



SERVICE AGREEMENT NO. 1944

Mobile Tire Repairs for Fleet Maintenance

THIS **Mobile Tire Repairs for Fleet Maintenance Agreement** ("Agreement") is entered into by and between the City of Corpus Christi, a Texas home-rule municipal corporation ("City") and E.B. Creager Tire & Battery, Inc. ("Contractor"), effective upon execution by the City Manager or the City Manager's designee ("City Manager").

WHEREAS, Contractor has bid to provide Mobile Tire Repairs for Fleet Maintenance in response to Request for Bid/Proposal No. 1830 ("RFB/RFP"), which RFB/RFP includes the required scope of work and all specifications and which RFB/RFP and the Contractor's bid or proposal response, as applicable, 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 Mobile Tire Repairs for Fleet Maintenance ("Services") 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, and in accordance with Exhibit 2.
- 2. Term.** This Agreement is for 12 months, with performance commencing upon the date of issuance of a notice to proceed from the Contract Administrator or Purchasing Division. The parties may mutually extend the term of this Agreement for up to one additional 12-month periods ("Option Period(s)"), provided, the parties do so in writing and prior to the expiration of the original term or the then-current Option Period. The City's extension authorization must be executed by the City Manager or designee.
- 3. Compensation and Payment.** This Agreement is for an amount not to exceed \$40,000.00, subject to approved extensions and changes. Payment will be made for Services completed 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 will 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:

Erlinda Klubertanz
General Services Department
Phone: 361-826-1903
Erlinda@cctexas.com

5. **Insurance; Bonds.**

(A) 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.

(B) In the event that a payment bond, a performance bond, or both, are required of the Contractor to be provided to the City under this Agreement before performance can commence, the terms, conditions, and amounts required in the bonds and appropriate surety information are as included in the RFB/RFP or as may be added to Attachment C, and such content is incorporated here in this Agreement by reference as if each bond's terms, conditions, and amounts were fully set out here in its entirety.

6. **Purchase Release Order.** For multiple-release purchases of Services to be provided by the Contractor over a period of time, the City will exercise its right to specify time, place and quantity of Services 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 Services will not be rendered until the Contractor receives the signed purchase release order.

7. Inspection and Acceptance. City may inspect all Services and products supplied before acceptance. Any Services or products that are provided but not accepted by the City must be corrected or re-worked immediately at no charge to the City. If immediate correction or re-working at no charge cannot be made by the Contractor, a replacement service may be procured by the City on the open market and any costs incurred, including additional costs over the item's bid/proposal 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.

(C) Contractor warrants that all Services will be performed in accordance with the standard of care used by similarly situated contractors performing similar services.

9. Quality/Quantity Adjustments. Any Service 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 Services 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.** Contractor may use subcontractors in connection with the work performed under this Agreement. When using subcontractors, however, the Contractor must obtain prior written approval from the Contract Administrator unless the subcontractors were named in the bid or proposal or in an Attachment to this Agreement, as applicable. 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 the necessity of providing a COI in advance to the City, are applicable to all subcontractors and their employees to the same extent as if the Contractor and its employees had performed the work. The City may, at the City's sole discretion, choose not to accept Services performed by a subcontractor that was not approved in accordance with this paragraph.
- 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: Erlinda Klubertanz
Title: Operations Manager
5352 Ayers, 3-B, Corpus Christi, Texas 78415
Phone: 361-826-1903
Fax: 361-826-4394

IF TO CONTRACTOR:

E.B. Creager Tire

Attn: Chris Emmons

Title: Vice President

5002 Leopard, Corpus Christi, Texas 78408

Phone: 361-884-0379

Fax: 361-884-8672

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 Manager may terminate this Agreement for Contractor's failure to perform the work specified in this Agreement or to keep any required insurance policies in force during the entire term of this Agreement. The Contract Administrator must give the Contractor written notice of the breach and set out a reasonable opportunity to cure. If the Contractor has not cured within the cure period, the City Manager may terminate this Agreement immediately thereafter.

