

CONSTRUCTION / INSTALLATION AGREEMENT

THE STATE OF TEXAS)
)
COUNTY OF CORYELL) KNOW ALL MEN BY THESE PRESENTS:

This Construction/Installation Agreement (the "Agreement") is made by and between [REDACTED] (the "Contractor") and the **City of Gatesville, Texas**, a municipal corporation (the "Owner"). For and in consideration of the payment, agreements and conditions hereinafter mentioned, and under the conditions expressed in the bonds herein, Contractor hereby agrees to complete the construction of improvements described as follows:

ELEVATED STORAGE TANK RECOATING AND CATHODIC PROTECTION

at the Hughes Unit EST in the City of Gatesville, Texas, and all extra work in connection therewith, under the terms as stated in the terms of this Contract, including all Contract Documents incorporated herein; and at his, her or their own proper cost and expense to furnish all superintendence, labor, insurance, equipment, tools and other accessories and services necessary to complete the said construction in accordance with all the Contract Documents, incorporated herein as if written word for word, and in accordance with the Plans, which include all maps, plats, blueprints, and other drawings and printed or written explanatory manner therefore, and the Specifications as prepared by City of Gatesville or its consultant hereinafter called Engineer, who has been identified by the endorsement of the Contractor's written bid, the General Conditions of this Contract, the Special Conditions of this Contract, the payment and performance bonds hereto attached; all of which are made a part hereof and collectively evidence and constitute the entire Contract.

A. Contract Documents and Order of Precedence

The Contract Documents shall consist of the following documents:

1. this Construction/Installation Agreement;
2. properly authorized change orders;
3. the Scope of Services of this Contract (Attachment 1);
4. the OWNER's written notice to proceed to the CONTRACTOR;
5. the Contractor's Cost Bid (Attachment 3 Contract Pricing Worksheet);
6. the Performance and Payment Bonds; and,
7. any other materials distributed by the Owner that relate to the Project.

These Contract Documents are incorporated by reference into this Construction/Installation Agreement as if set out here in their entirety. The Contract Documents are intended to be complementary; what is called for by one document shall be as binding as if called for by all Contract Documents. It is specifically provided, however, that in the event of any inconsistency in the Contract Documents, the inconsistency shall be resolved by giving precedence to the Contract Documents in the order in which they are listed herein above. If, however, there exists a conflict or inconsistency between the Technical Specifications and the Construction Drawings it shall be the Contractor's obligation to seek clarification as

to which requirements or provisions control before undertaking any work on that component of the project. Should the Contractor fail or refuse to seek a clarification of such conflicting or inconsistent requirements or provisions prior to any work on that component of the project, the Contractor shall be solely responsible for the costs and expenses - including additional time - necessary to cure, repair and/or correct that component of the project.

B. Total of Payments Due Contractor

For performance of the Work in accordance with the Contract Documents, the Owner shall pay the Contractor in current funds an amount not to exceed **xxxxx Dollars (\$xxxxxxx)**. This amount is subject to adjustment by change order in accordance with the Contract Documents.

C. Dates to Start and Complete Work

Contractor shall begin work within ten (10) calendar days after receiving a written Notice to Proceed or written Work Order from the Owner. All Work required under the Contract Documents shall be substantially completed in compliance with the Project Timeline (Attachment 2) and within _____ after the date of the Notice to Proceed for the project. Within thirty (30) additional calendar days after Substantial Completion, all outstanding issues shall be addressed and ready for final payment.

Under this Construction/Installation Agreement, all references to "day" are to be considered "calendar days" unless noted otherwise.

