

**Agreement Between
Webb County and Martin Asphalt Company
For Flexible Base Road Construction Materials**

WHEREAS, at a Webb County Commissioner's Court Meeting held on May 23, 2022, the Court approved and awarded Bid No. 2022-013, entitled "Contract for Road Construction Materials" to Martin Asphalt Company.

NOW, THEREFORE, IT IS AGREED between the **County of Webb**, acting by and through its Commissioners Court, hereinafter referred to as "County" and **Martin Asphalt Company**, a Texas Corporation, 3 Riverway, Suite 400, Houston, Texas 77056, hereinafter referred to as "Vendor" that Vendor shall provide "County" with the products/goods as more particularly described and attached herein as Exhibit A Bid Pricing.

Effective Date and Termination Date of Annual Contract:

The effective date of this Agreement is June 1, 2022, and shall terminate September 30, 2023.

1. Vendor

It is hereby covenanted and agreed by the parties that the products/goods to be provided to County by the Vendor, as awarded under Bid No. 2022-013, entitled Contract for Flexible Base Road Construction Materials and listed in the attached "Exhibit A Bid Pricing", incorporated herein by reference for all intents and purposes, shall be new and unused, unless otherwise specified. County of Webb reserves the right to test the material provided for specification compliance.

2. Contract Documents

The Contract Documents are:

- (a) This Agreement;
- (b) The bid specifications (ITB 2022-13 entitled "Contract for Road Construction Materials")
- (c) Vendor's Bid; and
- (d) Addendum to Bid Specification dated April 28, 2022

3. Price Matching

If the Purchasing Agent is able to identify a significantly lower price of any product/good provided by Vendor and determines that it's in the best interest of Webb County; the Purchasing Agent shall first notify the Vendor either in writing or via email and provide Vendor with the opportunity to match the lower price of any product/good that County is seeking. In the event that the Vendor is not able to match the lower price Vendor shall notify the Purchasing Agent either in writing or via email no later than next working day. Once notification is received within the required timeline specified in this section the Purchasing Agent is authorized to go outside of the annual contract to obtain the product/good in accordance with the Webb County Purchasing manual rules and regulations.

4. Compensation

The County of Webb shall pay the Vendor for products/goods provided which have been authorized by an Official Purchase Order signed by the Webb County Purchasing Agent. The

County Auditor will only authorize payment for the goods/services described on the Official Purchase Order unless otherwise permitted by law or the Webb County Purchasing Policy. Further, compensation for unauthorized change orders will not be paid by Webb County. Only change orders authorized by the Purchasing Agent through an Official Purchase Order will be paid once all goods are received and/or services completed. No other County Official, employee, officer or Elected Official is authorized to approve purchases and/or changes to purchase orders unless approved by the Webb County Purchasing Agent. Further, payment by County of Webb County does not imply that the material invoiced meets applicable specifications.

5. Billing Address

All invoices must be submitted to the Webb County Business Office in electronic format and/or delivered to the following address:

Webb County
1110 Washington Street, Ste. 203
Laredo, Texas 78040
Attn: Business Office

Or email to: apinvoices@webbcountytexas.gov

ALL invoices must reference a Purchase Order Number.

6. Vendor

In supplying products/goods required of the Vendor whether one or more, under this Agreement, it is mutually understood, and agreed, that Vendor is, at all times, acting and performing as an independent contractor. Webb County's sole interest is to assure that the Vendor shall supply products/goods in a competent, efficient, and satisfactory manner. The Vendor hereby agrees to supply the products/goods in a timely efficient manner and which comply with County's expectation, or reasonable commercial expectation, of the product supplied.

6. Warranties

- (a) Vendor Warrants that:
- (1) All materials will be paid in accord with the terms for the purchase of the materials from Vendor's provider and that the material will be free of the rightful claim of any provider or other third person;
 - (2) The material will meet or exceed the requirements of this Contract including all applicable statutes, regulations, industry standards, and applicable codes;
 - (3) The material will be merchantable with respect to good of the kind as defined by §2.314, Texas Business & Commerce Code; and
 - (4) The material will be suitable and fit for its intended purpose in compliance with §2.315, Texas Business & Commerce Code.
- (b) Vendor warrants its materials for the period and under the terms required by the bid documents.
- (c) Vendor hereby assigns to County of Webb any warranty for any material provided by the manufacturer and/or provider of such material, which assignment is in addition to Vendor warranties set forth herein.

