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SUPPLY AGREEMENT NO. 4104

Magnesium Anodes for Gas Department

THIS **Magnesium Anodes for Gas Department Supply Agreement** ("Agreement") is entered into by and between the City of Corpus Christi, a Texas home-rule municipal corporation ("City") and International Corrosion Control, Inc ("Contractor"), effective upon execution by the City Manager or the City Manager's designee ("City Manager").

WHEREAS, Contractor has bid to provide Magnesium Anodes for Gas Department in response to Request for Bid No. **4104** ("RFB"), which RFB includes the required scope of work and all specifications and which RFB and the Contractor's bid response 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 Magnesium Anodes for Gas Department 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. "Goods," "products", and "supplies", as used in this Agreement, refer to and have the same meaning.

2. **Term.**

(A) The Term of this Agreement is two years beginning on the date provided in the Notice to Proceed from the Contract Administrator or the City's Procurement Division. The parties may mutually extend the term of this Agreement for up to zero additional zero-year periods ("Option Period(s)"), provided, the parties do so in writing prior to the expiration of the original term or the then-current Option Period.

(B) At the end of the Term of this Agreement or the final Option Period, the Agreement may, at the request of the City prior to expiration of the Term or final Option Period, continue on a month-to-month basis for up to six months with compensation set based on the amount listed in Attachment B for the Term or the final Option Period. The Contractor may opt out of this continuing term by providing notice to the City at least 30 days prior to the expiration of the Term or final Option Period. During the month-to-month term, either Party may terminate the Agreement upon 30 days' written notice to the other Party.

3. **Compensation and Payment.** This Agreement is for an amount not to exceed $2,375,138.00, subject to approved extensions and changes. Payment will be made for goods delivered 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. Any amount not expended during the initial term or any option period may, at the City's discretion, be allocated for use in the next Option Period.

   Invoices must be mailed to the following address with a copy provided to the Contract Administrator:

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

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: Maria Morales
   Department: Gas
   Phone: 361-885-6945
   Email: MariaM@cctexas.com

5. **Insurance.** 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.

6. **Purchase Release Order.** For multiple-release purchases of products to be provided by the Contractor over a period of time, the City will exercise its right to specify time, place and quantity of products to be delivered in the following manner: any City department or division may send to Contractor a purchase

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release order signed by an authorized agent of the department or division. The purchase release order must refer to this Agreement, and products will remain with the Contractor until such time as the products are delivered and accepted by the City.

7. **Inspection and Acceptance.** City may inspect all products supplied before acceptance. Any products that are delivered but not accepted by the City must be corrected or replaced immediately at no charge to the City. If immediate correction or replacement at no charge cannot be made by the Contractor, a replacement product may be bought by the City on the open market and any costs incurred, including additional costs over the item's bid price, must be paid by the Contractor within 30 days of receipt of City's invoice.

8. **Warranty.**

(A) 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.

(B) 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 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 products 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.** In providing the Goods, Contractor will not enter into subcontracts or utilize the services of subcontractors.

13. **Amendments.** This Agreement may be amended or modified only in writing executed by authorized representatives of both parties.

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 applicable 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: Maria Morales
Title: Contract Administrator
Address: 4225 S. Port Ave, Corpus Christi, TX 78415
Phone: 361-885-6945
Fax: N/A

IF TO CONTRACTOR:
International Corrosion Control, Inc
Attn: Ray Thoroski
Title: Manager
Address: P.O. Box 441, Lewiston, NY 14092
Phone: 1-800-699-8771
Fax: 905-333-4313

17. ***CONTRACTOR SHALL FULLY 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 WHATEVER NATURE, CHARACTER, OR DESCRIPTION ON ACCOUNT OF PERSONAL INJURIES, PROPERTY LOSS, OR DAMAGE, OR ANY OTHER KIND***

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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 CONTRACTOR OR RESULTS FROM THE NEGLIGENT ACT, OMISSION, MISCONDUCT, OR FAULT OF THE CONTRACTOR OR ITS EMPLOYEES OR AGENTS. 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 OR RESULTING 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 may terminate this Agreement for Contractor's failure to comply with any of the terms of this Agreement. The City 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 may terminate this Agreement immediately thereafter.

