



## CONTRACT FOR SERVICES

### MARY RHODES PIPELINE REPAIR

#### **Service Agreement No. (to be determined)**

THIS **Service Agreement** (this "Agreement") is entered into by and between **Mercer Construction Co.** (the "**Contractor**") and the **City of Corpus Christi**, a Texas home-rule municipal corporation (the "**City**"), , effective for all purposes upon execution by and through its authorized Agent.

WHEREAS **Contractor** has proposed to provide pipeline repair services for the Mary Rhodes Pipeline (the "**Work**"), see **Exhibit A Work Scope**, which is incorporated and attached to this **Agreement**, in response to a request from the **City**.

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

1. **Services.** **Contractor** will provide pipeline repair services for the Mary Rhodes Pipeline ("**Work**") in accordance with the Scope of Work, **Exhibit A.** **Contractor** shall provide all labor, supervision, equipment, materials, small tools, consumables, safety equipment, transportation and all other items of expense required to perform and complete the **Work**.

The **Work** will include all quality assurance, testing and inspections reasonably required by good industry practice to ensure that the **Work** complies with the terms and conditions of all the Contract Documents, unless more stringent quality assurance is required by other industry standards.

2. **Term.** This **Agreement** shall commence on or about 7/31/2012 and expires on 8/31/2012. Provided, however, that the term of this contract shall automatically terminate upon the completion and acceptance of the **Work** by the **City**.

3. **Project Manager.** The Project Manager designated by the **City** is responsible for approval of all phases of performance and operations under this Agreement including deductions for nonperformance and authorizations for payment. The Project Manager for this project is **Rene Marroquin**, cell: 361-815-6159, email: [renema@cctexas.com](mailto:renema@cctexas.com).

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**.



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5. **Insurance.** Before the **Work** can begin under this **Agreement**, the **Contractor's** insurance company(ies) must deliver a Certificate of Insurance, as proof of the required insurance coverages to the **City's** Risk Manager; **Exhibit B** (attached) defines the **City's** requirements. The **City** must approve and accept the policies prior to the commencement of the **Work**.

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 grounds whatsoever.

7. **Waiver.** No waiver of any breach of any term or condition of this **Agreement** waives any subsequent breach of the same.

8. **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, Mary Rhodes Pipeline easement located on property VI-032 Bennet Wood Interest, station number 556-00, near LaSalle, 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.

9. **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 **City**. 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, including insurance requirements**, are applicable to all subcontractors and their employees to the same extent as if the **Contractor** and its employees had performed the services.

10. **Amendments.** This **Agreement** may be changed only by written amendment(s) duly authorized and signed by the parties hereto.

11. **Termination.** The **City** may terminate this **Agreement** for **Contractor's** failure to perform the services specified. Failure to keep all insurance policies and/or



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any performance bonds (when requested) in force for the entire term of this **Agreement** is grounds for termination. 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.

Either Party may terminate this **Agreement** at any time, with or without cause upon providing twenty (20) days' prior written notice.

12. **Compensation.** The **City** agrees to reimburse the **Contractor** for and in consideration of the complete, satisfactory and timely performance of the **Work** pursuant to the **Contractors** rate sheets attached (**Exhibit C**) and all the requirements contained in this **Agreement**. The total value of this **Agreement** shall be limited to an amount equal to or less than \$50,000.00 (fifty thousand dollars), unless changed by written amendment.

13. **Invoices.** All invoices must reference this **Agreement** number (to be determined)

Remit invoices to: City of Corpus Christi  
P.O. Box 9277  
Corpus Christi, TX 78469-9277  
Attn: Accounts Payable

14. **Terms.** The **City** will remit payments net 30 days from the date received by the **City**.

15. **Contracts Administrator.** All of the **Contractor's** notices, communications or questions regarding this **Agreement** must be directed to the **Contract Administrator**, who is **Tom Richey, Senior Buyer**, ph:361-826-3176, email: [tomri@cctexas.com](mailto:tomri@cctexas.com) .