- (d) These warranties are in addition to warranties provided by Vendor. These warranties prevail over any warranty disclaimer by Vendor and over any warranty Vendor inconsistent with these warranties.

7. Ethical Standards

Vendor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Bidder for the purpose of securing business. For breach or violation of this warranty, the County shall have the right in addition to any other right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

8. No Conflicts

Vendor represents and warrants that contractor has no actual or potential conflicts of interest in providing services to County under this contract and the contractor's provision of services under this contract would not reasonably create an appearance of impropriety.

9. Additional Services and Expenses

Any and all additional services, parts, costs, fees or expenses, not included in this agreement, shall require both a written request by the Vendor to the County and prior formal approval by a quorum of the Webb County Commissioner's Court at either a regular, special and/or emergency called meeting of the "County". The County shall not be responsible for and/or shall not compensate the Vendor for these costs without both a written request and prior approval by the County.

10. Terms and Conditions

The Vendor certifies, and affirms, that he/she/company is not legally, or professionally, disqualified from the performance of the duties under this Agreement. Vendor shall advise the County, in writing, of any change in status of the Vendor which may materially affect the ability of Vendor to legally, or professionally, carry out the duties herein.

11. Access to Criminal History Record and Termination of Contract or Disqualification of Bid for Cause

Please be advised that Webb County is entitled to obtain the criminal history information of any person and/or business owner who contracts with the County in accordance with Section 411.1295 of the Texas Government Code. In the event that any criminal history of a person or business owner who contracts with Webb County is discovered, then in that event, Webb County at its sole discretion reserves the exclusive right and shall be entitled to immediate termination of the contract and/or immediate disqualification of bid submittal in the event that such criminal history is discovered, by providing notice to the person and/or business owner of such termination and/or disqualification of bid submittal in accordance with the Notice provisions set forth in Section 13 herein-below.

12. Termination for Convenience

Termination for convenience, also known as a no-fault termination, allows the County to

terminate any contract, in whole or in part, at any time in its sole discretion, if it is determined that the termination is in the best interest of the County. As notified by the Purchasing Agent through a 15-day written notice/via email of such intent to terminate contract for convenience.

Purchasing provides the Vendor a written notice specifying the extent of termination and the effective date, providing as much notice as possible. The Vendor is generally paid for allowable costs incurred up to the effective date of termination. The County is not liable for payment to the Vendor related to the terminated portion of the work or any work performed or costs incurred after the effective date of the termination.

13. Termination for Default

A contract may be terminated for default when (a) the County concludes that the Vendor fails to perform, make progress, or in any way breaches the contract and continues to do so after receiving written notice/email notice of such default/issues and fails to cure such default/issues within 10 working days (b) Termination for default should be used as the last resort. The County should do everything practicable to assist the Vendor in curing a default. Factors to consider before making a decision to terminate for default include: (1) The provisions of the contract and applicable regulations, (2) The specific contractual failure(s) and the explanation provided for the failures, (3) The urgency of the need for the contracted supplies or services, (4) Actions the County may have taken that aggravated the problems, (4) The availability of the supplies or services from other sources and the time required to obtain them, and (5) Availability of funds or resources to re-purchase if the costs cannot be recovered from the defaulting Vendor.

14. Indemnification

(A) VENDOR SHALL INDEMNIFY AND HOLD HARMLESS THE COUNTY OF WEBB, THEIR COMMISSIONERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND REPRESENTATIVES FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, LOSSES, DAMAGES, COSTS, OR EXPENSES ARISING OUT OF, RESULTING FROM, OR OCCURRING IN CONNECTION WITH THE WORK TO BE PERFORMED OR MATERIALS DELIVERS THAT IS:

(1) ATTRIBUTABLE TO ANY BODILY OR PERSONAL INJURY, SICKNESS, DISEASE OR DEATH OF ANY PERSON;

(2) ATTRIBUTABLE TO ANY DAMAGE OR INJURY TO OR DESTRUCTION OF REAL PROPERTY INCLUDING THE LOSS OF USE THEREOF THEREOF; AND

(3) CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENCE, STRICT LIABILITY, OR OTHER ACT OR OMISSION OF:

(a) VENDOR AND ANY SUPPLIER OR THEIR RESPECTIVE AGENTS, REPRESENTATIVES, EMPLOYEES AND/OR

(b) THE COUNTY OF WEBB AND THEIR COMMISSIONERS, OFFICERS, DIRECTORS, TRUSTEES, EMPLOYEES, AGENTS, AND REPRESENTATIVES OR ANY OTHER PARTY FOR WHOM THEY MAY BE LIABLE REGARDLESS OF WHETHER SUCH LIABILITY IS CAUSED IN WHOLE OR PART OF THE NEGLIGENCE, STRICT LIABILITY, OR OTHER ACT OR OMISSION OF THE

PARTIES SO INDEMNIFIED.