(B) Alternatively, the City Manager may terminate this Agreement for convenience upon 30 days advance written notice to the Contractor. The City Manager 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. **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.
20. **Severability.** Each provision of this Agreement is considered to be severable and, if, for any reason, any provision or part of this Agreement is determined to be invalid and contrary to applicable law, such invalidity shall not impair the operation of nor affect those portions of this Agreement that are valid, but this Agreement shall be construed and enforced in all respects as if the invalid or unenforceable provision or part had been omitted.
21. **Order of Precedence.** In the event of any conflicts or inconsistencies between this Agreement, its attachments, and exhibits, such conflicts and inconsistencies will be resolved by reference to the documents in the following order of priority:
 - A. this Agreement (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).
22. **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.
23. **Verification Regarding Israel.** In accordance with Chapter 2270, Texas Government Code, the City may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The signatory executing this Agreement on behalf of the Contractor verifies that the company does not boycott Israel and will not boycott Israel during the term of this Agreement.
24. **Governing Law.** This Agreement is subject to all federal, State, and local laws, rules, and regulations. The applicable law for any legal disputes arising out of this Agreement is the law of the State of Texas, and such form and venue for such disputes is the appropriate district, county, or justice court in and for Nueces County, Texas.

25. 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: CHRIS EMMONS

Title: VP

Date: 10/29/18

CITY OF CORPUS CHRISTI

Kim Baker
Assistant Director of Finance – Purchasing Division

Date: _____

Attached and Incorporated by Reference:

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

Incorporated by Reference Only:

Exhibit 1: RFB/RFP No. 1830
Exhibit 2: Contractor's Bid/Proposal Response

Attachment A: Scope of Work

1.1 General Requirements/Background Information

The Contractor shall provide mobile tire repairs as outlined in this Scope of Work. Repairs may be at offsite locations or at City facility locations.

1.2 Scope of Work

- A. Contractor shall provide mobile tire service for Fleet vehicles as needed during normal working hours and after hours.
 - 1. Normal working hours – Monday through Friday 7:00 am to 5:00 pm.
 - 2. After hours – Monday through Friday, 5:01 pm to 6:59 am, weekends, and holidays.
- B. The City's Service Center Clerk will call the Contractor when a repair is needed. If the repair is needed after hours, the department with the request will contact the Contractor.
- C. The Contractor's response time will be no later than 30 minutes unless otherwise approved from the time the call is placed from City's Service Center Clerk. If Contractor is not available to respond to the service call, another Contractor will be called.
- D. Contractor shall call the City's Service Center's Clerk with the departure time and the arrival time. If the call is after hours, the Contractor will call the City Department that has requested the repair service.
- E. Contractor shall charge a one service call charge if multiple jobs are at the same job site.
- F. The service call shall include any fuel surcharge or mileage that would be individually charged.
- G. If tire is not repairable, the Contractor shall call the Service Center at 361-826-1916 and a tire will be pulled from stock. It is the Contractor's responsibility to pick up the tire from the Service Center and replace the tire.
- H. If tire is not in stock at the Service Center, a tire will be ordered by the Service Center and the Contractor will pick up tire or tires at the place of purchase the Fleet department has designated and return to replace the tire.

- I. The Contractor shall furnish its own tools to include floor jacks, jack stands, tire repair hardware such as patches, plugs, or any other tool needed for repairing tires.
- J. All tires removed by the Contractor shall be brought back to the Service Center for disposal.

1.3 Warranty

Contractor shall warranty all repairs for 30 days. If repair is due to defective work caused by the Contractor, Contractor will repair tire at no additional labor charge. If the tire is a defective tire, the Contractor will install new tire and a new invoice will be generated for the service.

1.4 Contractor Quality Control and Superintendence

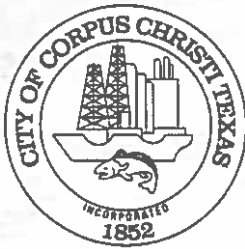
The Contractor shall establish and maintain a complete Quality Control Program that is acceptable to the Contract Administrator to assure that the requirements of the Contract are provided as specified. The Contractor will also provide supervision of the work to insure it complies with the contract requirements.

