

Parks and Recreation Department
Parks Master Plan
Responses to Questions from Consultants

1. What is the budget for this project? Does the City have an expectation that this proposal include a proposed budget? **We do have budgeted funds for this project, but we'll need to discuss that after the selection process as outline in the RFP under Part 2, Section 4.**
2. Part I, Section 8.2 of the request proposals (RFP) indicates that the City's selection committee will consider each respondent's "Project understanding, approach/methodology, and schedule." Part IV of the RFP does not however identify where this information should be included in each respondent's submittal. Could you please clarify where this information should be included in our submittal? **You can add an additional tab (tab 5) that can be included in the proposal. Please label that section as "additional information".**
3. Does the City have a preference for which parks conceptual renderings should be prepared or do you expect that the location and number of renderings will be determined during the planning process? **We expect this will come out during the planning process but we envision at least two of our parks having conceptual renderings, Riverside Park, and Ethel Lee Tracy**
4. If available, can you please provide the budget for this project? **Same as number 1 above**
5. Has the City/department identified any specific parks that they would like conceptual plans prepared for? **Same as Number 3 above**
6. Are any park dedications pending with active subdivision developments? **Not at the moment.**
7. Due to the current circumstances, do you anticipate this submittal being changed to an electronic submittal? **Submissions will be accepted electronically, mail, or FedEx/UPS.**
8. Under the Committee Review, it lists "Project understanding, approach/methodology, and schedule" as a scorable item. However, these items are not specifically outlined to include in the Response Requirements section. Should we include this under References and Experience or have an "Additional Information" tab following tab #4? **Same as number 2 above**
9. For the required forms and acknowledgment of any addenda, may we add another tab for these items? **Yes, please add an additional tab and include this information.**
10. For resumes, which section would you prefer we include those in? **Please include them in tab #4.**
11. If we would like to subconsultants on our team, where would you prefer we list those? **Please include them in tab #4.**
12. In regards to the timeframe to demonstrate similar project experiences; is this requirement a prerequisite (thus considered a non-compliant item if not fulfilled) or will you still consider a list of references and projects completed more than 2-years prior? **Yes, we will consider project references that are further than 2 years back.**
13. Could the City please clarify if the golf course, zoo, and community center are included in the project. **The golf course would be included in the project as it is located inside Riverside Park. However, the golf course should simply be viewed as part of the parks system as the golf course has a business plan in place. The community center can be included in the plan as it is part of the parks and recreation system. The zoo will not to be included in the plan, as it is ran by a separate entity.**

14. The RFP references an Appendix A containing the City's Definitions, Terms, and Conditions (page 3, item 3). Could the City provide that attachment for proposers to review? Are there specific terms to which proposers cannot take exception? **See Terms and Conditions below.**
15. If not included in Appendix A, could the City specify its insurance requirements (page 3, item 4), and indicate whether any subcontractors would be required to hold the same level of insurance? **See Insurance Ride below.**
16. Part IV does not appear to outline any proposal section that should show cost, approach/scope of work, etc. Could the City indicate whether it has a specific requirement for how proposers present that information, if there are any page limits? **You can include the approach/scope of work under a new tab (#5) that can be labeled "additional information". The City does not have a specific requirement in how you present that information, as long as it aligns with part IV of the response requirements.**

STANDARD TERMS AND CONDITIONS

AGREEMENT: This set of Terms and Conditions is incorporated into Purchase Order No. _____ in its entirety and, upon execution of the Purchase Order by both Parties, constitutes a portion of the Parties' Agreement. No change, modification or revision to the Agreement shall be binding unless made in writing and signed by the Parties. Buyer will not in any manner be responsible for goods delivered or work done for our account without a written order.

DEFINED TERMS: Where utilized in this Request for Proposals, Purchase Order, requirements/specifications, or elsewhere, the following defined terms shall have the meaning assigned to them:

1. "Purchase Order" means the contract between the Buyer and Seller.
2. "Contract Documents" means the Purchase Order, its terms and conditions, the technical specifications, requirements, specifications, drawings, addendum, and amendments, all of which comprise the full agreement of the Parties.

ACCEPTANCE: Acceptance of this Purchase Order shall be deemed effective upon Buyer's execution of this Purchase Order or upon shipment of the goods which are the subject of this Purchase Order, whichever occurs first. Any proposal made by Seller for additional or different terms and conditions or any attempts by Seller to vary, in any degree, any of the terms and conditions of this Purchase Order is hereby rejected.

