

STATE OF TEXAS § AGREEMENT FOR CONSULTING ON
§ INSTALLATION OF HEAT FLOOR SYSTEM
COUNTY OF COLLIN § AT ALLEN COMMUNITY ICE RINK

This Agreement (“Agreement”) is made by and between the City of Allen, Texas, a Texas home-rule municipality (“City”), and Golden State Hockey Rush, LLC, a California limited liability company, d/b/a GS Ice Sports (“Contractor”) (each a “Party” and collectively the “Parties”), acting by and through their authorized representatives.

RECITALS:

WHEREAS, City owns the Allen Community Ice Rink located at 200 E. Stacy Road, #1350, in Allen, Texas (the “Community Ice Rink”), with existing sub-floor heating and cooling systems that maintain the ice surface; and

WHEREAS, the existing sub-floor heating system at the Allen Community Ice Rink is damaged to the degree that immediate repairs are needed to avoid damage to the sub-floor cooling system; and

WHEREAS, City desires to install a new heat floor system under the existing failed system utilizing a directional boring method from the exterior of the building; 144 new 2 3/4” Poly Piping pairs (“Earth Loops”) that will connect to an internal header system to be located under the concrete walk way on the player’s bench side of the ice rink; and a stand-alone pump, heater and expansion tank in the existing mechanical room dedicated to the new heat floor system, (the “Project”); and

WHEREAS, City desires to enter this Agreement with Contractor for the purpose of providing consulting services necessary to complete the Project, as set forth in Exhibit “A” (“Scope of Work”); and

WHEREAS, pursuant to Section 252.022 of the Texas Local Government Code, the City Council of the City has determined that an emergency exists to preserve equipment and other property at the Community Ice Rink and to contract for the necessary repairs to the provision of the Work is necessary to avoid further damage to the sub-floor heating system and the currently undamaged equipment of the Community Ice Rink;

NOW, THEREFORE, in consideration of the terms and conditions contained herein and other valuable considerations, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

Article I Term

This Agreement shall commence on the last date of execution hereof (“Effective Date”) and continue until completion of the work and services set forth in the Scope of Work, unless sooner terminated as provided herein.

II. Scope of Work

Contractor shall perform the Work for the Project pursuant to this Agreement as specified in the Scope of Work.

Article III Devotion of Time; Personnel; and Equipment

3.1 Contractor shall devote such time as reasonably necessary for the satisfactory performance of the work under this Agreement. Should City require additional services not included under this Agreement, Contractor shall make reasonable efforts to provide such additional services within the time schedule without decreasing the effectiveness of the performance of work required under this Agreement, and shall be compensated for such additional services on a time and materials basis at a cost agreed between the Parties prior to the commencement of such additional work.

3.2 To the extent reasonably necessary for Contractor to perform the work under this Agreement, Contractor shall be authorized to engage the services of any agents, assistants, persons, or corporations that Contractor may deem proper to aid or assist in the performance of the services under this Agreement. Contractor shall provide written notice to and approval from City prior to engaging services not referenced in this Agreement. The cost of such personnel and assistance shall be included as part of the total compensation to be paid Contractor hereunder, and shall not otherwise be reimbursed by City unless otherwise provided herein.

3.3 Contractor shall furnish the labor, materials, equipment and personnel necessary to perform the work required under this Agreement unless otherwise provided herein.

3.4 Contractor shall submit monthly progress reports and attend progress meetings as may be required by City from time to time based upon Project demands. Each progress report shall detail the work accomplished and special problems or delays experienced on the work during the previous report period, and the planned work activities and special problems or delays anticipated for the next report period.

Article V Schedule of Work

Contractor shall cause the Scope of Work to will be completed within forty-five (45) days after receipt of the written Notice to Proceed from City.

Article VI Compensation and Method of Payment

Contractor will be compensated a total amount not to exceed Forty-Nine Thousand Nine Hundred Dollars (\$49,900.00) to be paid in full upon execution of this Agreement.

Article VII Notice to Proceed

Contractor shall not proceed with any work required under this Agreement without a written Notice to Proceed from City.

