



Engineer shall perform with respect to Projects assigned to it are as stated in **Exhibit "A"** which is attached hereto and incorporated herein by reference for all purposes, and in the sections to follow. Upon assignment of a Project to Engineer, Engineer and Owner agree to execute a Work Order in substantially the form contained in **Exhibit "B"** which is attached hereto and incorporated herein for all purposes, which form shall set forth the specific scope of Engineer's services to be performed in connection with such Project. Owner agrees to pay Engineer compensation as stated herein in exchange for such services.

**ARTICLE 2. SCOPE OF SERVICES.** The Engineer's services, as more fully described generally in **Exhibit "A"**, and specifically in each Work Order, shall be divided into the following phases, and compensation of the Engineer based on completion of the milestones specified for such phase;

**A. Preliminary Phase:**

A specific description of the services to be rendered by the Engineer in the Preliminary Phase is included in **Exhibit "A"**.

**B. Design Phase:**

A specific description of the services to be rendered by the Engineer in the Design Phase is included in **Exhibit "A"**.

**C. Construction Phase:**

A specific description of the services to be rendered by the Engineer in the Construction Phase included in **Exhibit "A"**.

**ARTICLE 3. Period of Service.** The services called for in Article 2A (Preliminary Phase) of this Agreement shall be completed and the report submitted immediately following the receipt by the Engineer of notice to proceed for a Project.

After receipt from the Owner of acceptance of the preliminary study and report for

a project indicating any specific modifications or changes in scope desired by the Owner, and upon written authorization from the Owner, the Engineer will proceed with the performance of the services called for in Article 2.B (Design Phase) of this Agreement, so as to deliver completed contract drawings, specifications and estimates of cost for construction of the Project. Engineer will, upon the execution of a work order for a Project, proceed to obtain all necessary permits and prepare any applications or studies which Owner may need to submit to any federal, state or local authority in order to comply with any laws, regulations, ordinances, building codes and/or guidelines.

Following the award by the Owner of a construction contract or contracts, the Engineer will proceed with the performance of the services called for in Article 2.C (Construction Phase) of this Agreement.

This Agreement shall remain in force, with respect to any particular Project, (1) for a period which may reasonably be required for the design, award of contracts, construction each Project, and supervision of the initial operation of each Project, including extra work and any required extensions thereto; or (2) for a period of 12 months after the completion of the services for each Project called for either in Section 2.A (Preliminary Phase) or B (Design Phase), which ever may be pertinent, in case construction is not commenced. The final acceptance by the Owner of each construction contract in each Project shall serve as evidence of completion, on the part of the Engineer, of all services under this Agreement insofar as they pertain to that section of each Project.

**ARTICLE 4. Coordination with the Owner.** The Engineer shall hold conferences with the Owner, or his representatives as often as necessary, to the end that the Project, as perfected, shall have full benefit of the Owner's experience and knowledge of existing needs and facilities, and be consistent with Owner's current policies and standards. To implement this coordination, the Owner shall make available to the Engineer for use in planning the Project, all existing plans, maps, field notes, statistics, computations and other data in his possession relative

to existing facilities and to the Project.

**ARTICLE 5A. Fees.** For and in consideration of the services to be rendered by the Engineer, the Owner shall pay Engineer a percentage fee equal to 8 % of construction costs for engineering services and an additional 2 ½ % of construction costs for the additional services of topographic surveying work and elevation determination for the Preliminary, Design and Construction Phases of the work. At Engineer's completion and Owner's approval of Engineer's services under the Preliminary Phase as defined in Article 2 hereof, Owner shall pay, in accordance with Article 8 hereof, 50% of the fees for engineering services and topographic surveying work based on the Engineer's estimated construction costs. At Engineer's completion and Owner's approval of the Engineer's services under the Design Phase, as defined in Article 2 hereof, Owner shall pay 30% of the fees for Engineering Services and topographic surveying work based on the lowest responsible and qualified bid for the Project. At Engineer's completion and Owner's approval of the Engineer's services under the Construction Phase as defined in Article 2 of this Agreement, Owner shall pay the remainder due for of the Engineering services and topographic surveying work based on the actual construction cost of the Project. . If no contract is awarded, or if no proposals or bona fide bids are received, the Engineer shall be paid for the Design Phase as though Engineer had completed the Design Phase and Owner shall have no further liability to Engineer for any such particular Project under this Agreement.

