

REQUIREMENTS AGREEMENT
C-09-012-04-07

THIS AGREEMENT (the "Agreement") is entered into effective as of **April 7, 2009** and between "**Frontera Materials, Inc.**"("Seller") and **HIDALGO COUNTY** ("Buyer").

WHEREAS, Buyer has solicited proposals for the supply of its requirements of Hidalgo County "**Type D Hot Mix Asphalt-Gravel & Limestone,**" as further described in Exhibit "A" which is attached hereto and incorporated herein by reference for all purposes (the "RFP Packet") for a period one (1) 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 "**Type D Hot Mix Asphalt-Gravel & Limestone**" in the areas of **HIDALGO COUNTY** projects for a period of **one(1) year** from **April 7, 2009** to **April 6, 2010** with the option to renew for an additional one (1) year under the same rates, terms, and conditions, and /or sixty (60) day grace period extension at the end of the contract for unforeseen delays on subsequent contract, 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: FRONTERA MATERIALS, INC.
Attn: Barry M. Ehlinger
PO Box 1449
Elsa, Texas 78543

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 United 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, _____.

APPROVED AS TO FORM:

By: _____
Antonio Mendoza
Assistant District Attorney

HIDALGO COUNTY

By: _____
Juan D. Salinas, III, County Judge

ATTEST:

Arturo Guajardo, Jr., County Clerk

VENDOR: Frontera Materials Inc.
By: _____
Printed Name: _____
Title: _____

EXHIBIT "A"

HIDALGO COUNTY
"TYPE D HOT MIX ASPHALT - GRAVEL & LIMESTONE"

BID NO.: 2009-012-03-25CGV

SPECIFICATIONS

EXHIBIT "A"
HIDALGO COUNTY
"TYPE D HOT MIX ASPHALT-GRAVEL & LIMESTONE"
BID NO.: 2009-012-03-25-CGV
S P E C I F I C A T I O N S

PROJECT OVERVIEW:

The intention of this Hidalgo County Request for Bids (RFB) is to solicit bids for a term contract for Type D Hot Mix Asphalt – Gravel & Limestone. All purchases will be on an "as needed" basis only. This bid price will be for the duration of one (1) year with County's option to renew for an additional one (1) year.

SPECIFICATIONS:

TYPE D HOT MIX ASPHALT-GRAVEL & LIMESTONE

SPECIAL CONDITIONS:

Measurements and bid shall per Ton. There will be a 4.8% to 5.0% Oil Content in the Mixture. The mixture will be mined & loaded by the owner.

REQUIREMENTS AND OTHER TERMS AND CONDITIONS:

- 1 It is intended that the amount of "**TYPE D HOT MIX ASPHALT-GRAVEL & LIMESTONE**" needed by Hidalgo County will be purchased on an as needed basis. It shall be agreed & understood that Hidalgo County will purchase no more material than is needed.
- 2 **Term of Contract:** The contract will be in effect for a period of (1) one year from bid award date with County's option to extend for an additional (1) one year term.
- 3 **Option to Extend:** Hidalgo County reserves the right to continue this bid for one (1) additional year and thereafter an additional (60) sixty day Grace Period at the end of the contract term due to unforeseen delay of award for the next contract term. County shall have the right to exercise all or portion of the Options to Extend in any combination it deems necessary.
- 4 **BID PRICE SHALL BE PER TON**
- 5 Hidalgo County reserves the right to reject any or all bids, to waive any or all formalities, or to accept the bid considered the best and most advantageous to the County, including compliance to the bid specifications. Location is an important factor in evaluation of the bids, due to transportation costs which will be taken into consideration if material is picked up at the plant site. Hidalgo County reserves the right to hold the bids for a period of (90) ninety days without taking action hereon.

- 6 **Method of Award:** One or more bidder(s) maybe designated as approved vendor(s) for purchases/service for Hidalgo County. Hidalgo County reserves the right to award separate/multiple contracts when it is in the best interest to do so.
- 7 After bid is awarded and low bidder(s) default(s) in meeting the general instructions to bidders and/or comply with the contractual agreement, Hidalgo County reserves the right to seek services from the next lowest bidder(s). In such event, County shall charge the successful bidder(s) the difference for any additional cost of such item(s).
- 8 Hidalgo County may seek purchases from state awarded vendors or any other cooperative purchasing programs, whenever it is in the best interest to do so.
- 9 The contract shall remain in effect until contract expires, deliver/completion of services ordered or terminated by either party with a (30) thirty day written notice prior to any cancellation. The successful bidder(s) must state therein the reasons for such cancellation. Hidalgo County reserves the right to award canceled contract to next lowest bidder as it deems to be in the best interest of the County.
- 10 Insurance Certificates as per Exhibit "C" must be submitted to the Purchasing Department prior to any services being performed by the awarded bidder(s).
- 11 When requested, samples shall be furnished free of expense to Hidalgo County.
- 12 Testing may be performed at the request of Hidalgo County anytime during the length of the contract through an independent testing laboratory.
- 13 Continuing non-performance of the bidder(s) in terms of specifications shall be basis for termination of contract by the County. The County shall not pay for work, equipment, or supplies which are unsatisfactory. Bidder(s) will be given a reasonable opportunity before termination to correct the deficiencies.
- 14 In the event the material furnished does not meet all the above requirements (regardless of weather, test's acceptability, method of repair or other conditions), the County reserves the option to require the material supplier to replace or to reimburse the County for the unused portion of material found to be unsatisfactory.
- 15 It is expressly understood and agreed that in case Hidalgo County should need "**TYPE D HOT MIX ASPHALT-GRAVEL & LIMESTONE**" not available within the time frame needed from the successful vendor during the term of this contract, Hidalgo County reserves the right to purchase these items from other sources other than the successful vendor and shall not be in violation of any terms or conditions of said contract. Further, Hidalgo County reserves the right to seek another vendor if, at any time, vendor's prices do not conform to public pricing.
- 16 **Purchase Order:** Contractor will not supply or deliver any items until a purchase order number is assigned by the designated representative of the County Purchasing Office. **Contractor will reference purchase order and contract number on all invoices submitted to the Hidalgo County Auditor.** Failure to act in this manner may result in termination of this contract.

