

REQUIREMENTS AGREEMENT
C-07-344-10-09

THIS AGREEMENT (the "Agreement") is entered into effective as of **October 09, 2007** by and between **APC Valley, LTD dba South-Tex Concrete**, a Texas Company ("Seller") and **HIDALGO COUNTY** ("Buyer").

WHEREAS, Buyer has solicited proposals for the supply of its requirements of Hidalgo County for "**Concrete Mix & Delivery Services**", as further described in Exhibit "A" which is attached hereto and incorporated herein by reference for all purposes (the "Products") for a period of one year; and

WHEREAS, Seller has submitted a proposal to supply Buyer's requirements; and

WHEREAS, Buyer has determined that Seller has submitted the lowest and best bid to meet Buyer's requirements for the Product.

NOW THEREFORE, for and in consideration of the mutual covenants and conditions hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Buyer agrees to purchase from Seller, and Seller agrees to sell to Buyer, all of the Products that Buyer may require for use by Buyer in "**Concrete Mix 3000PSI & 4000 PSI (Slum 1-7)**" in the areas of **HIDALGO COUNTY** projects for a period of **one (1) year from October 9, 2007 to October 9, 2008** with the option to renew for an additional one (1) year (if applicable) under the same rates, terms, and condition, and it is agreed that the Products will meet the specifications set forth in Exhibit "A" hereto.

2. When Buyer determines that it needs a quantity of the Products to be delivered, it will, according to its Purchasing Policies, complete and submit to Seller a Purchase Order describing the type and quantity of the Products required. The Products are to be delivered by Buyer to the location in Hidalgo County specified by Buyer in its Purchase Order.

3. Buyer agrees to pay Seller for each Purchase Order based on the prices set out in Exhibit "B". Seller shall render invoices for each Purchase Order, and the invoices shall be paid by Buyer on or before the 30th day following receipt of the invoice.

4. County and Seller agree that either party may terminate this contract upon thirty (30) days written notice at any time for any reason or no reason at all.

5. General Provisions.

a. **Conflict with Applicable Law.** Nothing in this Agreement shall be construed so as

to require the commission of any act contrary to law, and whenever there is any conflict between any provision of this Agreement and any present or future law, ordinance or administrative, executive or judicial regulation, order or decree, or amendment thereof, contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event the affected provision or provisions of this Agreement shall be modified only to the extent necessary to bring them within the legal requirements and only during the time such conflict exists.

b. **No Waiver.** No waiver by Buyer of any breach of any provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision hereof.

c. **Entire Agreement.** This Agreement contains the entire contract between the parties hereto, and each party acknowledges that neither has made (either directly or through any agent or representative) any representations or agreements in connection with this Agreement not specifically set forth herein. This Agreement may be modified or amended only by agreement in writing executed by Buyer and Seller, and not otherwise.

d. **Texas Law to Apply.** This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Hidalgo County, Texas. The parties hereby consent to personal jurisdiction in Hidalgo County, Texas.

e. **Notice.** Except as may be otherwise specifically provided in this Agreement, all notices, demands, requests or communications required or permitted hereunder shall be in writing and shall either be (i) personally delivered against a written receipt, or (ii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth below, or at such other addresses as may have been theretofore specified by written notice delivered in accordance herewith:

If to Buyer: Hidalgo County
Attention: County Judge
100 E. Cano, 2nd Floor
Edinburg, Texas 78539

If to Seller: South Texas Concrete
Attention: Mr. Al Longoria
PO Box 1518
Edinburg, Texas 78540

Each notice, demand, request or communication which shall be delivered or mailed in the manner described above shall be deemed sufficiently given for all purposes at such time as it is personally delivered to the addressee or, if mailed, at such time as it is deposited in the

Unites States mail.

f. **Additional Documents.** The parties hereto covenant and agree that they will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this Agreement.

g. **Successors.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Agreement.

h. **Assignment.** This Agreement shall not be assignable.

i. **Headings.** The headings and captions contained in this Agreement are solely for convenient reference and shall not be deemed to affect the meaning or interpretation of any provision or paragraph hereof.

j. **Gender and Number.** All pronouns used in this Agreement shall include the other gender, whether used in the masculine, feminine or neuter gender, and the singular shall include the plural whenever and as often as may be appropriate

k. **Authority to Execute.** The execution and performance of this Agreement by Buyer and Seller have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of Buyer and Seller in accordance with its terms.

l. **Commitment of Current Revenues Only.** In the event that, during any term hereof, the Commissioners Court does not appropriate sufficient funds to meet the obligations of Buyer under this Agreement, Buyer may terminate this Agreement upon sixty (60) days written notice to Seller. Buyer agrees, however, to use reasonable efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of Buyer pursuant to the provisions of Tex. Loc. Govt. Code Ann. § 271.903 (Vernon Supp. 1996).

