

THE STATE OF TEXAS §

COUNTY OF HIDALGO §

**SERVICE CONTRACT
C-09-231-09-22**

THIS CONTRACT is made and entered into this 22nd day of **September, 2009** by and between the **COUNTY OF HIDALGO, TEXAS** ("County"), and **HEB Wireless, Inc.** a Texas Corporation. ("Company").

WHEREAS, Company responded to advertised notices for bids for **"Flat Rate Wireless Service to Include Equipment for Hidalgo County"** (the "Services"); and

WHEREAS, Company submitted a bid to provide services in accordance with the specifications as bid, a copy of such specifications and bid being attached hereto as Exhibits "A" (the Specifications) and "B" (Vendor bid Page) respectively, and incorporated herein for all purposes (the "RFB Packet"); and

WHEREAS, in recognition of and in consideration of Company's agreement to perform the Services in accordance with Specifications, the Commissioners Court of County awarded the bid to Company.

NOW, THEREFORE, in mutual consideration of the foregoing and the further consideration of the following, the parties hereto agree as follows:

1. County and Company hereby agrees that this Contract is entered into in order to provide the Services to County. This Contract does not extend to any third parties any duties or benefits conferred in any manner hereunder or otherwise.

2. Company hereby promises and agrees to render and provide, during the term of this Contract, and shall be obligated to render and provide the Services in accordance with the Specifications within Hidalgo County following a request for Services by the

Department Head, or its designated agent. Company agrees in performing the Services that it will use proper professional standards, comply with any and all appropriate laws and regulations in providing the Services, and devote such time as is necessary to safely and efficiently provide the Services.

3. This Contract shall be for a period beginning **September 22, 2009** and ending on **September 21, 2010** and may be extended at the sole discretion of County for an additional five (5) one (1) year periods, unless this Contract is terminated pursuant to the provisions herein, whichever occurs first. County also reserves the right to continue this bid for an additional sixty (60) day Grace Period, under the same rates terms and conditions.

4. As a condition of this Contract, Company shall hold and maintain throughout the term of this Contract all licenses and permits required, or which may be required by any authority during the term hereof to provide the Services.

5. All trucks or vehicles operated by the Company to perform the Services shall contain all equipment required by any authority to operate on streets and roads and all persons in the employ of Company who operate such trucks or vehicles shall have the required licenses, qualifications, skill and expertise to perform such Services and shall comply with all laws, rules and regulations prescribed by any agency or authority having jurisdiction with regard to the operation of such trucks or vehicles in providing the Services.

6. As consideration for rendering the Service provided for in this Contract, the County agrees to pay Company the amounts specified in Exhibit "B" (Bid Page Form) attached hereto payable against written invoice submitted by Company.

7. Company shall provide insurance in force on all its vehicles and all persons connected with providing services under this Contract naming County as an additional insured (with the coverages and in the amounts described on Exhibit "C" attached hereto and incorporated herein at this point for all purposes), and shall furnish to County certificates of such insurance coverage.

8. Company shall provide a sufficient number of trucks, vehicles, personnel and equipment available to safely and efficiently provide the Services.

9. Company shall indemnify and hold harmless County, its elected officials, employees and agents from any and all claims, damages, losses, and expenses including attorney's fees for the defense of any action against County arising out of, resulting from, or connected with the provision of the Service by Company under this Contract. Said indemnity shall cover any act or failure to act by the Company, its agents or employees.

10. This Contract shall not be assignable in whole or in part by either party without prior written consent of the other party.

11. It is expressly agreed that this Contract and the performance by the parties hereunder does not create any agency relationship or master-servant relationship that County has no supervision of the performance of the Services provided by Company, and that Company is an independent contractor under this Contract.

12. Any notice required or permitted to be given hereunder shall be in writing and shall be delivered personally or sent by certified mail, postage prepaid, as set forth below:

If to County:

**The County of Hidalgo
Attn: County Judge
100 E. Cano
Edinburg, Texas 78539**

If to Company

**HEB Wireless Inc.
Attn.: William Hileman
646 S. Main
San Antonio, Texas 78216**

13. In case 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.

14. In the event that, during any term hereof, the Commissioners Court does not appropriate sufficient funds to meet the obligations of Buyer under this Agreement, Buyer may terminate this Agreement upon ninety (90) days written notice to Seller. Buyer 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 Buyer pursuant to the provisions of Tex. Loc. Govt. Code Ann. 271.903 (Vernon Supp. 1996).

