

Cause No. D-1-GN-21-006395

STATE OF TEXAS and  
CITY OF CORPUS CHRISTI,  
*Plaintiffs,*

v.

VALERO MARKETING AND  
SUPPLY COMPANY and ERGON  
ASPHALT AND EMULSIONS,  
INC.,  
*Defendants.*

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IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

250th JUDICIAL DISTRICT

AGREED FINAL JUDGMENT

Plaintiffs, the State of Texas (the State) and the City of Corpus Christi (the City), and Defendants, Valero Marketing and Supply Company and Ergon Asphalt and Emulsions, Inc., submit to the Court this Agreed Final Judgment (Judgment). By presenting this Judgment to the Court, the State of Texas announces that it has published notice of this Judgment in the *Texas Register* for thirty days as required by Texas Water Code section 7.110 and received no comments that demonstrate that the proposed settlement is inappropriate, improper, inadequate, or inconsistent with applicable law.

Therefore, by the duly authorized signatures subscribed to this Judgment, all parties represent to the Court that they agree to the terms of this Judgment, and the Judgment represents the compromise and settlement of any

and all claims and causes of action that were placed in issue or could have been placed in issue by the *Plaintiffs' Original Petition* filed in this case.

This Judgment resolves any and all claims of the State and the City against Defendants identified and described in the *Plaintiffs' Original Petition* for alleged violations of the Corpus Christi City Code, including but not limited to the City-adopted portions of the International Plumbing Code, the International Building Code, and the Property Maintenance Code, incorporated therein by reference (the City Code), and the Texas Health and Safety Code, Chapter 341 (Chapter 341).

Plaintiffs allege in *Plaintiffs' Original Petition* that one or both of the defendants violated the City Code and Chapter 341 at facilities they own or operate located at 6746 Up River Road in Corpus Christi, Texas during a time period that began in 2005 and ended in December 2016.

The Court finds that it has jurisdiction over the subject matter of this action pursuant to Chapter 341 of the Texas Health and Safety Code and Chapter 7 of the Texas Water Code. The Court finds this Judgment to be proper, necessary, and in the best interest of justice, and approves this Judgment.

*State of Texas and City of Corpus Christi v. Valero Marketing and Supply Company and Ergon Asphalt and Emulsions, Inc.*

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED as follows:

## 1. DEFINITIONS

1.1 As used in this Judgment, the words and terms set forth below have the following meanings:

- A. “City” means the City of Corpus Christi.
- B. “City Code” means the Corpus Christi City Code, including but not limited to City-adopted portions of the International Plumbing Code, the International Building Code, and the Property Maintenance Code, incorporated therein by reference.
- C. “Days” means calendar days.
- D. “Defendants” means Valero and Ergon, as those terms are defined herein.
- E. “Effective Date” means the date on which the Court signs this Judgment.
- F. “Ergon” means Defendant Ergon Asphalt and Emulsions, Inc., its officers, directors, managers, principals, partners, owners, employees, agents, servants, and all persons in active concert or participation with Ergon, on its behalf or under its control.
- G. “Judgment” means this Agreed Final Judgment.
- H. “Parties” means the State, the City, Valero, and Ergon, as those terms are defined herein.

*State of Texas and City of Corpus Christi v. Valero Marketing and Supply Company and Ergon Asphalt and Emulsions, Inc.*

- I. “Plaintiffs” means the State and the City, as those terms are defined herein.
- J. “Project Funds” are all amounts required to be paid to Texas Treasury Safekeeping Trust Company in accordance with this Judgment.
- K. “State” means the State of Texas.
- L. “TCEQ” means the Texas Commission on Environmental Quality.
- M. “Valero” means Defendant Valero Marketing and Supply Company, its officers, directors, managers, principals, partners, owners, employees, agents, servants, and all persons in active concert or participation with Valero, on its behalf or under its control.

## 2. COMMITMENTS BY THE PARTIES

2.1 The Parties acknowledge receipt of a copy of this Judgment, are aware of the duties placed upon them in this Judgment, and are desirous and capable of carrying out those duties in full.

## 3. OBLIGATIONS OF THE CITY

3.1 The City is ordered by this Court to implement and timely carry out the duties and responsibilities placed on the City in the Backflow Prevention Compliance Project that is set forth in full in Attachment A, attached to this Judgment and incorporated herein. Nothing in this Judgment or the Backflow Prevention Compliance Project limits or excuses the City’s obligations under

*State of Texas and City of Corpus Christi v. Valero Marketing and Supply Company and Ergon Asphalt and Emulsions, Inc.*

federal, state, or local laws.

#### 4. CIVIL PENALTIES

4.1 The State of Texas shall have judgment against Valero for civil penalties in the amount of SIX HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$625,000.00).

4.2 The State of Texas shall have judgment against Ergon for civil penalties in the amount of SIX HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$625,000.00).

4.3 The City of Corpus Christi shall have judgment against Valero for civil penalties in the amount of SIX HUNDRED FIFTY THOUSAND DOLLARS (\$650,000.00).

4.4 The City of Corpus Christi shall have judgment against Ergon for civil penalties in the amount of SIX HUNDRED FIFTY THOUSAND DOLLARS (\$650,000.00).

#### 5. ATTORNEYS' FEES

5.1 The State of Texas shall have judgment against Valero for attorney's fees in the amount of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00).

5.2 The State of Texas shall have judgment against Ergon for attorney's fees in the amount of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00).

*State of Texas and City of Corpus Christi v. Valero Marketing and Supply Company and Ergon Asphalt and Emulsions, Inc.*

## **6. PAYMENT TO STATE**

6.1 Defendants shall make payment on the amounts awarded to the State in this Judgment as follows:

A. Valero shall pay \$650,000.00 to the State no later than thirty (30)

Days after the Effective Date of the Judgment.

