct effect on the work is caused by failure of the City to provide information as specified, or necessary instructions for carrying on the work, or to provide the necessary right of way or site for installation, or failure of a utility to remove or relocate an existing facility such delay may be compensable and may entitle the Contractor to an equivalent extension of time, and to compensation for damages resulting directly from any of the causes of delay specified in this paragraph.

Editorial Note: Next section(s) deleted from original contract for educational purposes.

3.07 LIQUIDATED DAMAGES

A. The deduction for liquidated damages shall be $500.00 per working day from date of required Contract completion until actual Contract completion date.

B. The above liquidated damages are necessary to ensure timely completion and to defray costs of additional construction and contract administration. Timely completion is required to insure that the owner may occupy the building fully, all facilities operational and all construction activities completed in accordance with these Specifications.

C. Should the Contractor fail to complete all or portions of the contract work within the specified completion date, liquidated damages in the amount of mentioned above shall be assessed until such work is complete and accepted by the City. Such assessments shall be deducted from Contractor's funds being held in the Contractor's account or provided by the Contractor if the Contractor's account does not have sufficient funds.

D. It being impracticable or extremely difficult to fix the actual damage, the amount set forth above is hereby agreed upon as liquidated damages and will be deducted from any money due the Contractor under this Contract. Should the amount of the damages exceed the amount due the Contractor, he/she and his/her sureties shall be liable for the excess.

10.01 PROTECTION OF PERSONS AND PROPERTY

Contractor's Responsibility: Notwithstanding any other provision of these Specifications, the Contractor shall be solely and completely responsible for conditions of the job site, including safety of all persons and property, during performance of the work. This requirement will apply continuously and will not be limited to normal working hours. Safety and sanitary provisions shall conform to all applicable Federal, State, County, and local laws, regulations, ordinances, standards, and codes. Where any of these are in conflict, the more stringent requirement shall be followed.

10.02 PROTECTION FROM HAZARDS

A. **Trench Excavation**

Excavation for any trench four (4) feet or more in depth shall not begin until the Contractor has received approval from the Engineer of the Con tractor's detailed plan for worker protection from the hazards of caving ground during the excavation of such trench. Such plan shall show the details of the design of shoring, bracing, sloping or other provisions to be made for worker protection during such excavation. No such plan shall allow the use of shoring, sloping or protective system less effective than that required by the Construction Safety Orders of the Division of Occupational Safety and Health,

01/24/2019 - RS00000000000000000000001429657 - ROLE OF DESIGN PROFESSIONAL IN

and if such plan varies from the shoring system standards established by the Construction Safety Orders, the plan shall be prepared and signed by an engineer who is registered as a Civil or Structural Engineer in the State of California.

B. **Confined Spaces**
Contractor shall comply with all of the provisions of General Industry Safety Orders of the California Code of Regulations. Entry of a confined space shall not be allowed until the Contractor has received approval from the Engineer of the Contractor's program for confined space entry. Confined space means a space that (1) is large enough and so configured that an employee can bodily enter and perform assigned work; and (2) Has limited or restricted means for entry or exit (for example, tanks, vessels, silos, storage bins, hoppers, vaults, and pits are spaces that may have limited means of entry); and (3) is not designed for continuous employee occupancy. Failure to submit a confined space entry program may result in actions as provided in Article 5; "SUSPENSION OR TERMINATION OF CONTRACT", of these Specifications.

C. **Material Safety Data Sheet**
Contractor shall comply with all of the provisions of General Industry Safety Orders of the California Administrative Code. The Contractor shall submit to the Engineer a Material Safety Data Sheet (MSDS) for each hazardous substance proposed to be used, ten (10) days prior to the delivery of such materials to the job site or use of such materials at a manufacturing plant where the Engineer is to perform an inspection. For materials which are to be tested in City laboratories, the MSDS shall be submitted with the sample(s). Hazardous substance is defined as any substance included in the list (Director's List) of hazardous substances prepared by the Director, California Department of Industrial Relations, pursuant to Labor Code Section 6382. Failure to submit an MSDS for any hazardous substance may result in actions as provided in Article 5, "SUSPENSION OR TERMINATION OF CONTRACT," of these Specifications.

Editorial Note: Next section(s) deleted from original contract for educational purposes.

