CONTRACT BETWEEN THE CITY OF AUSTIN ("City")
AND
Capitol Aggregates, Inc. ("Contractor")
for
Hydraulic Cement, Bulk, Type 1
MA 6200 GA170000034

The City accepts the Contractor's Offer (as referenced in Section 1.1.3 below) for the above requirement and enters into the following Contract.

This Contract is between **Capitol Aggregates, Inc.** having offices at 2331 North Loop 1604 W, San Antonio, TX 78248, and the City, a home-rule municipality incorporated by the State of Texas, and is effective as of the date executed by the City ("Effective Date").

Capitalized terms used but not defined herein have the meanings given them in Solicitation Number IFB KDS0103-1.

1.1 **This Contract is composed of the following documents:**

1.1.1 This Contract

1.1.2 The City's Solicitation, Invitation for Bids, KDS0103-1 including all documents incorporated by reference

1.1.3 Capitol Aggregates, Inc. Offer, dated 02/02/2017, including subsequent clarifications

1.2 **Order of Precedence.** Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:

1.2.1 This Contract

1.2.2 The City's Solicitation as referenced in Section 1.1.2, including all documents incorporated by reference

1.2.3 The Contractor's Offer as referenced in Section 1.1.3, including subsequent clarifications.

1.3 **Term of Contract.** The Contract will be in effect for an initial term of thirty-six (36) months and may be extended thereafter for up to two (2) twelve (12)-month extension options, subject to the approval of the Contractor and the City Purchasing Officer or his designee. See the Term of Contract provision in Section 0400 for additional Contract requirements.

1.4 **Compensation.** The Contractor shall be paid a total Not-to-Exceed amount of $1,290,000 for the initial Contract term; a Not-to-Exceed amount of $450,000 for the first extension option and a Not-to-Exceed amount of $475,000 for the second extension option. Payment shall be made upon successful completion of services or delivery of goods as outlined in each individual Delivery Order.

1.5 **Quantity of Work.** There is no guaranteed quantity of work for the period of the Contract and there are no minimum order quantities. Work will be on an as needed basis as specified by the City for each Delivery Order.

This Contract (including any Exhibits) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

In witness whereof, the City has caused a duly authorized representative to execute this Contract on the date set forth below.

Capitol Aggregates, Inc.

Greg Hale
Printed Name of Authorized Person

Signature

President
Title:

5/31/17
Date:

CITY OF AUSTIN

Kim Scannell
Printed Name of Authorized Person

Signature

Procurement Specialist II
Title:

5/31/2017
Date:

Erin D'Vincent, C.P.P.B.
Printed Name of Authorized Person

Signature

Procurement Specialist IV
Title:

5/31/17
Date:

The undersigned, by his/her signature, represents that he/she is submitting a binding offer and is authorized to bind the respondent to fully comply with the solicitation document contained herein. The Respondent, by submitting and signing below, acknowledges that he/she has received and read the entire document packet sections defined above including all documents incorporated by reference, and agrees to be bound by the terms therein.

Company Name: Capitol Aggregates, Inc

Company Address: 2331 N Loop 1604

City, State, Zip: San Antonio Texas 78248

Federal Tax ID No.

Printed Name of Officer or Authorized Representative: Robert C. Murff

Title: Sales Rep

Signature of Officer or Authorized Representative:

Date: 02/02/17

Email Address: robe@capagg.com

Phone Number: 210-744-3055

*** Completed Bid Sheet, section 0600 must be submitted with this Offer sheet to be considered for award**

CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS

By submitting an Offer in response to the Solicitation, the Contractor agrees that the Contract shall be governed by the following terms and conditions. Unless otherwise specified in the Contract, Sections 3, 4, 5, 6, 7, 8, 20, 21, and 36 shall apply only to a Solicitation to purchase Goods, and Sections 9, 10, 11 and 22 shall apply only to a Solicitation to purchase Services to be performed principally at the City's premises or on public rights-of-way.

1. **CONTRACTOR'S OBLIGATIONS**. The Contractor shall fully and timely provide all Deliverables described in the Solicitation and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

2. **EFFECTIVE DATE/TERM**. Unless otherwise specified in the Solicitation, this Contract shall be effective as of the date the contract is signed by the City, and shall continue in effect until all obligations are performed in accordance with the Contract.

3. **CONTRACTOR TO PACKAGE DELIVERABLES**: The Contractor will package Deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and unit price Unless otherwise provided in the Specifications or Supplemental Terms and Conditions, each shipping container shall be clearly and permanently marked as follows: (a) The Contractor's name and address, (b) the City's name, address and purchase order or purchase release number and the price agreement number if applicable, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing list. The Contractor shall bear cost of packaging. Deliverables shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

4. **SHIPMENT UNDER RESERVATION PROHIBITED**: The Contractor is not authorized to ship the Deliverables under reservation and no tender of a bill of lading will operate as a tender of Deliverables.

5. **TITLE & RISK OF LOSS**: Title to and risk of loss of the Deliverables shall pass to the City only when the City actually receives and accepts the Deliverables.

6. **DELIVERY TERMS AND TRANSPORTATION CHARGES**: Deliverables shall be shipped F.O.B. point of delivery unless otherwise specified in the Supplemental Terms and Conditions. Unless otherwise stated in the Offer, the Contractor's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship the Deliverables. The place of delivery shall be that set forth in the block of the purchase order or purchase release entitled "Receiving Agency".

7. **RIGHT OF INSPECTION AND REJECTION**: The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the Deliverables at delivery before accepting them, and to reject defective or non-conforming Deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the Deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.

8. **NO REPLACEMENT OF DEFECTIVE TENDER**: Every tender or delivery of Deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.

9. **PLACE AND CONDITION OF WORK**: The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner, in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the contract. The Contractor hereby releases and holds the City

harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

10. **WORKFORCE**

A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.

B. The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property .

i. use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract; or
ii. use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

11. **COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS**: The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor’s obligations under this paragraph.

12. **INVOICES**:

A. The Contractor shall submit separate invoices in duplicate on each purchase order or purchase release after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.

B. **Proper Invoices must include a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department’s Name, and the name of the point of contact for the Department**. Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. The Contractor’s name and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor’s registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor’s invoice.

C. Invoices for labor shall include a copy of all time-sheets with trade labor rate and Deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.

D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.

E. Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

13. **PAYMENT**:

A. All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the Deliverables or of the invoice, whichever is later.

B. **If payment is not timely made, (per paragraph A), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**

C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches the shipment or delivery.

D. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:

i. delivery of defective or non-conforming Deliverables by the Contractor;
ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
iv. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
vi. failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or
vii. failure of the Contractor to comply with any material provision of the Contract Documents.

E. Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.

F. Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic funds transfer.

G. The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any Deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

14. **TRAVEL EXPENSES**: All travel, lodging and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Solicitation will be reviewed against the City's Travel Policy as published and maintained by the City's Controller's Office and the Current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

http://www.gsa.gov/portal/category/21287

No amounts in excess of the Travel Policy or Rates shall be paid. All invoices must be accompanied by copies of detailed itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulations.

15. **FINAL PAYMENT AND CLOSE-OUT**:

A. If an MBE/WBE Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Project manager or Contract manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.

B. The making and acceptance of final payment will constitute:

i. a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and

ii. a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

16. **SPECIAL TOOLS & TEST EQUIPMENT**: If the price stated on the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

17. **AUDITS and RECORDS**:

A. The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

B. Records Retention:

i. Contractor is subject to City Code chapter 2-11 (Records Management), and as it may subsequently be amended. For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Contractor in fulfillment of the Contract whether in digital or physical format, except a record specifically relating to the Contractor's internal administration.

ii. All Records are the property of the City. The Contractor may not dispose of or destroy a Record without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at no cost when requested by the City

iii. The Contractor shall retain all Records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer.

C. The Contractor shall include sections A and B above in all subcontractor agreements entered into in connection with this Contract.

18. **SUBCONTRACTORS**:

A. If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective Deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.

B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:

i. require that all Deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;
ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

19. **WARRANTY-PRICE**:

A. The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like Deliverables under similar terms of purchase.

B. The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

C. In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like Deliverables under similar terms of purchase.

20. **WARRANTY – TITLE**: The Contractor warrants that it has good and indefeasible title to all Deliverables furnished under the Contract, and that the Deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the Deliverables.

21. **WARRANTY – DELIVERABLES**: The Contractor warrants and represents that all Deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the Deliverables shall be new or recycled merchandise, and not used or reconditioned.

    A. Recycled Deliverables shall be clearly identified as such.

    B. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.

    C. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of acceptance of the Deliverables or from the date of acceptance of any replacement Deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming Deliverables, or replace the non-conforming Deliverables with fully conforming Deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs, shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

    D. If the Contractor is unable or unwilling to repair or replace defective or non-conforming Deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of Deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming Deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such Deliverables from another source.

    E. If the Contractor is not the manufacturer, and the Deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.

22. **WARRANTY – SERVICES**: The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

    A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.

    B. Unless otherwise specified in the Contract, the warranty period shall be <u>at least</u> one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.

    C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be

required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

23. **ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES**: If, instead of requiring immediate correction or removal and replacement of defective or non-conforming Deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming Deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming Deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

24. **RIGHT TO ASSURANCE**: Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

25. **STOP WORK NOTICE**: The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

26. **DEFAULT**: The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 24, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by the Contractor to the City.

27. **TERMINATION FOR CAUSE:**. In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

28. **TERMINATION WITHOUT CAUSE**: The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

29. **FRAUD**: Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

30. **DELAYS**:

A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in paragraph 48. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

B. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

31. **INDEMNITY**:

A. Definitions:

i. "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:
(1) damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or
(2) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),

ii. "Fault" shall include the sale of defective or non-conforming Deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

B. **THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.**

32. **INSURANCE**: (reference Section 0400 for specific coverage requirements). The following insurance requirement applies. (Revised March 2013).

A. General Requirements.

i. The Contractor shall at a minimum carry insurance in the types and amounts indicated in Section 0400, Supplemental Purchase Provisions, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.

ii. The Contractor shall provide Certificates of Insurance with the coverages and endorsements required in Section 0400, Supplemental Purchase Provisions, to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the

City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.

iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.

iv. The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.

v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.

vi. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.

vii. If insurance policies are not written for amounts specified in Section 0400, Supplemental Purchase Provisions, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

viii. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

ix. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

x. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

xi. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. Self-insured retentions shall be disclosed on the Certificate of Insurance.

xii. The Contractor shall provide the City thirty (30) calendar days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.

xiii. The insurance coverages specified in Section 0400, Supplemental Purchase Provisions, are required minimums and are not intended to limit the responsibility or liability of the Contractor.

B. Specific Coverage Requirements: Specific insurance requirements are contained in Section 0400, Supplemental Purchase Provisions

33. **CLAIMS**: If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the

Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

34. **NOTICES**: Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to the City at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the Contract Administrator.

35. **RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL**: All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.

36. **NO WARRANTY BY CITY AGAINST INFRINGEMENTS**: The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the Deliverables and (ii) the Deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the Deliverables and the Contractor does not know of any valid basis for any such claims. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's' ownership, and if applicable, license rights, and its use of the Deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's specifications regarding the Deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such Deliverables will not impact such warranties of Contractor.

37. **CONFIDENTIALITY**: In order to provide the Deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

38. **PUBLICATIONS**: All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

39. **ADVERTISING**: The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

40. **NO CONTINGENT FEES**: The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

41. **GRATUITIES**: The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

42. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS**: No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

43. **INDEPENDENT CONTRACTOR**: The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

44. **ASSIGNMENT-DELEGATION**: The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.