16. **Notice.** Notice may be given by email, hand delivery or certified mail, postage prepaid, and is received on the day emailed 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: Tom Richey, Water Dept.  
P.O. Box 9277  
Corpus Christi, Texas 78469-9277

[tomri@cctexas.com](mailto:tomri@cctexas.com)



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### IF TO CONTRACTOR:

Contractor Mercer Construction Co.  
Contact Mike Mercer  
Address: 909 N. Colorado St.  
City, State, Zip Edna, TX 77957

mmercerc@mercercconstco.com

17. **Entire Agreement.** This **Agreement** and any attached appendices constitute the sole and entire **Agreement** between the parties hereto and supersede any previous written or oral agreements. Any additional terms and conditions must be agreed to in writing by both parties.

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.



CONTRACT FOR SERVICES

20. **Commencement of Work.** No **Work** shall be performed under this **Agreement** until the **Contractor** has submitted to the **City** a signed and dated copy of this **Agreement** and the **Agreement** has been signed by the **City**.

SIGNED this 1<sup>ST</sup> day of AUGUST, 20 12.

Contractor: Mercer Construction Co.

Name MICHAEL MERCER  
Title: EXEC. VICE PRESIDENT

CITY OF CORPUS CHRISTI ("CITY")

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

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

CITY ATTORNEY

By: \_\_\_\_\_  
Lisa Aguilar, Assistant City Attorney  
For the City Attorney

Incorporated by Reference:

- Exhibit A: Work Scope
- Exhibit B: Insurance Requirements
- Exhibit C: Contractors Rate Sheets, dated 06/01/2012.

## EXHIBIT A

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### Scope of work

**Mercer Construction Co. will provide all labor, supervision, equipment, materials, small tools, consumables, safety equipment, transportation and all other items of expense required to perform and complete the excavation and repairs to the Mary Rhodes Pipeline.**

**The Mary Rhodes Pipeline repair services will be done in two phases:**

#### **Phase One**

**Exploratory excavation of the pipeline to determine the location and nature of the leak.**

#### **Phase Two**

**The repair(s), as required, to return the pipeline to its normal functioning capacity.**

**The leak location is described as being on the City of Corpus Christi, Mary Rhodes Pipeline easement, located on property VI-032 Bennet Wood Interest, at station number 556+00, near LaSalle, Texas.**

**EXHIBIT B**

**INSURANCE REQUIREMENTS**

- A. Contractor must not commence work under this agreement until all insurance required herein 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 the subcontractor has been obtained.
  
- B. Contractor must furnish to the City's Risk Manager two (2) copies of Certificates of Insurance, with applicable policy endorsements showing the following minimum coverage by insurance company(s) acceptable to the City's Risk Manager. The City must be named as an additional insured for the General liability policy and a waiver of subrogation is required for the General Liability and Workers Compensation policies.

TYPE OF INSURANCE	MINIMUM INSURANCE COVERAGE
<b>30-Day written notice of cancellation required on all certificates or by applicable policy endorsements</b>	<b>Bodily Injury and Property Damage</b> 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 COMBINED SINGLE LIMIT – \$2,000,000 Aggregate
AUTOMOBILE LIABILITY including: 1. Owned Vehicles 2. Hired & non-Owned vehicles	\$1,000,000 COMBINED SINGLE LIMIT
TRANSIT COVERAGE to include 1. Motor Truck Cargo/ Transportation	\$25,000 - Value of equipment being transported
WORKERS' COMPENSATION  EMPLOYERS' LIABILITY	WHICH COMPLIES WITH THE TEXAS WORKERS' COMPENSATION ACT AND SECTION II OF THIS EXHIBIT  500,000/500,000/500,000

- C. In the event of accidents of any kind relative to this agreement, the Contractor must furnish the Risk Manager with copies of all reports of such accidents within ten (10) days of accident.

**II. ADDITIONAL REQUIREMENTS**

- A. Contractor must obtain workers' compensation coverage through a licensed insurance company in accordance with Texas law. The contract for coverage must be written on a policy and endorsements approved by the Texas Department of Insurance. The coverage provided must be in amounts sufficient to assure that all workers' compensation obligations incurred will be promptly met. If coverage not written in

accordance with Texas law, All Other States (AOS) endorsement must be indicated on the certificate of insurance.

- B. Contractor's financial integrity is of interest to the City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, 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. The City shall be entitled, upon request and without expense, to receive copies of the policies, declarations page and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Contractor shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Contractor shall pay any costs incurred resulting from said changes. All notices under this Article shall be given to City at the following address:

City of Corpus Christi  
Attn: Risk Management  
P.O. Box 9277  
Corpus Christi, TX 78469-9277  
(361) 826-4555- Fax #

- 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:**
- Name the City and its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects 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 suspension, cancellation, non-renewal or material change 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 suspension, cancellation, or non-renewal 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 agreement.



