



SERVICE AGREEMENT NO. 898

Police and Municipal Court Parking Project Lot Improvements Phase 2 - Controlled Access Gates

THIS **Police and Municipal Court Parking Lot Improvements Phase 2 - Controlled Access Gate Agreement** ("Agreement") is entered into by and between the City of Corpus Christi, a Texas home-rule municipal corporation ("City") and Total Protection Systems, Inc. ("Contractor"), effective upon execution by the City Manager or the City Manager's designee ("City Manager").

WHEREAS, Contractor has bid to provide and install controlled access gates in response to Request for Bid/Proposal No. Sole Source Procurement ("RFB/RFP"), which RFB/RFP includes the required scope of work and all specifications and which RFB/RFP and the Contractor's bid or proposal response, as applicable, are incorporated by reference in this Agreement as Exhibits 1 and 2, respectively, as if each were fully set out here in its entirety.

NOW, THEREFORE, City and Contractor agree as follows:

- 1. Scope.** Contractor will provide and install controlled access gates ("Services") in accordance with the attached Scope of Work, as shown in Attachment A, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety, and in accordance with Exhibit 2.
- 2. Term.** This Agreement is for two months, with performance commencing upon the date of issuance of a notice to proceed from the Contract Administrator or Purchasing Division. This Agreement includes an option to extend the term for up to zero additional zero-month periods ("Option Period"), provided, the parties do so prior to expiration of the original term or the then-current Option Period. The decision to exercise the option to extend the term of this Agreement is, at all times, within the sole discretion of the City and is conditioned upon the prior written agreement of the Contractor and the City Manager.
- 3. Compensation and Payment.** The total value of this Agreement is not to exceed \$114,543.32, subject to approved extensions and changes. Payment will be made for Services completed and accepted by the City within 30 days of acceptance, subject to receipt of an acceptable invoice. All pricing must be in accordance with the attached Bid/Pricing Schedule, as shown in

Attachment B, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety.

4. **Contract Administrator.** The Contract Administrator designated by the City is responsible for approval of all phases of performance and operations under this Agreement, including deductions for non-performance and authorizations for payment. The City's Contract Administrator for this Agreement is as follows:

Name: Shane Torno
Department: Engineering
Phone: 361-826-3502
Email: ShaneT@cctexas.com

5. **Insurance; Bonds.**

(A) Before performance can begin under this Agreement, the Contractor must deliver a certificate of insurance ("COI"), as proof of the required insurance coverages, to the City's Risk Manager and the Contract Administrator. Additionally, the COI must state that the City will be given at least 30 days' advance written notice of cancellation, material change in coverage, or intent not to renew any of the policies. The City must be named as an additional insured. The City Attorney must be given copies of all insurance policies within 10 days of the City Manager's written request. Insurance requirements are as stated in Attachment C, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety.

(B) In the event a payment bond, a performance bond, or both, are required of the Contractor to be provided to the City under this Agreement before performance can commence, the terms, conditions, and amounts required in the bonds and appropriate surety information are as included in the RFB/RFP or as may be added to Attachment C, and such content is incorporated here in this Agreement by reference as if each bond's terms, conditions, and amounts were fully set out here in its entirety.

6. **Purchase Release Order.** For multiple-release purchases of Services to be provided by the Contractor over a period of time, the City will exercise its right to specify time, place and quantity of Services to be delivered in the following manner: any City department or division may send to Contractor a purchase release order signed by an authorized agent of the department or division. The purchase release order must refer to this Agreement, and

Services will not be rendered until the Contractor receives the signed purchase release order.