m. **Insurance.** Company shall provide insurance in force on all its vehicles and all persons connected with providing services under this Contract naming County as an additional insured (with coverages and in the amounts described on Exhibit "C" attached hereto and incorporated herein at this point for all purposes), and shall furnish to County certificates of such insurance coverage.

n. **Purchasing Ethics.** Seller represents and warrants it has not, during the process of being awarded this contract violated the following ethical standards of Buyer and, upon and after the execution of this Agreement, agrees to abide by the following ethical standards of Buyer:

(1) It shall be a breach of ethics to offer, give or agree to give any elected official, department head or employee, or former elected official, department head or employee, of Hidalgo County, or for any elected official, department head or employee or former elected official, department head or employee of Hidalgo County, to solicit, demand, accept or agree to accept from another person, entity or organization, a gratuity or an officer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or purchase request, influencing the content of any specification or procurement standard, rendering of advise, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor pending before any department or agency of Hidalgo County.

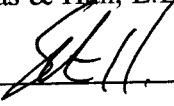
(2) It shall be a breach of ethics for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor for any contract for Hidalgo County, or any person associated therewith, as an inducement for the award of a subcontract or order.

EXECUTED effective as of the day and year first above written.

APPROVED BY COMMISSIONERS COURT ON, October 09, 2008

APPROVED AS TO FORM:

Atlas & Hall, L.L.P

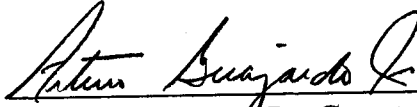
By: 

HIDALGO COUNTY

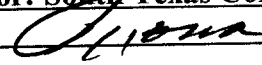
By: 

Juan D. Salinas, III, County Judge

ATTEST:


Arturo Guajardo, Jr., County Clerk

Vendor: South Texas Concrete

By: 

Printed Name: AL Longoria

Title: Representative

**EXHIBIT “A”
SPECIFICATIONS**

EXHIBIT "A"

HIDALGO COUNTY "CONCRETE MIX & DELIVERY SERVICES" BID NO: 07-344-08-29-YSI

SPECIFICATIONS, REQUIREMENTS & OTHER TERMS AND CONDITIONS

SCOPE OF SERVICES:

The services contract will encompass all project-related supplying and delivery of concrete mix for the County of Hidalgo including, but not limited to, the following:

1. All costs and expenses associated with the preparation and submission of bids shall be the responsibility of the bidder and no reimbursements for such charges or expenses shall be passed on to Hidalgo County.
2. Supplying of Concrete Mix and Delivery Services will be on an **as needed and as requested basis only**.
3. Concrete Mix 3000 PSI & 4000 PSI (Slum 1-7) will be supplied and delivered from your plant to different locations within Hidalgo County as requested.
4. Delivery hours will be arranged with requestor when requiring "Concrete Mix & Delivery Services".
5. Bid price must be per cubic yard basis with a minimum of 5 cubic yards per request.
6. Hidalgo County reserves the right to award the bid to one bidder or to multiple bidders if the County determines it is in its best interest to do so.
7. The contract will be in effect for a period of (1) one year from bid award date with the County's option to extend for an additional year under the same terms and conditions.
8. Hidalgo County reserves the right to continue this bid for an additional sixty (60) day Grace Period at the end of the contract term for unforeseen delay in award of new bid for next contract term.
9. The contract shall remain in effect until contract expires, delivery/completion of services ordered or terminated by either party with a thirty (30) day written notice prior to any cancellation.

10. Hidalgo County reserves the right to reject any/all bids, to waive any/all formalities or technicalities, or to accept the bid considered the best and most advantageous to the County.
11. **Insurance (requirements) certificates** must be submitted to Hidalgo County Purchasing Department for approval prior to any services being performed which is applicable to the awarded bidder in accordance to **Exhibit "C" attached**.
12. The bidder(s) awarded the contract **cannot** engage the services of a **subcontractor without prior written consent of Hidalgo County** for retention of a subcontractor to perform services hereunder. The successful bidder(s) must present evidence that the proposed subcontractor possesses all the necessary licenses and permits to perform the services and that the subcontractor has obtained the required insurance coverages as outlined in Exhibit "C".
13. **Market Volatility and Unit Price Adjustments:** Hidalgo County recognizes that during periods of national crisis and unstable economic conditions, unforeseen price increases might affect costs for goods and services contracted on an annual basis. The following procedure may be employed to mediate price volatility:
 - a) **Requesting Price Adjustment:** Upon written request of the Vendor to the County Purchasing Agent, the County may review evidence of prevailing industry-wide market conditions that warrant an adjustment in bid prices contained in the contract.
 - i) A Vendor must tie any price change clause to an industry-wide or otherwise nationally recognized index, or some other form of verifiable document. Such written request must be accompanied by a certified copy of the supplier's advisory or notification to the vendor of the price changes.
 - ii) The Vendor must put the Purchasing Agent on the mailing lists for such publications so that the Purchasing Agent can monitor said changes. Such membership shall be at no cost to the County.
 - iii) The County Purchasing Agent retains the right to determine whether or not such proposed price changes are in the best interest of the County.
 - iv) No price escalation will be authorized in excess of the amount of the increase referred to in the supplier's notice.
 - v) The County may only grant a price increase if the evidence presented is deemed reliable. Should the County allow a price increase, the approved price change shall be honored for all orders received by the vendor or contractor after the effective date of such price change. Approved price changes are not applicable to orders already issued and in process at time of price change.
 - b) **Price Reduction:** Vendor shall notify the County at the time when the Vendor's costs for items and/or supplies reduce due to stabilization in the market at which time prices for items on this contract shall be reduced accordingly. Failure by the Vendor to notify the County of a decrease in costs for items and/or supplies for which the Vendor was granted a price adjustment, may result in immediate termination of this contract and the County shall not be