15. This Agreement may be terminated by either party without cause upon thirty (30) days written notice.

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

17. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and shall be performable in Hidalgo County.

WITNESS our hands in duplicate originals this _____ day of _____, 2009.

COUNTY OF HIDALGO

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

ATTEST:

Arturo Guajardo Jr., County Clerk

COMPANY:

By: _____
Printed Name: _____
Title: _____

APPROVED AS TO FORM:

By: _____
Atlas & Hall L.L.P.

EXHIBIT "A"

SPECIFICATIONS

Bid
for
Flat Rate Wireless Service to Include Equipment
Bid No: 2009-231-08-05CGV
August 5, 2009

To: Martha L. Salazar, CPPB, Purchasing Agent
Hidalgo County Purchasing Department
2802 So. Business Hwy 281- New Administration Building
Edinburg, Texas 78539

In accordance with the Specifications, and subject to all laws and regulations of the United States and state and local laws, the undersigned bidder proposes and commits to furnish all labor, equipment, material, software and services as set forth in the documents hereinbefore mentioned. The undersigned bidder further agrees, upon acceptance of its bid, to execute a contract and/or Purchase Order issued by Hidalgo County for performing and completing the work described in the Specifications within the time stated and for the prices proposed in the documents attached hereto and made a part hereof.

Bidder acknowledges receipt of all of the pages of the documents referenced in the Invitation to Bid Checklist presented in connection with this procurement. Bidder understands that Hidalgo County reserves the right to reject any or all bids and further reserves the right to design the evaluation criteria to be used in selecting the lowest and best bid.

Bidder agrees that this bid shall be good and may not be withdrawn for a period of ninety (90) calendar days after the scheduled closing time for receiving bids, as contained in the Specifications.

Respectfully submitted,

Bidder: HEB Wireless Inc.
Address: 1046 S. Main Ave
By: [Signature]
Printed Name: William Hileman
Title: VP Service Co.

EXHIBIT "A"

HIDALGO COUNTY

REQUEST FOR BIDS

"FLAT RATE WIRELESS SERVICES TO INCLUDE EQUIPMENT"

RFB NO: 2009-231-08-05CGV

OBJECTIVE:

Hidalgo County is requesting sealed bids for flat rate pre-paid cellular service to cover Hidalgo County and surrounding areas. Hidalgo County does not make any commitment to the quantity of phones and minute usage inasmuch as the cellular phone program and policies may reduce or increase the number of eligible cell phone users the County requests to maintain currently operated.

The following outlines the Request for Bids:

SECTION I: SCOPE OF SERVICES

Requirements and Services:

1. Vendor will be required to reprogram all cellular phones currently operating on the County's existing system(Sprint/Nextel) to their system;
2. Hidalgo County requires a plan with one (1) flat fee which will include, but not limited to, the following:
 - no activation fees,
 - no termination fee,
 - no contracts,
 - *no roaming charges
 - no added surcharges or fee(s) that the federal government does not allow;
 - Unlimited voice calls
 - *Unlimited text messaging
 - Unlimited US Long distance
 - Free voice mail;
 - Free caller ID;
 - Free call waiting;
 - Free call forwarding;
3. Hidalgo County requires a thirty (30) business days (trial demonstration) to insure availability of reception of all incoming and outgoing calls throughout Rio Grande Valley Area before awarding bid;
4. Thirty (30) day term billing:
 - Month to month billing;
- Hidalgo County requires flat rate monthly charges in electronic format (.csv or .txt),

including detailed billing for each phone number ;

5. Assigned Service Manager;
 - a. Must have a location in Rio Grande Valley area.
6. Ability to use existing Sprint/Nextel equipment (Motorola ic502);
7. Vendor must provide a list with cost of new equipment, equipment protection plans and/or accessories available for purchase;
8. Complete Rio Grande Valley Coverage;
 - Must provide a local rate (toll free) coverage map outlining the local areas within Texas;
 - All Hidalgo County must be included in the local call zone.
9. Vendor must describe in detail, procedures used to address emergency calls and any other procedures used to alleviate special problems which may arise with the services or hardware.

