

SUPPLY AGREEMENT NO. 938

Aggregate Trap Rock

THIS **Aggregate Trap Rock Supply Agreement** ("Agreement") is entered into by and between the City of Corpus Christi, a Texas home-rule municipal corporation ("City") and Vulcan Construction Materials ("Supplier"), effective for all purposes upon execution by the City Manager or the City Manager's designee ("City Manager").

WHEREAS, Supplier has bid to provide Aggregate Trap Rock in response to Request for Bid No. **938** ("RFB"), which RFB includes the required scope of work and all specifications and which RFB and the Supplier'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 Supplier agree as follows:

1. **Scope.** Supplier will provide Aggregate Trap Rock 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.** This Agreement is for 12 months. This Agreement includes an option to extend the term for up to two additional 12-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 Supplier and the City Manager.
3. **Compensation and Payment.** The total value of this Agreement is not to exceed \$243,720.00, 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.
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: Peter Muniz
Department: Street Department
Phone: (361) 826-1951
Email: petermu@cctexas.com

5. **Insurance.** Before performance can begin under this Agreement, the Supplier 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 Supplier 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 Supplier a purchase 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 Supplier until such time as the products are delivered and accepted by the City.
7. **Inspection and 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 Supplier, 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 Supplier within 30 days of receipt of City's invoice.
8. **Warranty.** The Supplier 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 Supplier 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 Supplier 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.** Supplier 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 Supplier be considered an employee of the City.
12. **Subcontractors.** Supplier may use subcontractors in connection with the work performed under this Agreement. When using subcontractors, however, the Supplier must obtain prior written approval from the Contract Administrator if the subcontractors were not named at the time of bid. In using subcontractors, the Supplier is responsible for all their acts and omissions to the same extent as if the subcontractor and its employees were employees of the Supplier. 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 Supplier 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 Supplier 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: Peter Muniz
Street Operations
2525 Hygeia, Corpus Christi, TX 78415
Fax (361) 826-1627

IF TO SUPPLIER:

Vulcan Construction Materials
Attn: Oscar Benavides
Title Sales Manager
Address P.O. Box 791550, San Antonio, Texas 78279
Fax (210) 524- 3555

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

18. Termination.

(A) The City Manager may terminate this Agreement for Supplier'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 Supplier written notice of the breach and set out a reasonable opportunity to cure. If the Supplier 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 Supplier. The City Manager may also terminate this Agreement upon 24 hours written notice to the Supplier 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 Supplier, 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 Supplier 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 Supplier's bid response (Exhibit 2)
22. **Certificate of Interested Parties.** Supplier 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)

SUPPLIER

Signature: _____

Printed Name: _____

Title: _____

Date: _____

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 Requirements
- Attachment D: Warranty Requirements

Incorporated by Reference Only:

- Exhibit 1: RFB No. 938
- Exhibit 2: Supplier's Bid Response

Attachment A: Scope of Work

1.1 **General Requirements/Background Information**

The Supplier shall provide Aggregate Trap Rock for the Street Department as outlined in this Scope of Work (Specifications and Requirements).

1.2 **Scope of work**

- A. This specification covers various street construction material used by the City of Corpus Christi, Texas.
- B. The material listed in this specification are used in the repair and maintenance programs of the Corpus Christi Street Department.

1.3 **Work Site and Conditions**

- A. The material shall meet the requirements of Item #302 Aggregates for Surface Treatment, TYPE E, GRADE 5 "Trap Rock" of the current version of the Texas Department of Transportation Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges.

Retained Gradation as follows:

3/8" Sieve – 3% - 5%

#4 Sieve – 80% to 90%

#8 Sieve – 98% to 100%

Washed Rock

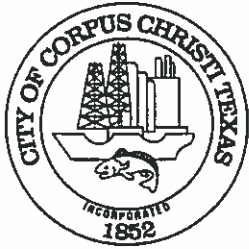
Decantation: 0.7% max

LA Abrasion 15% max

- B. Testing reports shall be submitted by the selected Supplier to the Contract Administrator for approval prior to delivery. Packing slips or other suitable shipping documents shall accompany each shipment and shall show: (a) name and address of person delivering the load, (b) name and address of receiving department and/or delivery location, and (c) with each delivery, furnish a shipping or delivery ticket showing description of items and quantity.
- C. All material shall be transported from the plant to the designated stock storage yard or job site in tight vehicles with metal bottoms previously cleaned of all foreign matter and when necessary shall be covered to reduce loss material and to protect material from weather elements.