Article VIII Warranties

8.1 Contractor warrants that all materials and services provided under this Agreement are subject to all warranties arising by operation of law and additionally conform to the specifications imposed by City; all parts and materials are of a good marketable quality, of latest model and current date, exclude surplus remanufactured and used products unless so specified by City and are fit for the known purpose for which they are sold. Said warranty being in addition to any standard warranty or service guarantee given by Contractor to City.

8.2 Contractor shall provide the warranties for the work as set forth in the Scope of Work.

Article IX Additional Terms

9.1 Time of the Essence. Time is of the essence with this Agreement.

9.2 Deliveries. Unless otherwise specified on the face of this order, the F.O.B. point shall be the location designated by City. Transportation of the Equipment is F.O.B. Contractor's location; therefore, Contractor shall bear all risk of loss or damage to the merchandise, and title shall not shift to City, until delivery of the merchandise has arrived to City's designated location. Deliveries will be accepted only during normal working hours on normal working days (8 A.M.-5 P.M., Monday through Friday, except on federal holidays). Unless otherwise indicated, items received must be new and in first class condition and, if type of materials normally packaged for

protection and convenience in storage, shall be in proper container. All services performed shall conform to the quality and workmanship of the accepted standards in the industry.

9.3 Freight. All shipments are to be prepaid. In shipments made direct by Contractor's supplier, Contractor is required to notify his supplier to prepay shipments. City shall not be charged for boxing, packing, or crating.

9.4 Risk of Loss. Risk of loss, damage or destruction of the materials covered by this order shall be borne by the Contractor until delivery in good condition of conforming products at the F.O.B. point designated on this order. Any rejected goods shall be at the Contractor's risk until returned to Contractor, at Contractor's expense, or otherwise disposed of as Contractor shall reasonably request.

9.5 Inspections. All merchandise is subject to City's inspection within a reasonable time after arrival at the F.O.B. point. If the merchandise fails to comply with the specifications imposed by City or is otherwise of an unsatisfactory condition, City may return said merchandise to Contractor at Contractor's expense. Payment for material on this order shall not constitute acceptance.

Article X Termination

This Agreement may be terminated by:

- (a) mutual written agreement of the Parties;
- (b) upon written notice by either Party if the other Party breaches any of the terms and conditions of this Agreement and such breach is not cured within thirty (30) days after receipt of written notice thereof;
- (c) upon written notice by City, if Contractor suffers an Event of Bankruptcy or Insolvency. For purposes of this Agreement, "Event of Bankruptcy" shall mean the dissolution or termination (other than a dissolution or termination by reason of Contractor merging with an affiliate of Contractor) of Contractor's existence as a going business, insolvency, appointment of receiver for any part of Contractor's property and such appointment is not terminated within ninety (90) business days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Contractor and in the event such proceeding is not voluntarily commenced by the Contractor, such proceeding is not dismissed within ninety (90) business days after the filing thereof; and
- (d) upon written notice by City, if City fails to budget and appropriate funds for payment of the obligations hereunder for the then ensuing fiscal year.

Article XI Miscellaneous

11.1 Entire Agreement. This Agreement constitutes the sole and only agreement between the Parties and supersedes any prior understandings, written or oral agreements between the Parties with respect to this subject matter.

11.2 Assignment. Contractor may not assign this Agreement in whole or in part without the prior written consent of the City Manager of the City.

11.3 Successors and Assigns. Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the Parties and their respective successors and permitted assigns.

11.4 Governing Law. This Agreement shall be governed by the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction; and venue for any action concerning this Agreement shall be in a State District Court of Collin County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

11.5 Amendments. This Agreement may be amended by the mutual written agreement of the Parties. The City Manager is authorized to execute any amendments or other instruments related to this Agreement.

11.6 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

11.7 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

11.8 Recitals. The recitals to this Agreement are incorporated herein.

11.9 Independent Contractor. It is understood and agreed by and between the Parties that the Contractor, in satisfying the conditions of this Agreement, is acting independently, and that City assumes no responsibility or liabilities to any third party in connection with these actions. All services to be performed by Contractor pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of City. Contractor shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Agreement.

