

2.1. Scope of Work. The **Owner** will furnish items and provide those services for the development of and fulfillment of this Agreement, as identified in **EXHIBIT "A" -Services to be Provided by the Owner**, attached hereto and made a part of this Agreement. The **Engineer** shall render professional engineering services for the development and fulfillment of this Agreement as identified in **EXHIBIT "B"-Services to be Provided by the Engineer**, attached hereto and made a part of this Agreement.

2.2 Classification of Services. For this Agreement, the professional services to be provided by the **Engineer**, are more particularly identified in **EXHIBIT "B"**, attached hereto.

ARTICLE 3 Period of Service

Upon execution of this Agreement, the **Engineer** shall proceed with the work outlined under Article 2 hereof.

3.1 Termination Date. This Agreement shall terminate at the close of business upon completion of this project (hereinafter referred to as the "**Termination Date**"), unless extended by written supplemental agreement, as provided in Article 8 hereof, duly executed by the **Engineer** and the **Owner** prior to the **Termination Date**, or otherwise terminated as provided in Article 3.4 herein and below. The **Owner** assumes no liability or obligation for payment to the **Engineer** for work performed or costs incurred by the **Engineer** prior to the date authorized by the **Owner** for the **Engineer** to begin work, during periods when work is suspended, or subsequent to the **Termination Date**.

3.2 Extension of the Termination Date. The **Engineer** shall notify the **Owner** in writing as soon as possible if it is determined, or reasonably anticipated, that the work under this Agreement cannot be completed before the **Termination Date**, and the **Owner** may, at the

Owner's sole discretion, extend the **Termination Date** by written supplemental agreement as provided in Article 7 hereof. The **Engineer** shall allow adequate time for review and approval by the **Owner** of the written notice and request by the **Engineer** to extend the **Termination Date**.

3.3 Suspension of Work. Should the **Owner** desire to suspend the work under this Agreement, but not terminate this Agreement, the **Owner** shall provide thirty (30) calendar days verbal notification to the **Engineer**, followed by written confirmation from the **Owner** to the **Engineer** to that effect. The thirty-day notice may be waived as agreed in writing by both the **Owner** and the **Engineer**. The work under this Agreement may be reinstated and resumed in full force and effect within sixty (60) days of receipt of written notice from the **Owner** to the **Engineer**. The sixty-day notice may be waived as agreed in writing by both the **Owner** and the **Engineer**.

If the **Owner** suspends the work, the **Termination Date** as identified above is not affected, and this Agreement will terminate on the date specified, unless extended by written supplemental agreement, as provided in Article 7 hereof, duly executed by the **Engineer** and the **Owner** prior to the **Termination Date**.

3.4 Termination of Agreement. This Agreement may be terminated before the stated **Termination Date** identified in Article 3.1 herein by any of the following conditions:

- (1) **Commitment of Current Revenues.** In the event that, during any term hereof, the **Owner** does not appropriate sufficient funds to meet to the obligations of this Agreement, the **Owner** may terminate this Agreement upon thirty (30) days written notice to the **Engineer**. The **Owner** 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 the **Owner** pursuant to the provisions of Tex. Loc. Govt. Code Ann. § 271.903 (Vernon Supp. 1995).

- (2) By mutual agreement and consent, in writing, of both the **Engineer** and the **Owner**.
- (3) By the **Owner**, upon failure of the **Engineer** to fulfill the **Engineer's** obligations set forth herein in a satisfactory manner as determined by the **Owner** and in sole opinion of the **Owner**, after the **Owner** provides written notice to the **Engineer** of such failure and the **Engineer** has not corrected such failure within (30) days of such written notice by the **Owner**.
- (4) By the **Engineer**, upon failure of the **Owner** to fulfill the **Owner's** obligations set forth herein, after the **Engineer** provides written notice to the **Owner** of such failure and the **Owner** has not corrected such failure within thirty (30) days of such written notice by the **Engineer**.
- (5) By the **Owner** without cause upon thirty (30) days written notice to the **Engineer**.
- (6) By satisfactory completion of all services and obligations described herein.

Should the **Owner** terminate this Agreement as herein provided, no fees other than fees due and payable at the time of termination shall thereafter be paid to the **Engineer** notwithstanding anything herein to the contrary. In determining the value of the work performed by the **Engineer** prior to termination, the **Owner** shall be the sole judge of the value of such work performed. Compensation for work at termination will be based on a percentage of the work completed at that

time. Should the **Owner** terminate this Agreement under (5) of the paragraph above, the amount charged during the thirty (30) day notice period shall not exceed the amount charged during the preceding ninety (90) days.

If the termination of this Agreement is due to the failure of the **Engineer** to fulfill the **Engineer's** obligations under this Agreement, the **Owner** may take over the Work Schedule, Exhibit "C" and prosecute the work to completion. In such case, the **Engineer** shall be liable to the **Owner** for any additional cost occasioned by the **Owner**.

If the **Engineer** defaults in the performance of this Agreement or if the **Owner** terminates this Agreement for fault on the part of the **Engineer**, the **Owner** will give consideration to payment of an amount in settlement to include: the actual costs incurred by the **Engineer** in performing the work to the date of default, the amount of work required which was satisfactorily completed to date of default, the value of the work which is usable to the **Owner**, the cost to the **Owner** of employing another consultant and/or firm to complete the work required and the time required to do so, and other factors which affect the value to the **Owner** of the work performed at the time of default. This Agreement shall not be considered as specifying the exclusive remedy for any default by the **Engineer**, but all remedies existing at law and in equity may be availed of by either party and shall be cumulative.

