

ROAD COMMISSION FOR OAKLAND COUNTY

SPECIAL PROVISION
FOR
INDEMNIFICATION, DAMAGE LIABILITY AND INSURANCE

RCOC/DESIGN:JO

PAGE 1 OF 5

RCOC20SP107AL
ORG:08-10-21

Section 107.10 of the *Michigan Department of Transportation 2020 Standard Specifications for Construction* is to be deleted and replaced with the following:

a. Indemnification:

The Contractor must hold harmless, indemnify, and defend in litigation the Board of County Road Commissioners of the County of Oakland (the "Board"), the County of Oakland, the Office of the Oakland County Water Resources Commissioner, any and all drainage district(s) and local unit(s) of government affected by the Project, Michigan Department of Transportation, and their agents and employees against claims for damage to public or private property and for injuries to persons arising out of the performance of the work, including attorney's fees related to said claims. The Contractor will not be responsible for claims that result from the sole negligence or willful acts or omissions of said indemnitee. Nothing herein shall require Contractor to provide such indemnity for any amount greater than Contractor's degree of fault.

b. Insurance Coverage:

Prior to execution of the contract, Contractor shall obtain from insurers acceptable to the Board, having and A.M. Best rating of A- or better, the insurance coverages set forth below, which coverages shall be primary and non-contributory; and Contractor shall file with the Board, copies of completed certificates of insurance and endorsements as evidence that carries the required insurance coverage. Contractor shall obtain and maintain the following insurance coverage acceptable to the Board:

1. **Workmen's Compensation and Employer's Liability Insurance:** To provide protection for the Contractor's employees to the statutory limits of the State of Michigan. The coverage must include \$500,000 employer's liability (\$500,000 for each accident, \$500,000 disease by employee, \$500,000 disease policy limit). The indemnification obligation under this section shall not be limited in any ways by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor under worker's disability compensation coverage established by law.
2. **Bodily Injury and Property Damage:** To afford protection against all claims for damages to public or private property, and injuries to persons arising out of and during the progress and to the completion of the work, and with respects to product and completed operations for one year after completion of the work.

Table 1: Bodily Injury and Property Damage

Bodily Injury Liability		OR	Single Limit: Bodily Injury and Property Damage	
Each Person:	\$1,000,000		Each Occurrence:	\$1,000,000
Each Occurrence:	\$1,000,000		Aggregate:	\$2,000,000
Aggregate:	\$2,000,000			
AND				
Property Damage Liability:				
Each Occurrence:	\$1,000,000			
Aggregate:	\$2,000,000			

Such insurance shall include: (1) explosion, collapse, and underground damage hazards (x,c,u), which shall include, but not be limited to coverage for (a) underground damage to facilities due to drilling and excavating with mechanical equipment; and (b) collapse or structural injury to structures due to blasting or explosion, excavation, tunneling, pile driving, cofferdam work, or building moving or demolition; (2) products and completed operations; (3) contractual liability; and (4) independence contractors coverages.

Bodily Injury Liability and Property Damage Liability Automobiles (Comprehensive Auto Liability)

– The minimum limits of bodily injury liability and property damage liability shall be:

Table 2: Bodily Injury Liability and Property Damage Liability Automobiles (Comprehensive Auto Liability)

Bodily Injury and Property Damage Liability		OR	Single Limit: Bodily Injury and Property Damage	
Each Person:	\$500,000		Each Occurrence:	\$2,000,000
Each Occurrence:	\$1,000,000			
AND				
Michigan No-Fault Statutory:				
Property Damage	\$1,000,000			
PIP:	Full and No Reductions or Voluntary Exclusions			

Such insurance shall include coverage for all owned, hired, and non-owned vehicles.

3. Excess and Umbrellas Insurance – The Contractor may substitute corresponding excess and/or umbrella liability insurance for a portion of the above listed requirements in order to meet the specified minimum limits of liability.

