

SUPPLY AGREEMENT NO. 4283

All-Weather Asphalt for Public Works

THIS **All-Weather Asphalt for Public Works Supply Agreement** ("Agreement") is entered into by and between the City of Corpus Christi, a Texas home-rule municipal corporation ("City") and Waller County Asphalt, Inc. ("Contractor"), effective upon execution by the City Manager or the City Manager's designee ("City Manager").

WHEREAS, Contractor has bid to provide All-Weather Asphalt for Public Works in response to Request for Bid No. **4283** ("RFB"), which RFB includes the required scope of work and all specifications and which RFB and the Contractor's bid response are incorporated by reference in this Agreement as Exhibits 1 and 2, respectively, as if each were fully set out here in its entirety.

NOW, THEREFORE, City and Contractor agree as follows:

1. Scope. Contractor will provide All-Weather Asphalt for Public Works in accordance with the attached Scope of Work, as shown in Attachment A, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety. "Goods," "products", and "supplies", as used in this Agreement, refer to and have the same meaning.

2. Term.

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

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

3. Compensation and Payment. This Agreement is for an amount not to exceed \$557,760.00, subject to approved extensions and changes. Payment will be made

for goods delivered and accepted by the City within 30 days of acceptance, subject to receipt of an acceptable invoice. All pricing must be in accordance with the attached Bid/Pricing Schedule, as shown in Attachment B, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety. Any amount not expended during the initial term or any option period may, at the City's discretion, be allocated for use in the next Option Period.

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

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

- 4. Contract Administrator.** The Contract Administrator designated by the City is responsible for approval of all phases of performance and operations under this Agreement, including deductions for non-performance and authorizations for payment. The City's Contract Administrator for this Agreement is as follows:

Name: Velma Pena
Department: Public Works
Phone: 361-826-1933
Email: VelmaP@cctexas.com

- 5. Insurance.** Before performance can begin under this Agreement, the Contractor must deliver a certificate of insurance ("COI"), as proof of the required insurance coverages, to the City's Risk Manager and the Contract Administrator. Additionally, the COI must state that the City will be given at least 30 days' advance written notice of cancellation, material change in coverage, or intent not to renew any of the policies. The City must be named as an additional insured. The City Attorney must be given copies of all insurance policies within 10 days of the City Manager's written request. Insurance requirements are as stated in Attachment C, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety.
- 6. Purchase Release Order.** For multiple-release purchases of products to be provided by the Contractor over a period of time, the City will exercise its right to specify time, place and quantity of products to be delivered in the following manner: any City department or division may send to Contractor a purchase release order signed by an authorized agent of the department or division. The purchase release order must refer to this Agreement, and products will remain with the Contractor until such time as the products are delivered and accepted by the City.

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

8. Warranty.

(A) The Contractor warrants that all products supplied under this Agreement are new, quality items that are free from defects, fit for their intended purpose, and of good material and workmanship. The Contractor warrants that it has clear title to the products and that the products are free of liens or encumbrances.

(B) In addition, the products purchased under this Agreement shall be warranted by the Contractor or, if indicated in Attachment D by the manufacturer, for the period stated in Attachment D. Attachment D is attached to this Agreement and is incorporated by reference into this Agreement as if fully set out here in its entirety.

9. Quality/Quantity Adjustments. Any quantities indicated on the Bid/Pricing Schedule are estimates only and do not obligate the City to order or accept more than the City's actual requirements nor do the estimates restrict the City from ordering less than its actual needs during the term of the Agreement and including any Option Period. Substitutions and deviations from the City's product requirements or specifications are prohibited without the prior written approval of the Contract Administrator

10. Non-Appropriation. The continuation of this Agreement after the close of any fiscal year of the City, which fiscal year ends on September 30th annually, is subject to appropriations and budget approval specifically covering this Agreement as an expenditure in said budget, and it is within the sole discretion of the City's City Council to determine whether or not to fund this Agreement. The City does not represent that this budget item will be adopted, as said determination is within the City Council's sole discretion when adopting each budget.

11. Independent Contractor. Contractor will perform the work required by this Agreement as an independent contractor and will furnish such products in its own manner and method, and under no circumstances or conditions will any agent, servant or employee of the Contractor be considered an employee of the City.

12. Subcontractors. In providing the Goods, Contractor will not enter into subcontracts or utilize the services of subcontractors.