D. CONTRACTOR'S INDEMNITY TO THE OWNER AND OTHERS

CONTRACTOR DOES HEREBY AGREE TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY OF GATESVILLE (OWNER) TOGETHER WITH ITS MAYOR AND CITY COUNCIL AND ALL OF ITS OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST ANY AND ALL CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LIABILITY, LOSSES, PENALTIES, SUITS OR CAUSES OF ACTION OF EVERY KIND INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, COURT COSTS AND ATTORNEY FEES WHICH MAY ARISE BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR FOR LOSS OF, DAMAGE TO, OR LOSS OF USE OF ANY PROPERTY OCCASIONED BY ERROR, OMISSION, OR NEGLIGENT ACT OF CONTRACTOR, ITS SUBCONTRACTORS, ANY OFFICERS, AGENTS OR EMPLOYEES OF CONTRACTOR OR ANY SUBCONTRACTORS, INVITEES, AND ANY OTHER THIRD PARTIES OR PERSONS FOR WHOM OR WHICH CONTRACTOR IS LEGALLY RESPONSIBLE, IN ANY WAY ARISING OUT OF, RELATING TO, RESULTING FROM, OR IN CONNECTION WITH THE PERFORMANCE OF THIS CONTRACT, AND CONTRACTOR WILL AT HIS OR HER OWN COST AND EXPENSE DEFEND AND PROTECT CITY OF GATESVILLE (OWNER) FROM ANY AND ALL SUCH CLAIMS AND DEMANDS.

IN ANY AND ALL CLAIMS AGAINST ANY PARTY INDEMNIFIED HEREUNDER BY ANY EMPLOYEE OF THE CONTRACTOR, ANY SUB-CONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE

LIABLE, THE INDEMNIFICATION OBLIGATION HEREIN PROVIDED SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR OR ANY SUB-CONTRACTOR UNDER WORKMEN'S COMPENSATION OR OTHER EMPLOYEE BENEFIT ACTS.

INDEMNIFIED ITEMS SHALL INCLUDE ATTORNEYS' FEES AND COSTS, COURT COSTS, AND SETTLEMENT COSTS. INDEMNIFIED ITEMS SHALL ALSO INCLUDE ANY EXPENSES, INCLUDING ATTORNEYS' FEES AND EXPENSES, INCURRED BY AN INDEMNIFIED INDIVIDUAL OR ENTITY IN ATTEMPTING TO ENFORCE THIS INDEMNITY.

In its sole discretion, the Owner shall have the right to approve counsel to be retained by Contractor in fulfilling its obligation to defend and indemnify the Owner. Contractor shall retain approved counsel for the Owner within seven (7) business days after receiving written notice from the Owner that it is invoking its right to indemnification under this Construction Agreement. If Contractor does not retain counsel for the Owner within the required time, then the Owner shall have the right to retain counsel and the Contractor shall pay these attorneys' fees and expenses.

The Owner retains the right to provide and pay for any or all costs of defending indemnified items, but it shall not be required to do so. To the extent that Owner elects to provide and pay for any such costs, Contractor shall indemnify and reimburse Owner for such costs.

(Please note that this "broad-form" indemnification clause is not prohibited by Chapter 151 of the Texas Insurance Code as it falls within one of the exclusions contained in Section 151.105 of the Texas Insurance Code.)

E. Insurance Requirements

Contractor shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the vendor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the contractor's bid. A certificate of insurance meeting all requirements and provisions outlined herein as Exhibit A shall be provided to the City prior to any services being performed or rendered. Renewal certificates shall also be supplied upon expiration. Certificates holder shall be listed as follows, with the project/contract number referenced:

City of Gatesville
Attn: City Manager

Gatesville, Texas _____

F. Payment, Performance, and Maintenance Bonds

The Contractor shall procure and pay for a Performance Bond, Payment Bond, and two-year Maintenance Bond applicable to the work, each in the amount of one hundred percent (100%) of the total proposed price. The performance and payment bonds shall be issued in forms acceptable to the City of Gatesville City Attorney. Other performance and payment bond forms shall not be accepted. Among other

things, these bonds shall apply to any work performed during the contractor's warranty period after acceptance as described in this Construction Agreement.

The bonds shall be issued by a corporate surety, acceptable to and approved by the City, authorized to do business in the State of Texas, pursuant to Chapter 2253 of the Texas Government Code. Further, the Contractor shall supply capital and surplus information concerning the surety and reinsurance information concerning the performance and payment bonds upon City request. In addition to the foregoing requirements, if the amount of the bond exceeds One Hundred Thousand Dollars (\$100,000) the bond must be issued by a surety that is qualified as a surety on obligations permitted or required under federal law as indicated by publication of the surety's name in the current U.S. Treasury Department Circular 570. In the alternative, an otherwise acceptable surety company (not qualified on federal obligations) that is authorized and admitted to write surety bonds in Texas must obtain reinsurance on any amounts in excess of One Hundred Thousand Dollars (\$100,000) from a reinsurer that is authorized and admitted as a reinsurer in Texas who also qualifies as a surety or reinsurer on federal obligations as indicated by publication of the surety's or reinsurer's name in the current U.S. Treasury Department Circular 570.