**B. Services Not Included in Above Fees:** The fees above described shall provide compensation to the Engineer for all services called for under this Agreement to be performed by him, or under his direction, except the services set forth below. These excluded services, and the compensation to be paid by the Owner to the Engineer for their performance as required, are as follows:

## **SPECIAL SERVICE**

1. Actual performance of test borings and other foundation investigations and related analysis, and detailed mill shop and/or laboratory inspection of materials and equipment.
2. Services of resident engineer or inspector if required by Owner.
3. Additional copies of reports and additional blue print copies of drawings and specifications over 5.
4. Extra travel required of the Engineer and authorized by the Owner to points outside of Hidalgo County other than from Engineer's office to and in between the Project Location.
5. Assistance to the Owner as expert witness in any litigation with third parties, arising from the development or construction of the Project.
6. Investigations involving detailed consideration of operation, maintenance and overhead expenses; and (unless otherwise agreed) the preparation of rate schedules, earning and expense statements, feasibility studies, appraisals, valuations, and material audits or inventories required for certification of force account construction performed by Engineer.
7. Right-of-Way title research, mapping and surveying for Right-of-Way acquisition, preparation of field notes for Right-of-Way acquisition.
8. Investigations involving detailed environmental studies for obtaining permit from various governmental agencies as may be required to approve project.
9. Preparation of subdivision plat, application, conceptual utility plan, drainage report and attending meetings as necessary to obtain preliminary and final plat approval. Preparation of construction documents for public improvements that may be needed for obtaining subdivision plat approval.
10. Detailed construction staking and project administration for projects as requested by the owner.

## **Basis of Compensation**

1. (1) Furnished directly by Owner or (2) By Engineer at salary cost plus 10% and reimbursement for direct non-labor expense and subcontract expense at invoice cost plus a 10% service charge.
2. Owner will employ the resident engineer or inspector and directly pay all costs such as salary and other related expenses to any such person or persons employed by owner in such capacity.
3. Salary cost plus 10% and reimbursement for direct non-labor expense and subcontract expense at invoice cost plus a 10% service charge.
4. At rates authorized by Hidalgo County for its County Officials.
5. At rates authorized by Hidalgo County for its County Officials.
6. Salary cost plus 10% and reimbursement for direct non-labor expense and subcontract expense at invoice cost plus a 10% service charge.
7. (1) Furnished directly by Owner or (2) By Engineer at negotiated fee or salary cost plus 10% and reimbursement for direct non-labor expense or subcontract expense at invoice cost plus a 10% service charge.
8. By Engineer at negotiated fee or subcontract expense at invoice cost plus 10% service charge.
9. By Engineer at negotiated fee or subcontract expense at invoice cost plus 10% service charge.
10. Salary cost plus 10% and reimbursement for direct non-labor expense and subcontract expense at invoice cost plus a 10% service charge.

Payments to the Engineer for authorized services not at the percentage fees will be made in accordance with the terms and provisions of Article 8 hereof, by the Owner, upon presentation of monthly statements by the Engineer of such services.

**ARTICLE 6. Revision to Drawings and Specifications.** The Engineer will make, without expense to the Owner, such revisions of the preliminary drawings as may be required to meet the needs of the Owner, but after a definite plan has been approved by the Owner, if a decision is subsequently made by the Owner, which for its proper execution, involves extra services and expenses for changes in, or additions to the drawings, specifications or other documents which do not concern reducing expenses to allow the Project's cost to be within the amount estimated by Engineer, or if the Engineer is put to labor or expense by delays imposed on him from causes not within his control, such as by the re-advertisement of bids or by the delinquency or insolvency of contractors, the Engineer shall be compensated for such extra services and expense, which services and expense shall not be considered as covered by the fee stipulated in Article 5B this Agreement. Compensation for such extra services shall be determined in accordance with Article 5B. Notwithstanding any provision herein to the contrary, in the event it is necessary for Owner to require changes in the final plan of the Project to enable it to reduce the cost of a Project to an amount within the sum estimated by Engineer, Engineer will make such revisions or changes without charge to Owner.

**ARTICLE 7. Ownership of Documents.** Original drawings and specifications are the property of the Engineer; however, the Project is the property of the Owner, and Engineer may not use the drawings and specifications therefor for any purpose not relating to the Project without

Owner's consent. Owner shall be furnished with such reproductions of drawings and specifications as Owner may reasonably require. Upon completion of the work or any earlier termination of this Agreement under Article 19, Engineer will revise drawings to reflect changes made during construction and will promptly furnish the Owner with one complete set of reproducible record prints. Additional prints shall be furnished, as an additional service, at any other time requested by Owner. All such reproductions shall be the property of the Owner who may use them without Engineer's permission for any proper purpose relating to the Project, including, but not limited to, additions to or completion of the Project.

**ARTICLE 8. Payment. Request for Payment.** On or before noon of the first Monday of each month during the performance of the services, Engineer shall submit to Owner for its approval a request for payment ("Request for Payment") in form and substance satisfactory to Owner. Each Request for Payment shall set forth the amount due for Engineer's services rendered, together with a detailed breakdown of the amount and the sum of all prior payments. Owner shall review each such Request for Payment and may make such exceptions as Owner reasonably deems necessary or appropriate under the circumstances then existing. About ten (10) working days after the Commissioners Court of Owner meets approving such payment, the Owner shall make payment to Engineer in the amount approved as aforesaid subject to Article 8.4 below.