11.10 Notice. Any notice required or permitted to be delivered hereunder may be sent by first class mail, overnight courier or by confirmed telefax or facsimile to the address specified below, or to such other party or address as either Party may designate in writing, and shall be deemed received three (3) days after delivery set forth herein:

If intended for the City:

City of Allen, Texas
Attn: Peter H. Vargas
City Manager
305 Century Parkway
Allen, Texas 75013

With Copy to:

Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Ross Tower
500 North Akard
Dallas, Texas 75201

If intended for Contractor:

Golden State Hockey Rush, LLC,
d/b/a GS Ice Sports
969 Market Street, Unit 304
San Diego, California 92101

11.11 Insurance. Contractor shall during the term hereof maintain in full force and effect insurance policies as required in the document attached hereto and incorporated herein as Exhibit "B".

11.12 Indemnification. **CITY SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE SERVICES OF THE CONTRACTOR PURSUANT TO THIS AGREEMENT. CONTRACTOR HEREBY WAIVES ALL CLAIMS AGAINST CITY, ITS OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO IN THIS SECTION AS "CITY") FOR DAMAGE TO ANY PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON ARISING AT ANY TIME AND FROM ANY CAUSE OTHER THAN THE NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY OR BREACH OF CITY'S OBLIGATIONS HEREUNDER. CONTRACTOR AGREES TO INDEMNIFY AND SAVE HARMLESS CITY FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION) AND ACTIONS OF ANY KIND BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY TO THE EXTENT CAUSED BY CONTRACTOR'S PERFORMANCE OF SERVICES UNDER THIS AGREEMENT OR BY REASON OF ANY NEGLIGENT ACT OR OMISSION ON THE PART OF CONTRACTOR, ITS OFFICERS, DIRECTORS, SERVANTS, EMPLOYEES, REPRESENTATIVES, SUB-CONTRACTORS, CONSULTANTS, LICENSEES, SUCCESSORS OR PERMITTED ASSIGNS (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO NEGLIGENCE OF THE CITY, IN WHOLE OR IN PART, IN WHICH CASE CONTRACTOR SHALL**

INDEMNIFY CITY ONLY TO THE EXTENT OR PROPORTION OF NEGLIGENCE ATTRIBUTED TO CONTRACTOR AS DETERMINED BY A COURT OR OTHER FORUM OF COMPETENT JURISDICTION). CONTRACTOR'S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY CONTRACTOR UNDER THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

11.13 Counterparts. This Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument.

11.14 Exhibits. The exhibits attached hereto are incorporated herein.

(Signature Page to Follow)

EXECUTED on this _____ day of _____, 2017.

CITY OF ALLEN, TEXAS

By: _____
Peter H. Vargas, City Manager

ATTEST:

By: _____
Shelley B. George, City Secretary

APPROVED AS TO FORM:

By: _____
Peter G. Smith, City Attorney

EXECUTED on this _____ day of _____, 2017.

**GOLDEN STATE HOCKEY RUSH, LLC
d/b/a GS ICE SPORTS**

By: _____
Rich Cubin, CEO and Managing Partner

EXHIBIT A SCOPE OF WORK

Location of Project

All work shall be performed at the Allen Community Ice Rink located at 200 E. Stacy Road, #1350, in Allen, Texas.

Scope of Work

Comprehensive Project Consulting Services

Contractor shall provide total Project consulting services and Project planning which includes the final heat floor system design, vendor selection, vendor scope of work details and verification of completed work to Contractor standards. The scope of the Project includes the installation of a new heat floor system under the existing failed system utilizing a directional boring method from the exterior of the building. Installation of 144 new 2-3/4" Poly Pipe pairs (Earthloops) that will connect to an internal header system to be located under the concrete walk way on the players bench side of the ice rink. This header system will receive the new 2-3/4" Poly Pipe pairs (Earthloops) and carry a polypropylene glycol solution back to the existing mechanical room. Installation of a stand alone pump, heater and expansion tank in the existing mechanical room dedicated to the new heat floor system. Once online, the new heat floor system will be super heated to further assist in the thawing of any sub-soil frost/ice in an attempt to return the ice rink slab back to its original grade. Once this process is complete, the heat floor heater will be turned down and maintained at a supply temperature between 65 and 75 degrees.

