

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 Premises.

Holdover

1.3 If County holds over and continues in possession of the Leased Premises after expiration of this Lease or any extension thereof as provided in Article 1.2, County will be deemed to be occupying the Premises on the basis of a tenancy at sufferance, subject to all of the terms and conditions of this Lease. The inclusion of this Article 1.3 shall not be construed as Lessor's consent for the County to hold over.

Termination

1.4 County may declare this Lease, and all rights and interest created by it, to be terminated without cause upon giving the other party thirty (30) days written notice. 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.

Lessor's Warranty of Quiet Enjoyment

1.5 Lessor covenants and agrees that County on paying the rent herein provided for and observing and keeping the covenants, conditions, and terms of this Lease on County's part to be kept or performed, shall lawfully and quietly hold, occupy, and enjoy the Leased Premises during the term of this Lease without hindrance or molestation of Lessor or any person claiming under Lessor except such portion of the Leased Premises, if any, as shall be taken under the power of eminent domain.

ARTICLE 2. RENT

Base Rent

2.1 County agrees to pay to Lessor, during the term hereof, a monthly rental equal to the product of **Seven Hundred Seventy Five Dollars (\$775.00) per month**, of the Premises as described in Exhibit B. 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.

Time and Manner of Payment

2.2 All rent due under this article shall be paid by County on a monthly basis and in advance, on the (Day) 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 in such location or locations as Lessor shall from time to time designate by written notice to County. Any rent due for any partial-month in the beginning or the end of the term hereof shall be prorated on the basis of a thirty-day month.

Taxes

2.3 Lessor is responsible for rendering and paying all real estate taxes on the Property. County shall be responsible for taxes, if any, on County's personal property located on the Premises.

ARTICLE 3. USE OF PREMISES

Permitted Use

3.1 County may use the premises for landfill transfer and any other lawful purposes.

Waste, Nuisance, or Illegal Use

3.2 County shall not use or permit the use of, the Premises in any manner that result in waste of the Premises or constitutes a nuisance or violates any statute, ordinance, rule, or regulation applicable to the premises or for any illegal purpose.

ARTICLE 4. REPAIRS AND MAINTENANCE

4.1 County shall be responsible for repairs and maintenance in connection with damage to the Premises caused by County's negligent use of Premises, and damage to fixtures and improvements resulting from negligent or willful acts of the County, or the County's employees, agents, licensees or invitees. In addition, County shall repair all injury caused by the installation or removal of furniture, fixtures, or property permitted under this Lease to be removed from the Leased Premises. All construction, modifications, maintenance, and/or repairs made by either County or Lessor shall be made by duly qualified individuals in a good and workmanlike manner using high-quality materials. A "good and workmanlike manner" is defined as work that is performed by one who has the knowledge, training, or experience necessary for the successful practice of a trade or occupation and performed in a manner generally considered proficient by those capable of such work.

Lessor's Duty to Repair

4.2 To the extent applicable to the present lease, Lessor shall maintain in good working order and make all repairs to the Premises' foundation, roof, plumbing systems, electrical and lighting systems, heating, ventilation, and air conditioning systems ("HVAC") structural integrity, fire protection and fire alert systems and all other repairs in and to the Leased Premises except that County shall make those repairs occasioned by County's negligent use of the Leased Premises. All repairs/maintenance will need to be addressed within five (5) business working days, with sanitation and leak issues to be prioritized and remedied with an immediate response, by no longer than a 24 hour period.

Lessor's Duty

4.3 To the extent applicable to the present lease, Lessor shall construct, repair, and maintain the Leased Premises so that the Premises will have:

- 1) Effective waterproofing and weather protection of the contents of the Leased Premises by watertight roof, exterior walls, windows, and doors.
- 2) Plumbing facilities that conform to applicable law, maintained in good working order.
- 3) A water supply approved under applicable law that is under the control of County, capable of producing hot and cold running water, or a system that is under the control of Lessor that produces hot and cold running water furnished to County and connected to a sewage disposal system conforming to applicable law.
- 4) Central heating, ventilation, and air conditioning facilities conforming to applicable law to provide ample cooling/heating to the entire Leased Premises and are maintained in good working order. Lessor is responsible for keeping structures on the Premises free of mold at all times.
- 5) Electrical lighting, with wiring and electrical equipment that conforms to applicable law, maintained in good working order.
- 6) Building, grounds, and appurtenances in every part clean, sanitary, and free from all accumulations of debris, and all areas under control of Lessor kept in every part clean, sanitary, and free from all accumulations of debris.
- 7) Floor, stairways, and railings maintained in good repair (including annual waxing of floors).

