

REQUIREMENTS AGREEMENT
C-06-446C-02-27

THIS AGREEMENT (the "Agreement") is entered into effective as of **March 3, 2007** by and between, **Frontera Materials, Inc. (Secondary)** ("Seller") a Texas Corporation and **Hidalgo County, Texas** ("Buyer").

WHEREAS, Buyer has solicited proposals for the supply of its requirements of Hidalgo County Precinct No. 3 for ~~Flexible Base Material (Crushed Caliche)~~ 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 "**Flexible Base Material (Crushed Caliche)(490 Pit)**" in an area of Hidalgo County projects for a period of one year from **March 3, 2007** to **March 2, 2008** with the County option to extend the contract for two (2) additional one (1) year term 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. 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 1917
Weslaco, Texas 78599

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 ninety (90) 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. **Termination:** This Agreement may be terminated by either party without cause upon thirty (30) days written notice.

l. **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.

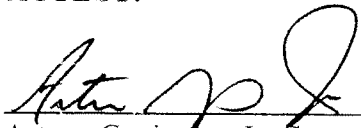
EXECUTED effective as of the day and year first above written.

HIDALGO COUNTY

By: 

Juan D. Salmas, III, County Judge

ATTEST:


Arturo Guajardo, Jr. County Clerk

Frontera Materials, Inc.

By: 

Printed Name: Barry M. Eklingier

Title: Materials Manager

Approved on Commissioners' Court February 27, 2007

APPROVED AS TO FORM

Atlas & Hall, L.L.P.

By: 

EXHIBIT "A"
REQUIREMENTS

EXHIBIT "A"
HIDALGO COUNTY
and
HIDALGO COUNTY COLONIA ACCESS PROGRAM

"FLEXIBLE BASE MATERIAL (CRUSHED CALICHE)"
BID NO.: 2006-446-01-10-ROL

BID SPECIFICATIONS

BID SPECIFICATIONS, TERMS AND CONDITIONS:

1. It is Intended that the amount of "**Flexible Base Material (Crushed Caliche)**" required by Hidalgo County and Hidalgo County Colonia Access Program will be purchased on an **as needed basis only**.
2. Flexible Base Material (Caliche) shall conform to Texas Department of Transportation (TX DOT), Standard Specifications for Construction of Highways, Streets and Bridges, 1993, Item 247, Type D Grade 6.

Flexible Base (TY D GR 6) shall conform to the following requirements:

Retained on Sq. Sieve	Percent Retained
2"	0
1/2"	20-60
No. 4	40-75
No. 40	70-90
Max. PI:	15
Max. Wet Ball PI:	15
Wet Ball Mill Max. Amount:	50

The Wet Ball Test (Tex-116-E) shall be run and the Plasticity index of the material passing the No. 40 sieve shall be determined (Wet Ball PI).

3. Bid price shall be on a per ton basis.
4. 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 bid specifications.
5. Location: Transportation is an important factor to analyze the material cost, and will be taken into consideration to evaluate the lowest total cost of material picked up at the plant sites. The following are **set reference locations for delivery of materials** to be used to calculate total cost of one load of material delivered:

Department/Location:			
Precinct No. 1 1902 Joe Stevens Weslaco, Tx 78596	Precinct No. 2 301 E. State Pharr, TX 78577	Precinct No. 3 724 N. Breyfogle Rd. Mission, TX 78574	Precinct No. 4 1102 N. Doolittle Edinburg, TX 78539

6. Hidalgo County reserves the right to hold the bids for a period of (90) ninety days without taking action hereon.
- ~~7. Hidalgo County reserves the right to award to one or more bidders whichever is in the best interest of the County.~~
8. Hidalgo County reserves the right to award to one or more bidder(s) whichever is in the best interest of the County.
9. Insurance certificates as per "Exhibit C" must be submitted (and maintained through out the contract term) to the Purchasing Department prior to any services being performed by the awarded bidder.
10. When requested, samples shall be furnished free of expense to Hidalgo County.
11. Random sampling/Testing may be performed at the request of Hidalgo County anytime during the length of the contract through an independent testing laboratory.
Continuing non-performance of the bidder in terms of specifications shall be basis for the termination of the contract by the County. The County shall not pay for work, equipment, or supplies which are unsatisfactory. Vendors will be given a reasonable opportunity before termination to correct the deficiencies.
12. In the event the material furnished does not meet all the above requirement (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.
13. Awarded Bidder shall have at the Bidder's Pit Location(s) (On Site) an electric or manual scale with a Minimum of 70 Ft. in length.
14. It is expressly understood and agreed that in case Hidalgo County should need "**Flexible Base Material (Crushed Caliche)**" 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.
15. **Contract Term:** The contract will be in effect for a period of one (1) year with the County's option to extend the contract for two (2) additional one (1) year terms under the same term and conditions.

