

THE STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES
C-09-447-12-15

THIS AGREEMENT is made, by and between HIDALGO COUNTY, acting herein by and through the Commissioner’s Court, hereinafter called the "Owner", and Leo Rodriguez Jr., dba Rodriguez Engineering, Professional Engineers of Edinburg, Texas, hereinafter called the "Engineer".

WITNESSETH:

WHEREAS, the Owner desires to contract with the Engineer to provide Engineering Services for the “Paving And Drainage Improvements–Victoria Road (Expressway 83–Business 83)” for Hidalgo County Precinct No. 1.

NOW, THEREFORE, the Owner and the Engineer in consideration of the mutual covenants and agreements herein contained do mutually agree as follows:

ARTICLE 1

Employment of Engineer

The Owner agrees to employ the Engineer and the Engineer agrees to perform on-site civil engineering plans as stated in the articles to follow, and for having rendered such services, the Owner agrees to pay the Engineer compensation as stated in the articles to follow.

ARTICLE 2

Character and Extent of Services

This Agreement will provide for the project with the following:

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 \$65,490.00 subject to adjustment in accordance with Article 6.1 herein, will be provided in EXHIBIT D1- *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 "D1", 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 "D1", 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: Leo Rodriguez Jr. dba Rodriguez Engineering
5602 East Iowa-P.O. Box 1830
Edinburg, Texas 78540

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 _____, 2009.

ENGINEER:
LEO RODRIGUEZ JR., DBA RODRIGUEZ ENGINEERING

BY: _____
Leo Rodriguez Jr.

OWNER:
HIDALGO COUNTY

BY: _____
Rene A. Ramirez, County Judge

ATTEST:

Arturo Guajardo, Jr., County Clerk

Approved by Commissioners' Court: _____, 2009

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 D1 -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 following provides an outline of the services to be provided by the **Engineer** in the development of the **Project**.

The ENGINEER will evaluate and design the Paving Improvement as follows:

- Review existing conditions to develop the design criteria;
- Conduct field surveys to obtain information on existing conditions and topography on the proposed roadways;
- Identify alignments and right of ways of proposed roadways;
- Develop typical cross sections for proposed roadways;
- Prepare plans and specifications for the improvements;
- Assist in bidding of the improvements; if needed,
- Provide construction staking and periodic inspection services during the construction phase of the improvements.

SCOPE OF SERVICES
HIDALGO COUNTY PRECINCT #1 PAVING AND DRAINAGE IMPROVEMENTS
VICTORIA ROAD (EXPRESSWAY 83 – BUSINESS 83)
PREPARED BY: RODRIGUEZ ENGINEERING

Hidalgo County Precinct #1 proposes to construct paving improvements for Victoria Road. The proposed improvements will consist of the acquisition of additional right-of-way and the reconstruction of the existing 20 foot asphalt paved road. The proposed road cross-section measures 38 feet edge-to-edge with a 6 inch thick subgrade, 8 inch thick flex-base, and 2 inch thick asphalt with road side ditches for drainage. The existing right-of-way is currently 40 feet in width and the county has proposed to obtain an additional 20 feet on the east side of Victoria Road for a total of 60 foot right-of-way, to construct the new 38 foot road. Right-of-way will not be acquired on the west side of Victoria Road.

Right-of-Way Acquisition Amount (\$2,800.00 per Parcel X 9 Parcels): \$25,200.00
Surveying and Engineering Design Amount: \$40,290.80
Total Combined Contract Amount: \$65,490.80

Project Tasks

TASK I – PROJECT ORIENTATION AND STARTUP

We propose that an initial project orientation meeting be scheduled so that both the Precinct and our firm may have a clear understanding of the acquisition, design, construction process, parameters to be used and the final product desired.

TASK II – SURVEY

Necessary field information will be developed by field surveys. Record plans will be used as a guide for the survey work and for the analysis of design alternatives.

TASK III – DESIGN ALTERNATIVES

Various design alternatives will be developed using information secured from ongoing field surveys. The record plans of the Precinct will be used as a guide for design evaluations. Each alternative will be evaluated with regard to the Project's goals being met. Cost estimates will be developed for the various alternatives.

TASK IV – DESIGN

This task will assure that the streets designed and incorporated in the plans are adequate for the area.

TASK V – PRELIMINARY PLANS AND ESTIMATES

The preliminary set of plans which will result from Task IV along with cost estimates will be reviewed with Precinct staff for input and guidance.

TASK VI – FINAL PLANS AND SPECIFICATIONS

Final plans, specifications and estimates will be prepared during this task. The output of this task will be the documents necessary for bidding and constructing the project.