- 8) Landscaping (all greenery, watering, and maintenance).
- 9) Parking Lot and on-premises roads (including painting, striping, paving, etc.)
- 10) Fire protection and fire alert systems that conform to applicable law, maintained in good working order.
- 11) Pest control services.

County's Right to Repair for Lessor or Vacate

4.4 (a) If after 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 make the repairs itself. In such a case, County may deduct the expenses of the repairs from further payment of rent or terminate this Lease Agreement as of the date County vacates the Premises and any rental shall be abated for the unexpired term of this Lease.

(b) For purposes of this Section 4.4, if Lessor makes repairs at least fifteen (15) days following the date of County's notice to Lessor, it will be presumed to have acted in a reasonable time.

ARTICLE 5. UTILITIES

Utility Charges

5.1 To the extent applicable to the present lease, County, at its sole cost and expense, shall have the responsibility of providing the following services at the Premises: electrical and water usage cost services, janitorial services, security alarm services, telecommunication services, and garbage services, used in and about the Leased Premises during the term of this Lease, all such charges to be paid by County directly to the utility company or municipality furnishing the same before the same shall become delinquent, unless otherwise agreed to by the Parties.

ARTICLE 6. ALTERATIONS, ADDITIONS, AND IMPROVEMENTS

Consent of Lessor

6.1 County shall not make any alterations, additions, or improvements to the Leased Premises without the prior written consent of Lessor. Consent for nonstructural alterations, additions, or improvements shall not be unreasonably withheld by Lessor.

Property of Lessor

6.2 All alterations, additions, or improvements made by County shall become the property of Lessor at the termination of this Lease. Lessor may, however, require that County remove any or all alterations, additions, and improvements installed or made by County, and any other property placed on the Premises by County, upon termination of the Lease. In the event that Lessor requires County to remove such alterations, additions, or improvements, County shall repair any damage to the Premises caused by such removal.

ARTICLE 7. SIGNS

7.1 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 Premises. 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 8. MECHANIC'S LIEN

8.1 County will not permit any mechanic's lien or liens to be placed upon the Leased Premises or improvements on the Premises, County will promptly pay the lien. If default in payment of the lien continues for twenty (20) days after written notice from Lessor to County, 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 Premises or improvements on the Premises 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 9. INSURANCE AND INDEMNITY

Property Insurance

9.1 Lessor shall, at its own expense, during the term of this Lease provide insurance on the Leased Premises including all buildings and improvements on the Leased Premises insured against loss or damage by fire with extended coverage to include direct loss by windstorm, hail, explosion, riot, or riot attending a strike, civil commotion, aircraft, vehicles, and smoke, in the aggregate amounts of not less than the full fair insurable value of the buildings and improvements.

The insurance is to be carried by one or more insurance companies licensed to do business in Texas and approved by County. The policies shall provide that any proceeds for loss or damage to buildings or improvements shall be payable solely to Lessor, which sum Lessor shall use for repair and restoration purposes as provided herein. County shall maintain all insurance on County's personal property located within the Leased Premises and County covenants and agrees that Lessor shall have no responsibility for damage or destruction of County's personal property located within the Leased Premises.

General Liability Insurance

9.2 **Lessor.** Lessor, at its own expense, shall provide and maintain in force during the term of this Lease, liability insurance with limits of at least Five Hundred Thousand Dollars (\$500,000.00), naming County as additional insured. 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."

9.3 **Lessor,** at its own expense, shall provide and maintain in force during the term of this Lease any other insurances which may be required or necessary.

9.4 **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.

