

Plan” for the County of Hidalgo, to parties listed in Section 9.

3. During the term of this Contract, Consultant shall be obligated and hereby promises and agrees to render and provide the Services in accordance with specifications and terms contained in Exhibit “A” Requirements. Services shall be performed within **Hidalgo County** following a request for Services by the **County** or its designated agent. Consultant agrees in performing the Services that it will use proper professional standards, comply with any and all appropriate laws and regulations in providing the Services, and devote such time as is necessary to safely and efficiently provide the Services. Further, Hidalgo County reserves the right to request these services from other sources other than the Consultant and shall not be in violation of any terms or conditions of said contract.

4. **Consideration.** As consideration for rendering the Service provided for in this Contract, the County agrees to pay Consultant the amounts specified in Exhibit “D” attached hereto payable against written invoice submitted by Consultant on or before the 30th calendar day, in accordance with the Texas Prompt Payment Act, Tex. Govt. Code Ch. 2251.

5. Consultant must comply with all applicable County policies. Notwithstanding the foregoing sentence, Consultant represents and maintains that s/he is an independent Consultant and is not an employee of County or any agency thereof, and represents and warrants that s/he does not desire or request any fringe benefits provided to employees to County. Consultant agrees to be responsible for any federal income tax, withholding or social security tax liability that might arise from payments received hereunder.

6. **Termination.** County may terminate this Agreement without cause upon thirty (30) days written notice at any time for any reason or no reason at all. In the event this Agreement is terminated without cause by County, but not otherwise any unpaid fees or compensation owing

to Consultant at the time of termination under this Agreement will be due and payable to Consultant within thirty (30) days following the time of termination of the Agreement.

7. **Assignment.** Consultant may not assign the obligations or rights under this Agreement to any person or entity without the prior written consent of County. does not delegate its duties hereunder.

8. **Nondiscrimination:** Consultant, including subcontractors, assignees and successors in interest, ensures that no person shall on the grounds of race, religion, color, national origin, sex, age, or disability, or any other protected class under law, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination or retaliation in any federally or non-federally funded program or activity when providing any services described herein under this contract/agreement. Applicable nondiscrimination statements and provisions of Title VI of the Civil Rights Act of 1964, as amended, were provided as part of the initial procurement packet and are incorporated herein and made a part of this agreement for all purposes.

9. **Term.** This Agreement shall commence upon execution of the Agreement by all parties, and will continue in force and effect for a period of one (1) year, from the date of execution of the last party to execute the Agreement (“the Expiration Date”).

10. **Notice.** Except as may be otherwise specifically provided in this Agreement, all notices, demands, requests or communications required or permitted hereunder shall be in writing and shall be either be (i) personally against a written receipt, or (ii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the addressed set forth below, or at such other addressed as may have been theretofore specified by written notice delivered in accordance herewith.

If to County: **The County of Hidalgo**
Attn: County Judge

**100 E. Cano St., 2nd Floor
Edinburg, Texas 78539**

Copy to: **Office of Emergency Management
Attn: Ricardo Saldana
302 W. University Dr.
Edinburg, TX 78539**

Copy to: **Purchasing Department
Attn: JD Cortez
2802 S. Business Highway 281
Edinburg, TX 78539**

If to Consultant: **H2O Partners Inc.
Attn: Eric Howard
260 Addie Roy Rd.
Suite 150
Austin, TX 78746**

Each notice, demand, request or communication which shall be delivered or mailed in the manner described above shall be deemed sufficiently given for all purposes at such time as it is personally delivered to the addressee or, if mailed, at such time as it is deposited in the United States mail.

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

12. **No Waiver.** No waiver by County of any breach of any provision of this Contract shall be deemed to be a waiver of any preceding or succeeding breach of the same or any

other provision hereof.

13. **Entire Agreement.** This Contract contains the entire Contract between the parties hereto, and each party acknowledges that neither has made (either directly or through any agent or representative) any representations or agreements in connection with this Contract not specifically set forth herein. This Contract may be modified or amended only by agreement in writing executed by County and Consultant and not otherwise.

14. **Texas Law to Apply.** This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Hidalgo County, Texas. The parties hereby consent to personal jurisdiction in Hidalgo County, Texas.

15. **Additional Documents.** The parties hereto covenant and agree that they will execute such other further instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this Contract.

16. **Successors.** This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrator, legal representatives, successors, and assigns where permitted by this Contract.

17. **Headings.** The headings and captions contained in this Contract are solely for convenient reference and shall not be deemed to affect the meaning or interpretation of any provision or paragraph hereof.

18. **Gender and Number.** All pronouns used in this Contract shall include the other gender, whether used in the masculine, feminine or neuter gender, and the singular shall include the plural whenever and as often as may be appropriate.

19. **Authority to Execute.** The execution and performance of this Contract by

County and Consultant have been duly authorized by all necessary laws, resolutions or corporate action, and this Contract constitutes and valid and enforceable obligations of County and Consultant in accordance with its terms.

20. **Ethical Provision.** It is understood that the employee of County or individuals acting as agents for County are not authorized to receive any type of personal payment, reimbursement, compensation, commission, gift or gratuity for services provided under this Contract. Consultant warrants that no employee or agent of the County has been retained to solicit or secure this Contract and that Consultant has not paid or agreed to pay and employee of County any fee, commission, percentage brokerage fee, gift or any other consideration contingent upon the making of this Contract, or as an inducement for entering into this Contract. The unauthorized offering or receipt of such payments may result in the immediate termination of this Contract.