COMPLETION: TIME IS OF THE ESSENCE IN THE PERFORMANCE OF THIS PURCHASE ORDER. If Seller fails to effect delivery or performance of the associated services required by Buyer in accordance with the project schedule, delivery schedule, or other time requirements as communicated to Seller in the Purchase Order or its attachments, in addition to its other rights and remedies hereunder, Buyer shall have the right to terminate this Purchase Order by notice effective when received by Seller or after the expiration of five days from the date of mailing of such notice, whichever occurs first. Such termination shall be effective as to goods not yet received by Buyer or services not yet rendered, regardless of their transit status. Thereafter, Buyer shall have the right to purchase substitute goods or services elsewhere and charge Seller with any and all losses, costs and expenses, including, but not limited to actual, consequential and incidental damages, reasonable attorneys' fees, and engineering or consulting fees incurred by Buyer by reason of such delay or termination.

PRICES: Seller warrants that the prices shown hereunder are the prices quoted to Buyer at the time of sale and include all costs incurred by Seller for shipment of all goods included in this Purchase Order. In the event of any price reduction between execution of the Purchase Order and delivery of the goods, Buyer shall be entitled to such reduction.

SHIPMENT AND DELIVERY: All goods made the subject hereof are to be suitably prepared and packaged for shipment in accordance with good commercial practice so as to effect safe delivery and freedom from weather or other damage and to meet the carrier's requirements. All damages to such goods occurring prior to delivery will be charged to Seller. No charges will be

allowed for packing, crating or carriage unless stated in this Purchase Order. If, in order to comply with Buyer's required delivery date it becomes necessary for Seller to ship by a more expensive way than specified in this Purchase Order, any such increased transportation costs shall be paid by Seller. All deliveries shall be F.O.B. point designated on the face of this Purchase Order or as specified in writing by Buyer. Cost of all return shipments, for whatever reason returned, shall be borne by Seller with title and risk of loss passing at Buyer's point of shipment, unless otherwise specified by Buyer at the time of return.

INSPECTION: Buyer shall have a reasonable time after delivery or performance to inspect the items delivered or the services performed. All such items or services must conform to the specifications, instructions, drawings and data set forth on the face hereof. Buyer may reject and refuse acceptance of any items or services which do not so conform. Buyer shall notify Seller of such rejection by either notice in writing and by the return to Seller of the rejected items at Seller's expense and risk.

REJECTION OF MATERIALS AND WORKMANSHIP: Buyer shall have the right to reject furnished materials and workmanship which are defective or otherwise fail to meet the requirements/specifications attached to Proposal [Proposal number], including specifications, the drawings, and all other documents (the "Contract Documents") and require their correction. Rejected goods shall be satisfactorily replaced with proper materials without charge to Buyer, and Seller shall promptly segregate and remove rejected materials from the Project site or point designated. If Seller does not correct defective workmanship or replace the rejected materials within a reasonable time, Buyer may do so and charge all costs, damages, fees, and expenses to Seller including, without limitation actual, consequential and incidental damages.

SHOP DRAWINGS, SUBMITTALS, QUALITY OF GOODS: Seller shall confirm that all materials are in strict accordance with the Contract Documents or requirements published by Buyer. Where required, prior to shipment, Seller shall provide shop drawings or submittals sufficient to demonstrate compliance with this Purchase Order and the Contract Documents for Buyer's review and approval. All goods and work of Seller shall conform to all applicable express and implied warranties and be of a good and workmanlike manner. A failure of Buyer during the progress of the work to discover or reject materials not in accordance with the Contract Documents shall not be deemed an acceptance thereof or a waiver of defects therein. No payment, use of goods provided by Seller, or occupancy of the Project site by Buyer shall be construed as an acceptance of materials which are not strictly in accordance with the Contract Documents.

RESPONSIBILITY FOR COMPLETION: Seller represents that it has examined the requirements/specifications, schedule, plans, drawings, and other documentation in the Contract Documents which Seller acknowledges are full and complete and are sufficient to enable Seller to determine the cost of the materials and has fully acquainted itself with all conditions relevant to the work and materials on the Project site and assumes the risk of any variance between the actual conditions and those set out in Contract Documents. Any failure by Buyer at any time, or from time to time, to enforce or require the strict keeping and performance of any of the terms or conditions of this Purchase Order shall not constitute a waiver of such terms or conditions and shall not affect or impair such terms or conditions in any way, or the right of Buyer at any time to

avail itself of such remedies, as it may have for any breach or breaches of such terms or conditions.