45. **WAIVER**: No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

46. **MODIFICATIONS**: The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

47. **INTERPRETATION**: The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

48. **DISPUTE RESOLUTION**:

A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

49. **JURISDICTION AND VENUE**: The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

50. **INVALIDITY**: The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

51. **HOLIDAYS:** The following holidays are observed by the City:

Holiday	Date Observed
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11

Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

52. **SURVIVABILITY OF OBLIGATIONS:** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

53. **NON-SUSPENSION OR DEBARMENT CERTIFICATION:**

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

54. **EQUAL OPPORTUNITY**

A. **Equal Employment Opportunity:** No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

B. **Americans with Disabilities Act (ADA) Compliance:** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

55. **INTERESTED PARTIES DISCLOSURE**

As a condition to entering the Contract, the Business Entity constituting the Offeror must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the "Certificate of Interested Parties" to the Texas Ethics Commission within 30 days of receipt from the successful Offeror. The Offeror is reminded that the provisions of Local Government Code 176, regarding conflicts of interest between the bidders and local officials remains in place. Link to Texas Ethics Commission Form 1295 process and procedures below:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

56. **BUY AMERICAN ACT-SUPPLIES (Applicable to certain Federally funded requirements)**

A. Definitions. As used in this paragraph –

i. "Component" means an article, material, or supply incorporated directly into an end product.

ii. "Cost of components" means -

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

iii. "Domestic end product" means-

(1) An unmanufactured end product mined or produced in the United States; or

(2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

iv. "End product" means those articles, materials, and supplies to be acquired under the contract for public use.

v. "Foreign end product" means an end product other than a domestic end product.

vi. "United States" means the 50 States, the District of Columbia, and outlying areas.

B. The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.

C. The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Offeror shall submit documentation with their Offer demonstrating that the article is on an approved Governmental list.

D. The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled "Buy American Act Certificate".

CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS
INVITATION FOR BID IFB 6200 KDS0103-1
HYDRAULIC CEMENT – TYPE 1

The following Supplemental Purchasing Provisions apply to this solicitation:

1. **EXPLANATIONS OR CLARIFICATIONS:** (reference paragraph 5 in Section 0200)

   All requests for explanations or clarifications must be submitted in writing to the Purchasing Office by email to kimberley.scannell@austintexas.gov no later than seven (7) business days prior to the bid due date.

2. **INSURANCE:** Insurance is required for this solicitation.

   A. **General Requirements:** See Section 0300, Standard Purchase Terms and Conditions, paragraph 32, entitled Insurance, for general insurance requirements.

      i. The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to contract execution and within 14 calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award
      ii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
      iii. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.
      iv. The Certificate of Insurance, and updates, shall be mailed to the following address:

         City of Austin Purchasing Office
         P. O. Box 1088
         Austin, Texas 78767

   B. **Specific Coverage Requirements:** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

      i. **Worker's Compensation and Employers' Liability Insurance:** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are $100,000 bodily injury each accident, $500,000 bodily injury by disease policy limit and $100,000 bodily injury by disease each employee.
         (1) The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:
            (a) Waiver of Subrogation, Form WC420304, or equivalent coverage
            (b) Thirty (30) days Notice of Cancellation, Form WC420601, or equivalent coverage
      ii. **Commercial General Liability Insurance:** The minimum bodily injury and property damage per occurrence are $500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injury).
         (1) The policy shall contain the following provisions:
            (a) Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
            (b) Contractor/Subcontracted Work.
            (c) Products/Completed Operations Liability for the duration of the warranty period.

(d) If the project involves digging or drilling provisions must be included that provide Explosion, Collapse, and/or Underground Coverage.

(2) The policy shall also include these endorsements in favor of the City of Austin:

(a) Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage

(b) Thirty (30) days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage

(c) The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage

iii. **Business Automobile Liability Insurance:** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of $500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are $250,000 bodily injury per person, $500,000 bodily injury per occurrence and at least $100,000 property damage liability per accident.

(1) The policy shall include these endorsements in favor of the City of Austin:

(a) Waiver of Subrogation, Endorsement CA0444, or equivalent coverage

(b) Thirty (30) days Notice of Cancellation, Endorsement CA0244, or equivalent coverage

(c) The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.

C. **Endorsements:** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

3. **TERM OF CONTRACT:**

A. The Contract shall be in effect for an initial term of thirty-six (36) months and may be extended thereafter for up to two (2) additional twelve (12) month periods, subject to the approval of the Contractor and the City Purchasing Officer or his designee.

B. Upon expiration of the initial term or period of extension, the Contractor agrees to hold over under the terms and conditions of this agreement for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 days unless mutually agreed on in writing).

C. Upon written notice to the Contractor from the City's Purchasing Officer or his designee and acceptance of the Contractor, the term of this contract shall be extended on the same terms and conditions for an additional period as indicated in paragraph A above.

D. Prices are firm and fixed for the first twelve (12) months. Thereafter, price changes are subject to the Economic Price Adjustment provisions of this Contract.

4. **QUANTITIES:** The quantities listed on the bid sheet are estimates for the first year of the Contract. The City reserves the right to purchase more or less of these quantities as may be required during the Contract term. Quantities will be as needed and specified by the City for each order. Unless specified in the solicitation, there are no minimum order quantities.

5. **DELIVERY REQUIREMENTS:**

Location:	Days:
City of Austin	Monday – Friday, 6:30 AM – 4:00 PM
Street and Bridge	

901 Dalton Lane
Austin, Texas 78742

A. Delivery is to be made within two (2) business days after the order is placed (either verbally or in writing). All orders must be shipped complete unless arrangements for partial shipments are made in advance.

B. The Contractor shall provide, with each delivery, a Shipping or Delivery Ticket showing the material description of each item, unit price, date, ticket number, quantity/net tons.

C. The Contractor shall confirm the quantity to be shipped on all orders within two (2) hours of notification by phone from the City.

D. Unless requested by the City, deliveries shall not be made on City-recognized legal holidays (see paragraph 51 in Section 0300).

6. **INVOICES and PAYMENT:** (reference paragraphs 12 and 13 in Section 0300)

A. Invoices shall contain a unique invoice number, product description, delivery ticket number, and the information required in Section 0300, paragraph 12, entitled "Invoices." Invoices received without all required information cannot be processed and will be returned to the vendor.

Invoices shall be mailed to the ordering department's address below:

	City of Austin
Department	Public Works Department – Financial Services
Attn:	Accounts Payable
Address	505 Barton Springs Rd., Ste. 800
City, State Zip Code	Austin, TX 78704

	City of Austin
Department	Watershed Protection Department
Attn:	Accounts Payable
Address	505 Barton Springs Rd., Ste. 1200
City, State Zip Code	Austin, TX 78704

B. The Contractor agrees to accept payment by either credit card, check or Electronic Funds Transfer (EFT) for all goods and/or services provided under the Contract. The Contractor shall factor the cost of processing credit card payments into the Offer. There shall be no additional charges, surcharges, or penalties to the City for payments made by credit card.

7. **MATERIALS SPECIFICATIONS/DESCRIPTIVE LITERATURE:**

A. If a solicitation refers to a Qualified Products List (QPL), Standard Products List (SPL) or a manufacturer's name and product, any Offeror offering products not referenced in the solicitation must submit as part of their Offer materials specifications/descriptive literature for the non-referenced product. Materials specifications/descriptive literature must be identified to show the item(s) in the Offer to which it applies.

B. Materials specifications/descriptive literature are defined as product manufacturer's catalog pages, "cut sheets" applicable tests results, or related detailed documents that specify material construction, performance parameters, and any industrial standards that are applicable such as ANSI, ASTM, ASME, SAE, NFPA, NBS, EIA, ESL, and NSA. The submitted materials specifications/descriptive literature must include the manufacturer's name and product number of the product being offered.

C. The failure of the materials specifications/descriptive literature to show that the product offered conforms to the requirements of the Solicitation shall result in rejection of the Offer.

D. Failure to submit the materials specifications/descriptive literature as part of the Offer may subject the Offer to disqualification from consideration for award.

8. **SAMPLES – QUALIFIED PRODUCTS LIST (QPL) and/or STANDARD PRODUCTS LIST (SPL):**

A. If requested by the City, the Offeror shall submit a sample of all proposed "equal" non-QPL and/or non-SPL products included in the Offer. The City reserves the right to test any "equal" non-QPL and/or non-SPL product that is offered prior to determination of award. If the amount of time required for testing exceeds ten (10) calendar days from the date of receipt of the sample, the City may award to Offerors with pretested products. The product will still be tested and if it meets specifications, will be added to the QPL and or SPL for future Solicitations.

B. Products that are not pretested must be available within forty-eight (48) hours after Solicitation Due Date at no charge to the City for testing and evaluation.

C. All products (except brand-name) provided to the City under this Solicitation will be evaluated or tested and must meet all requirements of the specification, regardless of whether or not all requirements are to be evaluated or tested.

D. Samples will be provided at no cost to the City, will be retained by the City, and may be used in assuring compliance with materials specifications after award. Failure to supply samples when requested shall subject the Offer to disqualification from consideration for award.

9. **HAZARDOUS MATERIALS:**

A. If this Solicitation involves hazardous materials, the Offeror shall furnish with the Offer Material Safety Data Sheets (MSDS), (OSHA Form 20), on all chemicals and hazardous materials specifying the generic and trade name of product, product specification, and full hazard information including receiving and storage hazards. Instructions, special equipment needed for handling, information on approved containers, and instructions for the disposal of the material are also required.

B. Failure to submit the MSDS as part of the Offer may subject the Offer to disqualification from consideration for award.

C. The MSDS, instructions and information required in paragraph "A" must be included with each shipment under the contract.

10. **LIVING WAGES:**

A. The minimum wage required for any Contractor employee directly assigned to this City Contract is $13.50 per hour, unless Published Wage Rates are included in this solicitation. In addition, the City may stipulate higher wage rates in certain solicitations in order to assure quality and continuity of service.

B. The City requires Contractors submitting Offers on this Contract to provide a certification **(see the Living Wages Contractor Certification included in the Solicitation**) with their Offer certifying that all employees directly assigned to this City Contract will be paid a minimum living wage equal to or greater than $13.50 per hour. The certification shall include a list of all employees directly assigned to providing services under the resultant contract including their name and job title. The list shall be updated and provided to the City as necessary throughout the term of the Contract.

C. The Contractor shall maintain throughout the term of the resultant contract basic employment and wage information for each employee as required by the Fair Labor Standards Act (FLSA).

D. The Contractor shall provide to the Department's Contract Manager with the first invoice, individual Employee Certifications for all employees directly assigned to the contract. The City reserves the right to request individual Employee Certifications at any time during the contract term. Employee Certifications shall be signed by each employee directly assigned to the contract. The Employee Certification form is available on-line at https://www.austintexas.gov/financeonline/vendor_connection/index.cfm.

E. Contractor shall submit employee certifications annually on the anniversary date of contract award with the respective invoice to verify that employees are paid the Living Wage throughout the term of the contract. The Employee Certification Forms shall be submitted for employees added to the contract and/or to report any employee changes as they occur.

F. The Department's Contract Manager will periodically review the employee data submitted by the Contractor to verify compliance with this Living Wage provision. The City retains the right to review employee records required in paragraph C above to verify compliance with this provision.

11. **NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING:**

A. On November 10, 2011, the Austin City Council adopted Ordinance No. 20111110-052 amending Chapter 2.7, Article 6 of the City Code relating to Anti-Lobbying and Procurement. The policy defined in this Code applies to Solicitations for goods and/or services requiring City Council approval under City Charter Article VII, Section 15 (Purchase Procedures). During the No-Contact Period, Offerors or potential Offerors are prohibited from making a representation to anyone other than the Authorized Contact Person in the Solicitation as the contact for questions and comments regarding the Solicitation.

B. If during the No-Contact Period an Offeror makes a representation to anyone other than the Authorized Contact Person for the Solicitation, the Offeror's Offer is disqualified from further consideration except as permitted in the Ordinance.

C. If an Offeror has been disqualified under this article more than two times in a sixty (60) month period, the Purchasing Officer shall debar the Offeror from doing business with the City for a period not to exceed three (3) years, provided the Offeror is given written notice and a hearing in advance of the debarment.