SECTION II: TERMS

Terms and Conditions:

- After bid is awarded and low bidder(s) default(s) in meeting the general instructions to bidders and/or comply with the contractual agreement, Hidalgo County reserves the right to seek services from the next lowest bidder(s). In such event, County shall charge the successful bidder(s) the difference for any additional cost of such item(s).
- Hidalgo County may seek purchases from state awarded vendors or any other cooperative purchasing programs, whenever it is in the best interest to do so.
- All costs and expenses associated with the preparation and submission of (bids, proposals and/or quotes) shall be the responsibility of the bidder and no reimbursements for such charges or expenses shall be passed onto Hidalgo County.
- Hidalgo County reserves the right to reject any or all bids, to waive any or all formalities, or to accept the bid considered the best and most advantageous to the County, including compliance to the bid specifications
- The contract shall remain in effect until contract expires, deliver/completion of services ordered or terminated by either party with a (30) thirty day written notice prior to any cancellation. The successful bidder(s) must state therein the reasons for such cancellation. Hidalgo County reserves the right to award canceled contract to next lowest bidder as it deems to be in the best interest of the County.

- Hidalgo County Commissioner's Court and issuance of a Contract, awarded vendor shall be obligated to deliver the products at the stated prices, within the time specified, and in accordance with all Terms and Conditions, and General Provisions contained herein as specified in properly executed Purchase Orders.

Contract Term:

- The initial contract term will be for one (1) year. The effective date of the contract is upon execution of the contract document.

Option to extend:

- The County reserves the right to extend for five (5) additional one (1) year terms under the same rates, terms and conditions.
- Hidalgo County reserves the right to continue this bid for an additional (60) sixty day Grace Period at the end of the contract term due to unforeseen delay of award for the next contract term. County shall have the right to exercise all or portion of the Options to Extend in any combination it deems necessary.

ADDITIONAL INFORMATION:

All bids must be placed in a sealed envelope and clearly marked on the outside of the envelope or package: **RFB-2009-231-08-05CGV, "Flat Rate Wireless Service to Include Equipment- Hidalgo County"**. One (1) original and three (3) copies shall be sealed and submitted to: Martha L. Salazar, CPPB, Purchasing Agent, 2812 South Business Highway 281, Edinburg Texas 78539. **Telephone calls will not be accepted!**

All questions concerning specifications and/or terms and conditions to this bid should be submitted in writing via facsimile to 956-318-2629 or via email to cris.villarreal@co.hidalgo.tx.us no later than, **Wednesday, July 29, 2009, 5:00 PM.** Responses to said questions will be sent to all applicants via facsimile or via email by no later than **5:00 PM, Friday, July 31, 2009.**

ADDITIONAL INFORMATION

H-E-B Mobile services are offered through Pocket Communications. Pocket Communications is a 100% Texas based company with headquarters in San Antonio. We are pleased to be considered for the provision of the Hidalgo County flat rate wireless service.

In addition to being the low cost leader, Pocket is dedicated to providing a quality product to its customers. Despite our phenomenal growth rate, we have maintained a superior level of network quality and customer service. We expand our network size and capacity in advance of demand and in order to maintain service quality rather than after the fact when service quality has already begun to suffer. Pocket network performance matches or exceeds that of every national service provider (consistently less than 1% dropped calls) and we invite a comparison test to prove that these are not just empty claims. We provide a broad local coverage area that is competitive with any other provider's and we continue to expand our footprint. Because a large percentage of our customers replace their home phone with our wireless service, our system is designed from the start to provide quality indoor coverage.

Our proposal includes fixed, flat rate pricing for unlimited service. Flat rate pricing simplifies administration of the County's account, eliminating the need to reconcile detailed call records, minutes of use summaries, or rollover plans. The cost of each line is exactly the same every month. There are no overages. Countless hours spent monitoring and managing the County account are saved. Any possibilities of overages or overpayment are eliminated. The benefits here are obvious and substantial.

Our basic philosophy is simple:

- Provide a competitive coverage area.
- Don't drop calls.
- Answer the phone quickly and courteously.
- Be the lowest cost provider.
- Work harder than the competition.

The difference between us and the others is that we deliver on this plan. As the fastest startup in wireless history, our success speaks for itself.