External Process

Irrigation System:	Isolate the system (by others), removal of all drip lines (by others).
Drain System:	Isolate the system (by others), reinstalled (by others).
Landscaping Materials:	Contractor will review all required digging in order to place the boring machine at a depth of 30" below grade. Contractor will review the backfilling of the area as the work progresses down the length of the rink and ensure the drilling vendor provides a rough grade for installation of new landscaping materials. Contractor will review the drilling locations prior to start of the drilling process for accuracy.

Concrete (external):

Contractor will designate and review the required removal and disposal of the exterior concrete slab area located in front of the exterior doors as needed. This area will be the

starting point of the heat floor installation process and the concrete will be reinstalled (by others) at this point immediately upon completion of the heat floor piping system.

Exterior work area will be protected with temporary chain-link fencing with wind mesh (by others).

Internal Process

Heat Floor Header Trench

Contractor will designate and review for accuracy the required removal of concrete to create a trench area 3' wide by 36" deep down the full length of the ice rink, approx. 200' in length. Once the new heat floor system header is installed and connected to the 144 - 2-3/4" Earthloops, the trench area will be back filled with clean sand, leveled off and then GS will oversee the installation of a steel plate system over the trench to allow accessibility for any future maintenance issues.

Please be advised, the trench will maybe saw cut and removed in 50' sections. This method will allow the Project to work in stages and minimize any customer inconveniences.

New Transmission Lines, Pump, Heater and Expansion Tank

Contractor will review the installation of new supply & return Sch 80 PVC pipes from the header trench area back to the existing mechanical room in the overhead area as originally discussed in the initial evaluation. Contractor will review the installation of a dedicated heater system, pump and expansion tank for the new heat floor system at a location to be determined in the existing mechanical room.

A licensed preferred electrical contractor will be selected to perform all required electrical connections.

Project Timeline

Contractor anticipates the entire Project to be completed inside of 45 days. Contractor is available to begin the immediate planning and review to begin this Project by mid- to late April 2017.

Warranty

Contractor shall ensure all selected vendors will warranty their workmanship for a period of 1 year from the date of completion.

Additional Services

Others are responsible for the cost and means to dispose of all landscaping, concrete demo and all other associated construction debris. Others are responsible for all associated electrical work required for the pump & heater system.

Project Phases & Work Schedule

Contractor will approach this Project in (4) different phases to ensure the highest level of boring accuracy and efficiency while minimizing any customer or ice rink use inconveniences, including working flexible and overnight hours as needed. Contractor and Facility will review and create a work schedule for the duration of the Project.

Contractor and selected vendors will be working Monday - Thursday, for periods of 10-15 hours per day. This aggressive schedule will minimize the overall completion time and allow for 100% ice rink usage during the busy weekend periods of use.

Phase #1:	Consulting, Project Planning Concrete Demolition: Exterior and 50' Interior Trench Section Landscaping Removal & Disposal Bore & Installation of up to 30 Earthloops Installation of 40' of Heat Floor Header System Installation of 50' Trench Plate Covers	
Phase #2:	Consulting & Continual Project Review Bore & Installation of up to 38 Earthloops Concrete Install: Install new exterior concrete pads Concrete Demo: 50' Interior Trench Section Installation of 40' of Heat Floor Header System Installation of 50' Trench Plate Covers	(68 total) (100' total) (80' total) (100' total)
Phase #3:	Consulting & Continual Project Review Bore & Installation of up to 40 Earthloops Install: New Overhead Transmission Lines to Mechanical Room Concrete Demo: 50' Interior Trench Section Installation of 60' of Heat Floor Header System Installation of 50' Trench Plate Covers	(106 total) (150' total) (140' total) (150' total)
Phase #4:	Consulting & Continual Project Review Bore & Installation of up to 38 Earthloops Install: Heat Floor Heater, Pump & Expansion Tank Concrete Demo: 50' Interior Trench Section Installation of 60' of Heat Floor Header System Installation of 50' Trench Plate Covers Pressure Test & Charge System with Propylene Glycol Solution	(144 total) (All Electrical by GS) (200' total) (200' total) (200' total)

