



2.03 CONSULTANT's Working Documents and Specifications for the Project shall meet applicable federal, state, and local standards, codes and specifications in effect at the time of award to Contractors, including the ACT and the Americans with Disabilities Act and the Texas Accessibility Standards. CONSULTANT shall be responsible for securing all governmental approvals pertinent to the completion of CONSULTANT's work product, except that CONSULTANT shall request no waiver of any code, standard or specification without the prior written consent of the Hidalgo County Commissioners Court (the "Court").

### **ARTICLE III** **PERIOD OF SERVICES**

3.01 Services will be completed in accordance with the RFQ and the ACT.

3.02 CONSULTANT shall not be liable or responsible for, and there shall be excluded from the computation of the aforesaid periods of time, any delays due to causes beyond CONSULTANT's reasonable control. Within 30 days from the occurrence of any event for which time for performance by CONSULTANT should be significantly extended under this provision, CONSULTANT may give written notice to COUNTY stating the reason for the extension and the actual or estimated time thereof.

### **ARTICLE IV** **COORDINATION WITH COUNTY**

4.01 CONSULTANT shall hold periodic conferences with the Executive Director of the Department (the "Director") to ensure that the completed Project will be consistent with Hidalgo County's policies and standards.

4.02 The Director shall act on behalf of COUNTY with respect to the work to be performed under this Agreement. The Director shall have complete authority to transmit instructions, receive information, interpret and define COUNTY's policies and decisions with respect to materials, equipment, elements and systems pertinent to CONSULTANT's services.

4.03 COUNTY agrees to make available to CONSULTANT all existing maps, plans, field notes, statistics, compilations, and other data in its possession relative to the existing facilities and to the Project, at no cost to CONSULTANT.

4.04 All information made available to CONSULTANT will remain the property of COUNTY, and must be returned to COUNTY.

### **ARTICLE V** **FEE SCHEDULE & PAYMENT**

5.01 COUNTY shall pay CONSULTANT an amount not to exceed **\$235,503.68** for services performed under this as detailed in *Appendix B*. CONSULTANT may begin incurring costs as of **May 17, 2011**.

5.02 CONSULTANT's invoices to COUNTY shall provide complete information and documentation to substantiate CONSULTANT's charges and shall be in form to be specified by the Hidalgo County Auditor. All payments to CONSULTANT shall be made on the basis of

the invoices submitted by CONSULTANT and approved by the Director, who shall either approve or reject the invoice submitted by CONSULTANT within ten (10) days of receipt. The invoices shall conform to the schedule of services and connected costs as set out above. All Reimbursable Expenses shall be clearly shown on a separate invoice. Should the Director request additional back-up material, CONSULTANT shall comply promptly with the request. Should the Court, the Hidalgo County Auditor, or the Director determine it necessary, CONSULTANT shall make all records and books relating to this Agreement available to COUNTY or its representative for inspection and auditing purposes.

5.03 COUNTY reserves the right to correct any error that may be discovered in any invoices that may have been paid to CONSULTANT and to adjust the same to meet the requirements of the Agreement. Following approval of invoices, COUNTY shall pay CONSULTANT within 30 days after receipt by COUNTY of conforming invoice.

## **ARTICLE VI** **CONSULTANT'S ACCOUNTING RECORDS**

6.01 CONSULTANT's records of accounts between COUNTY and CONSULTANT shall be kept on a generally recognized accounting basis and shall be available to COUNTY or its authorized representatives at mutually convenient times for a minimum of three (3) years after Final Certificate for Payment to Contractor for the complete Project.

