

**PROFESSIONAL SERVICES AGREEMENT No. 05026.03**

This Agreement is by and between Hidalgo County (**Client**) and Cook-Joyce, Inc. (**The Engineer**) who agree as follows: Client hereby engages The Engineer to perform the services described in Part I ("Services") and The Engineer agrees to perform the Services for the compensation set forth in Part III. The Engineer shall be authorized to commence the Services upon execution of this Agreement. Client and The Engineer agree that this agreement and attachments referred to herein, constitute the entire agreement between them relating to the Project ("Agreement").

Project: Precinct 3-Peñitas Landfill Engineering Services

Location: Hidalgo County Precinct 3 – Peñitas Landfill

Job No.: 05026.03

Start Date: Work conducted under this contract will begin on May 1, 2007.

**I. COOK-JOYCE, INC.'s RESPONSIBILITIES:** The Engineer shall perform or furnish the services described under this Agreement which are more particularly described in the May 22, 2007 proposal letter contained in Exhibit "A".

**II. CLIENT'S RESPONSIBILITIES:** Client, at its expense, shall do the following in a timely manner so as not to delay the Services.

1. **INFORMATION/REPORTS:** Furnish The Engineer with all reports, studies, site characterizations, regulatory orders, and similar information in its possession relating to the Project. Unless otherwise specified in Part I, The Engineer may rely upon Client-furnished information without independent verification in performing the Services.

2. **REPRESENTATIVE:** Designate a representative for the Project who shall have the authority to transmit instructions, receive information, interpret and define Client's policies, and make decisions with respect to the Services.

3. **DECISIONS:** Provide all criteria and full information as to Client requirements for the Project, obtain (with The Engineer's assistance, if applicable) necessary approvals and permits, attend Project-related meetings, provide interim reviews on an agreed-upon schedule, make decisions on Project alternatives, and generally participate in the Project to the extent necessary to allow The Engineer to perform the Services.

**III. COMPENSATION, BILLING, AND PAYMENT:** Client shall pay The Engineer for Services in accordance with the following Billing Schedule.

1. **SERVICES:**     X     Hourly Rates and Expenses not to Exceed a Maximum Fee of \$68,100, including all expenses, reimbursable expenses and all other fees arising under this Agreement (Engineer's Hourly Billing Rate Schedule is attached as Exhibit "B")

2. **REIMBURSABLE EXPENSES:** As referenced above in Section III.1.

3. **PAYMENTS:** Billings for services rendered will be made monthly and payment is requested within fifteen (15) days of receipt of invoice. Unless special arrangements are made, a finance charge of 1.5% per month will be added to unpaid balances more than thirty (30) days old. The Engineer reserves the right to suspend work should invoices not be paid within the stated terms.

**IV. STANDARD TERMS AND CONDITIONS:**

1. **STANDARD OF CARE.** Services shall be performed in accordance with the standard of professional practice

ordinarily exercised under similar circumstances by engineers experienced in the scope of work herein classified within the State of Texas.

**2. CHANGE OF SCOPE.** The scope of Services set forth in this Agreement is based on facts known at the time of execution of this Agreement, including, if applicable, information supplied by Client. For some projects involving conceptual, regulatory or process development services, scope may not be fully definable during initial phases. As the Project progresses, facts discovered may indicate that scope must be redefined.

**3. SAFETY.** Unless specifically included as a service to be provided under this Agreement, The Engineer specifically disclaims any authority or responsibility for general job site safety and safety of persons other than The Engineer's employees.

**4. DELAYS.** If events beyond the control of Client or The Engineer, including, but not limited to, fire, flood, explosion, riot, strike, war, process shutdown, act of God or the public enemy, and act or regulation of any government agency, result in delay to any schedule established in this Agreement, such schedule shall be amended to the extent necessary to compensate for such delay. In the event such delay exceeds 60 days, The Engineer shall be entitled to an equitable adjustment in compensation.

**5. TERMINATION/SUSPENSION.** Either party may terminate this Agreement upon 30 days written notice to the other party. Client shall pay The Engineer for all Services at the rates as described in III.1 above rendered prior to termination.