WARRANTIES / GUARANTEES: Seller expressly warrants that the items and services covered hereunder shall be free of defects in workmanship and shall strictly conform to applicable specifications, instructions, drawings, etc. These warranties shall be in addition to all warranties, express, implied or statutory. All warranties shall run to Buyer, its customers and subsequent owners of items or services covered hereunder.

INDEMNIFICATION: TO THE FULLEST EXTENT PERMITTED BY LAW, SELLER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY OF VICTORIA AND ITS OFFICERS, DIRECTORS, AGENTS, REPRESENTATIVES, EMPLOYEES FROM AND AGAINST ALL CLAIMS, LOSSES, EXPENSES, COSTS, DEMANDS, SUITS, CAUSES OF ACTION, AND DAMAGES, INCLUDING WITHOUT LIMITATION, ATTORNEYS' FEES, ENGINEERING OR OTHER CONSULTANTS' FEES, OF ANY KINDS RESULTING FROM SELLER'S PERFORMANCE OR NONPERFORMANCE OF ITS OBLIGATIONS PURSUANT TO THIS PURCHASE ORDER, FAILURE OF GOODS, OR ACTS RESULTING IN BODILY INJURY OR PROPERTY DAMAGE, BUT ONLY TO THE EXTENT OF THE NEGLIGENCE OR OTHER FAULT OF SELLER, ITS AGENTS, REPRESENTATIVES, EMPLOYEES OR SUBCONTRACTORS OF ANY TIER.

NO DAMAGES FOR DELAY: Seller shall have no right to claim any damages against Buyer, including consequential or incidental damages, as a result of delay. Extension of time for Seller's performance is conditioned upon Buyer's approval of an extension of time to the contract or delays claimed by Seller. Failure of Seller to make a claim promptly shall be deemed a waiver of the right to a claim for an extension of time for the particular cause.

TERMINATION: Buyer may terminate this Purchase Order or any part thereof for cause in the event of any default by Seller, or if Seller fails to comply with any of the terms and conditions of this offer. The Uniform Commercial Code of the State of Texas shall apply to Buyer's rights and remedies under commercial transactions. Buyer reserves all rights, remedies, and warranties, express and implied, under the UCC. Seller may not terminate this Purchase Order unless Buyer fails to provide payment for goods and/or associated services expressly accepted by Buyer.

TAXES: The City of Victoria is exempted from all city, state, and federal excise taxes. DO NOT include tax on your invoice.

INSURANCE: In the event that Seller's performance hereunder requires or contemplates the performance of services by Seller's employees, or other persons under contract to Seller, whether such services are to be performed at the place of delivery of such goods or services, or elsewhere, Seller agrees that any such performance of services shall be done as an independent contractor and that the persons doing such work shall not be considered employees of Buyer.

In such event, Seller at its sole expense, shall obtain and maintain (a) WORKERS' COMPENSATION, including Occupational Disease insurance, meeting the statutory requirements of the State in which work is to be performed together with a Broad Form Other States Endorsement and containing Employers' Liability insurance in an amount of at least

\$1,000,000. (b) GENERAL LIABILITY insurance providing Premises-Operations, Elevators, Independent Contractors, Broad Form Property Damage, Contractual Liability, Products & Completed Operations coverages (which shall be maintained in force for a period of two years after substantial completion of the Project). (c) AUTOMOBILE LIABILITY on occurrence basis covering all Owned, Non-Owned and Hired Vehicles with a limit of \$1,000,000 Bodily Injury & Property Damage Combined Single Limit

Insurance shall be in at least the following minimum limits:

COMMERCIAL GENERAL LIABILITY:

Amounts of coverage shall be no less than:

- \$1,000,000 Per Occurrence
- \$2,000,000 General Aggregate
- \$2,000,000 Products/Completed Operations Aggregate
- \$1,000,000 Personal and Advertising Injury
- Designated Construction Project(s) General Aggregate Limit

BUSINESS AUTOMOBILE LIABILITY:

Amount of coverage shall be no less than:

- \$1,000,000 Per Accident

WORKERS' COMPENSATION:

Amounts of coverage shall be no less than:

- Statutory Limits
- \$1,000,000 Each Accident and Disease
- Alternate Employer endorsement
- USL&H must be provided where such exposure exists.

EXCESS LIABILITY:

Amounts of coverage shall be no less than:

- \$1,000,000

Policy must include the City of Victoria as "Additional Insured" on all types of insurance (except Workers' Compensation), and must include the City of Victoria as "Waiver of Subrogation" on all types of insurance.

