

THE STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

LEASE AGREEMENT
C-19-036-07-16

THIS LEASE (the "Lease") is made on this **16th day of July, 2019**, by and between **RGV Towers, LLC**, referred to in this Lease as "Lessor", and **THE COUNTY OF HIDALGO**, acting for and on behalf of the Hidalgo County Sheriff's Office referred to in this "Lease" as "County" or "Lessee" for the lease of tower space as described herein.

ARTICLE 1. DEMISE OF LEASE PROPERTY

1.1 In consideration of the mutual covenants and agreements set forth in this Lease, and other good and valuable consideration, Lessor submitted a bid in response to the Notice of Bid in accordance with the specifications as bid, a copy of such specifications and bid being attached hereto as Exhibits "A" and "B" (Lessor's Bid") respectively, and incorporated herein for all purposes (the "RFB Packet"). Lessor demises and leases to County, and County leases from Lessor, that certain property described in Exhibits "A" and "B" attached hereto. The Property leased hereunder is referred to in this Lease as "the Property" or "the Leased Property."

ARTICLE 2. LEASE TERM

Term

2.1 Except as otherwise herein provided, the term of this Lease shall be for a period of **one (1) year** commencing on the **22nd of July, 2019** and ending as hereunder defined unless sooner terminated or unless renewed and extended as provided in this Lease. The "Termination Date" is the date twelve (12) months, following the Commencement Date. If the Premises are sold to an unrelated third party (not affiliated by common ownership with Lessor) at a time when more than six (6) months remains on the unexpired portion of the term of this Lease, then the unexpired portion of this Lease may, at County's option, be shortened to six (6) months from the date of such sale or conveyance.

Renewal or Termination

2.2 County shall have the right and option to renew and extend the term of this Lease for an additional **Nine (9) additional - one (1) year terms and an additional sixty (60) day grace period** under the same rates, terms and conditions. If County desires to renew and extend the term of this Lease for any such renewal period, County must give Lessor written notice of such renewal at least sixty (60) days prior to the termination of the initial lease term or renewal term if applicable if

County desires to renew for the renewal period. Any renewal or extension of this Lease shall be on the same terms and conditions as provided herein. This Lease shall terminate and become null and void without further notice on the expiration of the term specified above, unless sooner terminated or renewed and extended in accordance with the terms set forth within this agreement; and any holding over by County after the expiration of that term shall not constitute a renewal of the Lease or give County any rights under the Lease in or to the Leased Property.

Holdover

2.3 If County holds over and continues in possession of the Leased Property after expiration of the term of this Lease, County will be deemed to be occupying the Property on the basis of a month to month tenancy, subject to all of the terms and conditions of this Lease. The inclusion of this Article 2.3 shall not be construed as Lessor's consent for County to hold over.

Voluntary Termination

2.4 County may terminate this Contract at any time for any reason or no reason at all upon giving thirty (30) days prior written notice to the Lessor. Upon County electing to terminate, this Lease shall cease and come to an end as if the day of the termination election were the day originally fixed in the Lease for its expiration.

Commitment of Current Revenues Only

2.5 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 sixty (60) days written notice to Lessor. 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.

2.6 **Agreements for the acquisition, including lease, of real or personal property:** 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 sixty (60) days written notice to Lessor. County agrees, however, to use a best efforts attempt to obtain and appropriate funds for payment of the Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of County in accordance and compliance with Tex. Loc. Govt. Code Ann. §271.903 (Vernon Supp. 1996).

ARTICLE 3. RENT

Monthly Rental

3.1 County agrees to and shall pay to Lessor as rental for the use and occupancy of the Property under the lease during the initial lease term the amount as specified in Exhibit "B" of Lessor's Bid.

Monthly rental during the renewal term(s), if County exercises its renewal option(s), will be in accordance with the amount(s) specified in Exhibit "B" of Lessor's Bid. In the event the Commencement Date is a day other than the first day of the month, the rent for the period from the commencement date to the last day of the month shall be prorated by dividing the monthly rental by the number of calendar days in the month, and multiplying the result by the number of days remaining in the month that includes the Commencement Date.

Time and Manner of Payment

3.2 All rent due under this article shall be paid by County on a monthly basis and in advance, on the 1st business day of each month commencing on the Commencement Date. All installments of rent shall be paid in lawful money of the United States to the Lessor at the address listed below or other such location or locations as Lessor shall from time to time designate by written notice to County. Any rent due for any partial month at the beginning or the end of the term hereof shall be prorated on the basis of a thirty (30) day month.

3.3 Lessor also leases to County approximately twenty (20) square feet of the interior of the certain air conditioned, solid concrete building with generator backup located on the property described in Exhibit A (the "Equipment Building") for location of County's transmitter and other ancillary equipment. Lessor grants County unlimited access to the Equipment Building twenty-four hours of the day, seven days a week during the term of this Lease.

ARTICLE 4. UTILITIES

4.1 Lessor shall pay or cause to be paid all charges for electricity, used on the Property throughout the term of this lease, including any connection fees.

ARTICLE 5. USE OF PROPERTY

5.1 County shall have the right to use the Property for any lawful purpose pertaining to the receipt, broadcast or rebroadcast of data or radio signals.

ARTICLE 6. REPAIR AND MAINTENANCE

6.1 Lessor will, throughout the lease term, maintain the Property and keep it free of waste and nuisance. Lessor will, at Lessor's own expense, during the term of this Lease, maintain air conditioning systems, all windows, the roof, the foundation, the structural soundness of the exterior walls, the electrical wiring, paving the doors, the guy wires, the tower structure, the tower warning lights or beacons and all other components of the Property. County will, at its sole cost and expense, maintain and repair its own equipment, cables and antennae. Lessor will maintain all records and make all reports required by the Federal Aviation Administration with respect to maintenance and operation of tower

warning light or beacons. In the event Lessor should neglect to reasonably maintain the Property, County will have the right to:

- a. Upon County's notice to Lessor of repairs or maintenance which Lessor has a duty to undertake, Lessor neglects to make such repairs within thirty (30) days following written notice from County. County may vacate the Property, in which case it shall be discharged from further payment of rent, the performance of all other terms and conditions of this Lease, and this Lease shall terminate as of the date County vacates the Property and any rental shall be abated for the unexpired term of this Lease; or
- b. County will also have the right, but not the obligation, to cause repairs or corrections to be made, with any reasonable costs therefor to be payable by Lessor to County as an offset against rental on the next rental installment date.

ARTICLE 7. OBLIGATIONS OF LESSOR AND COUNTY

Taxes

7.1 County shall be responsible for, and shall pay and discharge before the same become delinquent, all taxes, if any, levied or assessed against personal property, furniture, or fixtures located in or upon the Property owned by County, but not by other Lessees or by Lessor, on the real property. Lessor shall be responsible for, and shall pay and discharge before the same become delinquent, all ad valorem taxes and assessments levied against the Property, including any fixtures and improvements.

Alternation, Additions, and Improvements

7.2 County may, at County's discretion, but shall not be required to, make any alterations, additions or improvements to the Property, provided County obtains the prior written consent of Lessor, which consent shall not be unreasonably withheld. All alterations, additions or improvements made to the Property described in Exhibit A, excluding equipment placed on the Property by County, shall become the property of Lessor at the termination of this Lease Agreement.

7.3 **Addition of New and Replacement Equipment.** In accordance with provision 7.2 of this Lease Agreement, County shall be allowed to replace existing equipment used on the Property with the prior written consent of Lessor as described in 7.2, without experiencing an increase in monthly rental costs. Should County desire to add new equipment to the Property currently not in place at County's expense, County shall also seek the prior written consent of Lessor as described in 7.2 and Lessor shall submit a written proposal to County of the additional rental costs associated with the new equipment. If the parties reach an agreement for additional rental costs due to new equipment, then the new equipment may be added. In no event, however, will the total rental costs associated with this Lease Agreement exceed Twenty-five Thousand Dollars and no/100ths (\$25,000.00) per year.

Damage or Destruction

7.4 If the Leased Property, or any structures or improvements on the Leased Property, should be damaged or destroyed by fire, tornado, or other casualty, County shall give immediate written notice of the damage or destruction to Lessor, including a description of the damage and, as far as known to County, the cause of the damage. In the event the Property or any portion thereof is damaged or destroyed by fire, tornado, or other casualty, County shall be entitled to an abatement of rent as a result and Lessor shall promptly repair any such damages or destruction using materials and workmanship of a similar nature and quality to the original construction.

Insurance and Indemnity

7.5 Lessor agrees to insure the Property, at its sole cost and expense, against loss by fire, or other casualty, including extended coverage to include direct loss by windstorm, hail, explosion, riot, or riot attending a strike, civil commotion, aircraft, vehicles, and smoke, with a policy or policies acceptable to Lessor. The coverages under such policy or policies shall provide for coverage in an amount reasonably required by Lessor to provide for the replacement or repair of the improvements located on the Property, or such portion thereof as may be damaged by a covered loss, but in no event less than the amount required by any party holding a security interest in or lien on the Property. Lessor agrees to hold County harmless from any and all claims actions proceedings, damages, and liabilities arising from the use, condition and operation of the Property, and to carry liability insurance insuring at the sole cost and expense of Lessor, both Lessor and County against such loss and liability, in such amounts as Lessor may reasonably require. In the event Lessor should neglect to provide any insurance coverage required under this paragraph, County shall have the right, but not the obligation, to purchase such coverage to protect County's interest, with any reasonable costs therefor to be payable by County. The insurance is to be carried by one or more insurance companies licensed to do business in Texas and approved by County. Prior to occupancy of the Premises, Lessor shall provide County with evidence of such insurance satisfying insurance requirements stated in the RFB, such evidence of insurance is attached hereto as "Exhibit C."

County's Insurance

7.6 County shall maintain all insurance on County's personal property located within the Leased Premises in the amounts deemed adequate by County. County, at its own expense, shall provide and maintain in force during the term of this Lease, liability insurance in the amounts deemed adequate by County, naming Lessor as additional insured. Prior to occupancy of the Property, County shall provide Lessor with evidence of such insurance.

ARTICLE 8. SIGNS

8.1 Subject to the written approval of Lessor, and further subject to applicable laws, ordinances and regulations, County shall have the right to install a sign on the Leased Property. County must

remove all signs at the termination of this Lease and repair any damage resulting from the erection or removal of the signs.

ARTICLE 9. MECHANIC'S LIEN

9.1 County will not permit any mechanic's lien or liens to be placed upon the Leased Property or improvements on the Property, County will promptly pay the lien. If default in payment of the lien continues for twenty (20) days after written notice from Lessor, Lessor may, at its option, pay the lien or any portion of it without inquiry as to its validity. Any amounts paid by the Lessor to remove a mechanic's lien caused to be filed against the Property or improvements on the Property by County, including expenses and interest, shall be due from County to Lessor and shall be repaid to Lessor immediately on rendition of notice, together with interest at ten percent (10%) per annum until repaid.

ARTICLE 10. DEFAULT

Events of Default

10.1 The following events shall be deemed to be events of default by County under this lease. County shall fail to pay any installment of rent hereby reserved and such failure shall continue for a period of thirty (30) days. County shall fail to comply with any term, provision, or covenant of this lease, other than the payment of rent, and shall not cure such failure within thirty (30) days after written notice thereof to County.

Remedies

10.2 Upon the occurrence of any event to default specified in Paragraph 10.1 hereof, Lessor shall have the option to pursue any one or more of the following remedies without notice of demand whatsoever.

Re-entry

10.3 Lessor may re-enter the Property immediately and remove all County's personal property therefrom. Lessor may store the personal property in a public warehouse or at another place at Lessor's choosing at County's expense or to County's account.

Termination

10.4 After re-entry, Lessor may terminate the lease on giving ten (10) days' written notice of such termination to County. Re-entry only, without notice of termination, will not terminate the lease.

Re-letting Property

10.5 After re-entering, Lessor may re-let the Property or any part thereof, for any term, without terminating the lease at such rent and on such terms as Lessor may choose. Lessor may make repairs to the Property at County's expense.

Quiet Enjoyment Pending Cure Period

10.6 Notwithstanding anything to the contrary herein, Lessor understands, acknowledges and agrees that some of the Property is utilized in the receipt, transmission and/or retransmission of radio signals for law enforcement and emergency services, which County is authorized to operate by virtue of a license issued by the Federal Communications Commission. Lessor shall not, except following written notice of a default and the failure to cure such default by County within the time periods provided in Section 8.02 (a) and (b), exercise any remedy which may affect or in any manner interfere with County's use, possession or quiet enjoyment of the property or the receipt, transmission or retransmission of any radio signal by County. Further, except for any time period following expiration of any cure period for which County has not satisfactorily cured any County default, County shall have full access to, use of any quiet enjoyment of the property undisturbed by Lessor.

Default by Lessor

10.7 If Lessor defaults in the performance of any terms, covenants, or conditions required to be performed by it under this Lease, in addition to other remedies afforded County under this Lease or at law, County may elect to voluntarily terminate the agreement as provided in section 2.4.

Cumulative Remedies

10.8 All rights and remedies of Lessor and County under this Article shall be cumulative, and none shall exclude any other right or remedy provided by law or by any other provision of this Lease. All such rights and remedies may be exercised and enforced concurrently and whenever, and as often, as occasion for their exercise arises.

Waiver of Breach

10.9 A waiver by either Lessor or County of a breach of this Lease by the other party does not constitute a continuing waiver or a waiver of any subsequent breach of the Lease.

ARTICLE 11. ASSIGNMENT AND SUBLETTING

Assignment by County

11.1 County may not sublet, assign, encumber, or otherwise transfer this Lease, or any right or interest in this Lease or in the Leased Property or the improvements on the Leased Property, without the written consent of Lessor. If County sublets, assigns, encumbers, or otherwise transfers its rights or interest in this Lease or in the Leased Property or the improvements on the Leased Property, other than as specified herein, without the written consent of Lessor, Lessor may, at its option, declare this Lease terminated and County and Lessor shall have no further obligation to each other under this Lease. In the event Lessor consents in writing to an assignment, sublease or other transfer of all or any of County's rights under this Lease, the assignee or sublessee, must assume all of County's obligations under this Lease, and County shall remain liable for every obligation under the Lease.

Lessor's consent under this section will not be arbitrarily or unreasonably withheld.

Assignment by Lessor

11.2 Lessor may assign or transfer any or all of its interests under the terms of this Lease.

ARTICLE 12. MISCELLANEOUS

Notices and Addresses

12.1 All notices provided to be given under this agreement shall be given by certified mail or registered mail addressed to the proper party, or in person against a receipt. Either party may change the address to which notices are to be sent it by giving the other party written notice of the new address in the manner provided in this section. The date of mailing of any notice under this agreement shall be deemed to be the date of such notice and shall be effective from such date. The addresses of the parties of this agreement are as follows:

Lessor:

Name: RGV Towers, LLC
Attn: Alan Yoder
Address: PO Box 3097
City, TX. Zip Code: McAllen, Texas 78502

County:

County of Hidalgo
Attn: Richard F. Cortez, County Judge
100 East Cano, Second Floor
Edinburg, Texas 78539

With copy to:

Hidalgo County Sheriff's Office
Attn: J. E. "Eddie" Guerra, Sheriff
711 El Cibolo Road
Edinburg, Texas 78541

Parties Bound

12.2 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives and assigns where permitted by this Agreement.