G. Progress Payments and Retainage

As it completes portions of the Work, the Contractor may request progress payments from the Owner. Progress payments shall be made by the Owner based on the Owner's estimate of the value of the Work properly completed by the Contractor since the time the last progress payment was made. The "estimate of the value of the work properly completed" shall include the net invoice value of acceptable, non-perishable materials actually delivered to and currently at the job site only if the Contractor provides to the Owner satisfactory evidence that material suppliers have been paid for these materials.

No progress payment shall be due to the Contractor until the Contractor furnishes to the Owner:

1. copies of documents reasonably necessary to aid the Owner in preparing an estimate of the value of Work properly completed;
2. full or partial releases of liens, including releases from subcontractors providing materials or delivery services relating to the Work, in a form acceptable to the Owner releasing all liens or claims relating to goods and services provided up to the date of the most recent previous progress payment;
3. an updated and current schedule clearly detailing the project's critical path elements; and
4. any other documents required under the Contract Documents.

Progress payments shall not be made more frequently than once every thirty (30) calendar days unless the Owner determines that more frequent payments are appropriate. Further, progress payments are to be based on estimates and these estimates are subject to correction through the adjustment of subsequent progress payments and the final payment to Contractor. If the Owner determines after final payment that it has overpaid the Contractor, then Contractor agrees to pay to the Owner the overpayment amount specified by the Owner within thirty (30) calendar days after it receives written demand from the Owner.

The fact that the Owner makes a progress payment shall not be deemed to be an admission by the Owner concerning the quantity, quality or sufficiency of the Contractor's work. Progress payments shall not be deemed to be acceptance of the Work nor shall a progress payment release the Contractor from any of its responsibilities under the Contract Documents.

After determining the amount of a progress payment to be made to the Contractor, the Owner shall withhold a percentage of the progress payment as retainage. The amount of retainage withheld from each progress payment shall be set at five percent (5%). Retainage shall be withheld and may be paid to:

1. ensure proper completion of the Work. The Owner may use retained funds to pay replacement or substitute contractors to complete unfinished or defective work;
2. ensure timely completion of the Work. The Owner may use retained funds to pay liquidated damages; and
3. provide an additional source of funds to pay claims for which the Owner is entitled to indemnification from Contractor under the Contract Documents.

Retained funds shall be held by the Owner in accounts that shall not bear interest. Retainage not otherwise withheld in accordance with the Contract Documents shall be returned to the Contractor as part of the final payment.

H. Withholding Payments to Contractor

The Owner may withhold payment of some or all of any progress or final payment that would otherwise be due if the Owner determines, in its discretion, that the Work has not been performed in accordance with the Contract Documents. The Owner may use these funds to pay replacement or substitute contractors to complete unfinished or defective Work.

The Owner may withhold payment of some or all of any progress or final payment that would otherwise be due if the Owner determines, in its discretion, that it is necessary and proper to provide an additional source of funds to pay claims for which the Owner is entitled to indemnification from Contractor under the Contract Documents.

Amounts withheld under this section shall be in addition to any retainage.

I. Acceptance of the Work

When the Work is completed, the Contractor shall request that the Owner perform a final inspection. The Owner shall inspect the Work. If the Owner determines that the Work has been completed in accordance with the Contract Documents, it shall issue a written notice of acceptance of the Work. If the Owner determines that the Work has not been completed in accordance with the Contract Documents, then it shall provide the Contractor with a verbal or written list of items to be completed before another final inspection shall be scheduled.

It is specifically provided that Work shall be deemed accepted on the date specified in the Owner's written notice of acceptance of the Work. The Work shall not be deemed to be accepted based on "substantial completion" of the Work, use or occupancy of the Work, or for any reason other than the Owner's written Notice of Acceptance. Further, the issuance of a certificate of occupancy for all or any part of the Work shall not constitute a Notice of Acceptance for that Work.

In its discretion, the Owner may issue a Notice of Acceptance covering only a portion of the Work. In this event, the notice shall state specifically what portion of the Work is accepted.

J. Final Payment

After all Work required under the Contract Documents has been completed, inspected, and accepted, the City shall calculate the final payment amount promptly after necessary measurements and computations are made. The final payment amount shall be calculated to:

1. include the estimate of the value of Work properly completed since the date of the most recent previous progress payment;
2. correct prior progress payments; and
3. include retainage or other amounts previously withheld that are to be returned to Contractor, if any.

