

STATE OF TEXAS               §  
   §  
 COUNTY OF FORT BEND       §

**PURCHASE AGREEMENT  
RFP 13-026**

THIS AGREEMENT is made and entered into by and between Fort Bend County, (hereinafter "County"), a body corporate and politic under the laws of the State of Texas, and United Plastic Fabricating Inc. (hereinafter "Contractor"), a corporation authorized to conduct business in the State of Texas.

**WITNESSETH**

WHEREAS, County desires to purchase two (2) mobile 500 gallon foam trailers with rear mounted attack manifold for the Fort Bend County (FBC) Office of Emergency Management (OEM), as specified herein and in RFP 13-026; and

WHEREAS, Contractor represents that it has available and desires to sell the foam trailers to County.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

**AGREEMENT**

**Article I. Scope of Services**

Contractor shall provide the two (2) foam trailers as specified in the attached Exhibit A. Contractor shall not deviate from the specifications contained in the attached Exhibit A without prior written consent from County.

**Article II. Compensation and Payment**

2.1 Contractor shall provide the two (2) foam trailers at the price set forth in the attached Exhibit A. The Maximum Compensation for the provision of the two (2) foam trailers described in Exhibit A is \$166,766.00. In no case shall the amount paid under this Agreement exceed the Maximum Compensation without an approved change order.

2.2 It is understood and agreed that payments will be made to Contractor by County based on the following procedures: Upon delivery of two (2) foam trailers as specified herein, Contractor shall submit to County an invoice in a form acceptable to County. County shall review such invoice and approve it within thirty (30) calendar days with such modifications as are consistent with this Agreement and forward same to the Auditor for processing. County shall pay the approved invoice within thirty (30) calendar days.

2.3 Payment of the invoice will not be deemed acceptance of the two (2) foam trailers, but rather the two (2) foam trailers will be subject to inspection, test, and rejection by

County for a period of five (5) days. County may reject the two (2) foam trailers if they do not comply with the specifications contained in the attached Exhibit A and Contractor will retrieve the two (2) foam trailers at no cost to County. County may elect to accept replacement tender if the two (2) foam trailers do not comply with the specifications contained in the attached Exhibit A.

### **Article III. Limit of Appropriation**

3.1 Prior to execution of this Agreement, Contractor has been advised by County, and Contractor clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of \$166,766.00, specifically allocated to fully discharge any and all liabilities which may be incurred by County.

3.2 Contractor does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Contractor may become entitled to hereunder and the total maximum sum that County shall become liable to pay to Contractor hereunder shall not under any conditions, circumstances, or interpretations thereof exceed \$166,766.00.

### **Article IV. Time of Performance**

It is understood and agreed that the Trailer shall be delivered to County on or before June 1, 2013 or within such additional time as may be extended by the County at County's sole discretion.

### **Article V. Modifications**

Any modifications to this Agreement must be in writing and must be signed by both parties.

### **Article VI. Termination**

#### **6.1 Termination for Default**

6.1.1 County may terminate the whole or any part of this Agreement for cause without cancellation charge in the following circumstances:

6.1.1.1 If Contractor fails to perform within the time specified in Section IV. of this Agreement or any extension thereof granted by County in writing; or

6.1.1.2 If Contractor materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in any of these circumstances does not cure such breach or failure to County's reasonable satisfaction within a period of thirty (30) calendar days after receipt of notice from County specifying such breach or failure.

6.2 If County terminates this Agreement as provided in this Section, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to Contractor.

## **Article VII. Insurance**

7.1 Prior to commencement of the Services, Contractor shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. Contractor shall provide certified copies of insurance endorsements and/or policies if requested by County. Contractor shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. Contractor shall obtain such insurance written on an Occurrence form from such companies having Bests rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

7.1.1 Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.

7.1.2 Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.

7.1.3 Business Automobile Liability insurance with a combined Bodily Injury/Property Damage limit of not less than \$1,000,000 each accident. The policy shall cover liability arising from the operation of licensed vehicles by policyholder.

7.1.4 Workers Compensation in accordance with the laws of the State of Texas. Substitutes to genuine Workers' Compensation Insurance will not be allowed.

