

will terminate one (1) year from the date of execution or unless sooner terminated as provided herein. The Surveyor will not begin work or incur costs until authorized in writing by the County for each work order.

3. **Method of Payment.** Payments to the Surveyor for services rendered will be made while work is in progress as executed through a lump sum fee assigned to each work authorization (hereinafter referred to as "**Work Authorization**") in accordance with Paragraph 4 herein. For each **Work Authorization**, the Surveyor shall prepare and submit to the County 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 Surveyor 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 Surveyor shall submit to the County for approval a **Request for Payment**. Payment of the lump sum fee for each **Work Authorization** identified in the **Request for Payment** will be in proportion to the percent completion of the work tasks identified in such **Work Authorizations** together with a detailed breakdown of the amount and the sum of all prior payments. The County shall review each such **Request for Payment** and may make such exceptions as the County reasonably deems necessary or appropriate under the circumstances then existing. About ten (10) working days after the Commissioners Court of the County meets approving such payment, the County shall make payment to the Surveyor in the

amount approved as aforesaid subject to Paragraph 4 herein and below.

If the **Project**, or any portion(s) thereof, are deleted or otherwise not completed, compensation to the **Surveyor** by the **County** for the **Project** or such portions of the project shall be only the amounts paid the **Surveyor** for actual work performed in accordance with the **Work Authorization(s)** approved by the **County**.

Final Payment. After final completion of the work and acceptance thereof by the **County** the **Surveyor** shall submit a final request for payment ("**Final Request for Payment**") which shall set forth all amounts due and remaining unpaid to the **Surveyor** and upon approval thereof by the **County**, the **County** shall pay to the **Surveyor** the amount due ("**Final Payment**") under such **Final Request for Payment** in accordance with the provisions of Paragraph 4 hereof. The **Final Payment** shall not be made until the **Surveyor** delivers to the **County** an affidavit that so far as the **Surveyor** has knowledge or information any and all amounts due for materials and services over which the **Surveyor** has control have been paid.

Qualification on Obligations to Pay. Any provision hereof to the contrary notwithstanding, the **County** shall not be obligated to make any payment (whether a payment under Paragraph 4 hereof or **Final Payment**) to the **Surveyor** hereunder if any one or more of the following conditions precedent exist:

- (1) The **Surveyor** 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 Surveyor'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 Surveyor's services which were performed in accordance with this Agreement.
- (3) The Surveyor has failed to make payments promptly to consultants or other third parties used in connection with the Project for which the County has made payment to the Surveyor;
- (4) If the County, in good faith judgment, determines that the portion of the compensation then remaining unpaid will not be sufficient to complete the Surveyor's services in accordance with this Agreement, no additional payments will be due the Surveyor hereunder unless and until the Surveyor, at its sole cost, performs a sufficient portion of the Surveyor's services so that such portion of the compensation then remaining unpaid is determined by the County to be sufficient to so complete the Surveyor's services.

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

The Surveyor shall promptly pay all bills for labor and material performed and furnished by others in connection with the performance of the Surveyor's services.

Waiver. The making of the Final Payment shall constitute a waiver of all claims by the County except those arising from (1) faulty or defective services of the Surveyor appearing after completion of the Project. (2) failure of the Surveyor'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 Surveyor except those previously made in writing and identified by the Surveyor as unsettled at the time of the Final Request for Payment.

4. **Work Authorization.** After execution of this Agreement, the Surveyor shall proceed with the work outlined under Article 2 hereof, only as authorized by the County through an agreed **Work Authorization** document in the form identified in EXHIBIT "D"– *Work Authorization Form*, attached hereto and made a part of this Agreement. The Surveyor will identify, as approved by the County, the needed services for the Project, as required through the course of the development to the Project. The County shall authorize the Surveyor to perform one or more of the agreed tasks identified in EXHIBIT "A", attached hereto, in the form of individual work authorizations. Upon authorization from the County, the Surveyor will prepare a **Work Authorization** document, which will include a description of the work to be performed, including a description of the tasks and milestones, a work schedule, and an estimated cost proposal agreed upon by the County and the Surveyor. The estimated cost proposal shall set forth in detail the computation of the cost of each work task, at the hourly rates established and identified in EXHIBIT "B", attached hereto. The **Work Authorizations** shall not waive the County's and the Surveyor's responsibilities and obligations established in this Agreement.