Final payment to the Contractor shall not be due until the Contractor provides original full releases of liens from the Contractor and its subcontractors, or other evidence satisfactory to the Owner to show that all sums due for labor, services, and materials furnished for or used in connection with the Work have been paid or shall be paid with the final payment. To ensure this result, Contractor consents to the issuance of the final payment in the form of joint checks made payable to Contractor and others. The Owner may, but is not obligated to issue final payment using joint checks.

Final payment to the Contractor shall not be due until the Contractor has supplied to the Owner original copies of all documents that the Owner determines are reasonably necessary to ensure both that the final payment amount is properly calculated, and that the Owner has satisfied its obligation to administer the Construction Agreement in accordance with applicable law. The following documents shall, at a minimum, be required to be submitted prior to final payment being due: redline as-built construction plans; consent of surety to final payment; public infrastructure inventory; affidavit of value for public infrastructure; and, final change order(s). "Redline as-built construction plans" shall include, but are not limited to markups for change orders, field revisions, and quantity overruns as applicable. The list of documents contained in this provision is not an exhaustive and exclusive list for every project performed pursuant to these Contract Documents and Contractor shall provide such other and further documents as may be requested and required by the Owner to close out a particular project.

Subject to the requirements of the Contract Documents, the Owner shall pay the Final Payment within ten (10) calendar days after the date specified in the Notice of Acceptance. This provision shall apply only after all Work called for by the Contract Documents has been accepted.

K. Termination.

If Contractor persistently or repeatedly refuses or fails to prosecute the Work in a timely manner, abandons the jobsite and fails to resume work within five (5) days of written notice thereof by Owner, fails to grant or allow access to the jobsite by Owner, fails to supply enough properly skilled workers, supervisory personnel or proper equipment or materials, fails to make prompt payment to subcontractors or for materials or labor, persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a violation of a material provision of this Contract, then the Owner may by written notice to Contractor, without prejudice to any other right or remedy, terminate this Contract and take possession of the site and of all materials and may finish the Work by whatever methods it deems expedient.

L. Contractor's Warranty

For a 1-year period after the date specified in a written notice of acceptance of Work, Contractor shall provide and pay for all labor and materials that the Owner determines are necessary to correct all defects in the Work arising because of defective materials or workmanship supplied or provided by Contractor or any subcontractor.

Forty-five (45) to sixty (60) calendar days before the end of the 1-year warranty period, the Owner may make a warranty inspection of the Work. The Owner shall notify the Contractor of the date and time of this inspection so that a Contractor representative may be present. After the warranty inspection, and before the end of the two-year warranty period, the Owner shall mail to the Contractor a written notice that specifies the defects in the Work that are to be corrected.

The Contractor shall begin the remedial work within thirty (30) calendar days after receiving the written notice from the City. If the Contractor does not begin the remedial work timely or prosecute it diligently, then the Owner may pay for necessary labor and materials to effect repairs and these expenses shall be paid by the Contractor, the performance bond surety, or both.

If the Owner determines that a hazard exists because of defective materials and workmanship, then the Owner may take steps to alleviate the hazard, including making repairs. These steps may be taken without prior notice either to the Contractor or its surety. Expenses incurred by the Owner to alleviate the hazard shall be paid by the Contractor, the performance or maintenance bond surety, or all of these.

Any Work performed by or for the Contractor to fulfill its warranty obligations shall be performed in accordance with the Contract Documents. By way of example only, this is to ensure that Work performed during the warranty period is performed with required insurance and the performance and payment bonds still in effect.

Work performed during the one year warranty period shall itself be subject to a one-year warranty. This warranty shall be the same as described in this section.

The Owner may make as many warranty inspections as it deems appropriate.

M. Compliance with Laws

The Contractor shall be responsible for ensuring that it and any subcontractors performing any portion of the Work required under the Contract Documents comply with all applicable federal, state, county, and municipal laws, regulations, and rules that relate in any way to the performance and completion of the Work. This provision applies whether or not a legal requirement is described or referred to in the Contract Documents.