21. **Commitment of Current Revenues Only.** In the event that, during any term hereof, the Commissioners Court does not appropriate sufficient funds to meet the obligations of County under this Agreement, County may terminate this Agreement upon 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. *Agreements for the acquisition, including lease of real or personal property under Tex. Loc. Govt. Code §271.903:* In the event that, during any term hereof, the Commissioner's Court does not appropriate sufficient funds to meet the obligations of County under this Agreement, County may terminate this Agreement upon ninety (90) days written notice to Company, County agrees, however, to use a best efforts attempt to obtain and appropriate funds for payment of the Agreement. The parties intend this provision, if applicable, to be a continuing right to terminate

this at the expiration of each budget period of County in accordance with Tex. Loc. Govt. Code §271.903 (Vernon Supp. 1996).

22. **Indemnification.** Consultant shall indemnify and hold harmless County, its elected officials, employees and agents from any and all claims, damages, losses, and expenses including attorney's fees for the defense of any action against County arising out of, resulting from, or connected with the provision of the Service by Consultant under this Contract. Said indemnity shall cover any act or failure to act by the Consultant, its agents or employees.

23. **Representation and Warranties.** Consultant represents and warrants to County all representations. Consultant agrees to promptly notify County thereof, in which event County may, in its sole discretion elect to terminate this Agreement, for cause, in the manner herein provided. Consultant acknowledges and agrees that County has relied and continues to rely upon the representations and warranties of Consultant as herein contained as a material inducement to County to enter into the Agreement.

24. **Insurance.** Consultant shall obtain and maintain insurance in the limits of liability for each of the types of insurance coverage identified as follows:

- (1) **Workers Compensation,** endorsed with a waiver or subrogation in favor of the County in accordance with the statutory obligations imposed by Worker's Compensation or Occupational Disease laws under the Texas Workers Compensation Law ("Statutory Texas")
- (2) **Commercial General Liability,** endorsed with the County as an additional insured and endorsed with a waiver of subrogation in favor of the County with limits of liability not less than one million dollars (\$1,000,000.00)

combined single limit, each occurrence and in the aggregate for bodily injury and property damage.

- (3) **Texas Business Automobile Policy**, required when doing business at or nearby County property, endorsed with the County as an additional insured and endorsed with a waiver of subrogation in favor of the County in limits of liability not less than two hundred fifty thousand dollars (\$250,000.00) per person and Five Hundred Thousand Dollars (\$500,000.00) per occurrence for bodily injury, and one hundred thousand dollars (\$100,000.00) each occurrence for property damage.

- (4) **Professional Liability** in limits of \$1,000,000.00 each claim and aggregate.

The Consultant covenants and agrees to maintain an insurance policy in the minimum limits of liability for each of the types of insurance coverage identified above. The Consultant shall furnish the County a certificate of insurance acceptable to County showing the said policies to be in full force and effect during the period of service, identified in numbered paragraph 8 hereto, for this Agreement. The completed County Certificate of Insurance shall be attached hereto and identified as Exhibit "C"- County Certificate of Insurance. The Consultant will be considered in breach of agreement should the Consultant fail to maintain an insurance policy in the minimum limits of liability and requirements identified above while performing services for and under this Agreement, and will be subject to default and termination of this Agreement hereto.

25. **Immunities.** Nothing in this Agreement is intended to and County does not hereby waive, release or relinquish any right to assert any of the defenses County enjoys by virtue of the state or federal constitution, laws, rules or regulations, and any sovereign, official or qualified immunity available to County as to any claim or action of any person, entity, or individual against County.

26. **Required Contract Provision for Contracts Subject to Federal Award (if applicable):** Pursuant to 2 CFR 200.326, 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. The applicable required contract clauses were provided as part of the initial procurement packet and are incorporated herein and made part of this agreement for all purposes.

27. **Liquidated Damages.** It is acknowledged that the Consultant's delay and/or failure to complete services, as specified in Exhibit A (Requirements/Specifications) of the RFP procurement packet, will cause County to incur substantial economic damages and/or losses of the type and amounts which are not possible to compute or ascertain with reasonable certainty as a basis for recovery by County of actual damages from Consultant. Further, Consultant and County agree that liquidated damages represent a fair, reasonable and appropriate estimate thereof. Accordingly, in lieu of actual damages for such delay and/or failure to complete services, Consultant agrees that liquidated damages in the amount of Five Hundred Dollars (\$500.00) for each day completion of the services is delayed beyond times set out in Exhibit A (Requirements/Specifications) of the RFP procurement packet. Such liquidated damages are

intended to represent estimated actual damages, are not intended as a penalty, and are not the sole remedy for such delay and/or failure to complete services. Delay and/or failure to complete caused by Force Majeure events or by actions of County shall not constitute a delay for failure to complete resulting in the payment of liquidated damages.

28. **Force Majeure.** With respect to the performance of services of this Agreement, including services specified in Exhibit A (Requirements/Specifications) of the RFP procurement packet, Consultant may be excused from Liquidated Damages for delay and/or failure to complete services IF due to Acts of God/Force Majeure, including but not limited to fire, flood, hurricane, earthquake, civil unrest, riot, war, governmental actions, or other causes beyond the reasonable control of Consultant (a Force Majeure event). Such excuse shall be for the duration of such event and for such time thereafter as is reasonable for Consultant to resume performance. In no event shall such excuse extend for a period of more than forty-five (45) days, at which time either party may terminate.

SIGNATURE PAGE TO FOLLOW

EXECUTED and effective as of the first day written above.

APPROVED BY COMMISSIONERS COURT ON _____, 2021.

H2O Partners, Inc.

Eric Howard, Vice President

COUNTY OF HIDALGO, TEXAS

Richard F. Cortez, County Judge

ATTEST:

Arturo Guajardo, Jr., County Clerk

APPROVED AS TO FORM:
Office of the Criminal District Attorney
Ricardo Rodriguez, Jr.

By:

David R Cantu
Assistant District Attorney