**8.2 Final Payment.** After final completion of the work and acceptance thereof by Owner, Engineer shall submit a final request ("Final Request") which shall set forth all amounts due and remaining unpaid to Engineer and upon approval thereof by Owner, Owner shall pay to Engineer the amount due ("Final Payment") under such Final Request in accordance with the provisions of Article 8.1.

**8.3 The Final Request for Payment** shall not be made until Engineer delivers to Owner an affidavit that so far as Engineer has knowledge or information any and all amounts due for materials and services over which Engineer has control have been paid.

**8.4** Qualification on Obligations to Pay. Any provision hereof to the contrary notwithstanding, Owner shall not be obligated to make any payment (whether a payment under Article 8.1 hereof or Final Payment) to Engineer hereunder if any one or more of the following conditions precedent exist:

- (1) Engineer is in default of any of its obligations hereunder or otherwise is in default under this Agreement or under any contract documents related to this Agreement;
- (2) Any part of such payment is attributable to Engineer's services which are not performed in accordance with this Agreement; provided, however, such payment shall be made as to the part thereof attributable to Engineer's services which were performed in accordance with this Agreement;
- (3) Engineer has failed to make payments promptly to consultants or other third parties used in connection with the Engineer's services for which Owner has made payment to Engineer;
- (4) If Owner, in its good faith judgment, determines that the portion of the compensation then remaining unpaid will not be sufficient to complete the Engineer's services in accordance with this Agreement, no additional payments will be due Engineer hereunder unless and until Engineer, at its sole cost, performs a sufficient portion of the Engineer's services so that such portion of the compensation then remaining unpaid is determined by Owner to be sufficient to so complete the Engineer's services.

**8.5** No partial payment made hereunder shall be or construed to be final acceptance or approval of that part of the Engineer's services to which such partial payment related or relieves Engineer of any of its obligations hereunder with respect thereto.

**8.6** Engineer shall promptly pay all bills for labor and material performed and

furnished by others in connection with the performance of the Engineer's services.

**8.7 Waiver.** The making of the Final Payment shall constitute a waiver of all claims by the Owner except those arising from (1) faulty or defective services of Engineer appearing after completion of the Project, (2) failure of Engineer's services to comply with the requirements of this Agreement or any contracts or agreements related to the Project, or (3) terms of any special warranties required by this Agreement or provided at law or in equity. The acceptance of Final Payment shall constitute a waiver of all claims by the Engineer except those previously made in writing and identified by the Engineer as unsettled at the time of the Final Request for payment.

**ARTICLE 9. Discounts, Rebates, Refunds.** In connection with procurement services rendered by Engineer, if procurement services are required of Engineer in **Exhibit "A"**, all discounts, rebates and refunds shall accrue to Owner. For some purchases, Engineer may deem that payment within the discount period is not safe; and/or inspection, guarantees, or other considerations may dictate delay. In such cases, Engineer shall promptly notify Owner so that a course of action may be mutually agreed upon by Owner and Engineer.

**ARTICLE 10. Records, Accounting, Inspection.** Engineer shall keep full and detailed records and accounts in a manner approved by Owner. Engineer shall afford Owner's authorized personnel and independent auditors, if any, full access to the work performed by Engineer regarding the Project and to all of Engineer's books, records, correspondence, instructions, drawings, receipts, vouchers and other documents relating to such work under this Agreement, and Engineer shall preserve all such records for three (3) years after final payment. Engineer shall deliver to Owner upon completion of such work, a statement of the cost of such work detailed according to the accounting procedure and requirements of Owner.

**ARTICLE 11. Subcontracting and Assignment.** This Agreement may not be assigned or encumbered by Engineer nor may Engineer subcontract any work hereunder in whole or in part, unless written permission is first obtained from Owner except as provided in **Exhibit**

"A". Owner shall have the right to approve any of Engineer's subcontracts of any portions of the work hereunder as Owner may deem advisable. Engineer will bind every subcontractor by written contract to observe all the terms of this Agreement to the extent that they may be applicable to such subcontractors.

**ARTICLE 12. Patents.** Engineer shall indemnify and save Owner harmless from all liability for alleged or actual infringement of any patent resulting from the use of apparatus or equipment furnished or designed by Engineer or from the use of any process designed by Engineer or effected by said apparatus or equipment, and Engineer shall indemnify and save Owner harmless from and against all costs, legal fees, expenses and liabilities incurred in or about any claim of or action for such infringement; provided, however, that Owner shall promptly transmit to Engineer all papers served on Owner in any suit involving such claim of infringement, and provided further, that Owner permits Engineer to have entire charge and control of the defense of any such suit. If because of actual infringement the use of such apparatus, equipment, or process is enjoined, Engineer shall refund the purchase price thereof in proportion to the length of service uncompleted, the life of such apparatus or equipment being assumed as five years.