Ancillary/Integral Professional Services: In selecting an architect, engineer, land surveyor, or other professional to provide professional services, if any, that are required by the Contract Documents, Contractor shall not do so on the basis of competitive bids but shall make such selection on the basis of demonstrated competence and qualifications to perform the services in the manner provided by Section 2254.004 of the Texas Government Code and shall so certify to the City the Contractor's agreement to comply with this provision with Contractor's bid.

N. Energy Boycott

In accordance with Chapter 2274, Texas Government Code (Acts 2021, 87th Leg., S.B. 13), the City may not enter into a contract with a company, excluding a sole proprietorship, with 10 or more full-time employees for goods or services valued at \$100,000 or more unless the contract contains a written verification from the company that the company: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract. The signatory executing the Contract on behalf of Seller verifies Seller does not boycott energy companies and will not boycott energy companies during the term of the Contract. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, and does not apply if the City determines the requirements of Subsection 2274.002(b) are inconsistent with the City's constitutional or statutory duties related to the issuance, incurrence or management of debt obligations or the deposit, custody, management, borrowing or investment of funds.

O. Firearms

In accordance with Chapter 2274, Texas Government Code (Acts 2021, 87th Leg., S.B. 19) the City may not enter into a contract with a company, excluding a sole proprietorship, with 10 or more full-time employees for goods or services valued at \$100,000 or more unless the contract contains a written verification from the company that the company: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. The signatory executing the Contract on behalf of Seller verifies Seller does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the contract against a firearm entity or firearm trade association. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, and does not apply if the City contracts with a sole-source provider or if the City does not receive any bids, if applicable, from a company that is able to provide the required verification.

P. Critical Infrastructure

In accordance with Chapter 2274, Texas Government Code, the City may not enter into a contract or agreement with a company, excluding a sole proprietorship, with 10 or more full-time employees for goods or services valued at \$100,000 or more (1) if the company would be granted direct or remote access to or control of critical infrastructure in Texas, excluding access specifically allowed by the City for product warranty and support purposes and (2) if the City knows the company is (A) owned by or the a majority of stock or other ownership interest of the company is held or controlled by (i) individuals who are citizens of China, Iran, North Korea, Russia, or a designated country or (ii) a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of such countries, or (B) headquartered in such countries. The signatory executing

the Contract on behalf of Seller represents that neither Seller nor any of its parent companies, wholly-owned subsidiaries, majority-owned subsidiaries, and other affiliates is a company of which the City may not contract pursuant to Section 2274.0102, Texas Government Code. The foregoing verification is made solely to comply with Section 2274.0102, Texas Government Code.

Q. Anti-Boycott Israel Verification

In accordance with Chapter 2271, Texas Government Code, the City may not enter into a contract with a company, excluding a sole proprietorship, with 10 or more full-time employees for goods or services valued at \$100,000 or more unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The signatory executing the Contract on behalf of Seller verifies that Seller and its parent company, wholly-owned subsidiaries, majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and, to the extent the Contract is a contract for goods or services, will not boycott Israel during the term of the Contract. As used in the foregoing verification, "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The signatory understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the signatory and exists to make a profit. This section does not apply to a Vendor which is a sole proprietorship and/or which has less than 10 full-time employees. This section does not apply to a contract valued at less than \$100,000.

R. Other Items

The Contractor shall sign the Construction Agreement, and deliver signed payment bonds and proper insurance policy endorsements (and/or other evidence of coverage) within ten (10) calendar days after the Owner makes available to the Contractor copies of the Contract Documents for signature. Six (6) copies of the Contract Documents shall be signed by an authorized representative of the Contractor and returned to the City.

The Construction Agreement "effective date" shall be the date on which the City Council acts to approve the award of the Contract for the Work to Contractor. It is expressly provided, however, that the City Council delegates the authority to the City Manager or his designee to rescind the Contract award to Contractor at any time before the Owner delivers to the Contractor a copy of this Construction Agreement that bears the signature of the City Manager and City Secretary or their authorized designees. The purpose of this provision is to ensure:

1. that Contractor timely delivers to the Owner all bonds and insurance documents; and
2. that the Owner retains the discretion not to proceed if the City Manager or his designee determines that information indicates that the Contractor was not the lowest responsible bidder or that the Contractor cannot perform all of its obligations under the Contract Documents.

