

REQUIREMENTS AGREEMENT

C-14-00-00

THIS AGREEMENT (the "Agreement") is entered into as of the ____ of ___, **2014** by and between _____ ("Seller") and **Hidalgo County** ("Buyer").

WHEREAS, Buyer has solicited proposals for the supply of its requirements of "**Hot Mix-Cold Laid Road Material**," as further described in Exhibit "A" (the "Products"). Request for Bid (RFB) Procurement Packet, which are attached hereto and incorporated herein by reference for all purposes (the "RFB") 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 "**Hot Mix-Cold Laid Road Material**," in the areas of Hidalgo County projects for a period of one (1) year commencing ____, **2014** and ending ____, **2015** and may be extended with the County's sole discretion for an additional one (1) year period, and it is agreed that the Products will meet the specifications set forth in Exhibit "A" hereto. 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.

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.

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 may terminate this Agreement at any time for any reason or no reason at all upon giving thirty (30) days written notice.

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
Attn: County Judge
302 W. University Drive
Edinburg, Texas 78539

If to Seller: _____

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.

HIDALGO COUNTY

By: _____
Ramon Garcia, County Judge

ATTEST:

Arturo Guajardo, Jr., County Clerk

COMPANY:

By: _____
Printed Name: _____
Title: _____

APPROVED AS TO FORM:
Atlas, Hall & Rodriguez, L.L.P

By _____

APPROVED BY COMMISSIONERS COURT ON:_____.

EXHIBIT “A”
REQUEST FOR BID (RFB)
PROCUREMENT PACKET

DRAFT

**EXHIBIT “B”
BID PAGE**

DRAFT

EXHIBIT "C"
CERTIFICATE OF
INSURANCE

DRAFT

Evangelina Garcia

From: Steve Crain [srain@atlashall.com]
Sent: Friday, January 11, 2013 11:43 AM
To: 'Evangelina Garcia'
Subject: RE: Review For Approval-Hot Mix Cold Laid Draft Contract

The draft contract is fine.

From: Evangelina Garcia [mailto:evangelina.garcia@co.hidalgo.tx.us]
Sent: Friday, January 11, 2013 10:28 AM
To: 'Stephen L. Crain'
Cc: 'Martha Salazar'
Subject: FW: Review For Approval-Hot Mix Cold Laid Draft Contract

Good Morning Mr. Crain:

Attached is the revised draft contract with the termination clause as requested for your review and approval.

Thank you

From: Martha Salazar [mailto:martha.salazar@co.hidalgo.tx.us]
Sent: Friday, January 11, 2013 9:28 AM
To: 'Evangelina Garcia'
Subject: FW: Review For Approval-Hot Mix Cold Laid Draft Contract

Vangie

See below email, Mr. Crain has reviewed draft agreement (as per your request) for above-mentioned contract.

From: Steve Crain [mailto:srain@atlashall.com]
Sent: Thursday, January 10, 2013 3:05 PM
To: 'Martha Salazar'
Subject: RE: Review For Approval-Hot Mix Cold Laid Draft Contract

You need to add the thirty day without cause termination clause to the agreement.

From: Martha Salazar [mailto:martha.salazar@co.hidalgo.tx.us]
Sent: Thursday, January 10, 2013 2:20 PM
To: 'Steve Crain'
Subject: FW: Review For Approval-Hot Mix Cold Laid Draft Contract

Mr. Crain

Attached please find a draft contract including specifications for your review and comments, should you have any questions related to this matter, you may contact Ms. Vangie. Thank you

From: Evangelina Garcia [mailto:evangelina.garcia@co.hidalgo.tx.us]
Sent: Thursday, January 10, 2013 12:00 PM
To: 'Martha Salazar'