

THE STATE OF TEXAS §

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COUNTY OF HIDALGO §

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made effective the 9th day of September, 2014, by and between the Urban County Program (hereinafter called the "Party") and CVQ Land Surveyors, LLC (hereinafter called the "Surveyor").

WITNESSETH:

WHEREAS, the County requires "Surveying Services" for **Penitas Drain Project** located within **Hidalgo County Precinct No. 3**, and

WHEREAS, Hidalgo County has received 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 Party is interested in obtaining Surveying Services; and

WHEREAS, the Surveyor, duly licensed and registered to practice surveying in the State of Texas, has the professional abilities to undertake the study, evaluation, analysis and recommendations in a manner which shall provide the necessary public service while preserving and enhancing to the greatest degree possible the natural and proposed environment in the Project (as hereinafter defined) area; and

WHEREAS, the Party desires to engage the Surveyor to render certain services in connection therewith;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein

contained, County and Surveyor do mutually agree as follows:

1. **Scope of Services.** Surveyor agrees to provide to the Party "Surveying services" for and in connection to the: **Penitas Drain Project** located within **Hidalgo County Precinct No. 3**, as shown in Exhibit "A" attached hereto and entitled "Services to be Provided by the Surveyor".

2. **Term.** This Agreement shall commence upon approval of this agreement for a term of **one (1) year**, effective **September 9, 2014**, expiring, **September 8, 2015** or unless sooner terminated as provided herein. The Surveyor will not begin work or incur costs until authorized in writing by the County for the Project.

The Party assumes no liability or obligation for payment to the Surveyor for work performed or costs incurred by the Surveyor prior to the date authorized by the Party for the Surveyor to begin work, during periods when work is suspended, or subsequent to the Termination Date.

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

4. **Compensation.** As consideration for rendering the Services provided for in this Agreement, the Party agrees to pay the Surveyor the amounts specified in Exhibit "B" attached hereto payable against written invoice submitted by Surveyor. The Surveyor 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, Party shall submit a requisition for payment of said services in the customary manner provided for payments utilized by Hidalgo County, Texas. Surveyor agrees to separately account for the receipt and/or expenditure of funds received pursuant to this Agreement and to keep adequate books and

records of all such receipts and/or expenditures. All payments to Surveyor shall be mailed to the address shown in numbered paragraph 21, hereof.

5. Progress. Upon acceptance of the written notice to proceed, the Surveyor shall undertake and complete the authorized work. The Party or the Surveyor can request conferences to be provided at the Surveyor'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 Surveyor, or a subcontractor, the Surveyor 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 agreement period to change the scope of work, the agreement period, the maximum amount payable, the complexity, or the character of this agreement, an amendment must be prepared and executed within the agreement period. The Party retains the right to reject any such amendment proposed by the Surveyor 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 agreement period as specified.

If the Party finds it necessary to require changes in completed work because of errors made by the Surveyor, the Party shall require the Surveyor to correct the work at no cost to the Party and without amendment to the agreement. If the changes are made at the request of the Party and are not due to errors of the Surveyor, the Party will reimburse the Surveyor 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 Surveyor shall promptly advise the Party in writing of events which have a significant impact upon the agreement, 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 Party 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 agreement, all documents prepared by the Surveyor or furnished to the Surveyor by the Party shall be delivered to and become the property of the Party. All sketches, photographs, calculations, and other data prepared under this agreement shall be made available, upon request, to the Party without restriction or limitation on their further use. The Surveyor may, at its own expense, have copies made of the documents or any other data furnished the Party under this agreement.

10. Independent Contractor. Surveyor must comply with all applicable Hidalgo Party policies and with any applicable federal, state or local laws, regulations, orders or ordinances applicable to the services provided by Surveyor under this Agreement. Notwithstanding the foregoing sentence, Surveyor represents and maintains that it is an independent contractor and is not an employee of Hidalgo Party, 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 Party's civil service program. Surveyor 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 Agreement 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. Surveyor 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, Surveyor, may not assign the obligations or rights under this agreement to any person without the prior written consent of County.

14. Conflict. Nothing in this Agreement 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 Agreement 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 agreement, the latter shall prevail, but in such event the affected provision or provisions of this Agreement shall be modified only to the extent necessary to bring them within the legal requirements and only during the time such conflict exists.

15. Termination by County. If Surveyor fails to deliver quality service, fails to achieve the defined goals, outcomes, strategies and outputs set by County, or if Surveyor fails to comply with any conditions in this Agreement, then Party shall have the right to terminate this Agreement upon the giving of ten (10) days prior written notice to Surveyor.

16. No Waiver. No waiver by Party of any breach of any provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision hereof.

17. Entire Agreement. This Agreement 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 Agreement not specifically set forth herein. This Agreement may be modified or amended only by agreement in writing executed by Party and Surveyor, and not otherwise.

18. Venue. This Agreement 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.

19. Hold Harmless. In the event Surveyor 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, Surveyor shall hold harmless and indemnify Party from any and all obligations, liabilities, causes of action, lawsuits, damages, and assessments, including legal fees, etc., that result from the Surveyor's intentional actions or negligence. This indemnification clause shall survive this Agreement and be enforceable as a separate agreement in the event its survival and enforcement becomes necessary.

20. 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 Agreement, 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.

21. Notices. Except as may be otherwise specifically provided in this Agreement, 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: Hidalgo County Urban County Program
Attention: Diana R. Serna
427 E. Duranta Ave., Suite 107
Alamo, Texas 78516

If to Surveyor: CVQ Land Surveyors LLC
Attention: Carlos Vasquez, R.P.L.S.
P.O. Box 5066
McAllen, Texas 78502

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.

22. 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 Agreement.

23. Binding Agreement. This Agreement 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 agreement.

24. Gender. All pronouns used in this Agreement 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

25. Authority. The execution and performance of this Agreement by Party and Surveyor have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of Party and Surveyor in accordance with its terms.

26. Commitment of Current Revenues. In the event that, during any term hereof, the Party does not appropriate sufficient funds to meet to the obligations of this Agreement, the

Party may terminate this Agreement upon thirty (30) days written notice to the Surveyor. 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 the County pursuant to the provisions of Tex. Loc. Govt. Code Ann. ' 271.903 (Vernon Supp. 1995).

WITNESS WHEREOF, the Surveyor and the Party have caused this Agreement for Professional Services to be effective as of the _____ day of _____, 2014.

BY:
Alfonso Quintanilla, President

Firm Name: CVQ Land Surveyors LLC
Address: P.O. Box 5066
City/ST/ZIP: McAllen, TX 78502
FED ID #/SS #: 26-0152586

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COUNTY OF HIDALGO §

This instrument was acknowledged before me on this the ____ day of _____, 2014, by _____ of and on behalf of _____ (title)(a corporation)(a partnership)(a sole proprietorship).

(seal)

Notary - Signature

County of Hidalgo Urban County Program:

Witness

Diana R. Serna, UCP Director

Revised as to Form:
Atlas, Hall, Rodriguez L.L.P.
By: _____
Stephen L. Crain

ATTACHMENTS:
EXHIBIT A -Scope of Services to be provided by the Surveyor & Surveying Rate Schedule

EXHIBIT "A"

Scope of Services to be provided by the Surveyor & Surveying Rate Schedule