- 7. Inspection and Acceptance.** Any Services that are provided but not accepted by the City must be corrected or re-worked immediately at no charge to the City. If immediate correction or re-working at no charge cannot be made by the Contractor, a replacement service may be procured by the City on the open market and any costs incurred, including additional costs over the item's bid/proposal price, must be paid by the Contractor within 30 days of receipt of City's invoice.
- 8. Warranty.** The Contractor warrants that all products supplied under this Agreement are new, quality items that are free from defects, fit for their intended purpose, and of good material and workmanship. The Contractor warrants that it has clear title to the products and that the products are free of liens or encumbrances. In addition, the products purchased under this Agreement shall be warranted by the Contractor or, if indicated in Attachment D by the manufacturer, for the period stated in Attachment D. Attachment D is attached to this Agreement and is incorporated by reference into this Agreement as if fully set out here in its entirety.
- 9. Quality/Quantity Adjustments.** Any Service quantities indicated on the Bid/Pricing Schedule are estimates only and do not obligate the City to order or accept more than the City's actual requirements nor do the estimates restrict the City from ordering less than its actual needs during the term of the Agreement and including any Option Period. Substitutions and deviations from the City's product requirements or specifications are prohibited without the prior written approval of the Contract Administrator.
- 10. Non-Appropriation.** The continuation of this Agreement after the close of any fiscal year of the City, which fiscal year ends on September 30th annually, is subject to appropriations and budget approval specifically covering this Agreement as an expenditure in said budget, and it is within the sole discretion of the City's City Council to determine whether or not to fund this Agreement. The City does not represent that this budget item will be adopted, as said determination is within the City Council's sole discretion when adopting each budget.
- 11. Independent Contractor.** Contractor will perform the work required by this Agreement as an independent contractor and will furnish such Services in its own manner and method, and under no circumstances or conditions will any agent, servant or employee of the Contractor be considered an employee of the City.

- 12. Subcontractors.** Contractor may use subcontractors in connection with the work performed under this Agreement. When using subcontractors, however, the Contractor must obtain prior written approval from the Contract Administrator if the subcontractors were not named at the time of bid or proposal, as applicable. In using subcontractors, the Contractor is responsible for all their acts and omissions to the same extent as if the subcontractor and its employees were employees of the Contractor. All requirements set forth as part of this Agreement, including the necessity of providing a COI in advance to the City, are applicable to all subcontractors and their employees to the same extent as if the Contractor and its employees had performed the work.
- 13. Amendments.** This Agreement may be amended or modified only by written change order signed by both parties. Change orders may be used to modify quantities as deemed necessary by the City.
- 14. Waiver.** No waiver by either party of any breach of any term or condition of this Agreement waives any subsequent breach of the same.
- 15. Taxes.** The Contractor covenants to pay payroll taxes, Medicare taxes, FICA taxes, unemployment taxes and all other related taxes. Upon request, the City Manager shall be provided proof of payment of these taxes within 15 days of such request.
- 16. Notice.** Any notice required under this Agreement must be given by fax, hand delivery, or certified mail, postage prepaid, and is deemed received on the day faxed or hand-delivered or on the third day after postmark if sent by certified mail. Notice must be sent as follows:

IF TO CITY:

City of Corpus Christi
Attn: Shane Torno
Title: Project Manager
Address: 1201 Leopard St., Corpus Christi, Texas 75401
Phone: 361-826-3502

IF TO CONTRACTOR:

Total Protection Systems, Inc.
Attn: Ed Donnell
Title : President
Address: P.O.Box 270837, Corpus Christi, Texas 78427
Phone : 361-289-2788

17. CONTRACTOR AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY OF CORPUS CHRISTI AND ITS OFFICERS, EMPLOYEES AND AGENTS ("INDEMNITEES") FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, CLAIMS, DEMANDS, SUITS AND CAUSES OF ACTION OF ANY NATURE WHATSOEVER ON ACCOUNT OF PERSONAL INJURIES (INCLUDING DEATH AND WORKERS' COMPENSATION CLAIMS), PROPERTY LOSS OR DAMAGE, OR ANY OTHER KIND OF INJURY, LOSS, OR DAMAGE, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, ATTORNEYS' FEES AND EXPERT WITNESS FEES WHICH ARISE OR ARE CLAIMED TO ARISE OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE PERFORMANCE OF THIS AGREEMENT, REGARDLESS OF WHETHER THE INJURIES, DEATH OR DAMAGES ARE CAUSED OR ARE CLAIMED TO BE CAUSED BY THE CONCURRENT OR CONTRIBUTORY NEGLIGENCE OF INDEMNITEES, BUT NOT IF BY THE SOLE NEGLIGENCE OF INDEMNITEES UNMIXED WITH THE FAULT OF ANY OTHER PERSON. CONTRACTOR MUST, AT ITS OWN EXPENSE, INVESTIGATE ALL CLAIMS AND DEMANDS, ATTEND TO THEIR SETTLEMENT OR OTHER DISPOSITION, DEFEND ALL ACTIONS BASED THEREON WITH COUNSEL SATISFACTORY TO THE CITY ATTORNEY, AND PAY ALL CHARGES OF ATTORNEYS AND ALL OTHER COSTS AND EXPENSES OF ANY KIND ARISING FROM ANY SAID LIABILITY, DAMAGE, LOSS, CLAIMS, DEMANDS, SUITS, OR ACTIONS. THE INDEMNIFICATION OBLIGATIONS OF CONTRACTOR UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.