- 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 agreement.
- 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 agreement.
- I. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this agreement.

Exhibit C

**MERCER CONSTRUCTION COMPANY**  
CURRENT EQUIPMENT CHARGE SCHEDULE  
06/01/12

<u>HEAVY MACHINERY</u>	<u>DAILY RATES</u>
RUBBER TIRE BACKHOE	\$ 230.00
RUBBER TIRE LOADER	390.00
TRACK EXCAVATOR (up to 135)	450.00
TRACK EXCAVATOR (>210)	975.00
MOTOR CRANE	450.00
- SMALL	365.00
DUMP TRUCK 5-6 YDS./WATER TRUCK	180.00

<u>SUPPORT EQUIPMENT</u>	<u>DAILY RATES</u>
AIR COMPRESSOR W/HOSES	\$ 70.00
PUMPS W/SUCTION & DISCHARGE - 1½" & 2"	50.00
- 3"	70.00
CUT OFF SAW	40.00
ELECTRIC GENERATOR	30.00
BORING MACHINE	250.00
TRENCH BOX	125.00

SPECIAL

WELLPOINT SYSTEM - FROM \$2,700.00 FIRST WEEK  
BY PASS PUMPING - FROM \$230.00 PER DAY

<u>TRANSPORTATION</u>	<u>RATE/MILE</u>
PICKUP (PASSENGER VEHICLE)	\$ .65
1-TON PICKUP & GOOSENECK TRAILER	1.80
TANDEM AXLE TRACTOR & LOW-BOY TRAILER	3.00

NOTES ON MACHINERY RATES:

FOR LONG TERM RENTAL (3+MONTHS) DISCOUNTS TO THE DAILY RATE MAY APPLY

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# Exhibit C

## MERCER CONSTRUCTION COMPANY

### CURRENT BILLING RATES

06/01/12

1. **LABOR:**

ALL LABOR IS TABULATED AT THE FOLLOWING RATES:

UNSKILLED LABOR	\$ 32.00/HR
SKILLED LABOR II	\$ 37.00/HR
MACHINE OPERATOR	\$ 43.00/HR
SUPERVISOR	\$ 125.00/HR

ADD 25% MARKUP TO TOTAL LABOR FOR SPECIAL CONDITIONS ENCOUNTERED (OVERTIME, ETC.)

2. **SUBCONTRACTORS:**

CHARGES DUE TO SUBCONTRACTORS UNDER OUR SUPERVISION ARE BASED ON NEGOTIATION WITH A MINIMUM MARKUP OF 15%.

3. **EQUIPMENT:**

ALL MACHINERY CHARGES ON OUR OWN MACHINERY IS TO BE TABULATED ACCORDING TO THE CURRENT EQUIPMENT CHARGE SCHEDULE. EQUIPMENT RENTED BY US FOR A SPECIFIC JOB WILL BE HANDLED IN THE SAME MANNER AS SUBCONTRACTORS (SEE ABOVE).

4. **MILEAGE:**

ALL VEHICLE MILEAGE ASSOCIATED WITH A SPECIFIC JOB WILL BE TABULATED ACCORDING TO THE CURRENT EQUIPMENT CHARGE SCHEDULE.

5. **MATERIAL:**

MATERIAL WILL BE TABULATED ACCORDING TO TYPE AND AVAILABILITY  
\* MATERIAL MAY BE SUBJECT TO SPECIAL HANDLING CHARGES (25%+)

6. **ADDITIONAL ITEMS:**

\*YARD TIME INVOLVED IN PREPARING FOR A SPECIFIC JOB WILL BE CHARGED OUT AT THE CURRENT LABOR RATES.

\*OVERTIME IS CONSIDERED ANYTHING OVER 8 HOURS IN ONE DAY (25% PREMIUM WHEN NECESSARY)

**SPECIAL CHARGES MAY APPLY FOR:**

- \*EXCESSIVELY HAZARDOUS WORK
- \*SPECIAL EMERGENCIES
- \*PERMITS OR DRAWINGS
- \*SPECIAL LAYOUT
- \*INCLEMENT WEATHER
- \*SALTY OR CORROSIVE ENVIRONMENT
- \*NIGHT OR WEEKEND WORK