EXHIBIT "B"
BID PAGE FORM

HIDALGO COUNTY

REQUEST FOR BIDS
"FLAT RATE WIRELESS SERVICES TO INCLUDE EQUIPMENT"
RFB NO: 2009-231-07-01CGV

Bid Page Form

Monthly Plan, including (no activation fees, no termination fees, unlimited calls, text messaging, U.S. Long Distance, voice mail, caller ID, call waiting, call forwarding):

Bid Price: \$ 25 per month

Total Number of Minutes per plan: Unlimited

Bid Price/ New Telephone: \$ 35 each

Bid Price/Accessories:

Please specify type of accessory.

\$ 10.00 each
\$ 10.00 each
\$ _____ each
\$ _____ each
\$ _____ each

Case
Car Charger

OPENED

9:46 am

8-5-09

Witnessed

[Signature]

Bid Price: (Reprogram (flash) of existing phones)

\$ 20 trade-in each

Bid Price/Porting:

\$ _____ each

Bid Price:

Equipment Insurance Coverage

\$ 5 each/per month

Name of Company or Provider: HEB Wireless Inc.

Address: 646 S. Main

City, State, Zip Code: San Antonio, TX 78216

Signature of Authorized Representative: [Signature]

Print Name: William Hileman Date: _____

Phone Number: 210-938-8082 Fax Number: _____

Email address: hileman.will@heb.com

EXHIBIT "C"

CERTIFICATE OF INSURANCE

PRODUCER

MCGRIFF, SEIBELS & WILLIAMS OF TEXAS, INC.
811 Town and Country Lane, Suite 500
Houston, TX 77024
713-877-8975

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.

COMPANIES AFFORDING COVERAGE

Company A Discover Property & Casualty Ins. Co.

INSURED

HEB Wireless Service, Inc.
P.O. Box 5997
San Antonio, TX 78201

Company B Natl Union Fire Ins Co of Pittsburgh PA

Company C

Company D

Company E

This is to certify that the policies of insurance described herein have been issued to the Insured named herein for the policy period indicated. Notwithstanding any requirement, term or condition of 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, conditions and exclusions of such policies. Limits shown may have been reduced by paid claims.

CO LT	TYPE OF INSURANCE	POLICY NUMBER	EFFECTIVE EXPIRATION	LIMITS OF LIABILITY	
	GENERAL LIABILITY <input type="checkbox"/> Commercial General Liability <input type="checkbox"/> Claims Made <input type="checkbox"/> Occurrence <input type="checkbox"/> Owners' and Contractors' Protection <input type="checkbox"/> <input type="checkbox"/> General Aggregate Limit applies per: <input type="checkbox"/> Policy <input type="checkbox"/> Project <input type="checkbox"/> Location			EACH OCCURRENCE	\$
				FIRE DAMAGE	\$
				MEDICAL EXPENSE	\$
				PERS. AND ADVERTISING INJURY	\$
				GENERAL AGGREGATE	\$
				PRODUCTS AND COMP. OPER. AGG.	\$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> Any Automobile <input type="checkbox"/> All Owned Automobiles <input type="checkbox"/> Scheduled Automobiles <input checked="" type="checkbox"/> Hired Automobiles <input checked="" type="checkbox"/> Non-owned Automobiles <input checked="" type="checkbox"/> SIR \$2,000,000 Per Occurrence	D007A00123	10/31/2008 10/31/2010	COMBINED SINGLE LIMIT	\$ 5,000,000
				BODILY INJURY (Per person)	\$
				BODILY INJURY (Per accident)	\$
				PROPERTY DAMAGE (Per accident)	\$
				COMPREHENSIVE	
				COLLISION	
	WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY			WC Statutory Limit	Other
				EL EACH ACCIDENT	\$
				EL DISEASE (Each employee)	\$
				EL DISEASE (Policy Limit)	\$
B	EXCESS LIABILITY <input checked="" type="checkbox"/> Occurrence <input type="checkbox"/> Claims Made	BE2227031	10/31/2008 10/31/2009	EACH OCCURRENCE	\$ 1,000,000
				AGGREGATE	\$ 1,000,000
					\$
					\$
					\$
					\$
					\$

The Certificate Holder is included as an Additional Insured as required by written contract, subject to the policy terms, conditions and exclusions. Umbrella Liability is excess of \$2,000,000 Self-Insured Retention as respects General Liability.

CERTIFICATE HOLDER

Hidalgo County
Attn: Purchasing Department
2802 S. Business Hwy 281
Edingburg, TX 78539

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