

## **00 72 13.2 – SUPPLEMENTARY CONDITIONS – ARTICLE 11 FOR HIGH RISK CONSTRUCTION**

Article 11 of Section 00 72 13 General Conditions of the Contract for Construction, AIA Document A201 - 2017, is replaced by the following:

### **ARTICLE 11 INSURANCE AND BONDS**

#### **§ 11.1 Contractor's Liability Insurance**

**§ 11.1.1** The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance required by the Contract Documents as will protect the Contractor and the Owner from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1** Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2** Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3** Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4** Claims for damages insured by usual personal injury liability coverage;
- .5** Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property on or away from the site, including loss of use resulting therefrom;
- .6** Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7** Claims for bodily injury or property damage arising out of completed operations; and
- .8** Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

**§ 11.1.2** The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until four years after final payment. Specific lines of coverage and limits of liability provided by the Contractor shall be written in a comprehensive form satisfactory to the Owner and in the following minimum requirements:

- .1** Commercial General Liability, with coverage for premises-operations, independent contractors' protective, products-completed operations contractual liability, bodily injury including accidental death, personal injury (employment exclusion deleted), sudden or accidental pollution and road form property damage (including coverage for demolition of any building or structure, explosion, collapse, blasting, excavation, damages to property below the surface of the ground (XCU) and underground hazards) shall be as follows:

|                               |                    |
|-------------------------------|--------------------|
| Each Occurrence               | <b>\$1,000,000</b> |
| Personal & Advertising Injury | <b>\$1,000,000</b> |
| Annual Aggregate              | <b>\$2,000,000</b> |

And including:
  - Premises & operations;
  - Underground, explosion, & collapse;
  - Products & completed operations;
  - Contractual;
  - Independent contractor, and
  - Personal injury (employment exclusion deleted)

The General Aggregate shall apply specifically to this project, using ISO form CG 2503 or the equivalent. The policy shall not include CO 22 94 or CO 22 95, as these endorsements will eliminate the Contractor's insurance coverage for its work where the damaged work or the work out of which the damage arises was performed by a Subcontractor. Notwithstanding this provision, the Contractor

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shall indemnify and hold harmless Owner, Designer and Designer's consultants for any claims resulting from the performance or non-performance of the Contractor and the Contractor's Subcontractors and/or their failure to be properly insured. The policy will contain a Waiver of Subrogation endorsement in favor of the Owner.

|                                           |                    |
|-------------------------------------------|--------------------|
| Products/Completed Ops. Aggregate         | <b>\$2,000,000</b> |
| Medical Expense Limit                     | <b>\$ 10,000</b>   |
| Property Damage to Premises Rented to You | <b>\$ 300,000.</b> |

Commercial General Liability shall include vehicle coverage shall include vehicle coverage issued to the contractor providing protection from all claims for personal injury, including death, and all claims for destruction of or damage to property, arising out of or in connection with any operations under the Contract Documents, whether such operations be by the Contractor or by an Subcontractor under the Contractor, or anyone directly or indirectly employed by the Contractor or by a Subcontractor under the Contractor as follows:

**\$1,000,000** for all damages arising out of bodily injury, including death, at any time resulting therefrom sustained by any one person in any one accident.

**\$2,000,000** aggregate limit of liability for any such damages sustained by two or more persons in any one accident.

**\$1,000,000** limit of liability for all property damage sustained by any one person in any one accident.

**\$2,000,000** aggregate for any such damage sustained by two or more persons in any one accident.

This policy shall be endorsed to have the General Aggregate to apply to this Project only.

The Contractual Liability insurance shall include coverage sufficient to meet the obligations in Section 3.18 of the General Conditions and shall include contractually assumed defense costs in addition to policy limits

Products and Completed Operations insurance shall be maintained for a minimum period of at least two (2) years of either 90 days following substantial Completion or final payment, whichever is earlier.

- .2 The Contractor will maintain a Contractor's Pollution Liability policy with limits of  
Each Occurrence **\$2,000,000**  
Annual Aggregate **\$4,000,000**  
Coverage will commence prior to the beginning of the Work and will be maintained until the Statute of repose has expired. The policy will be written on a primary and non-contributory basis and will name the Owner as an additional insured for both on-going and completed operations. Coverage will apply to all construction operations, transit and disposal of material at non-owned disposal sites performed by or on behalf of the Contractor. The Policy shall not contain coverage exclusions related to asbestos, lead, silica or mold/microbial matter. The policy will contain a Waiver of Subrogation endorsement in favor of the Owner.
- .3 Commercial Automobile Liability, with combined single limits for bodily injury and property damage of  
Each Occurrence **\$1,000,000**  
and including owned, hired, and non-owned vehicles; or, if there are no owned vehicles, Contractor may provide written certification of such and provide coverage limited to hired and non-owned vehicles. The policy will be written on a primary and non-contributory basis and will name the Owner as an additional insured, and will contain a Waiver of Subrogation endorsement in favor of the Owner.
- .4 Workers Compensation and Employer's Liability, (without restriction as to whether covered by Worker's Compensation law), with Workers Compensation according to statute, and

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- Employer's Liability: **\$500,000** per occurrence for bodily injury, **\$500,000** per employee for bodily injury by disease and a **\$500,000** policy limit for bodily injury by disease. The policy will contain a Waiver of Subrogation endorsement in favor of the Owner.
- .5** If an exposure exists, Aircraft and Watercraft Liability (owned & non-owned), with limits approved by Owner shall be provided.
  - .6** The Contractor will maintain Excess or Umbrella Liability coverage that is as broad or broader than the required Commercial General Liability, Commercial Automobile Liability and Employer's Liability with minimum limits **\$50,000,000** Annual Aggregate which shall remain in place as outlined in Paragraph 11.1.3 of the General Conditions. If the Contractor intends to implode any building(s), the Contractor's implosion Subcontractor also shall provide its own Excess/umbrella Liability insurance of **\$50,000,000** Aggregate which shall remain in place as outlined in Paragraph 11.1.3 of the General Conditions. The Excess or Umbrella policy will be written on a primary and non-contributory basis and will name the Owner as an additional insured.