The termination of the Agreement and payment of an amount in settlement as prescribed above shall extinguish all rights, duties, and obligations of the **Owner** and the **Engineer** under this Agreement, except the obligations set forth in Articles 11, 13, 14.3 and 15 hereto.

ARTICLE 4

Progress and Coordination

The **Engineer** shall, from time to time during the progress of the work, confer with the **Owner**. The **Engineer** shall prepare and present such information as may be pertinent and necessary, or as may be requested by the **Owner**, in order to evaluate features of the **Engineer's** services and work.

At the request of the **Owner** or the **Engineer**, conferences shall be provided at the **Engineer's** office, the office of the **Owner**, or at other locations designated by the **Owner**. These conferences shall also include evaluation of the **Engineer's** services and work when requested by the **Owner**.

All applicable study reports shall be submitted in preliminary form for approval by the **Owner** before the final report is issued. The **Owner's** comments regarding the **Engineer's** preliminary report will be addressed by the **Engineer** in the final report.

If funds by other agencies or entities are to be used for the development of the **Project** under this Agreement, the **Engineer's** services and work will be subject to periodic review and approval by other agencies or entities, including those of the city, county, state, and/or federal agencies.

Should it be determined that the progress in the production of the **Engineer's** services and work does not satisfy the requirements of the Scope of Services as provided by the engineer, the **Owner** shall review the approved Scope of Services with the **Engineer** to determine the corrective action needed by either the **Owner** or the **Engineer**.

The **Engineer** shall promptly advise the **Owner** in writing of events which have a significant impact upon the progress of the **Engineer's** services and work and the approved Scope of Services, including:

- (1) problems, delays, adverse conditions which will materially affect the ability to attain contract objectives, prevent the meeting of time schedules and goals, this disclosure will be accompanied by a statement by the **Engineer** of recommended or immediate action taken, or contemplated, and any **Owner** or other agency or entity assistance needed to resolve the situation; and
- (2) favorable developments or events which enable meeting the Scope of Services goals sooner than anticipated.

ARTICLE 5 Compensation and Fees

For and in consideration of the services to be rendered by the **Engineer**, the **Owner** shall compensate the **Engineer** as follows:

5.1 Services. For and in consideration of the **Services** to be rendered by the **Engineer**, as identified in Article 2 and more particularly identified in **EXHIBIT "B"**, attached hereto, the amount payable by the **Owner** to the **Engineer** for **Services** will be in the amount of **\$70,136.00**, subject to adjustment in accordance with Article 6.1 herein, will be provided in **EXHIBIT D I - Fee Breakdown** attached. Payments to the **Engineer** for **Services** shall be made by the **Owner**, upon presentation by the **Engineer** of the **Request for Payment**, in accordance with the terms and provisions of Article 6 herein.

ARTICLE 6 Method of Payment

6.1 Request for Payment. Payments to the **Engineer** for services rendered will be made while work is in progress as executed through a lump sum fee assigned. The **Engineer** shall prepare and submit to the **Owner** monthly progress reports in sufficient detail to support the progress of the work and in support of a request for payment (hereinafter referred to as "**Request for Payment**"). The progress report shall indicate the percent completion of the work accomplished by the **Engineer** during the billing period and to the date of the **Request for Payment**. On or before noon of the first Monday of each month during the performance of the services, the **Engineer** shall submit to the **Owner** for approval a **Request for Payment**. Payment of the lump sum fee identified in the **Request for Payment** will be in proportion to the percent completion of the work tasks identified together with a detailed breakdown of the amount and the sum of all prior payments. The **Owner** shall review each such **Request for Payment** and may make such exceptions as the **Owner** reasonably deems necessary or appropriate under the circumstances then existing. About ten (10) working days after the Commissioners Court of the **Owner** meets approving such payment, the **Owner** shall make payment to the **Engineer** in the amount approved as aforesaid subject to Article 6.4 herein and below.

6.2 Final Payment. After final completion of the work and acceptance thereof by the **Owner**, the **Engineer** shall submit a final request for payment ("**Final Request for Payment**") which shall set forth all amounts due and remaining unpaid to the **Engineer** and upon approval thereof by the **Owner**, the **Owner** shall pay to the **Engineer** the amount due ("**Final Payment**") under such **Final Request for Payment** in accordance with the provisions of Article 6.1 hereof. The **Final Payment** shall not be made until the **Engineer** delivers to the **Owner** an affidavit that so

far as the **Engineer** has knowledge or information any and all amounts due for materials and services over which the **Engineer** has control have been paid.

6.3 Qualification on Obligations to Pay. Any provision hereof to the contrary notwithstanding, the **Owner** shall not be obligated to make any payment (whether a payment under Article 6.1 hereof or **Final Payment**) to the **Engineer** hereunder if any one or more of the following conditions precedent exist:

- (1) The **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 the **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 the **Engineer's** services which were performed in accordance with this Agreement;
- (3) The **Engineer** has failed to make payments promptly to consultants or other third parties used for which the **Owner** has made payment to the **Engineer**;
- (4) If the **Owner**, in 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 the **Engineer** hereunder unless and until the **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 the **Owner** to be sufficient to so complete the **Engineer's** services.