obligated to pay the Vendor the difference between the contract price and the price adjustment.

- c) **Time frame for Adjusted Price Increases:** Price increases are only valid for the quarter in which they are requested and approved. Prices shall return to the original contract price at the beginning of the following quarter unless a Vendor notifies the County in writing within ten (10) days of expiration of the quarter in which the price increase is in effect, that it desires to have the price increase continue or that the Vendor is requesting a different price increase for the following quarter. Such request must be supplemented with sufficient justification to demonstrate that the price increase remains necessary. The County Purchasing Department shall have sole discretion whether to grant the price increase extension. The County too, shall have discretion to unilaterally reduce, eliminate or extend a price adjustment to the Vendor at any time upon written notice from the County to the Vendor demonstrating justification for such reduction, elimination or extension of the price adjustment.
- d) **Allowable Review Periods:** Price adjustment reviews may only be requested by the Vendor on a quarterly basis. However, the County may at its own discretion, conduct temporary price adjustment reviews at any time. The County Purchasing Agent and/or the County Auditor reserve the right to audit and/or examine any pertinent books, documents, papers, records or invoices relating directly to the contract transaction in question after reasonable notice and during normal business hours.
- e) **Dollar Limit to Price Changes:** The total increase in contract price shall not exceed twenty-five percent (25%) of the original contract price during the contract term.

ADDITIONAL INFORMATION:

Further information required for this project can be addressed to, Yvette Islas, Buyer, Hidalgo County Purchasing Department (956) 318-2626. Hidalgo County is requesting that any and all questions, inquiries, and clarifications regarding quotes, bids, proposals, or statement of qualifications be addressed to Martha L. Salazar, Purchasing Agent, 100 E. Cano, 4th Floor, Edinburg, Texas 78539. **TELEPHONE INQUIRIES WILL NOT BE ACCEPTED.**

ALL WRITTEN INQUIRIES WILL BE ACCEPTED VIA FACSIMILE NO LATER THAN, Wednesday, August 22, 2007, 5:00 P.M. Responses will be sent to all applicants via facsimile by no later than, 5:00 P.M., Friday, August 24, 2007.

EXHIBIT "B"
PAYMENT SCHEDULE

EXHIBIT "B"

RECEIVED

BID FORM

AUG 29 2007

PURCHASING DEPT.

HIDALGO COUNTY
"CONCRETE MIX & DELIVERY SERVICES"
BID NO: 07-344-08-29-YSI

Part I. AWARD WILL BE BASED ON THE LOWEST BID PER CUBIC YARD MEETING ALL REQUIRED SPECIFICATIONS.

Table with 4 columns: SAMPLE, \$ 3.00, 25%, .75. Rows include Location of Plant/Concrete Mix Materials, Total Cost Per Cubic Yard, Fuel Costs Percentage Per Cubic Yard, and Current / Base Fuel Cost. Data includes 3000 PSI and 4000 PSI concrete mix services with handwritten costs like \$70.00 and \$6.00 per truck.

Part II. BID PRICE ADJUSTMENT BY HIDALGO COUNTY

At the time of bid opening South Texas is expected to experience high fuel prices. Therefore, Hidalgo County is requesting pricing adjustments based on the following:

Fuel Cost Base Bid Price for project will be based on the OPIS Fuel Index for August 27, 2007. For each 10% (increase or decrease) in the OPIS Index of August 27, 2007 during the contract term, the fuel cost(s) portion of the awarded bid price(s) will be adjusted accordingly.

In the event you submit an invoice reflecting a price change under this provision, the Hidalgo County will only honor the change if a copy of the OPIS report on which the change is based accompanies the invoice.

In determining whether price changes are permitted hereunder, the appropriate OPIS Index is the index issued of the date of the invoice.

