

THE STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

PROFESSIONAL SERVICES CONTRACT

THIS AGREEMENT is made effective the 3rd day of September, 2013, by and between Hidalgo County, Texas acting by and through Urban County Program ("hereinafter called the "Party") and Leonel Garza Jr. and Associates (hereinafter called the "Appraiser").

WITNESSETH:

WHEREAS, the Party requires appraisal services for: The Fair Market Value Appraisals in connection with the Acquisition of Land, Rights of Way, Easements, Condemnations and Disposition of County owned Property located within Hidalgo County Precinct No. 3 for the Penitas Drain Project; and

WHEREAS, the Party has received GLO funds from the Texas General Land Office to be used by Urban County Participants. It is understood and agreed that the Party's obligation under this Agreement is contingent upon the actual receipt of adequate federal funds to meet the liabilities under this Agreement; and

WHEREAS, the County of Hidalgo solicited Request for Qualifications (RFQ) for the development and establishment of a yearly pool for "Professional Appraisal Services", and

WHEREAS, from which "Professional Appraiser" has been selected from the "Pool" of pre-qualified Appraisers from response to the Request for Qualifications (RFQ), and

WHEREAS, the Party has determined that the services of "Professional Appraiser" are sometimes necessary to carry out the required appraisal activities; and

WHEREAS, pursuant to Texas Government Code Section 2254.002, "The Professional Services Procurement Act," Government Code, the Party requested proposals from professional right-of-way appraiser to assist the County by providing appraisal services; and

WHEREAS, the Party has selected the Appraiser to provide the review appraisal services

within Hidalgo County Precinct No. 1, in accordance to Exhibit "A", Request for Qualifications (RFQ) Procurement Packet and through its procured approved pool of Appraisers.

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

1. **Scope of Services.** Appraiser agrees to provide to the Party **The Fair Market Value Appraisals in connection with the Acquisition of Land, Rights of Way, Easements, Condemnations and Disposition of County owned Property located within Hidalgo County Precinct No. 3**. In the event the Appraiser does not provide the fair market value appraisal prior to the date specified on the purchase order, the Purchase Order will become NULL and VOID. If such Purchase Order becomes NULL and VOID and a fair market value appraisal is secured from another firm, Appraiser will be responsible for any additional charges or expenses incurred by Hidalgo County.

Further, in the event that it is demonstrated by Appraiser that Hidalgo County has caused or delayed thus preventing the Appraiser from meeting the specified agreed upon deadline to provide the fair market value appraisal ordered, Appraiser must advise in written notice to the Purchasing Department to authorize and to secure additional time to comply.

2. **Non-Exclusive Services of Appraiser.** Party reserves the right to request these services from other sources other than the Appraiser and shall not be in violation of any terms or conditions of this Agreement.

3. **Term.** This Contract is for a period of one (1) year, effective **September 3, 2013**, and will expire **September 2, 2014** or unless sooner terminated as provided herein. The Appraiser will not begin work or incur costs until authorized in writing by the County for each "Purchase Order".

4. **Compensation.** As consideration for rendering the Services provided for in this Contract, the Party agrees to pay the Appraiser the amounts specified in Exhibit "B" attached hereto

payable against written invoice submitted by Appraiser. The Appraiser is authorized to submit periodic requests for payment within thirty days after completion of each purchase order. The request for payment shall be made using forms acceptable to the Party 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, the Party shall submit a requisition for payment of said services in the customary manner provided for payments utilized by Hidalgo County, Texas. Appraiser 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 Appraiser shall be mailed to the address shown in numbered paragraph 21, hereof.

5. Progress. Upon acceptance of a purchase order, the Appraiser shall undertake and complete the authorized work. The Party or the Appraiser can request conferences to be provided at the Appraiser's office, the office of the Party or at other agreed upon locations.