6.4 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 the **Engineer** of any of its obligations hereunder with respect thereto.

6.5 The **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.

6.6 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 the **Engineer** appearing after completion of the **Project**, or (2) failure of the **Engineer's** services to comply with the requirements of this Agreement. 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 7 Supplemental Agreements

The terms of this Agreement may be amended by supplemental agreement if the **Owner** determines that (1) there is a need to extend the **Termination Date** identified in Article 3.1 hereof, (2) there has been a significant change in the scope, complexity or character of the services to be performed by the **Engineer**, and/or (3) for any other reason agreeable to the **Owner** and the **Engineer**.

If determined appropriate by the **Owner**, additional compensation to the **Engineer** for (1), (2) and/or (3) above shall be paid as a negotiated lump sum fee at the **Contract Rates** specified in **EXHIBIT "DI"**, attached hereto. The negotiated lump sum fee shall be incorporated into the **Supplemental Agreement**.

Any **Supplemental Agreement** must be executed by both the **Engineer** and the **Owner** prior to the **Termination Date** specified in Article 3 hereof.

It is distinctly understood and agreed that no claim by the **Engineer** for additional work, as identified in Article 8 hereof, or changes or revisions in work, as identified in Article 9 hereof, shall be made by the **Engineer** until full execution of the **Supplemental Agreement** and authorization

to proceed is granted by the **Owner**. The **Owner** reserves the right to withhold payment to the **Engineer** pending verification of satisfactory work performed by the **Engineer**.

ARTICLE 8 Additional Work

If the **Engineer** is of the opinion that any work it has been directed to perform is beyond the scope of this Agreement and constitutes extra work, the **Engineer** shall promptly notify the **Owner** in writing. In the event the **Owner** finds that such work does constitute extra work, the **Owner** shall so advise the **Engineer** and a written supplemental agreement will be executed between the **Owner** and the **Engineer** as provided herein. The **Engineer** shall not perform any proposed additional work or incur any additional costs prior to the execution by both the **Engineer** and the **Owner** of a supplemental agreement. Additional compensation from the **Owner** to the **Engineer** shall be paid as a negotiated lump sum fee at the **Contract Rates** specified in **EXHIBIT "DI"**, attached hereto. The negotiated lump sum fee shall be incorporated into the supplemental agreement as specified in Article 7 hereof. The **Owner** shall not be liable or under any obligation to compensate the **Engineer** for work performed or costs incurred by the **Engineer** relating to additional work not directly associated with the performance of the work authorized in this Agreement or as amended through supplemental agreement.

ARTICLE 9 Changes or Revisions in Work

If the **Owner** finds it necessary to request changes to the work, and the changes are within the applications of sound engineering principles, the **Engineer** shall make such revisions if requested and directed by the **Owner**.

9.1 Preliminary Work. The **Engineer** will make, without expense to the **Owner**, such revisions of any preliminary reports or drawings as may be required to meet the needs of the **Owner** and the applications of sound engineering principles.

ARTICLE 10 Ownership and Release of Documents

10.1 Ownership of Documents.

All documents furnished to the **Engineer** by the **Owner** shall be delivered to the **Owner** upon completion or termination of this Agreement. The **Engineer**, at the **Engineer's** own expense, may retain copies of such documents or any other data under this Agreement.

ARTICLE 11 Records, Accounting, Inspection

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

ARTICLE 12 Subcontracting and Assignment

The **Engineer** shall not assign, subcontract or transfer the **Engineer's** interest in this Agreement without the prior written consent of the **Owner**. The **Engineer** shall bind every sub-

consultant by written subcontract to observe all the terms of this Agreement to the extent that they may be applicable to each sub-consultant. No subcontract relieves the **Engineer** of any responsibilities under this Agreement.

The **Engineer**, and the **Owner**, do hereby bind themselves, their successors, executors, administrators and assigns to each other party of this Agreement and to the successors, executors, administrators, and assigns of such other party in respect to all covenants of this contract.

ARTICLE 13 **Engineer's Seal, Responsibility and Warranties**

13.1 Engineer's Seal. The **Engineer** shall assign a responsible engineer or engineers licensed to practice in the State of Texas, who shall sign, seal and date all appropriate engineering submissions to the **Owner** in accordance with the Texas Engineering Practice Act and the Rules of the State Board of Registration for Professional Engineers.

13.2 Engineer's Responsibility. The **Engineer** shall be responsible for the accuracy of the work performed, and shall promptly make necessary revisions or corrections resulting from errors, omissions, or negligent acts by the **Engineer**. No additional compensation will be made to the **Engineer** for any necessary revisions or corrections resulting from errors, omissions, or negligent acts by the **Engineer**.

The **Engineer's** responsibility for all questions arising from errors and/or omissions will be determined by the **Owner** or a designee appointed by the **Owner**. The **Engineer** will not be relieved of the responsibility for subsequent correction of any such errors or omissions or for clarification of any ambiguities until after the construction phase of the **Project** has been completed.

ARTICLE 14 Engineer's Resources

The **Engineer** shall furnish and maintain, at the **Engineer's** own expense, office space for the performance of all services, skilled and sufficient personnel, as well as adequate and sufficient equipment to perform the services as required under this Agreement.