Engineer hereby grants to Owner a non-exclusive, royalty-free license under patents now or hereafter owned by Engineer covering any machines, apparatus, processes, articles, or products included in Engineer's work hereunder.

**ARTICLE 13. Confidential Information, Inventions and Other Restrictions.**

(a) Engineer shall not use in any way, commercial or otherwise, except to the extent required by the proper performance of this Agreement; and shall hold in confidence and not disclose to any person, for any reason or at any time, any information relating to the secret processes, products, compositions, machinery, apparatus or trade secrets of Owner, or any other confidential information given to Engineer by any of Owner's commissioners, elected officials,

employees, or representatives or acquired by Engineer during the term of or as a result of this Agreement. Any information not generally available to the public shall be considered secret and confidential for the foregoing purposes; provided, however, that any technical information which was lawfully in Engineer's possession prior to such disclosure to Engineer by Owner or which is or shall lawfully be published or become part of general knowledge from sources other than Engineer or which otherwise shall lawfully become available to Engineer from a source other than Owner, shall not be subject to these provisions. All the foregoing stipulations shall apply to such information and work hereunder as well as to any information and ideas originated or developed by Engineer in performing such work. Such information may, of course, be disclosed to the proper officials or employees of Owner if necessary to perform the work hereunder. Engineer shall, however, inform each of its employees who receive such information of these restrictions and Engineer shall take all reasonable precautions and exert all reasonable efforts to assure conformance with such restrictions by all of its officers, employees, and agents, obtaining from them if necessary, agreements satisfactory to Owner, effectuating the purposes of this Article.

(b) Engineer shall communicate to Owner at once, and require Engineer's employees assigned to this Project to communicate to Owner all inventions and improvements which any of Engineer's employees, either alone or in conjunction with any of Owner's employees may conceive, make or discover during the course of or as a result of work on this Project under this or any ensuing agreement with Owner that relates to the processes, products, compositions, machinery or plants of Owner, or relating in any way to any of the operations in which Owner has been or is engaged at the time, and such inventions and improvements shall become the sole, exclusive property of Owner without any obligation on its part to make any payment therefor in addition to any sums which Owner may be obligated to pay to Engineer as compensation for services rendered by Engineer under contract with Owner. Engineer shall require its employees to execute patent

applications and assignments thereof to Owner or its nominees, and powers of attorney relating thereto for any county Owner may designate, and shall take all other actions as Owner may request to maintain and protect such inventions and improvements. Owner shall pay all costs or charges incurred in protecting such inventions and improvements if Owner desires to protect them. Before assigning any of Engineer's employees to work under any contract with Owner concerning this Project, Engineer shall obtain from them agreements satisfactory to Owner effectuating the purposes of this paragraph.

(c) The rights and obligations set forth in this Article 13 shall survive the performance of this Agreement, or any termination, discharge or cancellation thereof.

#### **ARTICLE 14. Warranties.**

(a) Engineer warrants that engineering design work performed by it hereunder shall be in accordance with good engineering design practices and in conformance with applicable code and standards established for such work.

(b) Notwithstanding anything to the contrary contained in this Agreement, Owner and Engineer agree and acknowledge that Owner is entering into this Agreement in reliance on Engineer's experience and abilities with respect to performing the Engineer's services hereunder. The Engineer accepts the relationship of trust and confidence established between it and the Owner by this Agreement. Engineer covenants with Owner to use its best efforts, skill, judgment and abilities to design the Project and to further the interests of Owner in accordance with Owner's requirements and procedures, in accordance with all professional standards, and in compliance with all applicable national, federal, state, county and municipal laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction. Prior to the commencement of construction, Engineer shall certify in writing to Owner that the Drawings and Specifications and all drawings and the improvements when built in accordance therewith conform to all applicable

governmental regulations, statutes and ordinances then in effect. Engineer represents, covenants and agrees that there are no obligations, commitments or impediments of any kind that will limit or prevent performance of the Engineer's services.

(c) The Engineer represents, covenants and agrees that all of Engineer's services to be furnished by the Engineer under or pursuant to this Agreement from the inception of the Agreement until the Project has been fully completed, shall be of the standard and quality which prevail among engineers of similar experience, knowledge, skill and ability engaged in engineering practice throughout Texas under the same or similar circumstances involving the design and construction of a project such as the Project with all the amenities as set forth in the Drawings and Specifications.