B. Ergon shall pay \$650,000.00 to the State no later than thirty (30)

Days after the Effective Date of the Judgment.

6.2 All amounts required to be paid to the State in accordance with this Judgment shall be paid by certified checks made payable to the “State of Texas” and shall reference “AG No. CX2939695872.” Checks shall be delivered to Division Chief, Environmental Protection Division, Office of the Attorney General, P.O. Box 12548, MC-066, Austin, Texas 78711-2548.

## **7. PAYMENT TO FUND THE BACKFLOW PREVENTION PROJECT**

7.1 Defendants shall make payment on the amounts awarded to the City (Project Funds) in this Judgment as follows:

A. Valero shall pay \$650,000.00 to the Texas Treasury Safekeeping

Trust Company no later than thirty (30) Days after the Effective Date of the Judgment.

*State of Texas and City of Corpus Christi v. Valero Marketing and Supply Company and Ergon Asphalt and Emulsions, Inc.*

B. Ergon shall pay \$650,000.00 to the Texas Treasure Safekeeping Trust Company no later than thirty (30) Days after the Effective Date of the Judgment.

7.2 Defendants shall deposit the Project Funds into the Escrow Account described by the attached Escrow document, which is administered by the Texas Treasury Safekeeping Trust Company, no later than thirty (30) Days after the Effective Date of this Judgment, according to instructions received from the TexPool administrator and investment manager: Federated Hermes, Attn. Denise Hamala, Unit Manager, TexPool Participant Services, 1001 Texas Avenue, Suite 1150, Houston, Texas 77002, Phone: 1-866-839-7665, Email: Denise.Hamala@FederatedHermes.com. Any funds remaining after completion of the Backflow Prevention Compliance Project shall be handled in accordance with the terms specified in Attachment A.

## **8. RESERVATION OF RIGHTS**

8.1 Except as specifically provided in Section 9 of this Judgment, the State and the City each reserve, and this Judgment is without prejudice to, all other rights against Defendants, including the right to seek penalties or injunctive relief.

*State of Texas and City of Corpus Christi v. Valero Marketing and Supply Company and Ergon Asphalt and Emulsions, Inc.*

8.2 This Judgment shall not be construed in any way to relieve Defendants, the City, or their agents or contractors from the obligation to comply with any federal, state, or local law.

8.3 The State and the City reserve all legal and equitable remedies to address any endangerment to public health or welfare arising at or posed by Defendants' facilities for operations occurring after December 15, 2016.

8.4 The State and the City reserve all legal and equitable remedies available to enforce the provisions of this Judgment.

## 9. RELEASE

9.1 Upon full payment of the civil penalties in accordance with Paragraphs 6.1, 6.2, 7.1, and 7.2 of this Judgment, Defendants are released and discharged from any and all liability to Plaintiffs for all claims and causes of action that were placed in issue, or could have been placed in issue, by the State or the City that may have occurred before December 14, 2016, based on the failure to ensure against a backflow or siphonage of contaminated water into the drinking water supply as alleged in *Plaintiffs' Original Petition* at facilities located at 6746 Up River Road in Corpus Christi, Texas, owned or operated by Defendants, including violations of Chapter 341 and violations of the City Code.

*State of Texas and City of Corpus Christi v. Valero Marketing and Supply Company and Ergon Asphalt and Emulsions, Inc.*



## **10. RETENTION OF JURISDICTION**

10.1 This Court retains jurisdiction over both the subject matter of this Judgment and the Parties until Defendants are released pursuant to Paragraph 9.1 of this Judgment. Thereafter, this Court retains jurisdiction over the Project Funds for the duration of the performance of the terms and provisions of this Judgment for the purpose of enabling Plaintiffs to apply to the Court at any time for such further direction or relief as may be necessary or appropriate for the construction or modification of this Judgment, to effectuate or enforce compliance with its terms, or to resolve disputes related to it.

## **11. POST-JUDGMENT INTEREST**

11.1 Defendants shall pay post-judgment interest on all amounts required to be paid under this Judgment at the legal rate of 5.00 percent per annum from the date that the amounts are five (5) Days overdue, until paid.

## **12. GENERAL PROVISIONS**

12.1 This Judgment constitutes the entire agreement between the Parties and supersedes any and all prior agreements or understandings between the Parties relating to the referenced cause.

12.2 Nothing in this Judgment shall be construed to create any rights in, or

*State of Texas and City of Corpus Christi v. Valero Marketing and Supply Company and Ergon Asphalt and Emulsions, Inc.*

grant any cause of action to, any person not a party to this Judgment.

12.3 This Judgment may be executed in multiple parts, which together shall constitute a single original instrument. Any executed signature page to this Judgment may be transmitted by facsimile or email to the other Party, which shall constitute an original signature for all purposes.

12.4 The State and the City shall be allowed such writs and processes as may be needed for the enforcement of this Judgment.

12.5 Each of the undersigned representatives of a party to this Judgment certifies that he or she is fully authorized to enter into the terms and conditions of the Judgment and to legally execute and bind that party to this Judgment.

12.6 The Parties waive any appeal from this Judgment.

12.7 This Judgment is final and disposes of all parties and all claims in this cause.

Signed this 7th day of December, 2022.

