

## SUPPLY AGREEMENT NO. 2321

### Polyethylene Pipe for Gas Operations

THIS **Polyethylene Pipe for Gas Operations Supply Agreement** ("Agreement") is entered into by and between the City of Corpus Christi, a Texas home-rule municipal corporation ("City") and Gajeske, Inc. ("Supplier"), effective upon execution by the City Manager or the City Manager's designee ("City Manager").

WHEREAS, Supplier has bid to provide Polyethylene Pipe for Gas Operations in response to Request for Bid No. **2321** ("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 Polyethylene Pipe for Gas Operations 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 two years. The parties may mutually extend the term of this Agreement for up to zero additional zero-year 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 \$443,618.22, 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: Robert Presnell  
Department: Finance Department  
Phone: 361-826-1750  
Email: robertpr@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: Robert Presnell  
Title: Stores Supervisor  
Address: 5352 Ayers, Bldg 6, Corpus Christi, TX 78415  
Phone: 361-826-1750  
Fax: 361-826-1690

**IF TO SUPPLIER:**

Gajeske, Inc.  
Attn: Casen Doeppenschmidt  
Title: Regional Sales and Ops Manager  
Address: 6200 N. Houston Rosslyn Rd, Houston, TX 77091  
Phone: 210-380-6782  
Fax: 713-980-5290

- 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 comply with any of the terms 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. Governing Law.** Supplier 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.
- 24. 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: Casen Doeppenschmidt

Printed Name: Casen Doeppenschmidt

Title: Regional Sales and Operations manager

Date: 09/11/2019

**CITY OF CORPUS CHRISTI**

Kim Baker  
Director of Contracts and 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. 2321  
Exhibit 2: Supplier's Bid Response

## **ATTACHMENT A: SCOPE OF WORK**

### **1. General Requirements/Background Information**

The City uses and stocks polyethylene pipe at the City Warehouse for use by Gas Operations.

### **2. Scope of Work**

A. The Supplier shall provide polyethylene pipe as outlined on Bid/Pricing Schedule.

B. The Supplier shall cross reference the City's stock number listed on the Bid/Pricing schedule. The City agrees not to change the stock numbers assigned to each item for the duration of the contract.

### **3. Contractor Quality Control and Superintendence**

All polyethylene pipe will be defect free, properly packed and shipped to ensure a safe delivery.

### **4. Special Instructions**

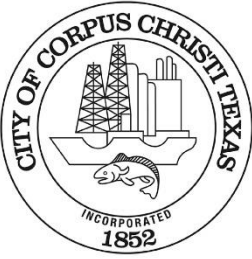
A. Ordering and Delivery

1. City will place an order on as needed basis.
2. Supplier shall ship the materials within 2 weeks of received order to the City Warehouse, located at 5352 Ayers St. Building 6, Corpus Christi, Texas 78415.
3. All contract prices are F.O.B. destination, inside delivery to the City of Corpus Christi Facility, freight prepaid.
4. Supplier must send Technical data sheet along with the delivery of the material. City will not accept any products that do not conform to the specifications.
5. If any items found defective, unusable or inoperable to the condition, Supplier shall arrange return shipment or shipping charge will be reimbursed from the invoice.
6. Supplier understands and agrees that the City may, at its discretion, cancel any backorders due to the Supplier's inability to deliver the product within the set time frame.
7. Cancellations shall be in writing and sent to Supplier by email, fax or mail.
8. No restocking fee or payment of any kind shall be owed for orders cancelled due to Supplier's inability to meet the deadline delivery date.

B. Defective Goods

Supplier shall pay for return shipment on any products that arrive in a defective, unusable or inoperable condition. Supplier must arrange for the return shipment of damaged products.





## ATTACHMENT B: BID/PRICING FORM

### CITY OF CORPUS CHRISTI CONTRACTS AND PROCUREMENT BID FORM

**RFB No. 2321**  
**Polyethylene Pipe**

Date: 07/30/2019

Bidder: Gajeske Inc

Authorized  
Signature:

Casen Doepenschmidt

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.
4. Bidders must not write over or revise the bid form. Bidders will be considered Non-Responsive if the bid form is modified.

Item	City Stock #	Description	UNIT	2 YR QTY	Unit Price	Total Price <small>Based On Full Truck Load Quantities</small>
1	4039	POLYETHYLENE PIPE YW 1/2" PE2708{2406}500' PIPE 65P0040931500Y	FT	10,000	\$0.3024	\$3024.00
2	4040	POLYETHYLENE PIPE YW 1" PE2708{2406} PIPE 500' 65P0101101500Y	FT	96,000	\$0.6394	\$61,382.40
3	4041	POLYETHYLENE PIPE YW 2" PE2708{2406} PIPE 500' 65P0201101500Y	FT	147,000	\$0.8497	\$124,905.90
4	4042	POLYETHYLENE PIPE YW 4" 4IPS DR11 YW GAS PIPE 1098798	FT	12,080	\$2.9040	\$35,080.32
5	4663	POLYETHYLENE PIPE 6" YW DR11 PIPE 500' COIL YELLOW 6" YELLOW DR11 PE2406	FT	33,000	\$6.6432	\$219,225.60
<b>Grand Total</b>						<b>\$443,618.22</b>

## **ATTACHMENT C: INSURANCE REQUIREMENT**

INSURANCE REQUIREMENTS: No insurance requirements necessary for this Supply Agreement; Section 5. Insurance: Bonds. (A) is null for this Supply Agreement.

## **ATTACHMENT D: WARRANTY REQUIREMENTS**

The Supplier warrants that all products supplied under this Agreement are new, quality items that are free from defects when accepted by the City.