Seller shall furnish Buyer with the policy endorsements and exclusions pages as well as a Certificate of Insurance or other satisfactory evidence that all insurance required by the Agreement has been obtained and paid for and will continue in full force and effect until the completion of the work.

The Seller shall provide a minimum of thirty (30) days' written notice to Buyer in the event of cancellation. If Seller should contract out any of the work to a third party, Seller shall cause said third party to carry the insurance required by this Purchase Order and to furnish evidence of same.

BONDS: To the extent the services required of Seller pursuant to this Purchase Order have an agreed value in excess of \$100,000, Seller shall provide a performance bond pursuant to chapter

2253 of the Texas Government Code on a form acceptable to Buyer. Said form shall be provided as an exhibit to this Purchase Order or provided to Seller for presentment to a licensed corporate surety for provision of the required bond. Seller's provision of a required bond on a form other than that proscribed by Buyer shall be rejected and may be grounds for termination of this Purchase Order by Buyer.

PAYMENT: Invoices will be paid according to agreed payment terms as reflected in the purchase order or within 30 days after receipt of the items or completion of required services. Payment for the goods delivered under this Purchase Order shall not be acceptance of such goods. Goods shall only be deemed accepted when they have actually been counted, inspected, and tested by Buyer and found to be in conformance with this Purchase Order. However, failure to inspect or test by Buyer shall not relieve Seller of any responsibility hereunder.

REMEDIES: The rights and remedies reserved to Buyer herein, except where expressly stated to be exclusive, shall be cumulative and in addition to any other or further rights and remedies provided by law or equity. No waiver of any breach of these provisions shall be deemed to constitute a waiver of any other breach.

ASSIGNMENT: Neither this Purchase Order nor any right or obligations herein may be assigned by Seller nor may Seller delegate the performance of any of its duties hereunder without in either case Buyer's prior written consent.

FORCE MAJEURE: Either party to this Purchase Order shall be free from liability for failing to perform hereunder if such failure is caused due to acts of God, labor difficulties, fires or other causes beyond the reasonable control of the affected party. In the event that Seller is unable to perform for such reasons beyond its reasonable control, Buyer shall have the right to either continue the delivery dates until Seller is able to perform or terminate this Purchase Order.

DISPUTE RESOLUTION: In the event of disputes over price, quantity or quality, Buyer shall have the right to audit Seller's records in order to resolve the dispute. Pending resolution of the dispute, amicably or otherwise, Seller shall proceed diligently with the performance of this Purchase Order as directed by Buyer. The Purchase Order shall be governed by the laws of the State of Texas. In the event that a dispute arises between Buyer and Seller, the parties agree that the exclusive venue to submit said disputes is the State District Courts of Victoria County, Texas for resolution.

Buyer:
The City of Victoria, Texas

Seller:
_____,
a _____

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Owner's Insurance Requirements of Contractor

1. Specific Insurance Requirements

The following insurance shall be maintained in effect with limits not less than those set forth below at all times during the term of this Agreement and thereafter as required:

Insurance	Coverage/Limits	Other Requirements
Commercial General Liability (Occurrence Basis)	<p>Amounts of coverage shall be no less than:</p> <ul style="list-style-type: none"> ▪ \$1,000,000 Per Occurrence ▪ \$2,000,000 General Aggregate ▪ \$2,000,000 Products/Completed Operations Aggregate ▪ \$1,000,000 Personal and Advertising Injury ▪ Designated Construction Project(s) General Aggregate Limit 	<ul style="list-style-type: none"> ▪ Current ISO edition of CG 00 01 ▪ Additional insured status shall be provided in favor of Owner Parties on a combination of ISO forms CG 20 10 04 13 and CG 20 37 04 13. ▪ This coverage shall be endorsed to provide primary and non-contributing liability coverage. It is the intent of the parties to this Agreement that all insurance coverage required herein shall be primary to and will not seek contribution from any other insurance held by Owner Parties, with Owner Parties' insurance being excess, secondary and non-contributing. ▪ Stop Gap coverage shall be provided if any work is to be performed in a monopolistic workers' compensation state. ▪ The following exclusions/limitations (or their equivalent(s), are prohibited: <ul style="list-style-type: none"> ○ Contractual Liability Limitation CG 21 39 ○ Amendment of Insured Contract Definition CG 24 26 ○ Limitation of Coverage to Designated Premises or Project, CG 21 44 ○ Exclusion-Damage to Work Performed by Subcontractors on Your Behalf, CG 22 94 or CG 22 95 ○ Exclusion-Explosion, Collapse and Underground Property Damage Hazard, CG 21 42 or CG 21 43 ○ Any Classification limitation ○ Any Construction Defect Completed Operations exclusion ○ Any endorsement modifying the Employer's Liability exclusion or deleting the exception to it ○ Any endorsement modifying or deleting Explosion, Collapse or Underground coverage ○ Any Habitational or Residential exclusion applicable to the Work ○ Any "Insured vs. Insured" exclusion except Named Insured vs. Named Insured ○ Any Punitive, Exemplary or Multiplied Damages exclusion ○ Any Subsidence exclusion