ARTICLE 11 – INDEMNITY, INSURANCE AND BONDS

11.01 INDEMNITY

To the fullest extent permitted by law, Contractor hereby agrees, at its sole cost and expense, to defend, protect, indemnify, and hold harmless the City of Glendale ("City"), and its officers, employees, elected officials, attorneys, members of boards and commissions, agents, and volunteers (hereinafter collectively referred to as "Indemnitees") from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, Iiens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith (hereinafter collectively referred to as "Liabilities"), arising or claimed to arise, directly or indirectly, out of, in connection with, resulting from, or related to any act, failure to act, error, or omission of Contractor or any of its officers, agents, servants, employees, subcontractors, suppliers or their officers, agents, servants or employees, arising or claimed to arise, directly or indirectly, out of, in connection with, resulting from, or related to the Contract or the performance or failure to perform any term, provision, covenant, or condition of the Contract, including this indemnity provision. This indemnity provision is elective regardless of any prior, concurrent, or subsequent active or passive negligence by Indemnitees, except that, to the limited extent mandated by California Civil

01/24/2019 - RS00000000000000000000001429657 - ROLE OF DESIGN PROFESSIONAL IN

Code Section 2782, the Contractor shall not be responsible for liabilities which arise from the sole negligence or willful misconduct of Indemnitees or arise from the active negligence of City. This indemnity provision shall survive the termination of the Contract or final payment hereunder and is in addition to any other rights or remedies which City may have under the law or under the Contract. Payment is not required as a condition precedent to an indemnitee's right to recover under this indemnity provision, and an entry of judgment against an Indemnitee shall be conclusive in favor of the Indemnitee's right to recover under this indemnity provision.

11.02 PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE

Contractor shall assume all responsibility for damages to property or injuries to persons, including accidental death, which may arise out of or may be caused by Contractor's performance of this Contract, by its subcontractor, or by anyone it directly or indirectly employed, and whether the damage or injury may accrue, or may be discovered, before or after termination of this Contract.

Contractor shall obtain, pay for, and maintain during the life of this Contract an "occurrence" policy for Commercial General Liability, including Contractual Liability, and an Automobile Liability policy which shall protect it and the City from claims for injuries and damages. The insurance company shall be an "admitted" insurer in the State of California; shall be domiciled within, and organized under the laws of, a State of the United States; and shall carry an A.M. Best & Company minimum rating of "A:VII." The policy shall name the City of Glendale, its officers, agents, and employees as additional insureds under the policy in the following amounts:

1. COMMERCIAL GENERAL LIABILITY INSURANCE in the amount not less than TWO MILLION DOLLARS ($2,000,000.00) per occurrence for personal injuries, including accidental death, to any one person; property damage insurance in an amount not less than TWO MILLION DOLLARS ($2,000,000.00) and subject to the above limits and combined single limit of insurance in an amount not less than TWO MILLION DOLLARS ($2.000,000.00): and

2. AUTOMOBILE LIABILITY INSURANCE endorsed for all vehicles, whether hired, scheduled, owned or non-owned, with a combined single limit of at least TWO MILLION DOLLARS ($2,000,000.00) per occurrence for personal injuries, including accidental death, to any one person; and for property damage.

All policies shall contain a "Severability of Interest" clause and a "Primary Coverage" clause for any loss arising out of or caused by Contractor's performance of the Contract. In addition, the policies shall contain a statement of obligation on the carrier's part to notify the City, by registered mail, at least 30 days in advance of any policy cancellation, termination, or reduction in the amount of coverage. Contractor shall furnish the City with a "certificate of insurance" and an "additional insured endorsement," both documents countersigned by the insurance carrier or its authorized representative, on forms satisfactory to the City Attorney, which set forth the above provisions.

The countersigned certificate, along with the additional insured endorsement … officers, agents, and employees are named as additional insureds under this policy." This insurance is primarily to the coverage of the City of Glendale. Neither the city nor any of its insurers shall be required to contribute to any loss. This policy contains a severability of interest clause. The issuing company shall mail 30 days advance notice to the City of any policy cancellation, termination, or reduction in the amount of coverage.

01/24/2019 - RS00000000000000000000001429657 - ROLE OF DESIGN PROFESSIONAL IN

The certificate of insurance must also state if any claim has been paid or is currently pending under the policy, and if so, the amount of such claim(s). Any deductibles or self-insured retentions shall be set forth on the certificate and shall be subject to the City's review and approval.

CONTRACTOR SHALL FURNISH THE REQUIRED CERTIFICATE(S) OF INSURANCE AND ENDORSEMENTS(S) BEFORE THE CITY SIGNS THIS CONTRACT.

11,03 CONTRACTOR'S FAILURE TO OBTAIN, PAY FOR, OR MAINTAIN INSURANCE

Contractor's failure to obtain, pay for, or maintain any required insurance shall constitute a material breach upon which the City may immediately terminate or suspend this Contract. At its discretion, the City may obtain or renew the insurance and pay all or part of the premiums. Upon demand, Contractor shall repay the City all monies the City has paid to obtain or renew the insurance, or the City may offset the cost of the premium against any monies due Contractor from the City.