(d) The Engineer represents, covenants and agrees that its special talent, training and experience cause it to be the prime professional on the Project and that because of such talent and training, Engineer envisions the construction of the Project in its entirety and possesses the special skills which enable it to recognize dangerous conditions that a reasonable, prudent Engineer having such special skills could anticipate may arise from the proper use of the Project after acceptance by Owner; as the design professional, it has some measure of control over any such dangerous conditions; it has knowledge which will enable it to recognize specific dangers that may arise from the proper use of the Project after acceptance by Owner; and, it recognizes that any commissioners, elected officials, employees, and agents of the Owner, plus guests and visitors are within a class of foreseeable persons who will be relying on the Project being designed in a professional and safe manner.

(e) Engineer represents, covenants and agrees that its drawings and specifications of the Project (the "Project Drawings") will be accurate and free from any material errors and the shop drawings that Engineer shall approve will be accurate and free from any

material errors relating to design intent. Engineer additionally represents, covenants, and agrees to the following: that the design of the Project will conform to its foreseeable use as a project with all the amenities as set forth in the Project Drawings; that the result of the Project Drawings, if built in accordance therewith, will be suitable for purposes for which the Project is designed; that the result of Engineer's inspection of the Project will be suitable for purposes for which the Project is designed; and, the Project will be designed and construction will be inspected in a workmanlike, professional manner and will be suitable for its intended purpose. The Engineer's responsibilities as set forth herein shall at no time be in any way diminished by reason of any approval by the Owner of the Project Drawings nor shall the Engineer be released from any liability by reason of such approval by the Owner, it being understood that the Owner at all times is ultimately relying upon the Engineer's skill and knowledge in preparing the Project Drawings.

In connection with Engineer's performance of procurement services hereunder, if any, Engineer shall use its best efforts to obtain from all vendors of equipment and materials, fullest possible warranties against defective materials and workmanship for the benefit Owner.

**ARTICLE 15. Indemnification.** To the fullest extent permitted by applicable law, the Engineer and its agents, partners, and consultants (collectively "Indemnitors") shall and do agree to indemnify, protect, defend and hold harmless the Owner, Owner's respective Commissioners, elected officials, employees and agents (collectively "Indemnitees") from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses, including attorney fees, of any nature, kind or description (collectively "Liabilities") of any person or entity whomsoever arising out of, caused by or resulting from the performance of Engineer's services or any part thereof provided that any such Liabilities (1) are attributable to bodily injury, personal injury, sickness, disease or death of any person, or to the injury to or destruction of tangible personal property including the loss of use and consequential damages resulting therefrom and (2) are caused in whole

or in part by any negligent act or omission of the Engineer, anyone directly or indirectly employed by it or anyone for whose acts it may be legally liable. In this connection, it is agreed and understood that Engineer shall not be responsible for any portion of the liability proximately caused by Owner's negligence.

**ARTICLE 16. Joint and Several Liability.** In the event more than one of the Indemnitors are connected with an accident or occurrence covered by the indemnification in Article 15 hereof, then each of such Indemnitors shall be jointly and severally responsible to the Indemnitees for indemnification and the ultimate responsibility among such Indemnitors for the loss and expense of any such indemnification shall be settled by separate proceedings and without jeopardy to any Indemnitee. The provisions of this Article shall not be construed to eliminate or reduce any other indemnification or right which Owner or any of the Indemnitees has by law.

**ARTICLE 17. Insurance.**

(a) Engineer shall comply with the insurance obligations set forth in **Exhibit "C"** entitled "**Insurance to be Carried by Engineer**", attached hereto and incorporated in the Agreement.

(b) Engineer currently maintains a general and professional liability insurance policy to cover the liability of Engineer connected with the performance of the Services or any service covered by this Agreement in an amount equal to or exceeding \$1,000,000.00 and Engineer covenants and agrees to use its best efforts to obtain renewals of such policy until one (1) year following date of the acceptance of the Project by the Owner. Engineer agrees to furnish Owner certificates of the insurance showing the said policy to be in full force and effect at all times during the period this Agreement is in effect.

**ARTICLE 18. Notices.** All notices hereunder shall be deemed to be made properly if sent by mail to Engineer at 130 East Park Avenue, Pharr, Texas 78577 and to County at 100 E. Cano, Edinburg, Texas 78539. The address may be changed by either party by similar notice. Notice

so mailed shall be effective upon mailing. Either party giving such notice shall also notify promptly the other party's Engineer, as appropriate.

**ARTICLE 19. Termination.** The Owner may terminate this Agreement at any time by a notice in writing to the Engineer. Upon receipt of such notice, the Engineer shall, unless the notice directs otherwise, immediately discontinue all services in connection with the performance of this Agreement and shall proceed to be relieved of any further obligation under the Agreement, and shall cancel promptly all existing orders and contracts, except the construction contract and other orders and contracts which Owner may designate in the notice, insofar as such orders or contracts are chargeable to this Agreement. As soon as practicable after receipt of notice of termination, the Engineer shall submit a statement, showing in detail the services performed under this Agreement to the date of termination. Owner shall then approve all or the portion of the services which Owner may consider appropriate under the circumstances. Owner shall then pay Engineer promptly that proportion of the prescribed fee which the services actually performed under this Agreement as determined by Owner bear to the total services called for under this Agreement, less such payments on account of the fee as have been previously made. Copies of all completed or partially completed designs, plans and specifications prepared under this Agreement shall be delivered to the Owner when and if this Agreement is terminated.