  
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JUDGE PRESIDING  
KARIN CRUMP  
250th DISTRICT COURT

*State of Texas and City of Corpus Christi v. Valero Marketing and Supply Company and Ergon Asphalt and Emulsions, Inc.*

AGREED TO AND ENTRY REQUESTED BY:

KEN PAXTON  
Attorney General of Texas

BRENT WEBSTER  
First Assistant Attorney General

GRANT DORFMAN  
Deputy First Assistant Attorney General

SHAWN COWLES  
Deputy Attorney General for Civil Litigation

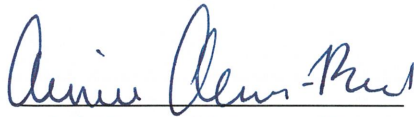
PRISCILLA M. HUBENAK  
Chief, Environmental Protection Division

/s/ Kellie E. Billings-Ray  
KELLIE E. BILLINGS-RAY  
Deputy Chief, Environmental Protection Division  
State Bar No. 24040447  
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OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
ENVIRONMENTAL PROTECTION DIVISION  
P.O. Box 12548, MC-066  
Austin, Texas 78711-2548  
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ATTORNEYS FOR THE TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

*State of Texas and City of Corpus Christi v. Valero Marketing and Supply Company and  
Ergon Asphalt and Emulsions, Inc.*



AIMEE ALCORN-REED

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**ATTORNEYS FOR THE CITY OF  
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*State of Texas and City of Corpus Christi v. Valero Marketing and Supply Company and  
Ergon Asphalt and Emulsions, Inc.*

BAKER BOTTS LLP

A handwritten signature in black ink, appearing to read "Molly Cagle", is written over the printed name "MOLLY CAGLE".

MOLLY CAGLE

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ERGON ASPHALT AND EMULSIONS, INC.

*State of Texas and City of Corpus Christi v. Valero Marketing and Supply Company and Ergon Asphalt and Emulsions, Inc.*

**ATTACHMENT A**

**CITY OF CORPUS CHRISTI**  
**BACKFLOW PREVENTION COMPLIANCE PROJECT**

*State of Texas and City of Corpus Christi v. Valero Marketing and Supply Company and Ergon Asphalt and Emulsions, Inc.*

## ATTACHMENT A

### CITY OF CORPUS CHRISTI BACKFLOW PREVENTION COMPLIANCE PROJECT

1. The City of Corpus Christi (“City”) shall implement and complete the Backflow Prevention Compliance Project (“Project”) set forth in this Project document. The Texas Commission on Environmental Quality (“TCEQ”) will have oversight of the Project and track the requirements to be performed by the City. Funds shall be disbursed to the City in amounts specified and approved by the TCEQ. The total amount of \$1,300,000 and any proceeds from the funds shall be dedicated to being spent on the Project (“Project Funds”).
2. The purpose of the Project is to protect the public drinking water supply of the City of Corpus Christi by reducing the likelihood of the future occurrence of contamination of the public water supply caused by backflow into the public water system through interconnection and to enhance responses to future backflow incidents. The effective date is the date the Agreed Final Judgment, in this case, is signed by the Court (“Effective Date”).
3. Pursuant to the Agreed Final Judgment, Project Funds shall be deposited with the Texas Treasury Safekeeping Trust Company (“Trust Company”) in accordance with the Agreed Final Judgment. These funds are not owned by the State of Texas and are not subject to legislative appropriation. Project Funds shall be used only as prescribed in this Project document and as approved by the TCEQ.
4. The Trust Company, as appointed by the TCEQ and the City, is empowered to manage, disburse, transfer, safekeep, and invest funds and securities to help the City implement the Project. Unless otherwise stated in this Project document, Project Funds will be approved only for work performed under the Project. The City may provide disbursement requests to TCEQ no more frequently than monthly. Such requests will provide the information required by Section 4 of the Escrow document.

*State of Texas and City of Corpus Christi v. Valero Marketing and Supply Company and Ergon Asphalt and Emulsions, Inc.*



If the City has complied with this Project document, the TCEQ will have up to thirty (30) days to approve the Letter of Instructions and submit it to the Trust Company. If the City has not complied with the obligations of this Project document, the TCEQ has the discretion to deny or delay such disbursements until the City is in full compliance. If the City is in full compliance and such disbursements are not provided to the City within thirty (30) days of the City's disbursement requests, the City may suspend implementation of the Project at its discretion until outstanding disbursement payments are provided. Suspension of the project does not relieve the City of its existing and ongoing obligations under federal, state, or local law.

5. The City shall respond completely and adequately, as determined by the TCEQ, to all requests for information concerning any disbursement request within fifteen (15) days after the date of such request or by any other deadline specified in writing.
6. The Escrow document shall define and establish a fund to be held by the Trust Company. The creation of the fund is to manage Project Funds to be used on specified tasks to be performed by the City to implement and complete the Project. The Project Funds will be on deposit with the Trust Company pursuant to the Escrow document to be executed between the City and the Trust Company. The Escrow document is provided as Attachment A-1. The release of Project Funds requires the approval of the TCEQ. Project Funds cannot be used by the City for any purpose other than the Project. Project Funds may not be used for administrative, indirect or overhead costs incurred by the City. In addition, during the term of the Project, the City may not receive or solicit reimbursement for the installation or repair of backflow assemblies from the City's commercial/industrial customers that require backflow prevention assemblies to the extent such installation or repair is funded by the Project Funds. The City may, however, receive and solicit reimbursement from the City's commercial/industrial customers for administrative, indirect and/or overhead costs incurred by the City that are not funded by the Project Funds. The parties do not anticipate that the Trust Company will charge any fees to maintain or administer the Escrow account. However, the parties agree that the Trust Company may withdraw Project Funds for any fees or expenses that may be

*State of Texas and City of Corpus Christi v. Valero Marketing and Supply Company and Ergon Asphalt and Emulsions, Inc.*

required pursuant to the Escrow document.