Texas Law to Apply

12.3 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.

Legal Construction

12.4 In case 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 provisions thereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

Prior Agreements Superseded

12.5 This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understanding or written or oral agreements between the parties respecting the within subject matter.

Amendment

12.6 No amendment, modification or alteration of the terms hereof shall be binding unless the same is in writing, dated subsequent to the date hereof, and duly executed by the parties hereto.

Rights and Remedies Cumulative

12.7 The rights and remedies provided by this Lease Agreement are cumulative, and the use of any one right or remedy by either party shall not preclude or waive that party's right to use any or all other remedies. The rights and remedies provided in this Lease are in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

Waiver of Default

12.8 No waiver by the parties hereto of any default of breach of any term, condition or covenant of this lease shall be deemed to be a waiver of any other breach of the same or any other term, conditions or covenant contained herein.

Force Majeure

12.8 Neither Lessor nor County shall be required to perform any term, conditions, or covenant in this Lease so long as such performance is delayed or prevented by force majeure, which shall mean acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riot, floods, and any other cause not reasonably within the control of Lessor or County and which by the exercise of due diligence Lessor or County is unable, wholly or in part, to prevent or overcome.

Real Estate Commission and Finder's Fees

12.9 Neither Lessor nor County has entered into any real estate commission or finder's fee agreements with any broker, agent or finder in respect of this transaction, and Lessor and County each agree to indemnify and hold harmless the other from and against any and all claims, losses, damages, costs or expenses of any kind, or arrangement or understanding alleged to have been made by the indemnifying party or on its behalf with any broker, salesman or finder in connection with this Lease or the transactions contemplated hereby.

Estoppel Information

12.10 To the extent allowed by law, County shall, at the request of Lessor, provide any and all information with respect to this Lease to any person designated by Lessor.

Time of Essence

12.11 Time is of the essence of this Lease Agreement.

Governmental Purpose

12.12 The County is entering into this agreement for the purpose of providing for governmental services or functions and will pay for such services out of current revenues available to the paying party as herein provided.

Immunities

12.13 It is expressly understood and agreed that, in the execution of this agreement, the County does not waive, nor shall be deemed hereby to waive, any immunity or defense that would otherwise be available to it against claims arising in the exercising of governmental powers and functions.

Additional Documents

12.14 The Parties agree that they will use reasonable, good faith efforts to execute each 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.

Non-Discrimination

12.15 The Agreement and all related activities shall be conducted in a manner that does not discriminate against any person on a basis prohibited by applicable law or County and Lessor policy, including without limitation to race, color, national origin, religion, sex, age, veteran status, or disability.

Required Contract Provision for Contracts Subject to Federal Award (if applicable)

12.16 Pursuant to 2 CFR 200.236, a non-federal entity's contracts must contain the applicable provisions described in Appendix II to 2 CFR 200-Contract Provisions for non-Federal Entity Contracts under Federal Awards. Additionally, County contracts under Federal award which are subject to assistance from the Federal Emergency Management Agency (FEMA) are also required to contain additional contract clauses. Applicable required contract clauses were provided as part of the initial procurement packet, and as such are incorporated into this agreement for all purposes.

Authority to Execute

12.17 The execution and performance of this Agreement by the Parties has been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of the participating Parties in accordance with its terms.

ARTICLE 13. WAIVER OF SUBROGATION

13.1 Lessor hereby waives Lessor's right of recovery against County for damages caused by fire, explosion and other perils to any of the Property to the extent that recovery is made by Lessor under insurance policies in effect at the time of loss; and County hereby waives County's rights of recovery against Lessor for damages to any of Lessor's property caused by fire, explosion and other perils to the extent that recovery is made by the County under insurance policies in effect at the time of loss. This agreement does not extend to and waiver does not apply to any damage suffered by either party hereto which is not recovered by the injury party under its insurance policies.

ARTICLE 14. SPECIAL PROVISIONS

Access to Property

14.1 During the term of this agreement, Lessor agrees that technical and maintenance employees and representatives and agents of County shall have at all time rights of ingress and egress to the Property for the Purpose of installing, maintaining and repairing County's equipment. County agrees to insure that its subcontractors and employees performing maintenance or technical services on County's equipment are covered by adequate levels of liability insurance and by any state-mandated worker's compensation insurance, if applicable.

Duty Not to Impair County's Operations

14.2 Lessor agrees not to lease or license the use of the Property, or any portion thereof, to any party which will interfere with County's use of the Property, and to require that any other lessees or licensees use and operation of radio or television transmission equipment on the Property shall be performed in such a manner as not to interfere with the operation of any equipment which County has therefore installed or may thereafter install on the Property. In the event interference should result, upon notice of such interference from County, Lessor shall cause its lessees and licensees to take all necessary steps, without costs or expense to County, to remove said interference or shut down communication equipment temporarily pending repair.

Hazardous Substances

14.3 Lessor represents that it has no knowledge of any substance, chemical or waste (collectively "substance") on the Site that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. County will not introduce or use any such substance on the Site in violation of any applicable law.

IN WITNESS WHEREOF, the undersigned Lessor and County hereto execute this Agreement as of the day and year first above written

HIDALGO COUNTY:

Richard F. Cortez, County Judge

LESSOR:

By: _____
Title: _____

ATTEST:

Arturo Guajardo, Jr., County Clerk

APPROVED AS TO FORM

Office of the Criminal District Attorney-Civil Litigation Division

By: _____

Robert Viña, III
Assistant District Attorney

Approved by Commissioners' Court on _____, 2019.

EXHIBIT A
REQUEST FOR BIDS (RFB) PROCUREMENT
PACKET

EXHIBIT B
BID PAGE with BID TABULATION

EXHIBIT C
INSURANCE CERTIFICATE



Hidalgo County Purchasing Department
 2812 S. Business Highway 281
 Edinburg, Texas 78539
 (956) 318-2626/ Fax: (956) 318-2629

REQUEST FOR BID (RFB)
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HIDALGO COUNTY SHERIFF'S OFFICE

"Lease of Tower Space"

(Including all funding sources, programs, and entities)

RFB No: 2019-036-05-29-HAG

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The above-mentioned items shall be found in the Request for Bids (RFB) packet that is attached herewith. Should you find that any of the items are not attached in its entirety please contact Purchasing by calling (956) 318-2626, and advise of missing documentation, and Purchasing will forward information either through facsimile, U.S. Mail, or e-mail.



2802 S. Bus. Hwy 281
Edinburg, Texas 78539
Phone: (956) 318-2626
Fax: (956) 318-2629
www.co.hidalgo.tx.us/purchasing

May 13, 2019

RGV Towers, LLC
Participant's/Bidder's name
PO Box 3097
Address
McAllen
City
Texas, 78502
State, Zip Code

Re: **HIDALGO COUNTY SHERIFF'S OFFICE**
Request for Bids - "Lease of Tower Space -Hidalgo County Sheriff's Office"
RFB Bid No: 2019-036-05-29-HAG

Dear Ladies / Gentlemen:

Enclosed, please find the Request for Bids (RFB) packet. Modifications and new requirements have been added and implemented. Carefully read and review all instructions, requirements, and specifications.

Hidalgo County Purchasing Department welcomes and appreciates your participation in the Request for Qualifications process.

If any further assistance is required, please do not hesitate to call the Purchasing Department (956) 318-2626, Ext. 4857.

Sincerely,

Martha L. Salazar

Martha L. Salazar, CPPB

Hidalgo County Purchasing Agent

MLS/hag

Enclosures

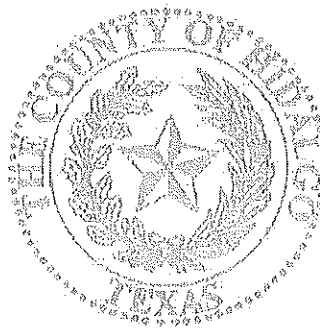
LEGAL NOTICE

REQUEST FOR BIDS

**HIDALGO COUNTY SHERIFF'S
OFFICE**

“LEASE OF TOWER SPACE”

RFB No.: 2019-036-05-29-HAG



REQUEST FOR BIDS (RFB)
HIDALGO COUNTY SHERIFF'S OFFICE
(Including all funding sources, programs, and entities)

"Lease of Tower Space"

RFB No: 2019-036-05-29-HAG

Acceptance Due Date: May 29, 2019

Martha L. Salazar, CPPB, Purchasing Agent
Hidalgo County Purchasing Department

Project Contract Specialist Contact Information:

Hector Garcia, Contract Specialist I
(956) 318-2626 Ext. 4877
hector.garcia1@co.hidalgo.tx.us

Form HCPD-04

1. Sealed bids will be received for "**Hidalgo County Sheriff's Office** (Including all funding sources, programs, and entities) "**Lease of Tower Space**", in accordance with the requirements attached hereto as Exhibit "A". The bid should address all requirements set forth. Bidders (may also be referred to as respondent, contractor or vendor) may suggest substitutions of features which they feel would be in the best interest of Hidalgo County ("County"), however, a strong rationale must be presented for any deviation from the requirements. Hidalgo County reserves the right to reject the deviation and its effect on the overall bid.
2. **One (1) original** (pages *one-sided* – clearly marked **ORIGINAL**), **one (1) copy** of all bids and **one (1) CD/USB in PDF format** are required with the bidder's name and address clearly typed/printed on upper left-hand corner and the proper notation clearly typed/printed on the lower left-hand corner of the envelope and/or package, **RFB: 2019-036-05-29-HAG Hidalgo County Sheriff's Office** (Including all funding sources, programs, and entities) "**Lease of Tower Space**", and in County's Purchasing Department, Physical Location: 2802 S. Business Hwy. 281 Postal/ Mailing: 2812 S. Business Hwy. 281 Administration Building, Edinburg, Texas, **ON OR BEFORE 9:30 A.M., WEDNESDAY, May 29, 2019.**

NO FACSIMILES OR LATE ARRIVALS WILL BE ACCEPTED. ANY BID RECEIVED AFTER THAT TIME WILL NOT BE OPENED AND WILL BE RETURNED. OVERNIGHT MAIL MUST ALSO BE PROPERLY LABELED ON THE OUTSIDE OF EXPRESS ENVELOPE AND/OR PACKAGE IN REFERENCE TO BID.

Hidalgo County reserves the right to refuse and reject any/all bids and to waive any/all formalities or technicalities or to accept the bid considered the best and most advantageous to Hidalgo County.

Additionally, all forms listed below must be properly executed and included with your RFB:

1. Legal Notice (See **page 11**);
 2. Insurance pages with Acknowledgment Forms (See **Exhibit "C"**);
 3. Form CIQ-Conflict of Interest Questionnaire (See **Exhibit "D"**);
 4. Vendor Bidder Application, W-9, & HUB/DBE (See **Exhibit "E"**);
 5. Certification Regarding Debarment (See **Exhibit "F"**);
 6. (If applicable) - Required Contract Clauses for Contracts Under Federal Award – 2 CFR 200, Appendix II & FEMA (See **Exhibit "H"**);
 7. Proposer's Affidavit (See **Exhibit "J"**); and
 8. SAMS.gov Registration Acknowledgement (See **Number 17** below).
3. Hidalgo County reserves the right to separate and accept or eliminate any item(s) listed under this bid that it deems necessary to accommodate budgetary and/or operational requirements. Hidalgo County also reserves the right to reject any or all bids submitted. Receipt of any bid shall under no circumstances obligate County to accept the lowest dollar bid. The award of this contract shall be made to the responsible bidder whose bid is determined to be the best bid, taking into consideration the relative importance of price and other factors as herein set forth.
 4. Failure of the delivered item to perform as specified or failure to meet the stated delivery schedule shall release Hidalgo County from all obligations to the contracting party with regard to the item(s) in question. In such an event, County may elect to award the contract to the next lowest responsible bidder or to reject all bids and re-advertise.
 5. For work to be performed at a County owned or operated location, each respondent shall, in its sole

discretion, visit the job site before preparing the bid and thoroughly familiarize himself/herself with existing conditions. Respondent should take field dimensions and note all circumstances which affect the dollar amount of the proposal.

6. Descriptive specifications are referenced in this document to indicate the general kind and quality of equipment desired by Hidalgo County. Due to various styles and models of equipment, bidders are required to include illustrations, specifications, explanation of warranties, and service data with their bid including catalog numbers and any necessary references.
7. Bid prices are to remain firm for a minimum of ninety (90) days after the bid opening.
8. County reserves the right to accept or reject any or all bids.
9. Any interpretations, amendments, corrections or changes to this bid document must be in a written addendum and signed by the County Judge or his designee. Addenda will be mailed to all who are known to have received a copy of the Request for Bid. Bidders shall acknowledge receipt of all addenda as a part of their bid.
10. Costs are to be net F.O.B., County Prepaid.
11. The county is exempt from Federal Excise Tax, State Tax, and Local Tax. DO NOT include tax in cost figure. If it is determined that tax was included in the cost figure it will not be included in the tabulation of any awards. Tax exemption certificates will be furnished upon request.
12. Funds for this procurement have been provided through the County budget for this fiscal year only. County, on an annual basis, has the right to reconsider a contract during the budget process for ensuing years if financial resources of County are insufficient to meet the liabilities of said contract. The award of a bid or contract hereunder will not be construed to create a debt of the County which is payable out of funds beyond the current fiscal year.
13. **DELIVERY INSTRUCTIONS:**
 - No deliveries accepted after 3:00 P.M., Monday-Friday (if applicable).
 - At least seventy-two (72) hours prior notice of delivery must (if applicable) be given to Martha L. Salazar, CPPB, Purchasing Agent before delivery will be accepted.
 - If you need additional information call the office listed below:

Hidalgo County Purchasing Department
Martha L. Salazar, CPPB, Purchasing Agent
(956) 318-2626

14. **BILLING AND PAYMENT INSTRUCTIONS:**

- Invoices must include:
 - a) Name and address of successful bidder;
 - b) Name and address of receiving department or official;
 - c) Purchase Order Number and Contract number (if any);
 - d) Notation - "Hidalgo County Sheriff's Office (Including all funding sources, programs, and entities) RFB: 2019-036-05-29-HAG "Lease of Tower Space", and
 - e) Descriptive information as to the items or services delivered, including product code,

item number, quantity, etc.

- Discount payments will be considered when offered.
- Contact person for Billing and Payment questions:

HIDALGO COUNTY AUDITOR'S OFFICE

Postal/Mailing 2808 S. Business Hwy. 281

Edinburg, Texas 78539

956-318-2511

15. SCHEDULE OF EVENTS:

Bid Opening, 9:30 A.M.	May 29, 2019
Award of Contract:	2019
Commence Work or Deliver Products:	2019

16. HIDALGO COUNTY HOLIDAYS:

2019 YEAR	
New Year's Day	01/01/19
Martin Luther King Day	01/21/19
President's Day	02/18/19
Good Friday	04/19/19
Memorial Day	05/27/19
Independence Day	07/04/19
Labor Day	09/02/19
Columbus Day	10/14/19
Veteran's Day	11/11/19
Thanksgiving Day	11/28/19-11/29/19
Christmas Day	12/24/19-12/25/19
New Year's Eve	12/31/19

17. BID, PAYMENT, OR PERFORMANCE BOND AND DEBARMENT CERTIFICATION; PAYMENT UNDER CONTRACT:

The County may, and if mandated by statute, shall require a bid bond, a performance bond and/or a payment bond. Any such bond must be executed with a surety company authorized to do business Texas and shall meet any other requirements established by law or by County pursuant to applicable law.