Remedy for Failure to Provide Insurance

9.4 Lessor shall furnish County with the original of all insurance policies required by this Article. If Lessor does not provide such policies or proof of such insurance within ten (10) days of the execution of this Lease, or if Lessor allows any insurance required under this Article to lapse after receipt of notice of cancellation or non-renewal, or if Lessor fails to deliver proof of insurance showing coverages to County prior to the effective date of such insurance and the original insurance policy within thirty (30) days thereafter, such failure shall be a default of Lessor under this Lease; or County may, but shall not be required, to take out such insurance and pay the premiums on the necessary insurance to comply with Lessor's obligations under the provisions of this Article. Lessor agrees to reimburse County all amounts spent by Lessor to procure and maintain such insurance within fifteen (15) days after demand from Lessor. Failure to pay such amount when due shall be a default of Lessor under this Lease.

ARTICLE 10. DAMAGE OR DESTRUCTION OF PREMISES

Notice to Lessor

10.1 If the Leased Premises, or any structures or improvements on the Leased Premises, 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.

10.2 If the Leased Premises or any structures or improvements on the Leased Premises should be totally destroyed by fire, tornado, or other casualty, or if it should be so damaged that rebuilding is necessary, this Lease Agreement, at the option of the County, shall terminate and rent shall be abated for the unexpired portion of this Lease, effective as of the date of said occurrence.

10.3 If the Leased Premises or any structures or improvements on the Leased Premises should be damaged by fire, tornado, or other casualties, but not to such an extent that rebuilding or repairs can reasonably be completed with thirty (30) working days from the date of the occurrence of the damage, this Lease shall not terminate, but Lessor shall if the casualty has occurred prior to the final six (6) months of the lease term, at Lessor's sole cost and risk proceed forthwith to rebuild or repair the Leased Premises to substantially the condition in which they existed prior to such damage. If the casualty occurs during the final six (6) months of the lease term, Lessor shall not be required to rebuild or repair such damage. If the Leased Premises are to be rebuilt or repaired and are untenable in whole or in part following such damage, the rent payable hereunder during the period in which they are untenable shall be adjusted equitably. In the working days from the date of the occurrence of the damage, County may at its option terminate this Lease by written notification at such time to Lessor, whereon all rights and obligations hereunder shall cease.

ARTICLE 11. CONDEMNATION

Total Condemnation

11.1 If during the term of this Lease all of the Leased Premises should be taken for any public or quasi-public use under any governmental law, ordinance, or regulation, or by right of eminent domain, or should be sold to the condemning authority under threat of condemnation, the Lease shall terminate, and the rent shall be abated during the unexpired portion of this Lease, effective as of the date of the taking of the premises by the condemning authority.

Partial Condemnation

11.2 If less than all, but more than ten percent (10%) of the Leased Premises is taken for any public or quasi-public use under any governmental law, ordinance, or regulation, or by right of eminent domain, or should be sold to the condemning authority under threat of condemnation, County may terminate the Lease by giving written notice to Lessor within thirty (30) days after possession of the condemned portion is taken by the entity exercising the power of condemnation.

If the Leased Premises are partially condemned and County fails to exercise the option to terminate the Lease under this section, or if less than ten percent (10%) of the Leased Premises are condemned, this Lease shall not terminate, but Lessor may, at its sole expense, restore and reconstruct the building and other improvements situated on the Leased Premises to make them reasonably tenantable and suitable for the uses for which the Premises are Leased. The rent payable under Sections 2.1 of this Lease shall be decreased equitably during the period of such restoration or reconstruction.

Condemnation Award

11.3 Lessor and County shall each be entitled to receive and retain such separate awards, and portions of lump-sum awards, as may be allocated to their respective interest in any condemnation proceedings. The termination of this Lease shall not affect the rights of the respective parties to such awards.

ARTICLE 12. DEFAULT

Default by County

12.1 If County shall allow the rent to be in arrears more than ten (10) days after written notice of such delinquency, or shall remain in default under any other condition of this Lease for a period of fifteen (15) days after written notice from Lessor, Lessor may at its option, without notice to County, terminate this Lease or, in the alternative, Lessor may re-enter and take possession of the Premises and remove all persons and property without being deemed guilty of any manner of trespass and relet the Premises, or any part of the Premises, for all or any part of the remainder of the Lease term, to a party satisfactory to Lessor and at such monthly rental as Lessor may with reasonable diligence be able to secure.