7. The Project Funds shall be maintained by the Trust Company as a separate and distinct fund outside the Texas State Treasury. All money and securities within the Escrow Account(s) shall be held, administered, invested, and disbursed solely in accordance with the provisions of the Escrow document and this Project document. The Trust Company exists and functions pursuant to Texas Government Code, Chapter 404.
8. Within 180 days after the Effective Date, the City shall:
  - i. **Develop and conduct an employee training program to increase the effectiveness of the City's backflow prevention program on its commercial/industrial connections by certifying additional City employees to test backflow prevention devices.** In addition to testing, City training provided for applicable City staff and applicable contractors shall include instruction on proper installation, maintenance, and repair of backflow assemblies, and shall provide education on state and municipal backflow prevention/cross-connection compliance requirements. The City shall also include cross-connection and backflow prevention training for water utility personnel, field staff, repair and maintenance staff, and meter readers to enable the identification of actual and potential backflow/cross-connection problems and response. Training shall include instruction on permanent backflow prevention assemblies and assemblies used on a temporary basis or on special applications.
  - ii. **Acquire the appropriate equipment the City will need to perform testing of backflow prevention assemblies and to enhance the City's response to backflow incidents.** An initial list of pre-approved training and equipment needed for the Project is provided as Attachment A-2. The City and the TCEQ may agree to supplement necessary equipment beyond the equipment identified in Attachment A-2 as needed during the term of the Project. In order to implement the Project, the City and the TCEQ may agree to authorize additional expenditures for training and

*State of Texas and City of Corpus Christi v. Valero Marketing and Supply Company and Ergon Asphalt and Emulsions, Inc.*

equipment. After this Project is fully performed, the City may continue to utilize equipment, including backflow device stock, used in the Project for the purpose of testing, inspecting, installing, maintaining, and repairing backflow assemblies.

- iii. **Submit to the TCEQ for review and approval the City's plan to respond to future potential backflow incidents.** The plan shall include procedures to coordinate and expedite response actions to backflow incidents. The plan shall designate an emergency response manager and backup emergency response manager and identify a critical management team including emergency responders, TCEQ regional office personnel, and water utility officials. The plan shall provide a contingency for alternate drinking water supplies and include a public notification program. In addition, the plan shall also incorporate procedures for emergency testing and monitoring. The TCEQ acknowledges receipt of the City's Water System Preparedness and Incident Response Plan on December 13, 2018, and acknowledges that plan may be periodically amended. The TCEQ has reviewed and approved said plan as meeting these requirements.
9. Within 200 days after the Effective Date, the City shall submit written certification, receipts, and other records as necessary to demonstrate compliance with Paragraphs 8.i. through 8.iii. to:

Office of Compliance and Enforcement  
Texas Commission on Environmental Quality  
Enforcement Division, MC 149A  
P.O. Box 13087  
Austin, Texas 78711-3087

The City shall provide electronic copies of the above-referenced certification to:

*State of Texas and City of Corpus Christi v. Valero Marketing and Supply Company and Ergon Asphalt and Emulsions, Inc.*

Litigation Division  
Texas Commission on Environmental Quality  
MC 175  
P.O. Box 13087  
Austin, Texas 78711-3087  
backflow@tceq.texas.gov

Financial Administration Division  
Texas Commission on Environmental Quality  
MC 181  
P.O. Box 13087  
Austin, Texas 78711-3087  
backflow@tceq.texas.gov

and

Water Section Manager  
Corpus Christi Regional Office  
NRC Building, Suite 1200  
6300 Ocean Drive, Unit 5839  
Corpus Christi, Texas 78412-5839  
backflow@tceq.texas.gov

10. Within 260 days after the Effective Date, the City or the City's contractor shall develop a database designed to assist in the management of the City's backflow prevention data and assist in compliance with state and municipal backflow regulatory requirements. The database shall include an inventory of all identified connections that require backflow prevention assemblies and document the risk category of each connection as well as the potential impact of identified connections that pose a critical risk to the water supply and public health and safety. The database shall be able to schedule and track performance testing of backflow prevention assemblies and maintain complete records of performance testing. The database shall maintain information of previous and future customer service inspections ("CSIs") and affidavits certifying backflow compliance signed and sealed by a professional engineer licensed in the State of Texas ("Affidavit") as well as annual assembly testing and certification. The database shall also document

*State of Texas and City of Corpus Christi v. Valero Marketing and Supply Company and Ergon Asphalt and Emulsions, Inc.*

device details and a complete history of each assembly, including maintenance, repair and replacement. Finally, the database shall be enabled to incorporate the City's GIS system with the location of each commercial/industrial backflow prevention assembly.

11. Within 280 days after the Effective Date, the City shall submit written certification, receipts, and other records as necessary to demonstrate compliance with Paragraph 10 to the addresses provided in Paragraph No. 9 above.
12. Within 365 days after the Effective Date, the City shall conduct an assessment of its commercial and industrial connections to its water distribution system. The assessment shall identify commercial/industrial connections that are required to have backflow prevention assemblies in accordance with 30 Texas Administrative Code section 290.44(h). The assessment shall determine, for each commercial/industrial connection, whether an actual or potential health or non-health hazard exists, as defined in 30 Texas Administrative Code sections 290.38(35) and 290.38(57), respectively, and, if so, the required assembly, as listed in section 290.47(f). The City shall document the findings of its assessment in a written inventory, provided to the TCEQ. Furthermore, the written inventory shall include the following information:
  - i. For commercial/industrial connections with backflow prevention assemblies, the location of assemblies at each connection; the type of device(s) installed; the date/status of most recent CSI, if available, or Affidavit; and the date/status of the most recent performance test of each connection's backflow prevention assembly, if available;
  - ii. For commercial/industrial connections that are required to have a backflow prevention assembly or assemblies and that are without backflow prevention protection, the type of device(s) required and the date/status of the most recent CSI, if available, or Affidavit; and