- 13. Amendments.** This Agreement may be amended or modified only in writing executed by authorized representatives of both parties.
- 14. Waiver.** No waiver by either party of any breach of any term or condition of this Agreement waives any subsequent breach of the same.
- 15. Taxes.** The Contractor covenants to pay payroll taxes, Medicare taxes, FICA taxes, unemployment taxes and all other applicable taxes. Upon request, the City Manager shall be provided proof of payment of these taxes within 15 days of such request.
- 16. Notice.** Any notice required under this Agreement must be given by fax, hand delivery, or certified mail, postage prepaid, and is deemed received on the day faxed or hand-delivered or on the third day after postmark if sent by certified mail. Notice must be sent as follows:

IF TO CITY:

City of Corpus Christi
Attn: Velma Pena
Title: Contracts/Funds Administrator
Address: 2525 Hygeia St., Corpus Christi, Texas 78415
Phone: 361-826-1933
Fax: N/A

IF TO CONTRACTOR:

Waller County Asphalt, Inc.
Attn: Reid Dawson
Title: Vice President
Address: 22010 Faigrounds Rd., Hempstead, Texas 77445
Phone: 979-826-7075
Fax: N/A

- 17. CONTRACTOR SHALL FULLY INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY OF CORPUS CHRISTI AND ITS OFFICERS, EMPLOYEES AND AGENTS ("INDEMNITEES") FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, CLAIMS, DEMANDS, SUITS, AND CAUSES OF ACTION OF WHATEVER NATURE, CHARACTER, OR DESCRIPTION ON ACCOUNT OF PERSONAL INJURIES, PROPERTY LOSS, OR DAMAGE, OR ANY OTHER KIND OF INJURY, LOSS, OR DAMAGE, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, ATTORNEYS' FEES AND EXPERT WITNESS FEES, WHICH ARISE OR ARE CLAIMED TO ARISE OUT OF OR IN CONNECTION WITH A BREACH OF THIS AGREEMENT OR THE PERFORMANCE OF THIS**

AGREEMENT BY THE CONTRACTOR OR RESULTS FROM THE NEGLIGENT ACT, OMISSION, MISCONDUCT, OR FAULT OF THE CONTRACTOR OR ITS EMPLOYEES OR AGENTS. CONTRACTOR MUST, AT ITS OWN EXPENSE, INVESTIGATE ALL CLAIMS AND DEMANDS, ATTEND TO THEIR SETTLEMENT OR OTHER DISPOSITION, DEFEND ALL ACTIONS BASED THEREON WITH COUNSEL SATISFACTORY TO THE CITY ATTORNEY, AND PAY ALL CHARGES OF ATTORNEYS AND ALL OTHER COSTS AND EXPENSES OF ANY KIND ARISING OR RESULTING FROM ANY SAID LIABILITY, DAMAGE, LOSS, CLAIMS, DEMANDS, SUITS, OR ACTIONS. THE INDEMNIFICATION OBLIGATIONS OF CONTRACTOR UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.

18. Termination.

(A) The City may terminate this Agreement for Contractor's failure to comply with any of the terms of this Agreement. The City must give the Contractor written notice of the breach and set out a reasonable opportunity to cure. If the Contractor has not cured within the cure period, the City may terminate this Agreement immediately thereafter.

(B) Alternatively, the City may terminate this Agreement for convenience upon 30 days advance written notice to the Contractor. The City may also terminate this Agreement upon 24 hours written notice to the Contractor for failure to pay or provide proof of payment of taxes as set out in this Agreement.

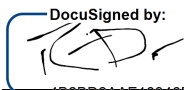
19. Owner's Manual and Preventative Maintenance. Contractor agrees to provide a copy of the owner's manual and/or preventative maintenance guidelines or instructions if available for any equipment purchased by the City pursuant to this Agreement. Contractor must provide such documentation upon delivery of such equipment and prior to receipt of the final payment by the City.

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

21. Assignment. No assignment of this Agreement by the Contractor, or of any right or interest contained herein, is effective unless the City Manager first gives written consent to such assignment. The performance of this Agreement by the Contractor is of the essence of this Agreement, and the City Manager's right to withhold consent to such assignment is within the sole discretion of the City Manager on any ground whatsoever.