The estimated cost proposal for each **Work Authorization**, developed by the Surveyor and approved by the County shall be used by the County to appropriate a

purchase order for the **Work Authorization**. Each executed **Work Authorization** shall become a part of this **Agreement**. Upon satisfactory completion of the **Work Authorization**, the **Surveyor** shall submit the **Project's** deliverables as specified in the executed **Work Authorization** to the **County** for review and acceptance.

Work included in a **Work Authorization** shall not begin until the **County** and the **Surveyor** have signed the **Work Authorization**. All work must be completed on or before the completion date specified in the **Work Authorization**, unless extended by written agreement by the **Surveyor** and the **County**. The **Surveyor** shall promptly notify the **County** of any event that will affect completion of the **Work Authorization**. All **Work Authorizations** must be executed and completed by both the **Surveyor** and the **County** within the period established for this **Agreement**.

The final acceptance by the **County** of each **Work Authorization** for the **Project** shall serve as evidence of completion, on the part of the **Surveyor** of all services under this **Agreement** insofar as they pertain to that portion of work on the **Project** identified in the applicable work authorization

5. Compensation. As consideration for rendering the **Services** provided for in this **Contract**, the **County** agrees to pay the **Surveyor** the amounts specified in Exhibit "B" attached hereto payable against written invoice submitted by **Surveyor**. The **Surveyor** is authorized to submit periodic requests for payment within thirty days after completion of each **Work Authorization**. The request for payment shall be made using forms acceptable to the **County** and shall show the total amount earned to the date of submission and the amount due and payable as of the date of the current billing. Upon receipt of said request for payment, **County**

shall submit a requisition for payment of said services in the customary manner provided for payments utilized by Hidalgo County, Texas. Surveyor agrees to separately account for the receipt and/or expenditure of funds received pursuant to this Contract and to keep adequate books and records of all such receipts and/or expenditures. All payments to Surveyor shall be mailed to the address shown in numbered paragraph 21, hereof.

6. Inspection of Work. The County has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder and the premises in which it is being performed. If any inspection or evaluation is made on the premises of the Surveyor, or a subcontractor, the Surveyor shall provide and require its subcontractor to provide all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

7. Amendments. If it becomes necessary at any time during the contract period to change the scope of work, the contract period, the maximum amount payable, the complexity, or the character of this contract, an amendment must be prepared and executed within the contract period. The County retains the right to reject any such amendment proposed by the Surveyor unless the County finds the proposed amendment necessary to complete the work authorized herein. Any such amendments be made in writing agreed to by all parties hereto and duly executed before the end of the contract period as specified.

If the County finds it necessary to require changes in completed work because of errors made by the Surveyor, the County shall require the Surveyor to correct the work at no cost to the County and without amendment to the Work Authorization or the Contract. If the changes are made at the request of the County and are not due to errors of the Surveyor, the County will reimburse the Surveyor for the additional work at the same rate of pay established in Exhibit "B", "Basis for Payment." If payment for the additional work will cause the maximum amount payable to be exceeded, an amendment shall be executed in accordance with the terms of this provision.

8. Reporting. The Surveyor shall promptly advise the County in writing of events which have a significant impact upon the contract, including:

1. Problems, delays, or adverse conditions which will materially affect the ability to meet time schedules and goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any County or, if Federal funds are involved, Federal assistance needed to resolve the situation.
2. Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected.

9. Ownership of Documents. Upon completion or termination of this contract, all documents prepared by the Surveyor or furnished to the Surveyor by the County shall be delivered to and become the property of the County. All sketches, photographs, calculations, and other data prepared under this contract shall be made available, upon request, to the County without restriction or limitation on their further use. The Surveyor may, at its own expense, have copies made of the documents or any other data furnished the County under this contract.

10. Independent Contractor. Surveyor must comply with all applicable Hidalgo County policies and with any applicable federal, state or local laws, regulations, orders or ordinances applicable to the services provided by Surveyor under this Contract. Notwithstanding the foregoing sentence, Surveyor represents and maintains that it is an independent contractor and is not an employee of Hidalgo County, Texas, or any agency thereof, and represents and warrants that it does not desire or request any fringe benefits provided to employees of Hidalgo County, Texas, and/or any agency thereof, including, but not limited to benefits associated with Hidalgo County's civil service program. Surveyor agrees to be responsible for any federal income tax, withholding or social security tax liability that might arise from payments received hereunder.

11. Voluntary Termination. Surveyor and County agree that either party may terminate this Contract at any time for any reason or no reason at all upon the giving of thirty (30) days prior written notice to the other party.