*State of Texas and City of Corpus Christi v. Valero Marketing and Supply Company and Ergon Asphalt and Emulsions, Inc.*

- iii. For commercial/industrial connections where an actual or potential hazard exists, whether an internal cross-connection control program is in effect, in accordance with 30 Texas Administrative Code section 290.44(h).
13. Within 400 days after the Effective Date, the City shall submit written certification, receipts, and other records as necessary to the TCEQ to demonstrate compliance with Paragraphs 12.i. through 12.iii. to the addresses provided in Paragraph No. 9 above.
14. Within 365 days after the Effective Date, the City shall:
- i. Conduct CSIs for the customers without the required backflow assemblies in accordance with 30 Texas Administrative Code section 290.46(j) or obtain an Affidavit on applicable industrial/commercial connections identified in the assessment required by Paragraphs 12.i. and ii. above that require a new CSI or an Affidavit. The City may contract with a vendor to perform the CSIs; and
  - ii. Conduct performance tests of backflow prevention assemblies at applicable industrial/commercial connections identified in the assessment required by Paragraph 12.i. above, and, if appropriate, replace or repair the device(s) and retest the device(s) at each connection with a new or repaired backflow prevention assembly. The City shall test or have tested backflow prevention assemblies in accordance with 30 Texas Administrative Code section 290.44(h). Installation or repair of backflow assemblies under this Project is a one-time activity; and
  - iii. Install backflow prevention assemblies and conduct performance tests of applicable industrial/commercial devices at applicable connections identified in Paragraph 12.ii. above. The City shall test or have tested installed backflow prevention assemblies in accordance with 30 Texas Administrative Code section 290.44(h). Such installation and testing under this Project is a one-time activity.

*State of Texas and City of Corpus Christi v. Valero Marketing and Supply Company and Ergon Asphalt and Emulsions, Inc.*

15. Within 400 days after the Effective Date, the City shall submit written certification, receipts, and other records as necessary to the TCEQ to demonstrate compliance with Paragraphs 14.i. through 14.iii. to the addresses provided in Paragraph No. 9 above.
16. The City shall use Project Funds only as specified by this Project document and authorized by the TCEQ. Authorizations and funding shall not be unreasonably withheld. All authorizations contemplated for the Project, including, but not limited to, disbursement requests, are subject to approval of the TCEQ in Austin, Texas.
17. The City shall use all Project Funds as needed to complete all tasks required under the Project. Project Funds shall be used only to fund the Project. Requests for the disbursement of Project Funds to fund matters not part of the Project will not be approved by the TCEQ. The City may use Project Funds to perform the Project requirements using methodologies, techniques, and strategies it determines necessary to protect the City's drinking water distribution system from the harm of potential or actual contamination hazards. The City may, but is not required to, use funds other than Project Funds to perform and complete Project requirements. There shall be no unexpended Project Funds at the completion of the Project.
18. The City's obligations for the Project as specifically provided in this document shall not extend beyond the depletion of all Project Funds on the Project.
19. The City may request the TCEQ approval of extensions of the timeframes provided for in this Project. The TCEQ may grant such extensions upon a written and substantiated showing of good cause. All requests for extensions shall be made in writing to the Executive Director of the TCEQ. An extension is not effective until the City receives written approval from the Executive Director of the TCEQ or his designated representative. The determination of what constitutes good cause rests solely with the Executive Director of the TCEQ. An extension request shall be sent to the Order Compliance Team at the address listed in

*State of Texas and City of Corpus Christi v. Valero Marketing and Supply Company and Ergon Asphalt and Emulsions, Inc.*

Paragraph No. 9 above.

20. The City will use best efforts to accomplish all of the tasks identified in this Project document with the Project Funds provided herein. Unexpended Project Funds remaining at the end of the Project may be expended for additional training, equipment, and inventory of items described in Attachment A-2. The City may also seek approval to expend Project Funds on additional training, equipment, and inventory related to the City's obligations under the Project but not listed in Attachment A-2.
21. The performance of and compliance with the Project does not exempt the City from the requirement to implement and maintain an effective cross-connection (backflow prevention) program pursuant to the Texas Water Code, TCEQ rules, and applicable City ordinances.
22. Within 60 days after the completion of the Project, the City shall submit a final accounting for approval to the TCEQ. The final accounting shall demonstrate a zero balance and shall demonstrate that Project Funds were spent on the Project in accordance with this Project document. The return of unexpended funds to the City will not be approved by the TCEQ.
23. The City contact for the Project is the City Manager or person designated in writing by the City Manager to the addresses provided in Paragraph No. 9 above. The TCEQ contacts for the Project are provided in Paragraph No. 9 above. The TCEQ may change the above addresses by providing in writing an updated address to the City.



**ATTACHMENT A-1**  
**ESCROW DOCUMENT**

*State of Texas and City of Corpus Christi v. Valero Marketing and Supply Company and Ergon Asphalt and Emulsions, Inc.*



# Escrow Agreement for the City of Corpus Christi

## Preamble

This Escrow Agreement (the **"Agreement"**) is made and entered into by the City of Corpus Christi, Texas, and the Texas Treasury Safekeeping Trust Company (the **"Trust Company"** or the **"Escrow Agent"**), together with any successor in such capacity.

