

THE STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

PROFESSIONAL SERVICES CONTRACT
C-12-013-00-00

THIS AGREEMENT is made effective the _____ day of _____, 2012, by and between the County of Hidalgo, Texas ("County") and _____ ("Title Agent/Examiner").

W I T N E S S E T H:

WHEREAS, the County requires services for: **Title Report Services in connection to the Acquisition of Land and Disposition of County owned Property** located within **Hidalgo County** and;

WHEREAS, the County of Hidalgo solicited Request for Proposals (RFP) for the development and establishment of a yearly pool for "Title Report Services", and

WHEREAS, from which "Title Report Services firm(s)/vendor" has been selected from the "Pool" of pre-qualified Title Report Services from response to the Request for Qualifications (RFP), and

WHEREAS, County has determined that the services of "Title Reports" are sometimes necessary to carry out the required report activities; and

WHEREAS, the County has selected the Title Agent/Examiner to provide title report services within the County of Hidalgo, Texas through its procured approved pool of Title Report Services.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, County and Title Agent/Examiner do mutually agree as follows:

1. **Scope of Services.** Title Agent/Examiner agrees to provide to County the services shown in Exhibit "A" attached hereto and entitled "Services to be Provided by the Title Agent/Examiner". Title Agent/Examiner selected is to have adequate experience and a workload free from constraints to complete Title Reports within three (3) business days per parcel. **The Title**

Agent/Examiner will not begin work or incur costs until authorization of a Purchase Order (PO) in writing by the County for each work order.

Further, in the event that it is demonstrated by Title Agent/Examiner that Hidalgo County has caused or delayed thus preventing the Title Agent/Examiner from meeting the specified agreed upon deadline to provided the title report(s) ordered, Title Examiner/Agent must advise in written notice to the Purchasing Department or requesting department(s) to authorize and to secure additional time to comply.

2. Term. This Contract becomes effective when fully executed by both parties and will terminate two (2) years from the date of execution with the County's option for an additional one (1) year extension based on prior year's performance evaluation and contingent upon cost remaining unchanged. Hidalgo County reserves the right to continue this proposal for an additional sixty (60) day "grace period" at the end of the contract term for unforeseen delay of award for next term and contingent upon cost remaining unchanged.

3. Compensation. As consideration for rendering the Services provided for in this Contract, the County agrees to pay the Title Agent/Examiner the amounts specified in Exhibit "B" attached hereto payable against written invoice submitted by Title Examiner/Agent. The Title Agent/Examiner is authorized to submit periodic requests for payment within thirty days after completion of each work order. 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. Title Agent/Examiner 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 Title Agent/Examiner shall be mailed to the

address shown in numbered paragraph 20, hereof.

4. Progress. Upon acceptance of a work order, the Title Agent/Examiner shall undertake and complete the authorized work. The County or the Title Agent/Examiner can request conferences to be provided at the Title Agent/Examiner's office, the office of the County or at other agreed upon locations.

5. 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 Title Agent/Examiner, or a subcontractor, the Title Agent/Examiner 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.

6. 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 Title Agent/Examiner 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 Title Agent/Examiner, the County shall require the Title Agent/Examiner to correct the work at no cost to the County and without amendment to the contract. If the changes are made at the request of the County and are not due to errors of the Title Agent/Examiner, the County will reimburse the Title Agent/Examiner 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.

7. Reporting. The Title Agent/Examiner shall promptly advise the County in writing of events which have a significant impact upon the contract, including:

- 7.1.** 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.
- 7.2.** Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected.

8. Ownership of Documents. Upon completion or termination of this contract, all documents prepared by the Title Agent/Examiner or furnished to the Title Agent/Examiner 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 Title Agent/Examiner may, at its own expense, have copies made of the documents or any other data furnished the County under this contract.

9. Independent Contractor. Title Agent/Examiner 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 Title Agent/Examiner under this Contract. Notwithstanding the foregoing sentence, Title Agent/Examiner 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. Title Agent/Examiner agrees to be responsible for any

federal income tax, withholding or social security tax liability that might arise from payments received hereunder.

10. Voluntary Termination. Title Agent/Examiner and County agree that any contract award to a successful bidder will be in effect until (a) the contract expires, (b) delivery and acceptance of products, and/or performance of services ordered, or (c) terminated by Contract with the thirty (30) days prior written notice to the other party.

11. Insurance. Title Agent/Examiner 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 "C"), issued by the insurer that such insurance is in full force and effect.

12. No Assignment. Except as otherwise herein provided, Title Agent/Examiner, may not assign the obligations or rights under this contract to any person without the prior written consent of County.

13. 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.

14. Termination by County. If Title Agent/Examiner fails to deliver quality service, fails to achieve the defined goals, outcomes, strategies and outputs set by County, or if Title Agent/Examiner 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 Title Agent/Examiner.

15. 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.

16. 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 Title Agent/Examiner, and not otherwise.

17. 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.

18. Hold Harmless. In the event Title Agent/Examiner 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, Title Agent/Examiner 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 Title Agent/Examiner'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.

19. 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.

20. 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
1615 So. Closner, Ste., J
Edinburg, Texas 78539

If to Title Agent/Examiner:

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.

21. 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.

22. 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.

23. 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

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

25. Commitment of Current Revenues Only. In the event that, during any term hereof, the Commissioners Court does not appropriate sufficient funds to meet the obligations of County under this Agreement, County may terminate this Agreement upon ten (10) days written notice to Contractor. County agrees, however, to use reasonable efforts to secure funds necessary for the 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. 1995).

EXECUTED as of the day and year first written above.

APPROVED BY COMMISSIONERS COURT on: _____, 2012.

APPROVED AS TO FORM:

Atlas & Hall LLP

By: _____

COUNTY OF HIDALGO, TEXAS

By: _____

Ramon Garcia, County Judge

TITLE AGENT/EXAMINER:

NAME _____

By: _____

Printed Name: _____

Title: _____

ATTEST:

Arturo Guajardo, J., County Clerk

EXHIBIT "A"

Services to be provided by Title
Agent/Examiner

DRAFT

EXHIBIT "B"

Fee Schedule

DRAFT

EXHIBIT "C"

Insurance Certificate

DRAFT