

## REQUIREMENTS AGREEMENT

C-13-018A-04-30

**THIS AGREEMENT** (the "Agreement") is entered into effective as of the 30<sup>th</sup> day of **April, 2013** by and between **Frontera Materials, Inc.** ("Seller") and **Hidalgo County, Texas** ("Buyer").

**WHEREAS**, Buyer has solicited sealed bids for the supply of its requirements of **Hidalgo County Precincts No. 1 & 3** for the "**Flexible Base Material (Crushed Caliche)**", (the "Product") as further described in Exhibit "A", Request for Bids (RFB) Procurement Packet as attached hereto and incorporated herein by reference for all purposes (the "RFB") for a period of **one (1) year** and;

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

**WHEREAS**, Buyer has determine that Seller has submitted the lowest and best bid to meet Buyer's requirements for certain of the Products, as herein after described.

**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 and deliver to Buyer, all of the Products listed on Exhibit "B", which is attached hereto and incorporated herein by references, that Buyer may require for use by Buyer in Hidalgo County projects for a period of **one (1) year, with the County's option to extend/renew for an additional two (2)-one (1) year terms under the same rates, terms and conditions.** This Contract shall commence on **May 3, 2013** and expires on **May 2, 2014.**

In the event the Seller notifies Buyer in writing of non availability or production of the Product, Buyer will seek purchase from "Secondary Vendor" and in such event, Buyer will charge the difference for any additional cost incurred to the "Seller." Buyer reserves the right to purchase the Product from other sources and shall not be in violation of any terms or conditions of this contract. It is agreed that the Product will meet the Specifications in the Request for Bids (RFB) Procurement Packet set forth in Exhibit "A" hereto.

Seller, if Seller is unable to deliver the Product to Buyer within two (2) business days of Buyer's request, Seller agrees to pay Buyer within ten (10) business days of receiving Buyer's notification of additional cost incurred by Buyer of obtaining the Product from another seller of source.

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  
302 W. University Dr.  
Edinburg, Texas 78539

If to Seller: Frontera Materials, Inc.  
C/O 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. **Termination.** County may terminate this Agreement at any time for any reason or no reason at all upon giving thirty (30) days written notice.

g. **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.

h. **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.

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

j. **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.

k. **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.

l. **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.

m. **Insurance.** Company shall provide insurance in force on all persons connected with providing services under this Contract naming County as an additional insured, and shall furnish to County certificates of such insurance coverage Exhibit "C", which is attached hereto.

n. **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).

o. **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 therefore 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.

**COUNTY OF HIDALGO**

**ATTEST:**

By: \_\_\_\_\_  
Ramon Garcia, County Judge

\_\_\_\_\_  
Arturo Guajardo Jr., County Clerk

**COMPANY:** Frontera Materials, Inc.

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**APPROVED AS TO FORM:**  
Atlas, Hall and Rodriguez, LLP

Stephen L. Crain

**EXHIBIT "A"**  
**SPECIFICATIONS/  
RFB-PROCUREMENT PACKET**

EXHIBIT "A"  
HIDALGO COUNTY  
"FLEXIBLE BASE MATERIAL (CRUSHED CALICHE)"  
BID NO. 2013-018-04-10-MEG

**SPECIFICATIONS**

**SCOPE OF WORK:**

Hidalgo County and Hidalgo County Colonia Access Program is seeking qualified companies to establish a contract for "Flexible Base Material (Crushed Caliche)" on an "As Needed Basis".

**SPECIFICATIONS, REQUIREMENTS**

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**.
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

Contact Personnel for County Precincts / Billing Purposes	
<b>Hidalgo County Precinct #1</b> David Rodriguez or Mari Gutierrez (956) 968-8733	<b>Hidalgo County Precinct #2</b> Yolanda Cisneros or Ricardo Cuellar (956) 787-1891
<b>Hidalgo County Precinct #3</b> Norma Ceballos or Saul Ramirez (956) 585-4509	<b>Hidalgo County Precinct #4</b> Juan Carranza (956) 383-3112

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).

1. Vendor must provide proof that the material meets the Texas Department of Transportation (TX DOT) gradation requirements and atterberg limits.
2. Bid price shall be on a per ton basis.
3. 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.

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4. When requested, samples shall be furnished free of expense to Hidalgo County.
5. 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.
6. 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.
7. Awarded Bidder(s) shall have at the Bidder's Pit Location(s) (On Site) an electric or manual scale with a Minimum of 70 Ft. in length.
8. It is understood and agreed that in case Hidalgo County should need "**Flexible Base Material (Crushed Caliche)**" and is 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. If at any time during the term of the contract and / or renewals, the flexible base material (crushed caliche) is not available at the initial pit location provided in this bid, an alternate pit location(s) within Hidalgo County from awarded vendor shall be provided in the bid page for continuance of service to Hidalgo County. Alternate pit will be utilized under emergency circumstances due to unavailability of flexible base material (crushed caliche) at initial pit location(s).
9. Awarded vendor must notify Hidalgo County within a 72 hour period (i.e. 3 business days) whenever the flexible base material (crushed caliche) is not available.
10. All Hidalgo County Precincts / Departments are able to utilize the contract.

**TERMS AND CONDITIONS**

1. The term of the bid contract will be for a period of one (1) year. Hidalgo County may in its sole discretion elect the option to extend the contract for two (2) additional one (1) year terms under the same rates, terms and conditions.
2. Hidalgo County reserves the right to continue this bid for an additional sixty (60) day grace period at the end of the contract term due to any unforeseen delay in the procurement process.
3. Hidalgo County reserves the right to award to MULTIPLE vendors if the County determines it is in its best interest to do so.
4. 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 advantage to the County.
5. Hidalgo County reserves the right to hold bids for a period of ninety (90) days without taking any action.