6. Inspection of Work. The Party 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 Appraiser, or a subcontractor, the Appraiser shall provide and require its subcontractor to provide all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

7. Amendments. If it becomes necessary at any time during the contract period to change the scope of work, the contract period, the maximum amount payable, the complexity, or the character of this contract, an amendment must be prepared and executed within the contract period. The Party retains the right to reject any such amendment proposed by the Appraiser unless the Party 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 Party finds it necessary to require changes in completed work because of errors made by the Appraiser, the Party shall require the Appraiser to correct the work at no cost to the Party and without amendment to the contract. If the changes are made at the request of the Party and are not due to errors of the Appraiser, the Party will reimburse the Appraiser for the additional work at the same rate of pay established in Exhibit "B", "Basis for Payment". If payment for the additional work will cause the maximum amount payable to be exceeded, an amendment shall be executed in accordance with the terms of this provision.

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

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

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

10. Independent Contractor. Appraiser 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 Appraiser under this Contract. Notwithstanding the foregoing sentence, Appraiser 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. Appraiser agrees to be responsible for any federal income tax, withholding or social security tax liability that might arise from payments received hereunder.

11. Voluntary Termination. The Party may terminate this Contract at any time for any reason or no reason at all upon the giving of thirty (30) days prior written notice to the other party.

12. Insurance. Appraiser 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.

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

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

15. No Waiver. No waiver by the Party 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 the Party and Appraiser, 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 Appraiser 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, Appraiser 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 Appraisers 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 Party: Hidalgo County Urban County Program
Attention: Diana R. Serna
3304 West Alberta Road
Edinburg, Texas 78539

If to Appraiser: Leonel Garza Jr. and Associates
1419 Dove Avenue, Suite 1
McAllen, Texas 78504
Office (956) 687-7295

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 the Party and Appraiser have been duly authorized by all necessary laws, resolutions or corporate action, and this Contract constitutes the valid and enforceable obligations of the Party and Appraiser 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 the Party under this Agreement, the Party may terminate this Agreement upon ninety (90) days written notice

to Company. The Party 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).

WITNESS WHEREOF, the Appraiser and the Party have caused this Agreement for Professional Services to be effective as of the 5th day of September, 2013.

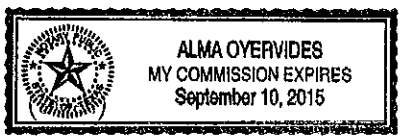
BY: [Signature]
Leonel Garza III, State Certified Real Estate Appraiser

Firm Name: Leonel Garza Jr. and Associates
Address: 1419 Dove Avenue, Suite 1
City/ST/ZIP: McAllen, Texas 78504
FED ID #/SS #: 74-2948770

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This instrument was acknowledged before me on this the 5th day of September, 2013 by Leonel Garza, III of and on behalf of Leonel Garza Jr. & Associates LC

(title)(a corporation)(a partnership)(a sole proprietorship).



[Signature]
Notary - Signature

County of Hidalgo Urban County Program:

[Signature]
Witness

[Signature]
Diana R. Serna, UCP Director

Approved as to Form:
Atlas, Hall, Rodriguez L.L.P.
By: Stephen L. Crain
on April 19, 2013

- ATTACHMENTS:
EXHIBIT A -REQUEST FOR QUALIFICATIONS (RFQ) PROCUREMENT PACKET
EXHIBIT B - BASIS FOR PAYMENT
EXHIBIT C - CERTIFICATE OF INSURANCE

EXHIBIT "A"
REQUEST FOR QUALIFICATIONS (RFQ)
PROCUREMENT PACKET

EXHIBIT "B"
Basis for Payment

1419 Dove Avenue, Suite 1, McAllen, Texas 78504
Email Address: leonel@garza-associates.com
Office (956) 687-7296 Fax (956) 687-9236

Leonel Garza Jr. & Associates LLC

Best & Final & Scope of Services For Appraisal Services

To: Hidalgo County Urban County Program
3304 West Alberta
Edinburg, Texas 78539

From: Leonel Garza III, General Certified Appraiser

Fax: (956) 318-2988

Pages: 2 Pages

Phone: (956) 787-8127

Date Submitted: August 15, 2013

Re: Penitas Drain Project

CC: Amanda V. Flores, Program Coordinator 1

Ms. Serna:

As per e-mail from Amanda V. Flores on August 15, 2013, our office is pleased to present our best and final offer proposal for appraising the various properties in connection with Acquisition of Land, Rights of Way, Easements, Condemnations Proceedings for properties located along what is known as the Penitas Drain located within Precinct No. 3, Hidalgo County. The appraisal reports shall be based on the Texas Department of Transportation Form A-6, A-5s & A-5 as required and confirmed during inspection of said tracts. Each report shall follow Senate Bill 18 (SB-18) as required by State Law. The following is an itemization of the Best & Final Cost of Services:

Appraisal Report Cost	\$2,000.00 Per Parcel (4) Original Appraisal Reports Included
Additional Original Reports	\$ 50.00 Per Original Copy This cost shall apply for additional original (color) copies required by the client and or other agencies involved in the project.
Updated/Revised Reports	\$ 500.00 Per Parcel This cost shall apply when a major change to the survey and or correction of the survey and or right-of-way map has been performed after the completion of the appraisal report. These revision cost shall be discussed with the client prior to billing. Minor revisions to a parcel report will be billed on a case by case basis depending on complexity of the revision as determined by Leonel Garza Jr. & Associates LLC.
Condemnation Hearing	Hourly Rate = \$ 150.00 Per Hour (Plus Expenses) Hourly rate shall apply to any and all preparation time required for the condemnation hearing plus expenses.
Appeals Court / Trial	Hourly Rate = \$ 250.00 Per Hour (Plus Expenses) Hourly rate shall apply to any and all preparation time, depositions, and consulting required for an appeal of a Condemnation Hearing to a bench or jury trial.

August 15, 2013

SCOPE OF SERVICES

The scope of the assignment is to appraise the area as fee simple in its present "as is condition" subject to governmental regulation, and in terms of a cash transaction. In addition, the scope is requiring the appraiser to make the extraordinary condition that the subject property is free from contamination of which could affect the overall market value of the subject property as a whole and the part to be acquired. Each property owner shall be sent a letter of intent to inspect the subject property and offer any additional inspections on-site and in the presence of the owner(s) and or owner(s) representative (as requested). In the event access is not granted to enter the subject area, the appraiser is to proceed off-site along existing road right-of-way as indicated by survey. The scope of the assignment requires that comparable market sales within the area be identified and analyzed for comparability and for their reliability in determining the estimated market value of the subject property. The comparables have been collected, confirmed and analyzed with respect to comparability to the subject property. These comparable sales were gathered through various sources which included the Greater McAllen Multiple Listing Service, local Realtors & Brokers, Real Estate Appraisers, and conversations with various owners along the project and other sources available to this firm. Listings along the respective projects shall also be reviewed in order to determine the current market asking price for property along the project.

Each appraisal shall be developed on a TxDOT A-5 or an A-6 and A-5s format as promulgated by the Texas Department of Transportation. Each report as of September 1, 2011 must comply with Texas State Senate Bill 18. Leonel Garza III has undergone the mandatory training thru the Texas Department of Texas Training on *Senate Bill 18 (SB-18)* and has included all changes associated with the new law in each report. Mr. Garza is fully aware of the magnitude of the Bill and the overall reporting and valuation effects of the Bill.

The appraisal report shall indicate the current market value of the subject property as per date of on-site and or off-site inspection without project influence as indicated by scope. The inspection is limited by the permissibility of the subject owner as per date of report. In the event an on-site inspection was not permitted, the appraiser shall continue the inspection off-site along the project. Once the appraisal has been concluded the report shall be delivered to the client, of which four (4) original copies shall be included in each appraisal packet. Once negotiations have begun, the appraiser shall be available to answer any questions or concerns by the property and assist the negotiator as needed. In the event a consensus cannot be made as to the market value, the appraiser shall be prepared to continue and prepare for condemnation proceedings of which will be billed at an additional cost. This service shall continue until all trial and or other court proceedings are concluded in the acquisition of the subject property.

If there are any questions or concerns or if any item needs clarification please call Leonel Garza III at (956) 687-7295 or via email leonel3@garza-associates.com. Please sign and fax or email back once accepted. Thank you for the opportunity.



Leonel Garza III
State Certified Real Estate Appraiser
TX-1328375-General
Leonel Garza Jr. & Associates LLC

Please Sign Here Upon Acceptance

Please Print Name

Date of Acceptance

EXHIBIT "C"
Certificate of Insurance