(B) THIS INDEMNIFICATION OBLIGATION SHALL NOT BE LIMITED IN ANY WAY BY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE UNDER ANY WORKERS' COMPENSATION ACT, LIABILITY BENEFIT ACTS, OR OTHER EMPLOYEE BENEFIT ACTS.

15. Notices

All notices called for, or contemplated, hereunder shall be in writing, and shall be deemed to have been duly given, when personally delivered and/or via e-mail, or seventy-two (72) hours after mailed to each party by certified mail, return receipt requested, postage prepaid.

Any notices required to be sent hereunder shall be sent as follows:

TO: Vendor

Martin Asphalt Company
3 Riverway, Suite 400
Houston, TX 77056
(713) 350-6852

E-Mail: Victoria.espino@martinmlp.com

TO: Webb County

Jose Angel Lopez III, CTPM Webb County Purchasing Agent

1110 Washington Street, Ste. 101
Laredo, Texas 78040
(956) 534-4125
E-Mail: joel@webbcountytexas.gov

16. Severability

Each paragraph, and provision, hereof is severable from the entire Agreement, and if any provision is declared invalid, the remaining provisions shall nevertheless remain in effect.

17. Prohibitions against Assignment.

No assignment or transfer of this Agreement can be made without written consent of both parties, hereto.

18. Insurance

Vendor is responsible for procuring and maintain insurance coverage, during the contract term, for the following:

- (a) Claims for workers' compensation, which will be in the amount required by the laws of the state of Texas including employer's liability coverage at minimum \$1,000,000 each occurrence, each accident/\$1,000,000 by disease each-occurrence/\$1,000,000 by disease aggregate;
- (b) Commercial General Liability insurance at minimum combined single limits of

\$1,000,000 per occurrence, \$2,000,000 general aggregate for bodily injury and property damage, which coverage shall include: products and completed operations

- (c) Commercial automobile liability insurance at a minimum combined single limit of \$1,000,000 per occurrence for bodily injury and property damage, including non-owned and hired are coverage and owned vehicle if any are owned.

With reference to the foregoing insurance requirements, Vendor shall specifically endorse applicable insurance policies as follows:

1. Webb County shall be named as an additional insured on a primary and non-contributory basis, regardless of the application of other insurance, with respect to all liability coverages, except for the workers compensation.
2. All liability policies shall contain no cross-liability exclusions or insured versus insured restrictions.
3. A waiver of subrogation in favor of Webb County shall be contained in all policies.
4. All insurance policies shall be endorsed to the effect that Webb County will receive at least thirty (30) days' notice prior to cancellation or non-renewal of the insurance.
5. The additional insured coverage in the CGL policy in favor of Webb County must apply to the ongoing operations of Contractor.
6. Required limits may be satisfied by any combination of primary and umbrella/excess liability insurances.
7. Contractor may maintain reasonable and customary deductibles, subject to approval by Webb County.
8. Insurance must be purchased from insurers that are financially acceptable to Webb County with a minimum *A.M. Best* financial rating of A:-VII.

All insurance must be written on standard ISO or equivalent forms. Certificates of insurance shall be prepared and executed by the insurance company, or its authorized agent, shall be furnished to Webb County within five (5) business days of being notified of the award of the contract, and shall contain provisions representing and warranting the following:

- Shall set forth all endorsements and insurance coverages according to requirements and instructions contained herein.
- Shall specifically set forth the notice-of-cancellation or termination provisions to Webb County.
- Copies of all required endorsements must be attached to the certificate of insurance. The certificates of insurance must be updated and resubmitted to the Webb County to show renewal coverages, as applicable, at least thirty (30) days prior to expiration of any

one or more policies.

Upon request, Contractor shall furnish Webb County with certified copies of all insurance policies.

19. Venue/Laws of Texas

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Texas, and the exclusive venue for any and all legal disputes between the parties shall be enforced and shall lie in the Webb County, Texas.

20. Entire Agreement

This Agreement incorporates all the agreements, covenants, and understandings between the parties herein concerning the subject matter hereof; and all such covenants, agreements, and understandings have been merged into this written Agreement. No other prior agreement, or understandings, verbal or otherwise, of the parties, or their agents, shall be valid, or enforceable, unless signed by both parties, and attached hereto, and/or embodied herein.

