

AGREEMENT BETWEEN CORPUS CHRISTI BUSINESS AND JOB DEVELOPMENT CORPORATION AND COMMUNITY DEVELOPMENT CORPORATION OF BROWNSVILLE, DBA COME DREAM. COME BUILD.

This Agreement for the Type A Affordable Housing Program – 4017 Capitol Drive Redevelopment (“Agreement”) is entered into between the Corpus Christi Business and Job Development Corporation (“Corporation”) and the Community Development Corporation of Brownsville, dba come dream. come build. (the “Developer”).

WHEREAS, the Texas Legislature in Section 501 of the Local Government Code (Development Corporation Act of 1979) empowered local communities with the ability to adopt an optional local sales and use tax as a means of improving the economic health and prosperity of their citizens;

WHEREAS, on November 5, 2002, residents of the City of Corpus Christi (the “City”) passed Proposition 2, New and Expanded Business Enterprises, which authorized the adoption of a sales and use tax for the promotion and development of new and expanded business enterprises at the rate of one-eighth of one percent to be imposed for 15 years;

WHEREAS, in the same election, the residents of the City passed Proposition 2B, Affordable Housing, which authorized the use of a portion of the sales and use tax approved under Proposition 2 for affordable housing, up to \$500,000 annually, so long as there are projects for which the amount can reasonably be used;

WHEREAS, the 1/8 cent sales tax authorized by passage of Proposition 2 and allocated under Proposition 2B for affordable housing was subsequently enacted by the City’s City Council (“City Council”) and filed with the State Comptroller of Texas, effective April 1, 2003, to be administered by the Corporation’s Board of Directors (“Board”);

WHEREAS, the Board wishes to fund affordable housing projects in an effective manner;

WHEREAS, the City and the Board worked together on the creation of Request for Proposals (“RFP”) No. 2354 seeking the services of a developer to create affordable housing units on a decommissioned City park located at 4017 Capitol Drive (“Project”).

WHEREAS, the Board has determined that it is in the best interests of the residents of the City that the Developer be awarded affordable housing funds, by execution of this Agreement, to accomplish the affordable housing project described in the Scope of Work, which is attached hereto as **Exhibit A** and incorporated herein by reference as if laid out here in its entirety and the Developer’s Proposal response to RFP No. 2354, which is incorporated hereto by reference as if laid out here in its entirety;

In consideration of the covenants, promises, and conditions stated in this Agreement, the Corporation and the City agree as follows:

- 1. Agreement to Provide Affordable Housing Services.** This Agreement between the Corporation and the Developer is executed to implement the promotion and development of the Project. In performance of the Agreement, Developer will:
 - a. Provide a detailed project concept and specific scope for the Project, including a project schedule to the Corporation and the City within 60 days following the Effective Date. The

Assistant City Manager, as an agent of the Corporation, must approve the project concept prior to the start of any work, including preparation of the property. The Project must be an affordable housing project, as described by 42 U.S.C. Section 12745, and must create homes for homeownership by qualified individuals.

- b. Complete construction of the project within two years following the approval and recordation of the plat. Developer will comply with all laws, rules, and ordinances in the construction of the Project and will obtain all required permits.
- c. Restrict the use of any units constructed as part of the Project to affordable housing, as described by 42 U.S.C. Section 12745, for a period of 20 years (the "Affordability Period").

2. Compensation. In exchange for the services needed to develop the Project, the Corporation will provide the following compensation to the Developer:

- a. Following the approval of the project concept, specific scope, and design, and a request from the Developer, the Corporation will pay the Developer the amount of \$154,227.00. The total amount will be split into five payments made upon notice from the Developer and a showing that the Developer has completed 20%, 40%, 60%, 80%, and 100% of the required work to complete the Project. Payments will be made within 30 days of confirmation by City staff that the requisite work has been properly completed.
- b. If the Developer fails to construct the Project within two years following the recordation of the plat, the Developer will, within 90 days following that end of that two year period, reimburse to the Corporation (or the City if the Corporation no longer exists at that time) all funds paid to the Developer in accordance with this Agreement.