14.1 Project Manager. The **Engineer** shall provide a manager (**Project Manager**) that is a registered professional engineer in the State of Texas. The **Project Manager** shall have such knowledge and experience as will enable the **Project Manager** to perform the duties required for the services under this Agreement. The **Engineer** may not change the **Project Manager** during the course of the Work Authorization without prior consent of the **Owner**. If, due to situations beyond the control of the **Engineer**, the **Engineer** must change the **Project Manager** prior to the completion and acceptance of the improvements, the **Engineer** will submit a request to change the **Project Manager** to the **Owner** for approval.

14.2 Employees of the Engineer. All employees of the **Engineer** shall have such knowledge and experience as will enable them to perform the duties assigned to them and required for the services under this Agreement. Any employee of the **Engineer** who, in the opinion of the **Owner**, is incompetent, or whose conduct becomes detrimental to the work required under this Agreement, shall immediately be removed from association with the Work Authorization when so instructed by the **Owner**. The **Engineer** certifies that the **Engineer** presently has employed sufficient and qualified personnel, and will maintain sufficient and qualified personnel for performance of the services under this Agreement.

14.3 Documents/Information Exchange. The purpose of this Article is to define the required automated resources, format for graphics files, and information exchange. Taking into

consideration that the **Owner** has a significant investment in the development of the information provided, there is a need for the **Engineer** to provide consistency in document development for information exchange. Consistency in document development for information exchange and production will help facilitate an economically efficient improvement. Therefore, the **Engineer** shall provide the **Owner** with documents and information in accordance with the special requirements outlined in **EXHIBIT "B"** attached hereto.

ARTICLE 15 Indemnification

To the fullest extent permitted by applicable law, the **Engineer** and its agents, partners, subcontractors, and consultants (collectively "**Indemnitors**") shall and do agree to indemnify, and hold harmless the **Owner**, the **Owner's** respective directors, 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 negligent performance of the **Engineer's** services through activities of the **Engineer**, its agents, partners, subcontractors and/or consultants performed under this Agreement, and which are caused by or result from error, omission, or negligent act of the **Engineer** or of any person employed or contracted by the **Engineer** 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 the **Engineer** or anyone for whose acts the **Engineer** may be legally liable. The **Engineer** shall also save harmless the **Owner** from any and all

expense, including, but not limited to, attorney fees which may be incurred by the **Owner** in litigation or otherwise resisting said claim or liabilities which may be imposed on the **Owner** as a result of such activities by the **Engineer**, its agents, partners, subcontractors and/or consultants. In this connection, it is agreed and understood that the **Engineer** shall not be responsible for any portion of the liability proximately caused by the **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 19 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 the **Owner** or any of the **Indemnitees** has by law.

ARTICLE 17 Insurance

The **Engineer** shall obtain and maintain insurance in the limits of liability for each of the types of insurance coverage identified as follows:

- (1) Workers' Compensation, endorsed with a waiver of subrogation in favor of the **Owner** in accordance with the statutory obligations imposed by Worker's Compensation or Occupational Disease laws under the Texas Workers' Compensation Law ("**Statutory Texas**").

- (2) Commercial General Liability, endorsed with the **Owner** as an additional insured and endorsed with a waiver of subrogation in favor of the **Owner** *all to the extent of the liabilities assumed by the Engineer under Article 15 and Article 16 herein*, in limits of liability not less than one million dollars (**\$1,000,000**) combined single limit each occurrence and in the aggregate for bodily injury and property damage.
- (3) Texas Business Automobile Policy, endorsed with the **Owner** as an additional insured and endorsed with a waiver of subrogation in favor of the **Owner** *all to the extent of the liabilities assumed by the Engineer under Article 15 and Article 16 herein*, in limits of liability not less than two hundred fifty thousand dollars (**\$250,000**) each person for bodily injury, five hundred thousand dollars (**\$500,000**) each occurrence for bodily injury, and one hundred thousand dollars (**\$100,000**) each occurrence for property damage.
- (4) Professional Liability in limits of (**\$1,000,000**) each claim and aggregate.

The **Engineer** covenants and agrees to maintain an insurance policy in the minimum limits of liability for each of the types of insurance coverage identified above. The **Engineer** shall furnish the **Owner** with a certificate of insurance (**Hidalgo County Certificate of Insurance**) showing the said policy to be in full force and effect during the period of service, identified in Article 3 hereto, for this Agreement. The completed **Hidalgo County Certificate of Insurance** shall be attached hereto and identified as **EXHIBIT "E"- Hidalgo County Certificate of Insurance**. The **Engineer** will be considered in breach of contract should the **Engineer** fail to maintain an insurance policy in the minimum limits of liability and requirements identified above while performing services for and under this Agreement, and will be subject to default and termination of the Agreement as outlined in Article 3.4 hereto. Additionally, the **Engineer** covenants and agrees to use its best efforts to

maintain an insurance policy in the minimum limits of liability and requirements identified above until one year following the date of the acceptance of the notice to proceed by the **Owner**.

ARTICLE 18 Gratuities

The **Owner** mandates that employees of the **Owner** shall not accept any benefits, gifts or favors from any person doing business or who reasonably speaking may do business with the **Owner** under this Agreement; the only exceptions allowed are ordinary business meals. Any person doing business with or who may reasonably seeking to do business with the **Owner** under this Agreement may not make any offer of benefits, gifts or favors to **Owner** employees, except as mentioned herein above. Failure on the part of the **Engineer** to adhere to this provision may result in the termination of this Agreement.