- If the contract proposed is for the construction of public works or is for a contract for goods & services exceeding \$100,000, all bidders shall furnish a good and sufficient bid bond in the amount of five percent of the total contract price.

- In the event the contract exceeds Fifty Thousand Dollars (\$50,000.00), the bidder shall furnish a payment bond and a performance bond to the County for the full amount of the contract within thirty (30) days after the date of signing of the contract or issuance of a Purchase Order following the acceptance of a bid or proposal, but in any event prior to the commencement of actual work.
- If the contract is for \$50,000 or less, no money will be paid to the contractor until completion and acceptance of the work or the fulfillment of the purchase obligation to the County, and, if applicable, the receipt by County of satisfactory evidence that all subcontractors and material men have been paid.
- If a contract is for the construction, alteration or repair of public buildings or public works, the contractor *shall* provide a performance bond for a contract in excess of One Hundred Thousand Dollars (\$100,000.00) and *shall* provide a payment bond for a contract in excess of Twenty-Five Thousand Dollars (\$25,000.00) as required by Tex. Govt. Code Ch. 2253.
- For requirements contracts, bond requirements are determined by applying the proposed unit price to the estimated quantities included in the specifications.

18. TITLE VI NOTICE/ NONDISCRIMINATION:

- a) By submitting a bid, the bidder certifies that it will comply with the following nondiscrimination statutes and their implementing regulations. Title VI of the Civil Rights Act of 1964, as amended (78 Stat.252, 42 U.S.C. §§2000d to 2000d-4) provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Recipient receives Federal financial assistance. Title VI has been broadened by related statutes, regulations and executive orders as found in Appendices "A" through "E" as delineated in the USDOT Standard Title VI/Non-Discrimination Assurances-Specific Assurances to prohibit discrimination on other grounds including, but not limited to, religion, sex, age, and disability. (Title VI-Appendices "A" through "E" are hereby attached as **Exhibit "G"**. The County's entire Title VI policy may be found at <https://www.hidalgocounty.us/2071/Title-VINondiscrimination-Plan> and is hereby incorporated by reference.
- b) The following required statement and the applicable provisions of the Title VI Appendices "A" through "E" expanding these protections to the categories described herein are hereby incorporated by reference as applicable.
 - "The County of Hidalgo, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat.252, 42 U.S.C. §§2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award".
- c) The bidder will attach all applicable notices, including those referenced in Title VI – Appendices

“A” through “E”, to which it is obligated to provide or submit as part of the bid.

- If applicable, Form FHWA 1273 – “*Required Contract Provisions Federal-Aid Construction Contracts*”, must be physically attached to certain Federal-aid construction contracts. A contractor (or subcontractor) is required to insert Form FHWA 1273 in each subcontract and all lower tier subcontracts. Form FHWA 1273 is attached as **Exhibit “P”**, and, if applicable, its provisions are incorporated in and made part of the contract entered into between the County and the successful respondent related to the present procurement.

19. ETHICAL STANDARDS:

- It shall be a breach of ethics to offer, give or agree to give any elected official, department head or employee, or former elected official, department head or employee, of the County, or for any elected official, department head or employee or former elected official, department head or employee of the County, to solicit, demand, accept or agree to accept from another person, entity or organization, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore pending before any department or agency of the County.
- It shall be a breach of ethics for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor for any contract for the County, or any person associated therewith, as an inducement for the award of a subcontract or order.
- Contracts awarded hereunder shall be in compliance with Tex. Loc. Govt. Code Chapter 171: Regulation of Conflicts of Interest of Officers of Municipalities, Counties and Certain Other Local Governments.
- **NOTICE:**
All communications by a vendor to the county, its officials, and department heads regarding this procurement shall be done through the Hidalgo County Purchasing Department.

No vendor, its representative, agent, or employee shall engage in private communication with a member of the Hidalgo County Commissioners Court or county department heads regarding any procurement of goods or services by the County from the date that the bid, RFP, or RFQ is released. No private communication regarding the purchase shall be permitted until the procurement process is complete and a purchase order is granted or a contract is entered into. “Private Communication” means communication with any vendor outside of a posted meeting of the governing body, a regular meeting of a standing or appointed committee, or negotiation with a vendor which has been specifically authorized by the governing body.

20. DISCLOSURE OF CONFLICT OF INTEREST:

Effective January 1, 2016, Chapter 176 of the Texas Local Government Code requires that any vendor, person, consultant or contractor considering doing business with Hidalgo County (“the County”) to disclose in the Conflict of Interest Questionnaire (the “CIQ”) attached as **Exhibit “D”**, the vendor, person, consultant or contractor’s affiliation or business relationship that might cause a

conflict of interest with the County. By law, the CIQ must be filed with the Hidalgo County Clerk's Office no later than the seventh business day after the date the person becomes aware of facts that require the statement to be filed. The disclosure requirement applies to a person or business that contracts or seeks to contract with Hidalgo County for the sale or purchase of property, goods or service. Any purchase order or contract resulting from this process shall be considered null and void if the successful respondent fails to comply with the Texas Local Government Code Chapter 176. Vendors, consultants, contractors and others who desire to conduct business with Hidalgo County are encouraged to refer to Texas Local Government Code Chapter 176 for details of this law. An offense under Texas Local Government Code Chapter 176 is a Class C Misdemeanor.

If applicable, completed Form CIQ must be submitted to the Hidalgo County Clerk's Office located at 100 N. Closner, Edinburg, Texas 78539 - Hidalgo County Courthouse.

COMPLETION AND SUBMISSION OF FORM CIQ IS THE SOLE RESPONSIBILITY OF THE PROSPECTIVE RESPONDENT. QUESTIONS REGARDING COMPLIANCE SHOULD BE DIRECTED TO YOUR LEGAL COUNSEL.

21. CERTIFICATE OF INTERESTED PARTIES (FORM HB1295):

As of January 1, 2016, to comply with Texas Government Code Section §2252.908, and the rules issued by the Texas Ethics Commission found in Title 1, Section 46.1, 46.3 and 46.5 of the Texas Administrative Code, we have updated and revised our RFP packet. In accordance with these requirements, a business must submit a completed Certificate of Interested Parties Form 1295 to the County before the County may enter into a contract with the business entity. In box 3 of Form 1295, you will provide the **RFB No. 2019-036-HAG**, as shown on the packet. Once completed and filed with the Texas Ethics Commission, Form 1295 must be printed, signed, and submitted to our office either by facsimile transmission to (956) 292-7612 or via email to **hector.garcia1@co.hidalgo.tx.us**. Hidalgo County cannot enter into a contract until Form 1295 is submitted. Therefore, failure to timely submit signed Form 1295 may result in a delay of the award. Full instructions for completion and submittal of Form 1295 may be found on the Texas Ethics Commission website:

<https://www.ethics.state.tx.us/tec/1295-Info.htm>

THE AWARDED VENDOR WILL HAVE THIRTY (30) DAYS FROM THE DATE THE HIDALGO COUNTY COMMISSIONERS' COURT APPROVES THIS AGREEMENT TO SUBMIT THE SIGNED FORM 1295. HIDALGO COUNTY CANNOT ENTER INTO A CONTRACT UNTIL FORM 1295 IS SUBMITTED.

22. If during the life of any contract, or proposal awarded, the successful respondents' net prices generally available to other customers for items awarded herein are reduced below the contracted price, it is understood and agreed that the benefits of such reduction shall be extended to County.
23. Proposal and all goods and services provided thereunder shall comply with all federal, state and local laws concerning this type(s) of goods and/or services.
24. Minimum Standards for Responsible Prospective Bidders: A prospective bidder must affirmatively demonstrate the bidder's responsibility. A prospective bidder, by submitting a bid, represents to County that it meets the following requirements:
- Possess or is able to obtain adequate financial resources as required to perform under the bid;

- Be able to comply with the required or proposed delivery schedule;
 - Have a satisfactory record of performance;
 - Have a satisfactory record of integrity and ethics; and
 - Be otherwise qualified and eligible to receive an award.
25. Successful bidder will pay or cause to be paid, without cost or expenses to County, all FICA, FUTA/SUTA and Federal Income Withholding Taxes of all employees, and all wages and benefits as required by Federal or State law. Successful bidders, officers, agents, and/or employees will not be entitled to any benefits of an employee or elected official of County, including, but not limited to, benefits associated with County's civil service system.
26. 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 County with thirty (30) days written notice prior to cancellation.
27. County reserves the right to enforce performance of any contract awarded hereunder in any manner prescribed by law or deemed to be in the best interest of the County. County reserves the right to terminate the contract immediately in the event of breach or default by a successful bidder, or in the event, a successful bidder fails to:
- A. Meet schedules;
 - B. Pay any required fees or taxes; or
 - C. Otherwise, perform in accordance with the requirements.
28. **INDEMNIFICATION:** Successful bidder shall defend, indemnify and save harmless County and all its elected officials, officers, agents and employees from all suits, actions, or other claims of any character, name and description brought for or on account of any injuries or damages received or sustained by any person, persons, or property on account of any negligent act or fault of the successful bidder, or of any agent, employee, subcontractor or supplier in the execution of, or performance under, any contract which may result from bid award. Successful respondent indemnifies and will indemnify and save harmless County from liability, claim or demand on their part, agents, servants, customers, and/or employees whether such liability, claim, or demand arises from event or casualty happening on or within the occupied premises themselves or happening upon or in any of the halls, elevators, entrances, stairways or approaches to the facilities within which the occupied premises are located. The successful bidder shall pay any judgment with costs which may be obtained against county growing out of such injury or damages, and shall, upon request, provide a defense to County by counsel reasonably acceptable to County. Successful bidders indemnify hereunder shall include but is not limited to, claims relating to patent, copyright or trademark infringement, and the like, arising out of the goods and services provided by the successful bidder.
29. The successful bidder shall warrant that all items/services shall conform to the specifications and/or all warranties provided under the Uniform Commercial Code and be free from all defects in material, workmanship and the like. Items supplied under a contract pursuant to this Request for Bid shall be subject to County approval. Items found to be defective or not meeting specifications shall be replaced by the successful bidder within two (2) business days at no expense to County. Items that are not picked up within one (1) week after notification shall be deemed a donation to County and may be used or disposed of at County's discretion and without waiver of any other rights of County as to the items' nonconformity.

30. This document and any disputes arising hereunder shall be governed and construed according to the laws of the State of Texas and will be performable exclusively in Hidalgo County, Texas.
31. The successful respondent shall not assign, sell, transfer or convey its rights under any awarded contract, in whole or in part, without the prior written consent of County.
32. Respondents shall provide with the proposal response, a list of at least three (3) references where like services have been supplied by their firm. Include the name of the business or government, address, telephone number and the name of the representative or contact person.

33. **CONTRACTS SUBJECT TO FEDERAL AWARD:**

- The procurement standards of 2 CFR, Part 200, including, but not limited to 2 CFR 200.317-200.326, and applicable Hidalgo County Purchasing Policy (found at <https://www.hidalgocounty.us/805/County-Administrative-Policies>) address the County's requirements, as a non-Federal entity, in regards to contracts it enters into that are subject to federal award. Pursuant to 2 CFR 200.236, the County, as a non-Federal entity, is required to include into contracts subject to federal award, the applicable provisions and contract clauses described in Appendix II to 2 CFR 200, (Contract Provisions for non-Federal Entity Contracts Under Federal Awards). As such, **if applicable**, the provisions of the Hidalgo County Purchasing Policy, the procurement standards found in 2 CFR, Part 200, the provisions of Appendix II to 2 CFR 200, and the required contract clauses found in **Exhibit "H"** are incorporated by reference, whether specified explicitly or not, as part of this procurement packet and any resulting agreement.
- In addition, should the County's contracts under Federal award be subject to assistance from the Federal Emergency Management Agency (FEMA), FEMA requires the inclusion of contract terms in addition to those under Appendix II to 2 CFR 200. **If applicable**, the additional contract clauses required by FEMA are found in **Exhibit "H"** and incorporated by reference, whether specified explicitly or not, as part of this procurement packet and any resulting agreement. Should the contract be subject to assistance from FEMA, it is the County's intention to comply with FEMA requirements; therefore, any conflict in terms should be resolved as such.
- **If applicable**, in accordance with 2 CFR 200.319, Contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. (See 2 CFR 200.219). Additionally, Hidalgo County policy provides that for federal road projects, engineers, engineering firms, and/or a subsidiary, affiliate, or a consultant of the engineer or engineering firm who has received compensation from the County, that assist in the development of, or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals, will be excluded from competing for such procurements (i.e...subsequent construction engineering/management and/or inspection/testing) for all other phases of the project. (See Hidalgo County Policy) "*Procedures for Selection and Contracting of Professional Service Providers for Federal Road Projects*" found at <https://www.hidalgocounty.us/805/County-Administrative-Policies>, which, if applicable, is incorporated by reference, whether specified explicitly or not, as part of this procurement packet and any resulting agreement for all purposes.

34. **HISTORICALLY UNDERUTILIZED BUSINESS/DISADVANTAGED BUSINESS ENTERPRISES:**

The County is committed to ensuring that Historically Underutilized Businesses (HUB) and

Disadvantaged Business Enterprises (DBE) such as small business enterprises (SBE), minority and women-owned business enterprises (MWBE) receive a fair and equal opportunity for participation in the County's procurement process. The County encourages the use of these enterprises both as prime and subcontractors. (See Exhibit "E" for requirements).

When federal funds are expended by the County, the County will take affirmative steps set forth in 2 CFR 200.321 to assure that small, minority, women-owned businesses and labor surplus area owned firms are used when possible. Pursuant to 2 CFR 321, the County requires that a prime contractor who uses sub-contractors take affirmative steps set forth in 2 CFR 200.321, including:

- a) Placing qualified small and minority business and women's business enterprises on solicitation lists;
- b) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- d) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- e) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

Nothing in this section is to be construed to require the County to award a contract other than as required by law and Hidalgo County policies and procedures.

35. TEX. GOVT. CODE 2270 – BOYCOTT ISRAEL VERIFICATION: Effective September 1, 2017, the Texas Government Code was amended to require state agencies and political subdivisions to obtain written verification from the Company that their Company (i) does NOT boycott Israel and (ii) will not boycott Israel during the life of this Contract, the Company verifies that it does not Boycott Israel, and agrees that during the term of this Contract will not Boycott Israel as that term is defined in Texas Government Code §2270.001(1) and §808.001(1), as amended. The County cannot execute a contract for goods or services without this declaration.
36. Bidders must provide all applicable documentation requested with this Bid in their response. Failure to provide this information may result in rejection of the bid as non-conforming.