12. Insurance. Surveyor agrees to provide liability insurance covering its activities in providing the services for County in an amount not less than the minimum amounts prescribed by the Texas Tort Claims Act, '100.001, et seq., Texas Civil Practices and Remedies Code, and shall furnish department a certificate of insurance, Exhibit AC@, issued by the insurer that such insurance is in full force and effect.

13. No Assignment. Except as otherwise herein provided. Surveyor may not assign the obligations or rights under this contract to any person without the prior written consent of the County.

14. Conflict. Nothing in this Contract shall be construed so as to require the commission of any act contrary to law, and whenever there is any conflict between any provision of this Contract and any present or future law, ordinance or administrative, executive or judicial regulation, order or decree, or amendment thereof, contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event the affected provision or provisions of this Contract shall be modified only to the extent necessary to bring them within the legal requirements and only during the time such conflict exists.

15. Termination by County. If Surveyor fails to deliver quality service, fails to achieve the defined goals, outcomes, strategies and outputs set by County, or if Surveyor fails to comply with any conditions in this Contract, then County shall have the right to terminate this Contract upon the giving of ten (10) days prior written notice to Surveyor.

16. No Waiver. No waiver by County of any breach of any provision of this Contract shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision hereof.

17. Entire Agreement. This Contract contains the entire agreement between the parties hereto, and each party acknowledges that neither has made (either directly or through any agent or representative) any representations or agreements in connection with this Contract not specifically set forth herein. This Contract may be modified or amended only by agreement in writing executed by County and Surveyor, and not otherwise.

18. Venue. This Contract shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Hidalgo County, Texas. The parties hereby consent to personal jurisdiction in Hidalgo County, Texas.

19. Hold Harmless. In the event Surveyor should cause, either directly or indirectly, damage, loss, destruction, liability, or claims against the other party as a result of intentional conduct, negligence or otherwise, Surveyor shall hold harmless and indemnify County from any and all obligations, liabilities, causes of action, lawsuits, damages, and assessments, including legal fees, etc., that result from the Surveyor's intentional actions or negligence. This indemnification clause shall survive this Contract and be enforceable as a separate agreement in the event its survival and enforcement becomes necessary.

20. Attorney's Fees. In the unlikely event that a dispute occurs which is litigated or arbitrated, or a cause of action in law or equity is filed concerning the operation, construction, interpretation, or enforcement of this Contract, the losing party shall bear the cost of the attorney's fees incurred by the prevailing party and any and all costs applicable thereto, including, but not limited to, court costs, deposition fees, expert witness fees, out-of-pocket expenses and travel expenses which are incurred by the prevailing party.

21. Notices. Except as may be otherwise specifically provided in this Contract, all notices, demands, requests or communications required or permitted hereunder shall be in writing and shall either be (i) personally delivered against a written receipt, or (ii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth below, or at such other addresses as may have been theretofore specified by written notice delivered in accordance herewith:

If to County: County of Hidalgo
Attention: County Judge
100 E. Cano, 2nd Floor
Edinburg, Texas 78539

If to Surveyor: Leo L. Rodriguez, Jr. dba
Rodriguez Engineering
5602 E. Iowa

Each notice, demand, request or communication which shall be delivered or mailed in the manner described above shall be deemed sufficiently given for all purposes at such time as it is personally delivered to the addressee or, if mailed, at such time as it is deposited in the United States mail.

22. Execution of Documents. The parties hereto covenant and agree that they will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this Contract including the **Work Authorization Form** attached hereto as **Exhibit "D"**.

23. Binding Contract. This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this contract.

24. Gender. All pronouns used in this Contract shall include the other gender, whether used in the masculine, feminine or neuter gender, and the singular shall include the plural whenever and as often as may be appropriate

25. Authority. The execution and performance of this Contract by County and Surveyor have been duly authorized by all necessary laws, resolutions or corporate action, and this Contract constitutes the valid and enforceable obligations of County and Surveyor in accordance with its terms.

EXECUTED as of the day and year first written above.