3. City Council Approval. This Agreement is subject to the approval of the City Council and shall not be effective unless approved by City Council.

4. Property Sale Limited to Affordable Housing. During the term of this Agreement and the Affordability Period, Developer may only sell the property or the Project to qualified individuals for use as affordable housing. If, during the term of this Agreement or the Affordability Period, the Developer sells or transfers the property or any units constructed thereon without the restriction that such property be restricted to qualifies individuals for use as affordable housing, the Developer shall, within 90 days following the transfer or sale, reimburse to the Corporation (or the City if the Corporation no longer exists at that time) all funds paid to the Developer in accordance with this Agreement.

5. Effective Date. The effective date of this Agreement is the date on which the City Council grants approval to the Corporation for this Project, so long as all parties have executed this Agreement.

6. Term. The term of this is for four years beginning on the Effective Date. The term may be extended by mutual agreement in writing if additional time is needed to complete the Project.

7. Termination. Corporation may terminate this Agreement 30 days' written notice of Developer's failure to comply with any terms of the Agreement.

- 8. Amendments or Modifications.** No amendments or modifications to this Agreement or to the Project may be made, nor any provision waived, unless the amendment or modification is made in writing and signed by persons duly authorized to sign agreements on behalf of all parties.
- 9. Notices.** Any required written notices shall be sent, certified mail, return receipt requested, addressed as follows:

If to Corporation:

City of Corpus Christi Business and Job Development Corporation
Attn: President
1201 Leopard Street
Corpus Christi, Texas 78401

With a copy to:

City of Corpus Christi
Attn.: City Attorney
P.O. Box 9277
Corpus Christi, Texas 78469-9277

If to Developer:

Community Development Corporation of Brownsville, dba come dream. come build.
Attn.: Nick Mitchell-Bennett
901 E. Levee St.
Brownsville, Texas 78520

Notice is effective upon deposit in the United States mail in the manner provided above.

- 10. Relationship of Parties.** In performing this Agreement, the Corporation and the Developer shall act in an individual capacity, and not as agents, representatives, employees, employers, partners, joint-venturers, or associates of one another. The employees or agents of either party may not be, nor be construed to be, the employees or agents of the other party for any purpose.

11. Insurance; Bonds.

- a. Before performance can begin under this Agreement, the Developer must deliver a certificate of insurance ("COI"), as proof of the required insurance coverages, to the City's Risk Manager and the Contracts and Procurement Department. Additionally, the COI must state that the City or the Corporation 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 and the Corporation must be named as additional insureds. The City Attorney must be given copies of all insurance policies within 10 days of the Corporation's written request. Insurance requirements are as stated in **Exhibit B**, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety.

- b. In the event that a payment bond, a performance bond, or both, are required of the Developer 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 RFP or as may be added to **Exhibit B**, 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.

12. Non-Appropriation. The continuation of this Agreement after the close of any fiscal year of the City and Corporation, 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 and the Corporation's Board to determine whether or not to fund this Agreement. The Corporation 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.

13. Waiver. No waiver by either party of any breach of any term or condition of this Agreement waives any subsequent breach of the same.

14. Taxes. The Developer covenants to pay payroll taxes, Medicare taxes, FICA taxes, unemployment taxes and all other applicable taxes. Upon request, the Corporation shall be provided proof of payment of these taxes within 15 days of such request.

15. DEVELOPER SHALL FULLY INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY OF CORPUS CHRISTI, THE CORPUS CHRISTI BUSINESS AND JOB DEVELOPMENT CORPORATION, AND THEIR RESPECTIVE OFFICERS, EMPLOYEES AND AGENTS ("INDEMNITEES") FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, CLAIMS, DEMANDS, SUITS, AND CAUSES OF ACTION OF WHATEVER NATURE, CHARACTER, OR DESCRIPTION ON ACCOUNT OF PERSONAL INJURIES, 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 A BREACH OF THIS AGREEMENT OR THE PERFORMANCE OF THIS AGREEMENT BY THE DEVELOPER OR RESULTS FROM THE NEGLIGENT ACT, OMISSION, MISCONDUCT, OR FAULT OF THE DEVELOPER OR ITS EMPLOYEES, CONTRACTORS, OR AGENTS. DEVELOPER 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 OR RESULTING FROM ANY SAID LIABILITY, DAMAGE, LOSS, CLAIMS, DEMANDS, SUITS, OR ACTIONS. THE INDEMNIFICATION OBLIGATIONS OF DEVELOPER

UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.

