



**AGENDA
CC REGULAR
HIDALGO COUNTY
COMMISSIONERS COURT
MEETING
DECEMBER 13, 2022
10:00 A.M.**

NOTICE is hereby given in accordance with Chapter 551, Texas Government Code, that a SPECIAL MEETING of the Commissioners Court will be held in the Commissioners Courtroom of the Administration Building, 100 E. Cano, 1st floor, Edinburg, Hidalgo County, Texas. Discussion and possible action relating to the following business will be transacted:

In accordance with Section 551.127, NOTICE is hereby given that a physical quorum, including the presiding officer/member, will be present at the specified meeting location. Some members of the governing body and/or government officials may participate via videoconference.

Members of the public are encouraged to watch the meetings online, at: www.hidalgocounty.us/HClive

1. Roll Call (Audio Reference 18m: 38s)

Judge Cortez called the meeting to order at 10:01 A.M.

All members of the Court were present during the roll call, except for Commissioner Fuentes

Commissioner Fuentes joined the meeting at a later time.

2. Pledge of Allegiance (Audio Reference 19m: 00s)

Veteran Jessica Villarreal led the Court in the Pledge Of Allegiance.

The Court Proceeded to agenda item 4 - Approval of Consent Agenda

3. Prayer (Audio Reference 26m: 20s)

Honorable Ricardo Rodriguez, Jr. Criminal District Attorney offered the prayer.

The Court proceeded to Agenda item 6 - Open Forum (Audio Reference 27m: 31s)

4. Approval of Consent Agenda (Audio Reference 20m: 30s)

Commissioner Fuentes joined the meeting.

The Court proceeded with the discussion and approval of the Consent Agenda.

See the Consent Agenda for the action taken

The Court returned to the Consent Agenda. (Audio Reference 39m: 07s)

See the Consent Agenda for Changes made.

5. Approval of Awards/Recognitions:

A. AI-88745 Approval of Resolution recognizing the Hidalgo County Public Affairs Division. (Audio Reference 21m: 20s)

Victor Garza, with the County Judge's Office, read the Resolution recognizing the Hidalgo County Public Affairs Division.

Hidalgo County Public Affairs Division Director, Carlos Sanchez came before the Court to express his gratitude for the Resolution.

On motion by COMMISSIONER PCT. 1, DAVID FUENTES, seconded by COMMISSIONER PCT. 3, EVERARDO "EVER" VILLARREAL, the Court made a UNANIMOUS vote of approval on agenda item 5. A.

The Court proceeded to Agenda item 3 - Prayer (Audio Reference 26m: 20s)

Vote: 5 - 0 - Unanimously

17. **AI-88759** Requesting approval of On-Call Professional Engineering Services Agreement with Half Associates, Inc., for projects located within Precinct No. 4, as ranked & approved to negotiate by CC on 11/29/2022 [AI-88537] (Audio Reference 01h: 32m: 57s)

On motion by COMMISSIONER PCT. 3, EVERARDO "EVER" VILLARREAL, seconded by COMMISSIONER PCT. 4, ELLIE TORRES, the Court made a UNANIMOUS vote of approval on agenda item 22. F. 17.

Vote: 4 - 0 - Unanimously

18. **AI-88764** Requesting approval of On-Call Professional Architectural Services Agreement with ERO Architects for projects located within Precinct No. 4, as ranked & approved to negotiate by CC on 11/29/22 [AI-88527]. (Audio Reference 01h: 33m: 11s)

On motion by COMMISSIONER PCT. 4, ELLIE TORRES, seconded by COMMISSIONER PCT. 3, EVERARDO "EVER" VILLARREAL, the Court made a UNANIMOUS vote of approval on agenda item 22. F. 18.

Vote: 4 - 0 – Unanimously

19. **AI-88697** Requesting approval of On-Call Professional Appraisal Services Agreement with Appraisal Haus for projects located within Precinct No. 4, as ranked & approved to negotiate by CC on 11/29/2022 [AI-88525]. (Audio Reference 01h: 33m: 28s)

On motion by COMMISSIONER PCT. 4, ELLIE TORRES, seconded by COMMISSIONER PCT. 3, EVERARDO "EVER" VILLARREAL, the Court made a UNANIMOUS vote of approval on agenda item 22. F. 19.

Vote: 4 - 0 – Unanimously

20. **AI-88507** Requesting authority to accept and award construction contract C-22-0047-12-23 for the Encore Ranches Stormwater Project to the lowest responsive and responsible bidder, Blue Dot Site and Utilities, LLC, for the total amount of \$266,262.00 (Bid Base and Alternate 2); with authority to issue Notice to Proceed upon receipt of the required payment & performance bonds. (Audio Reference 01h: 33m: 44s)

Purchasing Director, Eduardo Belmarez made a correction to the contract number as it should read C-22-0047-12-13.

The Court proceeded with a vote of approval on agenda item 22. F. 20 with corrections made.

On motion by COMMISSIONER PCT. 3, EVERARDO "EVER" VILLARREAL, seconded by COMMISSIONER PCT. 4, ELLIE TORRES, the Court made a UNANIMOUS vote of approval on agenda item 22. F. 20.

Vote: 4 - 0 - Unanimously

G. Public Defenders

1. **AI-88639** Requesting acceptance and approval to enter into a 12-month service agreement with Lexipol, LLC for the total amount of \$ 1,432.12 through Sourcewell Cooperative Contract No. 011822-LXP for PoliceOne Academy Subscriptions with authority for County Judge or District Attorney, Ricardo Rodriguez, Jr., to sign any required documentation. (Audio Reference 01h: 34m: 12s)

Mr. Belmarez made a correction to agenda item 22. G. 1; the presented agenda item should fall under District Attorney's Office.

The Court proceeded with a vote of approval on Agenda item 22. G. 1. with stated correction.

On motion by COMMISSIONER PCT. 3, EVERARDO "EVER" VILLARREAL, seconded by COMMISSIONER PCT. 4, ELLIE TORRES, the Court made a UNANIMOUS vote of approval on agenda item 22. G. 1.

Vote: 4 - 0 - Unanimously

H. Constables

1. **AI-88317** Constable Pct. #2:
Requesting authority to purchase up fitting accessories for a 2022 Ford F250 from HC's membership/participation with BuyBoard Cooperative, awarded vendor Cap Fleet Upfitters, contract #603-20, in the total amount of \$14,839.00 with authority for the County Judge to sign any required documentation. (Audio Reference 01h: 34m: 40s)

On motion by COMMISSIONER PCT. 4, ELLIE TORRES, seconded by COMMISSIONER PCT. 3, EVERARDO "EVER" VILLARREAL, the Court made a UNANIMOUS vote of approval on agenda item 22. H. 1.

Vote: 4 - 0 – Unanimously

I. IT Department

THE STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

ON-CALL PROFESSIONAL ARCHITECTURAL SERVICES AGREEMENT
C-22-0688-01-01

THIS AGREEMENT (“Agreement”) is made and entered on this 13th day of December 13th, 2022, by and between **HIDALGO COUNTY, TEXAS (“County” or “Owner”)**, and **ERO ARCHITECTS, (“Architect”)**.

W I T N E S S E T H:

WHEREAS, the County is in need of **On-Call Professional Architectural Services** (the “Services”) for projects within **Hidalgo County Precinct No. 4 (the “Precinct”)**;

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

WHEREAS, pursuant to Texas Government Code Chapter 2254.002, (the “Texas Professional Services Procurement Act”), the County requested Statements of Qualifications (SOQ’s) from professional architects to establish a yearly pool of qualified professional architects to assist the **County** by providing professional architect services. A copy of the Request for Qualifications (RFQ) packet, including applicable requirements and specifications, is attached hereto as **Exhibit “A”**, and is incorporated herein for all purposes;

WHEREAS, the Architect submitted a SOQ in response to County’s RFQ and was pre-qualified to be included in the County’s pool of professional architects and has been selected from the pool to provide On-Call Professional Architectural Services on an as needed basis for the Precinct, in accordance with the terms and provisions of **Exhibit “A”**;

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 Architect has provided a fee schedule in **Exhibit “B”**, i.e., Contract Rates, attached hereto and incorporated by reference herein as; and

WHEREAS, on a project-by-project basis, County shall determine when the services of an architect are required and shall provide project specifications (the “Specifications”) to Architect for review and response.

WHEREAS, the Architect represents that it is qualified and desires to perform such Services;

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

1. County and Architect hereby agree that this Agreement is entered into in order to provide the Services for Hidalgo County on a per-project basis as provided below. Types of Professional Services that may be included as dictated by the individual project requirements consist of Architectural Services. Upon identification by the County of specific projects that require the professional services of an architect, a detailed scope of work and identification of professional service disciplines required shall be established. County and Architect agree to cooperate with each other as provided herein. This contract does not extend to any third parties any duties or benefits conferred in any manner hereunder or otherwise
2. The County will furnish Specifications as needed on a per-project basis to Architect for the development of a project within the Precinct and fulfillment of this Agreement. Architect agrees to review the project as presented by the County and submit to the 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 Architect's consultants); and (4) cost for reimbursable expenses (see also requirements in provision 14) (collectively the "Architect's Proposal" or "Proposal");
3. The County may enter into negotiations with the Architect regarding the Architect's Proposal for the Services, and should the parties reach an agreement, then the Parties shall enter into an additional agreement, including but not limited to AIA B101-2017 (as modified by County) or other appropriate forms of agreement ("Additional Agreement"), in order to detail the Architect's and County's duties and responsibilities with respect to the specific project. However, if the parties are unsuccessful at coming to terms with the project, then the County may seek the services of other professional architects. *All the provisions and requirements of this Agreement shall be incorporated into each Additional Agreement entered into between the Parties; however, conflicting terms between this Agreement and an Additional Agreement shall be held in favor of the Additional Agreement.*
4. Architect 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 Architect.** Hidalgo County reserves the right to request these services from sources other than the Architect 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 **January 1st, 2023**, and will

terminate December 31st, 2023, or unless sooner terminated as provided in Number 7 below. The Architect will not begin to work or incur costs until authorized in writing by the County with a Project Specific “Additional Agreement”. The County assumes no liability or obligation for payment to the Architect for work performed or costs incurred by the Architect prior to the date authorized by the County for the Architect to begin work, during periods when work is suspended, or subsequent to the completion of a Project Specific Additional Agreement.

7. Termination of On-Call Agreement. This On-Call Agreement will be in effect until the Agreement expires or County terminates this Agreement during the contract term for any reason or no reason at all upon giving thirty (30) days prior written notice to the Architect. Any Additional Agreement for a specific project entered into with Architect prior to the termination of this On-Call Agreement shall continue unless terminated as provided below.

8. Termination of Project Additional Agreement.

8.1 Open Additional Agreement(s) entered into with Architect for a specific Project may be terminated by any of the following conditions:

- (1) **Commitment of Current Revenues.** In the event that, during any term hereof, the County does not appropriate sufficient funds to meet to the obligations of a Project, the County may terminate a Project Additional Agreement upon thirty (30) days written notice to the Architect. The County agrees, however, to use reasonable efforts to secure funds necessary for the continued performance of the Project. The parties intend this provision to be a continuing right to terminate the Project Additional Agreement at the expiration of each budget period of the County pursuant to the provisions of Tex. Loc. Govt. Code Ann. ' 271.903 (Vernon Supp. 1995).
- (2) By mutual agreement and consent, in writing, of both the Architect and the County.
- (3) By the County, upon failure of the Architect to fulfill the Architect’s obligations set forth herein in a satisfactory manner as determined by the County and in sole opinion of the County, after the County provides written notice to the Architect of such failure and the Architect has not corrected such failure within (30) days of such written notice by the County.
- (4) By the Architect, upon failure of the County to fulfill the County’s obligations set forth herein, after the Architect provides written notice to the County of such failure and the County has not corrected such failure within thirty (30) days of such written notice by the Architect.
- (5) By the County without cause upon thirty (30) days written notice to the Architect.

- (6) By satisfactory completion of all services and obligations described in a Project Specific Additional Agreement prior to the scheduled Project completion date. Extension of a scheduled Project completion date shall be in accordance to procedures described in sections 9 and 14.

8.2 Should the County terminate a Project or as herein provided, no fees other than fees due and payable at the time of termination of that Additional Agreement shall thereafter be paid to the Architect notwithstanding anything herein to the contrary. In determining the value of the work performed by the Architect prior to termination, the County shall be the sole judge of the value of such work performed. Compensation for work at termination will be based on a percentage of the work completed at that time. Should the County terminate a Project Additional Agreement under (5) of the paragraph above, the amount charged during the thirty (30) day notice period shall not exceed the amount charged during the preceding ninety (90) days.

8.3 If the termination of a Project Additional Agreement is due to the failure of the Architect to fulfill the Architect's obligations under the Additional Agreement including provisions of this Agreement incorporated therein, the County may take over the Project and prosecute the work to completion. In such case, the Architect shall be liable to the County for any additional cost occasioned by the County.

8.4 If the Architect defaults in the performance of a Project Additional Agreement or if the County terminates a Project Additional Agreement for fault on the part of the Architect, the county will give consideration to payment of an amount in settlement to include: the actual costs incurred by the Architect in performing the work to the date of default, the amount of work required which was satisfactorily completed to date of default, the value of the work which is usable to the County, the cost to the County of employing another consultant and/or firm to complete the work required and the time required to do so, and other factors which affect the value to the County of the work performed at the time of default. This Agreement shall not be considered as specifying the exclusive remedy for any default by the Architect, but all remedies existing at law and in equity may be availed of by either party and shall be cumulative.

8.5 The termination of a Project Additional Agreement and payment of an amount in settlement as prescribed above shall extinguish all rights, duties, and obligations of the County and the Architect under this Agreement, except the obligations set forth in sections 19.2, 20, 21, 23, 24, 25, 27.3, 28, 31 and 35 hereto.

9. Extension of a Project Termination Date. The Architect shall notify the County in writing as soon as possible if it is determined, or reasonably anticipated, that the work authorized under an

Additional Agreement for a Project cannot be completed before the Project's scheduled Termination Date, and the County may, at the County's sole discretion, extend the Project's scheduled Termination Date by written Amendment as provided in herein. The Architect shall allow adequate time for review and approval by the County of the written notice and request by the Architect to extend the Additional Agreement Termination Date.

10. Suspension of Work. Should the County desire to suspend the work under a Project Additional Agreement, but not terminate the Project Additional Agreement, the County shall provide thirty (30) calendar days verbal notification to Architect, followed by written confirmation from the County to Architect to that effect. The thirty-day notice may be waived as agreed in writing by both the County and Architect to that effect. The work under the Project Additional 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 Architect. The sixty-day notice may be waived if agreed in writing by both the County and Architect. If the County suspends the work, the Termination Date for a Project as identified is not affected and this Project will terminate on the date specified, unless extended by written amendment, as provided in the Amendment section hereof, duly executed by the Architect and the County prior to the Termination Date.

11. Progress and Coordination. The Architect shall, from time to time during the progress of the work, confer with the County.

- a. The Architect 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 Architect's services and work.
- b. At the request of the County or the Architect, conferences shall be provided at the Architect's office, the offices of the County, or at other locations designated by the County. These conferences shall also include evaluation of the Architect's services and work when requested by the County.
- c. County shall assist Architect, as necessary, to obtain required data and information from other local, regional, state and federal agencies the Architect cannot easily obtain, provide any available relevant data the County may have on file concerning the Project.
- d. County shall provide timely review and decisions in response to the Architect's request for information and/or required submittals and deliverables, in order for Architect to maintain the agreed-upon work schedule prepared in accordance with an Additional Agreement (if applicable).
- e. 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 Architect's preliminary report will be addressed by the Architect in the final report.

f. If funds by other agencies or entities are to be used for the development of any project awarded under this Agreement, the Architect'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.

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

h. **Reporting.** The Architect shall promptly advise the County in writing of events which have a significant impact upon the Agreement, a Project Additional Agreement and/or the progress of the Architect's Services and work and the approved Work Schedule, including:

(1) Problems, delays or 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 Architect within established time periods. This disclosure will be accompanied by a statement by the Architect of recommended or immediate action taken, or contemplated, and any County or other agency or entity assistance needed to resolve the situation, including Federal assistance if Federal funds are involved; and

(2) Favorable developments or events which enable meeting the Work Schedule goals sooner than anticipated or which are producing more work units than originally projected.

12. Compensation and Fees. For and in consideration of the services to be rendered by the Architect, the County shall compensate the Architect as follows:

12.1 Services. For and in consideration of the *Services* to be rendered by the Architect, as identified in herein and on the project specific Additional Agreement, the maximum amount payable by the County to the Architect for *Services*, subject to adjustment in accordance with Request for Payment provision provided below, will be provided in each Additional Agreement issued. An outline and breakdown of the Services Fee are more particularly identified in EXHIBIT "B"-Architect Contract Rates, attached hereto and made a part of this Agreement. Payments to the Architect for *Services* shall be made by the County, upon presentation by the Architect of the monthly Request for Payment, in accordance with the

terms and provisions provided below.

12.2 *Special Services (if applicable).* Those services that may be required to be provided by the Architect as *Special Services* are set forth below and more particularly described in Architect's proposal. For and in consideration of these *Special Services* rendered as required by the Architect, the County shall pay the Architect a negotiated lump sum fee (hereafter referred to as "Special Services Fee") at the hourly labor rates and non-labor rates (hereinafter referred to as "Contract Rates") specified in EXHIBIT "B" - *Contract Rates*, attached hereto and made a part of this Agreement, and as follows:

- A. RESIDENT OR SITE ARCHITECT, INSPECTOR.** Actual performance of services of project site Architect, resident Architect and/or inspector, if required by County.
- B. DOCUMENT COPIES.** Actual performance and/or providing of additional copies (over 10) of report; additional copies (over 10) of plans (contract drawings), specifications and estimates (PS&E); additional copies (over 10) of bidding documents: additional copies (over 10) of as-built drawings.
- C. EXTRA TRAVEL.** Extra travel required of Architect and authorized by County to points outside of Hidalgo County.
- D. EXPERT WITNESS.** Assistance to the County as expert witness in any litigation with third parties, arising from the development or construction of the Project.
- E. MISCELLANEOUS.** Investigations involving detailed consideration of operation, maintenance, and overhead expenses and (unless otherwise agreed) the preparation of rate schedules, earning and expense statements; preparation of feasibility studies; environmental document preparation; appraisals, valuations, and material audits; or inventories required for certification of force account construction performed by the County; preparation of change orders for extra work done by the Contractor.

13. Method of Payment. For and in consideration of the services to be rendered by the Architect, the County shall compensate the Architect as follows:

13.1 Request for Payment. Payments to the Architect for services rendered will be made periodically while work is in progress as executed through a lump sum fee assigned to each Additional Agreement as provided herein. For each Additional Agreement, the Architect

shall prepare and submit to the County monthly progress reports in sufficient detail to support the progress of the work and in support of a request for payment (hereinafter referred to as "Request for Payment"). The progress report shall indicate the percent completion of the work accomplished by the Architect during the billing period and to the date of the Request for Payment. On or before noon of the first Monday of each month during the performance of the services, the Architect shall submit to the County for approval a Request for Payment. Payment of the lump sum fee for each Additional Agreement identified in the Request for Payment will be in proportion to the percent completion of the work tasks identified in such Additional Agreements together with a detailed breakdown of the amount and the sum of all prior payments. The County shall review each such Request for Payment and may make such exceptions as the County reasonably deems necessary or appropriate under the circumstances then existing. About ten (10) working days after the Commissioners Court of the County meets approving such payment, the County shall make payment to the Architect in the amount approved as aforesaid subject to section 13.4 herein and below in accordance with the Texas Prompt Payment Act, Tex. Govt. Code Ch. 2251.

If the Project, or any portion(s) thereof, are deleted or otherwise not constructed, compensation to the Architect by the County for the Project or such portions of the project shall be only the amounts paid the Architect for actual work performed in accordance with the Additional Agreement(s) approved by the County.

13.2 Final Payment. After all periodic payments as described above are paid by the County and upon final completion of the work by the Architect and acceptance thereof by the County, the Architect shall submit a final request for payment ("Final Request for Payment") which shall set forth all amounts due and remaining unpaid to the Architect and upon approval thereof by the County, the County shall pay to the Architect the amount due ("Final Payment") under such Final Request for Payment in accordance with the provisions of section "13.1" hereof. The Final Payment shall not be made until the Architect delivers to the County an affidavit that so far as the Architect has knowledge or information any and all amounts due for materials and services over which the Architect has control have been paid.

13.3 Qualification on Obligations to Pay. Any provision hereof to the contrary notwithstanding, the County shall not be obligated to make any payment (whether a periodic payment as provided above or Final Payment) to the Architect hereunder if any one or more of the following conditions precedent exist:

- (1) The Architect is in default of any of its obligations hereunder or otherwise is in default under this Agreement or under any contract documents related to this Agreement;

- (2) Any part of such payment is attributable to the Architect's services which are not performed in accordance with this Agreement; provided, however, such payment shall be made as to the part thereof attributable to the Architect's services which were performed in accordance with this Agreement.
- (3) The Architect has failed to make payments promptly to consultants or other third parties used in connection with the Project for which the County has made payment to the Architect;
- (4) If the County, in good faith judgement, determines that the portion of the compensation then remaining unpaid will not be sufficient to complete the Architect's services in accordance with this Agreement, no additional payments will be due the Architect hereunder unless and until the Architect, at its sole cost, performs a sufficient portion of the Architect's services so that such portion of the compensation then remaining unpaid is determined by the County to be sufficient to so complete the Architect's services.

13.4 No partial payment made hereunder shall be or construed to be final acceptance or approval of that part of the Architect's services to which such partial payment related or relieves the Architect of any of its obligations hereunder with respect thereto.

13.5 If applicable, the Architect shall promptly pay all bills for labor and material performed and furnished by others in connection with the performance of the Architect's services.

14. Additional Agreement. After execution of this Agreement, the Architect shall proceed with the work outlined in this Agreement, only as authorized by the County, through an agreed Additional Agreement as described in section 3 above.

14.1 The Architect will identify, as approved by the County, the needed services for the Project, as required through the course of the development to the Project. The County shall authorize the Architect to perform one or more of the agreed tasks identified in this Agreement and in Architect's proposal, in the form of individual additional agreements. County will provide the authorization to proceed with services through coordination as needed with the project consulting and design Architect. Upon authorization from the County, the Architect will prepare an Additional Agreement document, which will include a description of the work to be performed, including a description of the tasks and milestones, a work schedule, and an estimated cost proposal agreed upon by the County and the Architect. The estimated cost proposal shall set forth in detail the computation of the cost of each work task, at the hourly rates established and identified in EXHIBIT "B", attached hereto. The Additional Agreements shall not waive the County's and the Architect's

responsibilities and obligations established in this Agreement.