ARTICLE 19 Payment of Franchise Tax

The **Engineer** hereby certifies that the **Engineer** is not delinquent in Texas franchise tax payments, or that the **Engineer** is exempt from, or not subject to, such a tax. A false statement concerning corporation's franchise tax status shall constitute grounds for termination of the Agreement at the sole option of the **Owner**.

ARTICLE 20 Severability

In the event any one or more of the provisions contained in this Agreement shall for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

ARTICLE 21
Notices

All notices to either party by the other required under this Agreement shall be personally delivered or mailed to such party at the following respective addresses:

Owner: Hidalgo County
100 East Cano, 2nd Floor
Edinburg, Texas 78539

Engineer: Dos Logistics, Inc.
212 West 3rd Street
Weslaco, Texas 78596

The address may be changed by either party by written notice, and notice so mailed shall be effective upon mailing.

ARTICLE 22
Miscellaneous Provisions

(a) This Agreement constitutes the entire Agreement between the **Engineer** and the **Owner** relating to the work herein described, and supersedes any prior understanding or written or oral contracts between the parties respecting the subject matter defined herein. There are no previous or contemporary representations or warranties of the **Owner** or the **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 the **Owner** unless in writing and executed by an officer or employee of the **Owner** specifically authorized to do so.

(c) No waiver of any provision of or a default under this Agreement shall affect the right of the **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 the **Owner's** rights with respect to any liabilities, whether or not liquidated, of the **Engineer** to the **Owner** theretofore accrued.

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

(f) The **Engineer** shall remain an independent contractor and shall have no power, nor shall the **Engineer** represent that the **Engineer** has any power, to bind the **Owner** or to assume or to create any obligation express or implied on behalf of the **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 performable in Hidalgo County, Texas.

(h) This Agreement may only be amended by a written document executed by the **Owner** and the **Engineer** as provided by Article 7 herein.

ARTICLE 23 **Signatory Warranty**

The undersigned signatory or signatories for the **Engineer** hereby represent and warrant that the signatory is an officer of the organization for which he or she has executed this Agreement, and that he or she has full and complete authority to enter into this Agreement on behalf of the **Engineer**. The above-stated representations and warranties are made for the purpose of inducing the **Owner** to enter into this Agreement.

IN WITNESS WHEREOF, the **Engineer** and the **Owner** have caused this **Agreement for Professional Services** to be effective as of the _____ day of _____, 2008.

ENGINEER:

DOS LOGISTICS, INC.

BY: _____
Eric C. Ybarra, President/CEO

OWNER:
HIDALGO COUNTY

BY: _____
Juan D. Salinas, County Judge

ATTEST:

Arturo Guajardo, Jr., County Clerk

APPROVED AS TO FORM:
Atlas & Hall L.L.P.

By: Stephen L. Crain

ATTACHMENTS:

- EXHIBIT A** -Scope of Services to be Provided by the Owner
- EXHIBIT B** -Scope of Services to be Provided by the Engineer
- EXHIBIT C** -Work Schedule
- EXHIBIT D** -Engineer's Contract Rates
- EXHIBIT D I** -Fee Breakdown
- EXHIBIT E** -Certificate of Insurance (*Hidalgo County*)

EXHIBIT A

-Scope of Services to be
Provided by the Owner

EXHIBIT "A"

Services to be provided by the **OWNER**

The following provides an outline of the services to be provided by the **OWNER** in the development of the Project.

The **OWNER** will provide to the **ENGINEER** the following:

- (1) Authorization to the **ENGINEER** to begin work in accordance with Section 3 of this Agreement.
- (2) Payment for work performed by the **ENGINEER** and accepted by the **OWNER** in accordance with Section 6 of the Agreement.
- (3) Assistance to the **ENGINEER**, as necessary, to obtain the required data and information from other local, regional, State and Federal agencies that the **ENGINEER** cannot easily obtain.
- (4) Provide any available relevant data the **OWNER** may have on file concerning the project.
- (5) Provide timely review and decisions in response to the **ENGINEER'S** request for information and/or required submittals and deliverables, in order for the **ENGINEER** to maintain the agreed-upon work schedule prepared in accordance with Attachment "C" of this Agreement.
- (6) Attend and participate in progress meetings as required and as coordinated and conducted by the **ENGINEER**.
- (7) Assist the **ENGINEER** in the preparation of the project mailing list; provide representation, a site and stenographer for all public meetings; additionally:

Public Meetings

- (a) Approve agenda and all exhibits prior to public meeting.
 - (b) Approve date and location of the meeting.
 - (c) Review/approve Public Meeting Report.
- (8) Attend the Preliminary Concept Conference coordinated and conducted by the **ENGINEER** and more particularly identified in Attachment "B" of the Agreement.
 - (9) Assist the **ENGINEER** as required in the coordination with the **USACE** and the Federal Emergency Management Agency (**FEMA**) and any other coordinating agency or entity.
 - (10) Review and approve the Project design criteria.
 - (11) Review and approve change orders as required and prepared by the **ENGINEER**.

EXHIBIT B

**-Scope of Services to be
Provided by the Engineer**

EXHIBIT "B"

Services to be Provided by the Engineer

The project will consist of data collection, preliminary engineering analysis, engineering design, bidding assistance, and construction administrative services for replacing two Culvert Pipe crossings removed on Mile 13 and Martin Morales off of Mile 6 along with providing a new roadside ditch and re-grading an existing ditch (approx. 0.5 miles).