1.4 Testing

- A. The City reserves the right to inspect and test materials for compliance to the specification at the supplier's location, at the point of delivery to the City Service Center yard or directly to 5352 Ayers, Corpus Christi, Texas 78415.
- B. If the laboratory tests indicate that the material delivered to the job site or City Yard, does not meet specifications, the City reserves the right to reject this material and supplier will be obligated to remove and replace rejected material with materials that will meet specifications.
- C. NOTE: The laboratory shall be hired by the City of Corpus Christi and the supplier shall cooperate with the laboratory at all times to be sure that the material meets City specifications.
- D. It shall be understood that the cost of all certified laboratory tests, materials and reports necessary to control the quality of material delivered, according to the City specifications, shall be accepted by the City but only on tested materials which meet City specifications.
- E. Deliveries are to be made as required. Delivery will be to the City of Corpus Christi Street Department materials storage yard at 5352 Ayers, Corpus Christi, Texas 78415. Delivery shall be in end-dump dump trucks.



CITY OF CORPUS CHRISTI
BID FORM
PURCHASING DIVISION
RFB No. 938
Aggregate Rock – Trap Rock

PAGE 1 OF 1

Date: 3-17-17
 Bidder: Vulcan Construction Materials LLC

 Authorized
 Signature:

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 purchasing 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 required governmental agencies.
 - d. Bidder acknowledges receipt and review of all addenda for this RFB.

Item	Description	UNIT	QTY	Unit Price	Total Price
1	Trap Rock - TYPE E, GRADE 5	TON	6000	\$40.62	\$243,720 ⁰⁰

1.1 Insurance Requirements

CONTRACTOR'S LIABILITY INSURANCE

- A. Contractor must not commence work under this contract until all insurance required has been obtained and such insurance has been approved by the City. Contractor must not allow any subcontractor, to commence work until all similar insurance required of any subcontractor has been obtained.
- B. Contractor must furnish to the City's Risk Manager and Contract Administrator one (1) copy of Certificates of Insurance 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 **endorsement** is required on GL, AL and WC if applicable. **Endorsements** must be provided with Certificate of Insurance. Project name and/or number must be listed in Description Box of Certificate of Insurance.

TYPE OF INSURANCE	MINIMUM INSURANCE COVERAGE
30-day advance written notice of cancellation, non-renewal, material change or termination required on all certificates and policies.	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 \$2,000,000 Aggregate
AUTO LIABILITY (including) 1. Owned 2. Hired and Non-Owned 3. Rented/Leased	\$1,000,000 Combined Single Limit
WORKERS'S COMPENSATION (All States Endorsement if Company is not domiciled in Texas) Employers Liability	Statutory and complies with Part II of this Exhibit. \$500,000/\$500,000/\$500,000

- C. In the event of accidents of any kind related to this contract, 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 statutory amounts according to the Texas Department of Insurance, Division of Workers' Compensation. An All States Endorsement shall be required if Contractor is not domiciled in the State of Texas.
- 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 renewal certificates of insurance throughout the term of this contract and any extensions within 10 days of the policy expiration dates. All notices under this Exhibit 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, and volunteers, as additional insureds by endorsement with regard to operations, completed operations, 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, cancellation, non-renewal, material change or termination 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 cancellation, non-renewal, material change or termination 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 stop work hereunder, and/or withhold any payment(s) 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 contract.
- 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 contract.
- I. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this contract.

2016 Insurance Requirements

Streets

Asphalt Supplier

10/04/2016 mv Risk Management

Attachment D: Warranty Requirements

No warranty requirement needed for this supply agreement.