Business Auto Liability	<p>Amount of coverage shall be no less than:</p> <ul style="list-style-type: none"> ▪ \$1,000,000 Per Accident 	<ul style="list-style-type: none"> ▪ Current ISO edition of CA 00 01 ▪ Arising out of any auto (Symbol 1), including owned, hired and non-owned
Workers' Compensation and Employer's Liability	<p>Amounts of coverage shall be no less than:</p> <ul style="list-style-type: none"> ▪ Statutory Limits ▪ \$1,000,000 Each Accident and Disease ▪ Alternate Employer endorsement ▪ USL&H must be provided where such exposure exists. 	<ul style="list-style-type: none"> ▪ The State in which work is to be performed must listed under Item 3.A. on the Information Page ▪ Such insurance shall cover liability arising out of the Contractor's employment of workers and anyone for whom the Contractor may be liable for workers' compensation claims. Workers' compensation insurance is required, and no "alternative" forms of insurance shall be permitted. ▪ Where a Professional Employer Organization (PEO) or "leased employees" are utilized, Contractor shall require its leasing company to provide Workers' Compensation insurance for said workers and such policy shall be endorsed to provide an Alternate Employer endorsement in favor of Contractor and Owner. Where Contractor uses leased employees with Workers' Compensation insurance provided by a PEO or employee leasing company, Contractor is strictly prohibited from subletting any of its work without the express written agreement of Owner.
Excess Liability (Occurrence Basis)	<p>Amounts of coverage shall be no less than:</p> <ul style="list-style-type: none"> ▪ \$5,000,000 Each Occurrence ▪ \$5,000,000 Annual Aggregate 	<ul style="list-style-type: none"> ▪ Such insurance shall be excess over and be no less broad than all coverages described above. ▪ Drop-down coverage shall be provided for reduction and/or exhaustion of underlying aggregate limits and shall include a duty to defend any insured.
Professional Liability	<p>Amounts of coverage shall be no less than:</p> <ul style="list-style-type: none"> ▪ \$1,000,000 Each Occurrence ▪ \$2,000,000 Annual Aggregate ▪ If a combined Contractor's Pollution Liability and Professional Liability policy is utilized, the limits shall be \$3,000,000 Each Loss and Aggregate. ▪ Such insurance shall cover all services rendered by the Contractor and its consultants under the Agreement, including but not limited to design or design/build services. ▪ Policies written on a Claims-Made basis shall be maintained for at least two years beyond termination of the Agreement. 	<ul style="list-style-type: none"> ▪ Such insurance shall cover all services rendered by the Contractor and its subcontractors under the Agreement. ▪ This insurance is not permitted to include any type of exclusion or limitation of coverage applicable to claims arising from: <ul style="list-style-type: none"> ○ bodily injury or property damage where coverage is provided in behalf of design professionals or design/build contractors ○ habitational or residential operations ○ mold and/or microbial matter and/or fungus and/or biological substance ○ punitive, exemplary or multiplied damages. ▪ Any retroactive date must be effective prior to beginning of services for the Owner. ▪ Policies written on a Claims-Made basis shall have an extended reporting period of at least