Back Fill Header Trench Area with Sand, Clean up all exterior & Interior Work Areas

Vendor Scope of Work

Directional Drilling Services

Vendor: Texas Directional Boring (TDB)

TDB shall provide all equipment and labor to effectively drill up to 144 (5" diameter) horizontal holes at 30" below grade from the exterior of the building to the interior trench area (provided by others). TDB shall also be responsible for attaching and pulling back through the holes, the provided 3/4" paired Earthloops (provided by others). TDB will also be responsible for any required site work to properly position their drilling equipment and staff into optimal and efficient positions on the exterior of the building (existing landscaping removed by others). TDB shall also be required to return the site back to a rough grade upon completion of the Project. TDB is responsible for providing a City approved temporary construction fence, including windscreen for the duration of the Project, as well as providing all City-required posted signs and TDB shall ensure the site is properly secured during all non-drilling periods.

Concrete Cutting, Trenching and Re-Installation Services

Vendor: TBD **Trade:** Concrete Work & Excavation

Concrete vendor shall be responsible for the following services following the specifications provided by Contractor.

Interior Trench Area: Vendor shall saw cut and remove the existing 6" concrete slab from the area designated by Contractor. This area will measure 200' in length and 36" in width and will allow access to dig out the interior trench area. Vendor shall then provide excavation equipment and labor to dig out the existing material to a depth of no less than 36". Vendor shall be responsible for all required shoring equipment. Vendor will be responsible for the removal of all concrete and material debris identified by Contractor to the exterior of the building. Vendor may also be responsible for the disposal of this debris (TBD).

Exterior Concrete Pad Area: It may be determined that the removal of the existing exterior pad maybe required to allow better access to the drilling vendor. If the removal of this pad is required, concrete vendor shall remove the pad according to the area designated by Contractor. Upon completion of the heat floor installation and activation, the concrete vendor would then be required to reinstall all areas of the exterior concrete pad that required removal with a material and finish that best matches the remaining original concrete pad or existing concrete areas.

ALTERNATIVE

Trenching, Excavating & Shoring Services

Vendor: **TBD** **Trade:** **Excavation & Site Work**

The possibility exists that securing the best concrete vendor for the Project may not include the additional excavation work that has been specified in the concrete vendor's scope of work. Therefore, it is important to recognize that there may be the need to secure a qualified excavation vendor to provide the following services initially included in the concrete vendors scope of work:

Contractor shall provide excavation equipment and labor to dig out the existing material to a depth of no less than 36" and approximately 200' in length. Contractor shall be responsible for all required shoring equipment. Contractor may also be responsible for the disposal of trench debris (TBD).

Vendor Scope of Work

Heat Floor Header System, Transmission Lines, Pump, Heater and Expansion Tank

Vendor: **TBD** **Trade:** **Mechanical / Commercial Refrigeration (CR)**

Mechanical / CR Vendor(s) will be responsible for providing labor and materials to install a 4" Sch 80 PVC supply and return header system with (144) 3/4" mechanical connection points. Mechanical / CR Vendor(s) will be responsible for providing labor and materials to install a 4" Sch 80 PVC supply and return transmission lines from the existing mechanical room through the overhead and connecting into the heat floor header system. The contractor shall also provide labor and materials to install (1) centrifugal pump*, 480V 3 phase, 250gpm, isolation valves, pressure gauges and mounting stand. The contractor shall also provide labor and materials to install (1) electrical heater (11KW), in line with the pump, including isolation valves, supply and return thermostats and mounting stand. The contractor shall also provide labor and materials to install a 50 gallon, poly expansion tank and stand, in line with the pump and heater systems. All components (Pump, Heater and Tank) must be compatible with Propylene Glycol. The contractor shall also perform a final pressure test on the entire closed loop heat floor system, including the heat floor header, pump, heater and expansion tank. Upon the passing of the pressure test, verified by Contractor, the contractor shall be responsible for providing and installing a 30% PG/70% H2O propylene glycol solution that fully charges the entire heat floor system and its components and leaves the expansion tank at a 50% filled state after 2-3 days of removing any excess air from the system.