ORIGINAL

LEGAL NOTICE

RFB No.: 2019-036-05-29-HAG

REQUEST FOR BID LEGAL NOTICE
For
HIDALGO COUNTY SHERIFF'S OFFICE
(including all funding sources, programs and entities)

"Lease of Tower Space"
RFB No.: 2019-036-05-29-HAG

OPENED
9.41
5-29-19
Witnessed

To: Martha L. Salazar, CPPB, Purchasing Agent
Hidalgo County Purchasing Department
Physical Address: 2802 S. Business Hwy. 281 Administration Building
Mailing/Postal Address: 2812 S. Business Hwy. 281
Edinburg, Texas 78539



Bidder acknowledges that it has examined this Request for Bid and specifications and is familiar with the conditions to be met. In accordance with the Specifications, and subject to all laws and regulations of the United States and state and local laws, the undersigned bidder proposes and commits to furnish all labor, equipment, material, software, and services as set forth in the documents hereinbefore mentioned. The undersigned bidder further agrees, upon acceptance of its bid, to execute a contract and/or Purchase Order issued by Hidalgo County for performing and completing the work described in the Specifications within the time stated and for the prices proposed in the documents attached hereto and made a part hereof.

Bidder acknowledges receipt of all of the pages of the documents referenced in the Invitation to Bid Checklist presented in connection with this procurement. Bidder understands that Hidalgo County reserves the right to reject any or all bids and further reserves the right to design the evaluation criteria to be used in selecting the lowest and best bid.

Bidder acknowledges that by signature below, it is providing the required certifications, attestations, verifications and/or acknowledgments as referenced within this Request for Bid. Bidder acknowledges that any and all specifications, provisions, and attachments of this Request for Bid are incorporated into and made a part of any resulting agreement.

Bidder agrees that this bid shall be good and may not be withdrawn for a period of ninety (90) calendar days after the scheduled closing time for receiving bids, as contained in the Specifications. An individual authorized to bind the company must sign the following section. Failure to execute this section may result in bid rejection.

Respectfully submitted,

Firm:

RGV Towers, LLC

Address:

PO Box 3097, McAllen, Texas 78502

By:



Printed Name:

Alan Yoder

Title:

President

EXHIBIT “A”
SPECIFICATIONS

REQUEST FOR BIDS

**HIDALGO COUNTY SHERIFF’S
OFFICE**

“LEASE OF TOWER SPACE”

RFB No.: 2019-036-05-29-HAG

Exhibit "A"

HIDALGO COUNTY SHERIFF'S OFFICE "LEASE OF TOWER SPACE" RFB. No. 2019-036-05-29-HAG SPECIFICATIONS

Hidalgo County is seeking to lease tower space for the Hidalgo County Sheriff's Office. Specifications are as follows, but not limited to the following:

Specifications & Requirements, Terms & Conditions

- 1). All costs and expenses associated with the preparation and submission of (bid, proposals and / or quotes) shall be responsibility of the bidder and no reimbursements for such charges or expenses shall be passed onto HIDALGO COUNTY.
- 2). Lease property must have shelter to house transmission, reception and rebroadcast equipment.
- 3). Tower shelter must have commercial electricity and air conditioning system.
- 4). Tower shelter should be of construction capable of withstanding sustained hurricane force winds.
- 5). Tower site must have a back up power source, generator preferred, capable of providing electricity for Sheriff's Department equipment and tower operations for a period of forty-eight (48) hours.
- 6). Height of tower should be four hundred forty (440) ft. or taller.
- 7). Tower must meet all F.A.A. and F.C.C guidelines and be licensed by the F.C.C and tower provider shall attach a copy of each F.C.C. Antenna Site Registration.
- 8). Tower site shall be an existing site or a new site, with construction to be completed and ready for installation of equipment, meeting all city, county, state, and federal standards by the date of the award of contract. Tower site must be geographically located within 6 nautical miles of the following:

Latitude	Longitude
26.25600556	-98.16222222

- 9). Tower provider will be responsible for all fines and penalties assessed by the F.A.A. or F.C.C. for the tower and tower related equipment as it relates to the tower site.
- 10). Tower rent must include cost of electricity.
- 11). Lessor throughout the lease term, will maintain the property and keep it free of waste and

nuisance.

- 12). Lessor throughout the lease term, at his own expense will maintain air conditioning systems, the roof, the foundation, the structural soundness of the exterior walls, the electrical wiring, the doors, the guy wires, the tower structure, the towering warning lights or beacons and all other components of the property.
- 13). Lessor will maintain all records and make all reports required by the Federal Aviation Administration with respect to maintenance and operation of tower warning light or beacons.
- 14). Lessor agrees that Hidalgo County employees and contracted agents of Hidalgo County shall have at all times rights of ingress and egress to the property for the purpose of installing, maintaining and repairing Hidalgo County's equipment subject to the lessor's approval/disapproval.
- 15). Lessor agrees not to lease or license the use of the property, or any portion thereof, to any party which will interfere with Lessee's use of the property after installation of Hidalgo County Equipment.
- 16). Lessor represents that it has no knowledge of any substance, chemical or waste (collectively, substance) on the site that is identified as hazardous, toxic or dangerous in any applicable federal state or local law or regulation.
- 17). Lessor must submit property legal description.
- 18). Vendor must provide bid on initial term including all renewal terms.
- 19). Bid award will be based on a total lump sum basis to the lowest bidder meeting all requirements and specifications.
- 20). Hidalgo County Sheriff's Office shall be allowed to substitute or replace equipment used on the property with substantially the same equipment with the prior written consent of Lessor without experiencing an increase in monthly rental costs. However, In the event, Hidalgo County Sheriff's Office desires to add "new" equipment to the property at Hidalgo County Sheriff's Office expense, Hidalgo County Sheriff's Office shall also seek the prior written consent of Lessor, and Lessor shall submit a written proposal to Hidalgo County Sheriff's Office with the proposed additional rental costs associated with the new equipment. If the parties reach an agreement for the additional rental costs due to the addition of new equipment, then the new equipment may be added and Hidalgo County will pay the increased cost.

Equipment to be installed at tower site

Hidalgo County Sheriff's Department will install the following antennas, lines, and transmitters.

- 1 VHF Antenna at or near 440 feet
- 1 VHF Antenna at or near 400 feet

All cables will be 7/8 inch heliax attached to tower with tie wire and/or snap in hangers and

be grounded at both top and bottom. The Hidalgo County Sheriff's Department will install 2 VHF transmitters with duplexors.

Two Macom transmitters
Two V.H.F. Duplexors

Premises:

Tower Space(s) at the elevation of 440 and 400 feet on the tower, together with the nonexclusive right to the use of the tower structure for mounting the transmission cables. Approximately 20 square feet, (20 square feet representing two (2) transmitter boxes and (2) duplexors) of equipment shelter space to house Lessee's transmission, reception and rebroadcast equipment in the equipment building located on the property.

Frequencies:

-TX 155.625 -TX 155.730
RX 154.770 RX 154.815

Terms and Conditions:

- 1). The initial term of the lease contract will be for a period of one (1) year. Hidalgo County May in its sole discretion elect the option to extend the contract for nine (9) additional one (1) year terms.
- 2). Hidalgo County reserves the right to continue this bid for an additional sixty (60) days grace period at the end of the contract term due to any unforeseen delay in the procurement process.
- 3). Hidalgo County reserves the right to hold bids for a period of ninety (90) days without taking any action.
- 4). Hidalgo County reserves the right to reject any/all bids, to waive any/all formalities or technicalities, or to accept the bid considered the best and most advantage to the County.
- 5). After bid is awarded and successful awarded contractor defaults in meeting the general instructions to bidders(s) and/or in complying with the contract agreement, Hidalgo County reserves the right to seek the services from the next low bidder(s).
- 6). Lessor agrees to insure the property, at its sole cost and expense, against loss by fire, or other casualty, including extended coverage, with a policy or policies acceptable to Lessee. The coverages under such policy or policies shall provide for coverage in an amount reasonably required by Lessee to provide for the replacement or repair of the improvements located on the property, or such portion thereof as may be damaged by a covered loss, but in no event less than the required by any party holding a security interest in or lien on the property.
- 7). Lessor agrees to hold Lessee harmless from any and all claims, actions, proceedings, damages and liabilities arising from the use, condition and operation of the property, and to carry liability insurance insuring, at the sole cost and expense of Lessor against such loss and liability, in such amounts as Lessee may reasonably require.

In the event Lessor should neglect to provide any insurance coverage required under this paragraph, Lessee shall have the right, but not the obligation, to purchase such coverage to protect Lessees interests, with any reasonable cost therefore to be payable by Lessor.

- 8). The awarded bidder shall adhere to the following insurance requirements:
Property insurance shall provide that any proceeds for loss or damage to building or to improvements shall be payable solely to Lessor, which sum shall be used by Lessor for repair and restoration purposes. Certificates of insurance shall be submitted to Hidalgo County for approval prior to rental services being performed by Lessor hereunder. Bidder shall maintain liability insurance on the building as described and listed in: Insurance Requirements: See exhibit "C" attached. Plus also insure building for fire, accident and natural disaster; the award of the bid will be evidenced by a written lease agreement in a form acceptable to Hidalgo County.

ALL WRITTEN INQUIRIES WILL BE ACCEPTED VIA EMAIL OR VIA FACSIMILE to (956-292-7612 and e-mail to hector.garcia1@co.hidalgo.tx.us BY NO LATER THAN May 20, 2019 BY 5:00 P.M.. Responses to said inquiries will be sent to all applicants via e-mail by no later than, May 23, 2019 by 5:00 p.m.

EXHIBIT “B”

BID PAGE

REQUEST FOR BIDS

HIDALGO COUNTY SHERIFF'S
OFFICE

“LEASE OF TOWER SPACE”

RFB No.: 2019-036-05-29-HAG

Tab Sheet
2019-036-05-29-HAG
"Lease of Tower Space"-Sheriff's Office

Vendor's Name	Year(s) 10 years term	Total Cost per month	Total Cost per year
RGV Towers, LLC FCC Antenna Site Registration# 1258600	Initial year -1st	\$1,100.00	\$13,200.00
	Renewals terms		
	2 nd year	\$1,150.00	\$13,800.00
	3 rd year	\$1,200.00	\$14,400.00
	4 th year	\$1,200.00	\$14,400.00
	5 th year	\$1,250.00	\$15,000.00
	6 th year	\$1,300.00	\$15,600.00
	7 th year	\$1,350.00	\$16,200.00
	*(With clarification provided by vendor on the typo made in submittal for this year's total cost)		
	8 th year	\$1,400.00	\$16,800.00
	9 th year	\$1,450.00	\$17,400.00
	10 th year	\$1,500.00	\$18,000.00
Total Cost for 10 years		\$154,800.00	

Re: 2019-036 "Lease of Tower Space"

From : Alan Yoder <alan@sc2000.net>

Wed, May 29, 2019 02:36 PM

Subject : Re: 2019-036 "Lease of Tower Space"

To : hector.garcia1 <hector.garcia1@co.hidalgo.tx.us>

The monthly charge is correct but the annual charge should be \$16,200.00 for the 7th year.

Alan Yoder
956-778-3040 Mobile
956-213-1147 Fax

On May 29, 2019, at 1:26 PM, hector.garcia1 <hector.garcia1@co.hidalgo.tx.us> wrote:

Good Afternoon Mr. Yoder,

After reviewing your proposal and adding up the years totals it does not match. Could you please clarify the cost for the 7th term of 1 year? Please see attached.

Respectfully,

--

Hector Garcia
Contracts Specialist I
Hidalgo County Purchasing Dept.
2812 S Bus. Highway 281
Edinburg, Texas 78539
T: (956) 318-2626 x4857
F: (956) 292-7612

<Bid Page.pdf>

From : hector.garcia1 <hector.garcia1@co.hidalgo.tx.us>

Wed, May 29, 2019 01:26 PM

Subject : 2019-036 "Lease of Tower Space"

📎 1 attachment

To : alan <alan@sc2000.net>

Good Afternoon Mr. Yoder,

After reviewing your proposal and adding up the years totals it does not match. Could you please clarify the cost for the 7th term of 1 year? Please see attached.

EXHIBIT "B"

BID PAGE

HIDALGO COUNTY SHERIFF'S OFFICE
 "LEASE OF TOWER SPACE"
 BID No: 2019-036-05-29-HAG
 Bid Opening Date: May 29, 2019 at 9:30 AM

Note: Vendor must provide bid on initial term including all renewal terms.

Initial 1 year term:	
<u>Description</u>	<u>Bid Amount</u>
Total cost per month	\$1,100.00
Total cost for 1 st term of 1 year (12 months)	\$13,200.00
Below are the Renewal Options – nine (9) one (1) year terms	
2 nd 1 year term:	
<u>Description</u>	<u>Bid Amount</u>
Total cost per month	\$1,150.00
Total cost for 2 nd term of 1 year (12 months)	\$13,800.00
3 rd 1 year term:	
<u>Description</u>	<u>Bid Amount</u>
Total cost per month	\$1,200.00
Total cost for 3 rd term of 1 year (12 months)	\$14,400.00
4 th 1 year term:	
<u>Description</u>	<u>Bid Amount</u>

Total cost per month	\$1,200.00
Total cost for 4 th term of 1 year (12 months)	\$14,400.00
5th 1 year term:	
<u>Description</u>	<u>Bid Amount</u>
Total cost per month	\$1,250.00
Total cost for 5 th term of 1 year (12 months)	\$15,000.00
6th 1 year term:	
<u>Description</u>	<u>Bid Amount</u>
Total cost per month	\$1,300.00
Total cost for 6 th term of 1 year (12 months)	\$15,600.00
7th 1 year term:	
<u>Description</u>	<u>Bid Amount</u>
Total cost per month	\$1,350.00
Total cost for 7 th term of 1 year (12 months)	\$1,620.00
8th 1 year term:	
<u>Description</u>	<u>Bid Amount</u>
Total cost per month	\$1,400.00
Total cost for 8 th term of 1 year (12 months)	\$16,800.00
9th 1 year term:	

<u>Description</u>	<u>Bid Amount</u>
Total cost per month	\$1,450.00
Total cost for 9 th term of 1 year (12 months)	\$17,400.00
10th 1 year term:	
<u>Description</u>	<u>Bid Amount</u>
Total cost per month	\$1,500.00
Total cost for 10 th term of 1 year (12 months)	\$18,000.00
Grand Total	
<u>Description</u>	<u>Bid Amount</u>
Total Cost for 10 years (120 months)	\$154,800.00
FCC Antenna Site Registration #	1258600

BIDDER'S INFORMATION:

BIDDER/COMPANY NAME:

RGV Towers, LLC

ADDRESS:

PO Box 3097

CITY/STATE/ZIP CODE:

McAllen, Texas 78502

PHONE & FAX NO'S:

956-778-3040 / 956-213-1147

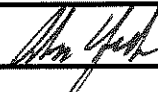
CELLULAR NO:

956-778-3040

E-MAIL ADDRESS:

alan@sc2000.net

AUTHORIZED SIGNATURE:



PRINTED NAME:

Alan Yoder

TITLE

President

52

EXHIBIT “C”
INSURANCE REQUIREMENTS

REQUEST FOR BIDS

**HIDALGO COUNTY SHERIFF'S
OFFICE**

“LEASE OF TOWER SPACE”

RFB No.: 2019-036-05-29-HAG

EXHIBIT "C"

Insurance Requirements Professional Services (i.e...Engineers, Architects, Appraisers & Surveyors)

The proposer awarded the contract shall furnish proof of insurance, which will also include any subcontractor that is subcontracted by the proposer in at least the following limits, to be in place prior to providing any services under this Contract and to continue at all times in force in effect during the term of this Contract:

1. 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 a five (5) year extended reporting period.
2. A Five Hundred Thousand Dollars (\$500,000.00) Comprehensive General Liability Insurance policy providing additional coverage to all underlying liabilities of County.
3. 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 with limits up to Five Hundred Thousand Dollars (\$500,000.00) arising out of the services provided to County hereunder.
4. Uninsured/Underinsured motorist coverage in an amount equal to the bodily injury limits set forth immediately above;
5. Workers compensation insurance in amounts established by Texas law, unless the Bidder is specifically exempted from the Texas Workers Compensation Act, Texas Labor Code Chapter 401, et. seq.