THE CONTRACTOR AGREES THAT IT SHALL HAVE NO CLAIM OR CAUSE OF ACTION OF ANY KIND AGAINST OWNER, INCLUDING A CLAIM FOR BREACH OF CONTRACT, NOR SHALL THE OWNER BE REQUIRED TO PERFORM UNDER THE CONTRACT DOCUMENTS, UNTIL THE DATE THE OWNER DELIVERS TO THE CONTRACTOR A COPY OF THE CONSTRUCTION AGREEMENT BEARING THE SIGNATURES JUST SPECIFIED.

The Contract Documents shall be construed and interpreted by applying Texas law. Exclusive venue for any litigation concerning the Contract Documents shall be Dallas County, Texas.

In the event of any disagreement or conflict concerning the interpretation of this Agreement, and such disagreement cannot be resolved by the signatories hereto, the signatories agree to submit such disagreement to non-binding mediation.

Although the Construction Agreement has been drafted by the Owner, should any portion of the Construction Agreement be disputed, the Owner and Contractor agree that it shall not be construed more favorably for either party.

The Contract Documents are binding upon the Owner and Contractor and shall insure to their benefit and as well as that of their respective successors and assigns.

If City Council approval is not required for the Construction Agreement under applicable law, then the Construction Agreement "effective date" shall be the date on which the City Manager and City Secretary or their designees have signed the Construction Agreement. If the City Manager and City Secretary sign on different dates, then the later date shall be the effective date.

{Signatures on next page}

Contractor

CITY OF GATESVILLE, TEXAS

By:

By: Bradley Hunt

Title:

Title: City Manager

Date:

Date:

Address:

Address:

Gatesville, TX

Attested by: _____
Holly Owens, City Secretary

EXHIBIT A STANDARD INSURANCE REQUIREMENTS

Company shall procure and maintain for the duration of the contract, insurance coverages outlined herein which may arise from or be in connection with the performance of the work hereunder by the Company, his agents, representatives, employees or subcontractors. Any exceptions to the requirements or provisions herein shall be submitted in writing to the City's Risk Manager for consideration and approval. The decision of the City will be final. The cost of such insurance shall be borne by the Company.

1.0 GENERAL PROVISIONS

- 1.1 The Company shall obtain and maintain the minimum insurance coverage set forth in this section. By requiring such minimum insurance, the City of Gatesville shall not be deemed or construed to have assessed the risk that may or may not be applicable to the Company. The Company shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. The Company is not relieved of any liability or other obligation assumed or pursuant to the Contract by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. The insurance requirements listed below do not replace any warranty or surety (performance, payment, or maintenance) bonds if required by preceding or subsequent sections of this contract.
- 1.2 Company shall cause each subcontractor employed by Company to purchase and maintain insurance of the type specified herein or cover such subcontractor under its insurance coverage.
- 1.3 The Company agrees that the insurance requirements specified in this section do not reduce the liability Company has assumed in any indemnification/hold harmless section of this contract.
- 1.4 City reserves the right to approve the security of the insurance coverage provided pursuant to this section by insurers including terms, conditions and the Certificate of Insurance. Failure of the Company to fully comply with requirements of this section during the term of this contract will be considered a material breach of contract and will be cause for immediate termination of the contract at the option of City.
- 1.5 Insurance coverage required by this section shall:
 - 1.5.1 Be on a primary basis, non-contributory with any other insurance coverage and/or self-insurance carried by City.
 - 1.5.2 Be with an insurer possessing an A-VII A. M. Best Rating or equivalent.

2.0 MINIMUM INSURANCE COVERAGE & LIMITS

- 2.1 Commercial General Liability. Company shall maintain commercial general liability and, if necessary, commercial umbrella or excess liability (umbrella or excess liability should be provided on follow-form policy).
- 2.2 Commercial general liability insurance shall be written on an ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises,

operations, independent Company's, product-completed operations, personal and advertising injury and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

- 2.3 City shall be included as an additional insured under the commercial general liability using ISO additional insured endorsement CG 20 10 07 04 and CG 20 37 07 04 or their equivalent, including coverage for City with respect to liability arising out of the completed operations of Company.