D. The City requires Offerors submitting Offers on this Solicitation to certify that the Offeror has not in any way directly or indirectly made representations to anyone other than the Authorized Contact

Person during the No-Contact Period as defined in the Ordinance. The text of the City Ordinance is posted on the Internet at: http://www.ci.austin.tx.us/edims/document.cfm?id=161145

12. **ECONOMIC PRICE ADJUSTMENT:**

A. **Price Adjustments:** Prices shown in this Contract shall remain firm for the first twelve (12) months of the Contract. After that, in recognition of the potential for fluctuation of the Contractor's cost, a price adjustment (increase or decrease) may be requested by either the City or the Contractor on the anniversary date of the Contract or as may otherwise be specified herein. The percentage change between the contract price and the requested price shall not exceed the percentage change between the specified index in effect on the date the solicitation closed and the most recent, non-preliminary data at the time the price adjustment is requested. The requested price adjustment shall not exceed twenty-five percent (25%) for any single line item and in no event shall the total amount of the contract be automatically adjusted as a result of the change in one or more line items made pursuant to this provision. Prices for products or services unaffected by verifiable cost trends shall not be subject to adjustment.

B. **Effective Date:** Approved price adjustments will go into effect on the first day of the upcoming renewal period or anniversary date of contract award and remain in effect until contract expiration unless changed by subsequent amendment.

C. **Adjustments:** A request for price adjustment must be made in writing and submitted to the other Party prior to the yearly anniversary date of the Contract; adjustments may only be considered at that time unless otherwise specified herein. Requested adjustments must be solely for the purpose of accommodating changes in the Contractor's direct costs. Contractor shall provide an updated price listing once agreed to adjustment(s) have been approved by the parties.

D. **Indexes:** In most cases an index from the Bureau of Labor Standards (BLS) will be utilized; however, if there is more appropriate, industry recognized standard then that index may be selected.

i. The following definitions apply:
(1) **Base Period:** Month and year of the original contracted price (the solicitation close date).
(2) **Base Price:** Initial price quoted, proposed and/or contracted per unit of measure.
(3) **Adjusted Price:** Base Price after it has been adjusted in accordance with the applicable index change and instructions provided.
(4) **Change Factor:** The multiplier utilized to adjust the Base Price to the Adjusted Price.
(5) **Weight %:** The percent of the Base Price subject to adjustment based on an index change.

ii. **Adjustment-Request Review:** Each adjustment-request received will be reviewed and compared to changes in the index(es) identified below. Where applicable:
(1) Utilize final Compilation data instead of Preliminary data
(2) If the referenced index is no longer available shift up to the next higher category index.

iii. **Index Identification:** Complete table as they may apply.

Weight % of Base Price: 100%	
Database Name: Producer Price Index	
Series ID: PCU3273103273100	
☒ Not Seasonally Adjusted	☐ Seasonally Adjusted
Geographical Area: All	

Description of Series ID: Cement manufacturing, Cement, hydraulic (including cost of shipping containers).

E. **Calculation:** Price adjustment will be calculated as follows:

Single Index: Adjust the Base Price by the same factor calculated for the index change.

Index at time of calculation
Divided by index on solicitation close date
Equals Change Factor
Multiplied by the Base Rate
Equals the Adjusted Price

F. If the requested adjustment is not supported by the referenced index, the City, at its sole discretion, may consider approving an adjustment on fully documented market increases.

13. **INTERLOCAL PURCHASING AGREEMENTS:** (applicable to competitively procured goods/services contracts).

A. The City has entered into Interlocal Purchasing Agreements with other governmental entities, pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. The Contractor agrees to offer the same prices and terms and conditions to other eligible governmental agencies that have an interlocal agreement with the City.

B. The City does not accept any responsibility or liability for the purchases by other governmental agencies through an interlocal cooperative agreement.

14. **CONTRACT MANAGER:** The following person is designated as Contract Manager, and will act as the contact point between the City and the Contractor during the term of the Contract:

Brenda Jimenez

Street and Bridge Operations

4411-A Meinardus Drive, Austin TX 78744

Phone: 512-974-7955 or 512-974-8758; Fax: 512-974-8760

*Note: The above listed Contract Manager is not the authorized Contact Person for purposes of the **NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING Provision** of this Section; and therefore, contact with the Contract Manager is prohibited during the no contact period.

BID SHEET
CITY OF AUSTIN
HYDRAULIC CEMENT – TYPE 1
IFB KDS0103-1

Bid Due Date & Time: 2/2/2017, 2:00 PM, Central time

Buyer: Kimberley Scannell

Copies of Bid: Bidder to submit two copies of its signed bid - one original paper copy and one (1) electronic copy on a flash drive.

Special Instructions:
Be advised that exceptions taken or qualifying statements made to any portion of the solicitations may jeopardize acceptance of the bid and may result in disqualification of the bid. Prices being submitted shall include **ALL** discounts, fees such as environmental or any other applicable fees, shipping charges, and FOB Destination.

A bid of '0' (zero) will be interpreted by the City as a no-charge (free) item and the City will not expect to pay for that item. A bid of 'no bid' will be interpreted by the City that the responder does not wish to bid on that item.

The quantities noted below are first year estimates and not a guarantee of actual volume. The City does not guarantee the purchase of the quantities listed. Actual purchases may be more or less.

ITEM NO.	ITEM DESCRIPTION	ESTIMATED ANNUAL QUANTITY	UNIT OF MEASURE	UNIT PRICE	EXTENDED PRICE
1	Cement, Hydraulic, Type 1 - Bulk, DELIVERED	3,000	Tons	$141.53/ton	$146.53/ton
			TOTAL		

Please check the boxes below as confirmation.

- ☑ Offer Sheet - required
- ☑ Bid Sheet (Section 0600) -required
- ☑ Local Business Presence Identification Form (Section 0605) - required
- ☑ Reference Sheet (Section 0700) -required
- ☑ Nonresident Bidder Provisions (Section 0835)- required
- ☑ Goal Determination Form (Section 0900) - required
- ☑ ASTM C-150 certified test results per Section 0500 Specifications - required
- ☑ MSDS - OSHA Form 20 - required
- ☑ **I UNDERSTAND THAT FAILURE TO SUBMIT THE COMPLETED FORMS ABOVE MAY RESULT IN DISQUALIFICATION OF MY BID**
- ☑ **I UNDERSTAND THAT SUBMITTING WITH MY BID ANY CLARIFICATION STATEMENTS, QUALIFYING STATEMENTS, AND/OR EXCEPTIONS TO THE CITY'S TERMS AND CONDITIONS MAY RESULT IN DISQUALIFICATION OF MY BID**

DELIVERY TERMS: DELIVERY IS TO BE FOB DESTINATION, PREPAID AND ALLOWED

Section 0605: Local Business Presence Identification

A firm (Offeror or Subcontractor) is considered to have a Local Business Presence if the firm is headquartered in the Austin Corporate City Limits, or has a branch office located in the Austin Corporate City Limits in operation for the last five (5) years, currently employs residents of the City of Austin, Texas, and will use employees that reside in the City of Austin, Texas, to support this Contract. The City defines headquarters as the administrative center where most of the important functions and full responsibility for managing and coordinating the business activities of the firm are located. The City defines branch office as a smaller, remotely located office that is separate from a firm's headquarters that offers the services requested and required under this solicitation.

OFFEROR MUST SUBMIT THE FOLLOWING INFORMATION FOR EACH LOCAL BUSINESS (INCLUDING THE OFFEROR, IF APPLICABLE) TO BE CONSIDERED FOR LOCAL PRESENCE.

NOTE: ALL FIRMS MUST BE IDENTIFIED ON THE MBE/WBE COMPLIANCE PLAN OR NO GOALS UTILIZATION PLAN (REFERENCE SECTION 0900).

USE ADDITIONAL PAGES AS NECESSARY

OFFEROR:

Name of Local Firm		
Physical Address		
Is your headquarters located in the Corporate City Limits? (circle one)	Yes	No
or		
Has your branch office been located in the Corporate City Limits for the last 5 years?	Yes	No
Will your business be providing additional economic development opportunities created by the contract award? (e.g., hiring, or employing residents of the City of Austin or increasing tax revenue?)	Yes	No

SUBCONTRACTOR(S):

Name of Local Firm		
Physical Address		
Is your headquarters located in the Corporate City Limits? (circle one)	Yes	No
or		
Has your branch office been located in the Corporate City Limits for the last 5 years	Yes	No

Will your business be providing additional economic development opportunities created by the contract award? (e.g., hiring, or employing residents of the City of Austin or increasing tax revenue?)	Yes	No

SUBCONTRACTOR(S):

Name of Local Firm		
Physical Address		
Is your headquarters located in the Corporate City Limits? (circle one)	Yes	No
or		
Has your branch office been located in the Corporate City Limits for the last 5 years	Yes	No
Will your business be providing additional economic development opportunities created by the contract award? (e.g., hiring, or employing residents of the City of Austin or increasing tax revenue?)	Yes	No

Section 0700: Reference Sheet

Responding Company Name Capitol Aggregates

The City at its discretion may check references in order to determine the Offeror's experience and ability to provide the products and/or services described in this Solicitation. The Offeror shall furnish at least 3 complete and verifiable references. References shall consist of customers to whom the offeror has provided the same or similar services within the last 5 years. References shall indicate a record of positive past performance.

1. Company's Name: Aransas County
   Name and Title of Contact: Lucia Ramos
   Project Name: 2017 Cement
   Present Address: 301 N Live Oak
   City, State, Zip Code: Rockport, Tx 78382
   Telephone Number: (361) 790-0152 Fax Number ( )
   Email Address: roadbridge@aransascounty.org

2. Company's Name: San Antonio Water System
   Name and Title of Contact: D. Anthony Rubin Procurement Specialist
   Project Name: 2015 Cement
   Present Address: ~~Po Box~~ PO Box 2449
   City, State, Zip Code: San Antonio, Tx 78298
   Telephone Number: (210) 233-3815 Fax Number (210) 233-5433
   Email Address: arubin@saws.org

3. Company's Name: Bexar County Auditor
   Name and Title of Contact:
   Project Name: 2-1-17 Cement
   Present Address: 101 W Nueva #800
   City, State, Zip Code: San Antonio, Tx 78205
   Telephone Number: (210) 631-0200 Fax Number ( )
   Email Address: irene.rocha@bexar.org

City of Austin, Texas
NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION

City of Austin, Texas

Equal Employment/Fair Housing Office

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

(1) Not to engage in any discriminatory employment practice defined in this chapter.

(2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.

(3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.

(4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.

(5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.

(6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.

(7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of $2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Non-Discrimination and Non-Retaliation Policy set forth below.

City of Austin
Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their compliant, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and non-retaliation employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, **OR** THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4 and the Non-Retaliation Policy.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filling. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 23rd day of February, 2017

CONTRACTOR Capitol Aggregates, Inc

Authorized Signature Dale Broeller

Title Director of Sales

Section 0815: Living Wages Contractor Certification

Company Name Capital Aggregates

Pursuant to the Living Wages provision (reference Section 0400, Supplemental Purchase Provisions) the Contractor is required to pay to all employees directly assigned to this City contract a minimum Living Wage equal to or greater than $13.50 per hour.

The below listed employees of the Contractor who are directly assigned to this contract are compensated at wage rates equal to or greater than $13.50 per hour.

Employee Name	Employee Job Title
N/A	N/A

USE ADDITIONAL PAGES AS NECESSARY

(1) All future employees assigned to this Contract will be paid a minimum Living Wage equal to or greater than $13.50 per hour

(2) Our firm will not retaliate against any employee claiming non-compliance with the Living Wage provision.

A Contractor who violates this Living Wage provision shall pay each affected employee the amount of the deficiency for each day the violation continues. Willful or repeated violations of the provision or fraudulent statements made on this certification may result in termination of this Contract for Cause and subject the firm to possible suspension or debarment, or result in legal action.

Section 0835: Non-Resident Bidder Provisions

Company Name Capital Aggregates

A. Bidder must answer the following questions in accordance with Vernon's Texas Statues and Codes Annotated Government Code 2252.002, as amended:

Is the Bidder that is making and submitting this Bid a "Resident Bidder" or a "non-resident Bidder"?