**WHEREAS**, the Trust Company is authorized to receive, transfer, and disburse money and securities belonging to the state, agencies, and local political subdivisions of the state, and nonprofit corporations, foundations, and charitable organizations created on behalf of the state or an agency or local political subdivision of the state under section 404.103, Texas Government Code;

**WHEREAS**, pursuant to an Agreed Final Judgment (the **"AFJ"**) involving the State of Texas (the **"State"**) and the City of Corpus Christi (the **"City"** or the **"Plaintiffs"**), against Valero Marketing and Supply Company and Ergon Asphalt and Emulsions, Inc. (the **"Defendants"**), the City will accept and comply with the obligations of the AFJ and the Backflow Prevention Compliance Project (the **"Project"**) to use funds paid by Defendants for the purpose of funding the Project in the amount of \$1,300,000.00.

**WHEREAS**, a condition of the AFJ and the Project is the deposit of funds paid by Defendants for the Project in escrow with the Escrow Agent subject to being withdrawn only as authorized by the Executive Director of the Texas Commission on Environmental Quality (the **"TCEQ"**), as specified by the Project.

**WHEREAS**, pursuant to section 404.103, Texas Government Code; Chapter 791, Texas Government Code (the Interlocal Cooperation Act); and Chapter 2256, Texas Government Code (the Public Funds Investment Act, the **"PFIA"**), the Trust Company manages the Texas Local Government Investment Pool (**"TexPool"**), a public funds investment pool; and

**WHEREAS**, on or about September 11, 2020, the City of Corpus Christi entered into a TexPool Investment Pools Participation Agreement with the Comptroller of Public Accounts acting through the Trust Company, as Trustee of the Texas Local Government Investment Pools.

**WHEREAS**, the PFIA, section 2256.016(d), Texas Government Code, authorizes the City to delegate to an investment pool the authority to hold legal title as custodian of investments purchased with City funds. In addition, these funds are not owned by the state of Texas and are not subject to legislative appropriation.

**NOW, THEREFORE**, in consideration of the mutual promises and agreements and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to secure the delivery of the Project requirements, the City and the Trust Company, as Trustee of the Texas Local Government Investment Pools, mutually undertake, promise, and agree for themselves, their respective representatives and successors, as follows:

## Agreement

**Section 1: ESCROW ACCOUNT(S).** Upon the delivery of the funds described above, in the amount of \$1,300,000.00 (the **"Project Funds"**) shall be deposited with and held in escrow in TexPool to the credit of an escrow account on behalf of the City; and except for purposes of investment as authorized herein, the Project Funds, and any proceeds related thereto, shall not be commingled with any other accounts or with any other proceeds or funds. The Escrow Agent shall have no right to title with respect to the Project Funds except as Escrow Agent under the terms of this Agreement.

The parties shall execute all documents necessary to establish the escrow account(s) with the entity hereby designated to hold such Funds—the Escrow Agent. The escrow account(s) described in the preceding sentence shall be referred to herein as the **"Escrow Account(s)."** The Escrow Account(s) shall be titled "City of Corpus Christi Backflow Prevention Compliance Project" and shall not be subject to warrants, drafts, or checks drawn by the City. The City Manager or designee is authorized to execute all documents required to establish the Escrow Account(s) on behalf of the City. The Project Funds held in the Escrow Account(s) shall be disbursed or withdrawn strictly to pay the costs of the Project in accordance with the Project and solely upon written authorization from the Executive Director of the TCEQ or his designated representative. The Escrow Agent shall ensure that the Escrow Account(s) are established to provide to the City Manager or his/her designee and to the Executive Director of the TCEQ or his designated representative the Escrow Account(s)' regular monthly statements.

**Section 2: INVESTMENTS.** While the Project Funds are held in escrow, the Escrow Agent shall only invest escrowed funds in accordance with the Participation Agreement between the City of Corpus Christi and the Trust Company, under the TexPool Investment Pools Investment Policies for the investment and management of funds in TexPool Investment Pools consistent with the PFIA. All interest earned shall be deposited in the Escrow Account(s) and shall become part of the Escrow Account(s) to be used on the Project. All losses resulting from the investment of the Funds shall be charged against the Escrow Account(s).

**Section 3: DISBURSEMENTS.** The Escrow Agent shall not honor any disbursement from the Escrow Account(s), or any portion thereof, unless and until it has been supplied with written approval and consent by the Executive Director of the TCEQ or his designated representative. However, no written approval and consent by the Executive Director of TCEQ shall be required if the disbursement involves transferring funds from one investment to another within the Escrow Account(s) provided that all such investments are consistent with the PFIA requirements.

Disbursements of the Project Funds to the City shall be pursuant to written "Letter of Instructions," prepared by the City and delivered to the TCEQ, approved by the TCEQ, and submitted to the Escrow Agent. Each Letter of Instructions shall state with specificity (i) the amount of money to be paid or transferred out of the Escrow Account(s); (ii) the City banking account(s) to which the Funds will be transferred by the Escrow Agent; (iii) an itemization of the costs and expenses covered by the Letter of Instructions, including the names of the contractors, subcontractors or other vendors or payees for whose fees or charges reimbursement is being requested; (iv) the requested date of such transfer; (v) the certification of the City Manager or designee that such requested disbursement is a proper expenditure under the Project; (vi) verification by the TCEQ that it approves of the City's certification and that such requested disbursement is a proper expenditure authorized by the Project and this Agreement; and that the TCEQ approves the disbursement. Upon receipt of the Letter of Instructions, signed by the TCEQ, no later than 10 business days thereafter, the Escrow Agent shall promptly disburse the requested funds to the City.

