

## REQUIREMENTS AGREEMENT

C-19-086-08-20

THIS AGREEMENT (the "Agreement") is entered into as of the **20<sup>th</sup> day of August, 2019** by and between **Frontera Materials, Inc.** ("Seller") and **Hidalgo County** ("Buyer").

WHEREAS, Buyer has solicited proposals for the supply of its requirements of "**Type D Hot Mix Asphalt (Limestone Only)**", as further described in Exhibit "A" the Request for Bid (RFB) Procurement Packet, which is attached hereto and incorporated herein by reference for all purposes (the "RFB") for a period of one year for Hidalgo County;

WHEREAS, Seller has submitted a proposal to supply, **Type D Hot Mix Asphalt (Limestone Only)** requirements; and (the "Products");

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 (Limestone Only)** in the areas of Hidalgo County projects for a period of one (1) year commencing **August 20, 2019** and ending **August 19, 2020** and may be extended with the County's sole discretion for an additional one (1) 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. Buyer 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.

**Type D Hot Mix Asphalt (Limestone Only)**

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

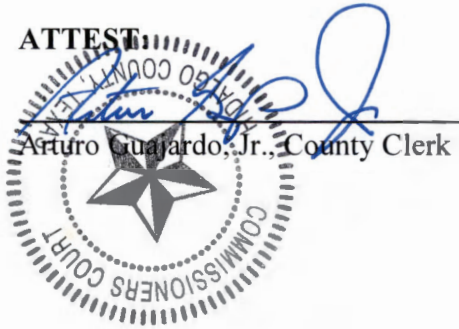
**EXECUTED** effective as of the day and year first above written.

**HIDALGO COUNTY**

*Richard F. Cortez*

Richard F. Cortez, County Judge

**ATTEST:**



Arturo Guajardo, Jr., County Clerk

**FRONTERA MATERIALS, INC.:**

By: *Barry Ehlinger*  
Printed Name: Barry Ehlinger  
Title: Materials Mgr.

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

By: *Stephen L. Crain*  
Stephen L. Crain

APPROVED BY  
COMMISSIONERS' COURT  
ON: 8/20/19

APPROVED BY COMMISSIONERS COURT ON 8-20-19.

its sole discretion elect the *option to extend* the contract for one (1) additional - one (1) year term under the same rates, terms and conditions.

- 9 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.
- 10 County shall have the right to exercise all or portion of the *Options to Extend* in any combination it deems necessary.
- 11 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
- 12 Hidalgo County reserves the right to hold bids for a period of ninety (90) days without taking any action
- 13 Hidalgo County reserves the right to award to ONE or to MULTIPLE vendors, if the County determines it is in its best interest to do so.
- 14 Any contract award to a successful bidder will be in effect until (a) the contract expires, (b) delivery and acceptance of product, and /or performance of services ordered, or (c) terminated by County with thirty day's written notice prior to cancellation.
- 15 **All costs and expenses associated with the preparation and submission of (bids, proposals, statements of qualifications (RFQ) and quotes) shall be responsibility of the bidder and no reimbursements for such charges or expenses shall be passed on to HIDALGO COUNTY.**
- 16 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 lowest bidder(s). In such event, Hidalgo County shall charge the successful bidder the difference for any additional cost to the County.
- 17 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.
- 18 Hidalgo County may utilize "**State Awarded Contracts**" when it is in the County best interest to do so.
- 19 The awarded vendor will maintain all insurance requirements and its limits throughout the agreement term and any extension hereof, as described and listed in Exhibit "C" Insurance requirements.
- 20 **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.
- 21 The bidder(s) awarded the contract **cannot** engage the services of a **subcontractor without prior written consent of Hidalgo County** to perform services hereunder. The successful

bidder(s) must present evidence that the proposed subcontractor possess all the necessary licenses and permits to perform the services and that subcontractor has obtained the required insurance.

### **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) **Timeframe 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