## **ARTICLE VII** **OWNERSHIP OF DOCUMENTS**

7.01 All of CONSULTANT's drawings and work product under this Agreement, including but not limited to tracings, drawings, CAD files, estimates, specifications, investigations, studies and other documents, completed or partially completed, will be the property of COUNTY, to be used as COUNTY desires, without restriction; and CONSULTANT specifically waives, and releases any proprietary rights or ownership claims therein. CONSULTANT is not responsible for liability arising from changes to CONSULTANT's original documents when changes occur after CONSULTANT releases those documents to COUNTY or if COUNTY uses said documents on extensions of the project or on any other project. CONSULTANT may retain copies. CONSULTANT shall be liable to COUNTY for any loss or damage to any such documents while they are in the possession of or while being worked upon by CONSULTANT or any subcontractors. CONSULTANT shall replace or restore any such lost or damaged documents without cost to COUNTY.

## **ARTICLE VIII** **TERMINATION AND/OR SUSPENSION OF WORK**

8.01 COUNTY may, at its discretion, terminate this agreement or indefinitely suspend the work under the Agreement by giving seven days written notice.

8.02 Upon notice of suspension or termination by COUNTY, CONSULTANT shall unless notice so otherwise directs, immediately begin to phase out and discontinue all services in connection with the performance of this Agreement, and shall proceed to promptly cancel all existing orders and Agreements insofar as such orders or Agreements are chargeable to this Agreement.

8.03 Within 30 days from the date of the termination of this Agreement, CONSULTANT shall submit a statement, showing in detail the services performed under this Agreement prior to the effective date of termination or suspension.

8.04 Neither COUNTY nor CONSULTANT shall be deemed in violation of this Agreement if it is prevented from performing any of its obligations hereunder by reasons for which it is not responsible or circumstances beyond its control. However, notice of the impediment or delay in performance must be timely given and all reasonable efforts undertaken to mitigate its effects.

**ARTICLE IX**  
**CONSULTANT'S WARRANTY**

9.01 CONSULTANT warrants that he will employ or retain the necessary personnel with the appropriate knowledge and skills to perform the work and/or services required and described in this Agreement.

**ARTICLE X**  
**EQUAL EMPLOYMENT OPPORTUNITY/  
MINORITY BUSINESS ENTERPRISE**

10.01 CONSULTANT shall not engage in employment practices that have the effect of discriminating against any employee or applicant for employment and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation. If non-compliance occurs, CONSULTANT, upon written notification by COUNTY, will begin compliance procedures within 30 days.

**ARTICLE XI**  
**ASSIGNMENT OR TRANSFER OF INTEREST**

11.01 CONSULTANT may not assign its interest in the Agreement without written consent of COUNTY. Any attempt to assign without COUNTY's approval will be void.

**ARTICLE XII**  
**INSURANCE**

12.01 CONSULTANT shall maintain and provide proof of insurance, which will also include any subcontractor that is subcontracted by the CONSULTANT in at least the following limits, to be in place prior to providing any services under this Agreement and to continue at all times in force in effect during the term of this Agreement, naming the COUNTY as additional insured.

12.02 CONSULTANT shall carry Professional liability insurance policy with limits of at least One Million Dollars (\$1,000,000) per occurrence, or limited to claims made, include at least five (5) year extended reporting period.

12.03 CONSULTANT shall carry Comprehensive General Liability insurance policy with limits of at least Five Hundred Thousand Dollars (\$500,000.00) providing additional coverage to all underlying liabilities to COUNTY.

12.04 CONSULTANT shall carry Automobile Liability insurance policy with limits of at least Three Hundred Thousand Dollars (\$300,000.00) per person and Five Hundred Thousand Dollars (\$500,000.00) per occurrence. Coverage should include injury to or death of persons and property damage claims limits up to Five Hundred Thousand Dollars (\$500,000.00) arising out of the services provided to COUNTY hereunder.

12.05 CONSULTANT shall carry Uninsured/Underinsured motorist coverage in an amount equal to the bodily injury limits set forth immediately above;

12.06 CONSULTANT shall carry Workers Compensation insurance in amounts established by Texas Law, unless the CONSULTANT is specifically exempt from the Texas Workers Compensation Act, Texas Labor Code Chapter 401, et. Seq.