- 22. Severability.** Each provision of this Agreement is considered to be severable and, if, for any reason, any provision or part of this Agreement is determined to be invalid and contrary to applicable law, such invalidity shall not impair the operation of nor affect those portions of this Agreement that are valid, but this Agreement shall be construed and enforced in all respects as if the invalid or unenforceable provision or part had been omitted.
- 23. Order of Precedence.** In the event of any conflicts or inconsistencies between this Agreement, its attachments, and exhibits, such conflicts and inconsistencies will be resolved by reference to the documents in the following order of priority:
- A. this Agreement (excluding attachments and exhibits);
 - B. its attachments;
 - C. the bid solicitation document including any addenda (Exhibit 1); then,
 - D. the Contractor's bid response (Exhibit 2).
- 24. Certificate of Interested Parties.** Contractor agrees to comply with Texas Government Code Section 2252.908, as it may be amended, and to complete Form 1295 "Certificate of Interested Parties" as part of this Agreement if required by said statute.
- 25. Governing Law.** Contractor agrees to comply with all federal, Texas, and City laws in the performance of this Agreement. The applicable law for any legal disputes arising out of this Agreement is the law of the State of Texas, and such form and venue for such disputes is the appropriate district, county, or justice court in and for Nueces County, Texas.
- 26. Public Information Act Requirements.** This paragraph applies only to agreements that have a stated expenditure of at least \$1,000,000 or that result in the expenditure of at least \$1,000,000 by the City. The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.
- 27. Entire Agreement.** This Agreement constitutes the entire agreement between the parties concerning the subject matter of this Agreement and supersedes all prior negotiations, arrangements, agreements and understandings, either oral or written, between the parties.

CONTRACTOR

Signature:  _____
Printed Name: Reid Dawson _____
Title: Vice President _____
Date: 8/17/2022 _____

CITY OF CORPUS CHRISTI

Josh Chronley
Assistant Director of Finance – Procurement

Date: _____

Attached and Incorporated by Reference:

Attachment A: Scope of Work
Attachment B: Bid/Pricing Schedule
Attachment C: Insurance Requirements
Attachment D: Warranty Requirements

Incorporated by Reference Only:

Exhibit 1: RFB No. 4283
Exhibit 2: Contractor's Bid Response

ATTACHMENT A: SCOPE OF WORK

General Requirements/Background Information

The Supplier shall provide bulk All-Weather Asphalt Mix Material (All Season Pre-Coated Patching Mixture), for the Street Department as outlined in this Scope of Work (Specifications and Requirements).

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 Public Works Department.

Work Site and Conditions

- A. The material shall meet the requirements of TXDOT Standard Specification for Construction and Maintenance of Highways, Streets and Bridges Departmental Materials Specifications (DMS) 9202 – Asphaltic Concrete Patching Material & DMS 9203 – Rapid-Curing Asphaltic Patching Material.

1) TXDOT DMS 9202 - 6.1.7. All Season Pre-Coated Patching Mixture

All Season Pre-Coated Patching Mixture (ASPPM). Use only aggregate gradation IV to produce ASPPM. Pre-coat the coarse and fine aggregates with at least 1% of AC-10, PG 64-22, or equivalent material in accordance with Item 300 prior to mixing with the asphalt material meeting the requirements of Table 7.

**Table 7
Asphalt Material Properties for ASPPM**

Property	Test Procedure	Min	Max
Kinematic viscosity, 140°F, cSt	T 201	300	700
Water, %	T 55	—	0.1
Flash point, T.O.C., °F	T 79	250	—
Distillation test:	T 78		
Distillate, percentage by volume of total distillate to 680°F			
to 437°F		0	0
to 500°F		0	5
to 600°F		55	—
Residue from distillation, volume %		73	100
Tests on distillation residue:			
Penetration, 100 g, 5 sec., 77°F	T 49	200	—
Solubility in trichloroethylene ¹ , %	T 44	99.0	—

Note—Test procedures beginning with T are AASHTO procedures.

1. Only perform this test if the binder does not appear homogenous.

2) TXDOT DMS 9203 Class I Dense Grade Rapid-Curing Asphalt Concrete

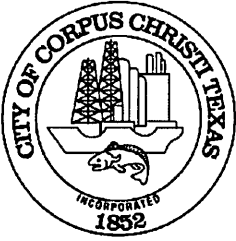
Table 1
Class I Dense Graded Rapid-Curing Asphalt Concrete

