

**BROWNSVILLE NAVIGATION DISTRICT CONTRACT AGREEMENT FOR
PURCHASE AND DELIVERY OF PRECAST DRAINAGE MATERIALS
FOR THE PORT OF BROWNSVILLE BUSINESS HUB
PDM-100324-51**

This Agreement is entered into as of Wednesday, March 20, 2024, between the Brownsville Navigation District of Cameron County, Texas (hereinafter “the Port”) and [Company] hereinafter referred to as (“CONTRACTOR”).

1. Documents

- a. The following documents (collectively, “Contract Documents”) are hereby incorporated into and made part of this Agreement.
 - i. Scope of Services, Conditions and Additional Services (Exhibit A)
 - ii. Terms of Agreement (Exhibit B)
 - iii. Compensation, Fees and Commissions (Exhibit C)
 - iv. Insurance (Exhibit D)

2. Scope of Services

- a. The contractor shall perform the Services under this agreement upon written request orders by PORT. Unless otherwise specified in a project request, Contractor and PORT agree that the scope of work is deemed to include preliminary considerations and prerequisites, and all tasks which are an integral and inseparable part of the work described in the Contract Documents or by separate written request.
- b. Contractor will perform such Services in a diligent and workmanlike manner consistent with industry standards.
- c. By signing this Agreement, Contractor represents that it has thoroughly reviewed the Contract Documents incorporated into this Agreement, including but not limited to “Exhibit A” Scope of services and that it accepts the description of the Work and the conditions under which the Work is to be performed and completed.

3. Independent Contractor; Personnel

- a. Contractor enters into this Agreement as, and shall continue to be, an independent contractor. All Services shall be performed only by the Contractor and Contractor’s employees. Under no circumstances shall Contractor, or any of Contractor's employees, look to PORT as his/her employer, or as a partner, agent, or principal. Neither Contractor, nor any of Contractor's employees, shall be entitled to any benefits accorded to PORT ’s employees, including without limitation worker's compensation, disability insurance, vacation, or sick pay. Contractor shall be responsible for providing, at Contractor's expense, and in Contractor's name, unemployment, disability, worker's compensation and other insurance, as well as any and all licenses and permits usual or necessary for conducting the Services. The contractor shall be responsible for paying all applicable local, state and federal taxes.
- b. Contractor represents and warrants to PORT that its employees performing Work hereunder will have sufficient expertise, training, licensure (if applicable) and experience to accomplish the Services.

4. Term of Agreement.

- a. The initial contract period shall commence on the date of approval of this agreement and shall end or be extended upon the terms specified in Contract Documents “Exhibit B”. The term or any continuation of this Agreement shall be subject to both the appropriation and the availability of funds by PORT.

5. Compensation

- a. Contractor agrees that compensation for services shall be as specified in the Contract Documents "Exhibit C". It is acknowledged and agreed by Contractor that compensation as enumerated in Exhibit C constitutes a limitation upon PORT 's obligation to compensate Contractor for Contractor's services pursuant and related to this Agreement but it does not constitute a limitation of any sort upon Contractor's obligation to perform all items of work required by or which can be reasonably inferred from the Scope of Services.
- b. Contractor may submit invoices for compensation no more often than monthly, but only after the services for which the invoices are submitted have been completed. An original invoice plus one copy are due within fifteen (15) days of the end of the month except the final invoice which must be received no later than sixty (60) days after this Agreement expires. Invoices shall designate the nature of the services performed and/or the goods provided. Notwithstanding any provision of this Agreement to the contrary, PORT may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work that has not been remedied or resolved in a manner satisfactory to the PORT 's Contract Administrator or failure to comply with this Agreement. The amount withheld shall not be subject to payment of interest by PORT.

6. Insurance

- a. The Contractor shall furnish proof of insurance requirements as specified in Contract Documents "Exhibit D". The coverage is to remain in force at all times during the contract period and the minimum insurance coverage is required. The commercial general liability insurance policy shall name the PORT, as an "additional insured." This MUST be written in the description section of the insurance certificate, even if there is a check-off box on the insurance certificate. Any costs for adding the PORT as "additional insured" shall be at the Contractor's expense.
- b. The PORT shall be given notice thirty (30) days prior to cancellation or modification of any required insurance. The insurance provided shall be endorsed or amended to comply with this notice requirement. In the event that the insurer is unable to accommodate, it shall be the responsibility of the Contractor to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested and addressed to the Procurement Services Division.
- c. The Contractor's shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and with an A.M Best's rating of no less than A- VII. Any exclusions or provisions in the insurance maintained by the contractor that excludes coverage for work contemplated in this solicitation shall be deemed unacceptable and shall be considered breach of contract.
- d. The Contractor shall be required to submit renewal certificates of insurance throughout the term of this contract and any extensions within 10 days of the policy expiration dates. All notices under this section shall be given to the Port of Brownsville at the following address: Port of Brownsville Attn: Administrative Services Department 1000 Foust Road Brownsville, TX 78521