APPROVED BY COMMISSIONER’S COURT ON: _____

APPROVED AS TO FORM:
Atlas & Hall, LLP

COUNTY OF HIDALGO, TEXAS

By: _____
Stephen L. Crain

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

SURVEYOR:
Leo L. Rodriguez, Jr. dba
Rodriguez Engineering

By: _____

Printed Name: _____

Title: _____

ATTEST:

Arturo Guajardo, Jr., County Clerk

EXHIBIT "A"

-Services to be
Provided by Surveyor

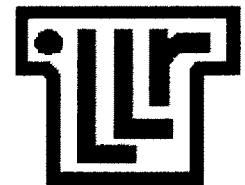
SCOPE OF SERVICES

Preliminary Phase

- Meet with Precinct 1 and visit site with
- Check flood map information

Survey

- Locate adjacent property corners and any property corners
- Tie property corners
- Input field information into computer and complete survey



WORK SCHEDULE

- Work schedule will start upon completion of contract and upon the Precinct permission to start
- Work will start at 8:00 a.m. and work until 5:00 p.m. Monday thru Friday



EXHIBIT “B”

-Fee Schedule

FEE SCHEDULE

- Survey fee for the new Air burner site consisting of surveying three different Parcels

Parcel No. 1: Manuel Chavey Property 2.5 acres	\$1,500.00
Parcel No. 2: Greg Salinas Property 2.5 acres	\$1,500.00
Parcel No. 3: Manuel Melendez Property 5.0 acres	<u>\$2,500.00</u>
Total:	\$5,500.00

- Preliminary Phase 25% \$1,375.00
- Completion of survey 75% \$4,125.00
- 100% \$5,500.00

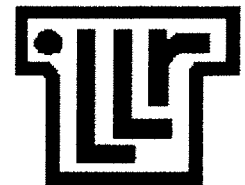


EXHIBIT “C”

-Insurance Requirements



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY)
08/03/09

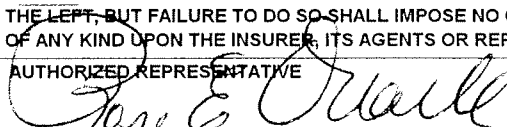
PRODUCER South Side Insurance P.O. Box 1526 McAllen, TX 78505 Phone (956)664-2246 Fax (956)664-2279	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
	INSURERS AFFORDING COVERAGE INSURER A: HARTFORD LLOYDS INS CO INSURER B: LANDMARK AMERICAN INS CO INSURER C: INSURER D: INSURER E: INSURER F:	NAIC #
INSURED LEO L. RODRIGUEZ, JR DBA RODRIGUEZ ENGINEERING 5602 E. IOWA EDINBURG, TX 78540		

COVERAGES

THE POLICIES OF INSURANCE LISTED 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 LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A		GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> <input type="checkbox"/> GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC	61SBMRR4037DX-1	06/26/09	06/26/10	EACH OCCURRENCE	1000000
		DAMAGE TO RENTED PREMISES (Ea occurrence)				100000	
		MED EXP (Any one person)				5000	
		PERSONAL & ADV INJURY				1000000	
		GENERAL AGGREGATE				2000000	
		PRODUCTS - COMP/OP AGG				1000000	
		AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON OWNED AUTOS <input type="checkbox"/> <input type="checkbox"/>				COMBINED SINGLE LIMIT (Ea accident)	
		BODILY INJURY (Per person)					
		BODILY INJURY (Per accident)					
		PROPERTY DAMAGE (Per accident)					
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/>				AUTO ONLY - EA ACCIDENT	
		OTHER THAN AUTO ONLY: EA ACC AGG					
		EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				EACH OCCURRENCE	
		AGGREGATE					
A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER / MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	61WECNV8909-1	06/26/09	06/26/10	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER	1000000
		E.L. EACH ACCIDENT					
		E.L. DISEASE - EA EMPLOYEE					
		E.L. DISEASE - POLICY LIMIT					
B		OTHER PROFESSIONAL LIABILITY	LHR719319	08/03/09	08/03/10	E & O	1000000

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

CERTIFICATE HOLDER COUNTY OF HIDALGO 2802 S BUS HWY 281 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 
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IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

EXHIBIT “D”

-Work Authorization Form

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 project.

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 the Hidalgo County Right of Way Department as to content and detail of this Work Authorization No. __.

HIDALGO COUNTY PRECINCT NO. _____

BY: _____

Hidalgo County Commissioner

PART 8. ACCEPTANCE AND APPROVAL

This Work Authorization is hereby accepted, approved by Hidalgo County Commissioners' Court on _____ as indicated below and effective as of _____ day of _____, 2009.

THE SURVEYOR:
(NAME OF FIRM)

THE OWNER:
HIDALGO COUNTY

Juan D. Salinas, III, County Judge

ATTEST:

Arturo Guajardo, Jr., County Clerk

LIST OF ATTACHMENTS

- ATTACHMENT "A" - Service to be Provided by the Surveyor
- ATTACHMENT "B" - Payment/ Fee Schedule
- ATTACHMENT "C" - Insurance Requirements provided by Surveyor
- ATTACHMENT "D" - Work Authorization Form