14.2 The estimated cost proposal for each Additional Agreement, developed by the Architect and approved by the County shall be used by the County to appropriate a purchase order for the Additional Agreement. Each executed Additional Agreement shall become a part of this Agreement. Upon satisfactory completion of the Additional Agreement, the Architect shall submit the Project's deliverables as specified in the executed Additional Agreement to the County for review and acceptance.

14.3 Work included in an Additional Agreement shall not begin until the County and the Architect have signed the Additional Agreement. All work must be completed on or before the completion date specified in the Additional Agreement, unless extended by written agreement by the Architect and the County. The Architect shall promptly notify the County of any event that will affect completion of the Additional Agreement. All specific Project Additional Agreements must be executed by both the Architect and the County within the period established for this Agreement as specified in the Term section hereof.

14.4 The final acceptance by the County of each Additional Agreement for the Project shall serve as evidence of completion, on the part of the Architect, of all services under this Agreement insofar as they pertain to that portion of work on the Project identified in the applicable additional Agreement.

15. Amendments This Agreement or a specific Project Additional Agreement may be amended as follows.

15.1 If it becomes necessary at any time during the term of this Agreement to change the terms of this Agreement then a written amendment shall be executed within the Agreement period indicated in section 7 above.

15.2 If it becomes necessary at any time during a Project Additional Agreement period to change a Project's scope of services, an Additional Agreement period, the maximum amount payable, the complexity, or the character of a Project Additional Agreement then a written amendment shall be executed within the specific Project Additional Agreement period.

15.3 The County retains the right to reject any such amendment proposed by the Architect. Any such amendments shall be made in writing, agreed to by all parties hereto, and duly executed before the end of the Agreement or specific Project period as specified. If the County finds it necessary to require changes in completed work because of errors made by the Architect, the County shall require the Architect to correct the work at no cost to the County and without amendment to the Agreement or specific Project period as specified. If the changes are made at the request of the County and are not due to errors of the Architect,

the County will reimburse the Architect for the additional work at the same rate of pay established in Exhibit "B", i.e., "Contract Rates." If payment for the additional work will cause the maximum amount payable under a specific additional Agreement to be exhausted, an amendment shall be proposed in accordance with all state procurement laws. It is distinctly understood and agreed that no claim by the Architect for additional work or changes or revisions in work, as identified below, shall be made by the Architect until full execution of the Amendment and authorization to proceed is granted by the County. The County reserves the right to withhold payment to the Architect pending verification of satisfactory work performed by the Architect.

16. Additional Work. If the Architect is of the opinion that any work it has been directed to perform is beyond the scope of this Agreement and constitutes extra work, the Architect shall promptly notify the County in writing. In the event, the County finds that such work does constitute extra work, the County shall so advise the Architect and a written Amendment will be executed between the County and the Architect as provided herein. The Architect shall not perform any proposed additional work or incur any additional cost prior to the execution by both the Architect and the County of an Amendment. Additional compensation from the County to the Architect shall be paid as a negotiated lump sum fee at the Contract Rates specified in EXHIBIT "B" attached hereto. The negotiated lump sum fee shall be incorporated into the Amendment as specified in the Amendment provision above. The County shall not be liable or under any obligation to compensate the Architect for work performed or costs incurred by the Architect relating to additional work not directly associated with the performance of the work authorized in this Agreement or as amended through an Amendment.

17. Changes or Revisions in Work. If the County finds it necessary to request changes to the work, and the changes are within the applications of sound Architectural principles, the Architect shall make such revisions if requested and directed by the County.

17.1 Preliminary Work. The Architect will make, without expense to the County, such revisions of any preliminary reports or drawings as may be required to meet the needs of the County and the applications of sound Architectural principles.

17.2 Previously Approved or Satisfactorily Completed Work. If the County finds it necessary to request the Architect to make changes to work previously approved by the County or work satisfactorily completed for which the County approves or after a definite plan has been approved by the County, if a decision is subsequently made by the County, which for proper execution involves extra services and expenses for changes in or additions to the drawings specifications or other documents, this will be considered as additional work, and compensation from the County to the Architect will be in accordance with the Additional Work provision hereof.

17.3 Project Delays. If the Architect is required to perform additional work due to delays by the imposition of causes not within the Architect's control, such as by the re-advertisement of bids or by the delinquency or insolvency of contractors, such work associated with these delays shall be considered additional work, and the Architect shall be compensated by the County for such extra services and expense in accordance with section 12 hereof.

17.4 Reduction of Project Cost. Notwithstanding any provision herein to the contrary, in the event it is necessary for the County to require changes in the final plan of the Project to enable it to reduce the construction cost of the Project to an amount within the sum estimated by the Architect, the Architect will be required to make such revisions or changes. These changes will only be considered additional work by the Architect, if the Architect previously provided these same changes as options to the County at the stage of preliminary work or prior to the approval of the final plan for the Project, and the option or options were not selected or approved by the County to be incorporated into the final plan of the Project. Payment for this additional work will then be made to the Architect in accordance with the Additional Work provision hereof. If the Architect failed to provide these changes as an option or options to the County at the stage of preliminary work or prior to the approval of the final plan of the Project, these changes will not be considered additional work and no additional compensation will be made to the Architect.

18. 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 Architect, or of a subcontractor, the Architect 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.

19. Ownership and Release of Documents.

19.1 Ownership of Documents. Original drawings and specifications are the property of the Architect however the Project is the property of the County, and the Architect may not use the drawings and specifications thereof for any purpose not relating to the Project with the County's consent. The County shall be furnished with such reproductions of drawings and specifications as the County may reasonably require. Upon completion of the work or any earlier termination of this Agreement or specific Additional Agreement under the termination provision provided herein, the Architect will revise drawings to reflect changes made during construction and will promptly furnish the County with one complete set of reproducible record prints. Prints shall be furnished by the Architect, as an additional service,

at any other time requested by County. All such reproductions shall be the property of the County who may use them without the Architect's permission for any proper purpose relating to the Project, including but not limited to additions to or completion of the Project. Any additions or revisions by the County to a drawing signed, sealed, and dated by a registered professional architect, shall be made in accordance with applicable law or standards.

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. All documents furnished to the Architect by the County shall be delivered to the County upon completion or termination of this Agreement. The Architect, at the Architect's own expense, may retain copies of such documents or any other data under this Agreement.

19.2 Release of Documents or Information. Release of information to the public or others regarding the **Project** will be in accordance with the Texas Public Information Act.

20. Discounts, Rebates, Refunds. In connection with procurement services rendered by the Architect, if procurement services are required of the Architect hereunder, all discounts, rebates, and refunds shall accrue to the County. For some purchases, the Architect may deem that payment within the discount period is not safe; and/or inspection, guarantees, or other considerations may dictate delay. In such cases, the Architect shall promptly notify the County so that a course of action may be mutually agreed upon by the County and the Architect.

21. Records, Accounting, Inspection. The Architect shall keep full and detailed records and accounts in a manner approved by the County. The Architect shall afford the County's authorized personnel and independent auditors, if any, full access to the work performed by the Architect regarding the Project and to all of the Architect's books, records, correspondence, instructions, drawings, receipts, vouchers and other documents relating to such work under this Agreement and the Architect shall preserve all such records for three (3) years after final payment or as required by law if longer. The Architect shall deliver to the County upon completion of such work, a statement of the cost of such work detailed according to the accounting procedure and requirements of the County.

22. Subcontracting and Assignment. The Architect shall not assign, subcontract or transfer the Architect's interest in this Agreement, including goods and/or services, without the prior written consent of the County through an Additional Agreement detailing the same. The Architect shall bind every sub-consultant by written subcontract to observe all the terms of this Agreement to the extent that they may be applicable to each sub-consultant. No subcontract relieves the Architect of any responsibilities under this Agreement. The Architect, and the County, do hereby bind themselves, their successors, executors, administrators and assigns to each other party of this

Agreement and the successors, executors, administrators, and assigns of such other party in respect to all covenants of this contract.

23. Patents. The Architect shall indemnify and save the County harmless from all liability for alleged or actual infringement of any patent resulting from the use of apparatus or equipment furnished or designed by the Architect or from the use of any process designed by the Architect or effected by said apparatus or equipment, and the Architect shall indemnify and save the County harmless from and against all costs, legal fees, expenses and liabilities incurred in or about any claim of or action for such infringement: provided, however, that the County shall promptly transmit to the Architect all papers served on the County in any suit involving such claim of infringement, and provided further, that the County permits the Architect to have entire charge and control of the defense of any such suit. If because of actual infringement the use of such apparatus, equipment, or process is enjoined, the Architect shall refund the purchase price thereof in proportion to the length of service uncompleted, the life of such apparatus or equipment being assumed as five years. The Architect hereby grants to the County a non-exclusive, royalty-free license under patents now or hereafter owned by the Architect covering any machines, apparatus, processes, articles, or products included in the Architect's work hereunder.

24. Confidential Information, Inventions, and Other Restrictions.

24.1 Confidential Information. The Architect shall not use in any way, commercial or otherwise, except to the extent required by the proper performance of this Agreement; and shall hold in confidence and not disclose to any person, for any reason or at any time, any information relating to the secret processes, products, compositions, machinery, apparatus or trade secrets of the County, or any other confidential information given to the Architect by any of the County's commissioners, elected officials, employees, or representatives or acquired by the Architect during the term of or as a result of this Agreement. Any information not generally available to the public shall be considered secret and confidential for the foregoing purposes; provided, however, that any technical information which was lawfully in the Architect's possession prior to such disclosure to the Architect by the County or which is or shall lawfully be published or become part of general knowledge from sources other than the Architect or which otherwise shall lawfully become available to the Architect from a source other than the County, shall not be subject to these provisions. All the foregoing stipulations shall apply to such information and work hereunder as well as to any information and ideas originated or developed by the Architect in performing such work. Such information may, of course, be disclosed to the proper officials or employees of the County if necessary to perform the work hereunder. The Architect shall, however, inform each of its employees who receive such information of these restrictions and the Architect shall

take all reasonable precautions and exert all reasonable efforts to assure conformance with such restrictions by all of its officers, employees, and agents, obtaining from them if necessary, agreements satisfactory to the County, effectuating the purposes of this section.

24.2 Inventions. The Architect shall communicate to the County at once, and require the Architect's employees assigned to this Project to communicate to the County all inventions and improvements which any of the Architect's employees, either alone or in conjunction with any of the County's employees may conceive, make or discover during the course of or as a result of work on this Project under this or any ensuing agreement with the County that relates to the processes, products, compositions, machinery or plants of the County, or relating in any way to any of the operations in which the County may be obligated to pay to the Architect as compensation for services rendered by the Architect under contract with the County. The Architect shall require its employees to execute patent applications and assignments thereof to the County or its nominees, and powers of attorney relating thereto for any country the County may designate and shall take all other actions as the County may request to maintain and protect such inventions and improvements. The County shall pay all costs or charges incurred in protecting such inventions and improvements if the County desires to protect them. Before assigning any of the Architect's employees to work under any contract with the County concerning this Project, the Architect shall obtain from them agreements satisfactory to County complying in all respects with the terms and provisions of this section.

24.3 The rights and obligations set forth in this section shall survive the performance of this Agreement, or any termination, discharge or cancellation thereof.

25. Architect's Seal, Responsibility and Warranties.

25.1 Architect's Seal. The Architect shall assign a responsible Architect or Architects licensed to practice in the State of Texas, who shall sign, seal and date all appropriate Architectural submissions to the County in accordance with the applicable law and standards.

25.2 Architect's Responsibility. The Architect shall be responsible for the accuracy of the work for the Project and shall promptly make necessary revisions or corrections resulting from errors, omissions, or negligent acts by the Architect. No additional compensation will be made to the Architect for any necessary revisions or corrections resulting from errors, omissions, or negligent acts by the Architect.

The Architect's responsibility for all questions arising from design errors and/or omissions will be determined by the County or a designee appointed by the County. The Architect will not be relieved of the responsibility for subsequent correction of any such errors or omissions or for clarification of any ambiguities until after the construction phase of the Project has been completed.

26. Warranties.

26.1 The Architect warrants that Architectural design work performed by the Architect hereunder shall be in accordance with sound Architectural design practices and in conformance with applicable code and standards established for such work.

26.2 Notwithstanding anything to the contrary contained in this Agreement, the County and the Architect agree and acknowledge that the County is entering into this Agreement in reliance on the Architect's experience and abilities with respect to performing the Architect's services hereunder. The Architect accepts the relationship of trust and confidence established between it and the County by this Agreement. The Architect covenants with the County to use the Architect's best efforts, skill, judgement and abilities to design the Project, perform services and to further the interests of the County in accordance with the County's requirements and procedures, in accordance with all professional standards, and in compliance with all applicable national, federal, state, county and municipal laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction. If the development of plans, specifications and estimates (hereinafter referred to as "PS&E") is part of the services to be provided by the Architect for any Project/ Additional Agreement entered into as part of this Agreement, prior to the commencement of construction, the Architect shall certify in writing to the County that the PS&E for the Project, and the improvements when built in accordance therewith, conform to all applicable governmental regulations, statutes and ordinances then in effect. The Architect represents covenants and agrees that there are no obligations, commitments or impediments of any kind that will limit or prevent performance of the Architect's services.

26.3 The Architect represents, covenants and agrees that all of Architect's services to be furnished by the Architect under or pursuant to this Agreement from the inception of the Agreement until the Project has been fully completed, shall be of the standard and quality which prevail among Architects of similar experience, knowledge, skill and ability engaged in Architectural practice throughout Texas under the same or similar circumstances involving the design and construction of Project.

26.4 The Architect represents, covenants and agrees that the Architect's special talent, training and experience may cause the Architect to be the prime professional on the Project

(designation to be determined at project development phase); that because of such talent and training, the Architect envisions the construction of the Project in its entirety and possesses the special skills which enable the Architect to recognize dangerous conditions that a reasonable, prudent Architect having such special skills could anticipate may arise from the proper use of the Project after acceptance by County; and that the Architect recognizes that any commissioners, elected officials, employees and agents of the County, plus residents and County of property within the area affected by the Project are within a class of foreseeable persons who will be relying on the project being designed in a professional and safe manner.

26.5 If the development of PS&E is part of the services to be provided by the Architect for any Project/Additional Agreement entered into as part of this Agreement, the Architect represents, covenants and agrees that the PS&E of the Project will be accurate and free from any material errors. The Architect additionally represents, covenants and agrees to the following: that the design of the Project will conform to its foreseeable use as a Project with all the amenities as set forth in any PS&E developed by the Architect for the Project; that the result of such PS&E, if built in accordance therewith, will be suitable for purposes for which the Project is designed; and the Project will be inspected in a workmanlike, professional manner and will be suitable for the Project's intended purpose. The Architect's responsibilities as set forth herein shall at no time be in any way diminished by reason of any approval by the County of any PS&E developed by the Architect for the Project, nor shall the Architect be released from any liability by reason of such approval by the County, it being understood that the County at all times is ultimately relying upon the Architect's skill and knowledge in preparing such PS&E.

26.6 In connection with the Architect's performance of procurement services hereunder, if any, the Architect shall use its best efforts to obtain from all vendors of equipment and materials, the fullest possible warranties against defective materials and workmanship for the benefit of the County.

27. Architect's Resources. The Architect shall furnish and maintain, at the Architect's own expense, office space for the performance of all services, skilled and sufficient personnel, as well as adequate and sufficient equipment to perform the services as required under this Agreement.

27.1 Project Manager. The Architect shall provide a manager (Project Manager) for the Project that is a registered professional Architect in the State of Texas. The Project manager shall have such knowledge and experience as will enable that Project Manager during the course of the Project without prior consent of the County. If due to situations beyond the control of the Architect, the Architect must change the Project Manager prior to the completion and acceptance of the Project, the Architect will submit a request to change the Project Manager to the County for approval.

27.2 Employees of the Architect. All employees of the Architect shall have such knowledge and experience as will enable them to perform the duties assigned to them and required for the services under this Agreement. Any employee of the Architect who, in the opinion of the County, is incompetent, or whose conduct becomes detrimental to the work required under this Agreement, shall immediately be removed from association with the Project when so instructed by the County. The Architect certifies that the Architect presently has employed sufficient and qualified personnel, and will maintain sufficient and qualified personnel for performance of the services under this Agreement.

27.3 Documents/Information Exchange The purpose of this section is to define the required automated resources, format for graphics files, and information exchange pertaining to the Project. Taking into consideration that the County has a significant investment in the development of the Project, there is a need for the Architect to provide consistency in document development for information exchange. Consistency in document development for information exchange and production will help facilitate an economically efficient Project. Therefore, the Architect shall provide the County with documents and information in accordance with the special requirement outlined in the project specific scope of services provided by Architect.

28. Indemnification. To the fullest extent permitted by applicable law, the Architect and its agents, partners, subcontractors, and consultants (collectively “Indemnitors”) shall and do agree to indemnify, and hold harmless the County, the County’s respective directors, elected officials, employees and agents (collectively “Indemnitors”) from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses, including attorney fees, of any nature, kind or description (collectively “Liabilities”) of any person or entity whomsoever arising out of, caused by or resulting from the negligent performance of the Architect’s services through activities of the Architect, its agents, partners, subcontractors and/or consultants performed under this Agreement, and which are caused by or result from error, omission, or negligent act of the Architect or of any person employed or contracted by the Architect provided that any such Liabilities (1) are attributable to bodily injury, personal injury, sickness, disease or death of any person, or to the injury to or destruction of tangible personal property including the loss of use and consequential damages resulting therefrom and (2) are caused in whole or in part by any negligent act or omission of the Architect, anyone directly or indirectly employed by the Architect or anyone for whose acts the Architect may be legally liable. The Architect shall also save harmless the County from any and all expense, including but not limited to, attorney fees which may be incurred by the County in litigation or otherwise resisting said claim or liabilities which may be imposed on the County as a result of such activities by the Architect, its agents partners, subcontractors and/or consultants. In

this connection, it is agreed and understood that the Architect shall not be responsible for any portion of the liability proximately caused by the County's negligence.

29. Joint and Several Liability. In the event more than one of the Indemnitors are connected with an accident or occurrence covered by the indemnification provision hereof, then each of such Indemnitors shall be jointly and severally responsible to the Indemnitees for indemnification and the ultimate responsibility among such Indemnitors for the loss and expense of any such indemnification shall be settled by separate proceedings and without jeopardy to any Indemnatee. The provisions of this Article shall not be construed to eliminate or reduce any other indemnification or right which the County or any of the Indemnitees has by law.

30. Insurance. Consistent with its status as an independent contractor and at its sole expense, Architect agrees that throughout the duration of the work under this contract and any extension thereof, it shall provide and maintain in full force and effect any and all insurances which may be necessary for 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, Architect's activities and all persons, vehicles, equipment, and property connected with providing Services, including but not limited to professional liability insurance covering Architect's activities in providing the services to the County. Coverage shall be in the amounts specified by the County in the Request for Qualifications ("RFQ") or 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. Architect shall furnish to the County certificate(s) of insurance and all renewals throughout the duration of any assigned Project on an Accord form, issued by the insurer that such insurance is in full force and effect. **See attached Exhibit "C", i.e., Certificates of Insurance,** attached hereto and incorporated by reference herein. For each applicable policy, Architect shall name the County as an additional insured. Architect shall notify the County a minimum of thirty (30) days in advance of cancellation of all or part of a policy. Architect shall make any other insurance documentation available to the County upon request. The Architect will be considered in breach of contract should the Architect 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 the Agreement as outlined in section 8 hereto. Additionally, the Architect covenants and agrees to use its best efforts to maintain an insurance policy in the minimum limits of liability and requirements identified above until one year following the date of the acceptance of the Project by County.

31. Compliance with Laws. The Architect shall comply with all applicable Federal, State, and local laws, statutes, codes, ordinances, rules and regulations and the orders and decrees of any court, or administrative bodies or tribunals in any manner affecting the performance of this Agreement

including, without limitation, workers compensation laws, minimum and maximum salary, and wage statutes and regulations and licensing laws and regulations. When required the Architect shall furnish the County with satisfactory proof of its compliance therewith.

32. Non-Collusion. The Architect warrants that the Architect has not employed or retained any company or persons, other than a bona fide employee working solely for the Architect, to solicit or secure this Agreement, and that the Architect has not paid or agreed to pay any company, Architect or any other person or entity any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or execution of this Agreement. For breach or violation of this warranty, the County shall have the right to annul this Agreement without liability or, in the County's discretion, to deduct from the *Services Fee*, or otherwise recover, the full amount of each fee, commission, percentage, brokerage fee, gift or contingent fee.

33. Gratuities. The County mandates that employees of the County shall not accept any benefits, gifts or favors from any person doing business or who reasonably speaking may do business with the County under this Agreement; the only exceptions allowed are ordinary business meals. Any person doing business with or who may reasonably seek to do business with the County under this Agreement may not make any offer of benefits, gifts or favors to County employees, except as mentioned hereinabove. Failure on the part of the Architect to adhere to this provision may result in the termination of this Agreement.

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

35. Disputes. The Architect shall be responsible for the settlement of all contractual and administrative issues arising out of any procurement made by the Architect in support of the services under this Agreement.

36. Severability. In the event 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 provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

37. Notices. Except as may be otherwise specifically provided in this Agreement, all notices, demands, requests, or communications required or permitted hereunder shall be in writing and shall either be (i) personally delivered against a written receipt, or (ii) sent by 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 specified by written notice delivered in accordance herewith:

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

CC: Precinct No.4
Attn: Precinct No. 4 Ellie Torres Commissioner
Address: 1051 N. Doolittle Rd.
Edinburg, Texas 78542

If to Architect: ERO Architects
Attention: Eli R. Ochoa, PE, AIA
Address: PO BOX 720428
McAllen, Texas 78504

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.

38. Miscellaneous Provisions

- a. Entire Agreement.** This Agreement contains the entire agreement between the parties hereto, and each party acknowledges that neither has made (either directly or through an 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 Architect, and not otherwise.
- b.** Except as specifically provided herein no modification, waiver, termination, rescission, discharge or cancellation of this Agreement or any terms thereof shall be binding on the County unless in writing and executed by an officer or employee of the County specifically authorized to do so.
- c. 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. No waiver of any provision of or default under this Agreement shall affect the right of the County thereafter to enforce said provision or to exercise any right or remedy in the event of any other default whether or not similar.

d. No modification, waiver, termination, discharge or cancellation of this Agreement or any terms thereof shall impair the County's right with respect to any liabilities whether or not liquidated of the Architect to the County theretofore accrued.

e. All rights and remedies of the County specified in this Agreement are in addition to the County's other rights and remedies.

f. **Independent Contractor.** Architect 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 Architect under this Agreement. Notwithstanding the foregoing sentence, Architect 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. Architect agrees to be responsible for any federal income tax, withholding, or social security tax liability that might arise from payments received hereunder.

g. **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 Architect hereby consents to personal jurisdiction in Hidalgo County, Texas.

h. This Agreement may only be amended by a written document executed by the County and the Architect as provided in the Amendment section herein.