		<p>two years beyond termination of the Agreement. Vendor shall trigger the extended reporting period if identical coverage is not otherwise maintained with the expiring retroactive date.</p>
<p>Contractors Pollution Liability</p>	<p>Amounts of coverage shall be no less than:</p> <ul style="list-style-type: none"> ▪ \$1,000,000 Each Loss ▪ \$2,000,000 Annual Aggregate ▪ If a combined Contractor’s Pollution Liability and Professional Liability policy is utilized, the limits shall be \$3,000,000 Each Loss and Aggregate. ▪ The policy must provide coverage for: <ul style="list-style-type: none"> ○ the full scope of the named insured’s operations (on-going and completed) as described within the scope of work for this Agreement ○ loss arising from pollutants including but not limited to fungus, bacteria, biological substances, mold, microbial matter, asbestos, lead, silica and contaminated drywall ○ third party liability for bodily injury, property damage, clean up expenses, and defense arising from the operations; ○ diminution of value and Natural Resources damages ○ contractual liability ○ claims arising from non-owned disposal sites utilized in the performance of this Agreement. 	<ul style="list-style-type: none"> ▪ The policy must insure contractual liability, name Owner Parties as an Additional Insured, and be primary and noncontributory to all coverage available to the Additional Insured. ▪ This insurance is not permitted to include any type of exclusion or limitation of coverage applicable to claims arising from: <ul style="list-style-type: none"> ○ Insured vs. insured actions. However, exclusion for claims made between insured within the same economic family are acceptable. ○ impaired property that has not been physically injured ○ materials supplied or handled by the named insured. However, exclusions for the sale and manufacture of products are allowed. Exclusionary language pertaining to materials supplied by the insured shall be reviewed by the certificate holder for approval. ○ property damage to the work performed by the contractor ○ faulty workmanship as it relates to clean up costs ○ punitive, exemplary or multiplied damages ○ work performed by subcontractors ▪ If coverage is provided on a Claims Made basis, coverage will at least be retroactive to the earlier of the date of this Agreement or the commencement of contractor services relation to the Work. ▪ The policy will offer an extended discovery or extended reporting clause of at least three (3) years. ▪ Completed Operations coverage shall be maintained through the purchase of renewal policies to protect the insured and additional insured for at least two (2) years after the property owner accepts the project or this contract is terminated. The purchase of an extended discovery period or an extended reporting period on a Claims Made policy or the purchase of occurrence-based Contractors Environmental Insurance will not be sufficient to meet the terms of this provision.

<p>Builders Risk</p>	<ul style="list-style-type: none"> ▪ Coverage shall be provided in an amount equal at all times to the full contract value, including change orders, and cost of debris removal for any single occurrence. ▪ Coverage shall be at least as broad as an unmodified ISO Special form, shall be provided on a completed-value basis, and shall be primary to any other insurance coverage available to the named insured parties, with that other insurance being excess, secondary and non-contributing. ▪ The policy must provide coverage for: <ul style="list-style-type: none"> ○ Agreed Value Included ○ Damage arising from error, omission or deficiency in construction methods, design, specifications, workmanship or materials, including collapse Included ○ Debris removal additional limit \$1,000,000 ○ Earthquake and Earthquake Sprinkler Leakage \$5,000,000 ○ Flood \$5,000,000 ○ Freezing Included ○ Mechanical breakdown including hot & cold testing Included ○ Ordinance or law \$1,000,000 ○ Pollutant clean-up and removal \$ 25,000 ○ Preservation of property Included ○ Theft Included • Deductible shall not exceed \$10,000 <ul style="list-style-type: none"> ○ All Risks of Direct Damage, Per Occurrence, except 2% subject to \$50,000 minimum ○ Named Storm, Earthquake and Earthquake Sprinkler Leakage, Per Occurrence \$100,000 ○ Flood, Per Occurrence or excess of NFIP if in Flood Zone A or V \$100,000 	<ul style="list-style-type: none"> ▪ Insureds shall include Owner, General Contractor, all Loss Payees and Mortgagees, and subcontractors of all tiers in the Work as Insureds. ▪ Such insurance shall cover: <ul style="list-style-type: none"> ○ all structure(s) under construction, including retaining walls, paved surfaces and roadways, bridges, glass, foundation(s), footings, underground pipes and wiring, excavations, grading, backfilling or filling; all temporary structures (e.g., fencing, scaffolding, cribbing, false work, forms, site lighting, temporary utilities and buildings) located at the site; ○ all property including materials and supplies on site for installation; ○ all property including materials and supplies at other locations but intended for use at the site; ○ all property including materials and supplies in transit to the site for installation by all means of transportation other than ocean transit; and ○ other Work at the site identified in the Agreement to which this Exhibit is attached. • No protective safeguard warranty shall be permitted. • The termination of coverage provision shall be endorsed to permit occupancy of the covered property being constructed. This insurance shall be maintained in effect, unless otherwise provided for the Agreement Documents, until the earliest of: <ul style="list-style-type: none"> ○ the date on which all persons and organizations who are insureds under the policy agree that it shall be terminated; ○ occupancy, in whole or in part; ○ the date on which release of substantial completion is executed; or ○ the date on which the insurable interests of Contractor in the Covered Property has ceased. • A waiver of subrogation provision shall be provided in favor of all insureds.
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2. General Insurance Requirements

A. Definitions. For purposes of this Agreement:

- i. "ISO" means Insurance Services Office.
- ii. "Contractor" shall include the Builder and its subcontractors of any tier.
- iii. "Owner Parties" means (a) City of Victoria, Texas (collectively referred to as "Owner"), (b) the Project, (c) any lender whose loan is secured by a lien against the Work, (d) their respective shareholders, members, partners, joint venturers, affiliates, subsidiaries, successors and assigns, (e) any directors, officers, employees, or agents of such persons or entities, and (f) others as required by the Contract Documents.