- 16. Assignment.** No assignment of this Agreement by the Developer, or of any right or interest contained herein, is effective unless the Executive Director of the Corporation first gives written consent to such assignment. The performance of this Agreement by the Developer is of the essence of this Agreement, and the Executive Director's right to withhold consent to such assignment is within the sole discretion of the Executive Director on any ground whatsoever.
- 17. 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.
- 18. Governing Law.** Developer agrees to comply with all federal, Texas, and City laws in the performance of this Agreement. 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.
- 19. Undocumented Workers.** Developer does not and agrees that it will not knowingly employ any undocumented workers. If, after receiving payments under this Agreement, Developer is convicted of a violation under 8 U.S.C. Section 1324a(f), Developer shall repay the payments received under this Agreement, including the cost of property acquisition, to the Corporation, with interest at the Wall Street Journal Prime Rate, not later than the 120th day after the date Developer has been notified of the violation.
- 20. 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]

**CORPUS CHRISTI BUSINESS &
JOB DEVELOPMENT CORPORATION**

**COMMUNITY DEVELOPMENT CORPORATION OF
BROWNSVILLE, DBA COME DREAM. COME BUILD.**

Scott Harris
President

Date: _____

Nick Mitchell-Bennett
Executive Director

Date: _____

ATTEST:

Rebecca Huerta
City Secretary

Date: _____

APPROVED AS TO FORM:

Assistant City Attorney

Exhibit A - Scope of Work

1.1. General Requirements

The Developer shall develop affordable housing for citizens of Corpus Christi, Texas. For the purpose of this project, affordable housing is defined as meeting the income eligibility requirements per household size as defined by the U.S. Department of Housing and Urban Development. The timeline for completion of the units is two years post plat. The location is 4017 Capitol Drive, Corpus Christi, Texas 78413. This location is currently a decommissioned City Park. Please see Attachment A-1 for a site map.

1.2. City Objectives

The City of Corpus Christi supports diverse populations and does not discriminate in housing based on race, color, religion, sex, national origin, physical or mental handicaps, or family status. The City of Corpus Christi desires to facilitate construction of affordable housing development that will:

1. Provide a mix of units housing units;
2. Provide a general project concept;
3. Be attractive and compatible with the character of the neighborhood and larger community, both aesthetically and functionally;
4. Utilize environmentally-friendly and sustainable principles in project design and construction;
5. Incorporate community input on the proposed development unit mix, affordability and physical design;
6. Possibility organize a Home Owners Association (HOA); and
7. May be a development for multi-family.

1.3. Scope of Work

The scope of work shall include, but will not be limited to:

Development Parameters:

A. Project Size

Development may include up to the maximum allowable number of units consistent with the land use policies, objectives, guidelines and the goals of this RFP.

B. Units Size and Tenure

All units are expected to be homeownership units. Unit square footage desired is greater than 1100 square feet.

C. Affordability Requirements

All units shall be affordable to households serving at or below 80% Area Median Income (AMI). Income levels are defined using the income limits published by the U.S. Department of Urban and Housing Development (HUD) for low income households in Nueces County, as published by HUD and located at:

<https://www.huduser.gov/portal/datasets/il/il2018/2018summary.odn>

D. Length of Affordability Term

The long-term affordability period shall be a minimum of 20 years.

E. Green Building and Energy Efficiency Requirements

All new construction projects must comply with Energy Star standards set forth by the Environmental Protection Agency. Developments shall incorporate green building techniques including but not limited to the following areas:

- Energy efficiency and renewable energy
- Sustainable site planning
- Safeguarding water quality and water efficiency
- Conservation of materials and resources
- Indoor environmental quality

F. On-Site Amenities

Developer shall include resident amenities within the development, consistent with City zoning to improve the quality of life of future residents of the proposed housing development and/or the surrounding neighborhood.