18. Termination.

(A) The City Manager may terminate this Agreement for Contractor's failure to perform the work specified in this Agreement or to keep any required insurance policies in force during the entire term of this Agreement. The Contract Administrator must give the Contractor written notice of the breach and set out a reasonable opportunity to cure. If the Contractor has not cured within the cure period, the City Manager may terminate this Agreement immediately thereafter.

(B) Alternatively, the City Manager may terminate this Agreement for convenience upon 30 days advance written notice to the Contractor. The City Manager may also terminate this Agreement upon 24 hours written notice to the Contractor for failure to pay or provide proof of payment of taxes as set out in this Agreement.

19. **Assignment.** No assignment of this Agreement by the Contractor, or of any right or interest contained herein, is effective unless the City Manager first gives written consent to such assignment. The performance of this Agreement by the Contractor is of the essence of this Agreement, and the City Manager's right to withhold consent to such assignment is within the sole discretion of the City Manager on any ground whatsoever.
20. **Severability.** Each provision of this Agreement is considered to be severable and, if, for any reason, any provision or part of this Agreement is determined to be invalid and contrary to applicable law, such invalidity shall not impair the operation of nor affect those portions of this Agreement that are valid, but this Agreement shall be construed and enforced in all respects as if the invalid or unenforceable provision or part had been omitted.
21. **Order of Precedence.** In the event of any conflicts or inconsistencies between this Agreement, its attachments, and exhibits, such conflicts and inconsistencies will be resolved by reference to the documents in the following order of priority:
 - A. this Agreement and its attachments
 - B. the bid solicitation document, including addenda (Exhibit 1)
 - C. the Contractor's bid response (Exhibit 2)
22. **Certificate of Interested Parties.** Contractor agrees to comply with Texas Government Code Section 2252.908, as it may be amended, and to complete Form 1295 "Certificate of Interested Parties" as part of this Agreement.
23. **Governing Law.** This Agreement is subject to all federal, State, and local laws, rules, and regulations. The applicable law for any legal disputes arising out of this Agreement is the law of the State of Texas, and such form and venue for such disputes is the appropriate district, county, or justice court in and for Nueces County, Texas.
24. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties concerning the subject matter of this Agreement and supersedes

all prior negotiations, arrangements, agreements and understandings, either oral or written, between the parties.

(SIGNATURE PAGE FOLLOWS)

CONTRACTOR

Signature: Total Protection Sp. Inc.
Printed Name: LINDA L. DONNELL
Title: C.E.O.
Date: 9/14/16

CITY OF CORPUS CHRISTI

Signature: _____
Printed Name: _____
Title: _____
Date: _____

Attached and Incorporated by Reference:

Attachment A: Scope of Work
Attachment B: Bid/Pricing Schedule
Attachment C: Insurance/Bond Requirements
Attachment D: Warranty Requirements

Incorporated by Reference Only:

Exhibit 1: RFB/RFP No.
Exhibit 2: Contractor's Bid/Proposal Response

Attachment A – Scope of Work

Scope of Work: This project includes 2 full height personnel gates, 2 - 23'6" by 6'8" gates along with posts, 2 - 1 hp gate operator, 1 emergency all gates open station, 1 long range reader with mounting stand, 2 card readers with stands, 200 windshield tags, 4 loop detectors, as well as all hardware, enclosures, pull stations, programming, conduit, wiring, and incidentals required for a working system. All related work should be coordinated with Engineering Services, Corpus Christi Police Department, and fencing contractor.