B. Policies.

- i. Contractor shall maintain such Excess Liability, Professional and Pollution insurance in identical coverage, form and amount, including required endorsements, for at least two (2) years following Date of Substantial Completion of the Work to be performed under this Agreement. Contractor shall maintain such General Liability insurance in identical coverage, form and amount, including required endorsements, for at least ten (10) years following Date of Substantial Completion of the Work to be performed under this Agreement. Contractor shall provide written representation to Owner stating Work completion date.
- ii. All policies must:
 - a. Be written through insurance companies authorized to do business in the State in which the work is to be performed and rated no less than A-: VII in the most current edition of A. M. Best's Key Rating Guide at all times Work is to be performed.
 - b. Provide a waiver of subrogation in favor of Owner Parties on all insurance coverage carried by Contractor, whether required herein or not.
 - c. Contain an endorsement providing for thirty (30) days prior written notice of cancellation to Owner.
 - d. Be provided to the Owner Parties in compliance with the requirements herein and shall contain no endorsements that restrict, limit, or exclude coverage required herein in any manner without the prior express written approval of the Owner.
- iii. Failure of any Owner Party to demand such certificate or other evidence of full compliance with these insurance requirements or failure of any Owner Party to identify a deficiency from evidence that is provided shall not be construed as a waiver of the Contractor's obligation to maintain such insurance.
- iv. Contractor shall provide to the Owner a certified copy of all insurance policies required herein within ten (10) days of any such request. Renewal policies, if necessary, shall be delivered to the Owner prior to the expiration of the previous policy.
- v. Commencement of Work without provision of the required certificate of insurance, evidence of insurance or required endorsements, or without compliance with any other provision of this Agreement, shall not constitute a waiver by any Owner Party of any rights. The Owner shall have the right, but not the obligation, of prohibiting the Contractor or any subcontractor from performing any Work until such certificate of insurance, evidence of insurance and/or required endorsements are received and approved by the Owner.

C. Limits, Deductibles and Retentions

- i. The limits of liability may be provided by a single policy of insurance or by a combination of primary and excess policies, but in no event shall the total limits of liability available for any one occurrence or accident be less than the amount required herein.
- ii. No deductible or self-insured retention shall exceed \$25,000 without prior written approval of the Owner, except as otherwise specified herein. All deductibles or retentions shall be paid by, assumed by, for the account of, and at the Contractor's sole risk. The Contractor shall not be reimbursed for same.

D. Forms

- i. If the forms of policies, endorsements, certificates or evidence of insurance required by this Exhibit A are superseded or discontinued, Owner will have the right to require other equivalent forms.

- ii. Any policy or endorsement form other than a form specified in this Exhibit A must be approved in advance by Owner.

E. Evidence of Insurance. Insurance must be evidenced as follows:

- i. ACORD Form 25 Certificate of Liability Insurance for liability coverages.
- ii. ACORD Form 28 Evidence of Commercial Property Insurance for property coverages.
- iii. Evidence shall be provided to Owner prior to commencing Work and prior to the expiration of any required coverage.
- iv. ACORD Forms specify:
 - a. Owner as certificate holder at Owner's mailing address;
 - b. Insured's name, which must match that on this Agreement;
 - c. Insurance companies producing each coverage and the policy number and policy date of each coverage;
 - d. Producer of the certificate with correct address and phone number and have the signature of the authorized representative of the producer;
 - e. Additional Insured status in favor of Owner Parties;
 - f. Amount of any deductible or self-insured retention in excess of \$25,000;
 - g. Designated Construction Project(s) General Aggregate Limit;
 - h. Primary and non-contributory status;
 - i. Waivers of subrogation; and
 - j. All exclusions and limitations added by endorsement to the General Liability coverage. This can be achieved by attachment of the Schedule of Forms and Endorsements page.
- v. Copies of the following shall also be provided:
 - a. General Liability Additional insured endorsement(s);
 - b. General Liability Schedule of Forms and Endorsements page(s); and
 - c. 30 Day Notice of Cancellation endorsement applicable to all required policies.