Answer: Resident Bidder

(1) Texas Resident Bidder- A Bidder whose principle place of business is in Texas and includes a Contractor whose ultimate parent company or majority owner has its principal place of business in Texas.
(2) Nonresident Bidder- A Bidder who is not a Texas Resident Bidder.

B. If the Bidder is a "Nonresident Bidder" does the state, in which the Nonresident Bidder's principal place of business is located, have a law requiring a Nonresident Bidder of that state to bid a certain amount or percentage under the Bid of a Resident Bidder of that state in order for the nonresident Bidder of that state to be awarded a Contract on such bid in said state?

Answer: _____ Which State: _____

C. If the answer to Question B is "yes", then what amount or percentage must a Texas Resident Bidder bid under the bid price of a Resident Bidder of that state in order to be awarded a Contract on such bid in said state?

Answer: _____

Section 0900: Minority- and Women-Owned Business Enterprise (MBE/WBE) Procurement Program No Goals Form

SOLICITATION NUMBER: IFB KDS0103-1

PROJECT NAME: Hydraulic Cement, Type I

The City of Austin has determined that no goals are appropriate for this project. Even though goals were not assigned for this solicitation, the Bidder/Proposer is required to comply with the City's MBE/WBE Procurement Program, if areas of subcontracting are identified.

If any service is needed to perform the Contract and the Bidder/Proposer does not perform the service with its own workforce or if supplies or materials are required and the Bidder/Proposer does not have the supplies or materials in its inventory, the Bidder/Proposer shall contact the Small and Minority Business Resources Department (SMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Bidder/Proposer must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract, using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

Will subcontractors or sub-consultants or suppliers be used to perform portions of this Contract?

No	✓	**If no, please sign the No Goals Form and submit it with your Bid/Proposal in a sealed envelope**
Yes		**If yes, please contact SMBR to obtain further instructions and an availability list and perform Good Faith Efforts. Complete and submit the No Goals Form and the No Goals Utilization Plan with your Bid/Proposal in a sealed envelope.**

After Contract award, if your firm subcontracts any portion of the Contract, it is a requirement to complete Good Faith Efforts and the No Goals Utilization Plan, listing any subcontractor, sub-consultant, or supplier. Return the completed Plan to the Project Manager or the Contract Manager.

I understand that even though goals were not assigned, I must comply with the City's MBE/WBE Procurement Program if subcontracting areas are identified. I agree that this No Goals Form and No Goals Utilization Plan shall become a part of my Contract with the City of Austin.

Capital Aggregates, Inc

Company Name

Robert C Muriff Sales Rep

Name and Title of Authorized Representative (Print or Type)

Signature 02/02/17 **Date**

Minority- and Women-Owned Business Enterprise (MBE/WBE) Procurement Program No Goals Utilization Plan
(Please duplicate as needed)

SOLICITATION NUMBER: IFB KDS0103-1
PROJECT NAME: Hydraulic Cement, Type I

PRIME CONTRACTOR / CONSULTANT COMPANY INFORMATION

Name of Contractor/Consultant			
Address			
City, State Zip			
Phone Number		Fax Number	
Name of Contact Person			
Is Company City certified?	Yes ☐ No ☐ MBE ☐ WBE ☐ MBE/WBE Joint Venture ☐		

I certify that the information included in this No Goals Utilization Plan is true and complete to the best of my knowledge and belief. I further understand and agree that the information in this document shall become part of my Contract with the City of Austin.

_____
Name and Title of Authorized Representative (Print or Type)

_____ _____
Signature **Date**

Provide a list of all proposed subcontractors / sub-consultants / suppliers that will be used in the performance of this Contract. **Attach Good Faith Effort documentation if non MBE/WBE firms will be used.**

Sub-Contractor / Sub-Consultant			
City of Austin Certified	MBE ☐ WBE ☐ Ethics / Gender Code: ☐ Non-Certified		
Vendor ID Code			
Contact Person		Phone Number	
Amount of Subcontract	$		
List commodity codes & description of services			

Sub-Contractor / Sub-Consultant			
City of Austin Certified	MBE ☐ WBE ☐ Ethics / Gender Code: ☐ Non-Certified		
Vendor ID Code			
Contact Person		Phone Number	
Amount of Subcontract	$		
List commodity codes & description of services			

FOR SMALL AND MINORITY BUSINESS RESOURCES DEPARTMENT USE ONLY:

Having reviewed this plan, I acknowledge that the proposer (HAS) or (HAS NOT) complied with City Code Chapter 2-9A/B/C/D, as amended.

Reviewing Counselor _____ **Date** _____ **Director/Deputy Director** _____ **Date** _____

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY
CERTIFICATION OF FILING

Certificate Number:
2017-200342

Date Filed:
05/01/2017

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Capitol Aggregates, Inc
San Antonio, TX United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City Of Austin

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

MA 6200 GA170000034
Cement

4 Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
		Controlling	Intermediary

5 Check only if there is NO Interested Party. [X]

6 AFFIDAVIT

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.

CARLA M. ESPARZA
Notary Public, State of Texas
My Comm. Exp. 11-10-2018
ID No. 91341-7

AFFIX NOTARY STAMP / SEAL ABOVE

Signature of authorized agent of contracting business entity

Sworn to and subscribed before me, by the said ROBERT MURFF, this the 1 day of May, 20 17, to certify which, witness my hand and seal of office.

Carla M. Esparza — CARLA M. ESPARZA

Signature of officer administering oath — Printed name of officer administering oath — Title of officer administering oath

City of Austin
SMBR
Small & Minority Business Resources

GOAL DETERMINATION REQUEST FORM

Buyer Name/Phone	Kim Scannell/42261	**PM Name/Phone**	Brenda Jimenez/47955
Sponsor/User Dept.	Public Works Department 6200	**Sponsor Name/Phone**	
Solicitation No	IFB 6200 KDS0103	**Project Name**	Hydraulic Cement - Type 1, Bulk
Contract Amount	$378,000 annually	**Ad Date (If applicable)**	Advertisement Date

Procurement Type

- ☐ AD – CSP
- ☐ AD – Design Build Op Maint
- ☒ IFB – IDIQ
- ☐ Nonprofessional Services
- ☐ Critical Business Need
- ☐ Sole Source*
- ☐ AD – CM@R
- ☐ AD – JOC
- ☐ PS – Project Specific
- ☐ Commodities/Goods
- ☐ Interlocal Agreement
- ☐ AD – Design Build
- ☐ IFB – Construction
- ☐ PS – Rotation List
- ☐ Cooperative Agreement
- ☐ Ratification

Provide Project Description**

Establish a master agreement for hydraulic cement used by the Street and Bridge Operations of the Public Workds Department and Watershed Protection Department for the repair of sidewalks, curbs, gutters and driveways. Dry cement is delivered to a COA silo where it is stored until needed. Dry cement is delivered to job sites via COA volumetric trucks that mix the concrete on-site.

Project History: Was a solicitation previously issued; if so were goals established? Were subcontractors/subconsultants utilized? Include prior Solicitation No.

Solicitation number EAD0220 was issued for Master Agreement GA130000077. No MWBE goals were established.

List the scopes of work (commodity codes) for this project. ***(Attach commodity breakdown by percentage; eCAPRIS printout acceptable)***

75021 - Cement, truckload lots and larger/100%

Kim Scannell	11/23/2016
Buyer Confirmation	**Date**

** Sole Source must include Certificate of Exemption*
***Project Description not required for Sole Source*

FOR SMBR USE ONLY

Date Received	11/23/2016	**Date Assigned to BDC**	11/23/2016

In accordance with Chapter2-9(A-D)-19 of the Austin City Code, SMBR makes the following determination:

☐ Goals	% MBE	% WBE
☐ Subgoals	% African American	% Hispanic
	% Asian/Native American	% WBE

City of Austin
SMBR
Small & Minority Business Resources
Opening the door to opportunities

GOAL DETERMINATION REQUEST FORM

☐ Exempt from MBE/WBE Procurement Program	☒ No Goals

City of Austin
SMBR
Small & Minority Business Resources
Opening the door to opportunities.

GOAL DETERMINATION REQUEST FORM

This determination is based upon the following:	
☐ Insufficient availability of M/WBEs	☒ No availability of M/WBEs
☐ Insufficient subcontracting opportunities	☐ No subcontracting opportunities
☐ Sufficient availability of M/WBEs	☐ Sufficient subcontracting opportunities
☐ Sole Source	☐ Other
If Other was selected, provide reasoning:	
MBE/WBE/DBE Availability	
There are no availabile MBE/WBE vendors	
Subcontracting Opportunities Identified	
N/A	

Cassidy Villegan	
SMBR Staff	**Signature/ Date** 11-30-16
SMBR Director or Designee	**Date** 12-1-16
Returned to/ Date:	

CAPITOL
AGGREGATES LTD

Capitol Cement
11551 Nacogdoches Rd.
San Antonio, Texas

Type I (LA) Cement - C 150/C 150M

Date: February 8,2017

Production Period:
Beginning: January 1, 2017
Ending: January 31,2017

CHEMICAL Item	Spec. Limit	Test Result
SiO_2 (%)	*A*	20.7
Al_2O_3 (%)	*A*	5.2
Fe_2O_3 (%)	*A*	1.9
CaO (%)	*A*	65
MgO (%)	*6.0 maximum*	0.8
SO_3 (%)	*3.5 D*	3.8
Na_2O (%)	*A*	0.06
K_2O (%)	*A*	0.43
Equivalent alkalies (%)	*0.60 maximum*	0.34
	minimum	0.32
	maximum	0.37
Ignition Loss (%)	*3.0 maximum*	1.9
Insoluble Residue (%)	*0.75 maximum*	0.49
Limestone (%)	*5.0 maximum*	0.00
CO_2 (%)	*A*	0.00
$CaCO_3$ in Limestone	*70 Minimum*	96
C_3A (%)	*A*	11

PHYSICAL Item			Spec. Limit	Test Result
Air Content of Mortar (volume %)			*12 maximum*	6.4
Blaine Fineness (m^2/kg)			*260 minimum*	409
Autoclave Expansion (%)			*0.80 maximum*	0.01
Time of Setting (minutes)				
Vicat				
Initial	Not less than		*45*	74
Final	Not more than		*375*	235
Compressive Strength				
1 Day	(psi)		*A*	2420
3 Day	(psi)	*minimum*	*(1740)*	4000
7 Day	(psi)	*minimum*	*(2760)*	5110
28 Day	(psi)	(Dec)	*A*	6760

A Not Applicable
D Note D additional information upon request.
We certify that the above cement, at the time of shipment meets the chemical and physical requirements of the current ASTM C 150 and AASHTO M 85 specifications.
The above data represents the averages of representative samples from production.

Signature: Douglas Conroy

Title: Chief Chemist

CAPITOL AGGREGATES INC

Safety Data Sheet

Portland Cements (Type I, II, III EcoMent, Class A Oilwell Cement)

Section 1: Identification

MANUFACTURER'S NAME & ADDRESS: Capitol Aggregates Inc.
11551 Nacogdoches Rd.
San Antonio, Texas 78217

PRODUCT NAME:	**Portland Cements (Type I,I/II, and III, EcoMent, Class A Oilwell Cement)**

EMERGENCY TELEPHONE NUMBER: (210) 871 6111
SDS INFORMATION OR ASSISTANCE: (210) 871-7247
COMPANY PHONE NUMBER: (210) 871 7260
CHEMICAL NAME: Portland Cement
CAS NUMBER: 65997-15-1
TRADE NAME or SYNONYMS: (Portland Cement, Type I,1/II, III, Oil Well cement, Oil Field Cement Class A)
PRODUCT USE: General Construction

Section 2: Hazards Identification

WARNING! CONTACT WITH WET OR DRY PORTLAND CEMENTS IS DANGEROUS AND MAY CAUSE SEVERE SKIN IRRITATION, CHEMICAL BURNS, AS WELL AS DAMAGE TO HUMAN TISSUE, INCLUDING EYES AND OTHER ORGANS. IN ADDITION, BREATHING CEMENT DUST OVER A PERIOD OF TIME MAY IN SOME CASES RESULT IN CANCER AND OTHER DISEASES.