17 **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

- Hidalgo County is requesting that any and all questions, inquiries, and clarifications regarding quotes, bids, proposals, or statements of qualifications be addressed to, Martha L. Salazar, CPPB, Purchasing Agent, 2802 S. Bus. Hwy. 281, New Administration Building, Edinburg, Texas 78539. **TELEPHONE INQUIRIES WILL NOT BE ACCEPTED.**
- **ALL WRITTEN INQUIRIES WILL BE ACCEPTED VIA FACSIMILE NO LATER THAN, Wednesday, March 18, 2009 by 5:00 P.M.** Responses will be sent to all applicants via facsimile by no later than, 5:00 P.M., Friday, March 20, 2009.
- All costs and expenses associated with the preparation and submission of (bids, proposals and/or quotes) shall be the responsibility of the bidder and no reimbursements for such charges or expenses shall be passed onto Hidalgo County.

EXHIBIT "B"

**HIDALGO COUNTY
"TYPE D HOT MIX ASPHALT - GRAVEL & LIMESTONE"**

BID NO.: 2009-012-03-25CGV

BID PAGE FORM

EXHIBIT "B"
HIDALGO COUNTY
"TYPE D HOT MIX ASPHALT - GRAVEL & LIMESTONE"
BID NO.: 2009-012-03-25CGV

BID PAGE FORM

BID PRICE PER TON (GRAVEL): \$ ~~46.90~~ ^{bone} ~~per ton~~ ^{bone} \$ 45.40 / TON ^{bone}
BID PRICE PER TON (LIMESTONE): \$ ~~46.90~~ ^{bone} ~~per ton~~ ^{bone} \$ 45.40 / TON ^{bone}

PHYSICAL LOCATION OF PIT(S):
Gravel Mix - 3.5 miles N. of US 83 on
FM 2221 La Joya, TX

Limestone Mix - 1/4 mile E. of FM 1015 on
Military Hwy, Progresso TX

BIDDER/COMPANY NAME: Frontera Materials Inc.
ADDRESS: P.O. Box 1449
CITY/STATE/ZIP CODE: Elsa TX 78543
PHONE & FAX NO.'S: 956-316-8900 FAX 316-8905
CELLULAR & BEEPER NO.'S: Barry's cell: 956-607-5965
AUTHORIZED SIGNATURE: Barry M Ehlinger
PRINTED NAME: Barry M. Ehlinger
TITLE: Materials Mgr. Email address: bme@frontera@aol.com

TERM: The contract will be in effect for a period of one (1) year from bid award date on an "As Needed Basis" with County's option to extend for an addition one (1) year term under the same rates, terms and conditions.

**EXHIBIT “C”
INSURANCE
REQUIREMENTS**

ACORD™ CERTIFICATE OF LIABILITY INSURANCE DATE (MM/DD/YYYY)
4/1/2009

PRODUCER (210)525-0500 FAX: (866)652-9386 Guaranty Insurance Services, Inc. 1100 N. E. Loop 410 Suite 200 San Antonio TX 78209	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.												
INSURED Frontera Materials, Inc. P. O. Box 1917 Weslaco TX 78599	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: left;">INSURERS AFFORDING COVERAGE</th> <th style="text-align: left;">NAIC #</th> </tr> <tr> <td>INSURER A: State Automobile Mutual</td> <td></td> </tr> <tr> <td>INSURER B: Service Lloyds Ins. Co.</td> <td></td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> </table>	INSURERS AFFORDING COVERAGE	NAIC #	INSURER A: State Automobile Mutual		INSURER B: Service Lloyds Ins. Co.		INSURER C:		INSURER D:		INSURER E:	
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INSURER E:													

COVERAGES

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

INSR	ADD'L LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A		GENERAL LIABILITY	SPP2497178	9/1/2008	9/1/2009	EACH OCCURRENCE \$ 1,000,000
		<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000
		<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person) \$ 5,000
						PERSONAL & ADV INJURY \$ 1,000,000
						GENERAL AGGREGATE \$ 2,000,000
						PRODUCTS - COMP/OP AGG \$ 2,000,000
		GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				
A		AUTOMOBILE LIABILITY	BAP2229231	9/1/2008	9/1/2009	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
		<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 (Per accident) \$
		<input type="checkbox"/> HIRED AUTOS				
		<input type="checkbox"/> NON-OWNED AUTOS				
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT \$
		<input type="checkbox"/> ANY AUTO				OTHER THAN EA ACC \$
						AUTO ONLY: AGG \$
		EXCESS/UMBRELLA LIABILITY				EACH OCCURRENCE \$
		<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE \$
		<input type="checkbox"/> DEDUCTIBLE				\$
		<input type="checkbox"/> RETENTION \$				\$
B		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	SRZ19278	9/1/2008	9/1/2009	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				E.L. EACH ACCIDENT \$ 1,000,000
		If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
						E.L. DISEASE - POLICY LIMIT \$ 1,000,000
		OTHER				

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS
 Job: Hot Mix & Cold Laid Road Materials

CERTIFICATE HOLDER Hidalgo County 100 N. Clossner Blvd. Edinburg, TX 78539	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>10</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE Brook Crawford/CVERAS
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