21. Amendment

This Agreement may be modified, only in writing, executed by both parties, and approved by a majority of a quorum of the Webb County Commissioner's Court.

22. Confidentiality

Any confidential information provided to, or developed by, Vendor in the performance of the Agreement shall be kept confidential, unless otherwise provided by law, and shall not be made available to any individual, or organization without the prior approval of COUNTY. All work products, whether in draft or final form is the sole property of Webb County and may not be used by VENDOR for any purpose without written consent of COUNTY.

23. Headings

The headings used herein are for convenience only, and shall not constitute a part hereof, or affect the construction or interpretation hereof.

24. Counterparts

This Agreement may be executed in any number or, and by, the different parties hereto on separate counterparts, each of which when so executed, shall be deemed to be an original, and such counterparts shall, together, constitute but one and the same document.

25. Terminology and Definitions

All personal pronouns used herein, whether used in the masculine, feminine, or neutral, shall include all other genders; the singular shall include the plural, and the plural shall include the singular.

26. Execution of Other Instruments

The Parties hereto agree that they will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate this Agreement.

27. Parties and Successor Bound

This Agreement will be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns, as may

be applicable.

28. Effective Date

This Agreement becomes effective on June 1, 2022.

WEBB COUNTY

VENDOR

Martin Asphalt Company

Tano E. Tijerina
Webb County Judge

Name:
Title:

ATTEST:

Margie Ramirez Ibarra
Webb County Clerk

APPROVED AS TO FORM:

Fortunato G. Paredes

Webb County Chief Assistant for Civil Legal Department*

*By law, this office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval of their own respective attorney(s).

Bid 2022-013	Martin Asphalt Company
Contract for Road Construction Material	c/o Victoria Espino
	3 Riverway #400
	Houston, TX 77056
	(713) 350-6852
<i>Contract Term:</i>	victoria.espino@martinmlp.com
<i>June 1, 2022 to September 30, 2023</i>	
ITEM DESCRIPTION	Price
Item I - Type E TxDot Approved Flexible Base	No Bid
per cubic yard when weekly Diesel price per gallon is \$2.500 - 3.499	
per cubic yard when weekly Diesel price per gallon is \$3.500 - 4.499	
per cubic yard when weekly Diesel price per gallon is \$4.500 ≥	
Item II - Type A Grade 1-2 TxDOT Approved	No Bid
per cubic yard when weekly Diesel price per gallon is \$2.500 - 3.499	
per cubic yard when weekly Diesel price per gallon is \$3.500 - 4.499	
per cubic yard when weekly Diesel price per gallon is \$4.500 ≥	
Item III - Type F Pit Run Caliche	No Bid
per cubic yard when weekly Diesel price per gallon is \$2.500 - 3.499	
per cubic yard when weekly Diesel price per gallon is \$3.500 - 4.499	
per cubic yard when weekly Diesel price per gallon is \$4.500 ≥	
Item IV - Fill Dirt	No Bid
per cubic yard when weekly Diesel price per gallon is \$2.500 - 3.499	
per cubic yard when weekly Diesel price per gallon is \$3.500 - 4.499	
per cubic yard when weekly Diesel price per gallon is \$4.500 ≥	
Item V - LRA Premix Type D Cold Mix	No Bid
price per ton delivered to locations	
Item VI - MS-2 (5600 gallons per order)	
per gallon when weekly Diesel price per gallon is \$2.500 - 3.499	\$2.94
per gallon when weekly Diesel price per gallon is \$3.500 - 4.499	\$2.94
per gallon when weekly Diesel price per gallon is \$4.500 ≥	\$3.04
Item VII - Water 130 BBLS	
per 130 BBLS when weekly Diesel price per gallon is \$2.500 - 3.499	No Bid
per 130 BBLS when weekly Diesel price per gallon is \$3.500 - 4.499	No Bid
per 130 BBLS when weekly Diesel price per gallon is \$4.500 ≥	No Bid
	No Bid
Geographic Location:	
Name of Ranch	

All TxDOT approved flexible base material must meet testing requirements as per standard specifications under Item 247 in the TxDOT Manual

Vendors are required to provide Webb County lab testing results on all flexible base material (non DOT approved upon request).

Exhibit A
Bid Pricing
Emperor Services, LLC
Page 1 of 1