**ARTICLE 20. Miscellaneous Provisions.**

(a) This Agreement constitutes the entire agreement between Engineer and Owner relating to the work herein described. There are no previous or contemporary representations or warranties of Owner or Engineer not set forth herein.

(b) Except as specifically provided herein, no modification, waiver, termination, rescission, discharge, or cancellation of this Agreement or of any terms thereof shall be binding on Owner unless in writing and executed by an officer or employee of Owner specifically authorized to do so.

(c) No waiver of any provision of or a default under this Agreement shall affect the right of Owner thereafter to enforce said provision or to exercise any right or remedy in the event of any other default, whether or not similar.

(d) No modification, waiver, termination, discharge or cancellation of this Agreement or of any terms thereof shall impair Owner's rights with respect to any liabilities, whether or not liquidated, of Engineer to Owner theretofore accrued.

(e) All rights and remedies of Owner specified in this Agreement are in addition to Owner's other rights and remedies.

(f) Engineer shall remain an independent contractor and shall have no power, nor shall Engineer represent that Engineer has any power, to bind Owner or to assume or to create any obligation express or implied on behalf of Owner except as specifically authorized in advance by the Owner.

(g) The Agreement shall be construed under the laws of the State of Texas and is perform able in Hidalgo County, Texas.

IN WITNESS WHEREOF, the Engineer and the Owner have caused this Contract to be executed as of the day and year first above written.

**ENGINEER:**

R. Gutierrez Engineering Corporation

By: Ramiro G.

Printed Name:: RAMIRO GUTIERREZ

Title: PRESIDENT

**OWNER:**

COUNTY OF HIDALGO

By: J.D. Salinas III  
Juan D. Salinas III, County Judge

**ATTEST:**

Arturo Guajardo Jr.  
Arturo Guajardo, Jr., County Clerk

Approved on Commissioners' Court September 4, 2007

APPROVED AS TO FORM

Atlas & Hall, L.L.P.

By: A.H.

**EXHIBIT "A"**  
**SCOPES OF SERVICES**

## **EXHIBIT "A"**

### **SCOPE OF SERVICES**

**The services to be provide by the ENGINEER in developing these Projects is as follows:**

**A. Preliminary Phase:**

- (1) Attend preliminary conferences with the OWNER and, if requested, with the funding agency and other government agencies or interested parties regarding the Project.
- (2) Provide for the necessary geotechnical investigation and testing necessary to develop the design.
- (3) Provide environmental studies as may be necessary to complete a project.
- (4) Provide for the surveying services necessary to determine and stake out the existing right-of-way, to obtain the existing topography and x-sections of the project and to provide the necessary mapping and plotting of the existing field conditions.
- (5) Provide for the preparation of a project right-of-way map where right-of-way acquisition is necessary. Provide for the necessary right-of-way research, mapping, surveying and all services related to the development of a right-of-way map. Prepare parcel sketches and field notes of all parcels requiring acquisition. Revisions to be done promptly at no cost to the Owner.
- (6) Provide for the preparation of a subdivision plat by preparing the City or County applications for the subdivision, preparing a preliminary layout of the subdivision plat, preparing a preliminary utility (water, sanitary sewer, and drainage) plan to serve the site, preparing a drainage report for the subdivision plat approval, attending meetings with Planning and Zoning and City Commission as necessary to obtain preliminary plat approval, preparing final subdivision layout of the subdivision plat, submitting plat to review agencies for final plat approval processing, addressing and responding to comments from the City from the preliminary plat review, attending public meetings as necessary for Final Plat Approval.
- (6) Based on the geotechnical investigation and surveying services, prepare a preliminary engineering study and report on the Project, in sufficient detail to clearly indicate the problems involved and the alternate solutions available to the OWNER; to include preliminary layouts, sketches and cost estimates for the Project, and to set forth clearly the ENGINEER's recommendations.
- (7) As may be required, comply and receive the Owner's and the funding agencies approval on all work.
- (8) Provide the OWNER 5 copies of the preliminary report, including preliminary layouts, sketches, profiles and cost estimates.

- (9) Obtain the OWNER'S approval of the work of the Preliminary Phase before proceeding with the next phase.