Classification of the substance or mixture:

SKIN CORROSION/IRRITATION — Category 1A

SERIOUS EYE DAMAGE/ EYE IRRITATION — Category 1

SKIN SENSITIZATION — Category 1

CARCINOGENICITY/INHALATION — Category 1A

SPECIFIC TARGET ORGAN TOXICITY
(SINGLE EXPOSURE) [Respiratory tract irritation] — Category 3
(EXTENDED EXPOSURE)) [Respiratory tract irritation] — Category 1

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GHS label elements
Hazard pictograms:

Signal word: **Danger**

Hazard statements: **Causes severe skin burns and eye damage.**
May cause an allergic skin reaction.
May cause respiratory irritation (Inhalation).
May cause cancer (inhalation).

EMERGENCY OVERVIEW:

Appearance/Odor: Gray to black or white powder. No odor.

Carcinogen, Acute & Chronic Toxin WARNING:

- Portland Cements are **NOT** listed by the National Toxicology Program (NTP), International Agency for Research on Cancer (IARC), or OSHA as carcinogens. However, Portland Cements may contain <0.1% sand or crystalline silica. The IARC classifies respirable crystalline silica as a Group I- Known Human Carcinogen. The NTP also lists respirable crystalline silica as a known carcinogen. Portland Cements may also contain trace amounts of hexavalent chromium, which is classified by IARC as a Group-1 Known Human Carcinogen and by NTP as a Known Carcinogen.

OSHA REGULATORY STATUS:

This product is considered HAZARDOUS by the OSHA Hazard Communication Standard (29 CFR 1910.1200).

POTENTIAL HEALTH EFFECTS:

LIKELY ROUTES OF EXPOSURE: Cement dusts: Inhalation, Eye or Skin contact, or Ingestion. Wet cement: Skin and Eye contact

TARGET ORGAN(S): Lungs, Skin, Eyes, Stomach/Intestines, other internal organs.

EYE

- Avoid eye contact. Exposure to dust may be irritating to the eyes and may impair vision. Exposure may result in conjunctivitis and inflammation of the mucous membrane covering the inner eyelid and front of the eyeball.
- Particulates from Portland Cements, (dust), may cause eye irritation resulting in pain, swelling and inflammation of the eyes.
- Contact with wet Portland Cements, e.g., unhardened cement, mortar or slurries, may cause caustic burns to the eyes.

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- Calcium oxide compounds create severe burns as the compounds tend to react with the moisture and protein of the eyes, forming clumps of moist compounds that act as reservoirs for continued release of calcium hydroxide.

WHEN WORKING WITH PORTLAND CEMENTS (WET OR DRY) ALWAYS WEAR PROTECTIVE EYEWEAR MEETING APPLICABLE OSHA STANDARDS.

SKIN

- Avoid skin contact. Exposure to cement dusts may be irritating to the skin by chemical or mechanical means. This condition may be aggravated by perspiration or moisture.
- Contact with wet Portland Cements, e.g., unhardened cement, mortar or slurries, may cause severe skin irritation or chemical burns which may not be apparent or painful for 12 to 48 hours after exposures of 1 to 6 hours. This condition may be aggravated by perspiration or moisture.
- Contact with wet Portland Cements may result in contact dermatitis, which is characterized by dryness, chapping, and reddening and, in some cases, may result in allergic contact dermatitis, which may in turn cause more frequent episodes and longer duration of skin conditions.
- Skin sensitivity may occur if hexavalent chromium is present in the cement.
- Skin contact with more hydrated forms of calcium sulfate may cause thermal burns during the hardening process.

WHEN WORKING WITH PORTLAND CEMENTS (WET OR DRY) ALWAYS WEAR PROTECTIVE IMPERVIOUS CLOTHING, WATERPROOF GLOVES AND, IF APPROPRIATE, WATERPROOF KNEEPADS AND BOOTS, MEETING APPLICABLE OSHA STANDARDS.

INHALATION

- Avoid prolonged and repeated inhalation of cement dust. Acute and chronic exposure to dusts may be irritating to the respiratory tract and may provoke bronchoconstriction.
- Respirable dusts can cause bothersome deposits in the nasal passages. Nuisance dusts cause toxicity from physical overloading of the respiratory clearance mechanisms.
- Significant deterioration of pulmonary function, chronic bronchitis, and emphysema can develop with prolonged overexposure to high concentrations of dusts.
- Continued overexposure to cement dust containing silica can result in silicosis, a chronic, progressive and sometimes fatal lung disease that is characterized by the presence of typical nodulation of the lungs leading to fibrosis. Silicosis can develop in weeks with high exposures and after years of lower exposure. Symptoms and signs of silicosis include cough, shortness of breath, wheezing, decreased pulmonary function, and changes in chest X-rays. Some studies have shown that respirable silica may also be associated with increased risk of autoimmune disorders, chronic kidney disease and end stage renal disease.
- Particulates from cement dust may cause upper respiratory tract irritation resulting in coughing, production of phlegm, or difficulty breathing.

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- Excessive, long-term inhalation of cement dusts may contribute to the development of occupational bronchitis and reduced breathing capacity, and may lead to the increased susceptibility to lung disease.
- Chronic overexposure to dusts of Portland Cements has resulted in perforation of the nasal septum.
- Exposure to calcium sulfate dust causes upper respiratory tract irritation primarily as a nuisance dust.
- Respirable silica, and hexavalent chromium, which may be present in small or trace amounts in portland cements, are classified as known carcinogens.

AVOID BREATHING CEMENT DUST. IF POSSIBLE, USE THESE PRODUCTS FROM AN UPWIND LOCATION. IF DUSTY CONDITIONS CANNOT BE AVOIDED, WEAR A NIOSH/MSHA APPROVED RESPIRATOR.

INGESTION

- Minute amounts accidentally ingested during industrial handling are not likely to cause injury.
- Ingestion of Portland Cements may cause irritation of the mouth, throat, esophagus and stomach with nausea, vomiting and diarrhea.
- Ingestion may also cause mucosal burns of the mouth, esophagus, and stomach; and bezoar formations in the stomach and intestines. Most will pass spontaneously, but larger ones may cause obstruction and require surgical removal.

MEDICAL CONDITIONS AGGRAVATED BY EXPOSURE

- Chronic exposure to nuisance dusts may enhance susceptibility to respiratory tract infections.
- Silica can cause silicosis a chronic, progressive and sometimes fatal lung disease which, in turn, increases the risk of pulmonary tuberculosis infection. Some studies have shown that silica may also be associated with increased risk of autoimmune disorders, chronic kidney disease and end stage renal disease..
- Smoking may increase the risk of developing lung disorders associated with silicosis. Smoking and lung disease may exacerbate the effects of exposure. Genetic factors may also exacerbate the effects of exposure.
- History of smoking is also a contributing factor in the chronic respiratory effects associated with cement dusts.
- Exposure to Portland Cements can result in allergic contact dermatitis, which may in turn cause more frequent episodes and longer duration of skin conditions.
- There have been several epidemiological studies suggesting an association between chronic exposure to Portland Cements and cancers.
- Drying and chapping may make the skin more susceptible to other irritants, sensitizers and disease.

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Section 3: Composition / Information on Ingredients

Component	CAS No.	Wt.%	Hazardous?	GHS-US
Portland Cements, which essentially consists of the following:				
Tricalcium Silicate $3CaO \cdot SiO_2$	12168-85-3	<70	NO	Skin Irrit. 2, H315 Eye Dam. 1, H318 Skin Sens. 1, H317 STOT SE 3, H335
Dicalcium Silicate $2CaO \cdot SiO_2$	10034-77-2	<20	NO	
Tricalcium Aluminate $3CaO \cdot Al_2O_3$	12042-78-3	<15	NO	
Tetracalcium Aluminoferrite $4CaO \cdot Al_2O_3 \cdot Fe_2O_3$	12068-35-8	<7	NO	
Calcium Sulfate Dihydrate (Gypsum) $CaSO_4 \cdot 2H_2O$ (and/or other hydrated forms of Calcium Sulfate (CAS No. 7778-18-9), $CaSO_4 \cdot XH_2O$)	13397-24-5	<9	YES	Not Classified
Crystalline Silica (quartz)	14808-60-7	<0.1%	Yes	Acute Tox. 4 (Oral), H302 Carc. 1A, H350 STOT RE 1, H372

Crystalline Silica is reported as total silica and not just the respirable fraction.

Any concentration shown as a range is to protect confidentiality of trade secret information or is due to process variation. Portland Cements consist of finely ground Portland Cement clinker interground with limestone and a small amount of calcium sulfate to control set. Portland Cement clinker is a sintered material produced by heating to a high temperature (>1200 °C) a mixture of substances such as limestone and shale from the earth's crust. The substances manufactured are essentially hydraulic calcium silicates contained in a crystalline mass, not separable into the individual components.

In addition to the elements listed above, these products may also contain small amounts of calcium oxide (CaO), magnesium oxide (MgO), potassium sulfate (K2SO4) and sodium sulfate (Na2SO4), which are considered hazardous (and the case of crystalline silica, carcinogenic) and trace amounts (below 0.1%) of chromium salts or compounds (including hexavalent chromium which is also considered carcinogenic) or other metals (including nickel compounds).

This SDS covers several different types of Portland Cements and the composition of the individual constituents mentioned above may vary among the different types. Particle sizes may also vary among different types of Portland Cements.

Section 4: First Aid Measures

EYE CONTACT
Get medical attention immediately. Call a poison center or physician. Immediately flush eyes with plenty of water, occasionally lifting the upper and lower eyelids. Check for and remove any contact lenses. Continue to rinse for at least 20 minutes. Chemical burns must be treated promptly by a physician. **Get prompt medical attention.**

SKIN CONTACT
Get medical attention immediately. Heavy exposure to dust of Portland Cements, wet concrete or associated water requires prompt attention. Quickly remove contaminated clothing, shoes, and

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leather goods such as watchbands and belts. Quickly and gently blot or brush away excess Portland Cements. Immediately wash thoroughly with lukewarm, gently flowing water and non-abrasive pH neutral soap. Seek medical attention for rashes, burns, irritation, dermatitis and prolonged unprotected exposures to wet cement, cement mixtures or liquids from wet cement. Burns should be treated as caustic burns. Portland Cements cause skin burns with little warning. Discomfort or pain cannot be relied upon to alert a person to a serious injury. You may not feel pain or the severity of the burn until hours after the exposure. Chemical burns must be treated promptly by a physician. In the event of any complaints or symptoms, avoid further exposure. If redness or irritation occurs and persists, **seek medical attention.**

INHALATION
Seek medical help if coughing or other symptoms persist. Inhalation of large amounts of Portland Cements requires immediate medical attention. Call a poison center or physician. Remove victim to fresh air and keep at rest in a position comfortable for breathing. If the individual is not breathing, if breathing is irregular or if respiratory arrest occurs, provide artificial respiration or oxygen by trained personnel. It may be dangerous to the person providing aid to give mouth-to-mouth resuscitation. If unconscious, place in recovery position and **get medical attention immediately**. Maintain an open airway.

INGESTION
Get medical attention immediately. Call a poison center or physician. Have victim rinse mouth thoroughly with water. DO NOT INDUCE VOMITING unless directed to do so by medical personnel. Remove victim to fresh air and keep at rest in a position comfortable for breathing. If material has been swallowed and the exposed person is conscious, give small quantities of water to drink. Have victim drink 60 to 240 mL (2 to 8 oz.) of water. Stop giving water if the exposed person feels sick as vomiting may be dangerous. If vomiting occurs, the head should be kept low so that vomit does not enter the lungs. Chemical burns must be treated promptly by a physician. Never give anything by mouth to an unconscious person. If unconscious, place in recovery position and **get medical attention immediately**. Maintain an open airway.

