

## Mary Rhodes Pipeline Easement Mowing

Service Agreement No. \_\_\_\_\_

THIS Mary Rhodes Pipeline Easement Mowing Service Agreement (this "Agreement") is entered into by and between Diamond M Field 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 **Mary Rhodes Pipeline Easement Mowing** in response to **Bid Invitation No. BI-0115-14** (which includes **Specification 1047**, dated 1/10/14) 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 **Mary Rhodes Pipeline Easement Mowing** in accordance with **Bid Invitation No. BI-0115-14** (which includes **Specification 1047**, dated 1/10/14).

**2. Term.** This Agreement is for one (1) year commencing on the date signed by the last signatory hereto and continuing for one (1) year thereafter. The term includes an option to extend for up to four (4) additional twelve-month periods subject to the approval of the Contractor and the City Manager or designee.

**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 **Mary Rhodes Pipeline Supervisor**.

**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.** Before activities can begin under this Agreement, the Contractor's insurance company(ies) must deliver a Certificate of Insurance, as proof of the required insurance coverages and the performance bond to the Contract Administrator. Additionally, the Certificate must state that the **Contract Administrator** will be given at least thirty (30) days' notice, by certified mail, of cancellation, material change in the coverages 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 15 days of the City Manager's written request.

**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 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-0115-14** (which includes **Specification 1047**, dated 1/10/14), or the Contractor's bid offer to **Bid Invitation No. BI-0115-14** 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 **Contract Administrator**. 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-0115-14** (which includes **Specification 1047**, dated 1/10/14). Failure to keep all insurance policies and performance bonds in force for the entire term of this Agreement is grounds for termination. 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: Water Contract Administrator  
P.O. Box 9277  
Corpus Christi, Texas 78469-9277

IF TO CONTRACTOR:

Contractor Diamond M Field Services  
Contact Meagan Cumberland  
Address: P.O. Box 61  
City, State, Schertz TX 78154-0061

17. **Month-to-Month Extension.** If the City has not completed the procurement process and awarded a new Agreement upon expiration of the original contract period or any extension period, the Contractor shall continue to provide goods/services under this Agreement, at the most current price under the terms of this Agreement or extension, on a month-to-month basis, not to exceed six months. This Agreement automatically expires on the effective date of a new contract.

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 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, 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 CONTRIBUTING NEGLIGENCE OF INDEMNITEES, BUT NOT BY THE SOLE NEGLIGENCE OF INDEMNITEES UNMIXED WITH THE FAULT OF ANY OTHER PERSON OR GROUP. 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 REASONABLY SATISFACTORY TO INDEMNITEES AND PAY ALL CHARGES OF ATTORNEYS AND ALL OTHER COSTS AND EXPENSES OF ANY KIND ARISING FROM ANY OF SAID LIABILITY, DAMAGE, LOSS, CLAIMS, DEMANDS OR ACTIONS. THE INDEMNIFICATION OBLIGATIONS OF CONTRACTOR UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OR SOONER TERMINATION OF THIS AGREEMENT.

SIGNED this 17 day of February, 2014

Contractor Diamond M Field Services

Meagan Cumberland  
Meagan Cumberland  
Title: Owner

CITY OF CORPUS CHRISTI ("CITY")

\_\_\_\_\_  
Michael Barrera  
Assistant Director of Financial Services

\_\_\_\_\_  
Date

Incorporated by Reference  
Exhibit A: Bid Invitation No BI-0115-14  
Exhibit B Bidder's Bid