F. Contractor Insurance Representations to Owner Parties

- i. It is expressly understood and agreed that the insurance coverages required herein (a) represent Owner Parties' minimum requirements and are not to be construed to void or limit the Contractor's indemnity obligations as contained in this Agreement nor represent in any manner a determination of the insurance coverages the Contractor should or should not maintain for its own protection; and (b) are being, or have been, obtained by the Contractor in support of the Contractor's liability and indemnity obligations under this Agreement. Irrespective of the requirements as to insurance to be carried as provided for herein, the insolvency, bankruptcy or failure of any insurance company carrying insurance of the Contractor, or the failure of any insurance company to pay claims accruing, shall not be held to affect, negate or waive any of the provisions of this Agreement.
- ii. Failure to obtain and maintain the required insurance shall constitute a material breach of, and default under, this Agreement. If the Contractor shall fail to remedy such breach within five (5) business days after notice by the Owner, the Contractor will be liable for any and all costs, liabilities, damages and penalties resulting to the Owner Parties from such breach, unless a written waiver of the specific insurance requirement(s) is provided to the Contractor by the Owner. In the event of any failure by the Contractor to comply with the provisions of this Agreement, the Owner may, without in any way compromising or waiving any right or remedy at law or in equity, on notice to the Contractor, purchase such insurance, at the Contractor's expense, provided that the Owner shall have no obligation to do so and if the Owner shall do so, the Contractor shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.
- iii. This Exhibit A is an independent contract provision and shall survive the termination or expiration of the Contract Agreement.

G. Insurance Requirements of Contractor's Subcontractors

- i. Insurance similar to that required of the Contractor shall be provided by all subcontractors (or provided by the Contractor on behalf of subcontractors) to cover operations performed under any subcontract agreement. The Contractor shall be held responsible for any modification in these insurance requirements as they apply to subcontractors. The Contractor shall maintain certificates of insurance from all subcontractors containing provisions similar to those listed herein (modified to recognize that the certificate is from subcontractor) enumerating, among other things, the waivers of subrogation, additional insured status, and primary liability as required herein, and make them available to the Owner upon request.
- ii. The Contractor is fully responsible for loss and damage to its property on the site, including tools and equipment, and shall take necessary precautions to prevent damage to or vandalism, theft, burglary, pilferage and unexplained disappearance of property. Any insurance covering the Contractor's or its subcontractor's property shall be the Contractor's and its subcontractor's sole and complete means or recovery for any such loss. To the extent any loss is not covered by said insurance or subject to any deductible or co-insurance, the Contractor shall not be reimbursed for same. Should the Contractor or its subcontractors choose to self-insure this risk, it is expressly agreed that the Contractor hereby waives, and shall cause its subcontractors to waive, any claim for damage or loss to said property in favor of the Owner Parties.

H. Use of the Owners Equipment

The Contractor, its agents, employees, subcontractors or suppliers shall use the Owners equipment only with express written permission of the Owners designated representative and in accordance with the Owners terms and condition for such use. **IF THE CONTRACTOR OR ANY OF ITS AGENTS, EMPLOYEES, SUBCONTRACTORS OR SUPPLIERS UTILIZE ANY OF THE OWNERS EQUIPMENT FOR ANY PURPOSE, INCLUDING MACHINERY, TOOLS, SCAFFOLDING, HOISTS, LIFTS OR SIMILAR ITEMS OWNED, LEASED OR UNDER THE CONTROL OF THE OWNER, THE CONTRACTOR SHALL DEFEND, INDEMNIFY AND BE LIABLE TO THE OWNER PARTIES FOR ANY AND ALL LOSS OR DAMAGE WHICH MAY ARISE FROM SUCH USE.**

I. Release and Waiver

The Contractor hereby releases, and shall cause its subcontractors to release, the Owner Parties from any and all claims or causes of action whatsoever which the Contractor or its subcontractors might otherwise now or hereafter possess resulting in or from or in any way connected with any loss covered by insurance, whether required herein or not, or which should have been covered by insurance required herein, including the deductible or uninsured portion thereof, maintained or required to be maintained by the Contractor or its subcontractors pursuant to this Agreement. **THE FOREGOING RELEASE AND WAIVER APPLY EVEN IF THE LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE FAULT OR NEGLIGENCE OR STRICT LIABILITY OF THE OWNER PARTIES.**