

THE STATE OF TEXAS §
§
COUNTY OF HIDALGO §

PROFESSIONAL SERVICES AGREEMENT
C-22-0337-07-26

THIS AGREEMENT is made and entered the 26th day of July, 2022 by and between **HIDALGO COUNTY, TEXAS**, (“County”) and **Kane Lindsey, LLC** (“Surveyor”).

WITNESSETH:

WHEREAS, the County is in need of On-Call Professional Surveying Services (the “Services”) for projects within **Hidalgo County Precinct No. 2**;

WHEREAS, the County has determined that the services of a professional surveyor are necessary to carry out the required Services;

WHEREAS, pursuant to Texas Government Code Chapter 2254 (the “Texas Professional Services Procurement Act”), the County requested Statements of Qualifications from professional surveying firms to assist the County by providing the Services;

WHEREAS, the County solicited Requests for Qualifications (RFQ) for the development and establishment of a yearly pool for “Professional Surveying Services”; and

WHEREAS, the Surveyor was pre-qualified from the County’s pool of Professional Surveyors and has been selected from the pool to provide On-Call Professional Surveying Services on an as needed basis for Hidalgo County Precinct No.2 (“County”), in accordance with the terms and provisions of **Exhibit “A”** Requirements/Request for Qualifications, attached hereto and incorporated by reference herein; and

WHEREAS, in continuation of the procurement process and in response to the County’s request to negotiate for a fair and reasonable price pursuant to Chapter 2254 Texas Government Code, the Surveyor has provided a fee schedule (“Surveyor Contract Rates”), which is attached hereto and made part of this Agreement as **Exhibit “B”**; and

WHEREAS, on a project to project basis, County shall determine when the services of a Surveyor for Professional Surveying Services is required and shall provide project specifications (the “Specifications”) to Surveyor for review and response.

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

1. County and Surveyor hereby agree that this Agreement is entered into in order to provide the Services for Hidalgo County Precinct #2.

2. The County will furnish Specifications as needed and on a per project basis to Surveyor for the development of project(s) and fulfillment of this Agreement. Surveyor agrees to review the project as presented by County (on a per-project basis) and submit to County within fourteen (14) days of receipt of the Specifications, a proposal. The proposal shall include, but not be limited to, the following: (1) fee structure for the project; (2) services included in the basic fee; (3) amount of, or basis for, compensation for additional services (including additional services that may arise during the course of the project and cost of Surveyor’s consultants); and (4) cost for reimbursable expenses (collectively the “Surveying Services Per-Project Proposal”);

3. The County may enter into negotiations with the Surveyor regarding the Surveying Services Per-Project Proposal and should the parties reach an agreement, then Surveyor will submit a final proposal to County for issuance of a Purchase Order. Services to be provided by the surveyor are detailed in the attached **Exhibit “C”**. However, if the parties are unsuccessful at coming to terms for any specific project, then the County may seek the services of other surveyors.

4. Surveyor 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.

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

6. Term. This Agreement is for a period of **one (1) year**, effective July 26, 2022 and will terminate July 25, 2023 or unless sooner terminated as provided herein. The Surveyor will not begin to work or incur costs until authorized in writing by the County for each **“Purchase Order”**.

7. Compensation. The maximum amount payable under this Agreement shall not exceed the amount for each **“Purchase Order”**. The Surveyor shall submit periodic requests for payment within (30) thirty days after completion of each work order. The request for payment shall be made using forms acceptable to the County and shall show the total amount earned to the date of submission and the amount due and payable as of the date of the current billing. Upon receipt of said request for payment, County shall submit a requisition for payment for said Services in the customary manner provided for payments utilized by Hidalgo County, Texas. Surveyor agrees to separately account for the receipt and/or expenditure of funds received pursuant to this Agreement and to keep accurate books and records of all such receipts and/or expenditures. All payments to Surveyor shall be mailed to the address shown in numbered paragraph 27. Titled “Notices” herein.

8. Inspection of Work. The County has the right at all reasonable times to inspect or otherwise evaluate the work performed hereunder and the premises in which it is being performed. If any inspection or evaluation is made on the premises of the Surveyor, or of a subcontractor, the Surveyor shall provide and require its subcontractor to provide all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay their work.