Asphalt Content Exclusive of Volatiles		
	Min.	Max.
% by Weight	4.0	6.5
Aggregate Gradation		
Sieve	% by Weight	
Passing 1/2"	100	
Passing 3/8"	95–100	
Passing 1/4"	80–95	
Passing No. 10	30–45	
Passing No. 40	8–20	
Passing No. 80	5–10	
Passing No. 200	2–8	
Hydrocarbon Volatile Content of Mix		
% by Weight	0.4	1.0
Moisture Content of the Mix		
% by Weight	–	0.2
Distillation Range of Volatiles Recovered from Mix		
Distillate, expressed as percent by volume of total volatiles recovered from mix when tested by ASTM D 86		
▪ Off at 300°F (149°C)	0	15
▪ Off at 350°F (177°C)	25	90
▪ Off at 400°F (204°C)	65	100
▪ Off at 450°F (232°C)	75	100
Properties of Asphalt Extracted from the Mix		
Penetration, 77°F (25°C), 100 g, 5 sec.	60	120
Ductility at 77°F (25°C), 5 cm/min., cm	100	–
Stability and Density Properties		
Stability of as-received mix (no curing) at 77 ± 2°F (25 ± 1°C), (molded at 77 ± 2°F [25 ± 1°C])	35%	–
Stability of cured mix at 140°F (60°C), (cured and molded at 140°F [60°C])	40%	–
Density (Mixed, cured, and molded at 140°F [60°C]; percent density is the ratio of the compacted specific gravity to the theoretical maximum specific gravity determined by Tex-227-F.)	90%	96%
Resistance to Water Damage		
The as-received mix, evaluated by Tex-530-C, must not show evidence of more than 10% stripping of the aggregate surfaces.		

- 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.
- D. Stock storage yard schedule delivery dates and standard service hours Monday through Friday between the hours of 7:00 a.m. – 5:00 p.m.
- E. Deliveries are to be made as required. Delivery will be to the City of Corpus Christi Public Works Department Materials Storage Yard at 2626 Holly Road, Corpus Christi, Texas 78415. Material Storage Yard is located behind Corpus Christi Animal Care and Vector Service Center with drivable entry on Civitan Street. Delivery shall be in end-dump dump trucks.

ATTACHMENT B: BID/PRICING SCHEDULE



CITY OF CORPUS CHRISTI CONTRACTS AND PROCUREMENT BID FORM

RFB No. 4283

All-Weather Asphalt for Public Works

PAGE 1 OF 1

Date: 8/15/2022Bidder: WALLER COUNTY ASPHALTAuthorized
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 Contracts and Procurement office, pursuant to the Code of Ordinances, is current and true.
 - c. Bidder is current with all taxes due and company is in good standing with all applicable governmental agencies.
 - d. Bidder acknowledges receipt and review of all addenda for this RFB.

Item	Description	UNIT	1-Year QTY	Unit Price	Total Price
1	All-weather asphalt pothole patching mix in bulk, no bags, including transportation	Tons	3,200	\$174.30	\$ 557,760
1-Year Total					\$

Item	Description	UNIT	1-Year QTY	Unit Price	Total Price
2	1st 1-Year Extension Option: All-weather asphalt pothole patching mix in bulk, no bags, including transportation	Tons	3,200	\$176.30	\$ 564,160
3	2nd 1-Year Extension Option: All-weather asphalt pothole patching mix in bulk, no bags, including transportation	Tons	3,200	\$178.30	\$ 570,560
Extensions Total					\$1,134,720
1 Year plus Extensions Grand Total					\$1,692,480

ATTACHMENT C: INSURANCE AND BOND REQUIREMENTS

I. CONTRACTOR'S LIABILITY INSURANCE

- A. Contractor must not commence work under this agreement until all insurance required has been obtained and such insurance has been approved by the City. Contractor must not allow any subcontractor Agency to commence work until all similar insurance required of any subcontractor Agency has been obtained.
- B. Contractor must furnish to the City's Risk Manager and Contract Administer one (1) copy of Certificates of Insurance (COI) 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 is required on all applicable policies. **Endorsements** must be provided with COI. Project name and or number must be listed in Description Box of COI.

TYPE OF INSURANCE	MINIMUM INSURANCE COVERAGE
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
AUTO LIABILITY (including) 1. Owned 2. Hired and Non-Owned 3. Rented/Leased	\$500,000 Combined Single Limit
WORKERS' COMPENSATION EMPLOYER'S LIABILITY	Statutory \$500,000 /\$500,000 /\$500,000

- C. In the event of accidents of any kind related to this agreement, 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 an amount sufficient to assure that all workers' compensation obligations incurred by the Contractor will be promptly met.
- 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 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 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, volunteers, and elected representatives as additional insured by endorsement, as respects operations, completed operation 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 30 calendar days advance written notice directly to City of any, cancellation, non-renewal, material change or termination in coverage and not less than 10 calendar days advance written notice for nonpayment of premium.
- E. Within 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 remove the exhibit hereunder, and/or withhold any payment(s) if any, 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.

BOND REQUIREMENTS:

No bonds are required for this Agreement.

2021 Insurance Requirements

Ins. Req. Exhibit **4-B**

Contracts for General Services – Services Performed Onsite

05/10/2021 Risk Management – Legal Dept.

ATTACHMENT D: WARRANTY REQUIREMENTS

No manufacturer's warranty required for this Agreement.