7.2 County and the members of Commissioners Court shall be named as additional insured to all required coverage. All Liability policies written on behalf of Contractor shall contain a waiver of subrogation in favor of County and members of Commissioners Court.

7.3 If required coverage is written on a claims-made basis, Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time that work under the Agreement is completed.

7.4 County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation and Professional Liability (if required). All Liability policies written on behalf of Contractor shall contain a waiver of subrogation in favor of County and members of Commissioners Court.

#### **Article VIII. Indemnity**

**CONTRACTOR SHALL SAVE HARMLESS COUNTY FROM AND AGAINST ALL CLAIMS, LIABILITY, AND EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ACTIVITIES OF CONTRACTOR, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF CONTRACTOR OR ANY OF CONTRACTOR'S AGENTS, SERVANTS OR EMPLOYEES.**

#### **Article IX. Independent Contractor**

9.1 In the performance of work or services hereunder, Contractor shall be deemed an independent contractor, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of contractor or, where permitted, of its subcontractors.

9.2 Contractor and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.

#### **Article X. Contract Administration**

10.1 All written notices, demands, and other papers or documents to be delivered to County under this Agreement shall be delivered to the Fort Bend County Purchasing Agent, 301 Jackson, Richmond, Texas 77469, or at such other place or places as it may from time to time designate by written notice delivered to Contractor. For purposes of notice under this Agreement, a copy of any notice or communication hereunder shall also be forwarded to the following address: Fort Bend County, 301 Jackson Street, Suite 719, Richmond, Texas 77469, Attention: County Judge.

10.2 All written notices, demands, and other papers or documents to be delivered to Contractor under this Agreement shall be delivered to United Plastics Fabricating, Inc., 165 Flagship Drive, No. Andover, MA 01845, or such other place or places as Contractor may designate by written notice delivered to County.

#### **Article XI. Compliance with Laws**

11.1 Contractor shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required, Contractor shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

#### **Article XII. Retention of Records**

Contractor shall retain all documents related to this Agreement for a minimum of three (3) years from the later of completion of this project or any litigation, dispute, or audit related to this Agreement.

**Article XIII. Warranty**

Contractor warrants to County that the two (2) foam trailers will materially conform to all requirements and specifications contained in the attached Exhibit A.

**Article XIV. Assignment**

Neither party may assign or transfer its rights or obligations under this Agreement without the prior written consent of the other party.

**Article XV. Applicable Law**

This Agreement shall be construed under and in accordance with the laws of the State of Texas. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all disputes arising hereunder and waive the right to sue or be sued elsewhere.

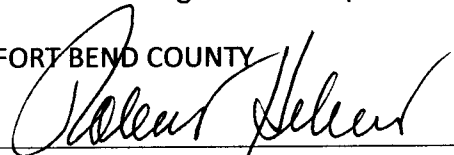
**Article XVI. Successors and Assigns**

County and Contractor bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of the other party, in respect to all covenants of this Agreement.

**Article XVII. Conflict**

In the event there is a conflict between this Agreement and the attached exhibit, this Agreement shall control.

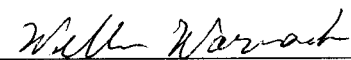
IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the date signed by County.

FORT BEND COUNTY  
  
Robert E. Hebert, County Judge

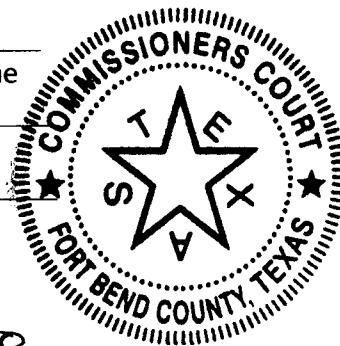
Date: 4-2-2013

ATTEST  
  
Dianne Wilson, County Clerk

UNITED PLASTIC FABRICATING INC.


  
Authorized Agent- Signature

William Warnock  
Authorized Agent- Printed Name  
sales engineer  
Title  
3/27/13  
Date



**AUDITOR'S CERTIFICATE**

I hereby certify that funds are available in the amount of \$166,766.00 to accomplish and pay the obligation of ~~the~~ Fort Bend County ~~Drainage County~~ under this contract.

  
Robert Edward Sturdivant, County Auditor