MOST IMPORTANT SYMPTOMS/EFFECTS, ACUTE and DELAYED POTENTIAL ACUTE HEALTH EFFECTS

Eye contact: Causes serious eye damage.
Inhalation: May cause respiratory irritation.
Skin contact: Causes severe burns. May cause an allergic skin reaction.
Ingestion: May cause burns to mouth, throat and stomach.

OVER-EXPOSURE SIGNS/SYMPTOMS

Eye contact: Adverse symptoms may include the following: pain, watering and redness
Inhalation: Adverse symptoms may include the following: respiratory tract irritation and coughing
Skin contact: Adverse symptoms may include the following: pain or irritation, redness and blistering may occur, skin burns, ulceration and necrosis may occur
Ingestion: Adverse symptoms may include the following: stomach pains

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NOTES TO PHYSICIAN
See all of the above and the POTENTIAL HEALTH EFFECTS in Section 2 above. In particular, note that (i) calcium oxide compounds create severe burns as the compounds tend to react with the moisture and protein of the eyes, forming clumps of moist compounds that act as reservoirs for continued release of calcium hydroxide and (ii) prolonged inhalation of crystalline silica can result in silicosis, a disabling and potentially fatal lung disease, tuberculosis and other diseases, as well as the aggravation of other conditions.

Section 5: Fire Fighting Measures

FLAMMABLE PROPERTIES:
Noncombustible and not explosive.

EXTINGUISHING MEDIA:
Suitable extinguishing media: Use an extinguishing agent suitable for the surrounding fire.
Unsuitable extinguishing media: Do not use water jet or water-based fire extinguishers.

SPECIFIC HAZARDS ARISING FROM THE CHEMICAL
No specific fire or explosion hazard.

THERMAL DECOMPOSITION PRODUCTS
Decomposition products may include the following materials: carbon dioxide, carbon monoxide, sulfur oxides and metal oxide/oxides.

PROTECTION OF FIREFIGHTERS:
See POTENTIAL HEALTH EFFECTS in Section 2, and Personal Protective Equipment (PPE) listed under Sections 2 and 8. Firefighters and other emergency service providers should avoid breathing cement dust. Keep up-wind of the fire. Fire-fighters should wear appropriate protective equipment and self-contained breathing apparatus (SCBA).

Section 6: Accidental Release Measures

PERSONAL PRECAUTIONS:
Use personal protective equipment (PPE) specified in Section 8 (Exposure Controls/Personal Protection). Also see Section 3 (Hazards Identification), Section 7 (Handling & Storage), and Section 10 (Stability & Reactivity). Clean up quickly and avoid generating dust. Wear suitable respiratory protection if dusty conditions arise. Avoid contact with eyes.

METHODS AND MATERIALS FOR CONTAINMENT AND CLEAN-UP
Move containers from spill area. Approach release from upwind. Prevent entry into sewers, water courses, basements or confined areas. Avoid dust generation. Vacuum or sweep material and place in a disposal container. Avoid creating dusty conditions and prevent wind dispersal. Spills to waterways may be hazardous due to alkalinity of the product. Dispose of waste material using a licensed waste disposal contractor.

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REFERRENCE TO OTHER SECTIONS

Note: see Section 1 for emergency contact information and Section 13 for waste disposal.

ENVIRONMENTAL PRECAUTIONS:
Do not allow spilled material to enter sewers or waterways. Spills to waterways may be hazardous due to alkalinity of the product.

OTHER INFORMATION:
Notify appropriate local authorities of spills into sewers or waterways.

Section 7: Handling and Storage

PRECAUTIONS FOR SAFE HANDLING:
Bagged Portland Cements are heavy and pose risk to the back, legs and other parts of the body when lifting. Bags should be handled carefully and safely using appropriate equipment. Always handle bags in well ventilated areas. Do not swallow. Avoid generating and breathing dust. Good housekeeping is important to prevent accumulation of dust. The use of compressed air for cleaning clothing, equipment, etc, is not recommended. Do not breathe dust. Do not ingest. Use only with adequate ventilation. Wear appropriate respirator when ventilation is inadequate. Minimize dust generation and avoid prolonged and repeated exposure to dusts.

ADVICE FOR GENERAL OCCUPATIONAL HYGIENE
Eating, drinking and smoking should be prohibited in areas where this material is handled, stored and processed. Workers should wash hands and face before eating, drinking and smoking. Remove contaminated clothing and protective equipment before entering eating areas. See also Section 8 for additional information on hygiene measures.

STORAGE:
Keep dry until used. No other special storage procedures are necessary for the protection of Portland Cements. Keep workers off large piles of these products to minimize dust levels and always follow the safety guidelines in the next following paragraph. Do not enter a silo or other enclosure containing bulk quantities of these products without using all appropriate safety precautions as engulfment or suffocation may occur. Portland Cements may form a surface crust which appears solid but may not support the weight of humans. Accordingly, do not stand on Portland cement without using all appropriate safety precautions, including, without limitation, properly employed harnesses, lifelines and all other necessary safety equipment.

OTHER:
Cutting or grinding hardened products containing Portland Cements may release respirable crystalline silica. Use appropriate measures to control dust and wear PPE.
KEEP THESE PRODUCTS OUT OF THE REACH OF CHILDREN.

Also see Section 8 (Exposure Controls/Personal Protection).

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Section 8: Exposure Controls / Personal Protection

EXPOSURE GUIDELINES:

Component (%)	CAS No.	OSHA PEL (8-hour TWA)	ACGIH TLV-TWA
Portland Cement clinker	65997-15-1	5 mg/m³ (respirable dust) 15 mg/m³ (total dust)	1 mg/m³ (respirable dust) 10mg/m³ (total dust)
Tricalcium silicate (20-70)	12168-85-3	see Nuisance Dusts PEL	see Nuisance Dusts TLV
Dicalcium silicate (10-60)	10034-77-2	see Nuisance Dusts PEL	see Nuisance Dusts TLV
Tetracalcium aluminoferrrite (5-15)	12068-35-8	see Nuisance Dusts PEL	see Nuisance Dusts TLV
Calcium sulfate Gypsum (2-10)	13397-24-5	see Nuisance Dusts PEL	see Nuisance Dusts TLV
Calcium oxide (0-5)	1305-78-8	5mg/m³	2mg/m³
Tricalcium aluminate (1-15)	12042-78-3	see Nuisance Dusts PEL	see Nuisance Dusts TLV
Magnesium oxide (0-4)	1309-48-4	15 mg/m³ (total dust)	10 mg/m³ (total dust)
Nuisance dusts	---	5 mg/m³ (respirable dust) 15 mg/m³ (total dust)	5 mg/m³ (respirable dust) 10 mg/m³ (total dust)
Crystalline silica (0-.1)	14808-60-7	10 mg/m³ /percent silica + 2 (respirable dust) 30 mg/m³/percent silica + 2 (total dust)	0.025 mg/m³ (respirable dust)

APPROPRIATE ENGINEERING CONTROLS:

Use ventilation adequate to keep exposures (airborne levels of dust, fume, vapor, etc.) below recommended exposure limits. Use product upwind to prevent eye and/or respiratory exposure. It is recommended that local exhaust be used to control airborne dust levels whenever feasible.

PERSONAL PROTECTIVE EQUIPMENT (PPE):

EYE/FACE PROTECTION

To prevent eye contact, wear appropriate protective eyewear meeting applicable OSHA standards, i.e. safety glasses with side shields, safety goggles or face shields when handling wet or dry Portland Cements or cement dust. Dust goggles should be worn in extremely dusty conditions. Wearing contact lenses when working with cement is not recommended.

SKIN PROTECTION

Precautions must be taken to protect skin. Avoid contact with the skin, as cement burns the skin with little warning since the heat produced by cement burning is not easily sensed by human skin. Use barrier creams; impervious, abrasion- and alkali-resistant protective clothes, gloves; kneepads, and boots meeting applicable OSHA standards to protect skin from contact with wet cement in plastic (unhardened) concrete, mortar or slurries. Immediately after working with cement or cement containing materials, workers should remove clothing soiled with cement dust and shower with soap and water. Affected clothes should also be thoroughly cleaned.

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RESPIRATORY PROTECTION
Precautions must be taken. Avoid breathing cement dust. For dust concentrations above the exposure limits for nuisance dust or silica, a NIOSH/MSHA-approved particulate dust respiratory must be used in accordance with the requirements of 29 CFR 1910.134.

GENERAL HYGIENE CONSIDERATIONS
Practice good housekeeping and hygiene practices to minimize generating and spreading airborne dust. Always wash areas of the body (hands, face, arms, etc.) that have come in contact with the product. Always wash hands and face with soap and water before eating, drinking, or smoking.

Section 9: Physical and Chemical Properties

Physical State: Solid. [Powder.]

Color: Gray or white.

Odor: Odorless.

Odor threshold: Not available.

pH: >11.5 [Conc. (% w/w): 1%]

Melting point: Not available.

Boiling point: >1000°C (>1832°F)

Flash point: Not flammable. Not combustible.

Burning time: Not available.

Burning rate: Not available.

Evaporation rate: Not applicable.

Flammability (solid, gas): Not applicable

OTHER INFORMATION - VOC CONTENT UNAVAILABLE

Lower and upper explosive (flammable) limits: Not applicable.

Vapor pressure: Not applicable.

Vapor density: Not applicable.

Relative density: 3.15

Solubility: Slightly soluble in water.

Solubility in water: 0.1 to 1%

Partition coefficient: n-octanol/water: Not applicable.

Auto-ignition temperature: Not applicable.

Decomposition temperature: Not available.

SADT: Not available.

Viscosity: Not applicable.

Section 10: Stability and Reactivity

REACTIVITY
No dangerous reaction known under conditions of normal use. Reacts slowly with water forming hydrated compounds, releasing heat and producing a strong alkaline solution until reaction is near completion. An alkali reaction from components of Portland Cements will corrode aluminium.

CHEMICAL STABILITY:
Product is stable. Keep dry until used.

Portland Cements react slowly with water forming hardened hydrated compounds, releasing heat and producing a strong alkaline solution.

POSSIBILITY OF HAZARDOUS REACTIONS
Under normal conditions of storage and use, hazardous reactions will not occur.

CONDITIONS TO AVOID:
Moisture – product must be kept dry until ready to use. Avoid high generation of dusts. See "OTHER INFORMATION" in this section for additional conditions to avoid.

INCOMPATIBLE MATERIALS:
Portland Cements are highly alkaline and will react with acids to produce a violent, heat-generating reaction. Toxic gases or vapors may be given off depending on the acid involved. Portland Cements also react with aluminum metals and ammonium salts. Aluminum power and other alkali and alkaline earth elements will react in wet mortar or concrete, liberating hydrogen gas.

Limestone ignites on contact with fluorine and is incompatible with acids, alum, ammonium salts, and magnesium. Silica reacts violently with powerful oxidizing agents such as fluorine, boron trifluoride, chlorine trifluoride, manganese trifluoride, and oxygen difluoride yielding possible fire and/or explosions. Silicates dissolve readily in hydrofluoric acid producing a corrosive gas-silicon tetrafluoride.

HAZARDOUS DECOMPOSITION PRODUCTS:
Silica-containing respirable dust particles may be generated if dried product is handled.

OTHER INFORMATION
See also additional precautions Section 5 (Fire Fighting Measures), Section 6 (Accidental Release Measures) and Section 7 (Handling & Storage).

Section 11: Toxicological Information

INFORMATION ON TOXICOLOGICAL EFFECTS

Acute toxicity: Not classified. Portland Cement LD50/LC50 = Not available
Irritation/Corrosion:

Skin: May cause skin irritation. May cause serious burns in the presence of moisture.
Eyes: Causes serious eye damage. May cause burns in the presence of moisture.
Respiratory: May cause respiratory tract irritation.
Sensitization: May cause sensitization due to the potential presence of trace amounts of hexavalent chromium.