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HIDALGO COUNTY  
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6. Any contract awarded 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 (30) days written notice prior to cancellation.
7. All costs and expenses associated with the preparation and submission of (bid, proposals and / or quotes) shall be responsibility of the bidder and no reimbursements for such charges or expenses shall be passed on to HIDALGO COUNTY.
8. Hidalgo County may utilize "**State Awarded Contracts**" when it is in the County best interest to do so.
9. Insurance requirements for this project to be maintained throughout the contract term (refer to limits on Exhibit "C"), if applicable.
10. CIQ Questionnaire: Attached conflict of interest (Exhibit D) must be filed and recorded at Hidalgo County Clerk's Office.
11. After bid is awarded and successful awarded contractor defaults in meeting the general instructions to bidders(s) and/or in complying with the contract agreement, Hidalgo County reserves the right to seek the services of the next most qualified bidder(s). In such event, Hidalgo County shall charge the successful bidder the difference for any additional cost to the County.

**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.

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- 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:**

Information regarding this project can be addressed in writing, to the Hidalgo County Purchasing Department. Hidalgo County is also requesting that any and all questions, inquiries and clarifications regarding quotes, bids, proposal or statement of qualifications be addressed to Martha L. Salazar, CPPB, Purchasing Agent, **AT 2802 SOUTH BUSINESS HWY 281, EDINBURG, TEXAS 78539. TELEPHONE INQUIRIES WILL NOT BE ACCEPTED.**

**ALL WRITTEN QUESTIONS WILL BE ACCEPTED VIA EMAIL NO LATER THAN**, April 2, 2013 at 5:00 p.m. at [elena.gomez@co.hidalgo.tx.us](mailto:elena.gomez@co.hidalgo.tx.us) . Responses to said inquiries will be sent to all applicants via facsimile by no later than April 5, 2013 at 5:00 P.M.

**EXHIBIT "B"**  
**VENDOR'S BID PAGE**

"EXHIBIT B"  
HIDALGO COUNTY  
"FLEXIBLE BASE MATERIAL (CRUSHED CALICHE)"  
BID NO. 2013-018-04-10-MEG

Frontera

**BID PAGE**

**NOTE: VENDOR MUST INDICATE AN INITIAL PIT AND ALTERNATE PIT(S) (REFER TO #10 ON PAGE 2 OF EXHIBIT "A" SPECIFICATIONS)**  
NIGP CODE: 750-52

<b>HIDALGO COUNTY Precinct NO. 1</b>	
Flexible Base Material Type D Grade 6 (Crushed Caliche)	\$ 3.25 (per ton)
<b>INITIAL PIT LOCATION for Precinct NO. 1</b>	
1. 490 Pit	
<b>NOTE: Alternate pit will be utilized under emergency circumstances due to unavailability of flexible base material (crushed caliche) at initial pit location(s). ALTERNATE PIT LOCATIONS for Precinct NO. 1</b>	
1. Reavis Pit	2.

<b>HIDALGO COUNTY Precinct NO. 2</b>	
Flexible Base Material Type D Grade 6 (Crushed Caliche)	\$ 3.25 (per ton)
<b>INITIAL PIT LOCATIONS for Precinct NO. 2</b>	
1. 490	
<b>NOTE: Alternate pit will be utilized under emergency circumstances due to unavailability of flexible base material (crushed caliche) at initial pit location(s). ALTERNATE PIT LOCATIONS for Precinct NO. 2</b>	
1. Reavis Pit	2.

**OPENED**

9:37

4-10-13

**Witnessed**

<b>HIDALGO COUNTY Precinct NO. 3</b>	
Flexible Base Material Type D Grade 6 (Crushed Caliche)	\$ 3.25 (per ton)
<b>INITIAL PIT LOCATIONS for Precinct NO. 3</b>	
1. Reavis	
<b>NOTE: Alternate pit will be utilized under emergency circumstances due to unavailability of flexible base material (crushed caliche) at initial pit location(s). ALTERNATE PIT LOCATIONS for Precinct NO. 3</b>	
1. 490 Pit	2.

"EXHIBIT B"  
HIDALGO COUNTY  
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<b>HIDALGO COUNTY Precinct NO. 4</b>	
Flexible Base Material Type D Grade 6 (Crushed Caliche)	\$ <b>3.25</b> (per ton)
<b>INITIAL PIT LOCATIONS for Precinct NO. 4</b>	
1. <b>490 Pit</b>	4.
2.	5.
3.	6.
<p align="center"><b>NOTE: Alternate pit will be utilized under emergency circumstances due to unavailability of flexible base material (crushed caliche) at initial pit location(s).</b>  <b>ALTERNATE PIT LOCATIONS for Precinct NO. 4</b></p>	
1. <b>Reavis Pit</b>	3.
2.	4.

★ 490 Pit - 4.5 miles West of US 281 ON FM 490  
Reavis Pit - 2.5 miles North of US 83 ON FM 2221  
ALL PRICES F.O.B. Pit.

**BIDDER'S INFORMATION**

BIDDER/COMPANY NAME: Frontera Materials, Inc.  
ADDRESS: Po Box 1449  
CITY/STATE/ZIP: ELSA TX 78543  
PHONE NO/FAX NO: 956-316-8954  
CELL PHONE NO: 956-607-5965 (Barry)  
E-MAIL ADDRESS: bmcfrontera@aol.com  
AUTHORIZED SIGNATURE: Barry M Ehly  
TITLE: Materials Mgr.

**OPENED**

9:37

**Witnessed**  
4-10-13

J

**EXHIBIT "C"**  
**CERTIFICATE OF INSURANCE**