### **ARTICLE XIII** **RESPONSIBILITY FOR WORK AND INDEMNIFICATION**

13.01 Approval by COUNTY shall not constitute nor be deemed a release of the responsibility and liability of CONSULTANT, its employees, subcontractors, agents, and consultants for the accuracy and competency of their designs, working drawings and specifications, or other documents and work; nor shall such approval be deemed to be an assumption of such responsibility by COUNTY for any defect, error, or omission in the designs, working drawings, and specifications or other documents prepared by CONSULTANT, its employees, subcontractors, agents, and consultants.

13.02 CONSULTANT shall indemnify and hold harmless COUNTY from any and all damages, loss or liability of any kind whatsoever, including costs of litigation and attorney's fees, occasioned by any negligent act, error or omission of CONSULTANT, its officers, agents, employees, or other persons for whom CONSULTANT is legally liable, in rendering or failing to render services with regard to the performance of this Agreement.

### **ARTICLE XIV** **SEVERABILITY**

14.01 If anyone or more of the provisions contained in this Agreement is for any reason held to be invalid, illegal or unenforceable in any respect that provision shall not affect any other provision and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

### **ARTICLE XV** **ESTIMATES OF COST**

15.01 Project Cost or CONSULTANT Cost provided for herein are to be made on the basis of its experience and qualifications and represent its best judgment as a professional familiar with the project. The compensation stated in *Appendix B* attached hereto and incorporated herein

shall represent CONSULTANT's full compensation for performing the entire Scope of Work as stated in *Appendix A* to be performed on County property listed in *Appendix C* attached hereto as required by this CONSULTANT Agreement. CONSULTANT is not entitled to any payment until CONSULTANT furnishes an Insurance Certificate in complete conformity with the CONSULTANT Agreement.

15.02 Commitment of Current Revenues Only. In the event that, during any term, hereof, the Commissioner's Court does not appropriate sufficient funds to meet the obligations of COUNTY under this Agreement, COUNTY may terminate this Agreement upon sixty (60) days written notice to CONSULTANT. COUNTY 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 COUNTY pursuant to the provisions of Tex. Loc. Govt. Code Ann. § 271.903 (Vernon Supp. 1996).

**ARTICLE XVI**  
**INTEREST IN COUNTY CONTRACTS PROHIBITED**

16.01 No officer or employee of COUNTY shall have financial interest, direct or indirect, in any Agreement with COUNTY, or shall be financially interested, directly or indirectly, in the sale to COUNTY of any land, materials, supplies or service, except on behalf of COUNTY as an officer or employee.

**ARTICLE XVII**  
**COMPLIANCE WITH LAWS AND ORDINANCES**

17.01 CONSULTANT shall comply with all Federal, State and Local laws and ordinances applicable to COUNTY for the work or services under this Agreement, the Americans with Disabilities Act, 42 U.S.C. 12101, et seq., and the Texas Accessibility Standards.

17.02 CONSULTANT shall also comply with the ACT- and Other Program Requirements pursuant to Public Law 111-5 of the Act.

**ARTICLE XVIII**  
**ENFORCEMENT, VENUE, GOVERNING LAWS AND NOTICES**

18.01 This Agreement shall be enforceable in Hidalgo County, Texas, and if legal action is necessary by either Party with respect to the enforcement of any or all its terms or conditions, exclusive venue shall lie in Hidalgo County, Texas. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

18.02 CONSULTANT's proposal is incorporated into Exhibit "A" in order to provide COUNTY and CONSULTANT with a complete understanding of the Project, its requirements and the scope of CONSULTANT's services. If there is a conflict between this Agreement and the Proposal, this Agreement shall govern unless otherwise specifically agreed to between COUNTY and CONSULTANT in writing.



COMPANY/FIRM: Vazaldua & Associates

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved on Commissioners' Court: \_\_\_\_\_

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

By: \_\_\_\_\_  
Stephen L. Crain