7. Termination

- a. *Termination for Cause.* The aggrieved party may terminate this Agreement for cause if the party in breach has not corrected the breach within ten (10) days after written notice from the aggrieved party identifying the breach. PORT may also terminate this Agreement upon such notice as the Port Director & CEO deems appropriate under the circumstances in the event the Port Director & CEO determines that termination is necessary to protect the public health or safety. The parties agree that if the PORT erroneously, improperly or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.

This Agreement may be terminated for cause for reasons including, but not limited to, Contractor's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or

- invoices, failure to perform the Work to PORT 's satisfaction; or failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Agreement.
- b. *Termination for Convenience.* PORT reserves the right, in its best interest as determined by the Port Director & CEO, to cancel this contract for convenience by giving written notice to the Contractor at least thirty (30) days prior to the effective date of such cancellation. In the event this Agreement is terminated for convenience, Contractor shall be paid for any services performed to PORT's satisfaction pursuant to the Agreement through the termination date specified in the written notice of termination. Contractor acknowledges and agrees that he/she/it has received good, valuable and sufficient consideration from PORT, the receipt and adequacy of which are hereby acknowledged by Contractor, for PORT 's right to terminate this Agreement for convenience.
 - c. *Cancellation for Non-appropriated Funds.* PORT reserves the right, in its best interest as determined by the Port Director & CEO, to cancel this contract for non-appropriated funds or unavailability of funds by giving written notice to the Contractor at least thirty (30) days prior to the effective date of such cancellation. The obligation of PORT for payment to a Contractor is limited to the availability of funds appropriated in a current fiscal period, and continuation of the contract into a subsequent fiscal period is subject to appropriation of funds, unless otherwise provided by law.
 - d. *Force Majeure.* PORT and Contractor will be excused from the performance of their respective obligations under this agreement when and to the extent that their performance is delayed or prevented by any circumstances beyond their control including, fire, flood, explosion, strikes or other labor disputes, act of God or public emergency, war, riot, civil commotion, malicious damage, act or omission of any governmental authority, delay or failure or shortage of any type of transportation, equipment, or service from a public utility needed for their performance, provided that:
 - i. The nonperforming party gives the other party prompt written notice describing the particulars of the Force Majeure including, but not limited to, the nature of the occurrence and its expected duration, and continues to furnish timely reports with respect thereto during the period of the Force Majeure.
 - ii. The excuse of performance is of no greater scope and of no longer duration than is reasonably necessary when considered in light of the Force Majeure.
 - iii. No obligations of either party that arose before the Force Majeure causing the excuse of performance are excused as a result of the Force Majeure; and
 - iv. The non-performing party uses its best efforts to remedy its inability to perform.
 - v. Notwithstanding the above, performance shall not be excused under this Section for a period in excess of sixty (60) days, provided that in extenuating circumstances, PORT may excuse performance for a longer term. Economic hardship of the Contractor will not constitute Force Majeure. The term of the agreement shall be extended by a period equal to that during which either party's performance is suspended under this Section.

8. Materiality and Waiver of Breach.

- a. PORT and Contractor agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and that each is, therefore, a material term hereof. PORT 's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

9. Indemnification by Contractor.

CONTRACTOR AGREES TO INDEMNIFY, AND HOLD THE PORT AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENAL TIES,

COSTS AND EXPENSES FOR ALL PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONTRACTOR'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE CONTRACTOR IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT. THE PORT DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

CONTRACTOR AT ITS OWN EXPENSE IS EXPRESSLY REQUIRED TO DEFEND PORT AGAINST ALL SUCH CLAIMS. PORT RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, PORT IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY PORT IS NOT TO BE CONSTRUED AS A WAIVER OF CONTRACTOR'S OBLIGATION TO DEFEND PORT OR AS A WAIVER OF CONTRACTOR'S OBLIGATION TO INDEMNIFY PORT PURSUANT TO THIS AGREEMENT. CONTRACTOR SHALL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF PORT'S WRITTEN NOTICE THAT PORT IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF CONTRACTOR FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, PORT SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND CONTRACTOR SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE PORT.