Mutagenicity: There are no data available.

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Carcinogenicity

A; General Product Information:

The Occupational Safety and Health Administration (OSHA), the National Toxicology Program (NTP) and the International Agency for Research on Cancer (IARC) have not listed Portland Cements as a carcinogen.

B: Component Carcinogenicity

These products, however, do contain constituents which are listed by IARC and NTP as carcinogens.Respirable crystalline silica in the form of quartz or cristobalite from occupational sources is listed by the International Agency for Research on Cancer (IARC) and National Toxicology Program (NTP) as a lung carcinogen. Prolonged exposure to respirable crystalline silica has been known to cause silicosis, a lung disease, which may be disabling. While there may be a factor of individual susceptibility to a given exposure to respirable silica dust, the risk of contracting silicosis and the severity of the disease is clearly related to the amount of dust exposure and the length of time (usually years) of exposure.

Chronic Toxicity

Crystalline silica is considered hazardous by inhalation. IARC has classified silica as a Group 1 substance, carcinogenic to humans. This classification is based on the findings of laboratory animal studies (inhalation and implantation) and epidemiology studies that were considered sufficient for carcinogenicity. NTP has also classified respirable crystalline silica as a known carcinogen. Excessive exposure to crystalline silica can cause silicosis, a chronic, progressive and sometimes fatal lung disease which, in turn, increases the risk of pulmonary tuberculosis infection.

Hexavalent chromium has also been classified by IARC as a Group 1 carcinogenic to humans and by NTP as a known carcinogen. Some of the adverse health effects from hexavalent chromium exposures, include nasal and sinus cancers, kidney and liver damage, nasal and skin irritation and ulceration, and eye irritation and damage.

Reproductive toxicity: There are no data available.

Teratogenicity: There are no data available.

Specific target organ toxicity (single exposure)

Name	Category	Route of Exposure	Target Organs
Calcium Oxide	3	Inhalation & Skin Contact	Respiratory tract irritation, skin irritation
Cement, Portland Chemicals	3	Inhalation & Skin Contact	Respiratory tract irritation, skin irritation

Specific target organ toxicity (repeated exposure)

Name	Category	Route of Exposure	Target Organs
Quartz	1	Inhalation	Respiratory tract and kidneys

Aspiration Hazard: There are no data available

INFORMATION ON LIKELY ROUTES OF EXPOSURE

Dermal contact. Eye contact. Inhalation. Ingestion.

Potential acute health effects:

Eye contact: Causes serious eye damage.
Inhalation: May cause respiratory irritation.
Skin contact: Causes severe burns. May cause an allergic skin reaction.
Ingestion: May cause burns to mouth, throat and stomach.

Symptoms related to the physical, chemical and toxicological characteristics:

Eye contact:
Adverse symptoms may include the following: pain, watering, redness
Inhalation: Adverse symptoms may include the following: respiratory tract irritation, coughing
Skin contact: Adverse symptoms may include the following: pain or irritation, redness, blistering may occur, skin burns, ulcerations and necrosis may occur
Ingestion: Adverse symptoms may include the following: stomach pains

Delayed and immediate effects and also chronic effects from short and long term exposure

Short term exposure - Potential immediate effects: No known significant effects or critical hazards. Potential delayed effects: No known significant effects or critical hazards.

Long term exposure - Potential immediate effects: No known significant effects or critical hazards. Potential delayed effects: Causes damage to organs (lung) through prolonged or repeated exposure. (Respirable crystalline silica in the form of quartz or cristobalite from occupational sources is listed by the International Agency for Research on Cancer (IARC) and National Toxicology Program (NTP) as a lung carcinogen. Prolonged exposure to respirable crystalline silica has been known to cause silicosis, a lung disease, which may be disabling. While there may be a factor of individual susceptibility to a given exposure to respirable silica dust, the risk of contracting silicosis and the severity of the disease is clearly related to the amount of dust exposure and the length of time (usually years) of exposure.)

Section 12: Ecological Information

ECOTOXICITY:
Portland Cements harden with water or moisture and is not expected to present unusual ecotoxicity risks. Do not flush to sewer or allow to enter waterways. Portland Cements are alkaline and can increase localized water PH until completely hardened. See Section 9 & 10 for relevant physical and chemical properties.

PERSISTENCE AND DEGRADABILITY
There are no data available

BIOACCUMULATIVE POTENTIAL
There are no data available

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MOBILITY IN SOIL
Soil/water partition coefficient (Koc): Not available.

OTHER ADVERSE EFFECTS
No known significant effects or critical hazards.

Section 13: Disposal Considerations

WASTE TREATMENT / DISPOSAL METHODS:

The generation of waste should be avoided or minimized wherever possible. Disposal of this product, solutions and any by-products should comply with the applicable requirements of environmental protection and waste disposal legislation and any regional local authority applicable requirements. Dispose of surplus and non-recyclable products via a licensed waste disposal contractor. Untreated waste should not be released to the sewer unless fully compliant with the applicable requirements of all authorities with jurisdiction. Waste packaging should be recycled. Incineration or landfill should only be considered when recycling is not feasible. This material and its container must be disposed of in a safe manner. Care should be taken when handling empty containers that have not been cleaned or rinsed out. Empty containers or liners may retain some product residues. Avoid dispersal of spilled material and runoff, and contact with soil, waterways, drains and sewers. Dispose of waste materials only in accordance with applicable federal, state, and local laws and regulations.

Section 14: Transport Information

UN NUMBER
Not Applicable

UN PROPER SHIPPING NAME
Not Applicable

BASIC SHIPPING DESCRIPTION
U.S. Department of Transportation (DOT) Highway/Rail (Bulk): Not classified
U.S. Department of Transportation (DOT) Highway/Rail (Non-bulk): Not classified

ADDITIONAL INFORMATION:

The DOT description is provided to assist in the proper shipping classification of this product and may not be suitable for all required shipping descriptions.

Section 15: Regulatory Information

OSHA:
Portland Cements are considered hazardous chemicals under 29 CFR 1910.1200 and should be included in employers' hazardous communication programs.

CAPITOL AGGREGATES INC

TSCA (Toxic Substances Control Act):
Portland Cements are considered to be statutory mixtures under TSCA. Cement, Portland, Chemicals [65997-15-1] is included on the TSCA inventory

CERCLA:
This product in not listed as a CERCLA hazardous substance

CLEAN AIR ACT

Clean Air Act Section 112 (b): Hazardous Air Pollutants (HAPs) — Not listed
Clean Air Act Section 602: Class I Substances — Not listed
Clean Air Act Section 602: Class II Substances — Not listed

DEA

DEA List I Chemicals: (Precursor Chemicals) — Not listed
DEA List II Chemicals: (Essential Chemicals) — Not listed

SARA TITLE III:
Section 302:
This product contains no "Extremely Hazardous Substances."

Section 311/312:
These products are considered a hazardous chemical and may have both immediate (acute) and delayed (Chronic)health effects.

Section 313:
This product does not contain any constituents listed under SARA (Title III) Section 313 in amounts requiring supplier notification under 40 CFR part 372 Subpart C

FEDERAL HAZARDOUS SUBSTANCE ACT
Portland Cements are "hazardous substances" subject to statutes promulgated under this Act.

INTERNATIONAL REGULATIONS
Not applicable since not shipped internationally.

US STATE REGULATIONS:

California Proposition 65:
These Portland Cements may contain the following chemicals known to the State of California to cause cancer:

Name	CAS Number
Crystalline Silica	14808-60-7
Chromium VI compounds	Various
Nickel Compounds	Various
Nickel	Various
Lead	Various

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California law requires the manufacturer to give the above warning in the absence of definitive testing to prove that the defined risks do not exist.

Section 16: Other Information

NFPA Ratings:

Health: 3
Flammability: 0
Reactivity: 0
0 = minimal hazard, 1 = slight hazard, 2 = moderate hazard, 3 = severe hazard, 4 = extreme hazard

Capitol Aggregates Inc.
11551 Nacogdoches Rd.
San Antonio, Texas 78217
(210)-871-6111

WARNING
Portland cement is made from a number of different substances, including calcium sulfate ($CaSO_4 \cdot 2H_20$) and calcium carbonate ($CaCO_3$). Small amounts of crystalline silica (Si02), calcium oxide (CaO), magnesium oxide (MgO), potassium sulfate (K_2SO_4) and sodium sulfate (Na_2SO_4) may also be present, as may trace amounts of hexavalent chromium (CrVI). These substances are considered to be hazardous. Crystalline silica and hexavalent chromium are substances which some health organizations believe are carcinogens.
CONTACT WITH WET OR DRY CEMENT IS DANGEROUS AND MAY CAUSE SEVERE SKIN IRRITATION, CHEMICAL BURNS, AS WELL AS DAMAGE TO HUMAN TISSUE, INCLUDING EYES AND OTHER ORGANS. IN ADDITION, BREATHING CEMENT DUST OVER A PERIOD OF TIME MAY IN SOME CASES RESULT IN CANCER AND OTHER DISEASES. AS A RESULT, PROTECT YOURSELF FROM CONTACT WITH THIS PRODUCT. DO NOT BREATHE CEMENT DUST. WHEN WORKING WITH CEMENT (WET OR DRY) ALWAYS WEAR PROTECTIVE IMPERVIOUS CLOTHING, EYEWEAR, WATERPROOF GLOVES AND, IF APPROPRIATE, WATERPROOF KNEEPADS AND BOOTS. IN DUSTY CONDITIONS, ALSO WEAR A NIOSH/MSHA APPROVED RESPIRATOR. If any contact with skin or eyes occurs, immediately flush the area thoroughly with clean water and rinse any affected clothing. If ingested, drink water; do not induce vomiting. In the event of eye contact, inhalation, ingestion, or if irritation or pain is severe or persists, seek medical attention immediately. BEFORE USING, ALSO READ THE SAFETY DATA SHEET FOR THIS PRODUCT FOUND AT **WWW.CAPITOLAGGREGATES.COM.**

KEEP OUT OF THE REACH OF CHILDREN

Product Identifier:
PORTLAND CEMENT
CAS NO. 65997-15-1

Hazard Statement: **DANGER**
Can cause severe skin burns and eye damage. May cause an allergic skin reaction.
May cause cancer (Inhalation). May cause respiratory irritation (inhalation).

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ABBREVIATIONS

ACGIH	American Conference of Governmental Industrial Hygienists
ASTM	American Society for Testing and Materials
CAS	Chemical Abstract Service
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CFR	Code of Federal Regulations
DOT	Department of Transportation
ft^3	Cubic Foot
IARC	International Agency for Research on Cancer
m^3	Cubic meter
mg	Milligram
MSDS	Material Safety Data Sheet
MSHA	Mine Safety and Health Administration
N/A	Not applicable
NFPA	National Fire Protection Association
NIOSH	National Institute for Occupational Safety and Health
NTP	National Toxicology Program
OSHA	Occupational Safety and Health Administration
PEL	Permissible Exposure Limit
PPE	Personal Protective Equipment
RQ	Reportable Quantity
TLV	Threshold Limit Value
TRI	Toxic Release Inventory
TSCA	Toxic Substance Control Act

NOTE: This SDS attempts to describe as accurately as possible the potential exposures associated with normal use of these products. Health and safety precautions on this data sheet may not be adequate for all individuals and/or situations. Users have the responsibility to evaluate and use this product safely and to comply with all applicable environmental, health, and safety laws and regulations.

Revised September 23, 2015
Supersedes any and all previous versions (extensive revisions were made)

Disclaimer of Warranty:

While the information provided herein is believed to provide a useful summary of the hazards of the different types of Portland Cements designated above as commonly used, this SDS cannot anticipate and provide all of the information that might be needed by every individual in every situation. Inexperienced users should obtain proper training prior to using any Portland Cements and no one should use any Portland Cements without following all applicable safety laws and regulations related to its storage, handling, use and disposal and without first understanding the potential hazards of mixing Portland Cements with other materials. This SDS does not cover such potential hazards.