9. Amendments. If it becomes necessary at any time during this Agreement to change the scope of services, the Agreement period, the maximum amount payable, the complexity, or the character of this Agreement, an amendment must be prepared and executed within the agreement period. The County retains the right to reject any such amendment proposed by the Surveyor. Any such amendments shall be made in writing, agreed to by all parties hereto, and duly executed before the end of the Agreement as specified. If the County finds it necessary to require changes in completed work because of errors made by the Surveyor, the County shall require the Surveyor to correct the work at no

cost to the County and without amendment to the Agreement. If the changes are made at the request of the County and are not due to errors of the Surveyor, the County will reimburse the Surveyor for the additional work at the same rate of pay established in **Exhibit "B"** "Surveyor Contract Rates." If payment for the additional work will cause the maximum amount payable under this Agreement to be exhausted, an amendment shall be proposed in accordance with all State procurement laws.

10. Reporting. The Surveyor shall promptly advise the County in writing of events which have a significant impact upon the Agreement, including:

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

11. Ownership of Documents. Upon completion or termination of this Agreement, all documents prepared by the Surveyor or furnished to the Surveyor by the County shall be delivered to and become the property of the County. All sketches, photographs, calculations, and other data prepared under this Agreement shall be made available, upon request, to the County without restriction or limitation on their further use. The Surveyor shall not be liable for the reuse or modification of its work product. The Surveyor may, at its own expense, have copies made of the documents or any other data furnished to the County under this Agreement.

12. Suspension of Work. Should County desire to suspend the work under this Agreement, but not terminate this Agreement, the County shall provide thirty (30) calendar days verbal notification to Surveyor, followed by written confirmation from the County to Surveyor to that effect. The thirty-day notice may be waived as agreed in writing by both the County and Surveyor to that effect. The work

under this Agreement may be reinstated and resumed in full force and effect within sixty (60) days of receipt of written notice from the County to the Surveyor. The sixty-day notice may be waived as agreed in writing by both the County and Surveyor. If the County suspends the work, the Termination Date as identified above is not affected and this Agreement will terminate on the date specified.

13. Progress and Coordination. The Surveyor shall, from time to time during the progress of the work, confer with the County. The Surveyor shall prepare and present such information as may be pertinent and necessary, or as may be requested by the County, in order to evaluate features of the Surveyor's services and work.

At the request of the County or the Surveyor, conferences shall be provided at the Surveyor's office, the offices of the County, or at other locations designated by the County. These conferences shall also include evaluation of the Surveyor's services and work when requested by the County.

All applicable study reports shall be submitted in preliminary form for approval by the County before the final report is issued. The County's comments regarding the Surveyor's preliminary report will be addressed by the Surveyor in the final report.

If funds by other agencies or entities are to be used for the development of any project awarded under this Agreement, the Surveyor's Services and work will be subject to periodic review and approval by other agencies or entities, including those of the city, county, state and/or federal agencies.

Should it be determined that the progress in the production of the Surveyor's Services and work does not satisfy the requirements of the approved "Purchase Order", the County shall review the approved Purchase Order with the Surveyor to determine the corrective action needed by either the County or the Surveyor.

The Surveyor shall promptly advise the County in writing of events which have a significant impact upon the progress of the Surveyor's Services and work and the approved Work Schedule, including:

- a. problems, delays, adverse conditions which will materially affect the ability to attain Agreement objectives, prevent the meeting of time schedules and goals, or preclude

the timely completion and submittal of Project deliverables by the Surveyor within established time periods; this disclosure will be accompanied by a statement by the Surveyor of recommended or immediate action taken, or contemplated, and any Owner or other agency or entity assistance needed to resolve the situation: and

- b. favorable developments or events which enable meeting the Work Schedule goals sooner than anticipated.

14. Independent Contractor. Surveyor must comply with all applicable Hidalgo County policies and with any applicable federal, state or local laws, regulations, orders or ordinances applicable to the Services provided by Surveyor under this Agreement. Notwithstanding the foregoing sentence, Surveyor represents and maintains that it is an Independent Contractor and is not an employee of Hidalgo County, Texas or any agency thereof, and represents and warrants that it does not desire or request any fringe benefits provided to employees of Hidalgo County, Texas, and/or any agency thereof, including, but not limited to benefits associated with Hidalgo County's civil service program. Surveyor agrees to be responsible for any federal income tax, withholding or social security tax liability that might arise from payments received hereunder.

15. Voluntary Termination. County may terminate this Agreement at any time for any reason or no reason at all upon giving thirty (30) days prior written notice to the Surveyor.