1.5 Special Instructions

All repairs shall be completely documented by the Contractor. A copy of each repair slip will be provided to the City personnel on site at time of completion and shall provide the following information:

- 1. Site location of the vehicle or equipment repair.
- 2. Unit number, make, model number and VIN of the vehicle repaired.
- 3. Make and model number of any replacement parts.
- 4. Work Order Number
- 5. Purchase Order Number

Attachment B: Bid/Pricing Schedule



CITY OF CORPUS CHRISTI PURCHASING DIVISION BID FORM

RFB No. 1830

**RFB Title Mobile Tire Repair for Fleet
Maintenance**

**PAGE
1 OF 2**

Date: 09/17/2017

Bidder: E. B. CREAGER TIRE

Authorized

Signature: 

1. Refer to "Instructions to Bidders" and Contract Terms and Conditions before completing bid.
2. Quote your best price for each item.
3. In submitting this bid, Bidder certifies that:
 - a. the prices in this bid have been arrived at independently, without consultation, communication, or agreement with any other Bidder or competitor, for the purpose of restricting competition with regard to prices.
 - b. Bidder is an Equal Opportunity Employer, and the Disclosure of Interest information on file with City's Purchasing office, pursuant to the Code of Ordinances, is current and true.
 - c. Bidder is current with all taxes due and company is in good standing with all applicable governmental agencies.
 - d. Bidder acknowledges receipt and review of all addenda for this RFB.

| Group 1 – Light Passenger and Truck Tires | | | | | |
|---|---------------------------|----------|------|------------|-------------|
| Item | Description | Unit | Qty | Unit Price | Total Price |
| 1 | Service Call | EA | 400 | 55.00 | 22,000.00 |
| 2 | Service Call - After Hour | EA | 75 | 100.00 | 7,500.00 |
| 3 | Service Call – Holiday | EA | 7 | 100.00 | 700.00 |
| 4 | New Tire Pick up Charge | EA | 132 | 0.00 | 0.00 |
| 5 | Out of Town Mileage | Per Mile | 5500 | 1.00 | 5,500.00 |
| 6 | Mount and Dismount | EA | 1000 | 8.00 | 8,000.00 |
| Total | | | | | 43,700.00 |

Revised: Addendum 2

| Page 2 of 2 | | | | | |
|---|--------------------------------|----------|------|------------|------------------|
| Group 2 – Medium Tires to Class 8 Tires | | | | | |
| Item | Description | Unit | Qty | Unit Price | Total Price |
| 7 | Service Call | EA | 200 | 55.00 | 11,000.00 |
| 8 | Service Call - After Hour | EA | 50 | 100.00 | 5,000.00 |
| 9 | Service Call – Holiday | EA | 7 | 100.00 | 700.00 |
| 10 | New Tire Pick up Charge | EA | 66 | 0.00 | 0.00 |
| 9 | Out of Town Mileage | Per Mile | 5500 | 1.00 | 5,500.00 |
| 10 | Mount and Dismount | EA | 800 | 25.00 | 20,000.00 |
| Total | | | | | 42,200.00 |
| Group 3 – OTR (Off the Road) Tires | | | | | |
| Item | Description | Unit | Qty | Unit Price | Total Price |
| 11 | Service Call | EA | 100 | 55.00 | 5,500.00 |
| 12 | Service Call - After Hour | EA | 20 | 100.00 | 2,000.00 |
| 13 | Service Call – Holiday | EA | 7 | 100.00 | 700.00 |
| 14 | New Tire Pick up Charge | EA | 35 | 0.00 | 0.00 |
| 15 | Out of Town Mileage | Per Mile | 3000 | 1.00 | 3,000.00 |
| 16 | Mount and Dismount – Small OTR | EA | 20 | 25.00 | 500.00 |
| 17 | Mount and Dismount – Med OTR | EA | 20 | 50.00 | 1,000.00 |
| 18 | Mount and Dismount – Large OTR | EA | 60 | 75.00 | 4,500.00 |
| Total | | | | | 17,200.00 |

RFB was bid out in three groups awarding primary and secondary for each group.