In the event either party defaults in its obligations under this Agreement (including Client's obligation to make the payments required hereunder), the non-defaulting party may, after 7 days written notice stating its intention to suspend performance under the Agreement if cure of such default is not commenced and diligently continued, and failure of the defaulting party to commence cure within such time limit and diligently continue, suspend performance under this Agreement.

**6. OPINIONS OF CONSTRUCTION COST.** Any opinion of construction costs prepared by The Engineer is supplied for the general guidance of the Client only. Since The Engineer has no control over competitive bidding or market conditions, The Engineer cannot guarantee the accuracy of such opinions as compared to contract bids or actual costs to Client.

**7. RELATIONSHIP WITH CONTRACTORS.** The Engineer shall serve as Client's professional representative for the Services, and may make recommendations to Client concerning actions relating to Client's contractors, but The Engineer specifically disclaims any authority to direct or supervise the means, methods, techniques, sequences, or procedures of construction selected by Client's contractors.

**8. HAZARDOUS MATERIALS.** Hazardous materials may exist at a site where there is no reason to believe they could or should be present. The Engineer and Client agree that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the scope of work. The Engineer agrees to notify Client as soon as practically possible should unanticipated hazardous materials or suspected hazardous materials be encountered. Client acknowledges and agrees that it retains title to all hazardous material existing on the site and shall report to the appropriate federal, state or local public agencies, as required, any conditions at the site that may present a potential danger to the public health, safety or the environment. Client shall execute any manifests or forms in connection with transportation, storage and disposal of hazardous materials resulting from the site or work on the site or shall authorize The Engineer to execute such documents as Client's agent. Client waives any claim against The Engineer and agrees to defend, indemnify, and save The Engineer harmless from any claim or liability for injury or loss arising from The Engineer's discovery of unanticipated hazardous materials or suspected hazardous materials.

**9. ACCESS.** Client shall provide The Engineer access to any premises necessary for The Engineer to provide the Services.

**10. REUSE OF PROJECT DELIVERABLES.** Reuse of any documents or other deliverables, including electronic media, pertaining to the Project by Client for any purpose other than that for which such documents or deliverables were originally prepared, or alteration of such documents or deliverables without written verification or adaptation by The Engineer

for the specific purpose intended, shall be at the Client's risk.

**11. AMENDMENT.** This Agreement, upon execution by both parties hereto, can be amended only by a written instrument signed by both parties.

**12. INSURANCE.** The Engineer and its subcontractors will maintain insurance coverage for Professional Comprehensive General, Automobile, Worker's Compensation, and Employer's Liability in amounts as specified in Exhibit "C", "Insurance Requirements". Certificates evidencing such coverage will be provided to Client upon request. For projects involving construction, Client agrees to require its construction contractor, if any, to include the Engineer as an additional insured on its policies relating to the Project. The Engineer's coverages referenced above shall, in such case, be excess over contractor's primary coverage.

**13. DISPUTE RESOLUTION.** In the event any actions are brought, this agreement shall be governed by the laws of the State of Texas and shall be performed in Hidalgo County. Engineer submits to the Jurisdiction of State Courts sitting in Hidalgo County for resolution of any and all claims arising out of or connected with this agreement.

**14. NO WAIVER.** No waiver by either party of any default by the other party in the performance of any particular section of this Agreement shall invalidate any other section of this Agreement or operate as a waiver of any future default, whether like or different in character.

**15. SEVERABILITY.** The various terms, provisions and covenants herein contained shall be deemed to be separate and severable, and the invalidity or unenforceability of any of them shall not affect or impair the validity or enforceability of the remainder.


**16. AUTHORITY.** The persons signing this Agreement warrant that they have the authority to sign as, or on behalf of, the party for whom they are signing.