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

j. **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.

k. **Licenses.** As a condition of this Agreement, Architect 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 required Services. If such license or permit is suspended or revoked, this Agreement shall automatically be terminated

and the Architect shall immediately notify the County.

l. Equipment. All trucks or vehicles operated by the Architect 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 Architect 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. Architect shall provide a sufficient number of trucks, vehicles, personnel and equipment available to safely and efficiently provide the Services.

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

n. 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 to the legal requirements and only during the time such conflict exists. In case anyone, 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 provision hereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

o. 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.

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

q. 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 Architect. 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 Architect. 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).

r. Nondiscrimination. Architect, 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.

s. Additional 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.

t. 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.

APPROVED BY COMMISSIONERS' COURT ON December 13th, 2022.

Agenda Item No. 88764

Executive Office: MM
MM

ARCHITECT:
ERO ARCHITECTS

COUNTY:
COUNTY OF HIDALGO

Eli R. Ochoa

Eli R. Ochoa (Dec 21, 2022 14:24 CST)

Eli R. Ochoa, PE, AIA

Richard F. Cortez

Hon. Richard F. Cortez, County Judge

APPROVED AS TO FORM

Office of the Criminal District Attorney,
Ricardo Rodriguez, Jr.

ATTEST:



Robert Viña, III

Robert Viña, III (Dec 21, 2022 15:31 CST)

Robert Vina III, Assistant District Attorney

Arturo Guajardo, Jr.

Arturo Guajardo, Jr., County Clerk

ATTACHMENTS:

EXHIBIT A -Requirements/County's Request for Qualifications

EXHIBIT B - Contract Rates

EXHIBIT C - Certificates of Insurance

SUPPLEMENTAL SIGNATURES (if any):



EXHIBIT A

REQUIREMENTS/COUNTY'S REQUEST FOR QUALIFICATIONS

HIDALGO COUNTY PROCUREMENT PACKET

**Request for Qualifications
RFQ No: 2021-0788-02-23-ABV**

“PROFESSIONAL ARCHITECTURAL SERVICES POOL”

**Acceptance Due Date:
Wednesday, February 23, 2022 at 2:00pm**

Eduardo Belmarez, MBA, CPM, Purchasing Director
Hidalgo County Purchasing Department

Project Contact Information:

Alexandra B. Vela, Contract Specialist II
(956) 318-2626 Ext. 4865
alexandra.vela@co.hidalgo.tx.us



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

January 31, 2022

Company Name

Authorized Representative

Address

City

State, Zip Code

HIDALGO COUNTY
REQUEST FOR QUALIFICATIONS: RFQ NO.: 2021-0788-02-23-ABV
Professional Architectural Services Annual Pool

Dear Prospect Vendor:

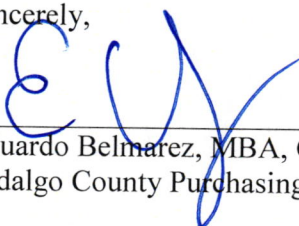
Hidalgo County Purchasing Department welcomes and appreciates your participation in this project.

Enclosed please find the procurement packet for the aforementioned project. Modifications and new requirements have been added and implemented. Please ensure to carefully read and review all instructions, requirements and specifications.

The items listed on the Table of Contents shall be found in this procurement packet that is attached herewith. Should you find that any of the listed items are not attached in their entirety, please contact the Contract Specialist listed on the cover page to advice of the missing documentation, and it will be emailed to you.

If any further assistance is required, please do not hesitate to call the Purchasing Department.

Sincerely,



Eduardo Belmarez, MBA, CPM
Hidalgo County Purchasing Agent

TABLE OF CONTENTS

This procurement packet includes the components marked below. If the item is not checked, it is not applicable to this solicitation. Offerors are asked to review the documentation to be sure that all applicable parts are included. If any portion of the documentation is missing, notify the Purchasing Department immediately. Offeror should be thoroughly familiar with all of the following items applicable to this procurement packet before submitting a response.

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PROCUREMENT OVERVIEW

PROCUREMENT OVERVIEW

THE RESPONDENT IS RESPONSIBLE FOR READING AND UNDERSTANDING ALL DOCUMENTS, FORMS, SPECIFICATIONS, AND INSTRUCTIONS WITHIN THIS ENTIRE DOCUMENT. Follow all instructions; you are responsible for obtaining any information needed in order to respond to this RFQ. Further, the Respondent is responsible for providing any and all relevant information necessary to establish qualifications of the Firm. Failure to do so will be at the Respondent's risk, and may result in rejection of the qualification as non-conforming.

General Requirements apply to all advertised solicitations; however, these may be superseded, whole or in part, by OTHER DATA CONTAINED HEREIN. Review the Table of Contents. Be sure your proposal package is complete.

INTRODUCTION

Hidalgo County (hereinafter referred to as “**COUNTY**”) is seeking qualified firms interested in providing comprehensive professional services as part of our 2022 Professional Services Pools. Qualified Respondents may then be engaged from the pool to provide professional services on an “As Needed Basis” or on a “Project-Specific Basis”. Sealed qualifications will be received for “**Hidalgo County** (including all funding sources, programs, and entities) “**Professional Architectural Services Pool**”, in accordance with the requirements attached hereto as **Appendix “A”**. Inclusion into the specified Pool is based on qualifications and other factors as herein set forth. The qualifications should address all requirements. Respondent may suggest substitutions of features which they feel would be in the best interest of COUNTY; however, a strong rationale must be presented for any deviation from the requirements. COUNTY reserves the right to reject the deviation and its effect on the overall qualification.

Hidalgo County is requiring all submitted qualifications are to remain firm for a minimum of ninety (90) days after the RFQ opening.

AWARD

Hidalgo County anticipates accepting all qualified firms to our Pool. No award can be made until approved by Hidalgo County Commissioners Court. This RFQ does not obligate Hidalgo County to the eventual purchase of any product and/or service described, implied or which may be proposed. Progress toward this end is solely at the discretion of Hidalgo County, and may be terminated at any time prior to execution of an agreement.

TERM OF POOL

The term of this pool shall be for a period of one (1) year, commencing on March 26, 2022 and end on March 25, 2023. The information provided in this Request for Qualification (hereinafter referred to as “RFQ”) is only to be used for the purpose of preparing a submission for the above referenced pool.

GENERAL REQUIREMENTS

One (1) original and two (2) USBs in original PDF format. Further instructions listed below under **VENDOR INSTRUCTIONS**. For convenience, the Offeror may utilize the Shipping Label provided in **Appendix “N”**.

SUBMISSION DEADLINE AND BID OPENING

All submissions must be received on or before Wednesday, February 23, 2022 at 2:00pm. **Any submission received after this deadline will not be accepted and will be returned to sender.**

BID OPENING STREAMING

Due to the ongoing pandemic, and in order to abide with social distancing protocols and/or any applicable order(s), the Hidalgo County Purchasing Department is limiting the number of participants allowed in our office during bid openings to authorized personnel only; however, this is a public bid opening and it can be accessed via a live stream or by calling in the day of the event.

Live stream:

<https://hidalgocounty.zoom.us/j/86900060589?pwd=OWNpTk9Lay9nSjZRNhVkdVd1UT09>

Meeting ID: 869 0006 0589

Passcode: 5 0 5 1 8 5

Dial by your location: +1 346 248 7799 US (Houston)

To find your local number: <https://hidalgocounty.zoom.us/j/kcEzSlJvRI>

Join by SIP: 86900060589@zoomcrc.com

HAND DELIVERED BIDS

Hidalgo County requires submitters, when hand delivering bids, to make sure that it is stamped with date and time by the Hidalgo County Purchasing staff.

ELECTRONIC TRANSMISSION OF SUBMISSION

Hidalgo County Purchasing Department will not accept telegraphic or electronically transmitted submissions.

DELIVER TO:

US Postal Mail Address:

Eduardo Belmarez, MBA,CPM,
Purchasing Director
ATTN: Alexandra B. Vela
Hidalgo County Purchasing Department
Administration Building
2812 S. Business Hwy 281
Edinburg, Texas 78539

Physical Address:

Eduardo Belmarez, MBA,CPM,
Purchasing Director
ATTN: Alexandra B. Vela
Hidalgo County Purchasing Department
Administration Building
2802 S. Business Hwy. 281
Edinburg, Texas 78539

SIGNING OF SUBMISSION

In order to be considered, all submittals **must** be signed by an authorized representative of the firm. **Please sign the original in [blue](#) ink and ensure the USB is clearly labeled.**

QUESTIONS AND ANSWERS

Questions must be submitted via email to alexandra.vela@co.hidalgo.tx.us by **Monday, February 14, 2022 at 5:00 P.M.** Responses to submitted questions will be emailed to all participants who obtained their procurement packet directly from Hidalgo County Purchasing Department by **Wednesday, February 16, 2022**. Telephone inquiries will not be accepted.

RESTRICTIVE OR AMBIGUOUS REQUIREMENTS

It is the responsibility of the submitter to review the procurement packet and to notify the Hidalgo County Purchasing Department if the requirements are formulated in a manner that would unnecessarily restrict competition, or clarification on any requirements that are ambiguous. Any such protest or question regarding the requirements or bidders procedures must be received in writing via email by the deadline stated for Questions and Answers.

COST OF SUBMISSION

Hidalgo County will not be liable for any costs incurred by the vendor in preparing a response to this procurement packet. Each Offeror acknowledges it is submitting a response at their own risk and expense. Further, no reimbursement for such charges or expenses shall be passed onto Hidalgo County. Hidalgo County makes no guarantee that any products or services will be purchased as a result of this solicitation, and reserves the right to reject any and all submissions received. All responses and accompanying documentation will become the property of Hidalgo County. All responses are open to negotiation.

WAIVING OF INFORMALITIES

Hidalgo County reserves the right to waive minor informalities or technicalities when it is in the best interest of Hidalgo County.

NOTICE OF COMMUNICATION

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 this procurement packet 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.

VENDOR INSTRUCTIONS

Responses to this procurement packet shall be formatted and organized in the following order for consistency and easy screening:

- All submissions must be typed, single spaced, and printed single-sided on 8 ½" by 11" paper.
- One (1) original, **clearly marked "ORIGINAL"** and two (2) USBs in PDF format. Original document must be submitted in a three-ring, loose-leaf binder with a Cover Page containing the information listed in the Submission Outline/Checklist, under Submission Cover Page. One (1) USB containing the complete response in PDF, Word, and/or Excel format must be provided and placed in the ORIGINAL response. The PDF document must also be signed. A self-adhesive packet may be used to secure the USB. The USB must also be properly labeled.
- The complete response must be sealed in an appropriately sized envelope or box for delivery to the Hidalgo County Purchasing Department, per instructions in the Procurement Packet Submission paragraph of the Legal Notice section contained within this procurement packet.
- All documents must be labeled with the vendor's name and the RFQ number. Any response received by the Hidalgo County Purchasing Department that is not identified on the outside with the RFQ number will be at risk for rejection.
- Each section of the vendor's response should start on a new page. A tabbed divider page marked with the section number should be used to separate each section.
- Prepare a Table of Contents for the response being submitted and place it after the Submission Cover Sheet and before Section I. The Table of Contents must list Sections I-VII and the contents of each section as listed in **Appendix "A"**.
- The binder must be in the order listed in the Submission Outline/Checklist below.

REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK.

SUBMISSION OUTLINE/CHECKLIST

To assist in ensuring all submissions received are complete, it is recommended for the Offeror to use this Submission Outline as a Checklist prior to submitting a response. All Responses must be submitted in the following order with the guidelines provided in Vendor Instructions within this section of this solicitation:

_____ **Submission Cover Sheet** - Must include the following:

- Company Name, Company Address, Company Phone Number
- Project Name: Sealed Submission for 2022 Pools of Professional Services-Architectural Services
- Procurement Number: RFQ No. 21-0788-02-23-ABV
- Opening Date: Wednesday, February 23, 2022
- Opening Time: 2:00pm

_____ **Table of Contents**

_____ **Section I: Required Documents (signed and filled) and Executive Summary**

- _____ • **Executive Summary** - The summary should include:
- Company name and address; name, title, email, telephone and fax number of person(s) to be contacted for clarifications or additional information regarding proposal;
 - Name, title, email, telephone and fax number of person(s) authorized to contractually obligate vendor's company with proposal and any future negotiations; and
 - Understanding of the Project
- _____ • **Legal Notice Acknowledgement**
- _____ • **Appendix "B" – Areas of Specialization**
- _____ • **Appendix "C" – Insurance Requirements**
- Proof of Insurance
 - Insurance Requirement Acknowledgement
 - Project Requirements Acknowledgement
- _____ • **Appendix "D" – Conflict of Interest Questionnaire**
- CIQ Form – Copy of County Clerk File with fee receipt (when applicable)
 - Form 1295
- _____ • **Appendix "E" – Vendor Forms**
- Vendor Application
 - HUB Declaration
 - W-9
- _____ • **Appendix "F" – Certification Regarding Debarment**
- Signed Certification
 - SAM.gov Registration Acknowledgement
- _____ • **Appendix "H" – Contracts Under Federal Award 2 – CFR 200**
- Byrd Anti-Lobbying Contract Clause
 - 2 CFR 200 Certification
- _____ • **Appendix "J" – Respondent's Affidavit**
- _____ • **Addenda (when applicable; see Addenda under Legal Notice)**

_____ **Section II: Vendor Information**

_____ **Section III: Vendor Experience and Qualifications**

_____ **Section IV: Scope of Services and Narrative of Proposed Services**

_____ **Section V: Legal Documents**

_____ **Section VI: Miscellaneous**



LEGAL NOTICE

LEGAL NOTICE

These General Provisions are considered standard language for an Offeror (hereinafter referred to as “Offeror”, “Vendor”, “Respondent”, or “Contractor”) submitting a response for a Request for Bids, Proposals, Qualifications or other solicitation (hereinafter referred to as “Procurement Packet”) made by the County of Hidalgo (hereinafter referred to as “Hidalgo County” and “County” or any other governing body/agency for which the Hidalgo County Purchasing Department has been authorized to perform procurement services.

It is the Offeror’s sole responsibility to be in compliance of all federal, state, and local laws, requirements, rules, codes, ordinances, and regulations applicable to their proposed goods and/or services. In the event of any conflict between the terms and provisions of these requirements and the specifications, the specifications shall govern. In the event of any conflict of interpretation of any part of this overall procurement packet, Hidalgo County’s interpretation shall govern.

The following is a link to all adopted Hidalgo County policies (<https://www.hidalgocounty.us/805/County-Administrative-Policies>), which for all purposes, when applicable and whether specified explicitly or not, are incorporated by reference as part of this procurement packet and any resulting agreement.

1. **ACCEPTANCE OF SUBMISSION.** Receipt of the submission shall under no circumstance obligate Hidalgo County to accept the response, or make an award. The Offeror is responsible for obtaining any information needed in order to respond and for all costs of submitting its response. An Offeror’s submitted response is to remain firm for a minimum of ninety (90) days after opening. Hidalgo County is not responsible for any missing, lost, or late submissions.
2. **ACCESS TO RECORDS.** In special circumstances, Vendor may be required to allow duly authorized representatives of Hidalgo County, or the state and federal government access to contracts, books, documents, and records necessary to verify the nature and extent of the cost of services provided by Vendor. Vendor must keep records within Hidalgo County or note in their submission that records will be available within the boundaries of Hidalgo County to those representatives within one (1) business day of request by the County.
3. **ACCOUNT CREATION FOR PAYMENT.** Upon award and prior to execution of a contract, Offeror shall cooperate with and submit any required information to the Hidalgo County Auditor’s Office in order to establish an account with the County for payment, including information requested on Hidalgo County Vendor Enrollment Solution, **Appendix “E”** on this procurement packet. This information must be on file with the Hidalgo County Purchasing Department and the Hidalgo County Auditor’s Office. Failure to provide this information may result in a delay in payment and/or back-up withholding as required by the Internal Revenue Service.
4. **ADDENDA.** When specifications interpretations, amendments, corrections or changes are revised, the Hidalgo County Purchasing Department will issue an Addendum addressing the nature of the change. All released Addenda will be e-mailed to all point of contact(s) who are known to have received or requested a copy of the procurement packet directly from the Hidalgo County Purchasing Department. Offeror must **sign in blue ink and include it in the returned submission package.**
5. **ASSIGNMENT.** The successful Offeror shall not assign, sell, transfer, convey, or otherwise transfer its rights under any awarded contract, in whole or in part, without the prior written consent of County of Hidalgo County Commissioners Court (hereinafter referred to as “Commissioners Court”), or other applicable governing body.
6. **AWARD.** Hidalgo County reserves the right to award this contract on the basis determined on the Procurement Overview, and when applicable, listed on **Appendix “B”**, in accordance with the laws of the State of Texas, to waive any formality or irregularity, to make awards to more than one Offeror, and to reject any or all submissions received. After Hidalgo County Commissioners’ Court approves an award, and the awarded Contractor defaults in meeting the general requirements and/or specifications in complying with the contract agreement, Hidalgo County reserves the right to seek the services of the next lowest bidder(s) and/or qualified Offeror(s). In such event, Hidalgo County shall charge the Awarded Vendor the difference for any additional cost of such item. Hidalgo County reserves the right to add or delete items during the term of the contract under the same rates and conditions.

7. **COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS.** The County will search a database maintained by the Texas State Comptroller which contains relevant vendor information. A contract may not be entered into with an entity that is identified therein. Search results shall be incorporated for all purposes as part of any resulting agreement entered into by the parties. The Offeror shall follow all federal, state, and local laws, requirements, rules, codes, ordinances, regulations and Hidalgo County Policy & Procedures applicable to their proposed goods and/or services, including, but not limited to those addressed within this procurement packet, the resulting agreement and the following:

7.1 Attestation Terrorist Organizations - TEX. GOVT. CODE CH. 2252. Pursuant to the Texas Government Code, including but not limited to Chapter's 2252, 806 and 807, the Offeror warrants, represents, certifies and attests that, by submitting a response to this procurement packet and/or at the time of execution of this Contract, Agreement, or supplemental agreement thereafter, neither the Offeror, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same (i) engages in business with Iran, Sudan, or any foreign terrorist or (ii) is a company listed by the Texas Comptroller of Public Accounts.

7.2 Breach of Ethics. 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.

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 response to a request 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.

7.3 Bonds. If this procurement packet requires submission of bid bond or proposal guarantee, and performance and payment bonds, an explanation of these requirements will be detailed on the Projects Requirements Acknowledgement listed in **Appendix "C"**. Responses submitted without the required bond or cashier's checks may be deemed unresponsive, thus disqualified from participation.

7.4 Boycott Energy Companies Verification – TEX. GOVT. CODE 2274. In accordance with changes to the law from the 87th Legislature in 2021, a for-profit company, not including a sole proprietorship, with ten or more full-time employees, is required to verify in writing that it does not boycott energy companies, and it will not boycott energy companies during the term of the Contract, if it is a contract for goods or services that has a value of at least \$100,000 that is paid wholly or partly from public funds of the governmental body. Written verification may be provided by signing the Legal Notice Declarations page. Please provide a written notification if your company is unable to provide the written verification referenced above.

As per Tex. Gov't. Code §809.001(1), "Boycott energy company" means "without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by Paragraph (A)".

As per Ch. 2274(c), this verification requirement does not apply to the County if it determines that this requirement is inconsistent with the County's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds.

7.5 Boycott Israel Verification - TEX. GOVT. CODE 2270. In accordance with the Texas Government Code, including but not limited to Chapters 2270 and 808, a company, other than a sole proprietorship, with ten or more full time employees is required to certify in writing that it does not boycott Israel and will not boycott Israel during the term of the Contract, if the Contract has a value of \$100,000 or more.

7.6 Certification Regarding Debarment, Suspension Ineligibility, and Voluntary Exclusion. The Offeror warrants and represents by execution of an award from their response to this procurement packet that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in any Federal programs, or state assistance, as described under Executive Order 12549, "Debarment and Suspension." The Offeror agrees to include this certification in all contracts between itself and any subcontractors in connection with the services performed under any subsequent Contract or Agreement arising from this award. The Offeror also acknowledges that it is their sole responsibility to immediately notify Hidalgo County, in writing, if they or a subcontractor is not in compliance with Executive Order 12549 during the term of this contract. Further, Offeror agrees to refund Hidalgo County for any payments made to the contractor while ineligible. Pursuant to federal regulation 45 CFR Part 76, the Offeror is required to furnish a certification or acknowledgement stating that they are free from suspension and debarment through registration on System for Award Management at www.sam.gov with their response.

7.7 Davis-Bacon Act/Hidalgo County Adopted Prevailing Wage Rate. When applicable, in accordance with Texas Government Code, Chapter 2258, as well as any other applicable laws, any Contractor or Subcontractor performing contracts in excess of \$2,000, for the construction, alteration, or repair (including painting and decorating) of public buildings or public works must pay their laborers and mechanics employed under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area as per the Davis Bacon Act or the rates adopted by Hidalgo County.

The Offeror warrants and represents that it will pay all its workers all monies earned by its employees including, but not limited to regular wages, any overtime compensation, or any additional payments pursuant to the Fair Labor Standards Act, 29 U.S.C. Section 207 9a(1), as amended; the Texas Pay Day Act; the Equal Pay Act; Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e, *et al.*, as amended; and/or any provisions of the Texas Labor Code Ann., as amended, without cost or expenses to the County.

Awarded Vendors, its officers, agents, and/or employees will not be entitled to any benefits of an employee or elected official of Hidalgo County, including, but not limited to, benefits associated with Hidalgo County's civil service system.

7.7 Disclosure of Conflict of Interest.

7.7.1 As an Offeror. Pursuant to Texas Local Government Code, Chapter 176, an Offeror must disclose an interest between the Offeror, the Offeror's employees and any Hidalgo County employees arising from relationships within the first degree of consanguinity or affinity. A financial interest arises if the County's elected official, department head, or employee, or a member of their family, received any gifts valued in excess of \$250 during the preceding twelve (12) month period, or employment of any County's elected official, department head, or employee, or the County official's family member.

The Offeror shall not use funds to directly or indirectly pay any person for influencing or attempting to influence any County employee or official in connection with the awarding of any contract or the extension, continuation, renewal, amendment or modification of any contract.

7.7.2 Certificate of Interested Parties (Form 1295). Hidalgo County cannot enter into a contract until Form 1295 is submitted, as Texas law, including, but not limited to Tex. Govt. Code

Ch. 2252, Title 1 Tex. Ethics Comm. Rules – Title 1, sec. 46 and the Tex. Admin. Code, requires all parties who enter into any contract with the County which must be approved by its governing body, to disclose all interested parties. Form 1295 must be completed in its entirety through the Texas Ethics Commission at the following website:
https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm prior to awarding the Contract. Failure to do so may result in delay of award, or deem your response unresponsive, thus disqualified from participation.