1.4. Warranty of Units

Warranty is the Standard Construction warranty.

1.5. Bonds

Payment bond, a performance bond, or both will be required if the Developer plats the property and installs the utilities.

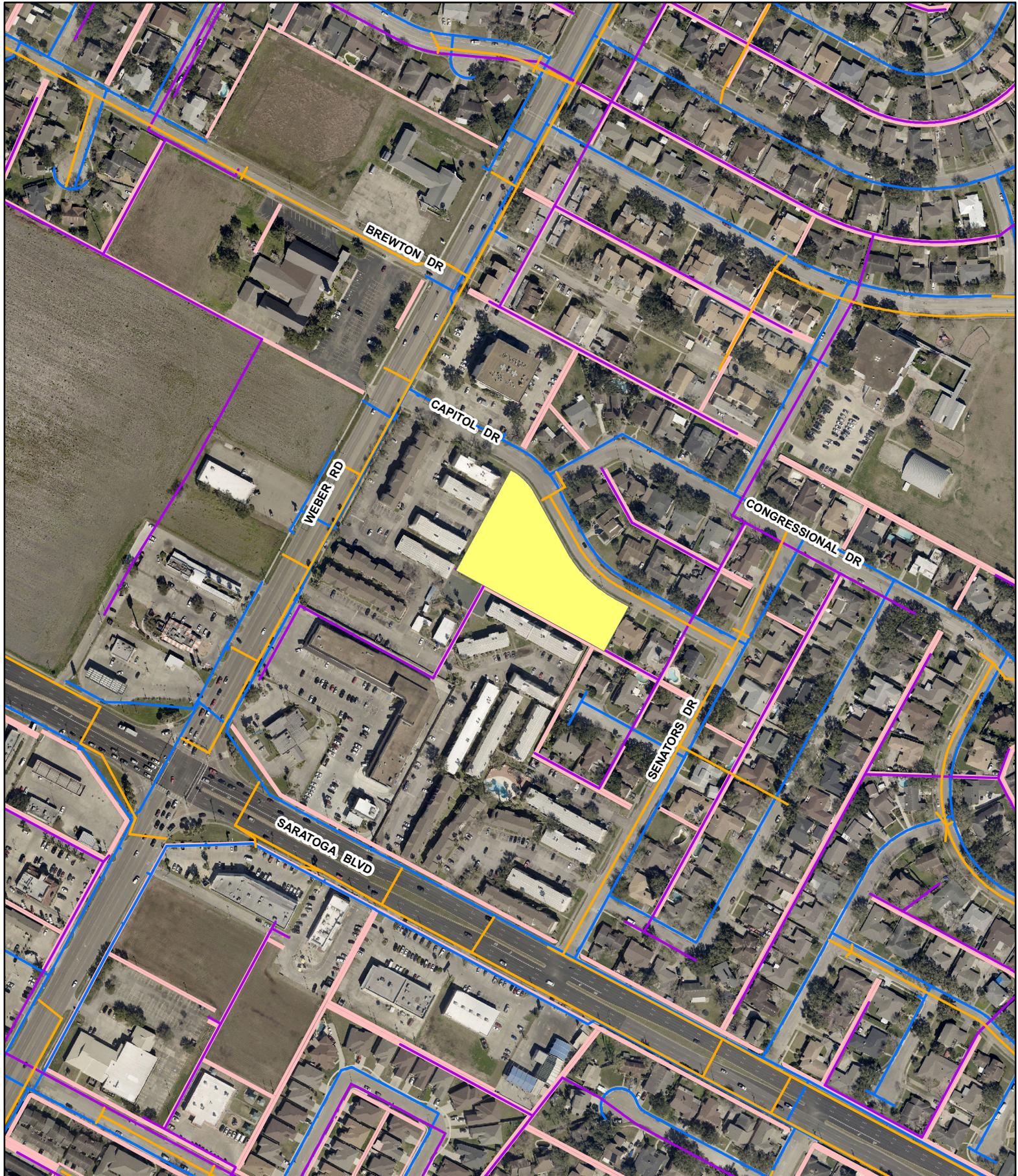
1.6. Inspection and management of Construction

The inspection and management of the construction of the housing will be done Developer, in conjunction with City of Corpus Christi's Development Services.