Agreement to Bid Price Adjustment Part I & II for the term of the contract includes any grace period extension.

BIDDER/COMPANY NAME :

South-Tex Concrete

ADDRESS:

P.O. Box 1518

CITY/STATE/ZIP CODE:

Edinburg, TX 78540

PHONE AND FAX No:

956) 381-9886 FAX 956) 383-5854

AUTHORIZED SIGNATURE:

[Handwritten Signature]

PRINTED NAME:

AL Longoria

TITLE:

Representative

**EXHIBIT “C”
INSURANCE**

MARSH

CERTIFICATE OF INSURANCE

CERTIFICATE NUMBER
CLE-001631707-03

PRODUCER

Marsh USA Inc.
TWO LOGAN SQUARE
PHILADELPHIA, PA 19103-2797
Attn: Philadelphia.certs@Marsh.com Fax: 212-948-0360

927483--CAS-08-09

INSURED

ACP VALLEY, LTD.
DBA SOUTH-TEX CONCRETE
6055 W. GREEN MOUNTAIN ROAD
P.O. BOX 34807
SAN ANTONIO, TX 78265

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER OTHER THAN THOSE PROVIDED IN THE POLICY. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES DESCRIBED HEREIN.

COMPANIES AFFORDING COVERAGE

- COMPANY
A SENTRY INSURANCE A MUTUAL CO
- COMPANY
B AMERICAN GUARANTEE & LIABILITY INSURANCE COMPANY
- COMPANY
C THE AMERICAN INSURANCE COMPANY
- COMPANY
D

COVERAGES

This certificate supersedes and replaces any previously issued certificate for the policy period noted below. 1

THIS IS TO CERTIFY THAT POLICIES OF INSURANCE DESCRIBED HEREIN HAVE BEEN ISSUED TO THE INSURED NAMED HEREIN FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THE CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, CONDITIONS AND EXCLUSIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS		
A	GENERAL LIABILITY	90-15373-06	01/01/08	01/01/09	GENERAL AGGREGATE	\$ 2,000,000	
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				PRODUCTS - COMP/OP AGG	\$ 2,000,000	
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				PERSONAL & ADV INJURY	\$ 2,000,000	
	<input type="checkbox"/> OWNER'S & CONTRACTOR'S PROT				EACH OCCURRENCE	\$ 2,000,000	
					FIRE DAMAGE (Any one fire)	\$ 500,000	
					MED EXP (Any one person)	\$ 5,000	
A	AUTOMOBILE LIABILITY	90-15373-07	01/01/08	01/01/09	COMBINED SINGLE LIMIT	\$ 2,000,000	
	<input checked="" type="checkbox"/> ANY AUTO				BODILY INJURY (Per person)	\$	
	<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$	
	<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE	\$ 5,000	
	<input type="checkbox"/> HIRED AUTOS				AUTO ONLY - EA ACCIDENT	\$	
	<input type="checkbox"/> NON-OWNED AUTOS				OTHER THAN AUTO ONLY:		
					EACH ACCIDENT	\$	
	AGGREGATE	\$					
B	EXCESS LIABILITY	TBD	01/01/08	01/01/09	EACH OCCURRENCE	\$ 2,000,000	
	<input checked="" type="checkbox"/> UMBRELLA FORM				AGGREGATE	\$ 2,000,000	
	<input type="checkbox"/> OTHER THAN UMBRELLA FORM					\$	
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	90-15373-07	01/01/08	01/01/09	<input checked="" type="checkbox"/> WC STATUTORY LIMITS	<input type="checkbox"/> OTHER	
	<input type="checkbox"/> THE PROPRIETOR/PARTNERS/EXECUTIVE OFFICERS ARE:				<input checked="" type="checkbox"/> INCL	EL EACH ACCIDENT	\$ 1,000,000
					<input type="checkbox"/> EXCL	EL DISEASE-POLICY LIMIT	\$ 1,000,000
						EL DISEASE-EACH EMPLOYEE	\$ 1,000,000
C	OTHER EXCESS LAYER LIABILITY	TBD	01/01/08	01/01/09			

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS

It is agreed that The County of Hidalgo is included as an Additional Insured as respects to General Liability where required by written contract.

CERTIFICATE HOLDER

The County of Hidalgo
100 E. Cano 4th Fl. Adm. Bldg.
Edinburg, TX 78539

CANCELLATION

SHOULD ANY OF THE POLICIES DESCRIBED HEREIN BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE INSURER AFFORDING COVERAGE WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED HEREIN, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER AFFORDING COVERAGE, ITS AGENTS OR REPRESENTATIVES, OR THE ISSUER OF THIS CERTIFICATE.

MARSH USA INC.
BY: Mary Radaszewski
MM1(3/02)

Mary Radaszewski
VALID AS OF: 01/02/08