

## SUPPLY AGREEMENT NO. 2008

### Emulsified Polymerized Asphalt (HFRS-2P)

THIS **Emulsified Polymerized Asphalt (HFRS-2P) Supply Agreement** ("Agreement") is entered into by and between the City of Corpus Christi, a Texas home-rule municipal corporation ("City") and Ergon Asphalt & Emulsions, Inc. ("Supplier"), effective upon execution by the City Manager or the City Manager's designee ("City Manager").

WHEREAS, Supplier has bid to provide Emulsified Polymerized Asphalt (HFRS-2P) in response to Request for Bid No. 2008 ("RFB"), which RFB includes the required scope of work and all specifications and which RFB and the Supplier'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 Supplier agree as follows:

- 1. Scope.** Supplier will provide Emulsified Polymerized Asphalt (HFRS-2P) 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.** This Agreement is for 36 months. The parties may mutually extend the term of this Agreement for up to zero additional zero-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 \$2,250,000.00, 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 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:

Name: Peter Muniz  
Department: Street Operations  
Phone: (361) 826-1951  
Email: petermu@cctexas.com

- 5. Insurance.** Before performance can begin under this Agreement, the Supplier 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 Supplier 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 Supplier 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 Supplier 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 Supplier, 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 Supplier within 30 days of receipt of City's invoice.

## 8. Warranty.

(A) The Supplier 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 Supplier 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 Supplier 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 30<sup>th</sup> 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.** Supplier 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 Supplier be considered an employee of the City.
12. **Subcontractors.** Supplier may use subcontractors in connection with the work performed under this Agreement. When using subcontractors, however, the Supplier must obtain prior written approval from the Contract Administrator unless the subcontractors were named in the bid or in an attachment to this Agreement. In using subcontractors, the Supplier is responsible for all their acts and omissions to the same extent as if the subcontractor and its employees were employees of the Supplier. 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 Supplier and its employees had performed the work.

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 Supplier 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: Peter Muniz  
Title: Finance & Resource Manager  
Address: 2525 Hygeia St., Corpus Christi, Texas 78415  
Phone: (361) 826-1951  
Fax: (361) 826-1627

**IF TO SUPPLIER:**

Ergon Asphalt & Emulsions, Inc.  
Attn: Ernesto Santillan  
Title: Area Sales Manager  
Address: 11612 RM 2244, Building I, Suite 250, Austin, Texas 78738  
Phone: (512) 469-9292  
Fax: (512) 469-0391

17. ***SUPPLIER 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 SUPPLIER OR RESULTS FROM THE NEGLIGENT ACT, OMISSION, MISCONDUCT, OR FAULT OF THE SUPPLIER OR ITS EMPLOYEES OR AGENTS. SUPPLIER 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 SUPPLIER UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.**

**18. Termination.**

(A) The City Manager may terminate this Agreement for Supplier'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 Supplier written notice of the breach and set out a reasonable opportunity to cure. If the Supplier 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 Supplier. The City Manager may also terminate this Agreement upon 24 hours written notice to the Supplier 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 Supplier, 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 Supplier 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 Supplier's bid response (Exhibit 2).
- 22. Certificate of Interested Parties.** Supplier 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 Supplier 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.

**(SIGNATURE PAGE FOLLOWS)**

**SUPPLIER**

Signature:  \_\_\_\_\_

Printed Name: ERNESTO SANTILLAN

Title: AREA SALES MANAGER

Date: JANUARY 15, 2019

**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 Requirements
- Attachment D: Warranty Requirements

**Incorporated by Reference Only:**

- Exhibit 1: RFB No. 2008
- Exhibit 2: Supplier's Bid Response

## Attachment A – Scope of Work

### 1.1 General Requirements/Background Information

The Contractor shall provide emulsified polymerized asphalt (HFRS-2P) to be used in the chip seal program throughout the City as outlined in this Scope of Work.

### 1.2 Scope of Work

The emulsified polymerized asphalt shall be a homogeneous mix meeting the TXDOT Specifications Item 300.2 of 2014 Standard Specifications for Construction and Maintenance of Highway, Streets and Bridges.

### 1.3 Special Instructions

- A. The Supplier shall provide a high float rapid set (HFRS-2P) anionic emulsified asphalt with a polymer additive that meets the City's expectations for performance. The blended asphalt material hereafter referenced as an emulsified polymerized asphalt shall consist of virgin asphalt, an emulsifier agent, and a polymer additive. Issues of concern to the City regarding the emulsified polymerized asphalt are stability (breaking time), aggregate chip retention, resistance to premature aging (that is, long-term elasticity), and field performance.
- B. In addition to meeting the method requirements, the City requires the emulsified polymerized asphalt to perform favorably with respect to the issues listed above. Evaluation of field performance will be based on field observations by City personnel of chip seal applications with specific observations relative to chip retention, chip "rolling", clogging or stringing of distributor spray heads, uneven spray distribution, "running" of asphalt along application surface, and visual observation of changes in color and consistency relative to time elapsed after application.
- C. The polymer additive shall be styrene-butadiene-styrene (SBS), styrene-butadiene rubber (SBR) or equivalent. The additive may be a combination of one or more of these materials.
- D. The emulsified polymerized asphalt shall meet the storage stability, viscosity, and sieve tests requirements at any time within 14 days of delivery. Samples shall be stored in clean, airtight, sealed containers at a temperature of not less than 40 deg. F until tested.