7.7.3 Collusion. The Offeror affirms that by responding to any solicitation made by Hidalgo County, it has not communicated directly or indirectly the response made to any competitor or any other person engaged in such line of business. Any or all responses may be rejected if the County believes that collusion exists among the Offerors, and/or the County believes prices provided by the Offerors are inappropriately unbalanced. Respondent's Affidavit (**Appendix "J"**) must be included in the response.

7.7.4 Consultants Excluded from Competition. An outside Consultant or Contractor is prohibited from submitting a response for goods or services requested on a Hidalgo County project of which the Consultant or Contractor was a designer or other previous contributor, assisted in developing or drafting specifications, requirements, statements of work, or requests for goods and/or services must be excluded from competing for such procurements. If such, a Consultant or Contractor submits a response, that response shall be prohibited, and disqualified on the basis of conflict of interest, no matter when the conflict is discovered by Hidalgo County.

7.7.5 Disclosure of Interested Parties (Form CIQ). Offeror must fully disclose the existence of any relationships as defined above in its response to this procurement packet. The Conflict of Interest Questionnaire (CIQ), attached hereto as **Appendix "D"**, must be filed with the Hidalgo County Clerk, located inside the Hidalgo County Courthouse, at 100 N. Closner, Edinburg, TX 78539 no later than the seventh business day after the date the person becomes aware of facts that require the statement to be filed. **Completion and submission of Form CIQ is the sole responsibility of the Offeror.** Additionally, the Offeror must immediately notify Hidalgo County if the information provided in its response changes at any time.

7.7.6 Disclosure to Report Lobbying. When applicable, pursuant to 31 U.S.C.A. §1352 (2003), if at any time during the contract term funding to Contractor exceeds \$100,000.00, Contractor shall file with the County the Federal Standard Form LLL titled "Disclosure Form to Report Lobbying" as detailed in **Appendix "H"**.

7.8 Discrimination Against Firearm Entities or Trade Associations Verification - Tex. Gov't. Code Ch. 2274. In accordance with changes to the law from the 87th Legislature in 2021, a for-profit company, not including a sole proprietorship, with ten or more full-time employees, is required to verify in writing that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of the Contract, if it is a contract for goods or services that has a value of at least \$100,000 that is paid wholly or partly from public funds of the governmental body. Written verification may be provided by signing the Legal Notice Declaration page. Please provide a written notification if your company is unable to provide the written verification referenced above.

As per Tex. Gov't. Code §2274.001(3), except as otherwise indicated, to "discriminate against a firearm entity or firearm trade association " means "with respect to the entity or association, to: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association".

As per Ch. 2274, this verification requirement does not apply to the County if it contracts with a sole-source

provider, does not receive any bids from a company that is able to provide the required written verification above, or the contract is exempt from compliance under Tex. Gov't. Code sec. 2274.003 relating to the issuance, sale or delivery of notes.

7.9 Disqualification of Offeror. By submitting a response to this request, an Offeror offering to sell supplies, materials, services, or equipment to Hidalgo County certifies that the Offeror has not violated the antitrust laws of this state codified in Texas Business and Commerce Code §15.01, et seq., as amended, or the federal antitrust laws. If multiple submissions are made by an Offeror and after they are opened, the Offeror requests to withdraw one of the submissions is requested to be withdrawn, the result will be that all of the responses submitted by that Offeror will be withdrawn; however, nothing herein prohibits an Offeror from submitting multiple responses for different products or services.

7.10 Ethical Business Practices. Hidalgo County operates its business ethically and in compliance with the law. We ask that any Offeror, their representative, and/or employee doing business with Hidalgo County, who believes they have witnessed any suspected ethical violation or fraud immediately report the allegations to the Hidalgo County Purchasing Director, 2802 S. BUS HWY 281, Edinburg, TX 78539, (956) 318-2626, eduardo.belmarez@co.hidalgo.tx.us.

Hidalgo County Purchasing Department will conduct a prompt and thorough investigation. At the conclusion of the investigation, Hidalgo County Purchasing Department will refer any suspected criminal activity to the Hidalgo County District Attorney or other appropriate law enforcement agency. Any Offeror who reports suspected ethical violations or fraud can do so without fear of retaliation. Retaliating against any offeror for reporting suspected ethical violations or fraud is strictly prohibited.

7.11 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 as listed in **Appendix "E"**.

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 subcontractors 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.
- f. 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.

When procurement is related to road construction projects with the Texas Department of Transportation (TxDOT), all respondents must submit their HUB/DBE plans as part of their submission to be qualified to participate.

7.12 Independent Contractor. It is expressly agreed that this Contract and the performance by the parties hereunder does not create any agency relationship or master-servant relationship that the County has no supervision of the performance of the Services provided by Vendor, and that Vendor is an independent contractor under an award through this procurement packet.

7.13 Nondiscrimination. By submitting a response to this procurement packet, the Offeror certifies that it will conform to the provisions of the Federal Civil Rights Act of 1964, as amended and related state and federal law.

Offeror, during the performance of this contract, will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, age, disability or any other protected class under law (except as allowed in the case of bona fide occupational qualifications).

7.14 Texas Public Information Act. The Offeror understands and agrees that Hidalgo County is a governmental body for purposes of the Public Information Act, codified as Chapter 552 of the Texas Government Code and as such is required to release information in accordance with the Public Information Act (the "Act"). Hidalgo County must rely on advice, decisions and opinions of the Attorney General of the State of Texas relative to the disclosure of data or information. Submissions will be kept confidential in accordance with the Act and applicable law, and **submissions are subject to inclusion into the public record after award.** To the extent permitted by law, Offeror may request in writing non-disclosure of any information that it considers to be confidential, proprietary, and/or trade secret in its submission. Such data shall accompany the submission, be readily separable from the response, and shall be CLEARLY MARKED "CONFIDENTIAL, PROPRIETARY and/or TRADE SECRET". Hidalgo County will make reasonable efforts to provide Offeror notice in accordance with the Act in the event the County receives a request for information under the Act for information that the Offeror has marked as indicated above. E-mail addresses provided by Offeror to the County as part of its response to this procurement packet are not confidential. Additionally, Offeror provides its affirmative consent to the disclosure of its e-mail addresses, including from its employees, officers, and agents acting on its behalf, that are provided to Hidalgo County. This consent shall survive termination of this agreement and apply to any e-mail address provided in any form for any reason whether related to this procurement packet or otherwise.

7.15 Title VI Notice. 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 respondents 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. Further, Title VI has been broadened by related statutes, regulations and executive orders as found in Appendices "A" through "E" as attached hereto as **Appendix "G"**. Offeror agrees to comply with Title VI as may be required.

8. **CONTRACT OBLIGATION.** Hidalgo County Commissioners Court must award the contract and the County Judge must sign the contract before it becomes binding on Hidalgo County or the Offeror. Elected officials, department heads, other County employees or representatives are NOT authorized to sign agreements for Hidalgo County, unless prior authorization is approved by the Hidalgo County Commissioners Court, or respective governing body. Binding agreements shall remain in effect until all products and/or services covered by this procurement packet have been satisfactorily delivered and accepted.
9. **CONTRACT RENEWALS.** Any extension or renewal of the agreement entered into by the parties are made at the County's sole discretion and under the same rates, terms and conditions as the initial agreement, or as amended.
10. **CONTRACT TRANSITION (Grace Period).** In the event services end by either contract expiration or termination, it shall be required that the successful respondent continue services if requested by the Hidalgo County Purchasing Department, until new services can be completely operational. The successful respondent acknowledges its responsibility to cooperate fully with the replacement vendor and Hidalgo County to ensure a smooth and timely transition to the replacement vendor. Such transitional period shall not extend more than sixty (60) days beyond the expiration/termination date of the contract, or any extension thereof. The successful respondent shall be reimbursed for services during the transitional period at the rate in effect when the transitional period clause is invoked by Hidalgo County. During any transition period, all other terms and conditions of the contract shall remain in full force and effect as originally written and subsequently amended.

- 11. COST OF GOODS AND SERVICES.** Discount payments will be considered when offered. If during the life of any contract, or response awarded, the successful respondent's 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 Hidalgo County. Failure by the Vendor to notify the County of a decrease in costs for items and/or supplies for which the Vendor was granted a price adjustment, may result in immediate termination of this contract and the County shall not be obligated to pay the Vendor the difference between the contract price and the price adjustment.
- 12. COUNTY APPROVED HOLIDAYS.** There are fourteen (14) County approved holidays. The Offeror is advised that official County business will not be conducted on those dates. The link of approved holidays can be found on: <https://www.hidalgocounty.us/115/County-Holidays>.
- 13. EVALUATION.** Evaluation shall be used as a determinant as to which proposed items or services are the most efficient and/or most economical for the County, considering all factors which have a bearing on price and performance of the items in the user department's environment. All submissions, except for Requests for Bids, may be subject to evaluations and negotiations by the Hidalgo County Purchasing Department, or authorized Hidalgo County representative as approved by Hidalgo County Commissioners Court, with recommendation to the appropriate governing body. Compliance with all requirements, delivery and needs of the user department are considerations in evaluating the responses received. **Pricing is NOT the only criteria for making a recommendation.** A preliminary evaluation by Hidalgo County will be held and appropriate responses will be subjected to the negotiating process and a request for a Best and Final Offer. Upon completion of the negotiations, Hidalgo County will make an award. All responses that have been submitted shall be available and open for public record after the contract is awarded, except for trade secrets or confidential information contained in the responses and identified as such.

Hidalgo County reserves the right to refuse and reject any or all submissions and to waive any or all formalities or technicalities, or to the qualifications considered the best and most advantageous to Hidalgo County. Additionally, Hidalgo County reserves the right to separate and accept or eliminate any item(s) listed under this procurement packet that it deems necessary to accommodate budgetary or operational requirements.

- 14. FISCAL FUNDING.** Hidalgo County has the discretion to utilize grant funding or general funding, however, should grant funding be utilized "Grant Funding" rules will apply. The award of a contract hereunder will not be construed to create a debt of the County which is payable out of funds beyond the current fiscal year. Additionally, should funds not be appropriated by the applicable governing body to continue the lease or contract in their sole discretion, said lease or contract shall become null and void on the last day of the current appropriation of funds.

14.1 General Funding. A multi-year lease or lease/purchase arrangement, or any contract continuing as a result of an extension option, must include a fiscal funding out provision in the lease or contract. Funds for this procurement have been provided through the County budget for this fiscal year only. Hidalgo County, on an annual basis and at their discretion, has the right to reconsider a contract during the budget process for ensuing years if financial resources of Hidalgo County are insufficient to meet the liabilities of said contract. After expiration of the lease, leased equipment shall be removed by the Vendor from the user department without penalty of any kind or form to Hidalgo County. All charges and physical activity related to delivery, installation, removal and re-delivery shall be the responsibility of the Vendor.

14.2 Grant Funding. Any contract entered into by the County that is to be paid from grant funds shall be limited to payment from the grant funding, and the Offeror understands that the County has not set aside any County funds for the payment of obligations under a grant contract. If grant funding should become unavailable at any time for the continuation of services paid for by the grant, and further funding cannot be obtained for the contract, then the contract shall be null and void.

Additionally, County contracts subject to assistance from the Federal Emergency Management Agency (FEMA), require inclusion of the contract terms found in **Appendix "H"**. It is the County's intention to comply with FEMA requirements; therefore, any conflict in terms should be resolved as such.

- 15. FORCE MAJEURE.** If by reason of Force Majeure either Party shall be rendered unable, wholly or in part, to carry out its responsibility under this contract by any occurrence by reason of Force Majeure, then the Party unable to carry out its responsibility shall give the other Party notice and full particulars of such Force Majeure in writing within a reasonable time after the occurrence of the event, and such notice shall suspend the Party's responsibility for the continuance of the Force Majeure claimed, but for no longer period. Force Majeure means acts of God, floods, hurricanes, tropical storms, tornadoes, earthquakes, or other natural disasters, acts of a public enemy, acts of terrorism, sovereign conduct, riots, civil commotion, strikes or lockouts, and other causes that are not occasioned by either Party's conduct which by the exercise of due diligence the Party is unable to overcome and which substantially interferes with operations.
- 16. GOVERNING LAW.** This procurement packet is governed by the competitive bidding requirements of the County Purchasing Act, Texas Local Government Code, §262.021 *et seq.*, as amended. Offerors shall comply with all applicable federal, state and local laws and regulations. Offeror is further advised that these requirements shall be fully governed by the laws of the State of Texas and venue shall be performable in a federal or state court or competent jurisdiction in Hidalgo County, Texas. Hidalgo County may request and rely on advice, decisions and opinions of the Attorney General of Texas and the Hidalgo County District Attorney concerning any portion of these requirements. The County does not agree to binding arbitration and does not waive its right to a jury trial.
- 17. HIPAA COMPLIANCE.** When applicable, the Offeror agrees to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (codified at 45 C.F.R. Parts 160 and 164), as amended ("HIPAA"); privacy and security regulations promulgated by the United States Department of Health and Human Services ("DHHS"); Title XIII, Subtitle D of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, as amended ("HITECH Act"); provisions regarding Confidentiality of Alcohol and Drug Abuse Patient Records (codified at 42 C.F.R. Part 2), as amended; and TEX. HEALTH & SAFETY CODE ANN. §§81.046, as amended, 181.001 *et seq.*, as amended, 241.151 *et seq.*, as amended, and 611.001 *et seq.*, as amended collectively referred to as "HIPAA", to the extent that the Offeror uses, discloses or has access to protected health information as defined by HIPAA. Offeror may be required to enter a Business Associate Agreement pursuant to HIPAA.
- 18. INDEMNIFICATION.** The successful Offeror, shall indemnify, defend, save, and hold Hidalgo County, all its elected officials, officers, agents and employees harmless 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 directly or indirectly from contractor's performance on account of any negligent act or fault of the successful Offeror, or of any agent, employee, subcontractor or supplier in the execution of, or performance under, any contract which may result from award or which arises from any event or casualty happening on or within County premises themselves or happening upon or in any halls, elevators, entrances, stairways or approaches of or to such County facilities. Successful Offeror shall pay any judgment with costs which may be obtained against the County growing out of such injury or damages, and shall, upon request, provide a defense to Hidalgo County by counsel reasonably acceptable to the County. The Successful Offeror indemnity 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 successful Offeror.
- 19. INSPECTIONS & TESTING.** Hidalgo County reserves the right to inspect any item(s) or service location for compliance with specifications and requirements and needs of the user department. If an Offeror cannot furnish a sample of a proposed item, where applicable, for review, or fails to satisfactorily show an ability to perform, the County can reject the response as inadequate.

The successful respondent 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 procurement packet shall be subject to the County's approval. Items found to be defective or not meeting specifications shall be replaced by the successful Offeror within two (2) business days at no expense to the County. Items that are not picked up within one (1) week after notification shall be deemed a donation to the County and may be used or disposed of at the County's discretion, without waiver of any other rights of the County as to the items' nonconformity.

- 20. INSURANCE.** Contractor shall procure and maintain, with respect to the subject matter of this procurement packet, appropriate insurance coverage including, as a minimum, public liability and property damage with adequate limits to cover contractor's liability as may arise directly or indirectly from work performed under terms of this procurement packet. Certification of such coverage must be provided to the County as part of this response. (See **Appendix "C": Insurance Requirements**). Prior to award, Hidalgo County must be listed as a Certificate Holder to the policies.
- 21. LEGAL DOCUMENTS.** Offeror should submit any agreement for products and/or services which may be required by their organization to enter into a contract with Hidalgo County. The awarded vendor will be required to execute an agreement with Hidalgo County which finalizes the terms and conditions set forth in their response, best and final offer, and any negotiations between the Offeror and Hidalgo County. The agreement is subject to review and amendment by the Hidalgo County District Attorney's Office.
- 22. MAINTENANCE.** Maintenance required for equipment proposed should be available in Hidalgo County by a manufacturer-authorized maintenance facility. Costs for this service shall be shown on **Appendix "B"**. If Hidalgo County opts to include maintenance, it shall be so stated in the purchase order and said cost will be included. Service will commence only upon expiration of applicable warranties and should be priced accordingly.
- 23. MARKET VOLATILITY AND UNIT PRICE ADJUSTMENTS.** When applicable, Hidalgo County recognizes that during periods of national crisis and unstable economic conditions, unforeseen price increase might affect costs for goods and services contracted on an annual basis. As such, upon written request of the Vendor to the County Purchasing Agent, the County may review evidence of prevailing industry-wide market conditions that may warrant an adjustment in bid prices contained in the contract. When applicable, the following procedure and conditions may be employed to mediate price volatility:
- A Vendor shall:
 - make its Market Volatility and Unit Price Adjustment request in writing to the County Purchasing Agent.
 - tie any price change clause to an industry-wide or otherwise nationally recognized index, or some other form of verifiable document. Such written request must be accompanied by a certified copy of the supplier's advisory or notification to the Vendor of the price changes.
 - put the Purchasing Agent on the mailing lists for such publications so that the Purchasing Agent can monitor said changes. Such membership shall be at no cost to the County.
 - notify the County at the time when the Vendor's costs for items, supplies, and or services reduce due to stabilization in the market at which time prices for items on this contract shall be reduced accordingly. Failure by the Vendor to notify the County of a decrease in costs for items and/or supplies for which the Vendor was granted a price adjustment, may result in immediate termination of this contract and the County shall not be obligated to pay the Vendor the difference between the contract price and the price adjustment.
 - Price adjustment reviews may only be requested by the Vendor on a quarterly basis; however, the County may at its own discretion, conduct temporary price adjustment reviews at any time.
 - The County Purchasing Agent retains the right to determine whether or not such proposed price changes are in the best interest of the County.
 - The County may only grant a price increase if the evidence presented is deemed reliable.
 - No price escalation will be authorized in excess of the amount of the increase referred to in the supplier's notice.
 - The total increase in contract price shall not exceed twenty-five percent (25%) of the original contract price during the contract term.
 - Should the County allow a price increase, the approved price change shall be honored for all orders received by the vendor or contractor after the effective date of such price change. Approved price changes are not applicable to orders already issued and in process at time of price change.
 - Price increases are only valid for the quarter in which they are requested and approved.
 - Prices shall return to the original contract price at the beginning of the following quarter unless a Vendor notifies the County in writing within ten (10) days of expiration of the quarter in which the price increase is in effect, that it desires to have the price increase continue or that the Vendor is requesting a different price increase for the following quarter. Such request must be supplemented

with sufficient justification to demonstrate that the price increase remains necessary. The County Purchasing Department shall have sole discretion whether to grant the price increase extension.

- The County Purchasing Agent and/or the County Auditor reserve the right to audit and/or examine any pertinent books, documents, papers, records or invoices relating directly to the contract transaction in question after reasonable notice and during normal business hours.
- The County too, shall have discretion to unilaterally reduce, eliminate or extend a price adjustment to the Vendor at any time upon written notice from the County to the Vendor demonstrating justification for such reduction, elimination or extension of the price adjustment.

- 24. MATERIAL SAFETY DATA SHEETS.** Under the "Hazardous Communication Act", commonly known as the "Texas Right to Know Act", an Offeror must provide to the County with each delivery, safety data sheets which are applicable to hazardous substances defined in the Act. Failure of the Offeror to furnish the required documentation will be cause to reject any response applying thereto.
- 25. MINIMUM STANDARDS FOR RESPONSIBLE PROSPECTIVE RESPONDENTS.** With their submitted response, the Offeror must affirmatively demonstrate their responsibility as listed on **Appendix "A"**. A prospective respondent, by submitting a response, represents to County that it meets the requirements listed.
- 26. NAME BRANDS.** Specifications may reference name brands and model numbers. It is not the intent of Hidalgo County to restrict or preclude competition in any way, but to establish a desired quality level of merchandise or to meet a pre-established standard due to like existing items. Offerors may offer items of equal stature and the burden of proof of such stature rests with Offerors. Hidalgo County shall act as sole judge in determining equality and acceptability of products offered.
- 27. NEW MILLENNIUM COMPLIANCE.** All products and/or services furnished as part of this contract must be compliant for the present year and forward. This applies to all computers including hardware and software as well as all other commodities with date sensitive embedded chips.
- 28. PAYMENT UNDER CONTRACT.** 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.
- 29. PERFORMANCE ENFORCEMENT.** Hidalgo County reserves the right to enforce performance of any contract, agreement, supplemental agreement, as amended, or participation in the professional services pool, in any manner prescribed by law or deemed to be in the best interest of the County. Hidalgo County reserves the right to terminate the contract awarded hereunder in any manner prescribed by law or deemed to be in the best interest of the County immediately in the event of breach or default by a successful respondent, including, but not limited to failure to maintain qualifications, meet schedules, pay any required fees or taxes, or otherwise failing to perform in accordance with the requirements of this procurement packet.
- 30. POST-AWARD DELIVERY INSTRUCTIONS.** Title and Risk of Loss of goods shall not pass to Hidalgo County until Hidalgo County actually receives and takes possession of the goods at the point or points of delivery. Receiving times may vary with the user department. Generally, deliveries may be made between 8:30 a.m. and 4:00 p.m., Monday through Friday, except on County approved holidays. The Offeror is advised to consult the user department for instructions, and be given at least seventy-two (72) hours prior notice of delivery, if applicable, before delivery will be accepted. The place of delivery shall be identified in the Requirements/Specifications attached hereto as **Appendix "A"** of this procurement packet and/or on the Purchase Order as a "Deliver To:" address.
- 31. POST-AWARD INVOICES AND PAYMENTS.** Offerors shall submit an original, itemized invoice on company letterhead with their company name and address, detailing the deliverable(s) of goods and/or services provided, the respective price, product code, item number, quantity, etc. per line item, the name of receiving/requesting department or elected office, the delivery address, the awarded vendor's contract number, and issued purchase order number. Any invoice, which cannot be verified by the contract price and/or is otherwise incorrect, will be returned to the Offeror for correction. Under term contracts, when multiple deliveries and/or services are required, the Offeror may invoice following each delivery and the County will pay on invoice. Contracts providing for a monthly charge will be billed and paid on a monthly basis only. All payments are

subject to compliance with the Texas Prompt Payment Act.

Deliverables or services will be considered complete only upon written acceptance by Hidalgo County. No charges may be billed to Hidalgo County unless such costs are explicitly included in the agreement or contract. For billing and payment questions please contact the Hidalgo County Auditor's Office, 2808 S. Business Hwy. 281, Edinburg, Texas 78539, (956) 318-2511.

32. PROCUREMENT PACKET FORM COMPLETION. Fill out and return to the Hidalgo County Purchasing Department one (1) complete response in an appropriately sized envelope or box. **PACKAGE MUST SHOW THE COMPANY NAME, RETURN ADDRESS, THE RFB, RFP, RFQ, etc., PROJECT DESCRIPTION, OPENING DATE AND TIME, AND BE MARKED "SEALED PROPOSAL".** For Offeror's convenience, the shipping label on **Appendix "N"** can be used on the submission packet. An authorized representative of the Offeror should sign the Submission Cover Sheet. The contract will be binding only when signed by Hidalgo County, funds are certified by the Hidalgo County Auditor, and an official Hidalgo County Purchase Order is issued by the Hidalgo County Purchasing Department.