This Contractor is secondary for Group 1 and Group 3.

Attachment C: Insurance and Bond Requirements

A. CONTRACTOR'S LIABILITY INSURANCE

1. Contractor must not commence work under this contract until all insurance required has been obtained and such insurance has been approved by the City. Contractor must not allow any subcontractor, to commence work until all similar insurance required of any subcontractor has been obtained.
2. Contractor must furnish to the City's Risk Manager and Contract Administrator one (1) copy of Certificates of Insurance with applicable policy endorsements showing the following minimum coverage by an insurance company(s) acceptable to the City's Risk Manager. The City must be listed as an additional insured on the General liability and Auto Liability policies **by endorsement**, and a waiver of subrogation **endorsement** is required on all applicable policies. **Endorsements** must be provided with Certificate of Insurance. Project name and/or number must be listed in Description Box of Certificate of Insurance.

| TYPE OF INSURANCE | MINIMUM INSURANCE COVERAGE |
|--|--|
| 30-day advance written notice of cancellation, non-renewal, material change or termination required on all certificates and policies. | Bodily Injury and Property Damage Per occurrence - aggregate |
| COMMERCIAL GENERAL LIABILITY including: 1. Commercial Broad Form 2. Premises – Operations 3. Products/ Completed Operations 4. Contractual Liability 5. Independent Contractors 6. Personal Injury- Advertising Injury | \$1,000,000 Per Occurrence \$1,000,000 Aggregate |
| AUTO LIABILITY (including) 1. Owned 2. Hired and Non-Owned 3. Rented/Leased | \$1,000,000 Combined Single Limit |
| WORKERS'S COMPENSATION (All States Endorsement if Company is not domiciled in Texas) | Statutory and complies with Part II of this Exhibit. |
| Employer's Liability | \$500,000/\$500,000/\$500,000 |

3. In the event of accidents of any kind related to this contract, Contractor must furnish the Risk Manager with copies of all reports of any accidents within 10 days of the accident.

B. ADDITIONAL REQUIREMENTS

1. Applicable for paid employees, Contractor must obtain workers' compensation coverage through a licensed insurance company. The coverage must be written on a policy and endorsements approved by the Texas Department of Insurance. The workers' compensation coverage provided must be in statutory amounts according to the Texas Department of Insurance, Division of Workers' Compensation. An All States Endorsement shall be required if Contractor is not domiciled in the State of Texas.
2. 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.
3. Contractor shall be required to submit renewal certificates of insurance throughout the term of this contract and any extensions within 10 days of the policy expiration dates. All notices under this Exhibit shall be given to City at the following address:

City of Corpus Christi
Attn: Risk Manager
P.O. Box 9277
Corpus Christi, TX 78469-9277

4. **Contractor agrees that, with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:**
 - List the City and its officers, officials, employees, and volunteers, as additional insureds by endorsement with regard to operations, completed operations, and activities of or on behalf of the named insured performed under contract with the City, with the exception of the workers' compensation policy;
 - Provide for an endorsement that the "other insurance" clause shall not apply to the City of Corpus Christi where the City is an additional insured shown on the policy;
 - Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City; and
 - Provide thirty (30) calendar days advance written notice directly to City of any, cancellation, non-renewal, material change or termination in coverage and not less than ten (10) calendar days advance written notice for nonpayment of premium.

5. Within five (5) calendar days of a cancellation, non-renewal, material change or termination of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this contract.
6. 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.
7. Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractor's performance of the work covered under this contract.
8. It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of Corpus Christi for liability arising out of operations under this contract.
9. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this contract.

2018 Insurance Requirements
Purchasing
Mobile Tire Repairs for Fleet
07/26/2018 sw Risk Management
Valid Through 12/31/2018

No Bond is required for this service.

Attachment D: Warranty Requirements

Contractor shall warranty all repairs for 30 days. If repair is due to defective work caused by the Contractor, Contractor will repair tire at no additional labor charge. If the tire is a defective tire, the Contractor will install new tire and a new invoice will be generated for the service.