

RENTAL OF MOTOR GRADER AND WHEEL LOADERS
SERVICE AGREEMENT

Service Agreement No. _____

THIS **Rental of Motor Grader and Wheel Loaders Service Agreement** (this "Agreement") is entered into by and between Doggett Heavy Machinery Services (the "Contractor") and the City of Corpus Christi, a Texas home-rule municipal corporation (the "City"), *by and through its duly authorized City Manager or designee* ("City Manager"), effective for all purposes upon execution by the City Manager.

WHEREAS Contractor has proposed to provide **Rental of Motor Grader and Wheel Loaders** in response to **Bid Invitation No. BI-0197-14** (which includes **Specifications 1080 and 1089** dated 6/12/14) which is incorporated and attached as Exhibit A;

WHEREAS the City has determined Contractor to be the lowest responsible bidder;

NOW, THEREFORE, Contractor and City enter into this Agreement and agree as follows:

1. **Services.** Contractor will provide **Rental of Motor Grader and Wheel Loaders** in accordance with **Bid Invitation No. BI-0197-14** (which includes **Specifications 1080 and 1089** dated 6/12/14) (Exhibit A).

2. **Term.** This Agreement is for three (3) consecutive nine-month terms of February 1, 2015 through October 31, 2015, February 1, 2016 through October 31, 2016, and February 1, 2017 through October 31, 2017 for a total of twenty-seven (27) months.

3. **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. All of the Contractor's notices or communications regarding this Agreement must be directed to the Contract Administrator, who is the **Beach & Special Events Superintendent**.

4. **Independent Contractor.** Contractor will perform the services hereunder as an independent contractor and will furnish such services in its own manner and method, and under no circumstances or conditions may any agent, servant or employee of the Contractor be considered an employee of the City.

5. **Insurance.** N/A

6. **Assignment.** No assignment of this Agreement or any right or interest therein by the Contractor is effective unless the City first gives its written consent to such assignment. The performance of this Agreement by the Contractor is of the essence of this Agreement and the City's right to withhold consent to such assignment is within the sole discretion of the City on any ground whatsoever.

7. **Fiscal Year.** All parties recognize that the continuation of any contract after the close of any fiscal year of the City (the City's fiscal year ends on September 30th), is subject to appropriations and budget approval providing for covering such contract item as an expenditure in said budget. The City does not represent that said budget item will be actually adopted as that determination is within the sole discretion of the City Council at the time of adoption of each budget.

8. **Waiver.** No waiver of any breach of any term or condition of this Agreement, or **Bid Invitation No. BI-0197-14** (which includes **Specifications 1080 and 1089** dated 6/12/14), or the Contractor's bid offer to **Bid Invitation No. BI-0197-14** (Exhibit B) waives any subsequent breach of the same.

9. **Compliance with Laws.** This Agreement is subject to all applicable federal, state and local laws. All duties of the parties will be performed in the City of Corpus Christi, Texas. The applicable law for any legal disputes arising out of this Agreement is the law of Texas and such form and venue for such disputes is the appropriate district, county or justice court in and for Nueces County, Texas.

10. **Subcontractors.** The 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 **Beach & Special Events Superintendent**. 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 are applicable to all subcontractors and their employees to the same extent as if the Contractor and its employees had performed the services.

11. **Amendments.** This Agreement may be amended only by written Agreement duly authorized by the parties hereto and signed by the parties.

12. **Termination.** The City Manager may terminate this Agreement for Contractor's failure to perform the services specified in **Bid Invitation No. BI-0197-14** (which includes **Specifications 1080 and 1089** dated 6/12/14). 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.

Alternatively, the City may terminate this Agreement upon twenty (20) days' written notice to the Contractor. However, the City may terminate this Agreement on twenty-four (24) hours' written notice to the Contractor for failure to pay or provide proof of payment of taxes as set out herein.