33. PROCUREMENT PACKET SUBMISSION. Offeror must submit all completed responses to the Hidalgo County Purchasing Department reception desk at 2802 S. BUS. HWY 281, Edinburg, Texas 78539 by the date and time listed under the Submission Deadline and Bid Opening section of the Procurement Overview. **Late proposals will not be accepted for any reason.**

33.1 Supplemental Materials. Offerors are responsible for including all pertinent product data in the submitted response to this procurement packet. Literature, brochures, data sheets, specification information, completed forms requested as part of the procurement packet and any other facts which may affect the evaluation and subsequent contract award should be included. Materials such as legal documents and contractual agreements, which the Offeror wishes to include as a condition of the submission, must also be in the submitted response. Failure to include all necessary and proper supplemental materials may be cause to reject the entire response.

34. PROOF OF BUSINESS. Offeror must be in business under its current name and in its current form (e.g., proprietorship, Chapter S Corporation). Information to be included as part of the Vendor Application, **Appendix "E"**.

35. PURCHASE ORDER AND DELIVERY. The successful Offeror shall not deliver products or provide services without a Hidalgo County Purchase Order, signed by the Hidalgo County Purchasing Director, or an authorized agent of the Hidalgo County Purchasing Department. When applicable, the fastest, most reasonable delivery time shall be indicated by the Offeror in the proper place on **Appendix "B"**. Any special information concerning delivery should also be included, on a separate sheet, if necessary. All items shall be shipped **F.O.B. INSIDE DELIVERY** unless otherwise stated in the specifications. This shall be understood to include bringing merchandise to the appropriate room or place designated by the user department. Every tender or delivery of goods must fully comply with all provisions of these requirements and the specifications including time, delivery and quality. Nonconformance shall constitute a breach which must be rectified prior to expiration of the time for performance. Failure to rectify within the performance period will be considered cause to reject future deliveries and cancellation of the contract by Hidalgo County, without prejudice to other remedies provided by law. **Where delivery times are critical, Hidalgo County reserves the right to award accordingly.**

Goods and/or Services must not be provided and **invoices will not be paid** without a purchase order signed by the Hidalgo County Purchasing Director.

36. QUALIFICATIONS OF OFFEROR. Offeror's failure to qualify or maintain qualifications throughout the term of this agreement shall release Hidalgo County from all obligations to the Offeror with regard to the services. In such an event, Hidalgo County may elect to engage another qualified firm or reject all submissions and re-advertise.

37. RECYCLED MATERIALS. Hidalgo County encourages the use of products made of recycled materials and shall give preference in purchasing to products made of recycled materials if the products meet applicable

specifications as to quantity and quality. Hidalgo County will be the sole judge in determining product preference application.

38. REFERENCES. Offeror must provide a total of four (4) references in each response to a solicitation requested by Hidalgo County. **One of the four references listed should be of a project that was canceled.** Offeror may provide this in form of Reference Letters from other individual(s)/entities or local government entities for whom the Offeror has provided similar services in the past twenty-four (24) months as demonstration of their prior experience, or if Offeror prefers, may utilize the Reference Form **Appendix “M”**. Letters or reference sheet must include the following information:

- Organization/Client Name/Government Entity (Include population of any local governmental entity – some procurements may require a specific population).
- Name of Contact Person
- Contact Telephone, Address and Email
- Name of Project
- Scope of Work
- Contract Period
- Budget Project Amount; Actual Project Amount
- Expected project timeframe; actual project timeframe
- Include contact information for one (1) client that services have been canceled, and a description of why the project was canceled.

39. SCANNED OR RE-TYPED RESPONSE. If in its response, Offeror either electronically scans, re-types, or in some way reproduces the County's published procurement packet, then in the event of any conflict between the terms and provisions of the County's published procurement packet, or any portion thereof, and the terms and provisions of the response made by the Offeror, the County's proposal package **as published** shall control. Furthermore, if an alteration of any kind to the County's published procurement packet is only discovered after the contract is executed and is or is not being performed; the contract is subject to immediate cancellation.

Regardless of how an Offeror requested or received a copy of this procurement packet to prepare a response, **the response must be submitted in hard copy** according to the instructions contained within this procurement packet.

40. SEVERABILITY. If any section, subsection, paragraph, sentence, clause, phrase or word of these requirements or the specifications shall be held invalid, such holding shall not affect the remaining portions of these requirements and the specifications and it is hereby declared that such remaining portions would have been included in these requirements and the specifications as though the invalid portion had been omitted.

41. SILENCE OF SPECIFICATIONS. The apparent silence of specifications as to any detail, or the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and that only material and workmanship of the finest quality are to be used. All interpretations of specifications shall be made on the basis of this statement. The items furnished under this contract shall be new, unused of the latest product in production to commercial trade and shall be of the highest quality as to materials used and workmanship. Manufacturer furnishing these items shall be experienced in design and construction of such items and shall be an established supplier of the item proposed.

42. SUBCONTRACTING. Vendor may not subcontract services to another firm without prior written request detailing goods and/or services that are to be subcontracted, and approval of said written request by Hidalgo County Commissioners Court, or applicable governing body.

43. TAXES. Hidalgo County is exempt from all federal excise, state and local taxes unless, otherwise stated in this document. Hidalgo County claims exemption from all sales and/or use taxes under Texas Tax Code §151.309, as amended. Offerors are not to include tax in any cost figures (including in any supplemental project specific contracts applicable to pools). If it is determined that tax was included in the cost figure it will not be included in the tabulation of any supplemental project specific awards. Texas Limited Sales Tax Exemption Certificates

will be furnished upon written request to the Hidalgo County Purchasing Department, and signed by the Agent, or authorized Purchasing Department representative.

- 44. TERM OF CONTRACTS.** If the contract is intended to cover a specific time period, the term will be specified in **Appendix A: Requirements/Specifications**. Awarded contract will be in effect until (a) the term expires, or (b) participation is terminated by County with thirty (30) days written notice prior to cancellation with or without cause. Any supplemental project-specific contract award to a successful respondent 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 the County with thirty (30) days written notice prior to cancellation with or without cause, unless otherwise stated in the executed agreement.
- 45. TERMINATION.** Hidalgo County reserves the right to terminate the contract for default if Offeror breaches any of the terms therein, including warranties of Offeror or if the Offeror becomes insolvent or commits acts of bankruptcy. Such right of termination is in addition to and not in lieu of any other remedies which Hidalgo County may have in law or equity. Default may be construed as, but not limited to, failure to deliver the proper goods and/or services within the proper amount of time, and/or to properly perform any and all services required to Hidalgo County's satisfaction and/or to meet all other obligations and requirements. Hidalgo County may terminate the contract without cause upon thirty (30) days written notice, unless otherwise stated in the executed agreement.
- 46. TERMINATION FOR HEALTH AND SAFETY VIOLATIONS.** Hidalgo County has the option to terminate this contract immediately without prior notice if Offeror fails to perform any of its obligations in this contract if the failure (a) created a potential threat to health or safety or (b) violated a law, ordinance, or regulation designed to protect health or safety.
- 47. USAGE REPORTS.** Hidalgo County reserves the right to request, and receive at no additional cost during the yearly contract period, a usage report detailing the services furnished to date under an agreement resulting from this procurement packet. The reports must be furnished no later than five (5) business days after written request and itemize all purchases to date by Hidalgo County department, description of each service purchased, quantity of each service purchased, per unit cost and total amount of all services purchased.
- 48. WAIVER OF SUBROGATION.** Offeror and Offeror's insurance carrier waive any and all rights whatsoever with regard to subrogation against Hidalgo County as an indirect party to any suit arising out of personal or property damages resulting from Offeror's performance under any award resulting from award from this procurement packet.
- 49. WARRANTIES.** Offerors shall furnish all data pertinent to warranties or guarantees which may apply to items in the response to this procurement packet. Offeror may not limit or exclude any implied warranties. Further, Offeror warrants that product sold to the County shall conform to the standards established by the U.S. Department of Labor under the Occupational Safety and Health Act of 1970. In the event product does not conform to OSHA Standards, where applicable, Hidalgo County may return the product for correction or replacement at the Offeror's expense. If Offeror fails to make the appropriate correction within a reasonable time, Hidalgo County may correct at the Offeror's expense.
- 50. CIVIL WORKS, CONSTRUCTION & PUBLIC WORKS PROJECTS.** Provisions of Tex. Govt. Code Ch. 2269 as amended by HB 2581 of the 87th Texas Legislature applicable to Civil Works and Construction Projects are hereby incorporated. Provisions of Texas Local Govt. Code Ch. 271, subchapter B applicable to competitive bidding on certain public works projects are hereby incorporated.

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LEGAL NOTICE DECLARATION

TO: Eduardo Belmarez, MBA, CPM, Purchasing Director
ATTN: Alexandra Vela, Contract Specialist II
Hidalgo County Administration Building/Purchasing Department
2802 S. Business Hwy. 281
Edinburg, Texas 78539

RE: RFQ No. 21-0788-02-23-ABV Professional Architectural Service Pool

By providing a response to this solicitation, we acknowledge receipt of all of the pages of in this procurement packet. We understand that Hidalgo County reserves the right to reject any or all submissions, and further reserves the right to design the evaluation criteria to be used in selecting the lowest and best qualification.

We acknowledge that we have examined this procurement packet in its entirety, and are familiar with the conditions to be met. In accordance with the Specifications, and subject to all laws and regulations of the United States, State of Texas, and local laws, we propose and commit to furnish all labor, equipment, material, software, and services as set forth in the documents hereinbefore mentioned. We, the undersigned respondent, further agree, upon acceptance of its response to be a member of the Pools of Professional Services and further execute supplemental project-specific contracts with the County as needed. Any purchase order or contract resulting from this process shall be considered null and void if the successful respondent fails to comply with any federal, state or local laws.

We acknowledge that we are providing the required certifications, attestations, verifications and/or acknowledgments as referenced within this procurement packet. We further acknowledge that any and all specifications, provisions, and attachments of this response are incorporated into and made a part of any resulting agreement.

We agree that this response shall be good, and may not be withdrawn for a period of ninety (90) calendar days after the scheduled bid opening time and date for receiving the requested solicitation, as contained in the Specifications.

Lastly, we understand that any questions regarding compliance should be directed to our firm's legal counsel. We acknowledge that the individual authorized to bind the company is signing this Acknowledgement Form. By signing this Acknowledgement Form we understand we are providing written verification and certification of the aforementioned, and the County cannot execute a contract for goods or services without this declaration.

Respectfully submitted,

Firm: _____

Address: _____

Printed Name: _____

Title: _____

Signature: _____ Date: _____



APPENDIX A

REQUIREMENTS/SPECIFICATIONS

REQUIREMENTS/SCOPE OF SERVICES

The required contents and limitations for the preparation of the RFQ are described in this section. Failure to provide the requested information or adhere to any County limitations may result in disqualification of the submitted response.

Section I: UNDERSTANDING OF THE PROJECT (limited to 3 pages)

This section should demonstrate the respondent's understanding of the project needs, the work required, and any identify and local issues or concerns to demonstrate the firm's familiarity with the geographical area of County of Hidalgo.

Section II: VENDOR INFORMATION

- a. **Vendor History** - This section should include Vendor's history, the firm's background and identify the principal officers. It should include an organization chart, and a description of project team organization and names of team members. Additionally, it should state the firm's commitment and ability to commence services immediately after successfully negotiating a contract for services, and a statement regarding their Affirmative Action Program.
- b. **Personnel and Staffing** - This section should identify all members on the organizational chart, and a summary paragraph of the project work to be performed by each proposed staff member. Biographic summaries that highlight the experience relevant to the specific project responsibilities should be provided for all proposed personnel. A one (1) page biographic summary provided with history of architectural certification from the Texas Board of Architectural Examiners for each proposed staff member, and a one (1) page of a general list of projects with brief project summaries that respective proposed staff member was a part within the last 12 consecutive months, and identify their role in each project.

This section should also outline the firm's contingency plan for servicing the project in the event that one or more key personnel are not available for any reason during the period of performance.

- c. **Proof of Licenses and Certifications** - This section will contain copies of any and all current state certifications and licenses with applicable seals, and any other applicable licenses and certifications as required by the State of Texas.

Section III: VENDOR EXPERIENCE AND QUALIFICATIONS (limited to 10 pages)

- a. **Competency** - This section should demonstrate firm's competency and experience in, but not limited to the following areas: General Design and Construction, Federal, State, and County-funded construction projects, and projects located in this general region of the state.
- b. **Experience and Recent Projects** - This section should include a description of the firm's most recent and varied projects (other local government projects preferred), and identify the personnel that were key in each project. Identify key challenges, and the firm's solution to overcome such challenges. For each project, a client contact name and phone number should be included for reference purposes.
- c. **References** – This section should list four (4) references, other than past or present employees of Hidalgo County, who can verify your performance as a Vendor within the past 24 months. Performance includes, but not limited to, sales and/or services, delivery, invoicing, and other items as may be required for Hidalgo County to determine Respondent's ability to provide the intended goods and/or service of this procurement packet. Hidalgo County prefers references to be from

Government customers. The name, address and phone number of the person(s) listed should be the one most closely associated with your company's performance on that specific project. References must be able to verify the quality of service Respondent's company provide and that the Respondent has completed a project of similar size and scope of work in this solicitation. Inaccurate, obsolete or negative responses from the listed references could result in rejection of your response. **One of the four references listed should be of a project that was canceled with a description of why the project was canceled.** Failure to supply the required references may deem your response as non-responsive and will not be considered for award.

Respondent's involvement with reference checks is not permitted. Only Hidalgo County Purchasing Department or authorized designees will conduct reference checks. Any deviation to this may result in rejection of your response. You may use your own format, or use the Reference Form included as **Appendix "M"**.

Section IV: SCOPE OF SERVICES

- a. List of Services** - The architectural services contract will encompass all project-related architectural services to the County of Hidalgo including, but not limited to, the following:
- ADA Compliance
 - Building Design
 - Code Analysis
 - Construction Contract Management
 - Cost Estimation
 - Design and Construction of Multi-Level Parking Structure
 - Design for Alterations and Renovations
 - Design for New Construction
 - Field Testing and Inspection
 - Forensic Studies
 - Interior Design
 - Master Planning
 - Needs Assessment
 - Plans, Drawings, and Specifications
 - Pre-Design Services
 - Space Planning
 - Space Programming
- b. Narrative** - This section should include firm's philosophy, approach(s) and preferred methods for meeting requirements, deliverables, and the aforementioned services listed in the scope of services. Provide the greatest amount of meaning detail possible to describe the proposed products and/or services. Indicate if your firm can meet the scope of services, or if the Scope of Services can be met only under certain conditions or circumstances. If your firm is not able to meet the specification, briefly explain why, noting any concerns or issues Hidalgo County should be aware. Provide a timeline indicating deliverables, vendor responsibilities and resources needed from Hidalgo County. Merely reiterating the scope of services are strongly discouraged, as they do not provide insight into the firm's ability to meet the scope of services.

Section V: LEGAL DOCUMENTS

If applicable, the Firm is to include any standard agreement(s) and/or contracts associated with their response.

Section VI: MISCELLANEOUS

State exemptions to any of the requirements in this procurement packet, if any. Any additional information the firm deems appropriate to the response may be included in this section.

Section VII: PRICING INFORMATION

PARTICIPATING FIRMS ARE NOT TO PROVIDE A FEE PROPOSAL WITH THIS SUBMITTAL. The fee will be negotiated in accordance with the Professional Services Procurement Act,

Tex. Govt. Code Ann. 2254.001, et seq. Once selected, the proposer is to provide a fee proposal based on the scope of work.

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Appendix B

EVALUATION PROCEDURE, AREAS OF SPECIALIZATION, and EVALUATION FORM

EVALUATION PROCEDURE

POOL ACCEPTANCE

It is Hidalgo County's intention that all responses that met the requirements listed within this procurement packet will be accepted in the respective annual pool.

AWARD PROTOCOL

A firm can be selected from the approved Pool for 1) an On-Call Agreement, or 2) Project Specific; regardless of the option, once a project has been identified and it is determined that Architectural Services are required, approval to seek engagement for Professional Services is requested from the Hidalgo County Commissioners Court. The following protocol and procedures are utilized:

1. Hidalgo County Commissioners Court, Elected Official, or User Department in need of the Professional Service will nominate, at the minimum, 3 firms. The firms selected must be able to complete the project requested, and if specializations are available, those specialized firms should be considered for nomination first.
2. Hidalgo County Commissioners' Court, Elected Official, or User Department will select the Evaluation Committee.
3. The Evaluation Committee will review, score and evaluate the Statement of Qualifications received in this response.
4. A Scoring Grid will be presented to Hidalgo County Commissioners Court for the purpose of Ranking and Approval for the Hidalgo County Purchasing Department to enter into negotiations with the number one (1) ranked firm.

EVALUATION CRITERIA

Award shall be made to the responsible vendor whose proposal is determined to be the best evaluated offer resulting from negotiations and taking into consideration all aspects of proposal impact items and the Evaluation Criteria as stated in **Appendix "B"**.

- Professional qualifications and experience of vendor and its staff with a minimum of predetermined number of years of relevant experience and demonstrated success in providing the services requested in this solicitation;
- Ability to commit resources and turnaround time for services requested;
- Experience with other clients of similar size to Hidalgo County and government entities;
- Vendor's professional reputation for integrity and compliance with state and federal law, including having the appropriate license to do business in Texas;
- Past performance history with Hidalgo County (if applicable);
- Experience based on references submitted with the vendor's proposal; and
- Overall quality of vendor's proposal.

Submission of a proposal implies the vendor's acceptance of the evaluation criteria and vendor's recognition that subjective judgments must be made by the Evaluation Committee.

EVALUATION PROCESS

All proposals will be examined by an Evaluation Committee consisting of various Hidalgo County personnel and Hidalgo County Purchasing on a 100-point system.

Proposals that do not conform to the instructions or which do not address all the services as specified may be eliminated from consideration; however, Hidalgo County reserves the right to accept such a proposal if it is determined to be in the best interest of Hidalgo County.

While Hidalgo County appreciates a brief, straightforward, concise reply, the proposer must fully understand that the evaluation is based on the information provided. Accuracy and completeness are essential. Omissions, ambiguous and equivocal statements may be construed against the proposer. The proposal response may be incorporated into any contract which results from this procurement packet, and vendors are cautioned not to make claims or statements it is not prepared to commit to contractually. Failure of the vendor to meet such claims will result in a requirement that the vendor provide resources necessary to meet submitted claims, without extending an additional cost to Hidalgo County.

Hidalgo County Purchasing Department may initiate discussions with selected vendors; however, vendors may not initiate discussions. Vendors shall not contact any Hidalgo County personnel during the procurement process without the express permission from the Hidalgo County Purchasing Department. Hidalgo County Purchasing Department may disqualify any vendor who has made site visits, contacted Hidalgo County personnel or distributed any literature without authorization from Hidalgo County Purchasing Department.

All correspondence relating to this procurement from the advertisement to the award shall be sent to Hidalgo County Purchasing Department. Hidalgo County Purchasing Department shall coordinate all presentations and/or meetings between Hidalgo County and the vendor relating to this solicitation.

Selected vendors may/will be expected to make a presentation/product demonstration to an evaluation committee. In addition to a presentation, visits by the Evaluation Committee to representative vendor client sites may be conducted where the proposed solution can be demonstrated in a production environment. Proposals, vendor presentations and product/service evaluations may develop into negotiating sessions with the vendor(s) as selected by the Evaluation Committee and approved by Hidalgo County Commissioners Court.

NEGOTIATION PROCESS

The Purchasing Department will commence negotiations with the Number One (1) ranked firm, as approved by Hidalgo County Commissioners Court by asking the selected firm to submit a Scope of Service, including their fees. Hidalgo County expects to conduct negotiations with vendor's representatives authorized to contractually obligate the vendor with an offer. The negotiated contract include a Best and Final Offer with the successful firm will be presented to Commissioners' Court for consideration and approval of award of contract. If vendor is unable to agree to contract terms and conditions, Hidalgo County reserves the right to terminate contract negotiations with that vendor and initiate negotiations with another vendor.

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AREAS OF SPECIALIZATION

RE: RFQ No. 2021-0788-02-23-ABV
Architectural Pool

Company Name: _____

Address: _____

City, State, Zip _____

Principal(s): _____	_____
Name	Title
_____	_____
Name	Title
_____	_____
Name	Title
_____	_____
Name	Title
_____	_____

Architect's Registration No.: _____

IDENTIFY AREAS OF SPECIALIZATION (Mark all that apply).

- _____ ADA Compliance
- _____ Building Design
- _____ Code Analysis
- _____ Construction Contract Management
- _____ Cost Estimation
- _____ Design and Construction of Multi-Level Parking Structures
- _____ Design for Alterations and Renovations
- _____ Design for New Construction
- _____ Field Testing and Inspections
- _____ Forensic Studies
- _____ Interior Design
- _____ Master Planning
- _____ Needs Assessment
- _____ Plans, Drawings, and Specifications
- _____ Pre-Design Services
- _____ Space Planning
- _____ Space Programming
- _____ Other (please specify, and separate listed specialties with a semicolon (;): _____
- _____
- _____
- _____ Sublet specialties to other firms (please specify, and separate listed specialties with a semicolon (;): _____
- _____
- _____

EVALUATION FORM

RE: RFQ No. 2021-0788-02-23-ABV
Professional Architectural Services

Evaluator: _____

Signature: _____

Date: _____

Project Name: _____ Department: _____

Evaluated Firm: _____

EVALUATION CRITERIA		POINTS	SCORE
1. RFQ RESPONSIVENESS (2 points)			
➤ Response is clear, concise, well-organized and followed the instructions listed in the Procurement Overview section of the procurement packet.		2	
Comments/Rationale for points:		Subtotal	
2. UNDERSTANDING THE PROJECT (22 points)			
➤ Firm demonstrates a thorough understanding of the project through their Scope of Services.		5	
➤ Firm addresses their understanding in a clear and concise narrative that outlines their knowledge in appropriate federal, state and local government regulations, codes, guidelines, professional standards, and other policies related to the specified project.		7	
➤ Firm identifies other successful projects of similar size and scope.		5	
➤ Firm has identified information to be gathered or obtained and proposed an approach to complete the Scope of Work.		5	
Comments/Rationale for points:		Subtotal	
3. FIRM'S QUALIFICATIONS (28 points)			
➤ Firm is registered and licensed to practice in the state of Texas, and has been verified through the Texas Board of Architectural Examiners.		5	
➤ Firm includes an organization chart, and a description of the proposed project team organization dedicated to this project, identifies key technical staff, their names and titles.		10	
➤ Firm provides proof of all licenses and certifications for each proposed staff member.		10	
➤ Firm identifies their Affirmative Action Program.		3	
Comments/Rationale for points:		Subtotal	
4 EXPERIENCE AND RECENT PROJECTS (27 points)			
➤ Firm includes biographic summaries/resumes for each proposed staff member that highlight their relevant experience specific to the project within the last 12 consecutive months, and their role in each project.		10	
➤ Firm identifies at least one (1) NAAB or NCARB Certified Architect with an educational background and/or strong experience in the scope of the project that is part of the proposed team dedicated to this project who has previously led or been a part of at least two (2) projects of similar size and scope.		10	
➤ Firm identifies two (2) different technical staff members with a minimum of five (5) and ten (10) years' experience.		7	
Comments/Rationale for points:		Subtotal	
5. LEADERSHIP AND ABILITY (21 points)			
➤ Firm identifies their commitment and ability to commence services immediately after successfully negotiating a contract for services.		3	
➤ Firm identifies proposed project composition, project leadership, and reporting responsibilities.		5	
➤ Firm has demonstrated competency and experience in the project specified.		3	
➤ Firm commits at least one Project Manager with experience in two (2) different areas of specialties, plus be 50% involved with the technical development of the project.		5	
➤ Firm commits at least one (1) Project Manager with experience in five (5) areas of specialties, plus be 85-100% involved with the technical development of the project.		5	
Comments/Rationale for points:		Subtotal	
GRAND TOTAL			



APPENDIX C

INSURANCE REQUIREMENTS

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.