Attachment B – Schedule of Pricing

Slide Gate Operator System

Qty	Part #	Description	List	Total
2	SL3000101U	1hp gate operator 115V	\$ 3,285.90	\$ 6,571.80
2	LMRRU	safety beam	\$ 199.80	\$ 399.60
4	LOOPDETLM	plugin loop detector	\$ 161.10	\$ 644.40
2	MSEL	mounting stand	\$ 276.30	\$ 552.60
4	LOT	Saw cut loops	\$ 600.00	\$ 2,400.00
1	LOT	Freight	\$ 150.00	\$ 150.00

Tymetal Slide Gates

Qty	Part #	Description	List	Total
2	23'6"X6'8"	gate/post/installed	\$ 13,210.80	\$ 26,421.61
1	LOT	freight	\$ 1,009.80	\$ 1,009.80
2	ASSY	Unistrut rack for enclosure	\$ 200.00	\$ 400.00

Personal Gates

Qty	Part #	Description	List	Total
2	MSGXE	Full height personnel gate	\$ 12,309.50	\$ 24,619.00
1	LOT	Freight	\$ 759.00	\$ 759.00

Access Control System

Qty	Part #	Description	List	Total
1	02-407	Emg all gates open station (dispatch)	\$ 75.01	\$ 75.01
1	WS-UHF-0-0	Long Range Reader	\$ 2,515.50	\$ 2,515.50
1	WS-UHF-0-0	LR power supply	\$ 70.00	\$ 70.00
1	WS-UHF-0-0	LR mounting bracket	\$ 70.00	\$ 70.00
1	LR-P-12	LR Mounting stand (3")	\$ 105.60	\$ 105.60
200	WS-UHF-0-0	Windshield tags (per PD)	\$ 14.00	\$ 2,800.00
1	5375G	MaxiPROX reader	\$ 739.80	\$ 739.80
2	5355G	ProxPro card reader	\$ 317.00	\$ 634.00
1	DIN-24	24V DIN power supply	\$ 72.00	\$ 72.00
1	RS-TPSI-L	Reader Stand low	\$ 673.60	\$ 673.60
1	HS-TPSI	Hood Small	\$ 240.00	\$ 240.00
1	FP-TPSI	Faceplate	\$ 80.00	\$ 80.00
1	3270	Knox Lock Box blk Hinged	\$ 579.00	\$ 579.00
1	EP1502	Dual door electronics	\$ 1,338.30	\$ 1,338.30
3	MR50	Single door electronics	\$ 372.60	\$ 1,117.80
2	181808	18x18x8 NEMA 4 enclosure	\$ 644.00	\$ 1,288.00
3	LIN-PS	Linear Power Supply	\$ 130.50	\$ 391.50
3	T1656	Transformer	\$ 60.30	\$ 180.90
1	ENCL	Enclosure indoor	\$ 261.90	\$ 261.90
250	Oasis	Oasis Cable inside bldg..	\$ 1.86	\$ 465.00
1000	Beldon	4/18 cable outdoor strd	\$ 0.6976	\$ 697.60
6	LOT	TPSI System Programming	\$ 110.00	\$ 660.00
200	LOT	MH Installation	\$ 85.00	\$ 17,000.00

1	Lot	Boring from building to gates, install two 1" conduits	\$ 10,900.00	\$ 10,900.00
1	Lot	Asphalt repair for boring locations five	\$ 1,440.00	\$ 1,440.00
2	lot	In ground pull boxes with covers drive-over	\$ 560.00	\$ 1,120.00
4	lot	Operator Pads	\$ 250.00	\$ 1,000.00
1	lot	Electrical, wiring, breakers, installation (sub-contract)	\$ 4,100.00	\$ 4,100.00

\$ 114,543.32

NOTES:

1. Does include any city permits
2. Does not include traffic controls

Attachment C – Insurance and Bond Requirements

INSURANCE REQUIREMENTS

ARTICLE 1 – INSURANCE REQUIREMENTS

1.01 CONTRACTOR’S INSURANCE AMOUNTS

- A. Provide the insurance coverage for at least the following amounts unless greater amounts are required by Laws and Regulations:

Type of Insurance	Minimum Insurance Coverage
Commercial General Liability including 1. Commercial Form 2. Premises – Completed Operations 3. Explosions and Collapse Hazard 4. Underground Hazard 5. Products / Completed Operations Hazard 6. Contractual Liability 7. Broad Form Property Damage 8. Independent Contractors 9. Personal & Advertising Injury	\$1,000,000 Per Occurrence \$2,000,000 Aggregate
Business Automobile Liability - Owned, Non-Owned, Rented and Leased	\$1,000,000 Combined Single Limit
Workers’ Compensation	Statutory
Employer’s Liability	\$500,000/ 500,000/ 500,000
Excess Liability/Umbrella Liability <i>Required if Contract Price > \$5,000,000</i>	\$1,000,000 Per Occurrence
Contractor’s Pollution Liability / Environmental Impairment Coverage Not limited to sudden and accidental discharge. To include long-term environmental impact for the disposal of pollutants/contaminants. <i>Required if excavation > 3 ft</i>	\$1,000,000 Per Claim <input type="checkbox"/> Required <input checked="" type="checkbox"/> Not Required
Builder’s Risk (All Perils including Collapse) <i>Required for vertical structures and bridges</i>	Equal to Full Replacement Cost of Structure and Contents <input type="checkbox"/> Required <input checked="" type="checkbox"/> Not Required

Installation Floater

Equal to Contract Price

Required if installing city-owned equipment

☐ Required ☒ Not Required

1.02 GENERAL PROVISIONS

- A. Provide insurance coverages and limits meeting the requirements for insurance in accordance with Article 6 of the General Conditions and this Section.
- B. Provide endorsements to the policies as outlined in this Section.
- C. Obtain insurance from companies that are duly licensed or authorized in the State of Texas to issue insurance policies for the required limits and coverages. Provide insurance from companies that have an A.M. Best rating of A-VIII or better.
- D. Furnish copies of endorsements and documentation of applicable self-insured retentions and deductibles upon request by OPT or any named insured or additional insured. Contractor may block out (redact) any confidential premium or pricing information contained in any endorsement furnished under this Contract.
- E. The name and number of the Project must be referenced on the certificate of insurance.
- F. OPT's failure to demand such certificates or other evidence of the Contractor's full compliance with the insurance requirements or failure to identify a deficiency in compliance from the evidence provided is not a waiver of the Contractor's obligation to obtain and maintain the insurance required by the Contract Documents.
- G. Notify the Owner if the Contractor fails to purchase or maintain the insurance required by the Contract Documents. Contractor shall not be allowed to perform any Work on the Project until the required insurance policies are in effect. A Certificate of Liability Insurance shall be submitted to the OPT.
- H. Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16 of the General Conditions if Contractor fails to obtain or maintain the required insurance.
- I. Owner does not represent that the insurance coverage and limits established in this Contract are adequate to protect Contractor or Contractor's interests.
- J. The required insurance and insurance limits do not limit the Contractor's liability under the indemnities granted to Owner's Indemnitees in the Contract Documents.
- K. Provide for an endorsement that the "other insurance" clause shall not apply to the OPT where the OPT is an additional insured shown on the policy. Contractor's insurance is primary and non-contributory with respect to any insurance or self-insurance carried by the OPT for liability arising out of operations under this Contract.
- L. Include the Owner and list the other members of the OPT and any other individuals or entities identified in the Supplementary Conditions as additional insureds on all policies with the exception of the workers' compensation policy and Contractor's professional liability policy.

1.03 CONTRACTOR'S INSURANCE

- A. Purchase and maintain workers' compensation and employer's liability insurance for:
 - 1. Claims under workers' compensation, disability benefits, and other similar employee benefit acts. Obtain workers' compensation coverage through a licensed insurance

company in accordance with Texas law and written on a policy and endorsements approved by the Texas Department of Insurance. Provide insurance in amounts to meet all workers' compensation obligations. Provide an "All Other States" endorsement if Contractor is not domiciled in Texas and policy is not written in accordance with Texas Department of Insurance rules.

2. Claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees.
 3. United States Longshoreman and Harbor Workers' Compensation Act and Jones Act coverage (if applicable).
 4. Foreign voluntary worker compensation (if applicable).
- B. Purchase and maintain commercial general liability insurance covering all operations by or on behalf of Contractor. The expected coverage is that which would be included in a commercially available ISO Commercial General Liability policy and should provide coverage on an occurrence basis, against:
1. Claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
 2. Claims for damages insured by reasonably available personal injury liability coverage which are sustained;
 3. By any person as a result of an offense directly or indirectly related to the employment of such person by Contractor; and
 4. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including any resulting loss of use.
- C. Provide Contractor's commercial general liability policy that is written on a 1996 (or later) ISO commercial general liability form (occurrence form) and include the following coverages and endorsements:
1. Products and completed operations coverage as required in this Section. Insurance is to remain in effective for 3 years after final payment. Furnish evidence of the continuation of this insurance at final payment and again each year for 3 years after final payment to Owner and each named insured or additional insured.
 - a. If required by Paragraph 1.01, provide and maintain Installation Floater insurance for property under the care, custody, or control of Contractor. Provide Installation Floater insurance that is a broad form or "All Peril" policy providing coverage for all materials, supplies, machinery, fixtures, and equipment which will be incorporated into the Work.
 - 1) Provide coverage under the Contractor's Installation Floater that includes:
 - a) Faulty or Defective workmanship, materials, maintenance, or construction;
 - b) Cost to remove Defective or damaged Work from the Site or to protect it from loss or damage;
 - c) Cost to cleanup and remove pollutants;
 - d) Coverage for testing and startup;
 - e) Any loss to property while in transit;
 - f) Any loss at the Site;

- g) Any loss while in storage, both on and off the Site; and
 - h) Any loss to temporary Project Works if their value is included in the Contract Price.
- 2) Coverage cannot be contingent on an external cause or risk or limited to property for which the Contractor is legally liable. Provide limits of insurance adequate to cover the value of the installation. Pay any deductible carried under this coverage and assume responsibility for claims on materials, supplies, machinery, fixture, and equipment which will be incorporated into the Work while in transit or in storage.
- 2. Blanket contractual liability coverage for Contractor's contractual indemnity obligations in Paragraph 7.14 of the General Conditions, and all other contractual indemnity obligations of Contractor in the Contract Documents. Industry standard ISO Contractual Liability coverage will meet this obligation.
- 3. Broad form property damage coverage.
- 4. Severability of interest.
- 5. Underground explosion and collapse coverage.
- 6. Personal injury coverage.
- 7. Endorsement CG 2032, "Additional Insured - Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.
- D. Purchase and maintain automobile liability insurance against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.
- E. For Projects with a Contract Value that exceeds \$5,000,000, purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the paragraphs above. Provide coverage that is at least as broad as all underlying policies. Provide a policy that provides first-dollar liability coverage as needed.
- F. Provide Contractor's commercial general liability and automobile liability policies that:
 - 1. Are written on an occurrence basis;
 - 2. Include the individuals or entities identified in the Supplementary Conditions as additional insureds;
 - 3. Include coverage for Owners Indemnitees as defined in Article 1 of the General Conditions; and
 - 4. Provide primary coverage for all claims covered by the policies, including those arising from both ongoing and completed operations.
- G. Purchase and maintain insurance coverage for third-party injury and property damage claims, including clean-up costs that result from Hazardous Environmental Conditions which result from Contractor's operations and completed operations. Provide Contractor's pollution liability insurance that includes long-term environmental impacts for the disposal of pollutants/contaminants and is not limited to sudden and accidental discharge. The completed operations coverage is to remain in effect for 3 years after final payment. The policy must name OPT and any other individuals and entities identified in the Supplementary Conditions as additional insureds.

- H. Purchase and maintain applicable professional liability insurance, or have Subcontractors and Suppliers do so, if Contractor or any Subcontractor or Supplier will provide or furnish professional services under this Contract.
- I. The policies of insurance required by this Section must:
 - 1. Include at least the specific coverages and be written for not less than the limits of liability provided in this Section or required by Laws or Regulations, whichever is greater.
 - 2. Contain a provision that coverage afforded will not be canceled or materially changed until at least 30 days prior written notice has been given to Contractor, Owner, and all named insureds and additional insureds.
 - 3. Remain in effect at all times when Contractor is performing Work or is at the Site to conduct tasks arising from the Contract Documents.
 - 4. Be appropriate for the Work being performed and provide protection from claims resulting from the Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether performed by Contractor, Subcontractor, Supplier, anyone directly or indirectly employed or retained by any of them, or by anyone for whose acts they may be liable.
- J. The coverage requirements for specific policies of insurance must be met directly by those policies and may not rely on excess or umbrella insurance provided in other policies to meet the coverage requirement.