TASK VIII – BIDDING AND AWARD

VII a. Bidding Process

A pre-bid meeting will be schedule if necessary in order to brief potential bidders and suppliers on the project. Necessary clarifications or addendum will be issued. We will attend the bid opening and assist as the Precinct desires.

VII b. Bid Recommendations

After receipt of bids by the Precinct, we will tabulate the bids and make recommendations in consultation with Precinct staff.

VII c. Award

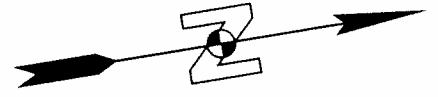
We will prepare necessary contract documents for execution after award by the Precinct.

TASK VIII – CONSTRUCTION

During this stage we will observe ongoing work, provide construction staking of the contractor and certify periodic payment requests. Upon completion, a final inspection will be scheduled with the contractor and Precinct staff. The outcome of this final inspection will be a certificate of completion or a punch list of items for the contractor to complete.

TASK IX – AS BUILTS

We will provide the Precinct will reproducible “as-builts” of the project along with a diskette on AutoCAD.



SCALE: 1" = 250'



EXHIBIT C

-Work Schedule

EXHIBIT “C”

Work Schedule

For this Agreement, the **Engineer** shall perform the work identified in EXHIBIT “B” in accordance with the following schedule:

- Conduct field surveys to obtain information on existing roadways.
- Prepare plans and specifications
- Provide construction staking and periodic inspections during construction phase of improvements.

The **Engineer** will diligently pursue the completion of this work authorization as defined by the milestones and deliverable due dates outlined in the approved 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

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EXHIBIT "D"
ENGINEER'S CONTRACT RATES

HOURLY RATES:

Principal	\$120.00/Hr.
Project Manager	\$78.00/Hr.
Project Engineer	\$70.00/Hr.
R.P.L.S.	\$70.00/Hr.
G.P.S. Survey Crew	\$95.00/Hr.
3 Man Survey Crew	\$80.00/Hr.
2 Man Survey Crew	\$70.00/Hr.
Party Chief	\$40.00/Hr.
CADD/Designer	\$48.00/Hr.
Clerical	\$15.00/Hr

EXHIBIT D1

-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:

Right-of-Way Acquisition Fee	=	\$25,200.00
Field Data Collection	=	25% of the Services Fee
ROW Map and Metes & Bounds	=	75% of the Services Fee
Final Submittal for Recording	=	25% of the Services Fee
Surveying and Engineering Design Fee	=	\$40,290.80
Field Surveying	=	25% of the Services Fee
Final Design	=	75% of the Services Fee
Construction Staking	=	25% of the Services Fee

**ROADWAY EXPANSION
PRELIMINARY PROJECT COST ESTIMATE**

11-Nov-09

Project Name: VICTORIA ROAD, DONNA, TX

VICTORIA ROAD

CIVIL IMPROVEMENTS					
ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	ITEM TOTAL
1	6" ROAD GRADER WORK (DENS CONT.) SUBGRADE	14,500	SY	\$4.00	\$58,000.00
2	6" FL BS (DC) (TY D GR6 CL III)	13,800	SY	\$6.00	\$82,800.00
3	PRIME COAT ASPH MATRL (MC-30)	2,760	GAL.	\$5.00	\$13,800.00
4	DENSE-GRADED HOT-MIX ASPH CONC TY D	13,100	SY	\$8.00	\$104,800.00
5	ROADSIDE DITCHES	5,600	LF	\$2.00	\$11,200.00
6	TURNOUTS	5	EA	\$1,500.00	\$7,500.00
7	DRIVEWAYS TO HOUSES & BUS BARN	725	SY	\$20.00	\$14,500.00
8	DEMOLISION	1	LS	\$15,000.00	\$15,000.00
9	15" RCP, CL III	540	LF	\$18.00	\$9,720.00
10	18" RCP, CL III w/ S.E.T.	320	LF	\$28.00	\$8,960.00
11	RELOCATION OF EXIST IRRIGATION LINES	1	LS	\$25,000.00	\$25,000.00
12	STRIPING INCLUDING PVMT MARKERS	1	LS	\$15,000.00	\$15,000.00
CONSTRUCTION TOTAL					\$366,280.00

RAILROAD IMPROVEMENTS					
ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	ITEM TOTAL
13	RAILROAD IMPROVEMENTS	1	LS	\$125,000.00	\$125,000.00
CONSTRUCTION TOTAL					\$125,000.00

Total Estimated Construction Cost

Civil Improvements	\$	366,280.00
Railroad Improvements	\$	125,000.00
Contingency (10% of Total)	\$	49,128.00
SUB-TOTAL	\$	540,408.00

Professional Costs

Basic Engineering Services (10% of Total Estimated Civil Improvements Construction Cost)	\$	40,290.80
SUB-TOTAL	\$	40,290.80

PROJECT TOTAL \$ 580,698.80

Notes:

1. Railroad improvements is not included in engineering fees.
2. Hidalgo County Pricinct No. 1 will provide geotechnical services.