**17. COMMITMENT OF CURRENT REVENUES ONLY.** In the event that, during any term hereof, the Commissioners Court does not appropriate sufficient funds to meet the obligations of County under this Agreement, County may terminate this Agreement upon ninety (90) days written notice to The Engineer. County agrees, however, to use reasonable efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of County pursuant to the provisions of Tex. Loc. Govt. Code Ann. '271.903 (Vernon Supp. 1995)

**APPROVED FOR HIDALGO COUNTY**

**APPROVED FOR COOK-JOYCE, INC.**

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

By:   
Stephen L. Cook, P.E.  
President

Date: 5/22/07

Attest: \_\_\_\_\_  
County Clerk

Date: \_\_\_\_\_



## EXHIBIT "A"

22 May 2007

Commissioner Joe Flores  
Hidalgo County Precinct 3  
P.O. Box 607  
Mission, Texas 78573

Re: Precinct 3 - Peñitas Landfill  
Landfill Engineering Services Contract

Dear Commissioner Flores:

I am pleased to provide you with this proposal to continue providing engineering services that support the operation and development of the Hidalgo County Precinct 3 - Peñitas landfill. In particular, Texas Commission on Environmental Quality (TCEQ) regulations require that the landfill continue gas monitoring, disposal cell development and final cover activities under engineering guidance. These services will be performed economically under terms of the standard County contract developed for the landfill. A budget amount of \$68,100 is proposed to provide the engineering services and construction quality assurance described below. Work under this contract will begin May 1, 2007.

### SCOPE OF WORK

#### Task 1 – Permit Compliance and Monitoring

Engineering guidance will be provided as requested to support landfill operations in compliance with the permit. Assistance may be provided for annual TCEQ reports, TCEQ inspection preparation, tire bale and brush handling operations, permit modifications insuring that landfill operations match Site Plans, and completion of Agreed Order and Supplemental Environmental Project. Quarterly methane gas monitoring will also be conducted as required by TCEQ.

The County may desire to modify the landfill permit by increasing the height of portions of the landfill, thereby extending the landfill life and more efficiently staging closure construction tasks. A basic permit modification application to TCEQ may be initiated under this Task. Additionally if closure work will involve contractor bids, the bid plans and specification can be developed under this task.





A summary of work will be provided at the completion of the contract term.

Work will be conducted as requested by Precinct 3 managers up to the \$35,600 budgeted for this Task. If the work effort required by this task exceeds this budget, available budgeted funds may be transferred from other tasks or a budget amendment may be required.

#### Task 2 –Construction Quality Assurance for Landfill Final Cover

During late 2001, Precinct 3 forces began installing compacted clay cover over landfill Cells F and G. In the upcoming months, additional clay cover and seeding may be initiated to complete final cover for other portions of the landfill. As required by TCEQ, a Final Cover Evaluation Report will be produced for this work, sealed by an engineer and submitted to the TCEQ Municipal Waste Permits Division. This report will document the project location, construction methods, observations, and soil test results.

Full time observation of the work will be provided when the remaining construction activity is underway (as set forth in the Final Cover Quality Control Plan). Observation during as many as 18 days over 8 work periods is included for this task.

The budget for this work task is \$24,500.

#### Task 3 – Soil Testing During Closure Construction

Soil testing will be provided during the construction project as required by TCEQ. Tests include:

- field moisture and density tests (a maximum of 6 testing trips)
- permeability tests of shelby tube samples (a maximum of 4 tests)
- sieve analysis (passing the #200 sieve) and Atterberg Limits (a maximum of 4 tests)
- Standard Proctor and remolded permeability test (2 tests)

The budget for this work task is \$8,000. Additional sampling requirements may require an amendment to the budget.

### **PROFESSIONAL SERVICES AGREEMENT AND SCHEDULE**

This scope of work will be conducted as further described in Professional Services Agreement No. 05026.03. As in the past, surveying which may be needed during the work will be provided by a surveying company under separate contract to the County. The duration of this scope of



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22 May 2007  
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EXHIBIT "A"



work and budget is expected to extend through at least the first quarter of 2008. Specific project tasks may vary as needed, and the budget may be amended to cover extra work upon written approval by both parties as set forth in the Agreement.

I appreciate the opportunity to propose this scope of work to assist you with the landfill operations. If any further information is needed, please give Brian Dudley, P.E. a call at 512/474-9097.

Sincerely,

A handwritten signature in black ink, appearing to read 'Stephen L. Cook'.

Stephen L. Cook, P.E.  
President

BD:nn





22 May 2007

Commissioner Joe Flores  
Hidalgo County Precinct 3  
P.O. Box 607  
Mission, Texas 78573

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- Adapting new survey information on landfill elevations into a 3-D CADD model to identify remaining capacity and drainage projects.

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Stephen L. Cook, P.E.  
President

BD:nn