2.4 Limits of Insurance

Contracts between \$0 and \$1,000,000		
Type of Insurance	Amount of Insurance	Provisions
1. Commercial General (Public) Liability to include coverage for: a) Premises/Operations b) Products/Completed Operations c) Independent Contractors d) Personal Liability e) Contractual Liability	<ul style="list-style-type: none"> • \$1,000,000 each occurrence • \$2,000,000 general aggregate • \$2,000,000 Umbrella/ Excess Liability (follow-form) 	<p>City to be listed as additional insured and provided 30-day notice of cancellation or material change in coverage</p> <p>City to be provided a waiver of Subrogation</p>
2. Business Auto Liability	<ul style="list-style-type: none"> • \$1,000,000 per occurrence • \$1,000,000 aggregate or; • \$1,000,000 combined single limits 	City to be named as additional insured
3. Workers' Comp & Employers' Liability	<ul style="list-style-type: none"> • Statutory Limits • \$1,000,000 each accident 	City to be provided a waiver of subrogation
4. Builders Risk Policy	<ul style="list-style-type: none"> • 100% of construction total 	If Applicable
5. Other Coverages a) Professional Liability b) E & O coverage c) Cyber Liability	<ul style="list-style-type: none"> • To be determined by the City's Risk Manager on a per project basis 	If Applicable
Contracts between \$1,000,000 and \$8,000,000		
Type of Insurance	Amount of Insurance	Provisions
1. Broad Form Commercial General Liability to include coverage for: a) Premises/Operations b) Products/Completed Operations c) Independent Contractors d) Personal Liability e) Contractual Liability	<ul style="list-style-type: none"> • \$2,000,000 each occurrence • \$4,000,000 general aggregate • \$4,000,000 Umbrella/ Excess Liability (follow-form) 	<p>City to be listed as additional insured and provided 30-day notice of cancellation or material change in coverage</p> <p>City to be provided a waiver of Subrogation</p>

3. Workers' Comp & Employers' Liability	<ul style="list-style-type: none"> • Statutory Limits • \$1,000,000 each accident 	City to be provided a waiver of subrogation
4. Builders Risk Policy	<ul style="list-style-type: none"> • 100% of construction total 	If Applicable
5. Other Coverages a) Professional Liability b) E & O coverage c) Cyber Liability	<ul style="list-style-type: none"> • To be determined by the City's Risk Manager on a per project basis 	If Applicable

- 2.4.1 If vendor is performing service-related work on City fleet, Garage Keeper Liability is required at a limit of not less than \$1,000,000 per occurrence on a special form basis.
- 2.4.2 If contract has exposure for environmental hazards contact City's Risk Manager for specifications. (Including MCS-90).
- 2.4.3 Contracts for construction projects taking place in a high-risk flood zone area may require additional coverage requirements.
- 2.4.4 Insurance specifications for Contracts in excess of \$8,000,000 will be determined by the City's Risk Manager.
- 2.5 Commercial Automobile Liability. Company shall maintain business automobile liability insurance and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 per occurrence.
- 2.6 Such automobile liability insurance shall cover liability arising out of any auto (including owned, hired, and non-owned automobiles).
- 2.7 Commercial automobile coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to the amount provided in ISO form CA 00 01.
- 2.8 Company waives all rights against City and its agents, officers, directors and employees for recovery by the commercial automobile liability or commercial umbrella liability insurance obtained by Company pursuant to this section or under any applicable automobile physical damage coverage.
- 2.9 Workers' Compensation & Employer's Liability. Company shall maintain workers' compensation insurance with a limit of no less than \$1,000,000 each incident. The employers' liability limit and, if necessary, commercial umbrella coverage, shall not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.
- 2.10 Company waives all rights against City and its agents, officers, directors and employees for recovery of damages under Company's workers' compensation and employers' liability in connection with scope of contract and completed operations.

3.0 EVIDENCE OF INSURANCE

- 3.1 Prior to commencement of work, and thereafter upon renewal or replacement of coverage required by this section, Company shall furnish City a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with this section. Company shall furnish copies of all endorsements as required by each section.
- 3.2 Failure of City to demand such certificate(s) or other evidence of full compliance with these insurance requirements or failure of City to identify a deficiency from evidence that is provided shall not be construed as a waiver of Company's obligation to maintain such insurance.
- 3.3 City shall have the right, but not the obligation, of prohibiting Company or any subcontractor from entering the project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the City.
- 3.4 Failure to maintain required insurance may result in termination of this contract at sole option of the City.
- 3.5 **All Certificates of Insurance need to reference job or contract number in comments section.**
- 3.6 **Certificate Holder shall be listed as follows: City of Gatesville, TX**

ATTACHMENT 1
SCOPE OF SERVICES