Bidder shall obtain and maintain any and all other insurances which may be necessary in providing the good/service applicable to this procurement or are otherwise required by law. Any and all insurance policies shall be in amounts prescribed by law or otherwise specified by the County, but in no event less than the minimum amounts prescribed by law.

Additional Insurance Requirements:

- a. Bidder shall furnish to County certificate(s) of insurance, and all renewals throughout the duration of the Project, issued by the insurer that such insurance is in full force and effect.
- b. Certificates of insurance shall be submitted to County for approval prior to any services being performed by Bidder.
- c. **Hidalgo County will only accept certificates of insurance on an Acord form (as attached hereto).**
- d. For each policy, except Workers' Compensation, Bidder shall name the County as an additional insured.
- e. 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.

- f. 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 of 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.
- g. All insurance policies will be endorsed to provide a waiver of subrogation in favor of the County.
- h. County reserves the right to review the insurance requirements of this section during the effective period of the contract and to require adjustment of insurance coverage and their limits when deemed necessary and prudent by County based upon changes in statutory law, court decisions, or the claims history of the industry as well as the Bidder.
- i. Insurance policies shall be obtained at Bidder's sole expense. County does not maintain and will not obtain insurance of any type to protect Bidder against loss, damage or injury that may in any way result from Bidders performance of the services.
- j. In no event shall the County be liable for any loss, damage to or destruction of any property belonging to the Bidder.
- k. Bidder is responsible for ensuring all required insurance policies are valid for the duration of the contract.
- l. All insurance policies are to be issued by an insurance company authorized to do business in the State of Texas and acceptable to County.
- m. Bidder shall make any other insurance documentation available to County upon request.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

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 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	CONTACT NAME:	
	PHONE (A/C, No, Ext):	FAX (A/C, No):
	E-MAIL:	
	ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	NAIC #
INSURED	INSURER A:	
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES

CERTIFICATE NUMBER:

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 LISTED 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 INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXPI (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY						EACH OCCURRENCE \$
	COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$
	CLAIMS-MADE						MED EXP (Any one person) \$
	OCUR						PERSONAL & ADV INJURY \$
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE \$
	POLICY						PRODUCTS - COMP/OP AGG \$
	PROJECT						\$
	LOC						COMBINED SINGLE LIMIT (Ea accident) \$
	AUTOMOBILE LIABILITY						BODILY INJURY (Per person) \$
	ANY AUTO						BODILY INJURY (Per accident) \$
	ALL OWNED AUTOS						PROPERTY DAMAGE (Per accident) \$
	SCHEDULED AUTOS						\$
	NON-OWNED AUTOS						EACH OCCURRENCE \$
	HIRED AUTOS						AGGREGATE \$
	UMBRELLA LIAB						\$
	EXCESS LIAB						WC STATUS- TORY LIMITS
	OCUR						OTH- ER
	CLAIMS-MADE						E.L. EACH ACCIDENT \$
	DED						E.L. DISEASE - EA EMPLOYEE \$
	RETENTION \$						E.L. DISEASE - POLICY LIMIT \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)						
	If yes, describe under DESCRIPTION OF OPERATIONS below						

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

CERTIFICATE HOLDER**CANCELLATION**

HIDALGO COUNTY ATTN: PURCHASING DEPARTMENT 2812 S. HIGHWAY BUS. 281 EDINBURG, TEXAS 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

ACORD 25 (2010/05)

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INSURANCE REQUIREMENT ACKNOWLEDGEMENT

I, _____, authorized representative for _____,
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 the project by the Hidalgo County Commissioners' Court;
- will acquire additional amount needed to meet the County's requirements within 10 working days after notification from Purchasing Department of award of the project by the Hidalgo County Commissioners' Court; currently carry the following:

Professional Liability (Errors & Omissions): \$ _____
Automobile Liability: \$ _____ General Liability: \$ _____

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

Authorized Representative

Date

Notice to Bidder:

A certificate of insurance for the required insurance limits shall be provided to the Purchasing Department in order to qualify for award of the project 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 of the project to be rescinded and then 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 BE ACCOMPANY YOUR RESPONSE

PROJECT REQUIREMENTS ACKNOWLEDGMENT

This is to certify that I, _____, possess all of the **APPLICABLE**:

1. Licenses: _____

2. Bonds: _____

3. Certificates: _____

4. Permits: _____

5. Other: _____
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 bid packet in order to expedite the bid evaluation process. Failure to provide said documentation will result in the disqualification of your bid or response.**

Authorized Signature

Date

Company

Address

City, State, Zip



Appendix D

CONFLICT OF INTEREST QUESTIONNAIRE (CIQ)

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.

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.

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

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.



Appendix E

VENDOR/BIDDER APPLICATION, HUB DECLARATION, and FORM W-9

VENDOR ENROLLMENT SOLUTION

The Vendor Registration Form has been automated and will only be accepted through online submission. The Vendor Registration Form can be found on the Hidalgo County website: <https://www.hidalgocounty.us>, Home > Departments > Purchasing > Potential Vendors, or by using the link: <https://www.hidalgocounty.us/2912/Potential-Vendors-ConsiderMe>.



ConsiderMe

A Vendor Enrollment Solution



Register ➡ Get Listed ➡ Be Considered

Upon submission, you will receive an automatic confirmation email response advising your form has been successfully submitted. All submissions are reviewed by the Purchasing Department in the order they are received. Upon review and verification, approved vendors will be placed on our Potential Vendors List. Any incomplete submissions will be rejected and returned to the vendor to correct.

If you have any questions regarding the Vendor Registration Form please call the Purchasing Department at (956) 318-2626 or email us at vendor.application@co.hidalgo.tx.us.

For new Vendors:

As part of your procurement packet response, a copy of the confirmation email received is required.

For Current Vendors:

If your Company is a current active Vendor doing business with Hidalgo County, please submit this page and provide your Vendor Number below:

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: _____



APPENDIX F

CERTIFICATION REGARDING DEBARMENT

**Certification
Regarding Debarment, Suspension and Ineligibility**

As is required by the Federal Regulations Implementing Executive Order 12549, Debarment and Suspension, 45 CFR Part 76, Government-wide Debarment and Suspension, 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, 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 for cause or default.

Signature: _____
Print Name: _____
Title: _____
Telephone Number: _____
Date: _____

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



APPENDIX G

TITLE VI APPENDICES

APPENDIX A

THE TITLE VI CONTRACTOR ASSURANCES

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 will comply with the Regulations relative to nondiscrimination in federally assisted programs of the United States Department of Transportation 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, national origin, sex, age, disability, income or Limited English Proficiency 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 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 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 Acts and the Regulations relative to Non-discrimination on the grounds of race, color, national origin, sex, age, or disability.
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 funding agency (FHWA or FTA) 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 this information, the contractor shall so certify to the Recipient or the Federal Funding Agency, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Non-compliance:** In the event of the contractor's non-compliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Funding Agency may determine to be appropriate, including, but not limited to:
 - a. withholding contract payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a 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 Funding Agency 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 (Name of Appropriate Legislative Authority), the Regulations for the Administration of (Naming of Appropriate Program), 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, Non-discrimination 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 A 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 non-discrimination 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]. *

(*Reverter 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, permittee, 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 Non-discrimination 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 Non-discrimination 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. *

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary 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 List of discrimination Acts And Authorities.
- 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.*

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

APPENDIX E

TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS AND AUTHORITIES

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 non-discrimination statutes and authorities; including but not limited to:

Pertinent Nondiscrimination Authorities

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), 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 of 1990, 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 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 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 nondiscrimination 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 USC 1681 *et seq.*).



Appendix H

REQUIRED CONTRACT CLAUSES FOR CONTRACTS UNDER FEDERAL AWARD

2 C.F.R. § 200.327 & 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 §§200.317-200.327 of the Uniform Guidance contain provisions applicable to procurements made with federal grant funding. [Except as otherwise provided, updated Post Federal Award Requirements (i.e.: 2 CFR §§200.317-200.327) apply to declarations and awards issued on or after November 12, 2020].

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. §200.327). 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)).

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 agency.

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. See 2 C.F.R. Part 200, Appendix II, ¶ D.

- 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.

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. See 2 C.F.R. Part 200, Appendix II, ¶ E.

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 City 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, _____ 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, _____, 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

Name and Title of Contractor's Authorized Official

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. § 200.323; *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.
- (2) 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>.
- (3) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.”

11. **Prohibition on Contracting for Covered Telecommunications Equipment or Services – 2 CFR § 200.216 (FEMA Interim Policy #405-143-1 effective August 13, 2020).**

- a. **Applicability:** This requirement applies to all Federal grant and cooperative agreement programs and/or as provided below, and is effective August 13, 2020.

- b. Standard. A non-Federal entity is prohibited against using federal funds to purchase telecommunications and video surveillance equipment and services (such as but not limited to mobile phones, land lines, internet, video surveillance, and cloud servers) from certain companies/entities in covered foreign countries for national security reasons. This regulation is being incorporated into federal grants and contracts received by the County through 2 CFR 200.216 and/or Federal Acquisition Regulations (FAR) clause 52.204-25; as well as guidance provided through Federal Emergency Management Agency (FEMA) Policy #405-143-1. See 2 C.F.R. Part 200, Appendix II, ¶ K

Currently, applicable federal provisions provide that Covered Foreign country means the People's Republic of China and covered telecommunications equipment or services means –

- i. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation, (or any subsidiary or affiliate of such entities);
- ii. For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
- iii. Telecommunications or video surveillance services provided by such entities or using such equipment; or
- iv. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

The definition of “Affiliate” can be found in FAR 2.101. Listing of subsidiaries and affiliates can be found in Supplement Number 4 to 15 CFR Part 744.

- c. Statement. Federal awards recipients and subrecipients, as well as their contractors and subcontractors, include the following required contract clause in applicable new, extended, or renewed contracts and subcontracts as per the provisions discussed above.

PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES

- (a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy, #405-143-1 Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services As used in this clause—
- (b) Prohibitions.
 - (1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.
 - (2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

- (i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - (ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - (iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
 - (iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.
- (c) Exceptions.
 - (1) This clause does not prohibit contractors from providing—
 - a. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
 - b. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
 - (2) By necessary implication and regulation, the prohibitions also do not apply to:
 - a. Covered telecommunications equipment or services that:
 - i. Are not used as a substantial or essential component of any system; and
 - ii. Are not used as critical technology of any system.
 - b. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.
- (d) Reporting requirement.
 - (1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.
 - (2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:
 - (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

- (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.
- (e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

12. **Domestic Preferences for Procurements**

- a. **Applicability:** This requirement of this section must be included in all subawards including all contracts and purchase orders for work or products under Federal award applies to all contracts and purchase orders for work or products using federal funds.
- b. **Standard.** As appropriate, and to the extent consistent with law, Non Federal Entities should, to the greatest extent practicable under a federal award, provide a preference for the purchase, acquisition, or use of goods, products or materials produced in the United States. This includes, but is not limited to, iron, aluminum, steel, cement, and other manufactured products. See 2 C.F.R. Part 200.322 and 2 C.F.R. Part 200, Appendix II, ¶ L
- c. **Statement.** The following provides the required Domestic Preferences for Procurements contracts clause that is incorporated herein by reference.

“Domestic Preference for Procurements

As appropriate, and to the extent consistent with law, the contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

For purposes of this clause:

- *Produced in the United States* means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- *Manufactured products* mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.”

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.

1. **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.”

2. **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 City of Concord, 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.”

3. **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.”

4. **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 with all applicable Federal law, regulations, executive orders, FEMA or applicable Federal policies, procedures, and directives.”

5. **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.”

6. **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.”

7. **FEMA Contract requirement regarding Prohibition on Contracting for Covered Telecommunications Equipment or Services – 2 CFR § 200.216 (FEMA Interim Policy #405-143-1 effective August 13, 2020).**

FEMA recipients and subrecipients and their contractors and subcontractors are required per 2 C.F.R. Part 200, Appendix II ¶ K to include a contract provision in all FEMA-funded contracts and subcontracts, including any purchase orders. To satisfy this requirement, the contract provision found in Number 11 above is incorporated by reference by the County of Hidalgo in all new, extended, or renewed contracts and subcontracts. Applicable County contractors and subcontractors shall also comply with the applicable law and requirements. (See Number 11 above).

8. **FEMA Contract requirement regarding Domestic Preferences for Procurements**

For purchases in support of FEMA declarations and awards issued on or after November 12, 2020, all FEMA recipients and subrecipients are required per 2 C.F.R. Part 200, Appendix II ¶ L to include in all contracts and purchase orders for work or products the contract provision included in number 12 above encouraging domestic preference for procurements.

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: _____

Printed Name and Title of Authorized Representative: _____

Signature of Authorized Representative: _____

Date: _____



APPENDIX I

FHWA 1273

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.



APPENDIX J

PROPOSER'S AFFIDAVIT

**EXHIBIT J
PROPOSER'S AFFIDAVIT**

**PROPOSER'S AFFIDAVIT OF NON-COLLUSION, NON-CONFLICT OF INTEREST, AND
ANTI-LOBBYING**

STATE OF TEXAS
COUNTY OF HIDALGO

Affiant, _____, 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: _____

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public

My commission expires: _____, 20____



APPENDIX L

DEFICIENCIES AND DEVIATIONS FORM

(This form must be signed)

1. DEVIATION(S) – Any deviations to the attached specifications shall be listed below, or on a separate sheet of paper, and attached to the bid response form identifying the section number, item number and a clearly defined explanation for the deviations.
2. It is the offeror's responsibility to submit a proposal that meets all mandatory specifications stated within. Because of the variations in manufacturer's construction, the offeror must compare their product bid with the required listed minimum specifications and identify any deviations.
3. Failure to properly identify deviations may render the offeror's proposal non-responsive and not capable of consideration for award.
4. Offeror should note that a descriptive brochure of the model bid may not be sufficient or acceptable as proper identification of deviations from the written specifications.

NO - Deviations: _____ YES - Deviations: _____

List any deviations your company is submitting below: (Use a separate page, if necessary)

Company Name

Print Name of Authorized Company Official

Signature of Authorized Company Official



APPENDIX M

REFERENCE FORM

REFERENCE FORM

Respondent's involvement with reference checks is not permitted. Only Hidalgo County Purchasing Department or authorized designees will conduct reference checks. Any deviation to this may result in rejection of your response.

Reference One

Client's Name: _____

Type of Organization: _____

Address: _____

Contact Person: _____ Title: _____

Telephone: _____ E-Mail: _____

Project Information:

Name of Project: _____

Scope of Work: _____

Contract Period: From _____ to _____

Cost: Projected \$ _____ Actual \$ _____

Timeframe (include unit measure) Projected _____ Actual _____

Status as of _____ (circle one): complete in progress canceled.
Date

Reference Two

Client's Name: _____

Type of Organization: _____

Address: _____

Contact Person: _____ Title: _____

Telephone: _____ E-Mail: _____

Project Information:

Name of Project: _____

Scope of Work: _____

Contract Period: From _____ to _____

Cost: Projected \$ _____ Actual \$ _____

Timeframe (include unit measure) Projected _____ Actual _____

Status as of _____ (circle one): complete in progress canceled.
Date

Reference Three

Client's Name: _____

Type of Organization: _____

Address: _____

Contact Person: _____ Title: _____

Telephone: _____ E-Mail: _____

Project Information:

Name of Project: _____

Scope of Work: _____

Contract Period: From _____ to _____

Cost: Projected \$ _____ Actual \$ _____

Timeframe (include unit measure) Projected _____ Actual _____

Status as of _____ (circle one): complete in progress canceled.
Date

Reference Four

Client's Name: _____

Type of Organization: _____

Address: _____

Contact Person: _____ Title: _____

Telephone: _____ E-Mail: _____

Project Information:

Name of Project: _____

Scope of Work: _____

Contract Period: From _____ to _____

Cost: Projected \$ _____ Actual \$ _____

Timeframe (include unit measure) Projected _____ Actual _____

Status as of _____ (circle one): complete in progress canceled.
Date



APPENDIX N

SHIPPING LABEL

SHIPPING LABEL

Below is a sample of how the response in an appropriate sized box or envelop should be submitted. Using this shipping label is optional, but preferred. Please cut out along the dotted line below, and affix to the outside of your response package on the lower right hand size. Ensure your company name and address is listed on the top left hand corner.

COMPANY NAME
COMPANY ADDRESS
CITY, STATE ZIP



HIDALGO COUNTY

**Sealed Submission for 2022 Pools of Professional
Services**

RFQ No.: 21-0788-02-23-ABV

Architectural Services

OPENING DATE: Wednesday, February 23, 2022

OPENING TIME: 2:00 PM

TO: Eduardo Belmarez, MBA, CPA

ATTN: **Alexandra B. Vela**

Hidalgo County Administration Building

Purchasing Department

2802 S. BUS. HWY 281

Edinburg, TX 78539



EXHIBIT B

CONTRACT RATES



ERO 2022 Professional Fee – Architectural

Principal	\$275/hr
Licensed Professional	250/hr
Project Manager	250/hr
Planning Manager	250/hr
Production Manager	225/hr
Architectural Associate	185/hr
Production	175/hr
Contract Administrator	165/hr
Graphic Designer	135/hr
Copy Writer	90/hr
Clerical	75/hr

ERO 2022 Professional Fee – Structural

Principal	\$275/hr
Structural Engineer	265/hr
Professional Engineer	255/hr
Engineer-in-Training	235/hr
Graduate Engineer	195/hr
Production	225/hr

office: 956-661-0400 | fax: 956-661-0401 | goERO.com
austin / central texas: 7500 Rialto Blvd., Bldg. 1, Ste. 250, Austin, TX 78735
el paso office: 7100 Westwind, Ste. 150, El Paso, TX 79912
houston office: 5444 Westheimer, Bldg. 1, Ste. 1000, Houston, TX 77056
rio grande valley office: 300 S. 8th St., McAllen, TX 78501



EXHIBIT C

CERTIFICATES OF INSURANCE



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/5/2022

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 Higginbotham Insurance Agency, Inc. 1400 McColi Rd. Ste 105 McAllen TX 78501	CONTACT NAME: Martha Guerrero PHONE (A/C, No, Ext): 956-688-3509 FAX (A/C, No): 956-687-1286 E-MAIL ADDRESS: mguerrero@higginbotham.net
INSURED GOERO International, LLC dba ERO Architects P. O. Box 720428 McAllen TX 78504	INSURER(S) AFFORDING COVERAGE INSURER A: Allied World Surplus Lines Insurance Company INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:

COVERAGES**CERTIFICATE NUMBER:** 1080064433**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
	COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☐ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC ☐ OTHER:						EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG \$ \$ \$ \$ \$ \$
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) \$ \$ \$ \$
	UMBRELLA LIAB ☐ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DED ☐ RETENTION \$						EACH OCCURRENCE AGGREGATE \$ \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ Y ☒ N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				PER STATUTE ☐ OTH-ER ☐ E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT \$ \$ \$
A	Professional Liability Claims-Made			03136158	11/15/2022	11/15/2023	Each Claim Aggregate Retention \$4,000,000 \$4,000,000 \$75,000

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

Project: Project No. 22-0688 - "On-Call Professional Architectural Services" - Pct.4.

Additional Named Insureds:
ERO International LLP dba ERO Architects
ERO Building Services, LLC**CERTIFICATE HOLDER****CANCELLATION**Hidalgo County
2802 S. Business Highway 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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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/5/2022

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 Higginbotham Insurance Agency, Inc. 1400 N McCall Rd, Ste 105 McAllen TX 78501	CONTACT NAME: Martha Guerrero PHONE (A/C, No, Ext): 956-668-3509 FAX (A/C, No): 956-687-1286 E-MAIL ADDRESS: mguerrero@higginbotham.net
INSURED GOERO International, LLC dba ERO Architects P. O. Box 720428 McAllen TX 78504	INSURER(S) AFFORDING COVERAGE INSURER A: Continental Casualty Company INSURER B: Texas Mutual Insurance Company INSURER C: INSURER D: INSURER E: INSURER F:

COVERAGES**CERTIFICATE NUMBER:** 144840757**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 ☐ PRO-JECT ☐ LOC OTHER:			7013596746	1/25/2022	1/25/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 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 \$
A	☐ AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY			7013596746	1/25/2022	1/25/2023	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 \$			7013596763	1/25/2022	1/25/2023	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N ☐	N/A	0001155533	3/11/2022	3/11/2023	☒ 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)

Project: Project No. 22-0688 - "On-Call Professional Architectural Services" - Pct.4.

Additional Named Insured:

ERO International, LLP dba ERO Architect

The General Liability Policy contains the following Endorsements:

Blanket Additional Insured and Liability Extension Enhancement: Pertains to Blanket Additional Insured of Written Contract, Primary Non-Contributory and Waiver of Subrogation under form SB146932F
See Attached...**CERTIFICATE HOLDER****CANCELLATION**Hidalgo County
2802 S. Business Highway 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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ADDITIONAL REMARKS SCHEDULE

Page 1 of 1

AGENCY Higginbotham Insurance Agency, Inc.		NAMED INSURED GOERO International, LLC dba ERO Architects P. O. Box 720428 McAllen TX 78504	
POLICY NUMBER		EFFECTIVE DATE:	
CARRIER	NAIC CODE		

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 **FORM TITLE:** CERTIFICATE OF LIABILITY INSURANCE

Blanket Additional Insured Endorsement with Products-Completed Operations Coverage & Blanket Waiver of Subrogation under form SB146968B

The Umbrella Policy contains the following Endorsement:

Commercial Umbrella Plus includes: Follow form over General Liability, and Employer Liability under form G-15057-C

The Workers Compensation contains the following Endorsement:

Blanket Texas Waiver of Our right to Recover from Others Endorsement form WC 420304B

BLANKET ADDITIONAL INSURED AND LIABILITY EXTENSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS LIABILITY COVERAGE FORM
BUSINESSOWNERS COMMON POLICY CONDITIONS

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I. BLANKET ADDITIONAL INSURED PROVISIONS**A. ADDITIONAL INSURED – BLANKET VENDORS**

Who Is An Insured is amended to include as an additional insured any person or organization (referred to below as vendor) with whom you agreed under a "written contract" to provide insurance, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:

1. The insurance afforded the vendor does not apply to:
 - a. "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
 - b. Any express warranty unauthorized by you;
 - c. Any physical or chemical change in the product made intentionally by the vendor;
 - d. Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
 - e. Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
 - f. Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
 - g. Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

- h. **"Bodily injury" or "property damage"** arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
- (1) The exceptions contained in Subparagraphs **d.** or **f.**; or
 - (2) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.
2. This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.
 3. This provision **2.** does not apply to any vendor included as an insured by an endorsement issued by us and made a part of this Policy.
 4. This provision **2.** does not apply if **"bodily injury" or "property damage"** included within the **"products-completed operations hazard"** is excluded either by the provisions of the Policy or by endorsement.