13. **Taxes.** The Contractor covenants to pay payroll taxes, Medicare taxes, FICA taxes, unemployment taxes and all other related taxes according to Circular E Employer's Tax Guide, Publication 15, as it may be amended. Upon his request, the City Manager shall be provided proof of payment of these taxes within fifteen (15) days of such request. The Contractor may terminate this Agreement upon ninety (90) days' written notice to the City.

14. **Drug Policy.** The Contractor must adopt a Drug Free Workplace policy.

15. **Violence Policy.** The Contractor must adopt a Violence in the Workplace policy.

16. **Notice.** Notice may be given by fax, hand delivery or certified mail, postage prepaid, and is received on the day faxed or hand-delivered and on the third day after deposit in the U.S. mail if sent certified mail. Notice shall be sent as follows:

IF TO CITY:

City of Corpus Christi

Attention: Beach & Special Events Superintendent

P.O. Box 9277

Corpus Christi, Texas 78469-9277

IF TO CONTRACTOR:

Contractor Doggett Heavy Machinery Services

Contact Drew Schuelke

Address: 134 N. Padre Island Dr.

City, State, Corpus Christi TX 78406

17. **Month-to-Month Extension.** N/A

18. **Severability.** Each provision of the Agreement shall be considered to be severable and, if, for any reason, any such provision or any part thereof, is determined to be invalid and contrary to any existing or future applicable law, such invalidity shall not impair the operation of or 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 thereof had been omitted.

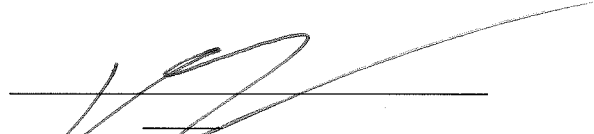
19. **INDEMNIFICATION.** CONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY OF CORPUS CHRISTI AND ITS OFFICERS, EMPLOYEES AND AGENTS ("INDEMNITEES") FROM AND AGAINST ANY AND ALL THIRD PARTY LIABILITY, LOSS, CLAIMS, DEMANDS, SUITS AND CAUSES OF ACTION OF ANY NATURE ON ACCOUNT OF DEATH, PERSONAL INJURIES, PROPERTY LOSS OR DAMAGE OR ANY OTHER KIND OF DAMAGE WHATSOEVER, INCLUDING ALL LIABILITY FOR DAMAGES ON ACCOUNT OF OR BY REASON OF BODILY INJURY, INCLUDING DEATH, NOT LIMITED TO THE EMPLOYEES OF CONTRACTOR, THE CITY, AND OF ANY SUBCONTRACTOR OR CONTRACTOR, AND FROM AND AGAINST ANY AND ALL DAMAGES TO PROPERTY, INCLUDING PROPERTY OF THE CITY OF CORPUS CHRISTI AND OF THIRD PARTIES, TO THE EXTENT DIRECTLY CAUSED BY AN ACT OF OMISSION OF CONTRACTOR OR ITS AGENTS, EMPLOYEES, VENDORS, OR SUBCONTRACTORS, OF THEIR EMPLOYEES OR AGENTS IN CONNECTION WITH THE PERFORMANCE OF THE CONTRACT, WHETHER OR NOT INSURED AGAINST, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, ATTORNEYS' FEES AND

EXPERT WITNESS FEES. THE INDEMNIFICATION OBLIGATIONS OF CONTRACTOR UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OR SOONER TERMINATION OF THIS AGREEMENT.

20. **Contractor's Rental Agreement.** Notwithstanding the foregoing, the terms and conditions included in Contractor's standard rental agreement shall additionally apply to the equipment being rented by the City of Corpus Christi which is referenced in this Agreement, and in the event of any conflict between this Agreement and Contractor's standard terms and conditions, Contractors standard terms and conditions shall prevail.

SIGNED this 28 day of August, 20 14.

Contractor Doggett Heavy Machinery Services



Title: _____

CITY OF CORPUS CHRISTI ("CITY")

Christela Morales
Procurement Manager

Date

Incorporated by Reference:

Exhibit A: Bid Invitation No. BI-0197-14, including Specifications 1080 and 1089 (Available upon request)

Exhibit B: Bidder's Bid (Available upon request)