The project is divided into six phases, Preliminary Engineering and Design, Final Design, Construction Phase Services, QA/QC Services, and Special Services.

The Data Collection Services includes compilation of survey, engineering and related data.

The Preliminary Engineering and Design phase will provide the general data collection, and develop the Preliminary Engineering plans to the schematic level, and will include typical channel sections, locations and sizes of drainage structures at roadway and irrigation canal crossings, and related information to provide information for Final Design. This phase will develop the proposed plans to the 30-percent level required for completed plans, specifications and estimates (PS&E).

The Final Design Phase will include all plans and specifications needed to go out for construction. This section of the project will be developed to complete PS&E, for use by the County.

PHASE 1 Data Collection

A. Survey

1. Ties to physical features within a the existing drainage easement edge of pavement, water, sewer, electric, telephone, cable, and irrigation systems, driveways, sheds, trees , etc.
2. Ground shots for topo, within the easement. Ground shots will include tops and toes of slopes of existing drainage ditch, tops and toes of berms, top and low line shots of any culverts, roadway crossing, slab elevations, and related features.
3. Cross sections will be taken at approximately 250-ft intervals. Additional sections will be taken at upstream and downstream of roadway crossings, and ditch crossings.

B. Engineering

1. Proposed plans and calculations for outfall drainage.
2. LIDAR and aerial photos when available.
3. County design requirements.

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4. Plans for other projects impacted by proposed drainage channel.

PHASE II Preliminary Engineering and Design

A. Preliminary Engineering

1. Confirm route selection and limits of work.
2. Prepare project layout and drainage area map.
3. Prepare basic hydrologic & hydraulic calculations based on County requirements.
4. Determine structure sizing and limits of pavement repair on crossing structures.
5. Develop hydraulic model of project.
6. Develop preliminary Engineers Opinion of Construction Cost estimates.
7. County Review.

I. Preliminary Design Plans (30%)

- a. Prepare General Drawings
- b. Prepare Plan and Profile Schematic
- c. Preliminary plan and profile for drainage structures
- d. Preliminary hydraulic calculations sheets
- e. Preliminary typical section sheets
- f. Submit for county Review and approval prior to final design

PHASE II FINAL DESIGN

1. Drainage Design

The Engineer shall perform drainage design for the proposed improvements to existing facilities within the **Project**. The design of drainage improvements shall conform to the **Project** design criteria, and when possible, the standard designs required by the Owner (City, County, or State) of any associated roadways. These designs shall in all respects combine the application of sound engineering principles, and shall be submitted to the applicable City, County, State, and/or Federal agencies for approval. If additional geotechnical borings or geotechnical engineering is required, the Engineer will request additional funds in the form of a supplemental agreement to this work authorization.

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EXHIBIT "B"

Page 2 of 5

2. Roadway Design
The Engineer shall perform roadway design for any intersecting roadway approaches to the proposed improvements of the **Project**. The design of these roadways shall conform to the Project design criteria, and when possible, the standard designs required by the Owner (City, County, or State) of the associated roadways. These designs shall in all respects combine the application of sound engineering principles, and shall be submitted to the applicable City, County, State, and/or Federal agencies for approval.

3. Bridge Design
The **Engineer** shall perform bridge design required for any roadway crossings to the proposed improvements to the existing channels and/or proposed channels of the **Project**. The design of these bridges shall conform to the **Project** design criteria, required by the Owner (City, County, or State), of any associated bridge structure and/or roadway, and the requirements set forth by the latest version of the American Association of State Highway and Transportation Officials (AASHTO), "Standard Specifications for Highway Bridges". These designs shall in all respects combine the application of sound engineering principles with a high degree of economy, and shall be submitted to the applicable City, County, State, and/or Federal agencies for approval.

4. Plans, Specifications & Estimates (PS&E)
 - i. The **Engineer** shall prepare contract drawings, specifications and estimates for construction of the Project or portions of the Project as authorized by the Owner. These documents shall in all respects combine the application of sound engineering principles, and shall be submitted to the applicable City, County, State and/or Federal agencies for approval.

 - ii. All final plan sheets shall be developed by the Engineer, on 11" x 17" reproducible, 4 mil, double-matte, white, opaque film.

 - iii. Graphics files shall be developed by the Engineer in AutoCADD design file format, and must plot consistent with the reproducible plots submitted.

 - iv. **Plan Sheets** Plan sheets developed by the Engineer shall include, but not be limited to, title sheet, typical sections, sequence of construction, traffic control (as applicable), specification data (including schedules for minimum sampling and testing), estimate and quantity, plan-profile, channel details, roadway details (as applicable), bridge and culvert details, hydraulic details, and standards. (Standards may be used from governing entities, but must be signed and dated by the Project Engineer of responsible supervision as being applicable to the Project.)

 - v. **Specifications.** Whenever possible, the Engineer shall use for roadways and bridges the latest version of the Texas Department of Transportation's Standard Specification for Construction and Maintenance of Highways, Streets and Bridges. Other specifications may be developed by the Engineer, but must incorporate, to

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the extent possible, references to standard requirements of AASHTO design and AASHTO testing procedures.

vi. **Estimates.** The Engineer shall 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.

5. **Construction Phase Services.** The Engineer shall provide engineering services for each authorized construction contract of the Project. Specific engineering work activities, tasks, and/or special services to be provided by the Engineer will include:

a) **Construction Bidding**

The Engineer shall prepare the documents for all necessary copies of approved plan, specifications, notices to bidders, and proposals.