Hidalgo County will only accept certificates of insurance on an Acord form (as attached hereto). Certificates of Insurance naming County as an additional insured shall be submitted to County for approval prior to any services being performed by Contractor. Each policy of insurance required hereunder shall extend for a period equivalent to, or longer than the term of the Contract, and any insurer hereunder shall be required to give at least thirty (30) days written notice to the County prior to the cancellation of any such coverage on the termination date, or otherwise. This Contract shall be automatically suspended upon the cancellation, or other termination, of any required policy of insurance hereunder, and such suspension shall continue until evidence adequate replacement coverage is provided to County. If replacement coverage is not provided within thirty (30) days following suspension of the Contract, this Contract shall automatically terminate.

ACORD		CERTIFICATE OF INSURANCE		DATE (MM/DD/YY)			
PRODUCER		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						INSURERS AFFORDING COVERAGE	
						INSURER A:	
						INSURER B:	
						INSURER C:	
		INSURER D:					
		INSURER E:					

COVERAGES						
THE POLICIES OF INSURANCE LISTED BELOW 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 THEIR TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.						
INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY				EACH OCCURRENCE	\$
	☐ COMMERCIAL GENERAL LIABILITY				FIRE DAMAGE (Any one fire)	\$
	☐ CLAIMS MADE OCCUR				MED (Any one person)	\$
	☐ OWNERS & CONT. PROT				PERSONAL & ADV INJURY	\$
	☐ OWNERS PROTECTIVE LIABILITY				GENERAL AGGREGATE	\$
	☐ GEN'L AGGREGATE LIMIT APPLIES PER: POLICY: ☐ PROJECT ☐ LOC				PRODUCTS - COMP/OP AGG	\$
B	AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (Per accident)	\$
	☐ ANY AUTO				BODILY INJURY (Per person)	\$
	☐ ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$
	☐ SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	\$
	☐ HIRED AUTOS				AUTO ONLY-CA ACCIDENT	\$
☐ NON-OWNED AUTOS				OTHER THAN AUTO ONLY	EA ACC AGG \$	
C	GARAGE LIABILITY				EACH OCCURRENCE	\$
	☐ ANY AUTO				AGGREGATE	\$
	EXCESS LIABILITY					\$
	☐ OCCUR ☐ CLAIMS MADE					\$
	☐ DEDUCTIBLE					\$
D	WORKERS COMPENSATION AND EMPLOYER'S LIABILITY				WC STATUTORY LIMITS	OTHER
					E.L. EACH ACCIDENT	\$
					E.L. DISEASE EA EMPLOYEE	\$
					E.L. DISEASE-POLICY LIMIT	\$
	OTHER					

DESCRIPTION OF OPERATIONS / LOCATION / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS County of Hidalgo shall be named as additional insured on all Commercial General Liability policies.		
CERTIFICATE HOLDER Hidalgo County Attn: Purchasing Department 2812 S Highway Bus. 281 Edinburg, Texas 78539	ADDITIONAL INSURED; INSURER LETTER:	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 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

25

Insurance Requirement Acknowledgment

I, Alan Yoder, authorized representative for RGV Towers, LLC,
Company/Vendor

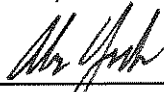
hereby acknowledge receipt of the County's required insurance limits. Said requirements:

- will be acquired within 10 working days after notification from Purchasing Department of award of project by the Hidalgo County Commissioners' Court;
- will acquire additional amounts required to meet the County's requirements within 10 working days after notification from Purchasing Department of award of project by the Hidalgo County Commissioners' Court; currently carry the following

Professional Liability (Errors & Omissions): \$ N/A

Automobile Liability: \$ 1,000,000 General Liability: \$ 1,000,000

- ✓ have already been met, see attached copy of insurance certificate.


Authorized Representative

5/17/19
Date

Notice to Proposer:

A certificate of insurance for the required insurance limits shall be provided to the Purchasing Department's Contract Managers in order to qualify for award and to execute a contract between your Company and the County

Failure to provide Certificates of Insurance to the Purchasing Department's Contract Managers will cause the award to be rescinded and re-awarded to next qualified vendor. Certificates of Insurance will be monitored and verified on a quarterly basis to ensure coverage policy is in place. It is the Company's obligation to maintain the appropriate insurance coverage throughout the term of the contract.

THIS FORM MUST ACCOMPANY YOUR PACKET

PROJECT REQUIREMENTS ACKNOWLEDGMENT

This is to certify that I, RGV Towers, LLC, possess all of the APPLICABLE:

1. Licenses: _____
2. Bonds: _____
3. Certificates: _____
4. Permits: _____
5. Other: FCC Tower Registration 1258600

necessary to carry out the required project. Furthermore, I am providing copies of the required documentation so that, if my company is awarded this project, I may be eligible to enter into a contract with Hidalgo County and proceed to complete the project in a timely manner.

* Any licenses, bonds, certificates, permits, etc. which are required must be presented as part of the packet in order to expedite the evaluation process. Failure to provide said documentation will result in the disqualification of your proposal/qualification.



Authorized Signature

RGV Towers, LLC

Company

PO Box 3097

Address

McAllen, Texas 78502

City, State, Zip

May 17, 2019

Date

EXHIBIT “D”

CIQ FORM

CONFLICT OF INTEREST QUESTIONNAIRE

REQUEST FOR BIDS

HIDALGO COUNTY SHERIFF'S
OFFICE

“LEASE OF TOWER SPACE”

RFB No.: 2019-036-05-29-HAG

CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

FORM CIQ

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of vendor who has a business relationship with local governmental entity.

RGV Towers, LLC

2 ☐ Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information is being disclosed.

None

Name of Officer

4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes

☐ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes

☐ No

5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7 
Signature of vendor doing business with the governmental entity

May 17, 2019

Date

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed;

or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

EXHIBIT “E”

VENDOR’S
APPLICATION
&
W-9 FORM

REQUEST FOR BIDS

HIDALGO COUNTY SHERIFF’S
OFFICE

“LEASE OF TOWER SPACE”

RFB No.: 2019-036-05-29-HAG

Proposer/Vendor Application

Mailing/Postal Address: 2812 S. Business Hwy. 281

Physical Address: 2802 S. Business Hwy. 281

Edinburg, Texas 78539

or e-mail: purchasing@co.hidalgo.tx.us

Company Name: RGV Towers, LLC		Telephone No. () 956-778-3040	
dba Name:			
Legal Name: RGV Towers, LLC			
Mailing Address: PO Box 3097, McAllen, TX 78502		Fax No. () 956-213-1147	
Physical Address: 600 Ash Avenue			
City, State, Zip: McAllen, Texas 78501		Tax I.D. No. 32024280607	
Remit to Address: PO Box 3097		City, State, Zip: McAllen, TX 78502	
E-Mail Address: alan@sc2000.net			
Representative(s) Name(s) & Title(s): Alan Yoder, President			
Type of Organization (check one): ☐ Individual ☐ Partnership ☐ Corporation ☐ Non-Profit			
☒ LLC ☐ Sole Proprietor ☐ Other, Specify			
State Identification No. 2024280607 (Please attach completed W-9 form with this application)			
Federal Identification No. or (if individual) SS No.			
State of Incorporation: Texas		Date: 12/28/06 Other:	
Type of Business (check one): ☐ Manufacturer ☐ Wholesaler ☐ Retailer ☐ Broker			
☐ Distributor ☐ Service Organization ☒ Other, Specify Tower Rental			
Name & Title of Person(s) Authorized to Sign Bids, Proposals, and/or Contracts: Alan Yoder, President			
Small and/or Disadvantaged Business Information (check application criteria)			
Small Business: ☐ Disadvantaged Business (At Least 51% Ownership): ☐			
☐ Less than 125,000 annual gross receipt		☐ Black American	
☐ Less than 250,000 annual gross receipt		☐ Hispanic American	
☐ Less than 499,000 annual gross receipt		☐ Asian Pacific American	
☐ More than 500,000 annual gross receipt		☐ Native American	
☐ More than 500,000 annual gross receipt		☐ Women	
☐ More than 500,000 annual gross receipt		☐ Other	
Have you been certified as a HUB or an MBE/WBE source?: ☐ Yes ☒ No			
Indicate Certification No.(s): _____, or are Certificate(s) attached?: ☐ Yes ☐ No			
What type of product(s) is/are solicited by your company?: Tower Rental			
Would you like to be provided with specifications for procurements of such products?: ☒ Yes ☐ No			
To Be Completed by the County: Rec'd by (Purchasing): _____ Date Rec'd by (Purchasing): _____			
Date Forwarded Information to Auditor's Office: _____ Entry Date: _____ Vendor No.: _____			

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HISTORICALLY UNDERUTILIZED BUSINESS (HUB) DECLARATION

The primary objective of the Hidalgo County HUB Program is to ensure Historically Underutilized Businesses receive a fair and equal opportunity for participation in the County's procurement process. This fact holds true for Services (Professional & Non-Professional), Commodities, and Construction contracts and any subcontracts thereto. The program strongly encourages Prime Contractors to provide subcontracting opportunities to Certified Hub Contractors/Vendors. Our goal for HUB contractor/vendor participation, as well as HUB subcontractor participation is 30%. To be considered as a "Certified HUB Contractor/Vendor" the contractor/vendor must have been certified by, and hold a current and valid certification with any of the three agencies listed below.

Have you been Certified as a HUB or an MBE/WBE source?: ☐ Yes ☒ No

If yes, by whom?: ☐ Texas Building & Procurement Commission ☐ Other _____

Indicate Certification No(s): _____ or Are Certificate(s) Attached?: ☐ Yes ☐ No

LIST OF CERTIFIED HUB SUBCONTRACTORS

(Attach additional pages if necessary)

What percentage of the Bid, RFP, or RFQ is to be subcontracted with Certified HUB sources?: _____%
(List HUB Subcontractor information below).

HUB Subcontractor Name: _____ HUB Status: _____
Certifying Agency (Check all applicable): ☐ Texas Building & Procurement Commission ☐ other
Address: _____ City: _____ State: _____ Zip: _____
Contact Person: _____ Title: _____ Phone No.: () _____
Subcontract Amount: \$ _____ Description of Work to be Performed: _____

HUB Subcontractor Name: _____ HUB Status: _____
Certifying Agency (Check all applicable): ☐ Texas Building & Procurement Commission ☐ other
Address: _____ City: _____ State: _____ Zip: _____
Contact Person: _____ Title: _____ Phone No.: () _____
Subcontract Amount: \$ _____ Description of Work to be Performed: _____

HUB Subcontractor Name: _____ HUB Status: _____
Certifying Agency (Check all applicable): ☐ Texas Building & Procurement Commission ☐ other
Address: _____ City: _____ State: _____ Zip: _____
Contact Person: _____ Title: _____ Phone No.: () _____
Subcontract Amount: \$ _____ Description of Work to be Performed: _____

(THIS PAGE MUST BE SUBMITTED WITH PROPOSAL)

Request for Taxpayer Identification Number and Certification

Go to www.irs.gov/FormW9 for instructions and the latest information.

Give Form to the
requester. Do not
send to the IRS.

Print or type. See Specific Instructions on page 3.	1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank. RGV Towers, LLC	
	2 Business name/disregarded entity name, if different from above	
	3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes. ☐ Individual/sole proprietor or single-member LLC ☐ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate ☒ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ _____ Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner. ☐ Other (see instructions) ▶ _____	
	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ (Applies to accounts maintained outside the U.S.)	
	5 Address (number, street, and apt. or suite no.) See instructions. PO Box 3097	Requester's name and address (optional)
	6 City, state, and ZIP code McAllen, Texas 78502	
	7 List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number								
			-			-		
or								
Employer identification number								
2	0	-	8	1	5	1	4	2

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign
Here

Signature of
U.S. person ▶

Date ▶ May 17, 2019

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What Is backup withholding, later.

EXHIBIT “F”

CERTIFICATION REGARDING
DEBARMENT

REQUEST FOR BIDS

HIDALGO COUNTY SHERIFF’S
OFFICE

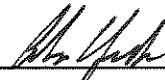
“LEASE OF TOWER SPACE”

RFB No.: 2019-036-05-29-HAG

**Certification
Regarding Debarment, Suspension Ineligibility**

As is required by the Federal Regulations Implementing Executive Order 12549, Debarment and Suspension, 45 CFR Part 76, Government-wide Debarment and Suspension, in the applicant certifies, to the best of his or her knowledge and belief, that both it and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency;
- b. Have not within a three-year period preceding this bid/proposal and/or application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction, violation of federal or state antitrust statutes or commission of embezzlement, theft, theory, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a government entity with commission of any of the offenses enumerated herein; and
- d. Have not within a three-year period preceding this bid/proposal and/or application had one or more public transactions terminated of cause or default.

Signature: 
Print Name: Alan Yoder
Title: Presidnet
Telephone Number: 956-778-3040
Date: May 17, 2019

If the proposer is unable to certify to all of the statements in this Certification, such proposer should attach an explanation to this proposal.

EXHIBIT “G”

**TITLE VI APPENDICES “A”
THROUGH “E”**

REQUEST FOR BIDS

**HIDALGO COUNTY SHERIFF’S
OFFICE**

“LEASE OF TOWER SPACE”

RFB No.: 2019-036-05-29-HAG

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Nondiscrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX B

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

NOW, THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the **COUNTY OF HIDALGO** will accept title to the lands and maintain the project constructed thereon in accordance with all applicable federal statutes, the Regulations for the Administration of all Department of Transportation programs, and the policies and procedures prescribed by the Federal Highway Administration of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the **COUNTY OF HIDALGO** all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit 1 attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto **COUNTY OF HIDALGO** and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the **COUNTY OF HIDALGO**, its successors and assigns.