16. Hidalgo County reserves the right to continue this bid for an additional (60) day "Grace Period" at the end of the contract term for unforeseen delay of award for next contract term.
17. Award of contract will be contingent on availability of Hidalgo County funds.
18. This contract shall remain in effect until contract expires, delivery/completion of services ordered or terminated by either party with a (30) thirty day written notice prior to any cancellation. ~~The successful bidder 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.
19. Any contract award to a successful bidder will be in effect until (a) the contract expires, (b) delivery and acceptance of products, and/or performance of services ordered, or (c) terminated by County with thirty day's written notice prior to cancellation.
20. **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:

- 1). **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.
 - 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.
 - 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.
 - The County Purchasing Agent retains the right to determine whether or not such proposed price changes are in the best interest of the County.
 - No price escalation will be authorized in excess of the amount of the increase referred to in the supplier's notice.
 - 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.

- 2). **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.
- 3). **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.
- 4). **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.
- 5). **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, 100 E. Cano St.-4th Floor, Edinburg, Texas 78539. **TELEPHONE INQUIRIES WILL NOT BE ACCEPTED.**

ALL WRITTEN INQUIRIES WILL BE ACCEPTED VIA FACSIMILE NO LATER THAN, Wednesday, January 3, 2007 by 5:00 P.M.. Responses to said inquiries will be sent to all applicants via facsimile by no later than, Friday, January 5, 2007 by 5:00 p.m.

Contact Personnel for County Precincts	
Hidalgo County Precinct #1 Joseph Palacios (956) 968-8733	Hidalgo County Precinct #2 Ricardo Cuellar (956) 787-1891
Hidalgo County Precinct #3 Saul Ramirez (956) 205-7009	Hidalgo County Precinct #4 Juan Carranza (956) 383-3112

EXHIBIT "B"
FEE SCHEDULE

EXHIBIT "B"

HIDALGO COUNTY
and
HIDALGO COUNTY COLONIA ACCESS PROGRAM

"FLEXIBLE BASE MATERIAL (CRUSHED CALICHE)"
BID NO.: 2006-446-01-10-ROL

BID PAGE

HIDALGO COUNTY PRECINCT NO. 3	
Flexible Base Material Type D Grade 6 (Crushed Caliche)	\$ 2.90 (per ton)
PIT LOCATIONS FOR PRECINCT NO. 3	
1. FM 490 Pit	4.
2. [REDACTED]	5.
3.	6.

HIDALGO COUNTY PRECINCT NO. 4	
Flexible Base Material Type D Grade 6 (Crushed Caliche)	\$ [REDACTED] (per ton)
PIT LOCATIONS FOR PRECINCT NO. 4	
1. [REDACTED]	4.
2. [REDACTED]	5.
3.	6.

ACORD CERTIFICATE OF LIABILITY INSURANCE

PRODUCER (210)525-0500 FAX: (866)652-9386
 Guaranty Insurance Services, Inc.
 1100 N. E. Loop 410
 Suite 200
 San Antonio TX 78209

INSURED
 Frontera Materials, Inc.
 P. O. Box 1917
 Weslaco TX 78599

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.

INSURERS AFFORDING COVERAGE NAIC #

INSURER A: State Automobile Mutual
 INSURER B: Service Lloyds Ins. Co.
 INSURER C:
 INSURER D:
 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 / TX STATE	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> YEAR <input type="checkbox"/> LOC	9822497178	9/1/2008	9/1/2009	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (EA OCCURRENCE) \$ 300,000 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
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	882229231	9/1/2008	9/1/2009	COMBINED SINGLE LIMIT (EA ACCIDENT) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY EA ACC \$ AGG \$
	EXCESS UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE \$ RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/OWNER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER	88219278	9/1/2008	9/1/2009	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER EL EACH ACCIDENT \$ 1,000,000 EL DISEASE - EA EMPLOYEE \$ 1,000,000 EL DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATION(S)/LOCATION(S)/VEHICLE(S)/EXCLUSIONS ADDED BY ENDORSEMENT(S)/SPECIAL PROVISIONS
 Project: Pit Run Caliche Base for Pct. 3 - Bid No: 2008-214-08-2700V
 It is agreed that Hidalgo County is included as an Additional Insured as respects to General Liability and Auto Liability per written contract.

CERTIFICATE HOLDER

Hidalgo County
 ATTN: Purchasing Department
 100 N. Closser 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 30 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
 H Shults, Jr./FMARTI *Edward L. Shults, Jr.*