16. Insurance. Consistent with its status as an independent contractor and at its sole expense, Surveyor agrees that throughout the duration of the work under this contract and any extension hereof, it shall provide and maintain in full force and effect any and all insurances which may be necessary in providing Services or are otherwise required by law, and shall require of all its' sub-consultants connected with providing services under this contract to provide insurance in full force and effect as well. Insurance policies shall cover, but are not limited to, Surveyor's activities and all persons, vehicles, equipment, and property connected with providing Services, including but not limited to professional liability insurance covering Surveyor's activities in providing the services to County. Coverage shall be in the amounts specified by the County in the Request for Qualifications ("RFQ") or

Kane Lindsey, LLC. Contract No. C-22-0337-07-26 Professional Surveying Services – Pct 2 as prescribed by law, but in no event shall any amount be less than the minimum amounts prescribed by the Texas Tort Claims Act, §100.001, et seq., Texas Civil Practices and Remedies Code. Surveyor shall furnish to County certificate(s) of insurance and all renewals throughout the duration of any assigned Project on an Accord form naming the County as an additional insured, issued by the insurer that such insurance is in full force and effect. **See attached Exhibit “D” Insurance Information.**

17. As a condition of this Agreement, Surveyor shall hold and maintain throughout the term of this Agreement all licenses and permits required, or which may be required by any authority during the term hereof to provide the Services for a particular project. If such license or permit is suspended or revoked, this Agreement shall automatically be terminated and Surveyor shall immediately notify the County.

18. All trucks or vehicles operated by the Surveyor to perform the Services shall contain all equipment required by any authority to operate on streets and roads and all persons in the employ of Surveyor who operate such trucks or vehicles shall have the required licenses, qualifications, skill and expertise to perform such Services and shall comply with all laws, rules and regulations prescribed by any agency or authority having jurisdiction with regard to the operation of such trucks or vehicles in providing the Services.

19. Payment of Franchise Tax. The Surveyor hereby certifies that the Surveyor is not delinquent in Texas franchise tax payments, or that the Surveyor is exempt from, or not subject to, such tax. A false statement concerning corporation’s franchise tax status shall constitute grounds for termination of the Agreement at the sole option of the County.

20. No Assignment. Except as otherwise herein provided, Surveyor may not assign the obligations or rights under this Agreement to any person without the prior written consent of County.

21. Conflict. Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law, and whenever there is any conflict between any provision of this Agreement and any present or future law, ordinance or administrative, executive or judicial regulation, order or decree, or amendment thereof, contrary to which the parties have no legal right to Agreement, the latter

shall prevail, but in such event the affected provision or provisions of this Agreement shall be modified only to the extent necessary to bring them the legal requirements and only during the time such conflict exists.

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

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

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

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

26. INDEMNIFICATION. Surveyor shall indemnify and hold harmless County, its elected officials, employees and agents from any and all claims, damages, losses, and expenses including reasonable attorney's fees for the defense of any action against County to the extent arising out of, resulting from, or connected with the negligent provision of the Services by Surveyor under this Contract. Said indemnity shall cover any intentional misconduct, negligent act, or failure to act by the Surveyor, its agents or employees. This indemnification clause shall survive this Agreement and be enforceable as a separate agreement in the event its survival and enforcement becomes necessary.

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

If to County: County of Hidalgo
Attention: County Judge
100 E. Cano, 2nd Floor
Edinburg, Texas 78539

If to Surveyor: Kane Lindsey, LLC
Attn: Kurt Schumacher, R.P.L.S.
2614 Dove Avenue
Mission, Texas 78574

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 addresses or, if mailed at such time as it is deposited in the United States mail.

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

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

30. Gender. All pronouns used in this Agreement shall include the other gender, whether used in the masculine, feminine or neutral gender, and the singular shall include the plural whenever and as often as may be appropriate.

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

32. Professional Seal. All documents and data furnished by the Surveyor to the County shall bear Professional seal of a licensed Surveyor employed by the Surveyor.

33. 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 thirty (30) days written notice to Surveyor. 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 the 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 the Agreement upon thirty (30) days written notice to Surveyor. 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 Agreement at the expiration of each budget period of County in accordance with Tex. Loc. Govt. Code §271.903 (Vernon Supp. 1966).

34. IMMUNITIES. Nothing in this Agreement 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.

35. Nondiscrimination: Surveyor, 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. 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 part of this agreement for all purposes.

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

Pursuant to 2 CFR 200.237, 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.

Signature page to follow

EXECUTED as of the day and year first written above.

COUNTY:
COUNTY OF HIDALGO, TEXAS

By: _____
Richard F. Cortez, County Judge

SURVEYOR:
KANE LINDSEY, LLC

By: _____

Printed Name Kurt Schumacher, R.P.L.S.