1.04 PROPERTY INSURANCE

- A. Purchase and maintain builder's risk insurance in the amount of the full replacement cost of the Project. This policy is subject to the deductible amounts requirements in this Section or those required by Laws and Regulations and must comply with the requirements of Paragraph 1.06. This insurance shall:
 - 1. Include the OPT, Contractor, and all Subcontractors, and any other individuals or entities identified in the Supplementary Conditions, as named insureds.
 - 2. Be written on a builder's risk "all risk" policy form that includes insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and insures against at least the following perils or causes of loss: fire; lightning; windstorm; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; water damage (other than that caused by flood); and such other perils or causes of loss as may be specifically required by this Section. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk, by endorsement or otherwise, this insurance may be provided through other insurance policies acceptable to Owner and Contractor.
 - 3. Cover expenses incurred in the repair or replacement of any insured property.
 - 4. Cover materials and equipment in transit or stored prior to being incorporated in the Work.

5. Cover Owner-furnished or assigned property.
 6. Allow for partial utilization of the Work by Owner.
 7. Allow for the waiver of the insurer's subrogation rights as set forth below.
 8. Provide primary coverage for all losses and damages caused by the perils or causes of loss covered.
 9. Not include a co-insurance clause.
 10. Include a broad exception for ensuing losses from physical damage or loss with respect to any Defective workmanship, design, or materials exclusions.
 11. Include testing and startup.
 12. Be maintained in effect until the Work as a whole is complete, unless otherwise agreed to in writing by Owner and Contractor.
- B. Evidence of insurance provided must contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each named insured.
- C. Pay for costs not covered by the policy deductible.
- D. Notify builder's risk insurance provider if Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 15.04 of the General Conditions. Maintain the builder's risk insurance in effect during this Partial Occupancy or Use.
- E. Contractor may purchase other special insurance to be included in or to supplement the builder's risk or property insurance policies provided under this Section.
- F. Contractor, Subcontractors, or employees of the Contractor or a Subcontractor owning property items, such as tools, construction equipment, or other personal property not expressly covered in the insurance required by the Contract Documents are responsible for providing their own insurance.

1.05 WAIVER OF RIGHTS

- A. Insurance shall include a waiver of subrogation in favor of the additional insureds identified in SECTION 00 73 00 SUPPLEMENTARY CONDITIONS.
- B. All policies purchased in accordance with this Section are to contain provisions to the effect that the insurers have no rights of recovery against OPT, named insureds or additional insureds in the event of a payment for loss or damage. Contractor and insurers waive all rights against the Owner's Indemnities for losses and damages created by or resulting from any of the perils or causes of loss covered by these policies and any other applicable property insurance. None of these waivers extend to the rights Contractor has to the proceeds of insurance as trustee.
- C. Contractor is responsible for assuring that agreements with Subcontractors contains provisions that the Subcontractor waive all rights against Owner's Indemnities, Contractor, named insureds and additional insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages created by or resulting from any of the perils or causes of loss covered by builder's risk insurance and other property insurance.

1.06 OWNER'S INSURANCE FOR THE PROJECT

- A. Owner is not responsible for purchasing and maintaining any insurance to protect the interest of the Contractor, Subcontractors, or others in the Work. The stated limits of insurance required are minimum only. Determine the limits that are adequate. These limits may be basic policy limits or any combination of basic limits and umbrella limits. In any event, Contractor is fully responsible for all losses arising out of, resulting from, or connected with operations under this Contract whether or not these losses are covered by insurance. The acceptance of evidence of insurance by the OPT, named insureds, or additional insureds does not release the Contractor from compliance with the insurance requirements of the Contract Documents.