The **COUNTY OF HIDALGO**, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the **COUNTY OF HIDALGO** will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended[, and (3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].*

(*Reverted clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

APPENDIX C

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the **COUNTY OF HIDALGO** pursuant to the provisions of Assurance 7(a):

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:
 - 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permitted, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, **COUNTY OF HIDALGO** will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*
- C. With respect to a deed, in the event of breach of any of the above Nondiscrimination covenants, the **COUNTY OF HIDALGO** will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the **COUNTY OF HIDALGO** and its assigns.*

(*Reverted clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

APPENDIX D

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by **COUNTY OF HIDALGO** pursuant to the provisions of Assurance 7(b):

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Nondiscrimination covenants, **COUNTY OF HIDALGO** will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*
- C. With respect to deeds, in the event of breach of any of the above Nondiscrimination covenants, **COUNTY OF HIDALGO** will there upon revert to and vest in and become the absolute property of **COUNTY OF HIDALGO** and its assigns.*

(*Reverted clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

Pertinent Nondiscrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23U.S.C. § 324et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49U.S.C. § 4 71, Section 4 7123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Nondiscrimination statute (49U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

EXHIBIT “H”

(If Applicable)

2 C.F.R. § 200.326 & 2 C.F.R. Part 200, Appendix II
Required Contract Clauses for Non-Federal Entity
Contracts Under Federal Awards

&

Required Contract Clauses for Non-Federal Entity
Contracts Under Federal Awards with the Federal
Emergency Management Agency
(FEMA)

2 C.F.R. § 200.326 & 2 C.F.R. Part 200, Appendix II, Required Contract Clauses for Non-Federal Entity Contracts Under Federal Awards

The United States Office of Management and Budget (OMB) issued in 2 C.F.R. 200: *Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards* (Uniform Guidance). Subpart D: Post Federal Award Requirements: 2 CFR §§200.317-200.326 of the Uniform Guidance contain provisions applicable to procurements made with federal grant funding.

As a non-Federal entity, the County of Hidalgo's ("County") contracts must contain the applicable contract clauses described in Appendix II to the Uniform Guidance (Contract Provisions for non-Federal Entity Contracts Under Federal Awards), which are set forth below. 2 C.F.R. §200.326. If applicable, the following clauses shall supersede any existing, similar clauses stated within the bid document, contract, and/or Terms and Conditions. *The term "Contractor" used herein refers to the proposer, bidder or other entity/individual responding to the applicable procurement packet.*

If applicable, the regulations in 2 CFR, Part 200 and Appendix II to the Uniform Guidance, as it may be amended from time to time, and the contract clauses below, are incorporated by reference as part of this procurement packet and any resulting agreement.

To procure goods and services using funds under a federal grant or contract, specific federal laws, regulations, and requirements may apply in addition to those under state law. The following provisions are required and apply when federal funds are expended by the County of Hidalgo for any contract resulting from this procurement process.

1. Remedies.

- a. **Applicability.** This requirement applies to all Federal grant and cooperative agreement programs.
- b. **Standard.** Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. See 2 C.F.R. Part 200, Appendix II, ¶ A.
- c. **Statement.** Pursuant to Federal Rule (A) above, when federal funds are expended by the County, the County reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party. Contractor shall comply with all applicable Federal, State of Texas, and local laws, rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the performance of the services, and any provision of equipment and material ("Applicable Law"). All transactions related to any of the Contract Documents shall be governed by the laws of the State of Texas, and trial of any action brought in connection with the bid or the Contract Documents shall be held exclusively in a state court in the County of Hidalgo, Texas.

2. Termination for Cause and Convenience.

- a. Applicability. This requirement applies to all Federal grant and cooperative agreement programs.
- b. Standard. All contracts in excess of \$10,000 shall address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement as follows. See 2 C.F.R. Part 200, Appendix II, ¶ B.
- c. Statement. Termination. County may terminate this Agreement for any reason upon ten (10) days written notice to the other party. County may terminate this Agreement immediately upon written notice if Contractor breaches this Agreement. In the event of any termination, Contractor shall promptly deliver to the County any and all Work Materials prepared for the County prior to the effective date of such termination, all of which shall become County's sole property. After receipt of the Work Materials, County will pay Contractor for the services which the County determines were satisfactorily performed as of the effective date of the termination.

Excuses for Non-Performance. Either party shall be absolved from its obligations under this contract when and to the extent that performance is delayed or prevented (and in the County of Hidalgo's case when and to the extent that its need for the articles, materials or work to be supplied hereunder is reduced or eliminated) by reason of acts of God, fire explosion, war riots, strikes, labor disputes, or governmental laws, orders or regulations.

Default. If Contractor or Subcontractor shall breach any provision hereof or shall become insolvent, enter voluntary or involuntary bankruptcy or receivership proceedings or make an assignment to the benefit of creditors, County of Hidalgo shall have the right (without limiting any other rights or remedies which it may have hereunder or by operation of law) to terminate this contract by written notice to Contractor whereupon County shall be relieved of all further obligation hereunder except the obligation to pay the reasonable value of Contractor's prior performance (at not exceeding the contract rate), and Contractor shall be liable to County for all costs incurred by County in completing or procuring the completion of performance in excess of the contract price herein specified. The County's right to require strict performance of any obligation hereunder shall not be affected by any previous waiver, forbearance of course of dealing. Time is of the essence thereof.

3. Equal Employment Opportunity.

- a. Applicability: This requirement applies to all Federal grant and cooperative agreement programs.
- b. Standard. Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60-1.4(b), in accordance with Executive Order 11246, *Equal Employment Opportunity* (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, *Amending Executive Order 11246 Relating to Equal Employment Opportunity*, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II, ¶ C.

c. Key Definitions:

- (1) *Federally Assisted Construction Contract.* The regulation at 41 C.F.R. § 60-1.3 defines a "federally assisted construction contract" as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.
- (2) *Construction Work.* The regulation at 41 C.F.R. § 60-1.3 defines "construction work" as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction

- d. Statement: Contractor will comply with the Nondiscrimination Civil Rights Act of 1964, as amended and all Federal regulations relative to nondiscrimination in Federally assisted programs. The regulation at 41 C.F.R. Part 60-1.4(b) requires the insertion of the following contract clause:

"During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the

administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States."

4. Davis Bacon Act and Copeland Anti-Kickback Act.

- a. Applicability of Davis-Bacon Act. The Davis-Bacon Act only applies to the emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. **It does not apply to other Federal grant and cooperative agreement programs, including the Public Assistance Program.**
- b. Standard. All prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction)). See 2 C.F.R. Part 200, Appendix II, ¶ D.

In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.

The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding City.

In contracts subject to the Davis-Bacon Act, the contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by

Department of Labor regulations at 29 C.F.R. Part 3 (Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States). The Copeland Anti-Kickback Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to FEMA or applicable Federal entity.

- c. Statement. The regulation at 29 C.F.R. § 5.5(a) does provide the required contract clause that applies to compliance with both the Davis-Bacon and Copeland Acts. However, as discussed in the previous subsection, the Davis-Bacon Act does not apply to Public Assistance recipients and subrecipients. In situations where the Davis-Bacon Act does not apply, neither does the Copeland "Anti-Kickback Act." However, for purposes of grant programs where both clauses do apply, FEMA or applicable Federal entity requires the following contract clause:

"Compliance with the Copeland "Anti-Kickback" Act.

(1) *Contractor.* The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

(2) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as Federal requirements may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

(3) *Breach.* A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12."

5. Contract Work Hours and Safety Standards Act.

- a. Applicability: This requirement applies to all Federal grant and cooperative agreement programs.
- b. Standard. Where applicable (see 40 U.S.C. § 3701), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II, ¶ E.

Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.

The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of

supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

The regulation at 29 C.F.R. § 5.5(b) provides the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act:

c. Statement.

"Compliance with the Contract Work Hours and Safety Standards Act.

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) *Withholding for unpaid wages and liquidated damages.* The County of Hidalgo shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section."

6. Rights to Inventions Made Under a Contract or Agreement.

- a. Applicability: Stafford Act Disaster Grants. This requirement **does not apply to the Public Assistance, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant**

Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA or Federal awards under these programs do not meet the definition of “funding agreement.”

- b. Standard. If the FEMA or Federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by FEMA or applicable awarding agency. See 2 C.F.R. Part 200, Appendix II, ¶ F.
- c. Key Definition: The regulation at 37 C.F.R. § 401.2(a) currently defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

7. Clean Air Act and the Federal Water Pollution Control Act.

- a. Applicability and Standard: Contracts of amounts in excess of \$150,000 must contain a provision that requires the contractor to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency. See 2 C.F.R. Part 200, Appendix II, ¶ G.
- b. Statement: Included in contracts as provided in section “7a” above.
 - (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. and the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
 - (2) The contractor agrees to report each violation to the Federal awarding agency (e.g. Federal Emergency Management Agency-FEMA) and the Regional Office of the Environmental Protection Agency. Contractor understands and agrees that each violation reported to the County of Hidalgo will, in turn, be reported as required to assure notification to the Federal awarding agency and the appropriate Environmental Protection Agency Regional Office.
 - (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by the applicable Federal awarding agency (e.g. FEMA).

8. Debarment and Suspension.

- a. Applicability: This requirement applies to all Federal grant and cooperative agreement programs.

- b. Standard. Non-Federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security's regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension).

These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. See 2 C.F.R. Part 200, Appendix II, ¶ H; and Chapter IV, ¶ 6.d and Appendix C, ¶ 2. A contract award must not be made to parties listed in the SAM Exclusions. SAM Exclusions is the list maintained by the General Services Administration that contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM exclusions can be accessed at www.sam.gov. See 2 C.F.R. § 180.530; Chapter IV, ¶ 6.d and Appendix C, ¶ 2.

In general, an "excluded" party cannot receive a Federal grant award or a contract within the meaning of a "covered transaction," to include subawards and subcontracts. This includes parties that receive Federal funding indirectly, such as contractors to recipients and subrecipients. The key to the exclusion is whether there is a "covered transaction," which is any nonprocurement transaction (unless excepted) at either a "primary" or "secondary" tier. Although "covered transactions" do not include contracts awarded by the Federal Government for purposes of the nonprocurement common rule and DHS's implementing regulations, it does include some contracts awarded by recipients and subrecipient.

Specifically, a covered transaction includes the following contracts for goods or services:

- (1) The contract is awarded by a recipient or subrecipient in the amount of at least \$25,000.
 - (2) The contract requires the approval of FEMA or applicable Federal entity, regardless of amount.
 - (3) The contract is for Federally-required audit services.
 - (4) A subcontract is also a covered transaction if it is awarded by the contractor of a recipient or subrecipient and requires either the approval of FEMA or applicable Federal entity or is in excess of \$25,000.
- c. Statement. The following provides a debarment and suspension clause. It incorporates a method of verifying that contractors are not excluded or disqualified:

For maximum protection, provide a print or electronic document for every prime and subcontractor, from www.sam.gov in order to ensure that they are not debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities.

This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

This certification is a material representation of fact relied upon by (insert name of subrecipient). If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (name of state agency serving as recipient and name of subrecipient), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions."

9. **Byrd Anti-Lobbying Amendment.**

- a. **Applicability:** This requirement applies to all Federal grant and cooperative agreement programs.
- b. **Standard.** Contractors that apply or bid for an award of \$100,000 or more must file the required certification. See 2 C.F.R. Part 200, Appendix II, ¶ I; 44 C.F.R. Part 18; Chapter IV, 6.c; Appendix C, ¶ 4. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any City, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. See Chapter IV, ¶ 6.c and Appendix C, ¶ 4.
- c. **Statement.** The following statement in bold provides a Byrd Anti-Lobbying contract clause:

(IF APPLICABLE, PLEASE FILL IN BLANKS AND SIGN)

"Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient."

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned Contractor, RGV Towers, LLC
certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, RGV Towers, LLC, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.


Signature of Contractor's Authorized Official

Alan Yoder

Name and Title of Contractor's Authorized Official

May 17, 2019

Date

10. **Procurement of Recovered Materials.**

- a. **Applicability:** This requirement applies to all Federal grant and cooperative agreement programs.
- b. **Standard.** A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962). See 2 C.F.R. Part 200, Appendix II, ¶ J; 2 C.F.R. § 200.322; *PDAT Supplement*, Chapter V, ¶ 7.

The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

- c. **Statement.** The following provides the clause that a state agency or agency of a political subdivision of a state and its contractors can include in contracts meeting the above contract thresholds:

“(1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired—

- (i) Competitively within a timeframe providing for compliance with the contract performance schedule;
- (ii) Meeting contract performance requirements; or
- (iii) At a reasonable price.

- (3) Information about this requirement, along with the list of EPA-designate items, is available at EPA’s Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.”

Additional Required Contract Clauses for Non-Federal Entity Contracts Under Federal Awards with the Federal Emergency Management Agency (FEMA)

Additional FEMA or applicable Federal Requirements. In addition to the requirements above, non-Federal entity contracts under Federal award subject to financial assistance from FEMA are required to contain the following additional contract clauses. The Uniform Guidance authorizes FEMA to require additional provisions for non-Federal entity contracts. FEMA, pursuant to this authority, requires or recommends the following:

These clauses are incorporated by reference as part of this procurement packet and any resulting agreement.

11. Changes.

- a. Standard. To be eligible for FEMA assistance under the non-Federal entity's Federal grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope. FEMA or applicable Federal entity recommends, therefore, that a non-Federal entity include a changes clause in its contract that describes how, if at all, changes can be made by either party to alter the method, price, or schedule of the work without breaching the contract. The language of the clause may differ depending on the nature of the contract and the end-item procured.

- b. Statement. The following provides a contract clause regarding access to records:

"The contractor shall secure written authorization before proceeding with any additional work, whether requested by the County or required to complete the contract. The cost for any changes to the contract price, whether requested by the County or the Contractor will be approved only after submitting the contractor's true costs for the work and related equipment costs and site expenses."

12. Access to Records.

- a. Standard. All non-Federal entities must place into their contracts a provision that all contractors and their successors, transferees, assignees, and subcontractors acknowledge and agree to comply with applicable provisions governing Department and FEMA or applicable Federal entity access to records, accounts, documents, information, facilities, and staff. See DHS Standard Terms and Conditions, v 3.0, ¶ XXVI (2013).

- b. Statement. The following provides a contract clause regarding access to records:

"Access to Records. The following access to records requirements apply to this contract:

(1) The contractor agrees to provide the County of Hidalgo, the FEMA or applicable Federal Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The contractor agrees to provide the FEMA or applicable Federal Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract."

13. DHS Seal, Logo, and Flags.

- a. Standard. All non-Federal entities must place in their contracts a provision that a contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS City

officials without specific FEMA or applicable Federal entity pre-approval. See DHS Standard Terms and Conditions, v3.0, ¶ XXV (2013).

b. Statement. The following provides a contract clause regarding DHS Seal, Logo, and Flags:

“The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS City officials without specific FEMA or applicable Federal entity pre-approval.”