**** The power for the pump maybe pulled from the abandoned heat floor pump if sufficient enough to power the new pump.***

Vendor Scope of Work

Electrical Requirements

Vendor: TBD **Trade:** Electrical Contractor

The electrical contractor will be responsible for providing new or existing service to the heat floor pump and heat floor heater system. It is the intention of Contractor to specify a heat floor pump that is compatible with the abandoned heat floor pump existing power supply, however the location of the new heat floor pump will result in the relocation of this electrical service. The contractor will most likely have to install a new breaker and power lines to the heat floor heater system. All required permits and permissions will be the responsibility of the electrical contractor.

Additional Project Considerations

Covering of the heat floor header trench area

Vendor: TBD **Trades:** Concrete or Other

Once the heat floor system is fully operational, the issue of securing the interior heat floor header trench area needs to be addressed. The (2) most popular options are:

Concrete: including backfilling the entire trench with the existing material that was removed to form the trench area. This option provides for the most secure protection of the heat floor header and returns the trench area back to its original state. The down side to this option is that should there be the need for any future maintenance of the heat floor header system, accessibility is very difficult, time and labor intensive and expensive to excavate.

Steel Plates: similar to the existing floor access area currently in the rink area. This option allows for a flush seamless finish and can be sealed to prevent water intrusion. The plates will be manufactured into manageable sections easy enough for one person to lift for immediate access. This options leans to be the more favorable as the overall cost is much lower than concrete and this option allows for easy access to the heat floor header system should future maintenance be required.

Project Consulting & Planning Services Fee & Terms

\$49,900.00 To be paid in full with the execution of this Agreement

EXHIBIT "B"

INSURANCE REQUIREMENTS

A. Contractor shall during the term of the Agreement maintain in full force and effect the following insurance:

- (i) a comprehensive general liability policy of insurance for bodily injury, death and property damage insuring against all claims, demands or actions relating to the Contractor's performance of services pursuant to this Agreement with a minimum combined single limit of not less than \$1,000,000.00 per occurrence, \$2,000,000.00 aggregate for injury to persons (including death), and for property damage. Said policy must be on an occurrence basis, include a Medical Expense limit of \$10,000, Personal and Advertising Injury limit of \$1,000,000, Products and Completed Operations limit of \$1,000,000 aggregate, and Fire Damage, any one Fire limit of \$1,000,000;
- (ii) policy of automobile liability insurance covering any vehicles owned, scheduled, hired, non-owned, and/or operated by Contractor, its officers, agents, and employees, and used in the performance of this Agreement with policy limits of not less than \$1,000,000.00 combined single limit and aggregate for bodily injury and property damage;
- (iii) statutory Worker's Compensation Insurance at the statutory limits and Employers Liability covering all of Contractor's employees involved in the provision of services under this Agreement with policy limit of not less than \$1,000,000.00; and
- (iv) Umbrella Liability Insurance Policy with a limit of not less than \$2,000,000 each occurrence. Such insurance shall be excess of the commercial general liability insurance, business auto liability insurance and employers liability insurance. This insurance will apply as primary insurance with respect to any other insurance or self-insurance programs maintained by the City and shall be provided on a "following form basis". Contractor waives all rights against the City Indemnitees for recovery of damages. Continuing commercial umbrella coverage, if any, shall include liability coverage for damage to the Contractor's completed Work, including its contractors, sub-contractors, consultants and employees.

B. All policies of insurance shall be endorsed to provide the following provisions: (1) name the City, its officers, and employees as additional insureds as to all applicable coverage with the exception of Workers Compensation Insurance, during and until completion of the Services; and (2) provide for at least thirty (30) days prior written notice to the City for cancellation of the insurance; (3) provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance.

Contractor shall provide written notice to the City of any material change of or to the insurance required herein.

C. All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least “A” by AM Best or other equivalent rating service.

D. A certificate of insurance and copies of the policy endorsements evidencing the required insurance shall be submitted prior to commencement of the work and upon request by the City.