(B) Alternatively, the City may terminate this Agreement for convenience upon 30 days advance written notice to the Contractor. The City 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. **Owner's Manual and Preventative Maintenance.** Contractor agrees to provide a copy of the owner's manual and/or preventative maintenance guidelines or instructions if available for any equipment purchased by the City pursuant to this Agreement. Contractor must provide such documentation upon delivery of such equipment and prior to receipt of the final payment by the City.

20. **Limitation of Liability**. The City's maximum liability under this Agreement is limited to the total amount of compensation listed in Section 3 of this Agreement. In no event shall the City be liable for incidental, consequential or special damages.

21. **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

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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.

22. **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.

23. **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 (excluding attachments and exhibits);
    B. its attachments;
    C. the bid solicitation document including any addenda (Exhibit 1); then,
    D. the Contractor's bid response (Exhibit 2).

24. **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 if required by said statute.

25. **Governing Law.** Contractor 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.

26. **Public Information Act Requirements.** This paragraph applies only to agreements that have a stated expenditure of at least $1,000,000 or that result in the expenditure of at least $1,000,000 by the City. The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

27. **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.

CONTRACTOR

Signature: DocuSigned by: Ray Thoroski 6A2E50D402D149F...

Printed Name: Ray Thoroski

Title: Manager, Customer Service

Date: 5/2/2022

CITY OF CORPUS CHRISTI

Josh Chronley
Assistant Director of Finance – Procurement

Date: _____

Attached and Incorporated by Reference:
Attachment A: Scope of Work
Attachment B: Bid/Pricing Schedule
Attachment C: Insurance Requirements
Attachment D: Warranty Requirements

Incorporated by Reference Only:
Exhibit 1: RFB No. 4104
Exhibit 2: Contractor's Bid Response

CITY OF CORPUS CHRISTI
CONTRACTS AND PROCUREMENT
BID FORM

RFB No. 4041
RFB Magnesium Anodes for Gas Department

Date: April 19, 2022

Bidder: International Corrosion Control Inc. Authorized Signature: Ray Thoroski

1. **Refer to "Instructions to Bidders" and Contract Terms and Conditions before completing bid.**
2. **Quote your best price for each item.**
3. **In submitting this bid, Bidder certifies that:**
   a. the prices in this bid have been arrived at independently, without consultation, communication, or agreement with any other Bidder or competitor, for the purpose of restricting competition with regard to prices.
   b. Bidder is an Equal Opportunity Employer, and the Disclosure of Interest information on file with City's Contracts and Procurement office, pursuant to the Code of Ordinances, is current and true.
   c. Bidder is current with all taxes due and company is in good standing with all applicable governmental agencies.
   d. Bidder acknowledges receipt and review of all addenda for this RFB.

Magnesium Anodes HP 48 # Magnesium Anode with 30' #12 THHN solid black cable	~~13,500~~ 5,000	Ea.	$ 365.22	$ ~~4,930,470.00~~ **$1,826,100.00**
Magnesium Anode with 10' #12 Gauge Wire – HP # 17 lbs.	3,000	Ea.	$148.83	$ 446,490.00
Magnesium Spike Anode Drive-in anodes 0.5 pound	3,300	Ea.	$29.56	$ 97,548.00
Freight Allowance				$5,000
				$ ~~5,479,508.00~~ **$2,375,138.00**

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Insurance Requirements

The City's Legal Department has recommended there be no insurance requirements for this particular scope of work, Purchase Contracts – Supply Agreements – Equipment Leases - Goods or Equipment Delivered to City Other Than Hazardous Chemicals.

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ATTACHMENT D: WARRANTY REQUIREMENTS

MAXM4 G® High Potential Magnesium Anodes & Zinc Spike Anodes

International Corrosion Control warrants all Cathodic Protection products for a period of one (1) year from the date of invoicing to be manufactured to the purchaser's specifications and are accordingly warranted against defective material and workmanship. The obligation of ICC under this warranty is limited to "repair, adjustment or replacement, at its option, and return at no charge, any part of a new product which in ICC's knowledge or judgment is found to have been defective in material and/or workmanship.