B. MISCELLANEOUS ADDITIONAL INSUREDS

1. **Who Is An Insured** is amended to include as an insured any person or organization (called additional insured) described in paragraphs **3.a.** through **3.j.** below whom you are required to add as an additional insured on this policy under a **"written contract."**
2. However, subject always to the terms and conditions of this policy, including the limits of insurance, we will not provide the additional insured with:
 - a. A higher limit of insurance than required by such **"written contract;"**
 - b. Coverage broader than required by such **"written contract"** and in no event greater than that described by the applicable paragraph a. through k. below; or
 - c. Coverage for **"bodily injury" or "property damage"** included within the **"products-completed operations hazard."** But this paragraph **c.** does not apply to the extent coverage for such liability is provided by paragraph **3.j.** below.

Any coverage granted by this endorsement shall apply only to the extent permitted by law.

3. Only the following persons or organizations can qualify as additional insureds under this endorsement:

a. Controlling Interest

Any persons or organizations with a controlling interest in you but only with respect to their liability arising out of:

- (1) such person or organization's financial control of you; or
- (2) Premises such person or organization owns, maintains or controls while you lease or occupy these premises;

provided that the coverage granted to such additional insureds does not apply to structural alterations, new construction or demolition operations performed by or for such additional insured.

b. Co-owner of Insured Premises

A co-owner of a premises co-owned by you and covered under this insurance but only with respect to the co-owners liability for **"bodily injury," "property damage" or "personal and advertising injury"** as co-owner of such premises.

c. Grantor of Franchise

Any person or organization that has granted a franchise to you, but only with respect to such person or organization's liability for **"bodily injury," "property damage," or "personal and advertising injury"** as grantor of a franchise to you.



d. Lessor of Equipment

Any person or organization from whom you lease equipment, but only with respect to liability for **"bodily injury," "property damage" or "personal and advertising injury"** caused in whole or in part by your maintenance, operation or use of such equipment, provided that the **"occurrence"** giving rise to such **"bodily injury" or "property damage"** or the offense giving rise to such **"personal and advertising injury"** takes place prior to the termination of such lease.

e. Lessor of Land

Any person or organization from whom you lease land, but only with respect to liability for **"bodily injury," "property damage" or "personal and advertising injury"** arising out of the ownership, maintenance or use of that specific part of the land leased to you, provided that the **"occurrence"** giving rise to such **"bodily injury" or "property damage"** or the offense giving rise to such **"personal and advertising injury,"** takes place prior to the termination of such lease. The insurance hereby afforded to the additional insured does not apply to structural alterations, new construction or demolition operations performed by, on behalf of or for such additional insured.

f. Lessor of Premises

An owner or lessor of premises leased to you, or such owner or lessor's real estate manager, but only with respect to liability for **"bodily injury," "property damage" or "personal and advertising injury"** arising out of the ownership, maintenance or use of such part of the premises leased to you, and provided that the **"occurrence"** giving rise to such **"bodily injury" or "property damage"** or the offense giving rise to such **"personal and advertising injury,"** takes place prior to the termination of such lease. The insurance hereby afforded to the additional insured does not apply to structural alterations, new construction or demolition operations performed by, on behalf of or for such additional insured.

g. Mortgagee, Assignee or Receiver

A mortgagee, assignee or receiver of premises but only with respect to such mortgagee, assignee, or receiver's liability for **"bodily injury," "property damage" or "personal and advertising injury"** arising out of the ownership, maintenance, or use of a premises by you. This insurance does not apply to structural alterations, new construction or demolition operations performed by, on behalf of or for such additional insured.

h. State or Political Subdivisions

A state or government agency or subdivision or political subdivision that has issued a permit or authorization, but only with respect to such government agency or subdivision or political subdivision's liability for **"bodily injury," "property damage" or "personal and advertising injury"** arising out of:

- (1) The following hazards in connection with premises you own, rent, or control and to which this insurance applies:
 - (a) The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoistaway openings, sidewalk vaults, street banners, or decorations and similar exposures; or
 - (b) The construction, erection, or removal of elevators; or
 - (c) The ownership, maintenance or use of any elevators covered by this insurance; or
- (2) The permitted or authorized operations performed by you or on your behalf. But the coverage granted by this paragraph does not apply to:
 - (a) **"Bodily injury," "property damage" or "personal and advertising injury"** arising out of operations performed for the state or government agency or subdivision or political subdivision; or
 - (b) **"Bodily injury" or "property damage"** included within the **"products-completed operations hazard."**

With respect to this provision's requirement that additional insured status must be requested under a **"written contract,"** we will treat as a **"written contract"** any governmental permit that requires you to add the governmental entity as an additional insured.

i. Trade Show Event Lessor

With respect to your participation in a trade show event as an exhibitor, presenter or displayer, any person or organization whom you are required to include as an additional insured, but only with respect to such person or organization's liability for "**bodily injury**," "**property damage**," or "**personal and advertising injury**" caused by:

- a. Your acts or omissions; or
- b. Acts or omissions of those acting on your behalf;

in the performance of your ongoing operations at the trade show premises during the trade show event.

j. Other Person or Organization

Any person or organization who is not an additional insured under paragraphs a. through i. above. Such additional insured is an insured solely for "**bodily injury**," "**property damage**" or "**personal and advertising injury**" for which such additional insured is liable because of your acts or omissions.

The coverage granted by this paragraph does not apply to any person or organization:

- (1) For "**bodily injury**," "**property damage**," or "**personal and advertising injury**" arising out of the rendering or failure to render any professional services;
- (2) For "**bodily injury**" or "**property damage**" included in the "**products-completed operations hazard**." But this provision (2) does not apply to such "**bodily injury**" or "**property damage**" if:
 - (a) It is entirely due to your negligence and specifically results from your work for the additional insured which is the subject to the "**written contract**"; and
 - (b) The "**written contract**" requires you to make the person or organization an additional insured for such "**bodily injury**" or "**property damage**"; or
- (3) Who is afforded additional insured coverage under another endorsement attached to this policy.

C. ADDITIONAL PROVISIONS PERTINENT TO ADDITIONAL INSURED COVERAGE

1. With respect only to additional insured coverage provided under paragraphs A. and B. above:

- a. The **BUSINESSOWNERS COMMON POLICY CONDITIONS** are amended to add the following to the Condition entitled **Other Insurance**:

This insurance is excess of all other insurance available to an additional insured whether primary, excess, contingent or on any other basis. However, if a "**written contract**" requires that this insurance be either primary or primary and noncontributing, then this insurance will be primary and non-contributory relative solely to insurance on which the additional insured is a named insured.

- b. Under **Liability and Medical Expense Definitions**, the following definition is added:

"**Written contract**" means a written contract or agreement that requires you to make a person or organization an additional insured on this policy, provided the contract or agreement:

- (1) Is currently in effect or becomes effective during the term of this policy; and
- (2) Was executed prior to:

- (a) The "**bodily injury**" or "**property damage**;" or
 - (b) The offense that caused the "**personal and advertising injury**";
- for which the additional insured seeks coverage.

2. With respect to any additional insured added by this endorsement or by any other endorsement attached to this Coverage Part, the section entitled **Who Is An Insured** is amended to make the following natural persons insureds.

If the additional insured is:

- a. An individual, then his or her spouse is an insured;



- b. A partnership or joint venture, then its partners, members and their spouses are insureds;
- c. A limited liability company, then its members and managers are insureds;
- d. An organization other than a partnership, joint venture or limited liability company, then its executive officers, directors and shareholders are insureds; or
- e. Any type of entity, then its employees are insureds;

but only with respect to locations and operations covered by the additional insured endorsement's provisions, and only with respect to their respective roles within their organizations. Furthermore, employees of additional insureds are not insureds with respect to liability arising out of:

- (1) **"Bodily injury"** or **"personal and advertising injury"** to any fellow employee or to any natural person listed in paragraphs a. through d. above;
- (2) **"Property damage"** to property owned, occupied or used by their employer or by any fellow employee; or
- (3) Providing or failing to provide professional health care services.

II. LIABILITY EXTENSION COVERAGES

It is understood and agreed that this endorsement amends the **Businessowners Liability Coverage Form**. If any other endorsement attached to this policy amends any provision also amended by this endorsement, then that other endorsement controls with respect to such provision, and the changes made by this endorsement to such provision do not apply.

A. Bodily injury – Expanded Definition

Under **Liability and Medical Expenses Definitions**, the definition of **"Bodily injury"** is deleted and replaced by the following:

"Bodily injury" means physical injury, sickness or disease sustained by a person, including death, humiliation, shock, mental anguish or mental injury by that person at any time which results as a consequence of the physical injury, sickness or disease.

B. Broad Knowledge of Occurrence

Under **Businessowners Liability Conditions**, the Condition entitled **Duties In The Event of Occurrence, Offense, Claim or Suit** is amended to add the following:

Paragraphs a. and b. above apply to you or to any additional insured only when such **"occurrence,"** offense, claim or **"suit"** is known to:

- (1) You or any additional insured that is an individual;
- (2) Any partner, if you or an additional insured is a partnership;
- (3) Any manager, if you or an additional insured is a limited liability company;
- (4) Any **"executive officer"** or insurance manager, if you or an additional insured is a corporation;
- (5) Any trustee, if you or an additional insured is a trust; or
- (6) Any elected or appointed official, if you or an additional insured is a political subdivision or public entity.

This paragraph applies separately to you and any additional insured.

C. Estates, Legal Representatives and Spouses

The estates, heirs, legal representatives and spouses of any natural person insured shall also be insured under this policy; provided, however, coverage is afforded to such estates, heirs, legal representatives and spouses only for claims arising solely out of their capacity as such and, in the case of a spouse, where such claim seeks damages from marital common property, jointly held property, or property transferred from such natural person insured to such spouse. No coverage is provided for any act, error or omission of an estate, heir, legal representative or spouse outside the scope of such person's capacity as such, provided however that the spouse of a natural person Named Insured and the spouses of members or partners of joint venture or partnership Named Insureds are insureds with respect to such spouses' acts, errors or omissions in the conduct of the Named Insured's business.

D. Fellow Employee First Aid Coverage

In the section entitled **Who Is An Insured**, paragraph 2.a.1. is amended to add the following:

The limitations described in subparagraphs 2.a.1.(a), (b) and (c) do not apply to your "**employees**" for "**bodily injury**" that results from providing cardiopulmonary resuscitation or other first aid services to a co-"**employee**" or "**volunteer worker**" that becomes necessary while your "**employee**" is performing duties in the conduct of your business. Your "**employees**" are hereby insureds for such services. But the insured status conferred by this provision does not apply to "**employees**" whose duties in your business are to provide professional health care services or health examinations.

E. Legal Liability – Damage To Premises

1. Under **B. Exclusions, 1. Applicable to Business Liability Coverage**, Exclusion **k. Damage To Property**, is replaced by the following:

k. Damage To Property

"**Property damage**" to:

1. Property you own, rent or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
2. Premises you sell, give away or abandon, if the "**property damage**" arises out of any part of those premises;
3. Property loaned to you;
4. Personal property in the care, custody or control of the insured;
5. That particular part of any real property on which you or any contractors or subcontractors working directly or indirectly in your behalf are performing operations, if the "**property damage**" arises out of those operations; or
6. That particular part of any property that must be restored, repaired or replaced because "**your work**" was incorrectly performed on it.

Paragraph 2 of this exclusion does not apply if the premises are "**your work**" and were never occupied, rented or held for rental by you.

Paragraphs 1, 3, and 4, of this exclusion do not apply to "**property damage**" (other than damage by fire or explosion) to premises:

- (1) rented to you;
- (2) temporarily occupied by you with the permission of the owner, or
- (3) to the contents of premises rented to you for a period of 7 or fewer consecutive days.

A separate limit of insurance applies to Damage To Premises Rented To You as described in Section D – Liability and Medical Expenses Limits of Insurance.

Paragraphs 3, 4, 5, and 6 of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph 6 of this exclusion does not apply to "**property damage**" included in the "**products-completed operations hazard**."

2. Under **B. Exclusions, 1. Applicable to Business Liability Coverage**, the following paragraph is added, and replaces the similar paragraph, if any, beneath paragraph (14) of the exclusion entitled **Personal and Advertising Injury**:

Exclusions **c, d, e, f, g, h, i, k, l, m, n, and o**, do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner or to the contents of premises rented to you for a period of 7 or fewer consecutive days. A separate limit of insurance applies to this coverage as described in **Section D. Liability And Medical Expenses Limits Of Insurance**.



3. The first Paragraph under item **5. Damage To Premises Rented To You Limit** of the section entitled **Liability And Medical Expenses Limits Of Insurance** is replaced by the following:

The most we will pay under Business Liability for damages because of "**property damage**" to any one premises, while rented to you or temporarily occupied by you with the permission of the owner, including contents of such premises rented to you for a period of 7 or fewer consecutive days, is the Damage to Premises Rented to You Limit. The Damage to Premises Rented to You Limit is the greater of:

- a. \$1,000,000; or
- b. The Damage to Premises Rented to You Limit shown in the Declarations.

F. Personal and Advertising Injury – Discrimination or Humiliation

1. Under **Liability and Medical Expenses Definitions**, the definition of "**personal and advertising injury**" is amended to add the following:

h. Discrimination or humiliation that results in injury to the feelings or reputation of a natural person, but only if such discrimination or humiliation is:

(1) Not done intentionally by or at the direction of:

(a) The insured; or

(b) Any "**executive officer**," director, stockholder, partner, member or manager (if you are a limited liability company) of the insured; and

(2) Not directly or indirectly related to the employment, prospective employment, past employment or termination of employment of any person or person by any insured.

2. Under **B. Exclusions, 1. Applicable to Business Liability Coverage**, the exclusion entitled **Personal and Advertising Injury** is amended to add the following additional exclusions:

(15) Discrimination Relating to Room, Dwelling or Premises

Caused by discrimination directly or indirectly related to the sale, rental, lease or sub-lease or prospective sale, rental, lease or sub-lease of any room, dwelling or premises by or at the direction of any insured.

(16) Employment Related Discrimination

Discrimination or humiliation directly or indirectly related to the employment, prospective employment, past employment or termination of employment of any person by any insured.

(17) Fines or Penalties

Fines or penalties levied or imposed by a governmental entity because of discrimination.

3. This provision (**Personal and Advertising Injury – Discrimination or Humiliation**) does not apply if **Personal and Advertising Injury** Liability is excluded either by the provisions of the Policy or by endorsement.

G. Personal and Advertising Injury - Broadened Eviction

Under **Liability and Medical Expenses Definitions**, the definition of "**Personal and advertising injury**" is amended to delete Paragraph c. and replace it with the following:

- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room dwelling or premises that a person or organization occupies committed by or on behalf of its owner, landlord or lessor.

H. Waiver of Subrogation – Blanket

We waive any right of recovery we may have against:

- a. Any person or organization with whom you have a written contract that requires such a waiver.

All other terms and conditions of the Policy remain unchanged.

IMPORTANT: THIS ENDORSEMENT CONTAINS DUTIES THAT APPLY TO THE ADDITIONAL INSURED IN THE EVENT OF OCCURRENCE, OFFENSE, CLAIM OR SUIT. SEE PARAGRAPH C., OF THIS ENDORSEMENT FOR THESE DUTIES.

**BLANKET ADDITIONAL INSURED ENDORSEMENT
WITH PRODUCTS-COMPLETED OPERATIONS COVERAGE AND
BLANKET WAIVER OF SUBROGATION**

Architects, Engineers and Surveyors

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS LIABILITY COVERAGE FORM
BUSINESSOWNERS COMMON POLICY CONDITIONS

- A. Who Is An Insured** is amended to include as an insured any person or organization whom you are required to add as an additional insured on this policy under a written contract or written agreement; but the written contract or written agreement must be:
1. Currently in effect or becoming effective during the term of this policy; and
 2. Executed prior to the:
 - a. **"Bodily injury"** or **"property damage"**; or
 - b. Offense that caused the **"personal and advertising injury"**;
for which the additional insured seeks coverage
- B. The insurance provided to the additional insured is limited as follows:**
1. The person or organization is an additional insured only with respect to liability for **"bodily injury," "property damage"** or **"personal and advertising injury"** caused in whole or in part by:
 - a. Your acts or omissions; or
 - b. The acts or omissions of those acting on your behalf,
in the performance of your ongoing operations specified in the written contract or written agreement; or
 - c. **"Your work"** that is specified in the written contract or written agreement, but only for **"bodily injury"** or **"property damage"** included in the **"products-completed operations hazard,"** and only if:
 - (1) The written contract or written agreement requires you to provide the additional insured such coverage; and
 - (2) This Coverage Part provides such coverage.
 2. The Limits of Insurance applicable to the additional insured are those specified in the written contract or written agreement or in the Declarations of this policy, whichever is less. These Limits of Insurance are inclusive of, and not in addition to, the Limits of Insurance shown in the Declarations.
 3. The insurance provided to the additional insured does not apply to **"bodily injury," "property damage"** or **"personal and advertising injury"** arising out of an architect's, engineer's, or surveyor's rendering of or failure to render any professional services including:
 - a. The preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications by any architect, engineer or surveyor performing services on a project of which you serve as construction manager; or
 - b. Inspection, supervision, quality control, engineering or architectural services done by you on a project of which you serve as construction manager.
 4. The insurance provided to the additional insured does not apply to **"bodily injury," "property damage"** or **"personal and advertising injury"** arising out of construction or demolition work while you are acting as a construction or demolition contractor.



C. Under Businessowners Liability Conditions, the condition entitled Duties In The Event of Occurrence, Offense, Claim or Suit is amended to add the following:

An additional insured under this endorsement will as soon as practicable:

1. Give written notice of an occurrence or an offense to us which may result in a claim or "suit" under this insurance;
2. Tender the defense and indemnity of any claim or "suit" to us for a loss we cover under this Coverage Part;
3. Except as provided for in paragraph D.2. below:
 - a. Tender the defense and indemnity of any claim or "suit" to any other insurer which also has insurance for a loss we cover under this Coverage Part; and
 - b. Agree to make available any other insurance which the additional insured has for a loss we cover under this Coverage Part.

We have no duty to defend or indemnify an additional insured under this endorsement until we receive written notice of a claim or "suit" from the additional insured.

D. With respect only to the insurance provided by this endorsement, the condition entitled Other Insurance of the BUSINESSOWNERS COMMON POLICY CONDITIONS is amended to delete paragraphs 2. and 3. and replace them with the following:

2. This insurance is excess over any other insurance available to the additional insured, whether primary, excess, contingent or on any other basis, But if required by the written contract or written agreement, this insurance will be primary and noncontributory relative to insurance on which the additional insured is a Named Insured.
3. When this insurance is excess, we will have no duty under **Business Liability** insurance to defend the additional insured against any "suit" if any other insurer has a duty to defend the additional insured against that "suit" If no other insurer defends, we will undertake to do so, but we will be entitled to the additional insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (b) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

E. Additional Insured – Extended Coverage

When an additional insured is added by this or any other endorsement attached to this Coverage Part, the section entitled **Who Is An Insured** is amended to make the following natural persons insureds:

If the additional insured is:

1. An individual, then his or her spouse is an insured;
2. A partnership or joint venture, then its partners, members and their spouses are insureds;
3. A limited liability company, then its members and managers are insureds;
4. An organization other than a partnership, joint venture or limited liability company, then its executive officers, directors and shareholders are insureds; or
5. Any type of entity, then its employees are insureds;

but only with respect to locations and operations covered by the additional insured endorsement's provisions, and only with respect to their respective roles within their organizations. Furthermore, employees of additional insureds are not insureds with respect to liability arising out of:

- (1) "Bodily injury" or "personal and advertising injury" to any fellow employee or to any natural person listed in paragraphs 1. through 4. above;

- (2) **"Property damage"** to property owned, occupied or used by their employer or by any fellow employee; or
- (3) Providing or failing to provide professional health care services.

F. The condition entitled **Transfer of Rights of Recovery Against Others to Us** of the **BUSINESSOWNERS COMMON POLICY CONDITIONS** is amended to deleted paragraph 2. and replace it with the following:

- 2. We waive any right of recovery we may have against any person or organization with whom you have agreed to waive such right of recovery in a written contract or agreement because of payments we make for injury or damage arising out of your ongoing operations or **"your work"** done under a contract with that person or organization and included within the **"products-completed operations hazard."**

All other terms and conditions of the Policy remain unchanged.

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COMMERCIAL UMBRELLA PLUS COVERAGE PART

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured identified under **SECTION II – WHO IS AN INSURED** of this policy.

The word "insured" means any person or organization qualifying as such under **SECTION II – WHO IS AN INSURED**.

The words "we," "us" and "our" refer to the Company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to **SECTION V – DEFINITIONS**.

SECTION I – COVERAGES

1. Insuring Agreement

We will pay on behalf of the insured those sums in excess of "scheduled underlying insurance," "unscheduled underlying insurance" or the "retained limit" that the insured becomes legally obligated to pay as "ultimate net loss" because of "bodily injury," "property damage" or "personal and advertising injury" to which this insurance applies.

a. This insurance applies to "bodily injury" and "property damage" only if:

- (1) The "bodily injury" or "property damage" is caused by an "incident" anywhere in the world;
- (2) The "bodily injury" or "property damage" occurs during the policy period; and
- (3) With respect to "bodily injury" or "property damage" that continues, changes or resumes so as to occur during more than one policy period, both of the following conditions are met:
 - (i) Prior to the policy period, no "authorized insured" knew that the "bodily injury" or "property damage" had occurred, in whole or in part; and
 - (ii) During the policy period, an "authorized insured" first knew that the "bodily injury" or "property damage" had occurred, in whole or in part.