10. Miscellaneous Provisions.

- a. *Successors and Assigns.* All the provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, if any, successors, and assigns.
- b. *Choice of Law.* The laws of the state of Texas shall govern the validity of this Agreement, the construction of its terms and the interpretation of the rights and duties of the parties hereto.
- c. *No Waiver of Governmental Immunity.* NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED TO WAIVE PORT'S GOVERNMENTAL IMMUNITY FROM LAWSUIT, WHICH IMMUNITY IS EXPRESSLY RETAINED TO THE EXTENT IT IS NOT CLEARLY AND UNAMBIGUOUSLY WAIVED BY STATE LAW.
- d. *Assignment.* Contractor shall not assign any of Contractor's rights under this Agreement, or delegate the performance of any of Contractor's duties hereunder, without the prior consent of PORT.
- e. *Modification or Amendment.* No amendment, change or modification of this Agreement shall be valid unless in writing signed by the parties hereto.
- f. *Venue.* This Agreement and any and all matters arising directly or indirectly herefrom shall be governed by and construed and enforced in accordance with the Laws of the State of Texas, in the Federal and State Courts of Cameron County, Texas having jurisdiction. (b) If at any time there is a dispute between or among the Parties with respect to any matter arising directly or indirectly from

this Agreement (an "Agreement Matter"), the Parties agree that, prior to seeking judicial remedy, they will engage in face-to-face negotiations in an attempt to resolve such dispute and shall, upon failing to negotiate a mutually-satisfactory resolution, choose a mutually agreeable neutral third party to mediate such dispute. Mediation shall be non-binding and shall be confidential.

- g. *Notices.* Any and all notices, demands, or other communications required or desired to be given hereunder by any party shall be in writing and shall be validly given or made to another party if personally served, or if deposited in the United States mail, certified or registered, postage prepaid, return receipt requested. If such notice or demand is served personally, notice shall be deemed constructively made at the time of such personal service. If such notice, demand or other communication is given by mail, such notice shall be conclusively deemed given five days after deposit thereof in the United States mail addressed to the party to whom such notice, demand or other communication is to be given as follows:
- h. *FOB Destination/Risk of Loss.* Seller retains the risk of loss until the goods reach the buyer.

If to Contractor: [Company]
Click or tap here to enter text.
Click or tap here to enter text.

If to Port: Brownsville Navigation District
1000 Foust Road
Brownsville, TX, 78521

With a copy to: Rentfro, Irwin, & Irwin, PLLC
1650 Paredes Line Road, Suite 102
Brownsville, Texas 78521

Any party hereto may change its address for purposes of this paragraph by written notice given in the manner provided above.

- i. *Entire Understanding.* This document and any exhibit attached constitute the entire understanding and agreement of the parties, and any and all prior agreements, understandings, and representations are hereby terminated and canceled in their entirety and are of no further force and effect.
- j. *Unenforceability of Provisions.* If any provision of this Agreement, or any portion thereof, is held to be invalid and unenforceable, then the remainder of this Agreement shall nevertheless remain in full force and effect.

IN WITNESS WHEREOF the undersigned have executed this Agreement as of the day and year first written above.

BROWNSVILLE NAVIGATION DISTRICT

CONTRACTOR

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT "A-C"

PENDING

EXHIBIT “D”

INSURANCE

The Contractor shall not commence work under this agreement until all of the insurance required has been obtained and certificates of insurance are on file and approved by the Brownsville Navigation District. Approval of the insurance by the Brownsville Navigation District shall not relieve or decrease the liability of the successful Vendor.

The successful Vendor shall provide and maintain for the duration of this agreement, the following minimum coverage:

Type of Coverage	Limit of Liability
Worker's Compensation	Statutory
Employer's Liability	\$1,000,000.00
Comprehensive General Liability	
-Bodily Injury	\$1,000,000/occurrence
-Property Damage	\$1,000,000/occurrence
Comprehensive Automotive Liability-All owned vehicles	\$1,000,000/occurrence
Coverage to include:	
-All owned vehicles	\$1,000,000/occurrence
-All non-owned vehicles	\$1,000,000/occurrence
-All hired vehicles	\$1,000,000/occurrence

All policies must be endorsed with a Waiver of Subrogation in favor of the Brownsville Navigation District d/b/a Port of Brownsville.

All insurance shall be at the sole cost and expense of the successful Vendor. All the liability coverages cited shall name the Brownsville Navigation District as an additional insured as its interest may appear. The policy or policies shall contain a clause that the insurer will not cancel or change the policy or policies without first giving the District thirty (30) days prior written notice.

EXHIBIT “D”