**Section 4: UNEXPENDED FUNDS.** Any funds remaining unexpended in the Escrow Account(s) after completion of the Project, including any proceeds from Project Funds, and after the final accounting has been submitted to and approved by the TCEQ shall be transferred or otherwise disposed of in accordance with the terms of the AFJ and the Project as determined by the TCEQ or as otherwise approved and authorized by the TCEQ. The City shall deliver to the Escrow Agent written instructions regarding the final disposition of unexpended funds along with copies of the TCEQ's approval of the final accounting and the TCEQ's approval of final disposition of unexpended funds hereunder. In making a final disposition of unexpended funds pursuant to this section, the Escrow Agent shall rely entirely on the City's instructions and the TCEQ's written approvals related thereto and shall have no obligation to ensure that such unexpended funds are used as required pursuant to the AFJ, the Project, or any other agreement or instrument to which it is not a party.

**Section 5: CERTIFICATIONS.** The Escrow Agent shall be authorized to accept and rely upon the certifications and documents furnished to the Escrow Agent by the City through the TCEQ as approved by the TCEQ and shall not be liable for the payment of any funds made in reliance in good faith upon such certifications or other documents or approvals, as herein recited.

**Section 6: LIABILITY OF ESCROW AGENT.** To the extent permitted by law, the Escrow Agent shall not be liable for any act done or step taken or omitted by it or any mistake of fact or law, except for its negligence or willful misconduct of the Escrow Agent in the performance of any obligation imposed upon it hereunder.

**Section 7: RECORDS/REPORTS.** The Escrow Agent shall keep complete and correct books of record and account relating to the receipts, disbursements, allocations, and application of the money deposited to the Escrow Account(s), and investments of the Escrow Account(s) and all proceeds thereof. The records shall be available for inspection and copying at reasonable hours and under reasonable conditions by the City or by the TCEQ. The Escrow Agent shall submit to the TCEQ at the addresses provided in Paragraph No. 9 of the Project document and the City Manager or his/her designee after the end of each month, a report of its transactions during the month and the balance of funds in the account(s).

**Section 8: AMENDMENTS.** This Agreement may be amended from time-to-time as necessary with the written consent of the City Manager and the TCEQ, but no such amendments shall increase the liabilities or responsibilities or diminish the rights of the Escrow Agent without its consent.

**Section 9: TERMINATION.** This Agreement may be terminated by the Escrow Agent or, with the approval of the TCEQ, by the City. The City and the TCEQ are responsible for ensuring that the following criteria are satisfied in selecting the successor escrow agent: (a) the successor escrow agent must be an FDIC-insured state or national bank designated by the Texas Comptroller as a state depository; (b) the successor escrow agent must be retained prior to or at the time of the termination; (c) an escrow agreement must be executed by and between the City and the successor escrow agent and must contain the same or substantially similar terms and conditions as are present in this Agreement; and (d) the City must forward a copy of the executed escrow agreement with the successor escrow agent to the TCEQ within five (5) business days of said termination. No funds shall be released by the TCEQ until it has received, reviewed, and approved the escrow agreement with the successor escrow agent. If the City has not appointed a successor escrow agent within thirty (30) days of the notice of termination, the Escrow Agent may petition any court of competent jurisdiction in Texas for the appointment of a successor escrow agent or for other appropriate relief, and any such resulting appointment shall be binding upon the City. Whether appointed by the City or a court, the successor escrow agent and escrow agreement must be approved by the TCEQ for the appointment to be effective. The Escrow Agent is responsible for performance under this Agreement until a successor has been approved by the TCEQ and has signed an acceptable escrow agreement.

**Section 10: FEES AND EXPENSES.** The only fees required in connection with establishing and maintaining the Escrow Account(s) are those set forth in the most current TexPool Participant fee schedule. Any such fees will be deducted from the Escrow Account.

**Section 11: EXPIRATION.** This Agreement shall expire upon final transfer of the Funds in the Escrow Account(s) to the City or as otherwise disposed of in accordance with Sections 3 or 9 of this Agreement, except that Sections 5, 6, 9, 13, 15 and 16 shall survive the expiration of this Agreement.

**Section 12:** POINTS OF CONTACT. The points of contact for the Escrow Agent, the City, and the TCEQ are as follows:

**Texas Treasury Safekeeping Trust Company**  
**Attention: Mike Reissig, Chief Executive Officer**  
208 East 10th Street, 4th Floor  
Austin, Texas 78701  
Phone: (512) 463-3788  
Email Address: legal@ttstc.texas.gov

**City of Corpus Christi**  
**Attention: Miles Risley, City Attorney**  
1201 Leopard Street  
Corpus Christi, Texas 78401  
Phone: (361) 826-3360

**Texas Commission on Environmental Quality**  
**Litigation Division**  
P.O. Box 13087, MC-175  
Austin, Texas 78711-3087  
Phone: (512) 239-3400

**Section 13:** CHOICE OF LAW. This Agreement shall be governed exclusively by the applicable laws of the State of Texas. Venue for disputes shall be in the District Court of Travis County, Texas.

**Section 14:** ASSIGNABILITY. This Agreement shall not be assignable by the parties hereto, in whole or in part, and any attempted assignment shall be void and of no force and effect.

**Section 15:** ENTIRE AGREEMENT. This Agreement evidences the entire Escrow Agreement between the Escrow Agent and the City and supersedes any other agreements, whether oral or written, between the parties regarding the Funds or the Escrow Account(s). No modification or amendment of this Agreement shall be valid unless the same is in writing and is signed by the City and consented to by the Escrow Agent and the TCEQ.