Note: Services for assistance in advertising for each authorized construction contract for the Project action on the bid proposals received, and the preparation of formal contract documents for the award of each construction contract will be performed by the Engineer

b) **Project Site Representation**

The Engineer shall prepare the documents for all necessary copies of approved plan, specifications, notices to bidders, and proposals.

1. In general, the Engineer shall provide the engineering support and data required for consultation and advisement to the Owner, and protect the Owner against defects and deficiencies in the work of the Contractor.
2. **Monthly Reports.** The Engineer shall provide the engineering support and data required to monitor the Contractor's progress on a monthly basis. This information will be utilized for the development of the monthly progress report to be provided to the Owner.
3. **Contractor Payment.** The Engineer shall take measurements and calculate quantities, in accordance with the construction contract specifications, of those items of work accepted and conforming to the construction contract specifications, for the preparation of the monthly and final estimates for payment to the Contractor.

Note: The Engineer is not responsible for actual payments to Contractor

4. The Engineer will provide Project site representation of the authorized construction contract as follows:

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- a. **Project Engineer.** The Engineer will provide visits by the Project Engineer or a competent representative of the Engineer to the site of construction at least one time per month for the purpose of monitoring the Contractor's progress and conformance to the construction contract plans and specifications.
- b. **Resident Engineer.** If authorized by the Owner, the Engineer will furnish the services of a Resident Engineer and/or construction representative(s) for continuous on-the-site representation. If the Owner requests the Engineer provide the services of the Resident Engineer, this will be considered special services and will require a supplemental agreement to this work authorization.

5. **Miscellaneous Technical Activities**

- a) **Shop Drawings.** The Engineer shall review and check all shop or working drawing furnished by the Contractor. If an individual shop or working drawing requires more than two (2) reviews, then all additional reviews by the Engineer will be considered special services.
- b) **Control of Materials & Equipment.** The Engineer shall review inspection reports of all materials and equipment furnished/used by the Contractor as follows:
 - a. Review all laboratory, shop and mill tests of materials and equipment for compliance with the contract specifications.
 - b. Review Project record testing and/or independent assurance testing reports as outlined in the contract specifications.
- c) **Change Orders.** When applicable, the Engineer will prepare the engineering data, including plan sheet drawings, specifications, and estimates, for the preparation of construction contract change order, which may be required due to actual field conditions encountered or new requirements directed by the Owner. If the change order will be considered as special services.

EXHIBIT C

-Work Schedule

EXHIBIT "C"
Work Schedule

A detailed work schedule for each **Work Authorization**, identified and more particularly described in Article 7 of this Agreement, shall be prepared by the **Engineer** to be submitted and approved by the Owner in writing for each **Work Authorization**. The work schedule will provide specific work sequence and definite review times by the **Owner** and the **Engineer** of the work performed.

The **Engineer** will diligently pursue the completion of each **Work Authorization** as defined by the milestones and deliverable due dates outlined in each **Work Authorization's** associated work schedule.

The **Engineer** will inform the **Owner** (in reasonable advance of the delay) should the **Engineer** encounter delays that would prevent the performance of all work in accordance with the established work schedule.

EXHIBIT D

-Engineer's Contract Rates

October 1, 2008

Ms. Leticia H. Saenz, CPPB/Contracts Manager
Hidalgo County Purchasing Department
2802 South Business Hwy. 281
Edinburg, Texas 78539

**RE: BAFO FOR CULVERT PIPE BRIDGE WASHOUT PROJECT - HIDALGO COUNTY
PRECINCT 1**

Dear Ms. Saenz:

Dos Logistics, Inc. (DL, Inc.) is excited about the opportunity to provide professional services for the Hidalgo County, Precinct 1 Culvert Pipe Bridge Washout Project.

After careful consideration of the work detail to perform the required engineering services for structures located at *Mile 6 and Mile 13 and Martin Morales and Mile 3 and Mile 491*, DL, Inc.'s best and final offer for professional services are attached hereto. If the proposed cost estimates meet your approval, we are ready to begin services promptly and certainly look forward to working with Hidalgo County, Precinct 1 on this valuable project.

Thank you for your attention and consideration. If you have any questions, concerns, or require additional information, please do not hesitate to contact me at (956) 797-4601, or Mr. Eric Ybarra, at your earliest convenience.

Sincerely,



TINA BUCHANAN
Contracts Manager

Enclosure

Preliminary Construction Cost Estimate
Hidalgo County Precinct No. 1 Culvert Pipe Bridge Washout
Prepared By Dos Logistics, Inc.