11.04 WORKER'S COMPENSATION INSURANCE

Contractor understands and agrees that all persons furnishing services to the City under this Contract are, for the purpose of workers' compensation liability, employees solely of Contractor and not of the City. Contractor shall bear the sole responsibility, liability, and costs of furnishing workers' compensation benefits to its employees, or anyone it directly or indirectly employs, for injuries arising out of or connected with services performed on behalf of Contractor.

Contractor shall obtain, pay for, and maintain for the duration of this Contract, complete workers' compensation insurance. The City of Glendale shall not be responsible for any claims at law or in equity caused by Contractor's failure to comply with this paragraph. Contractor shall provide proof of workers' compensation coverage by furnishing the City with an insurance certificate or a certificate of consent to self-insure.

All workers' compensation insurance policies shall bear an endorsement, or shall attach a rider, which provides that the carrier will notify the City, by registered mail, at least 30 days in advance of the policy's expiration, termination, or cancellation.

11.05 BUILDERS RISK/COURSE OF CONSTRUCTION INSURANCE

A. The Contractor shall obtain and maintain during the life of the Contract, in the name of the Contractor and the City, "all risk" builders risk/course of construction insurance issued on a completed value form covering the entire work of the Contract for 100% of the replacement value thereof without deductibles. Such insurance shall include items of labor and materials in place or to be used as part of the permanent construction, surplus miscellaneous materials and supplies incident to the work, temporary buildings, debris removal, and false work, staging, towers, forms and equipment, whether or not owned or rented by the Contractor, and demolition required by the enforcement of any Contract, law or regulation. Such insurance shall also include coverage for damage due to earthquake and flood.

B. In the event of a loss by the perils insured against, of any or all of the work and/or materials herein provided for, at any time prior to the final completion of the Contract and the final acceptance by

01/24/2019 - RS00000000000000000000001429657 - ROLE OF DESIGN PROFESSIONAL IN

the City, the Contractor shall promptly reconstruct, repair, replace or restore all work or materials so destroyed.

C. Nothing herein provided for shall in any way excuse the Contractor or his/her surety from the obligation of furnishing all the required materials and completing the work in full compliance with the terms of the Contract.

The following endorsements/coverages shall be included in the policy:

1. The coverages are primary to any other applicable insurance coverages carried by the City.

2. The contractor and the insurance company waive all rights of subrogation and contribution against the City, its officers, employees, elected official, attorneys, members of boards and commissions, agents and volunteers; and

3. The policy stall not be canceled nor the above coverages/ endorsements reduced without 60 days written notice to the City.

11.06 ENDORSEMENTS AND CERTIFICATE

A. Contractor shall have its insurance carrier(s) complete and execute the following documents, together with a copy of each insurance policy required under the Contract, including all endorsements thereto, which shall be delivered to the City Engineer within 14 working days following issuance of the Notice of Award:

1. Form entitled: Commercial General Liability/Automobile Liability/Special Endorsement, attached hereto as Exhibit "A1,"

2. Proof of Workers' Compensation Insurance, or if Contractor is self-insured for worker's compensation, a self-insuring certificate therefor from the State of California.

3. Form entitled: Certificate of Insurance, with 30 days prior notice of cancellation required as to all coverage and policies.

B. The Contract will not be executed by the City and the Notice to Proceed issued until the aforesaid insurance documents have been received and approved by the City. City's decision as to the acceptability of all insurance documents is final. No substitution of the form of the documents or the endorsements or amendments thereto will be permitted without the prior written consent of City.

11.07 BONDS

A. Contractor shall furnish the following bonds:

1. A Faithful Performance Bond in an amount equal to One Hundred percent (100%) of the Contract price in the form shown in Exhibit "B1" attached hereto.
2. A Payment Bond (Labor and Material) in an amount equal to One Hundred percent (100%) of the total Contract price in the form shown in Exhibit "B2" attached hereto.

01/24/2019 - RS00000000000000000000001429657 - ROLE OF DESIGN PROFESSIONAL IN

3. A Maintenance Bond in an amount equal to Ten percent (10%) of the total Contract price in the form shown in Exhibit "B3" attached hereto.

B. All such bonds shall be accompanied by a power of attorney from the surety company authorizing the person executing the bond to sign on behalf of the company. If the bonds are executed outside the State of California, a California representative of the surety must countersign all copies of the bonds. The signature of the person executing the bond shall be acknowledged by a Notary Public as the signature of the person designated in the power of attorney.

Editorial Note: Next section(s) deleted from original contract for educational purposes.

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