ARTICLE 2 – EVIDENCE OF INSURANCE

2.01 ACCEPTABLE EVIDENCE OF INSURANCE

- A. Provide evidence of insurance acceptable to the Owner with the executed Contract Documents. Provide the following as evidence of insurance:
 - 1. Certificates of Insurance on an acceptable form;
 - 2. Riders or endorsements to policies; and
 - 3. Policy limits and deductibles.
- B. Provide a list of "Additional Insureds" for each policy.
- C. Provide evidence that waivers of subrogation are provided on all applicable policies.
- D. Provide evidence of requirements for 30 days' notice before cancellation or any material change in the policy's terms and conditions, limits of coverage, or change in deductible amount.

2.02 CERTIFICATES OF INSURANCE

- A. Submit Certificates of Insurance meeting the following requirements:
 - 1. Form has been filed with and approved by the Texas Department of Insurance under Texas Insurance Code §1811.101; or
 - 2. Form is a standard form deemed approved by the Department under Texas Insurance Code §1811.101.
 - 3. No requirements of this Contract may be interpreted as requiring the issuance of a certificate of insurance on a certificate of insurance form that has not first been filed with and approved by the Texas Department of Insurance.
- B. Include the name of the Project in the description of operations box on the certificate of insurance.

2.03 INSURANCE POLICIES

- A. If requested by the Owner, provide a copy of insurance policies, declaration pages and endorsements, and documentation of applicable self-insured retentions and deductibles.
- B. Contractor may block out (redact) any proprietary information or confidential premium pricing information contained in any policy or endorsement furnished under this Contract.

2.04 CONTINUING EVIDENCE OF COVERAGE

- A. Provide updated, revised, or new evidence of insurance in accordance this Section prior to the expiration of existing policies.
- B. Provide evidence of continuation of insurance coverage at final payment and for the following 3 years.

2.05 NOTICES REGARDING INSURANCE

- A. Notices regarding insurance are to be sent to the Owner at the following address:
City of Corpus Christi – Engineering
Attn: Construction Contract Admin.
P.O. Box 9277
Corpus Christi, TX 78469-9277
- B. Submit questions regarding insurance requirements to the Construction Contract Administrator by calling 361-826-3530.

ARTICLE 3 – TEXAS WORKERS’ COMPENSATION INSURANCE REQUIRED NOTICE

3.01 WORKERS’ COMPENSATION INSURANCE COVERAGE

- A. Definitions:
 - 1. Certificate of coverage (“certificate”) - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers’ compensation insurance coverage for the person’s or entity’s employees providing services on a project, for the duration of the Project.
 - 2. Duration of the Project - includes the time from the beginning of the Work on the Project until the Contractor’s/person’s Work on the Project has been completed and accepted by the governmental entity.
 - 3. Persons providing services on the Project (“Subcontractor” in §406.096) - includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the Project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the Project. “Services” include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. “Services” does not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.
- B. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the Project, for the duration of the Project.
- C. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the Contract.
- D. If the coverage period shown on the Contractor’s current certificate of coverage ends during the duration of the Project, the Contractor must, prior to the end of the coverage

period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

- E. The Contractor shall obtain from each person providing services on a project, and provide to the governmental entity:
 - 1. A certificate of coverage, prior to that person beginning Work on the Project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the Project; and
 - 2. No later than seven days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.
- F. The Contractor shall retain all required certificates of coverage for the duration of the Project and for one year thereafter.
- G. The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.
- H. The Contractor shall post on each Project Site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- I. The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:
 - 1. Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the Project, for the duration of the Project;
 - 2. Provide to the Contractor, prior to that person beginning Work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the Project;
 - 3. Provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
 - 4. Obtain from each other person with whom it contracts, and provide to the Contractor:
 - a. A certificate of coverage, prior to the other person beginning Work on the Project; and
 - b. A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
 - 5. Retain all required certificates of coverage on file for the duration of the Project and for one year thereafter;
 - 6. Notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and

7. Contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.
- J. By signing this Contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- K. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the governmental entity to declare the Contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

END OF INSURANCE SECTION

BONDS

Payment and Performance bonds are required for this project and must be maintained at the current value of the Agreement including any change orders. Bonds must remain in effect for the duration of this Agreement.

END OF BOND SECTION

Attachment D – Warranty

Warranty – A one year warranty will be provided on all parts and labor for work performed under this Agreement. The effective date of the warranty will begin when the project is accepted by the City as final completion.