**Section 16:** VALIDITY OF PROVISIONS. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full-force and effect, and shall in no way be affected, impaired or invalidated thereby.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement effective upon signature of both parties.

**City of Corpus Christi, Texas**

**Texas Treasury Safekeeping Trust Company,**  
As Escrow Agent

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Mike Reissig  
Chief Executive Officer

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Address: 208 East 10th Street, 4th Floor  
Austin, Texas 78701

Address: \_\_\_\_\_

(Seal)

(Seal)

**ATTACHMENT A-2**

**INITIAL LIST OF PRE-APPROVED  
CITY OF CORPUS CHRISTI TRAINING & EQUIPMENT**

*State of Texas and City of Corpus Christi v. Valero Marketing and Supply Company and Ergon Asphalt and Emulsions, Inc.*

## ATTACHMENT A-2

### Initial List of Pre-Approved City of Corpus Christi Training & Equipment

To support compliance and testing of all backflow devices required by State law and City ordinance, the City of Corpus Christi will provide employees and registered backflow testers with Backflow Prevention and Assembly Testing (BPAT) training, and necessary equipment, and materials. In addition, the City will purchase backflow device inventory stock, purchase test kits, provide for customer service inspections, and provide reimbursement for the installation of new, compliant backflow assemblies.

### Employee Training & Equipment Costs

The City of Corpus Christi will provide the State-required Backflow Prevention and Assembly Tester (BPAT) training to City employees as well as backflow testers in Corpus Christi who have registered with the City's Development Services Department (to be provided on a first-come, first-serve basis). The training will include backflow regulations, assembly testing, and safety. The training costs are estimated to be \$15,000 per course, each accommodating up to 25 people. The City anticipates conducting up to three courses, subject to change based upon implementation needs. Personnel selected for training will be required to meet all the TCEQ licensing requirements including two years of experience in an approved discipline, hold a minimum of a GED or High School diploma, and pass all criminal background checks as administered by the TCEQ. Once all training hours are complete, each individual will be responsible for applying for and scheduling any required backflow certification examinations at his/her own cost. Employees will also be responsible for all associated fees but may be reimbursed by the City, using Project Funds, if available, upon verification of passing score.

*State of Texas and City of Corpus Christi v. Valero Marketing and Supply Company and Ergon Asphalt and Emulsions, Inc.*

## Inspection and Software Costs

**Customer Service Inspections and Software:** The City may contract with a contractor to develop/provide a database/software solution that allows the City to track commercial and industrial backflow assemblies, their locations, history of certification, scheduled certification, and history of installation, maintenance, and replacement. The anticipated cost of this database is \$43,000, subject to change based upon implementation needs. Once the database is created, the City will contract with a vendor to provide customer service inspections for identified customers without the required registered backflow assemblies. The customer service inspections will help the City determine which customers pose a risk to the City's water distribution system. Inspections are expected to take between one and four hours and to occur during normal business hours. The estimated cost for this program is \$400,000, which include three or four inspectors, vehicles, fuel, travel, and insurance costs, all via contractor. Such estimated cost is subject to change based upon implementation needs.

**Furnish New Equipment:** The City will make funding available for new backflow assemblies for existing customers. Existing customers will be required to respond by a stated deadline with plans, backflow specifications, and a timeline for installation. Funds will be available on a first-come, first-serve basis. The City can provide the equipment or reimbursement of reasonable costs with proof of installation and documentation of the actual costs incurred. The City will not install the assemblies, but will reimburse costs and inspect the backflow devices when they are installed. The City anticipates using some of this funding to replace the 200 non-testable devices currently used by commercial customers. Anticipated costs are based on an estimated \$220 to \$15,000 per double check assembly and \$450 to \$17,000 per reduced pressure assembly. The anticipated budget for this item is \$650,000, subject to change based upon implementation needs. The City anticipates using all or a significant portion of these Project Funds to provide new and improved backflow assemblies to existing customers.

*State of Texas and City of Corpus Christi v. Valero Marketing and Supply Company and Ergon Asphalt and Emulsions, Inc.*

**Test Kits:** The City expects to purchase test kits for City inspectors and for other backflow inspectors in Corpus Christi who are registered with the City's Development Services Department to be provided on a first-come, first-serve basis. This will increase the inventory of test kits available in the City to provide the City and its customers with increased access to backflow testing, which will help to reduce the risk to the City's water distribution system. Anticipated costs for this program are based on an estimated \$700 to \$1,000 per test kit. The anticipated budget for this item is \$160,000, subject to change based upon implementation needs. The City anticipates using all of the Project Funds to furnish test kits.

**Storage:** The City anticipates a cost of approximately \$2,000 to rent a 10 x 10 storage unit to store the equipment and test kits until they are furnished under the above proposed items. Such cost is subject to change based upon implementation needs.

**Table 1 - Total Anticipated Cost<sup>1</sup>**

<b><u>Program</u></b>	<b><u>Anticipated Cost, Subject to Change based upon implementation needs</u></b>
Backflow Training – 3 classes of 25 each	\$45,000
Customer Service Inspection Database	\$43,000
Customer Service Inspections for approx. 6,200 customers	\$400,000
Furnish Backflow Equipment to Customers	\$650,000
Test Kits for Employees and Other Registered Backflow Inspectors	\$160,000
Equipment Storage	\$2,000
<b>Total</b>	<b>\$1,300,000</b>

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<sup>1</sup> Table 1 contains front-end estimates on quantities and associated costs. The City is under no obligation to expend such funds pursuant to such estimates in Table 1. Instead, the projected quantities and costs are mere projections and may be adjusted during implementation so long as the City complies with the terms of the Agreed Final Judgment and the Project.