A. Mile 6 & Mile 13 & Martin Morales

1. Prepare Right of Way / Demolition	1	LS	@	\$10,000.75=	\$ 10,000
2. Pavement Repair	1	LS	@	\$ 5,000.00=	\$ 5,000
3. Roadside Ditches	2800	LF	@	\$ 20.00=	\$ 56,000
4. Re-grade Existing Ditch	3750	LF	@	\$ 6.50=	\$ 24,375
5. 36" Culvert Crossings	250	LF	@	\$ 90.00=	\$ 22,500
6. 8" x 8" Box Culverts	200	LF	@	\$ 600.00=	\$120,000
7. Gatewell Structure	1	EA	@	\$22,500.00=	\$ 22,500
8. Headwalls	8	EA	@	\$ 4,500.00=	\$ 36,000
9. SW3P	1	LS	@	\$ 6,500.00=	\$ 6,500
10. Rip Rap	1	LS	@	\$15,000.00=	\$ 15,000
11. Barricade and Traffic Handling	3	MO	@	\$ 5,000.00=	\$ 15,000

20% Contingency : \$ 66,575
Engineering Fee : \$ 49,931
Total : \$449,381

B. Mile 3 & FM 491

1. Prepare Right of Way / Demolition	1	LS	@	\$10,000.75=	\$ 10,000
2. 3" Asphalt Concrete Paving	300	TON	@	\$ 75.00=	\$ 22,500
3. Flexbase (New base) (8")	260	CY	@	\$ 30.00=	\$ 7,800
4. Lime (SLURRY)	10	TON	@	\$ 120.00=	\$ 1,200
5. Lime Treated Sub-base (8")	1250	SY	@	\$ 4.00=	\$ 5,000
6. Roadside Ditches	500	LF	@	\$ 20.00=	\$ 10,000
7. 8" x 8" Box Culverts	60	LF	@	\$ 600.00=	\$ 36,000
8. Rip Rap	1	LS	@	\$ 5,000.00=	\$ 5,000
9. Headwalls	2	EA	@	\$ 5,000.00=	\$ 10,000
10. Guard Rail	160	LF	@	\$ 45.00=	\$ 7,200
11. SW3P	1	LS	@	\$ 5,000.00=	\$ 5,000
12. Barricade and Traffic Handling	3	MO	@	\$ 5,000.00=	\$ 15,000

20% Contingency : \$ 26,940
Engineering Fee : \$ 20,205
Total : \$181,845

EXHIBIT D I

-Fee Breakdown

EXHIBIT "D1"
Fee Breakdown

For and in consideration of the **Services** attached to this Agreement and to be rendered by the Engineer, the Owner shall pay the Engineer the Fee as defined in this Agreement, and as more particularly identified as follows:

Basic Services Fee	=	\$ 70,136.00
Preliminary Design/Field Surveying	=	25% of the Services Fee
Final Design and Specification	=	50% of the Services Fee
Construction Staking	=	25% of the Services Fee

EXHIBIT E

-Certificate of Insurance (*Hidalgo County*)

ACORD CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
10/2/2008

PRODUCER
Ron Robertson Insurance Agency
7322 S.W. Frwy. Ste. 1850
Houston, TX. 77074
713-272-0558

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.

INSURED **Dos Logistics, Inc.**

212 West Third St.
Weslaco, TX 78596
956-968-8800

INSURERS AFFORDING COVERAGE	NAIC#
INSURER A: Interstate Fire & Casualty	
INSURER B: Sentinel Insurance/Hartford	
INSURER C: Texas Mutual Insurance Company	
INSURER D: HCC Specialty Insurance Co.	
INSURER E:	

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.

INBR ADD'L LTR. INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A X	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMSMADE <input checked="" type="checkbox"/> OCCUR	CMR6200015-1	10-28-07	10-27-08	EACH OCCURRENCE \$ 1,000,000
	DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPI/OP AGG \$ 1,000,000				
B	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	61UECKO4021	08-18-08	08-18-09	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	BODILY INJURY (Per person) \$				
	BODILY INJURY (Per accident) \$				
	PROPERTY DAMAGE (Per accident) \$				
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$
	EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMSMADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	001176767	02-10-08	02-10-09	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER
	E.L. EACH ACCIDENT \$ 500,000				
	E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000				
D	OTHER Professional E&O	S707-10575	10-28-07	10-28-08	\$2,000,000 occurrence \$ 35,000 retention

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

CERTIFICATE HOLDER

Hidalgo County Pct. 1
100 E. Cano, 4th Floor, Admin Bldg.
Edinburg, TX 78539

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Ron Robertson

EXHIBIT F

-Supplemental Agreement Form

EXHIBIT "F"

Supplemental Agreement Form

THE STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

SUPPLEMENTAL AGREEMENT NO. _____
TO AGREEMENT FOR PROFESSIONAL SERVICES

THIS SUPPLEMENTAL AGREEMENT is made pursuant to the terms and conditions of Article 8 of the Agreement made by and between **HIDALGO COUNTY**, acting herein by and through the **Commissioner's Court**, hereinafter called the "**Owner**", and _____, Professional Engineers of, _____, Texas, hereinafter called the "**Engineer**".

WITNESSETH

WHEREAS, the **Owner** and the **Engineer** executed the **Agreement** on the ____ day of _____ **2007** concerning engineering for _____ (hereinafter referred to as the "**Project**"); and,

WHEREAS, Article ____ of the **Agreement**, (article title), establishes _____; and,

WHEREAS, it has become necessary to amend the contract to _____

A. AGREEMENT

NOW THEREFORE, premises considered, the **Owner** and the **Engineer** agree that said **Agreement** is amended as follows:

I. Article ____ of the **Agreement**, (article title), is revised to

All other provisions are unchanged and remain in full force and effect.

IN WITNESS WHEREOF, the Engineer and the Owner have caused this Supplemental Agreement to the Agreement for Professional Services to be executed as of the _____ day of _____, 20__.

**THE ENGINEER:
ENGINEER**

BY: _____

**THE OWNER:
HIDALGO COUNTY**

BY: _____
Juan D. Salinas III, County Judge

LIST OF ATTACHMENTS

(as required)