EXHIBIT E

-Certificate of Insurance (*Hidalgo County*)



CERTIFICATE OF INSURANCE

SUCH INSURANCE AS RESPECTS THE INTEREST OF THE CERTIFICATE HOLDER NAMED BELOW WILL NOT BE CANCELED OR OTHERWISE TERMINATED WITHOUT GIVING 10 DAYS PRIOR WRITTEN NOTICE TO THE CERTIFICATE HOLDER, BUT IN NO EVENT SHALL THIS CERTIFICATE BE VALID MORE THAN 30 DAYS FROM THE DATE WRITTEN. THIS CERTIFICATE OF INSURANCE DOES NOT CHANGE THE COVERAGE PROVIDED BY ANY POLICY DESCRIBED BELOW.

- This certifies that:
- STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY of Bloomington, Illinois
 - STATE FARM FIRE AND CASUALTY COMPANY of Bloomington, Illinois
 - STATE FARM COUNTY MUTUAL INSURANCE COMPANY OF TEXAS of Dallas, Texas
 - STATE FARM INDEMNITY COMPANY of Bloomington, Illinois, or
 - STATE FARM GUARANTY INSURANCE COMPANY of Bloomington, Illinois

has coverage in force for the following Named Insured as shown below:

NAMED INSURED: LEO L. RODRIGUEZ JR DBA RODRIGUEZ ENGINEERING							
ADDRESS OF NAMED INSURED: 5602 E IOWA RD EDINBURG TX 78542-2758							
POLICY NUMBER	119 4980-E06-53						
EFFECTIVE DATE OF POLICY	11/06/09-05/06/10						
DESCRIPTION OF VEHICLE (Including VIN)	2001 FORD F150 1FTZX17271NB99777						
LIABILITY COVERAGE	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO
LIMITS OF LIABILITY							
a. Bodily Injury	250,000						
Each Person							
Each Accident	500,000						
b. Property Damage	300,000						
Each Accident							
c. Bodily Injury & Property Damage Single Limit							
Each Accident							
PHYSICAL DAMAGE COVERAGES							
a. Comprehensive	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO
	\$ 500 Deductible	\$ Deductible	\$ Deductible	\$ Deductible	\$ Deductible	\$ Deductible	\$ Deductible
b. Collision	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO
	\$ 500 Deductible	\$ Deductible	\$ Deductible	\$ Deductible	\$ Deductible	\$ Deductible	\$ Deductible
EMPLOYERS NON-OWNED CAR LIABILITY COVERAGE	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO
HIRED CAR LIABILITY COVERAGE	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO
FLEET - COVERAGE FOR ALL OWNED AND LICENSED MOTOR VEHICLES	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO



 AGENT 53-6442 11/16/2009
 Title Agent's Code Number Date

Name and Address of Certificate Holder CERTIFICATE HOLDER: HIDALGO COUNTY 100 N. CLOSNER BLVD. EDINBURG, TEXAS 78539	Name and Address of Agent STATE FARM INSURANCE JAMES NEWMAN, AGENT 903 PECAN BLVD. MCALLEN, TEXAS 78501
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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.	
	INSURED LEO L. RODRIGUEZ, JR DBA RODRIGUEZ ENGINEERING 5602 E. IOWA EDINBURG, TX 78540	INSURERS AFFORDING COVERAGE INSURER A: HARTFORD LLOYDS INS CO INSURER B: LANDMARK AMERICAN INS CO INSURER C: INSURER D: INSURER E: INSURER F:

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	<input type="checkbox"/>	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	
		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"/>				COMBINED SINGLE LIMIT (Ea accident)	
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/>				BODILY INJURY (Per person)	
		EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				BODILY INJURY (Per accident)	
A	<input type="checkbox"/>	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER / MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	61WEENV8909-1	06/26/09	06/26/10	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER	1000000
		E.I. EACH ACCIDENT					
		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**CANCELLATION**
 COUNTY OF HIDALGO
 2802 S BUS HWY 281
 EDINBURG, 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