Default by Lessor

12.2 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 that: 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 Premises, 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 Premises and any rental shall be abated for the unexpired term of this Lease.

Cumulative Remedies

12.4 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

12.5 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 13. ASSIGNMENT AND SUBLETTING

Assignment and Subletting by County

13.1 County may not sublet, assign, encumber, or otherwise transfer this Lease, or any right or interest in this Lease or the Leased Premises or the improvements on the Leased Premises, 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 Premises or the improvements on the Leased Premises, 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

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

ARTICLE 14. ADA COMPLIANCE

14.1 Lessor shall be responsible for ensuring Premises comply with the Americans with Disabilities Act (ADA) as amended. Any contest by Lessor of any law, rule, order, ordinance, regulation or requirement of the ADA shall be done with due diligence through appropriate legal proceeding at no cost to County, and shall not subject the County to criminal/civil prosecutions or penalties or encumbrance the Premises in any way.

ARTICLE 15. MISCELLANEOUS

15.1 **Notices and Addresses.** All notices required under this Lease will be deemed delivered when deposited in certified or registered mail, addressed to the proper party, at the following addresses:

County:

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

Copy to:

H. C. Purchasing Department
Attn: Purchasing Director
2802 S. Business Hwy. 281
Edinburg, Texas 78539

Lessor:

Richard Cohrs
P.O. Box 698
Donna, TX 78537

Either party may change the address to which notices are to be sent by giving the other party notice of the new address in the manner provided in this section.

15.2 **Entire Agreement.** This Agreement contains the entire contract between the parties hereto and each party acknowledges that neither has made (either directly or through an

agent or representative) any representation or agreement in connection with this Agreement not specifically set forth herein. This Agreement may be modified or amended only by an agreement in writing executed by the parties hereto, and not otherwise.

15.3 **Parties Bound.** This agreement shall be binding upon and inure to the benefit of, the parties to the Lease and their respective heirs, executors, administrators, legal representatives, successors and assigns when permitted by this agreement.

15.4 **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 by this Lease are performable in Hidalgo County, Texas.

15.5 **Legal Construction.** In case any one or more of the provisions contained in this Agreement shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of the agreement, and this agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been included in the agreement.

15.6 **Prior Agreements Superseded.** This agreement constitutes the sole and only agreement of the parties to the agreement and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter of this agreement.

15.7 **Amendment.** No amendment, modification, or alteration of the terms of this agreement shall be binding unless it is in writing, dated subsequent to the date of this agreement, and duly executed by the parties to this agreement.

15.8 **Rights and Remedies Cumulative.** 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.

15.9 **Force Majeure.** 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.

15.10 **Real Estate Commission and Finder's Fees.** 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.

15.11 **Estoppel Information.** County shall, at the request of Lessor, provide any and all information with respect to this Lease to any person designated by Lessor.

15.12 **Time of Essence.** Time is of the essence of this agreement.

15.13 **Governmental Purpose.** 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.

15.14 **Commitment of Current Revenues Only.** In the event that, during any term hereof, the Commissioners Court of County 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 best efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of County pursuant to the provisions of Texas Local Government Code Ann. ' 271.903 (Vernon Supp. 1996).

15.15 **Immunities.** 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.

15.16 **Additional Documents.** 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.

15.17 **Non-Discrimination** 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.

15.18 **Required Contract Provision for Contracts Subject to Federal Award (if applicable).** Pursuant to 2 CFR 200.327, 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.

15.19 **Authority to Execute.** 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.

[SIGNATURE PAGE TO FOLLOW]

EXECUTED as of the day and year first written above.

APPROVED BY COMMISSIONERS' COURT ON _____.

Agenda Item No. XXXXX

Executive Office: _____

VENDOR:
Richard Cohrs

COUNTY:
COUNTY OF HIDALGO

Richard Cohrs, Owner

Hon. Richard F. Cortez, County Judge

APPROVED AS TO FORM
Office of the Hidalgo County
Criminal District Attorney,
Toribio "Terry" Palacios

ATTEST:

Robert Viña, Assistant District Attorney

Arturo Guajardo, Jr., County Clerk

ATTACHMENTS:
(If Applicable)

SUPPLEMENTAL SIGNATURES:
(If Applicable)