The information provided in this SDS is believed by Capitol Aggregates, Inc. to be accurate at the time it was prepared or it was prepared from sources then believed to be reliable. It is the

responsibility of the user independently to investigate and understand other pertinent sources of information and to comply with all laws, regulations and procedures applicable to the safe storage, handling, use and disposal of Portland Cements. It is also the responsibility of the user to independently determine the suitability or fitness of any of the products covered by this SDS for their intended uses.

CAPITOL AGGREGATES, INC. MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, BY OR THROUGH THIS SDS CONCERNING THE PRODUCTS COVERED HEREBY OR THEIR FITNESS FOR ANY USE. LIKEWISE CAPITOL AGGREGATES, INC. MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE ACCURACY OR COMPLETENESS OF THE INFORMATION SET FORTH HEREIN. THE PROVISION OF THE SUCH INFORMATION IS NOT INTENDED TO BE, AND SHOULD NOT BE CONSTRUED AS LEGAL OR OTHER ADVICE, OR AS ENSURING COMPLIANCE WITH ANY PARTICULAR LAWS AND REGULATIONS.

CAPITOL
AGGREGATES INC

Dear Customer

Whether you are a long term customer or a new contractor, we would like to thank you for purchasing Capitol Aggregates Products. We are a Texas owned Company and produce all of our products in the State of Texas. This Safety Data Sheet (SDS), provided for the product you purchased or intend to use is a revision and replaces any previous versions formerly known as Material Safety Data Sheets or (MSDS). We are providing you this SDS as required by the Mine Safety & Health Administration's (MSHA), or the Occupational Safety & Health Administration, OSHA, and any applicable State Right-To –Know laws. The requirements applicable to the OSHA and MSHA Hazard Communication Standards can be found at 29 CFR 1910.1200 for OSHA and 30 CFR 47 for MSHA.

It is an important responsibility for you as a customer or contractor to communicate this information to your employees, customers, and contractors who may use, contact, or be exposed to this product. It is also an important consideration and responsibility for you to follow any applicable laws that require you to forward a copy of this SDS to your customers or end users. Please direct this SDS to the person responsible for safety and health compliance at your company as they may be able to assist you with any of the necessary requirements. If you need additional copies or have questions about this SDS please contact 210-871-6111, or visit us at www.capitolaggregates.com .

Spanish language versions will be available in the near future at www.capitolaggregates.com .

Sincerely

Chuck Ross
Director of Safety

Bryan W. Shaw, Ph.D., P.E., *Chairman*
Toby Baker, *Commissioner*
Zak Covar, *Commissioner*
Richard A. Hyde, P.E., *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 3, 2014

MR GERRY MCKERVEY
PLANT MANAGER
CAPITOL AGGREGATES INC
PO BOX 33240
SAN ANTONIO TX 78265-3240

CAPITOL AGGREGATES, LTD.
AP Dept
RcCD
OCT 09 2014

Re: Permit Amendment Application
Permit Number: 7369
Capitol Cement Plant
Planned Maintenance, Startup, and Shutdown
San Antonio, Bexar County
Regulated Entity Number: RN100211507
Customer Reference Number: CN604033142
Account Number: BG-0045-E
Associated Permit Number: PSDTX120M3

Dear Mr. McKervey:

This is in response to your letter received January 4, 2013 and your Form PI-1 (General Application for Air Preconstruction Permits and Amendments) concerning the proposed amendment to Permit Number 7369. We understand that you propose to authorize emissions from planned maintenance, startup, and shutdown activities. Also, this will acknowledge that your application for the above-referenced amendment is technically complete as of September 16, 2014.

In accordance with Title 30 Texas Administrative Code (TAC) Section 116.116(b) and based on our review, Permit Number 7369 is hereby amended. This information will be incorporated into the existing permit file. Enclosed are revised general conditions (permit face), special conditions, and a maximum allowable emission rates table. We appreciate your careful review of the special conditions of the permit and assuring that all requirements are consistently met.

You may file a **motion to overturn** with the Chief Clerk. A motion to overturn is a request for the commission to review the executive director's decision. Any motion must explain why the commission should review the executive director's decision. According to 30 TAC § 50.139, an action by the executive director is not affected by a motion to overturn filed under this section unless expressly ordered by the commission.

A motion to overturn must be received by the Chief Clerk within 23 days after the date of this letter. An original and 11 copies of a motion must be filed with the Chief Clerk in person, or by mail to the Chief Clerk's address on the attached mailing list. On the same day the motion is transmitted to the Chief Clerk, please provide copies to the applicant, the executive director's attorney, and the Public Interest Counsel at the addresses listed on the attached mailing list. If a

motion to overturn is not acted on by the commission within 45 days after the date of this letter, then the motion shall be deemed overruled.

You may also request **judicial review** of the executive director's approval. According to Texas Health and Safety Code § 382.032, a person affected by the executive director's approval must file a petition appealing the executive director's approval in Travis County district court within 30 days after the **effective date of the approval**. Even if you request judicial review, you still must exhaust your administrative remedies, which includes filing a motion to overturn in accordance with the previous paragraphs.

Your cooperation in this matter is appreciated. If you need further information or have any questions, please contact Mr. Randy Hamilton, P.E. at (512) 239-1512 or write to the Texas Commission on Environmental Quality, Office of Air, Air Permits Division, MC-163, P.O. Box 13087, Austin, Texas 78711-3087.

This action is taken under authority delegated by the Executive Director of the TCEQ.

Sincerely,

Michael Wilson, P.E., Director
Air Permits Division
Office of Air
Texas Commission on Environmental Quality

MPW/rh

Enclosures

cc: Mr. Larry Moon, P.E., Vice President, Zephyr Environmental Corp, Austin
Sanitarian Services Manager, Food and Environment Division, San Antonio Metropolitan Health District, San Antonio
Air Section Manager, Region 13 - San Antonio
Air Permits Section Chief, New Source Review Section (6PD-R), U.S. Environmental Protection Agency, Region 6, Dallas

Project Number: 187166

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AIR QUALITY PERMIT

A Permit Is Hereby Issued To
Capitol Aggregates, Inc.
Authorizing the Construction and Operation of a
Portland Cement Plant
Located at **San Antonio, Bexar County, Texas**
Latitude 29° 32′ 50″ Longitude 98° 25′ 23″

Permit: 7369 and PSDTX120M3

Amendment Date : October 3, 2014

Renewal Date: August 27, 2017

For the Commission

1. **Facilities** covered by this permit shall be constructed and operated as specified in the application for the permit. All representations regarding construction plans and operation procedures contained in the permit application shall be conditions upon which the permit is issued. Variations from these representations shall be unlawful unless the permit holder first makes application to the Texas Commission on Environmental Quality (commission) Executive Director to amend this permit in that regard and such amendment is approved. [Title 30 Texas Administrative Code 116.116 (30 TAC 116.116)]
2. **Voiding of Permit.** A permit or permit amendment is automatically void if the holder fails to begin construction within 18 months of the date of issuance, discontinues construction for more than 18 months prior to completion, or fails to complete construction within a reasonable time. Upon request, the executive director may grant an 18-month extension. Before the extension is granted the permit may be subject to revision based on best available control technology, lowest achievable emission rate, and netting or offsets as applicable. One additional extension of up to 18 months may be granted if the permit holder demonstrates that emissions from the facility will comply with all rules and regulations of the commission, the intent of the Texas Clean Air Act (TCAA), including protection of the public's health and physical property; and (b)(1)the permit holder is a party to litigation not of the permit holder's initiation regarding the issuance of the permit; or (b)(2) the permit holder has spent, or committed to spend, at least 10 percent of the estimated total cost of the project up to a maximum of $5 million. A permit holder granted an extension under subsection (b)(1) of this section may receive one subsequent extension if the permit holder meets the conditions of subsection (b)(2) of this section. [30 TAC 116.120(a), (b) and (c)]
3. **Construction Progress.** Start of construction, construction interruptions exceeding 45 days, and completion of construction shall be reported to the appropriate regional office of the commission not later than 15 working days after occurrence of the event. [30 TAC 116.115(b)(2)(A)]
4. **Start-up Notification.** The appropriate air program regional office shall be notified prior to the commencement of operations of the facilities authorized by the permit in such a manner that a representative of the commission may be present. The permit holder shall provide a separate notification for the commencement of operations for each unit of phased construction, which may involve a series of units commencing operations at different times. Prior to operation of the facilities authorized by the permit, the permit holder shall identify the source or sources of allowances to be utilized for compliance with Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program). [30 TAC 116.115(b)(2)(B)(iii)]
5. **Sampling Requirements.** If sampling is required, the permit holder shall contact the commission's Office of Compliance and Enforcement prior to sampling to obtain the proper data forms and procedures. All sampling and testing procedures must be approved by the executive director and coordinated with the regional representatives of the commission. The permit holder is also responsible for providing sampling facilities and conducting the sampling operations or contracting with an independent sampling consultant. [30 TAC 116.115(b)(2)(C)]

6. **Equivalency of Methods.** The permit holder must demonstrate or otherwise justify the equivalency of emission control methods, sampling or other emission testing methods, and monitoring methods proposed as alternatives to methods indicated in the conditions of the permit. Alternative methods shall be applied for in writing and must be reviewed and approved by the executive director prior to their use in fulfilling any requirements of the permit. [30 TAC 116.115(b)(2)(D)]
7. **Recordkeeping.** The permit holder shall maintain a copy of the permit along with records containing the information and data sufficient to demonstrate compliance with the permit, including production records and operating hours; keep all required records in a file at the plant site. If, however, the facility normally operates unattended, records shall be maintained at the nearest staffed location within Texas specified in the application; make the records available at the request of personnel from the commission or any air pollution control program having jurisdiction; comply with any additional recordkeeping requirements specified in special conditions attached to the permit; and retain information in the file for at least two years following the date that the information or data is obtained. [30 TAC 116.115(b)(2)(E)]
8. **Maximum Allowable Emission Rates.** The total emissions of air contaminants from any of the sources of emissions must not exceed the values stated on the table attached to the permit entitled "Emission Sources--Maximum Allowable Emission Rates." [30 TAC 116.115(b)(2)(F)]
9. **Maintenance of Emission Control.** The permitted facilities shall not be operated unless all air pollution emission capture and abatement equipment is maintained in good working order and operating properly during normal facility operations. The permit holder shall provide notification for upsets and maintenance in accordance with 30 TAC 101.201, 101.211, and 101.221 of this title (relating to Emissions Event Reporting and Recordkeeping Requirements; Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements; and Operational Requirements). [30 TAC 116.115(b)(2)(G)]
10. **Compliance with Rules.** Acceptance of a permit by an applicant constitutes an acknowledgment and agreement that the permit holder will comply with all rules, regulations, and orders of the commission issued in conformity with the TCAA and the conditions precedent to the granting of the permit. If more than one state or federal rule or regulation or permit condition is applicable, the most stringent limit or condition shall govern and be the standard by which compliance shall be demonstrated. Acceptance includes consent to the entrance of commission employees and agents into the permitted premises at reasonable times to investigate conditions relating to the emission or concentration of air contaminants, including compliance with the permit. [30 TAC 116.115(b)(2)(H)]
11. **This** permit may not be transferred, assigned, or conveyed by the holder except as provided by rule. [30 TAC 116.110(e)]
12. **There** may be additional special conditions attached to a permit upon issuance or modification of the permit. Such conditions in a permit may be more restrictive than the requirements of Title 30 of the Texas Administrative Code. [30 TAC 116.115(c)]
13. **Emissions** from this facility must not cause or contribute to a condition of "air pollution" as defined in Texas Health and Safety Code (THSC) 382.003(3) or violate THSC 382.085. If the executive director determines that such a condition or violation occurs, the holder shall implement additional abatement measures as necessary to control or prevent the condition or violation.
14. **The** permit holder shall comply with all the requirements of this permit. Emissions that exceed the limits of this permit are not authorized and are violations of this permit.