1.7. Developer Quality Control and Superintendence

The Developer shall establish and maintain a complete Quality Control Program that is acceptable to the Contract Administrator to assure that the requirements of the Contract are provided as specified. The Developer will also provide supervision of the work to insure it complies with the contract requirements.

Attachment A-1 Congress Park - 4017 Capitol Drive



- Water
- Wastewater
- Stormwater
- Congress Park
- Utility Easement



Date Created: 08/15/2018
Department of Development Services

0 180 360 720 Feet

EXHIBIT B

INSURANCE REQUIREMENTS

I. CONTRACTOR'S LIABILITY INSURANCE

- A. Contractor must not commence work under this agreement until all insurance required has been obtained and such insurance has been approved by the City. Contractor must not allow any subcontractor Agency to commence work until all similar insurance required of any subcontractor Agency has been obtained.
- B. Contractor must furnish to the City's Risk Manager and Contract Administer one (1) copy of Certificates of Insurance (COI) with applicable policy endorsements showing the following minimum coverage by an insurance company(s) acceptable to the City's Risk Manager. The City must be listed as an additional insured on the General liability and Auto Liability policies **by endorsement**, and a waiver of subrogation is required on all applicable policies. **Endorsements** must be provided with COI. Project name and or number must be listed in Description Box of COI.

TYPE OF INSURANCE	MINIMUM INSURANCE COVERAGE
30-written day notice of cancellation, required on all certificates or by applicable policy endorsements	Bodily Injury and Property Damage Per occurrence - aggregate
Commercial General Liability Including: 1. Commercial Broad Form 2. Premises – Operations 3. Products/ Completed Operations 4. Contractual Liability 5. Independent Contractors 6. Personal Injury- Advertising Injury	\$1,000,000 Per Occurrence
AUTO LIABILITY (including) 1. Owned 2. Hired and Non-Owned 3. Rented/Leased	\$1,000,000 Combined Single Limit
WORKERS' COMPENSATION	Statutory
EMPLOYER'S LIABILITY	\$500,000 /\$500,000 /\$500,000
POLLUTION LIABILITY	\$1,000,000 Per Occurrence
CRIME/EMPLOYEE DISHONESTY Contractor shall name the City of Corpus Christi, Texas as Loss Payee	\$1,000,000 Per Claims Made

- C. In the event of accidents of any kind related to this agreement, Contractor must furnish the Risk Manager with copies of all reports of any accidents within 10 days of the accident.

II. ADDITIONAL REQUIREMENTS

- A. Applicable for paid employees, Contractor must obtain workers' compensation coverage through a licensed insurance company. The coverage must be written on a policy and endorsements approved by the Texas Department of Insurance. The workers' compensation coverage provided must be in an amount sufficient to assure that all workers' compensation obligations incurred by the Contractor will be promptly met.
- B. Contractor shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- VII.
- C. Contractor shall be required to submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Contractor shall pay any costs incurred resulting from said changes. All notices under this Article shall be given to City at the following address:

City of Corpus Christi
Attn: Risk Manager
P.O. Box 9277
Corpus Christi, TX 78469-9277

- D. **Contractor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:**
- List the City and its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations, completed operation and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation policy;
 - Provide for an endorsement that the "other insurance" clause shall not apply to the City of Corpus Christi where the City is an additional insured shown on the policy;
 - Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City; and
 - Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.
- E. Within five (5) calendar days of a suspension, cancellation, or non-renewal of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this contract.

- F. In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to remove the exhibit hereunder, and/or withhold any payment(s) if any, which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.
- G. Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractor's performance of the work covered under this agreement.
- H. It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of Corpus Christi for liability arising out of operations under this agreement.
- I. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this agreement.

2019 Insurance Requirements

Ins. Req. Exhibit **4-Q**

Contracts for General Services – Services Performed Onsite – Pollution - Crime

09/19/2019 Risk Management – Legal Dept.