14. Compliance with Federal Law, Regulations, and Executive Orders.

a. Standard. All non-Federal entities must place into their contracts an acknowledgement that FEMA or applicable Federal financial assistance will be used to fund the contract along with the requirement that the contractor will comply with all applicable Federal law, regulations, executive orders, and FEMA or applicable Federal policies, procedures, and directives.

b. Statement. The following provides a contract clause regarding Compliance with Federal Law, Regulations and Executive Orders:

“This is an acknowledgement that Federal financial assistance will be used to fund the contract only. The contractor will comply will all applicable Federal law, regulations, executive orders, FEMA or applicable Federal policies, procedures, and directives.”

15. No Obligation by Federal Government.

a. Standard. The non-Federal entity must include a provision in its contract that states that the Federal Government is not a party to the contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

b. Statement. The following provides a contract clause regarding no obligation by the Federal Government:

“The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.”

16. Program Fraud and False or Fraudulent Statements or Related Acts.

a. Standard. The non-Federal entity must include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.

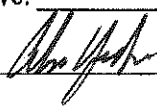
b. Statement. The following provides a contract clause regarding Fraud and False or Fraudulent Related Acts:

“The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor’s actions pertaining to this contract.”

Contractor agrees to comply with all federal, state and local laws, rules, regulations and ordinances, as applicable. It is further acknowledged that the Contractor read and understands all provisions, laws, acts, regulations, etc. as specifically noted above and certifies compliance with the same.

Vendor's Name/Company Name: RGV Towers, LLC

Printed Name and Title of Authorized Representative: Alan Yoder, President

Signature of Authorized Representative: 

Date: May 17, 2019

EXHIBIT “I”

FHWA1273

REQUEST FOR BIDS

HIDALGO COUNTY SHERIFF'S
OFFICE

“LEASE OF TOWER SPACE”

RFB No.: 2019-036-05-29-HAG

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly

rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

EXHIBIT “J”

PROPOSER’S AFFIDAVIT

REQUEST FOR BIDS

**HIDALGO COUNTY SHERIFF’S
OFFICE**

“LEASE OF TOWER SPACE”

RFB No.: 2019-036-05-29-HAG

Exhibit "J"

PROPOSER'S AFFIDAVIT

**PROPOSER'S AFFIDAVIT OF NON-COLLUSION
NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING
"Lease of Tower Space"
PROJECT NO.: 2019-036-05-29-HAG**

STATE OF TEXAS
COUNTY OF HIDALGO

Affiant, RGV Towers, LLC, being first duly sworn, deposes that:

- (1) Affiant does hereby state neither the proposer nor any of the proposer's officers, partners, owners, agents, representatives, employees, or parties in interest, has in any way colluded, conspired, agreed, directly or indirectly with any person, firm, corporation, or another proposer, or potential proposer, to provide any money or other valuable consideration for assistance in procuring or attempting to procure a contract, or fix the prices in the attached proposed or the proposal of any other proposer, and further states that no such money or another reward will be hereinafter paid.
- (2) Affiant further states they have neither recommended nor suggested to Hidalgo County or any of its officials or employees, any of the terms or provisions set forth in their Request for Proposal and subsequent agreement, except at a meeting open to all interested proposers, of which proper notice was given.
- (3) Affiant, further states their officers, employees, or agents have not, and will not attempt to lobby, directly or indirectly, the Hidalgo County Commissioner's Court between proposal submission date and award by the Hidalgo County Commissioner's Court.
- (4) Affiant further states no officer, or stockholder of the proposer is a member of the staff, or related to any employee of Hidalgo County except as noted herein below:

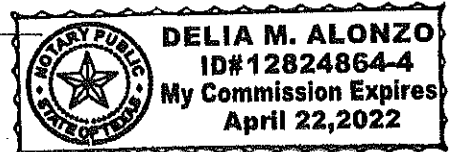
Signature/Title: *[Signature]*

President

Subscribed and sworn to before me this 17 day of May, 2019.

Delia M. Alonzo
Notary Public

My commission expires: April 22, 2022



LEASE AGREEMENT

REQUEST FOR BIDS

**HIDALGO COUNTY SHERIFF'S
OFFICE**

“LEASE OF TOWER SPACE”

RFB No.: 2019-036-05-29-HAG

THE STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

LEASE AGREEMENT
C-19-036-00-00

THIS LEASE (the "Lease") is made on this _____ day of _____, 2019, by and between _____, referred to in this Lease as "Lessor", and **THE COUNTY OF HIDALGO**, acting for and on behalf of the Hidalgo County Sheriff's Office referred to in this "Lease" as "County" or "Lessee" for the lease of tower space as described herein.

ARTICLE 1. DEMISE OF LEASE PROPERTY

1.1 Lessor, for and in consideration of the rents, covenants, and promises herein contained to be kept, performed, and observed by County, does hereby lease and demise to County, and County does hereby rent and accept from Lessor, that certain property more particularly described on Exhibit "A-1" and Exhibit "A-2", hereto, in Hidalgo County, Texas (hereinafter referred to as the "Property" or the "Leased Property").

ARTICLE 2. LEASE TERM

Term

2.1 Except as otherwise herein provided, the term of this Lease shall be for a period of **one (1) year** commencing on _____, 2019 (as hereinafter defined) and ending on _____, 2020 (as hereunder defined) unless sooner terminated or unless renewed and extended as provided in this Lease. The "Termination Date" is the date twelve (12) months, following the Commencement Date, unless the Commencement date is other than the first day of a calendar month, in which event the Term shall be extended by the number of days remaining in the month which includes the Commencement Date, and the Termination Date shall be likewise extended. If the Premises are sold to an unrelated third party (not affiliated by common ownership with Lessor) at a time when more than six (6) months remains on the unexpired portion of the term of this Lease, then the unexpired portion of this Lease may, at County's option, be shortened to six (6) months from the date of such sale or conveyance.

Renewal or Termination

2.2 County shall have the right and option to renew and extend the term of this Lease for an additional **Nine (9) additional - one (1) year terms and an additional sixty (60) day grace period** under the same rates, terms and conditions. If County desires to renew and extend the term of this Lease for any such renewal period, County must give Lessor written notice of such renewal at least sixty (60) days prior to the termination of the initial lease term or renewal term if applicable if County desires to renew for the renewal period. Any renewal or extension of this Lease shall be on the same terms and conditions as provided herein. This Lease shall terminate and become null and void without further notice on the expiration of the term specified above, unless sooner terminated or renewed and extended in accordance with the terms set forth within this agreement; and any holding over by County after the expiration of that term shall not constitute a

renewal of the Lease or give County any rights under the Lease in or to the Leased Property.

Holdover

2.3 If County holds over and continues in possession of the Leased Property after expiration of the term of this Lease, County will be deemed to be occupying the Property on the basis of a month to month tenancy, subject to all of the terms and conditions of this Lease. The inclusion of this Article 2.3 shall not be construed as Lessor's consent for County to hold over.

Voluntary Termination

2.4 County may terminate this Contract at any time for any reason or no reason at all upon giving thirty (30) days prior written notice to the Lessor. Upon County electing to terminate, this Lease shall cease and come to an end as if the day of the termination election were the day originally fixed in the Lease for its expiration.

2.5

Commitment of Current Revenues Only

2.6 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 ninety (90) days written notice to Company. 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.

2.7 **Agreements for the acquisition, including lease, of real or personal property:** 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 sixty (60) days written notice to Lessor. County agrees, however, to use a best efforts attempt to obtain and appropriate funds for payment of the Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of County in accordance and compliance with Tex. Loc. Govt. Code Ann. §271.903 (Vernon Supp. 1996).

ARTICLE 3: RENT

Monthly Rental

3.1 County agrees to and shall pay to Lessor as rental for the use and occupancy of the Property under the lease during the initial lease term the sum of \$_____ per month. Monthly rental during the renewal term, if County exercises its renewal option, will be \$_____ per month. In the event the Commencement Date is a day other than the first day of the month, the rent for the period from the commencement date to the last day of the month shall be prorated by dividing the monthly rental by the number of calendar days in the month, and multiplying the result by the number of days remaining in the month that includes the Commencement Date.

Time and Manner of Payment

3.2 All rent due under this article shall be paid by County on a monthly basis and in advance, on the 1st business day of each month commencing on the Commencement Date. All installments of rent shall be paid in lawful money of the United States to the Lessor at the address listed below or other such location or locations as Lessor shall from time to time designate by written notice to County. Any rent due for any

partial month at the beginning or the end of the term hereof shall be prorated on the basis of a thirty (30) day month.

3.3 Lessor also leases to County approximately twenty (20) square feet of the interior of the certain air conditioned, solid concrete building with generator backup located on the property described in Exhibit A-2 (the "Equipment Building") for location of County's transmitter and other ancillary equipment. Lessor grants County unlimited access to the Equipment Building twenty-four hours of the day, seven days a week during the term of this Lease.

ARTICLE 4. UTILITIES

4.1 Lessor shall pay or cause to be paid all charges for electricity, used on the Property throughout the term of this lease, including any connection fees.

ARTICLE 5. USE OF PROPERTY

5.1 County shall have the right to use the Property for any lawful purpose pertaining to the receipt, broadcast or rebroadcast of data or radio signals.

ARTICLE 6. REPAIR AND MAINTENANCE

6.1 Lessor will, throughout the lease term, maintain the Property and keep it free of waste and nuisance. Lessor will, at Lessor's own expense, during the term of this Lease, maintain air conditioning systems, all windows, the roof, the foundation, the structural soundness of the exterior walls, the electrical wiring, paving the doors, the guy wires, the tower structure, the tower warning lights or beacons and all other components of the Property. County will, at its sole cost and expense, maintain and repair its own equipment, cables and antennae. Lessor will maintain all records and make all reports required by the Federal Aviation Administration with respect to maintenance and operation of tower warning light or beacons. In the event Lessor should neglect to reasonably maintain the Property, County will have the right to:

a. Upon County's notice to Lessor of repairs or maintenance which Lessor has a duty to undertake, Lessor neglects to make such repairs within thirty (30) days following written notice from County. County may vacate the Property, in which case it shall be discharged from further payment of rent, the performance of all other terms and conditions of this Lease, and this Lease shall terminate as of the date County vacates the Property and any rental shall be abated for the unexpired term of this Lease; or

b. County will also have the right, but not the obligation, to cause repairs or corrections to be made, with any reasonable costs therefor to be payable by Lessor to County as an offset against rental on the next rental installment date.

ARTICLE 7. OBLIGATIONS OF LESSOR AND COUNTY

Taxes

7.1 County shall be responsible for, and shall pay and discharge before the same become delinquent, all taxes, if any, levied or assessed against personal property, furniture, or fixtures located in or upon the Property owned by County, but not by other Lessees or by Lessor, on the real property. Lessor shall be responsible for, and shall pay and discharge before the same become delinquent, all ad valorem taxes and

assessments levied against the Property, including any fixtures and improvements.

Alteration, Additions, and Improvements

7.2 County may, at County's discretion, but shall not be required to, make any alterations, additions or improvements to the Property, provided County obtains the prior written consent of Lessor, which consent shall not be unreasonably withheld. All alterations, additions or improvements made to the Property described in Exhibit A-1, excluding equipment placed on the Property by County, shall become the property of Lessor at the termination of this Lease Agreement.

7.3 **Addition of New and Replacement Equipment.** In accordance with provision 7.2 of this Lease Agreement, County shall be allowed to replace existing equipment used on the Property with the prior written consent of Lessor as described in 7.2, without experiencing an increase in monthly rental costs. Should County desire to add new equipment to the Property currently not in place at County's expense, County shall also seek the prior written consent of Lessor as described in 7.2 and Lessor shall submit a written proposal to County of the additional rental costs associated with the new equipment. If the parties reach an agreement for additional rental costs due to new equipment, then the new equipment may be added. In no event, however, will the total rental costs associated with this Lease Agreement exceed Twenty-five Thousand Dollars and no/100ths (\$25,000.00) per year.

Damage or Destruction

7.4 If the Leased Property, or any structures or improvements on the Leased Property, should be damaged or destroyed by fire, tornado, or other casualty, County shall give immediate written notice of the damage or destruction to Lessor, including a description of the damage and, as far as known to County, the cause of the damage. In the event the Property or any portion thereof is damaged or destroyed by fire, tornado, or other casualty, County shall be entitled to an abatement of rent as a result and Lessor shall promptly repair any such damages or destruction using materials and workmanship of a similar nature and quality to the original construction.

Insurance and Indemnity

7.5 Lessor agrees to insure the Property, at its sole cost and expense, against loss by fire, or other casualty, including extended coverage to include direct loss by windstorm, hail, explosion, riot, or riot attending a strike, civil commotion, aircraft, vehicles, and smoke, with a policy or policies acceptable to Lessor. The coverages under such policy or policies shall provide for coverage in an amount reasonably required by Lessor to provide for the replacement or repair of the improvements located on the Property, or such portion thereof as may be damaged by a covered loss, but in no event less than the amount required by any party holding a security interest in or lien on the Property. Lessor agrees to hold County harmless from any and all claims actions proceedings, damages, and liabilities arising from the use, condition and operation of the Property, and to carry liability insurance insuring at the sole cost and expense of Lessor, both Lessor and County against such loss and liability, in such amounts as Lessor may reasonably require. In the event Lessor should neglect to provide any insurance coverage required under this paragraph, County shall have the right, but not the obligation, to purchase such coverage to protect County's interest, with any reasonable costs therefor to be payable by County. The insurance is to be carried by one or more insurance companies licensed to do

business in Texas and approved by County. Prior to occupancy of the Premises, Lessor shall provide County with evidence of such insurance satisfying insurance requirements stated in the RFB, such evidence of insurance is attached hereto as "Exhibit C."

County's Insurance

7.6 County shall maintain all insurance on County's personal property located within the Leased Premises in the amounts deemed adequate by County. County, at its own expense, shall provide and maintain in force during the term of this Lease, liability insurance in the amounts deemed adequate by County, naming Lessor as additional insured. Prior to occupancy of the Property, County shall provide Lessor with evidence of such insurance.

ARTICLE 8. SIGNS

8.1 Subject to the written approval of Lessor, and further subject to applicable laws, ordinances and regulations, County shall have the right to install a sign on the Leased Property. County must remove all signs at the termination of this Lease and repair any damage resulting from the erection or removal of the signs.

ARTICLE 9. MECHANIC'S LIEN

9.1 County will not permit any mechanic's lien or liens to be placed upon the Leased Property or improvements on the Property, County will promptly pay the lien. If default in payment of the lien continues for twenty (20) days after written notice from Lessor, Lessor may, at its option, pay the lien or any portion of it without inquiry as to its validity. Any amounts paid by the Lessor to remove a mechanic's lien caused to be filed against the Property or improvements on the Property by County, including expenses and interest, shall be due from County to Lessor and shall be repaid to Lessor immediately on rendition of notice, together with interest at ten percent (10%) per annum until repaid.

ARTICLE 10. DEFAULT

Events of Default

10.1 The following events shall be deemed to be events of default by County under this lease. County shall fail to pay any installment of rent hereby reserved and such failure shall continue for a period of thirty (30) days. County shall fail to comply with any term, provision, or covenant of this lease, other than the payment of rent, and shall not cure such failure within thirty (30) days after written notice thereof to County.

Remedies

10.2 Upon the occurrence of any event to default specified in Paragraph 10.1 hereof, Lessor shall have the option to pursue any one or more of the following remedies without notice of demand whatsoever.