**B. Design Phase:**

- (1) Attend the OWNER'S and respective Party's meeting as requested for the purpose of explaining completed design work activities.
- (2) Perform any additional surveying services necessary to collect information required in the design of the Project.
- (3) Plot field data and other survey information for the design of the Project.
- (4) Prepare detailed plans specifications, contract documents and drawings for construction authorized by the OWNER. These designs shall in all respects combine the application of sound engineering principles with a high degree of economy.
- (5) Prepare detailed cost estimates and proposals of authorized construction, which shall include summaries of bid items and quantities based, insofar as practicable, on the unit price system of bidding. The ENGINEER shall not be required to guarantee the accuracy of those estimates.
- (6) Develop preliminary and final plans for on-site subdivision improvements (water, sanitary sewer, and drainage). Develop preliminary and final paving and grading plans. Submit plans to respective public entities for review and comment. Address any comments from respective public entities and obtain approvals. Prepare specifications and final cost estimate of proposed subdivision improvements. The ENGINEER shall not be required to guarantee the accuracy of those estimates.
- (7) Furnish the OWNER all necessary copies of approved plans, specifications, notices to bidders, and proposals. All sets of plans in excess of 5 are to be paid for separately.
- (8) Assist the OWNER in the advertisement of the Project for bids.
- (9) Assist the OWNER in the opening and tabulation of bids for construction on the Project, and recommend to the OWNER as to the proper action on all proposals received.
- (10) Assist in the preparation of formal contract documents for the award of contracts.
- (11) Prepare and assist owner in preparing any reports, plans, documentation, studies or other material of any nature whatsoever, which OWNER may need or be required to submit to any federal, state or local authority in order to comply with any federal, state or local statute, order, regulation, ordinance or guideline.

**C. Construction Phase:**

- (1) The ENGINEER shall consult and advise OWNER and act as OWNER's representative as provided in the General Conditions of the Construction Contract. The extent and limitations of the duties, responsibilities and the authority of ENGINEER as assigned in the General Conditions of the

Construction Contract shall not be modified, except as ENGINEER may otherwise agree in writing.

- (2) The ENGINEER shall provide administration of authorized construction (as distinguished from the inspection of a resident engineer continuously at the site of the Project), including visits of the ENGINEER or a competent representative of the ENGINEER to the site of construction at least three times per week. In the administration of the Project, the ENGINEER will use his best efforts to protect the OWNER against defects and deficiencies in the Work of contractors, but he does not guarantee the performance of their contracts; however, he will promptly notify OWNER of any such defect and take all steps possible to require Contractor to correct the deficiency.
- (3) Provide for all field surveys and field layouts to establish right-of-way and vertical and horizontal control for construction.
- (4) Provide for detailed construction staking, at OWNER's expense.
- (5) Consult and advise with the OWNER during construction.
- (6) Furnish the services of a resident engineer and inspectors if OWNER requests ENGINEER to do so, for continuous on-the-site inspection of construction, at OWNER's expense.
- (7) Submit a written monthly report to the OWNER that outlines the progress in a form and manner satisfactory to the OWNER.
- (8) Check shop or working drawings furnished by Contractors.
- (9) Review all laboratory, shop and mill tests of materials and equipment for compliance with specifications.
- (10) Prepare monthly and final estimates for payments to contractors, and furnish to the OWNER any necessary certifications as to payments to contractors and suppliers. Retainage is to be withheld from all payments on construction contracts until final acceptance by OWNER.
- (11) Prepare, explain and submit proposed contract change orders when applicable.
- (12) Supervise initial operation of the Project, following the completion of construction and supervise the necessary performance tests required by specifications.
- (13) Perform, in company with the OWNER's representatives, a final inspection of the Project.
- (14) Revise contract drawings to show the work as actually constructed and furnish the OWNER with 5 sets of prints.

**EXHIBIT "B"**  
**WORK AUTHORIZATION**

**HIDALGO COUNTY**  
**Professional Engineering Services**  
**Contract #**  
**Work Authorization/ Work Order Form**

**WORK AUTHORIZATION/ORDER NO. \_\_\_\_\_**

**THIS WORK AUTHORIZATION** is made pursuant to the terms and conditions of Section I.A. of the Agreement made by and between **HIDALGO COUNTY**, action herein by and through the **Commissioner's Court**, hereinafter called the "**Owner**," and, \_\_\_\_\_ professional engineers of \_\_\_\_\_ Texas, hereinafter called "**Engineer**".

**PART 1. SCOPE OF WORK**

The purpose of this Work Authorization is for the **Engineer** to provide \_\_\_\_\_.

The scope of services to be provided by the **Engineer** is identified in *Attachment A* – *Scope of Services to be Provided by the Owner* attached hereto.

The scope of services to be provided by the **Engineer** is identified in *Attachment B* – *Scope of Services to be Provided by the Engineer* attached hereto.

**PART 2. ESTIMATED COST**

The estimated cost for services under this Work Authorization is \_\_\_\_\_. This amount is based upon the costs outlined in the **Estimated Cost Proposal** attached hereto as **Attachment "D"**.