4. Owners Protective Liability. The Contractor must ensure that the insurer extends bodily injury and property damage protection, including general supervision of work performed, to the Board of County Road Commissioners of the County of Oakland and all agencies as specified under Subparagraph a of this Special Provision, and their agents and employees and, as indicated by the identity of the contracting parties, to participating political subdivisions and public corporations. The minimum limit will be \$1,000,000 for each occurrence and \$2,000,000 for aggregate.

c. Notice:

The Contractor must ensure that all insurance policies and binders include an endorsement by which the insurer agrees to notify the Board in writing at least 30 days before there is a cancellation or material change in coverage. The Contractor must stop operations if any insurance is canceled or reduced, and must not resume operations until new insurance is in force.

d. Damage Claims:

The Contractor is responsible for acting on damage claims that occur from acts or omissions that occur in the execution of the contract . The Contractor may act directly with the claimant or through the claimants' insurance carrier.

1. Damage Claim Program. Before beginning construction on the project, the Contractor must submit a written damage claim program for approval by the Engineer. The damage claim program must outline the Contractor's plan for the investigation and disposition of damage claims. The Contractor must meet with the Engineer to discuss the damage claim program and develop a mutual understanding of how the Contractor will govern, administer, and enforce the program.

2. Damage Claim Officer. The Contractor must provide written notification to the Engineer of the name and contact information for the Contractor's Damage Claim Officer. The Damage Claim Officer is the person with the authority and responsibility to administer the Contractor's damage claim program.

3. Damage Claim Process. The Engineer will submit damage claim forms received by the Department to the Contractor within 14 days from the first contact with the claimant. The Contractor must act on damage claims within the time frames specified in this subsection, and must submit to the Engineer a report on damage claims received that includes information as specified in subsection D.5 of this Special Provision.

A. Claims Less Than or Equal To \$1,500. The Contractor must reach final disposition and notify the claimant within 60 calendar days of receipt of the damage claim form from the Engineer. If the Contractor fails to reach final disposition and

notify the claimant within 60 calendar days, the Engineer will enforce subsection D.3.(c), below. In this circumstance, the Board defines restoration as payment to the claimant for alleged damages as documented on the original damage claim form. If payment is made based on failure to meet the time requirement, the claimant must sign a waiver indicating that payment was made because of a failure to meet the time requirement not because of the merit of the damage claim. Before the 60 calendar days expires, the Contractor may request an extension of no more than 30 calendar days for documented circumstances beyond the Contractor's control. The Contractor must make this request in writing to the Engineer.

B. Claims Greater Than \$1,500. The Contractor must reach final disposition and notify the claimant within 120 calendar days of receipt of the damage claim form from the Engineer. If the 120 calendar days expire prior to final acceptance of the project, the Engineer will withhold the amount of the damage claim from payments to the Contractor until the Contractor reaches final disposition and notifies the claimant.

C. Protection and Restoration of Property. The Contractor must restore, at no additional cost to the Board, public and private property damaged because of acts or omissions by the Contractor and the employees and agents of the Contractor, to a condition similar and equal to that existing before the damage occurred. If the Contractor neglects to make restoration within 7 days of receiving written notice from the Engineer, or as otherwise required by applicable laws or regulations, the Engineer may proceed to make the restoration. The Engineer will deduct the cost of the restoration from monies that are or may become due the Contractor.

4. Final Disposition. The Department will withhold from the final estimate or monies due or to become due the Contractor an amount not exceeding the aggregate amount of all outstanding and unresolved damage claims until final disposition of all damage claims. Final disposition for damage claims \$1,500 or less must include payment, settlement, or denial of the damage claim by the Contractor's insurer or the Contractor. Final disposition for damage claims over \$1,500 must include payment, settlement, or denial of the damage claim by the Contractor's insurer, or settlement or payment by the Contractor.

5. Documentation Requirements. The Contractor must submit to the Engineer a report upon final disposition of each damage claim. The report must include the following information:

- A. Location of the incident;
- B. Specific work activities for day and time of damage claim;
- C. Detailed weather and road conditions;
- D. Traffic movements, signing, equipment in use;

- E. Any unusual occurrences;
 - F. Measurements taken at the time or location of the incident;
 - G. Records of all contact with Engineer or claimant to discuss disposition;
 - H. Other documentation pertinent to the damage claim; and
 - I. Report of final disposition of damage claim.
6. The Certificate of Insurance and bond forms properly executed, must be provided to the Board, before the award of the contract by the Board.