Re-entry

10.3 Lessor may re-enter the Property immediately and remove all County's personal property therefrom. Lessor may store the personal property in a public warehouse or at another place at Lessor's choosing at County's expense or to County's account.

Termination

10.4 After re-entry, Lessor may terminate the lease on giving ten (10) days' written notice of such termination to County. Re-entry only, without notice of termination, will not terminate the lease.

Re-letting Property

10.5 After re-entering, Lessor may re-let the Property or any part thereof, for any term, without terminating the lease at such rent and on such terms as Lessor may choose. Lessor may make repairs to the Property at County's expense.

Quiet Enjoyment Pending Cure Period

10.6 Notwithstanding anything to the contrary herein, Lessor understands, acknowledges and agrees that some of the Property is utilized in the receipt, transmission and/or retransmission of radio signals for law enforcement and emergency services, which County is authorized to operate by virtue of a license issued by the Federal Communications Commission. Lessor shall not, except following written notice of a default and the failure to cure such default by County within the time periods provided in Section 8.02 (a) and (b), exercise any remedy which may affect or in any manner interfere with County's use, possession or quiet enjoyment of the property or the receipt, transmission or retransmission of any radio signal by County. Further, except for any time period following expiration of any cure period for which County has not satisfactorily cured any County default, County shall have full access to, use of any quiet enjoyment of the property undisturbed by Lessor.

Default by Lessor

10.7 If Lessor defaults in the performance of any terms, covenants, or conditions required to be performed by it under this Lease, in addition to other remedies afforded County under this Lease or at law, County may elect to voluntarily terminate the agreement as provided in section 2.4.

Cumulative Remedies

10.8 All rights and remedies of Lessor and County under this Article shall be cumulative, and none shall exclude any other right or remedy provided by law or by any other provision of this Lease. All such rights and remedies may be exercised and enforced concurrently and whenever, and as often, as occasion for their exercise arises.

Waiver of Breach

10.9 A waiver by either Lessor or County of a breach of this Lease by the other party does not constitute a continuing waiver or a waiver of any subsequent breach of the Lease.

ARTICLE 11. ASSIGNMENT AND SUBLETTING

Assignment by County

11.1 County may not sublet, assign, encumber, or otherwise transfer this Lease, or any right or interest in this Lease or in the Leased Property or the improvements on the Leased Property, without the written consent of Lessor. If County sublets, assigns, encumbers, or otherwise transfers its rights or interest in this Lease or in the Leased Property or the improvements on the Leased Property, other than as specified herein,

without the written consent of Lessor, Lessor may, at its option, declare this Lease terminated and County and Lessor shall have no further obligation to each other under this Lease. In the event Lessor consents in writing to an assignment, sublease or other transfer of all or any of County's rights under this Lease, the assignee or sublessee, must assume all of County's obligations under this Lease, and County shall remain liable for every obligation under the Lease. Lessor's consent under this section will not be arbitrarily or unreasonably withheld.

Assignment by Lessor

11.2 Lessor may assign or transfer any or all of its interests under the terms of this Lease.

ARTICLE 12. MISCELLANEOUS

Notices and Addresses

12.1 All notices provided to be given under this agreement shall be given by certified mail or registered mail addressed to the proper party, or in person against a receipt. Either party may change the address to which notices are to be sent it by giving the other party written notice of the new address in the manner provided in this section. The date of mailing of any notice under this agreement shall be deemed to be the date of such notice and shall be effective from such date. The addresses of the parties of this agreement are as follows:

Lessor:

Name: _____
Attn: _____
Address: _____
City, TX. Zip Code: _____

County:

County of Hidalgo
Attn: Richard F. Cortez, County Judge
100 East Cano, Second Floor
Edinburg, Texas 78539

With copy to:

Hidalgo County Sheriff's Office
Attn: J. E. "Eddie" Guerra, Sheriff
711 El Cibolo Road
Edinburg, Texas 78541

Parties Bound

12.2 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives and assigns where permitted by this Agreement.

Texas Law to Apply

12.3 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.

Legal Construction

12.4 In case 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 provisions thereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

Prior Agreements Superseded

12.5 This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understanding or written or oral agreements between the parties respecting the within subject matter.

Amendment

12.6 No amendment, modification or alteration of the terms hereof shall be binding unless the same in writing, dated subsequent to the date hereof, and duly executed by the parties hereto.

Rights and Remedies Cumulative

12.7 The rights and remedies provided by this Lease Agreement are cumulative, and the use of any one right or remedy by either party shall not preclude or waive that party's right to use any or all other remedies. The rights and remedies provided in this Lease are in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

Waiver of Default

12.8 No waiver by the parties hereto of any default of breach of any term, condition or covenant of this lease shall be deemed to be a waiver of any other breach of the same or any other term, conditions or covenant contained herein.

Force Majeure

12.8 Neither Lessor nor County shall be required to perform any term, conditions, or covenant in this Lease so long as such performance is delayed or prevented by force majeure, which shall mean acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riot, floods, and any other cause not reasonably within the control of Lessor or County and which by the exercise of due diligence Lessor or County is unable, wholly or in part, to prevent or overcome.

Real Estate Commission and Finder's Fees

12.9 Neither Lessor nor County has entered into any real estate commission or finder's fee agreements with any broker, agent or finder in respect of this transaction, and Lessor and County each agree to indemnify and hold harmless the other from and against any and all claims, losses, damages, costs or expenses of any kind, or arrangement or understanding alleged to have been made by the indemnifying party or on its behalf with any broker, salesman or finder in connection with this Lease or the transactions contemplated hereby.

Estoppel Information

12.10 To the extent allowed by law, County shall, at the request of Lessor, provide any and all information with respect to this Lease to any person designated by Lessor.

Time of Essence

12.11 Time is of the essence of this Lease Agreement.

Governmental Purpose

12.12 The County is entering into this agreement for the purpose of providing for governmental services or functions and will pay for such services out of current revenues available to the paying party as herein provided.

Immunities

12.13 It is expressly understood and agreed that, in the execution of this agreement, the County does not waive, nor shall be deemed hereby to waive, any immunity or defense that would otherwise be available to it against claims arising in the exercising of governmental powers and functions.

Additional Documents

12.14 The Parties agree that they will use reasonable, good faith efforts to execute each 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.

Non-Discrimination

12.15 The Agreement and all related activities shall be conducted in a manner that does not discriminate against any person on a basis prohibited by applicable law or County and Lessor policy, including without limitation to race, color, national origin, religion, sex, age, veteran status, or disability.

Required Contract Provision for Contracts Subject to Federal Award (if applicable)

12.16 Pursuant to 2 CFR 200.236, a non-federal entity's contracts must contain the applicable provisions described in Appendix II to 2 CFR 200-Contract Provisions for non-Federal Entity Contracts under Federal Awards. Additionally, County contracts under Federal award which are subject to assistance from the Federal Emergency Management Agency (FEMA) are also required to contain additional contract clauses. Applicable required contract clauses were provided as part of the initial procurement packet, and as such are incorporated into this agreement for all purposes.

Authority to Execute

12.17 The execution and performance of this Agreement by the Parties has been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of the participating County and City in accordance with its terms.

ARTICLE 13. WAIVER OF SUBROGATION

13.1 Lessor hereby waives Lessor's right of recovery against County for damages caused by fire, explosion and other perils to any of the Property to the extent that recovery is made by Lessor under insurance policies in effect at the time of loss; and County hereby waives County's rights of recovery against Lessor for damages to any of Lessor's property caused by fire, explosion and other perils to the extent that recovery is made by the County under insurance policies in effect at the time of loss. This agreement does not extend to and waiver does not apply to any damage suffered by either party hereto which is not recovered by the injury party under its insurance policies.

ARTICLE 14. SPECIAL PROVISIONS

Access to Property

14.1 During the term of this agreement, Lessor agrees that technical and maintenance employees and representatives and agents of County shall have at all time rights of ingress and egress to the Property for the Purpose of installing, maintaining and repairing County's equipment. County agrees to insure that its subcontractors and employees performing maintenance or technical services on County's equipment are covered by adequate levels of liability insurance and by any state-mandated worker's compensation insurance, if applicable.

Duty Not to Impair County's Operations

14.2 Lessor agrees not to lease or license the use of the Property, or any portion thereof, to any party which will interfere with County's use of the Property, and to require that any other lessees and licenses use and operation of radio or television transmission equipment of the Property shall be performed in such a manner as not to interfere with the operation of any equipment which County has therefore installed or may thereafter install on the Property. In the event interference should result, upon notice of such interference from County, Lessor shall cause its lessees and licenses to take all necessary steps, without costs or expense to County, to remove said interference or shut down communication equipment temporarily pending repair.

Hazardous Substances

14.3 Lessor represents that it has no knowledge of any substance, chemical or waste (collectively "substance") on the Site that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. County will not introduce or use any such substance on the Site in violation of any applicable law.

IN WITNESS WHEREOF, the undersigned Lessor and County hereto execute this Agreement as of the day and year first above written

LESSOR:

By: _____

Title: _____

HIDALGO COUNTY:

Richard F. Cortez, County Judge

ATTEST:

Arturo Guajardo, Jr., County Clerk

APPROVED AS TO FORM

Office of the Criminal District Attorney-Civil Litigation Division

By: _____

Robert Viña, III

Assistant District Attorney

Approved by Commissioners' Court on _____, 2019.

gt

EXHIBIT A
REQUEST FOR BIDS (RFB) PROCUREMENT
PACKET

EXHIBIT A-1
LEGAL DESCRIPTION

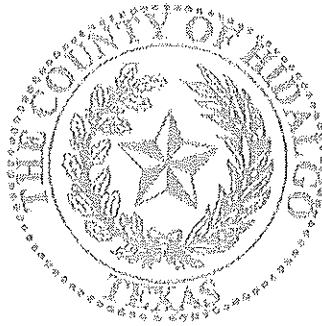
**LEASE OF TOWER SPACE IN THE
CITY OF EDINBURG, TEXAS**

EXHIBIT A-2
PROPERTY LEGAL DESCRIPTION
LEASE OF TOWER SPACE IN THE
CITY OF EDINBURG, TEXAS

EXHIBIT B
BID PAGE with BID TABULATION

EXHIBIT C
INSURANCE CERTIFICATE

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HIDALGO COUNTY SHERIFF'S OFFICE
(Including all funding sources, programs, and entities)
REQUEST FOR BIDS

"Lease of Tower Space"
RFB No.: 2019-036-05-29-HAG

RFB SUBMITTAL CHECKLIST

All forms listed below must be submitted in the RFB response. If forms are not submitted, your response may be considered non-responsive.

Indicate with a check mark (✓) the Forms completed and included in this response:

- ☒ Page 11 of Legal Notice
- ☒ Exhibit "C" – Insurance Requirement Acknowledgement forms (pages 3 and 4)
- ☒ Exhibit "D" - CIQ Form -Copy of County Clerk File Recording fee receipt (if applicable)
- ☒ Exhibit "E" – Vendor/Bidder Application - W-9 Form – HUB/DBE
- ☒ Exhibit "F" – Certification Regarding Debarment
- ☒ Exhibit "H" – Required Contract Clauses for Contracts Under Federal Award 2 – CFR 200, Appendix II & FEMA (if applicable)
- ☒ Exhibit "J" – Proposer's Affidavit
- ☒ SAMS.gov Registration Acknowledgement

One (1) Original (original must be one (1) sided and clearly marked as original), one (1) copy, and one (1) CD/USB in PDF format containing a complete copy of Response.

Signature

May 17, 2019

Date



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

5/17/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Shepard Insurance Agency 5801 N 10th St Ste 600 McAllen TX 78504		CONTACT NAME: Yolanda Alonso PHONE (A/C No. Ext): 956-686-3888 E-MAIL: yolandaa@shepins.com ADDRESS:		FAX (A/C No): 956-682-5650
		INSURER(S) AFFORDING COVERAGE		NAIC #
		INSURER A : Philadelphia Indemnity Ins Co		
		INSURER B : American Fire and Casualty Company		24066
		INSURER C : Texas Mutual Insurance Company		22945
		INSURER D :		
		INSURER E :		
		INSURER F :		

COVERAGES**CERTIFICATE NUMBER:** 1970269681**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW 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. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☐ LOC OTHER:			PHPK1950917	3/5/2019	3/5/2020	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$300,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
B	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY			BAA57070472	1/17/2019	1/17/2020	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☒ RETENTION \$10,000			PHUB667083	3/5/2019	3/5/2020	EACH OCCURRENCE \$2,000,000 AGGREGATE \$2,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			0001134027	7/29/2018	7/29/2019	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER**CANCELLATION**County of Hidalgo
2812 S Business Hwy 281
Edinburg TX 78539

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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ASR Registration Search

Registration 1258600[Map Registration](#)**Registration Detail**

Reg Number	1258600	Status	Constructed
File Number	A0589625	Constructed	03/31/2008
EMI	No	Dismantled	
NEPA	No		

Antenna Structure

Structure Type TOWER - Free standing or Guyed Structure used for Commu

Location (in NAD83 Coordinates)

Lat/Long	26-11-10.0 N 098-11-19.6 W	Address	1000 South Bluebonnet
City, State	Pharr , TX		
Zip	78577	County	HIDALGO
Center of AM Array		Position of Tower in Array	

Heights (meters)

Elevation of Site Above Mean Sea Level	Overall Height Above Ground (AGL)
34.7	146.3
Overall Height Above Mean Sea Level	Overall Height Above Ground w/o Appurtenances
181.0	134.1

Painting and Lighting SpecificationsFAA Chapters 4, 8, 12
Paint and Light in Accordance with FAA Circular Number 70/7460-1K**FAA Notification**

FAA Study	2007-ASW-35-OE	FAA Issue Date	03/05/2007
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Owner & Contact Information

FRN	0015927650	Owner Entity Type	
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Owner

RGV Towers, LLC	P: (956)213-1130
Attention To: Alan Yoder	F:
P.O. Box 3097	E: alan@sc2000.net
McAllen , TX 78502	

Contact

Yoder , Alan	P: (956)213-1130
P.O. Box 3097	F:
McAllen , TX 78502	E: alan@sc2000.net

Last Action Status

Status	Constructed	Received	03/31/2008
Purpose	Notification	Entered	03/31/2008
Mode	Interactive		

Related Applications

03/31/2008	A0589625 - Notification (NT)
05/29/2007	A0550651 - New (NE)

Comments**Comments**

None

History

Date	Event
03/31/2008	Construction Notification Received
05/30/2007	Registration Printed

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05/29/2007

New Application Received

Automated Letters

05/30/2007

Authorization, Reference 566318

CLOSE WINDOW

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RGV Towers, LLC
PO Box 3097
McAllen, Texas 78502
956-778-3040

HIDALGO COUNTY

RFB # 2019-036-05-29-HAG

LEASE OF TOWER SPACE
HIDALGO COUNTY SHERIFF'S OFFICE

Land Legal Description

Kelly Pharr Tract S4.34 AC- N10.18AC- W444.8'- Lot 188, Pharr, Texas

1000 South Bluebonnet Pharr, Texas