**§ 11.1.3** Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to Owner's execution of the Agreement and thereafter upon renewal or replacement of each required policy of insurance. Certificate(s) of insurance provided to attest to coverage shall specifically cite each element of coverage and not less than limits set forth in Section 11.1.2, as confirmation of complete coverage, and shall identify Contractor, Producer, Insurance Carrier, Project, and certificate holder, and state Producer's notice requirements as set forth in Section 11.1.4. The term "Commercial General Liability" shall mean all of the coverage listed in Section 11.1.2.1a unless specifically noted otherwise in the certificate. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

**§ 11.1.4** The Contractor and its subcontractors shall cause the commercial general liability, auto, pollution and excess/umbrella coverage required by the Contract Documents to include (1) the Owner, the Designer and the Designer's consultants as additional insureds on a primary and non-contributory basis for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations using ISO form CG 2010 (07/04); and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations, using ISO form CG 2037 (07/04) edition.

**§ 11.1.5** Contractor shall notify Owner in writing of changes in coverage or carrier not later than ten days after notification of Contractor by Producer, or ten days before Contractor makes a change, whichever occurs first. By way of an endorsement to the policy, the Insurer will be required to provide written notice if policies are cancelled or modified before expiration date thereof.

**§ 11.1.6** If professional design services or certifications by an appropriately licensed design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, as referenced in Sections 3.12.10.1 and 3.12.10.2, then that professional(s) shall maintain Professional Liability Insurance in the amount of: Each Claim \$ 1,000,000, Annual Aggregate \$1,000,000. The Professional Liability Insurance coverage shall be maintained for four (4) years after the date of Substantial Completion of the Project. The Contractor is responsible for requiring that the Professional Liability Insurance is acquired and maintained.

### **§ 11.2 (Deleted)**

### **§ 11.3 Property Insurance**

**§ 11.3.1** The Contractor shall purchase from and maintain, with a company or companies licensed to do business in Tennessee by the Department of Commerce and Insurance, property insurance written on a builder's risk "all risk" or equivalent policy form in the amount of the initial Contract Sum plus value of subsequent Contract modifications for the covered project at the site on a replacement cost basis. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered,

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whichever is later. This insurance shall specify the Owner as named insured, and the Contractor, Subcontractors and Sub-subcontractors as insureds under the policy.

**§ 11.3.1.1** Property insurance shall be on an “all-risk” or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, and debris removal and shall cover reasonable compensation for Designer’s services and Contractor’s work required as a result of such insured loss. The policy will be written to include a waiver of subrogation applying to all parties.

**§ 11.3.1.2** For Work stored off the site, or in transit, the Contractor shall provide insurance upon such Work to protect the Owner’s Interest.

**§ 11.3.1.3** Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

**§ 11.3.1.4** Builder’s Risk Insurance (BRI) for the full amount of the Contract Sum, unless the Work consists entirely of hazardous materials abatement or other demolition with no constructive patching or renovating, in which case there will be no BRI.

**§ 11.3.1.5** The Contractor will be responsible for maintaining its own insurance for owned, leased and borrowed tools and equipment. The policy will contain a Waiver of Subrogation endorsement in favor of the Owner.

### **§ 11.3.2 Boiler and Machinery Insurance**

The Contractor shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

### **§ 11.3.3 Loss of Use Insurance**

The Owner, at the Owner’s option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner’s property due to fire or other hazards, however caused.

**§ 11.3.4** Before an exposure to loss may occur, the Contractor shall file with the Owner a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the Issuing company will endeavor to provide ten days written notice to the Owner should the policy be canceled prior to the expiration date.

**§ 11.3.5** A loss insured under the Contractor’s property insurance shall be adjusted by the Contractor as fiduciary and made payable to the Contractor as fiduciary for the insureds. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

**§ 11.3.6** If after an insured loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor.

### **§ 11.4 Contract Bond**

**§ 11.4.1** If the initial Contract Sum as awarded exceeds \$100,000, Contractor shall provide Contract Bond, in the amount of 100 percent of Contract Sum covering faithful performance of contract and payment of obligations arising thereunder. If a Contract Bond is required, and a Three Year Roof Bond is also stipulated in the Bidding Documents, then the Three Year Roof Bond shall be provided as stipulated. Bond(s) shall be executed on Tennessee State Building Commission Standard Form(s) exhibited in Bidding Documents for project, and subject to provision of Section 11.4.3.

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**§ 11.4.2** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

**§ 11.4.3** Surety is the person or entity identified as such in a bond and is referred to throughout the Contract Documents as if singular in number. The term “Surety” means the Surety or the Surety’s authorized representative. Surety Company issuing Bond shall be licensed to transact business in Tennessee by Department of Commerce and Insurance. Bonds shall have certified and current Power-of-Attorney for the Surety’s Attorney-in-Fact attached. Attorney-in-Fact who executes bond on behalf of Surety shall be one who is licensed by Tennessee as a resident agent, and shall affix license number to bond; or, countersignature by and license number of a licensed resident agent shall be affixed to the bond in addition to the signature of the Attorney-in-Fact.

**END OF SECTION**