ATTEST:

Arturo Guajardo Jr., County Clerk

APPROVED AS TO FORM:
Hidalgo County District Attorney's Office

By: _____
Josephine Ramirez Solis, Assistant District Attorney

- ATTACHMENTS:**
- EXHIBIT A** -Requirements/County's Request for Qualifications
 - EXHIBIT B** -Surveyor's Contract Rates
 - EXHIBIT C** -Scope of Services to be provided by Surveyor
 - EXHIBIT D** -Certificates of Insurance

EXHIBIT “A”

REQUIREMENTS/COUNTY’S REQUEST FOR QUALIFICATIONS PROCUREMENT PACKET

EXHIBIT “B”

SURVEYOR’S CONTRACT RATES



“Exhibit B”

Surveyor Contract Rates

LABOR CLASSIFICATION		CONTRACT RATE
Senior RPLS/Principal		\$ 160.00
RPLS		\$ 125.00
Senior Survey Technician		\$ 90.00
Survey Technician		\$ 75.00
Abstractor		\$ 70.00
Surveyor-In-Training		\$ 85.00
3- Man Crew		\$ 160.00
2- Man Survey Crew		\$ 130.00
Sr. Lidar Technician		\$ 90.00
Lidar Technician		\$ 75.00
Utility Coordinator		\$ 75.00
Flagger		\$ 40.00
Admin/Clerical		\$ 60.00

Lump Sum Services

Aerial Photogrammetry and Lidar Mobilization \$500

Title Reports \$500

EXHIBIT “C”

SCOPE OF SERVICES TO BE PROVIDED BY SURVEYOR



“Exhibit C”

Services to Be Provided by the Surveyor:

Services shall be provided under the direct supervision of a Texas Registered Professional Land Surveyor and shall be in accordance (when applicable) to the Texas Board of Professional Engineers and Land Surveyors Acts and Rules, with minimum requirements met in accordance to the latest edition of the Texas Society of Professional Land Surveyors (TSPS) *Manual of Practice*, latest standards for ALTA/NSPS surveys, and the latest edition of the Texas Department of Transportation *Survey Manual*.

Boundary/ Property Surveys:

- Abstracting. Surveyor shall research County Clerk records for deed and easement information.
- Field Surveys. Recover and set boundary corners.
- Parcel Descriptions. Describe subject tract by metes and bounds description identifying calculated acreage, distances, set and recovered property corners, and adjoining property record deed information.
- Survey plat. Map detailing boundary location, documents of record, encumbrances, encroachments, easements, right-of-way information, and improvements on subject tract.

Topographical Survey by Aerial, GPS, or conventional methods:

- Horizontal and Vertical Control Networks. Establish horizontal values by GPS “RTK” or “Static” procedures and/or conventional survey methods. Vertical values to be established by digital level loops. Horizontal and Vertical control sketches to be delivered when applicable. Horizontal values to be referenced to the Texas Coordinate System, North American Datum of 1983, South Zone. Vertical values referenced to the North American Vertical Datum of 1988, Geoid 18.
- Cross sections. Grid lines shall be 100-ft unless specified otherwise by the County.



- Utilities. Submit a Texas 811 utility locate request. Locate all visible above ground utilities within project limits, to include: identifying direction/alignment of overhead lines, collect invert elevation data at irrigation standpipes, storm sewer manholes, sanitary sewer manholes, and drain ditch structures, and locate Texas 811 utility markings with owners inventoried.
- Improvements. Locate all visible above ground improvements to include roadways, grade breaks, buildings, fences, and driveways.
- Final Deliverables. 2D and 3d mapping, digital Terrain model, correspondence with utility purveyors, field books, aerial imagery files, survey point file.

Survey Alignments:

- Alignments. Establish centerline alignments for existing and future easements, roadways, and utility corridors.
- Right-of-ways. Establish existing road and utility right of ways from public record documents. Mapping identifying resolved right of way, easement, and alignment locations.
- Deliverables. CADD files identifying improvements, alignments, dimensions, record ownership information, distances, bearings, property lines, monuments recovered, monuments set, and easement locations. PDF file to be provide on request.

EXHIBIT “D”

CERTIFICATES OF INSURANCE

CERTIFICATE OF INTERESTED PARTIES

FORM **1295**

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

**OFFICE USE ONLY
CERTIFICATION OF FILING**

Certificate Number:
2022-914062

Date Filed:
07/25/2022

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Kane Lindsey LLC
McAllen, TX United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

Hidalgo County

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

C-22-0337-07-26
Professional Land Surveying Services

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO Interested Party.

6 UNSWORN DECLARATION

My name is Kurt Schumacher, and my date of birth is 02/08/1977.

My address is 4307 N 22nd Street, Suite B, McAllen, TX, 78504, USA.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Hidalgo County County, State of Texas, on the 25 day of July, 20 22.
(month) (year)

Signature of authorized agent of contracting business entity (Declarant)