### 1.4 Pickup/Delivery Instructions

- A. Standard Service picked up at Supplier's location and loaded into City Trucks.



- B. Material delivered and loaded into City Trucks and/or Supplier's tanker is to be delivered to the Street Department Service Center, 2525 Hygeia, Corpus Christi, Texas.
- C. Shipping temperatures shall be in accordance with the heating and storage maximum temperature ranges shown in the Texas State Department of Highways and Public Transportation, 2014 Standard Specifications for Construction of Highways, Streets, and Bridges. Supplier must be able to pump material into City distributor tanker. Minimum delivery will be 3,000 gallons.

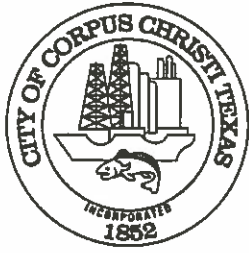
**1.5 Contractor Quality Control and Superintendence**

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.

**1.6 Samples**

- A. Suppliers are required to submit third party lab test reports which indicate that the emulsion asphalt mix meets all requirements in accordance with 2014 TX DOT Standard Specification Item 300.2
- B. The City may obtain samples of the emulsified polymerized asphalt at any time during the Contract period. Sampling is to be performed by the Director of Street Services in accordance with TX DOT test method Tex-500-C. The Suppliers' representative will be given the opportunity to witness sampling of the emulsified polymerized asphalt.
- C. At the City's discretion, samples shall be obtained on every 50,000 gallons of emulsified polymerized asphalt sold to the City or at least once every two weeks whichever results in more samples. In lieu of the foregoing sampling requirements, the City may elect to accept third party lab test reports which indicate that the emulsion asphalt mix meets all the requirements listed on the 2014 TX DOT Standard Material Specifications Item 300. The third-party test reports must be for every new batch of material formulated that was picked up or delivered to the City. The City will test at its discretion or when the emulsified polymerized asphalt field performance indicates the need. The sampling will be at the point of manufacturer or at the point where the City takes possession of the emulsified polymerized asphalt. The City reserves the right to determine the place and time of sampling.

- D. The City also reserves the right to sample and test at any time. All costs associated with sampling and testing shall be paid by the City except the Supplier will pay for all costs associated with the testing of samples which fail to meet requirements. The costs for samples that fail to meet requirements will be deducted from the vendor's payment from the City.
- E. The City requires a copy of the material test report for every pickup or delivery of material.



**CITY OF CORPUS CHRISTI  
PURCHASING DIVISION  
BID FORM  
RFB No. 2008  
Emulsified Polymerized Asphalt (HFRS-2P)**

PAGE 1 OF 1

Date: DECEMBER 28, 2018Bidder: ERGON ASPHALT & EMULSIONS, INC. Authorized Signature:

ERNESTO SANTILLAN  
AREA SALES MANAGER

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.
4. Bidders must not write over or revise the bid form. Do not write notes on the bottom of this page. Bidder will be considered Non-Responsive if the bid form is modified.

Item	Description	UNIT	1- Year Quantity	Unit Price	Total Price
1.	Emulsified Polymerized Asphalt (HFRS-2P)	Gallons	250,000	\$ 3.00	\$ 750,000.00
Total					\$ 750,000.00

Grand Total for 36 Months \$2,250,000.00

## Attachment C – Insurance Requirements

### I. CONTRACTOR’S LIABILITY INSURANCE

- A. 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.
- B. 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 GL, AL and WC if applicable. **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
<b>30-day advance written notice of cancellation, non-renewal, material change or termination required on all certificates and policies.</b>	<b>Bodily Injury and Property Damage</b> Per occurrence - aggregate
COMMERCIAL GENERAL LIABILITY including: 1. Commercial Broad Form 2. Premises – Operations 3. Products/Completed Operations 4. Contractual Liability 5. Independent Contractors 6. Personal Injury- Advertising Injury	\$1,000,000 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)  Employers Liability	Statutory and complies with Part II of this Exhibit.  \$500,000/\$500,000/\$500,000
POLLUTION LIABILITY	\$1,000,000 Per Occurrence

- C. 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.

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 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.
- 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 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

- 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, 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.
- E. 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.
- F. In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.
- G. Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractor's performance of the work covered under this contract.
- 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 contract.
- I. 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

Supply and Delivery of Emulsified Polymerized Asphalt (HFRS-2P)

10/22/18 sw Risk Management

Valid Through 12/31/2018

## **Attachment D - Warranty Requirements**

Section 8 Warranty Sub Section (b) is null and void for this Supply Agreement.