**PART 3. PAYMENT**

Compensation and payment to the **Engineer** for the services established under this Work Authorization shall be made in accordance with Article/Part/Section \_\_\_\_\_ of the Agreement.

**PART 4. FUNDING**

This Work Authorization No. \_\_\_\_\_ shall be funded through funding source:

Account No. - - - - -

Requisition Number \_\_\_\_\_ (MUST BE INCLUDED AFTER CC APPROVAL)

**PART 5. PERIOD OF SERVICE**

This Work Authorization shall become effective on the date of final acceptance of the parties hereto, and terminate upon completion of scopes of the work authorization or (DATE).

**PART 6. RESPONSIBILITIES AND OBLIGATIONS**

This Authorization does not waive the parties' responsibilities and obligations provided under the Agreement.

**PART 7. ACKNOWLEDGEMENT AND CONFIRMATION**

Acknowledgement and confirmation by Hidalgo County Precinct No. \_\_\_\_\_  
Commissioner \_\_\_\_\_ as to content and detail of this Work Authorization No. # \_\_\_\_\_.

HIDALGO COUNTY  
COMMISSIONER PRECINCT NO. \_\_:

BY: \_\_\_\_\_

**PART 8. ACCEPTANCE AND APPROVAL**

This Work Authorization is hereby accepted, approved by Hidalgo County Commissioners' Court on \_\_\_\_\_ (DATE) as indicated below and effective as of \_\_\_\_\_ day of \_\_\_\_\_, 2005.

THE ENGINEER:  
(INSERT NAME OF COMPANY)

THE OWNER:  
HIDALGO COUNTY

By: \_\_\_\_\_  
(TYPE NAME)

By: Ramon Garcia, County Judge or  
Presiding Officer

ATTEST:

\_\_\_\_\_  
by: Eddy Trevino, County Clerk

**LIST OF ATTACHMENTS**

- ATTACHMENT "A" - Service to be Provided by the Owner
- ATTACHMENT "B" - Services to be Provided by the Engineer
- ATTACHMENT "C" - Work Schedule
- ATTACHMENT "D" - Cost Proposal

**EXHIBIT "C"**  
**INSURANCE**

# ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE  
11/07/2006

PRODUCER Valley Insurance Providers  
PO Drawer 3783  
McAllen TX 78502

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

### INSURERS AFFORDING COVERAGE

INSURED R GUTIERREZ ENGINEERING CORP.  
130 E. Park  
Pharr TX 78577

INSURER A: ZURICH NORTH AMERICA INSURANCE COMPANY  
INSURER B: ZURICH NORTH AMERICA INSURANCE COMPANY  
INSURER C: ASSOCIATED INTERNATIONAL INS. COMPANY  
INSURER D: THE HARTFORD INSURANCE  
INSURER E: LANDMARK AMERICAN INSURANCE COMPANY

### COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR YR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY	PAS 42735911	11/05/2006	11/05/2007	EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				FIRE DAMAGE (Any one fire) \$ 1,000,000
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person) \$ 10,000
	GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
B	AUTOMOBILE LIABILITY	001287350-01	11/05/2006	11/05/2007	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input type="checkbox"/> ANY AUTO				BODILY INJURY (Per person) \$
	<input checked="" type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident) \$
	<input checked="" type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident) \$
<input checked="" type="checkbox"/> HIRED AUTOS					
<input checked="" type="checkbox"/> NON-OWNED AUTOS					
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT \$
	<input type="checkbox"/> ANY AUTO				OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
C	EXCESS LIABILITY	UE421900064	11/05/2006	11/05/2007	EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE \$ 1,000,000
	<input type="checkbox"/> DEDUCTIBLE				
<input checked="" type="checkbox"/> RETENTION \$ 10,000					
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	65WEPK3153	11/05/2006	11/05/2007	WC STATU-TORY LIMITS <input checked="" type="checkbox"/> OTH-ER
					E.L. EACH ACCIDENT \$ 1,000,000
					E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
					E.L. DISEASE - POLICY LIMIT \$ 1,000,000
E	OTHER PROFESSIONAL CLAIMS MADE FORM	LHR711493	11/05/2006	11/05/2007	LIMIT: \$1,000,000 DEDUCTIBLE \$5,000 APPLIES TO INDEMNITY AND EXPENSE

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

CERTIFICATE HOLDER <input checked="" type="checkbox"/>	ADDITIONAL INSURED: <input type="checkbox"/>	INSURER LETTER: _____	CANCELLATION
HIDALGO COUNTY FAX: 782-2558		SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO LIABILITY ON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE: <b>620 W. Ferguson Pharr, TX 785</b> VALLEY INSURANCE PROVIDERS Tel. (956) 787-8555	