For purposes of this Paragraph (1) a.(3) only, if (a) "bodily injury" or "property damage" that occurs during this policy period does not continue, change or resume after the

termination of this policy period; and (b) no "authorized insured" first knows of this "bodily injury" or "property damage" until after the termination of this policy period, then such first knowledge will be deemed to be during this policy period.

- b. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any "authorized insured" includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.
- c. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any "authorized insured":
 - (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
 - (2) Receives a written or verbal demand, claim or "suit" for damages because of the "bodily injury" or "property damage"; or
 - (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.
- d. This insurance applies to "personal and advertising injury" caused by an "incident" committed anywhere in the world during the policy period.

If we are prevented by law, statute or otherwise from paying on behalf of the insured, then we will indemnify the insured for those sums that the insured is legally obligated to pay as "ultimate net loss" because of "bodily injury," "property damage" or "personal and advertising injury" to which this insurance applies.

2. Exclusions

This Insurance does not apply to:

a. Expected or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property. This exclusion does not apply to Employers Liability claims for "bodily injury" covered by "scheduled underlying insurance."

b. Contractual Liability

"Bodily injury," "property damage" or "personal and advertising injury" for which the insured is obligated to pay damages by reason of the

assumption of liability in a contract or agreement. This exclusion does not apply to liability for "ultimate net loss":

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Because of "bodily injury" or "property damage" assumed in a contract or agreement that is an "insured contract," provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement.

c. "Personal and advertising injury" Exclusions

"Personal and advertising injury":

- (1) Caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury";
- (2) Arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity;
- (3) Arising out of oral or written publication of material whose first publication took place before the beginning of the policy period;
- (4) Arising out of a criminal act committed by or at the direction of the insured;
- (5) Arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement";
- (6) Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement";
- (7) Arising out of the wrong description of the price of goods, products or services stated in your "advertisement";
- (8) Arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights;

However, this exclusion does not apply to infringement, in your "advertisement," of copyright, trade dress or slogan;

- (9) Committed by an insured whose business is:
 - (a) Advertising, broadcasting, publishing or telecasting;
 - (b) Designing or determining content of websites for others; or
 - (c) An Internet search, access, content or service provider;

However, this exclusion does not apply to paragraphs 10. a., b. and c. of "personal and advertising injury" under **SECTION V – DEFINITIONS**;

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

- (10) Arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control; or
- (11) Arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

d. Workers' Compensation and Similar Laws

Any obligation of the insured under a:

- (1) Workers' compensation;
- (2) Disability benefits; or
- (3) Unemployment compensation law or any similar law.

e. Employers Liability

"Bodily injury" to:

- (1) An employee of the insured arising out of and in the course of:
 - (a) Employment by the insured; or
 - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that employee as a consequence of (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply:

- (1) To liability assumed by the insured under an "insured contract"; or
- (2) Only to the extent that coverage is provided by "scheduled underlying insurance."

f. Pollution

- (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":
- (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured;
 - (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
 - (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for any insured or any person or organization for whom you may be legally responsible; or
 - (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations:
 - (i) If the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor; or
 - (ii) If the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants."
 - (e) That are, or that are contained in property that is:
 - (i) Being transported or towed by, or handled for movement into, onto or from a covered "automobile";
 - (ii) Otherwise in the course of transit;
 - (iii) Being stored, disposed of, treated or processed in or upon the covered "automobile";
 - (f) Before the "pollutants" or property in which the "pollutants" are contained are moved from the place where they are accepted by the insured for movement into or onto the covered "automobile"; or
 - (g) After the "pollutants" or property in which the "pollutants" are contained are moved

from the covered "automobile" to the place where they are finally:

- (i) Delivered;
- (ii) Disposed of; or
- (iii) Abandoned

by the insured.

Subparagraphs (a) and (d)(i) do not apply to "bodily injury" or "property damage" arising out of heat, smoke or fumes from a hostile fire.

As used in this exclusion, a hostile fire means one which becomes uncontrollable or breaks out from where it was intended to be.

Subparagraph (d)(i) does not apply to "bodily injury" or "property damage" arising out of the escape of fuels, lubricants, or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor.

Subparagraph (e)(iii) does not apply to fuels, lubricants, fluids, exhaust, gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the covered "automobile" or its parts if the "pollutants" escape or are discharged, dispersed or released directly from an "automobile" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants."

Subparagraphs (f) and (g) do not apply if the "pollutants" or property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of a covered "automobile" and the discharge, dispersal, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.

- (2) "Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

- (3) Any loss, cost or expense arising out of any:
- (a) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants"; or
 - (b) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of "pollutants."

g. Watercraft

"Bodily injury" or "property damage" arising out of the:

- (1) Ownership;
- (2) Maintenance;
- (3) Use; or
- (4) Entrustment to others

of a "watercraft" owned or operated by or rented or loaned to an insured. Use includes operation or "loading or unloading."

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training, or monitoring of others by that insured, if the "incident" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A "watercraft" while ashore on premises you own or rent;
- (2) A "watercraft" you do not own that is:
 - (a) Less than 55 feet long; and
 - (b) Not being used to carry persons or property for a charge; or
- (3) Liability assumed under an "insured contract" for the ownership, maintenance or use of "watercraft."

h. Aircraft

The ownership, maintenance, operation, use, entrustment to others or "loading or unloading" of any "aircraft":

- (1) Owned by an insured; or
- (2) Chartered without crew by an insured or on an insured's behalf.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training, or monitoring of others by that insured, if the "incident" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any "aircraft" that is owned or operated by or rented or loaned to any insured.

i. War

Any liability arising out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

j. Damage to Property

"Property damage" to:

- (1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.



Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard."

k. Damage to your Product

"Property damage" to "your product" arising out of it or any part of it.

l. Damage to you Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard."

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

m. Damage to Impaired Property or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

n. Recall of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

o. E.R.I.S.A.

Liability for alleged or actual violations of the Employees Retirement Income Security Act of 1974 or any amendments or additions thereto.

p. Directors and Officers

Liability for a wrongful act, error, omission or breach of duty by an insured in the performance of the office of director or officer of an organization.

q. Uninsured/Underinsured Motorist and Similar Laws

Liability imposed on the insured under an uninsured/underinsured motorist law, a personal injury protection law, a reparations benefit law or other similar law.

r. Electronic Data

Any liability arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data."

s. Nonemployment Related Discrimination

To any alleged or actual nonemployment related discrimination committed intentionally against a person.

t. Asbestos

- (1) "Bodily Injury," "property damage" or "personal and advertising injury" arising out of the actual, alleged or threatened exposure at any time to "asbestos"; or
- (2) Any loss, cost or expense that may be awarded or incurred:
 - (a) By reason of a claim or "suit" for any such injury or damage; or
 - (b) In complying with a governmental direction or request to test for, monitor, clean up, remove, contain or dispose of "asbestos."

u. Fungi and Microbes

- (1) "Bodily injury," "property damage" or "personal and advertising injury," which would not have occurred, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of any "fungi or microbes"; or
- (2) Any loss, cost, or expense arising out of the testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating, or disposing of, or in any way responding to or assessing the effects of "fungi or microbes" by any insured or by anyone else.

This exclusion applies regardless of any other cause or event that contributes concurrently or in any sequence to such injury or damage, loss, cost or expense.

v. Silica

- (1) "Bodily injury" arising in whole or in part out of the actual, alleged or threatened respiration or ingestion at any time of "silica," or

- (2) "Personal and advertising injury" or "property damage" arising in whole or in part out of the actual, alleged or threatened presence of "silica."

w. Named Insured vs. Named Insured

Any liability arising out of claims or "suits" by a named insured against another named insured.

x. Employment Related Practices

Any liability arising out of:

- (1) A refusal to employ;
- (2) Termination of employment;
- (3) Demotion, evaluation, reassignment, discipline;
- (4) Coercion, defamation, discrimination, harassment or humiliation; or

any other employment related practices, policies, acts or omissions.

y. Terrorism Limitation

"Bodily injury" or "property damage" arising out of any act of terrorism, unless, and then only to the extent that coverage is provided by "scheduled underlying insurance."

z. Liquor Liability Limitation

"Bodily injury" or "property damage" for which an insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages;

unless, and then only to the extent that coverage is provided by "scheduled underlying insurance."

aa. Auto and Mobile Equipment Limitation

Any liability arising out of the:

- (1) Ownership;
- (2) Maintenance;
- (3) Use; or
- (4) Entrustment to others

of an "automobile" or "mobile equipment" owned or operated by or rented or loaned to an insured unless, and then only to the extent that coverage is provided by "scheduled underlying insurance."

To the extent that this insurance applies to an "automobile" or "mobile equipment" it is further subject to the pollution exclusion, exclusion f. of this policy.

Use includes operation or "loading or unloading."

bb. Do Not Call

Any liability arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- (3) Any statute, ordinance or regulation, other than the TCPA or the CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

SECTION II – WHO IS AN INSURED

1. Named Insured means any individual or organization stated in the Declarations of this policy and if you are designated in the Declarations of this policy as:

- a. An individual, you and your spouse, but only with respect to the conduct of a business of which you are the sole owner.

If you are designated in the Declarations of this policy as an individual, this policy shall not apply to liability arising out of your domestic or non-business activities. This does not apply to the ownership, maintenance, use or "loading or unloading" of any "automobile," or to the Personal Umbrella Liability Coverage Part.

- b. A partnership or joint venture, you and your members, your partners, and their spouses, but only with respect to the conduct of your business.

No person or organization is an insured with respect to the conduct of any current or past partnership or joint venture that is not shown as a Named Insured in the Declarations.

- c. An organization other than a partnership or joint venture, you and your executive officers and directors, but only with respect to their duties as your officers or directors. Your stockholders are also named insureds, but only with respect to their liability as stockholders.

- d. A limited liability company, you and your members, but only with respect to the conduct of your business. Your managers are also named insureds but only with respect to their duties as your managers.



No person or organization is an insured with respect to the conduct of any current or past limited liability company that is not shown as a Named Insured in the Declarations.

- e. A corporation or organization, other than partnerships, joint ventures or limited liability companies, that you form, acquire or gain control of during the policy period, but only with respect to "bodily injury," "property damage" or "personal and advertising injury" taking place after you form, acquire or gain control of such corporation or organization.

2. Insured means the Named Insured and:

- a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your employees, other than your executive officers and directors (if you are an organization other than a partnership, joint venture or limited liability company) or your members (if you are a limited liability company) but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these employees or "volunteer workers" is an insured for:

(1) "Bodily injury" or "personal and advertising injury":

- (a) To you; to your partners or members (if you are a partnership or joint venture) to your members (if you are a limited liability company) or to a co-employee while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
- (b) To the spouse, child, parent, brother or sister of that co-employee or "volunteer worker" as a consequence of Paragraph (1)(a) above;
- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or
- (d) Arising out of his or her providing or failing to provide professional health care services.

(2) "Property damage" to property:

- (a) Owned, occupied or used by;
- (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by

you, any of your employees, "volunteer workers" any partner or member (if you are a partnership or joint venture) or any member (if you are a limited liability company).

- b. A person or organization for whom you are required, by virtue of a written contract entered into prior to the "bodily injury," "property damage" or "personal and advertising injury" occurring or being committed, to provide the insurance that is afforded by this policy. This insurance applies only with respect to operations by you or on your behalf or to facilities you own or use, but only to the extent of the limits of insurance required by such contract, not to exceed the limits of insurance in this policy.

- c. Any other persons or organizations included as an insured under the provisions of the "scheduled underlying insurance" shown in the Declarations of this policy and then only for the same coverage, except for limits of insurance, afforded under such "scheduled underlying insurance."

However, If a blanket additional insured endorsement is attached to the general liability "scheduled underlying insurance" pursuant to a written or oral contract or agreement between you and another person or organization (called additional insured), this insurance is excess over such insurance provided to the additional insured subject to the following conditions:

- (1) If the limits specified in the written contract or agreement are less than the limits provided by the "scheduled underlying insurance," then no coverage is provided to the additional insured under this policy.
- (2) If the limits specified in the written contract or agreement are greater than the limits provided by the "scheduled underlying insurance," then this insurance is excess over the insurance provided by the "scheduled underlying insurance." The limits of insurance for the additional insured are the lesser of:
 - (i) The limits specified in the written contract; or
 - (ii) The limits of the "scheduled underlying insurance" plus the limits of this policy.

SECTION III – LIMITS OF INSURANCE

- 1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- a. Insureds;
- b. Claims made or "suits" brought;
- c. Persons or organizations making claims or bringing "suits."

- d. "Automobiles," "aircraft" or "watercraft" to which this policy applies; or
 - e. Coverages under which loss is insured in this policy.
2. The limit of insurance shown in the Declarations as the Aggregate Limit is the most we will pay for the sum of all "ultimate net loss," to which this insurance applies and applies separately to all "ultimate net loss":
- a. Included in the "products-completed operations hazard";
 - b. To which, and in the same manner, an aggregate limit applies under "scheduled underlying insurance" other than "ultimate net loss" included in the "products-completed operations hazard"; and
 - c. To which no "scheduled underlying insurance" applies.

The Aggregate Limit does not apply to "ultimate net loss" for which no aggregate limit applies in the "scheduled underlying insurance."

3. Subject to 2. above, the limit of insurance shown in the Declarations as the Each Incident limit is the most we will pay for the sum of all "ultimate net loss" to which this insurance applies arising out of any one "incident."
4. In the event of reduction or exhaustion of the aggregate limits of insurance under "scheduled underlying insurance" solely by reason of payments of a combination of covered:
- a. Expenses;
 - b. Settlements; or
 - c. Judgments

paid thereunder as a result of "bodily injury," property damage" or "personal and advertising injury" taking place during this policy period, this policy shall, subject to this limit of insurance provision and to the remaining terms and provisions and conditions of this policy:

- a. Apply in excess of such reduction of "scheduled underlying insurance"; or
- b. Apply in place of the exhausted amount of "scheduled underlying insurance."

Nothing in a. or b. above shall serve to increase the limits of insurance shown in the Declarations.

5. The limits of this policy shall apply separately to:
- a. Each consecutive annual period; and
 - b. Remaining periods of less than 12 months;
- starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less

than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the limits of insurance.

SECTION IV – CONDITIONS

1. Financial Impairment

Bankruptcy, rehabilitation, receivership, liquidation or other financial impairment of you or an "underlying insurer" shall neither relieve nor increase any of our obligations under this policy.

In the event there is diminished recovery or no recovery available to you as a result of such financial impairment of an insurer providing "scheduled underlying insurance," the coverage under this policy shall apply only in excess of the limits of insurance stated in the "scheduled underlying insurance." Under no circumstances shall we be required to drop down and replace the limits of insurance, or assume the obligations of a financially impaired insurer.

2. Duties of the Insured

- a. In the event of an "incident" which has not resulted in a claim or suit.

Whenever you have information of an "incident" which involves injuries or damages likely to involve this policy, written notice shall be given by or for you to us or to our authorized agent as soon as practicable. The notice shall contain:

- (1) Particular information sufficient to identify the insured;
- (2) Such information as can be reasonably obtained with respect to time, place and circumstances of the occurrence or offense; and
- (3) Names and addresses of the insured and of available witnesses.

- b. In the Event of Claims or Suit

You shall provide us with written notice as soon as practicable whenever:

- (1) A claim is made or "suit" is brought against you;
- (2) You receive notice that a right to bring claim or "suit" against you will be asserted; or
- (3) You obtain information that the obligation of "underlying insurers" to:
 - (a) Investigate;
 - (b) Defend;
 - (c) Pay on behalf of; or
 - (d) Indemnifyyou has ceased.



Every demand, notice, summons, amended complaint or other process received by you or your representative shall be forwarded with each notice.

3. Legal Action Against Us

No legal action shall be brought against us unless you have fully complied with all the terms of this policy and the amount of your obligation to pay has been finally determined either by:

- a. Judgment against you after actual trial; or
- b. Written agreement between us, you and the claimant.

4. Other Insurance

This insurance is excess over and will not contribute with any other insurance available to the insured whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise. This condition does not apply to insurance purchased specifically to apply in excess of this insurance.

5. Premium Audit

- a. We will compute all premiums for this policy in accordance with our rules and rates.
- b. If the premium is shown in the Declarations as flat, the premium for this policy is not subject to adjustment.
- c. If the premium is shown in the Declarations as adjustable, the premium shown as the advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period. Audit premiums are due and payable on notice to the first Named Insured shown in the Declarations. If the sum of the advance and audit premiums paid for the policy term are greater than the earned premium, we will return the excess, subject to the minimum premium, to the first Named Insured shown in the Declarations.
- d. The first Named Insured shown in the Declarations must keep records of the information we need for premium computation, and send us copies at such times as we request.

6. Nonrenewal

If we decide not to renew this policy, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

7. Severability of Interests

The insurance afforded applies separately to each insured against whom claim is made or "suit" is

brought. However, the inclusion of more than one insured shall not operate to increase the limits of insurance.

8. Annual Rating

If this policy is issued for a period in excess of one year, the premium may be revised on each annual anniversary in accordance with our rates and rules in effect at that time.

9. "Scheduled Underlying Insurance"

Material change in premium for "scheduled underlying insurance" shall be promptly reported to us. Premium for this policy may be adjusted to reflect changes in underlying insurance in accordance with our manuals in effect at the time of the change.

10. Maintenance of "Scheduled Underlying Insurance"

While this policy is in force you agree that the policies listed in the Declarations as "scheduled underlying insurance" and their renewals and replacements shall be maintained, without alterations of terms or conditions, in full effect during the term of this policy; except for reduction or exhaustion of the aggregate limits of insurance in the "scheduled underlying insurance," provided that such reduction or exhaustion is solely the result of "incidents" taking place during this policy period, and not before. If you fail to maintain "scheduled underlying insurance," this condition shall not invalidate this policy. However, in the event of such failure, we will only be liable to the same extent as if you had complied with this condition.

11. Appeals

If you or your "underlying insurers" elect not to appeal a judgment in excess of the limits of insurance afforded by the:

- a. "Scheduled underlying insurance";
- b. "Unscheduled underlying insurance"; or
- c. "Retained limit";

we may elect to appeal. Our limit of liability shall not be increased because of such appeal. We will, however, pay the following costs and expenses:

- a. All premium bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy;
- b. All premiums on appeal bonds required in such defended "suit," but without obligation to apply for or furnish such bonds;
- c. Court fees;
- d. Costs and expenses taxed against you by the appellate court and interest accruing after entry of a judgment against you and before we have:

(1) Paid;

- (2) Offered to pay; or
- (3) Deposited in court

the part of the judgment that is within the applicable limit of insurance. Where the "underlying insurers" terminate their liability to pay interest on the judgment by an offer to pay their limits, you shall demand that such limits be paid. If the appeal is successful, such amounts not obligated to be paid shall be returned to such "underlying insurer."

12. Subrogation

In the case of any payments by us under the coverages of this policy, we shall be subrogated to all rights of recovery against any other party which you may have and will cooperate with you and all other interests. Amounts recovered shall be apportioned in the following order:

- a. Amounts paid in excess of the payments under this policy shall first be reimbursed up to the amount paid by those, including you, who made such payments;
- b. We are then to be reimbursed up to the amount we paid;
- c. Any remainder shall be available to the interests of those over whom this coverage is in excess and who are entitled to claim such remainder.

Expenses necessary to the recovery of such amounts shall be divided between the interests concerned, including you, in the ratio of their respective recoveries as finally settled.

13. Settlement of Claims or Suit

We may pay, but are not obligated to pay, any part or all of the amount of the "retained limit" to effect settlement of a claim or "suit." Upon notification of the action taken you shall promptly reimburse us for such part of the "retained limit" that we had paid. All named insureds are jointly and severally responsible for our reimbursement and agree to make such reimbursement within 30 days after we give you written notice or demand for payment.

14. Sole Agent

The insured first named in the Declarations is authorized to act on behalf of all named insureds and other insureds with respect to:

- a. The giving and receiving of notice of cancellation; and
- b. Receiving return premium that may be payable under this policy.

The insured first named in the Declarations is responsible for the payment of premiums, but the other named Insureds jointly and severally agree to make

such payments in full if the insured first named fails to pay the amount due within 30 days after we give written notice or demand.

15. Trade Sanctions

In accordance with laws and regulations of the United States concerning economic and trade embargoes, this policy is void ab initio (void from its inception) with respect to any term or condition of this policy that violates any laws or regulations of the United States concerning economic and trade embargoes including, but not limited to the following:

- a. Any insured, or any person or entity claiming the benefits of an insured, who is or becomes a Specially Designated National or Blocked Person or who is otherwise subject to U.S. economic or trade sanctions;
- b. Any claim or "suit" that is brought in a Sanctioned Country or by a Sanctioned Country Government, where any action in connection with such claim or "suit" is prohibited by U.S. economic or trade sanctions;
- c. Any claim or "suit" that is brought by any Specially Designated National or Blocked Person or any person or entity who is otherwise subject to U.S. economic or trade sanctions;
- d. Property that is located in a Sanctioned Country or that is owned by, rented to or in the care, custody or control of a Sanctioned Country Government, where any activities related to such property are prohibited by U.S. economic or trade sanctions; or
- e. Property that is owned by, rented to or in the care, custody or control of a Specially Designated National or Blocked Person, or any person or entity who is otherwise subject to U.S. economic or trade sanctions.

As used in this policy a Specially Designated National or Blocked Person is any person or entity that is on the list of Specially Designated Nationals and Blocked Persons issued by the U.S. Treasury Department's Office of Foreign Asset Control (O.F.A.C.) as it may be from time to time amended.

As used in this policy a Sanctioned Country is any country that is the subject of trade or economic embargoes imposed by the laws or regulations of the United States of America.

SECTION V – DEFINITIONS

- 1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition



- a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
- b. Regarding websites, only that part of a website that is about your goods or services for the purposes of attracting customers or supporters is considered an advertisement.

2. **"Automobile"** means

- a. A land motor vehicle, trailer or semitrailer designed for travel on public roads; including any attached machinery or equipment; or
- b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged.

However, "automobile" does not include "mobile equipment."

3. **"Bodily injury"** means bodily injury, sickness or disease sustained by a person, including death, humiliation, shock, mental anguish or mental injury by that person at any time which results as a consequence of the bodily injury, sickness or disease.

4. **"Aircraft"** means a vehicle designed to transport persons or property in the air.

5. **"Impaired property"** means tangible property, other than "your product" or "your work," that cannot be used or is less useful because:

- a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
- b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by:

- a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
- b. Your fulfilling the terms of the contract or agreement.

6. **"Insured contract"** means:

- a. A lease of premises;
- b. A sidetrack agreement;
- c. An easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An indemnification of a municipality as required by ordinance, except in connection with work for a municipality;
- e. An elevator maintenance agreement; or
- f. The part of other contracts or agreements pertaining to your business (including an

indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability to pay damages because of "bodily injury" or "property damage" to a third person or organization, if the contracts or agreements are made prior to the "bodily injury" or "property damage."

Tort liability means liability that would be imposed by law in the absence of contracts or agreements.

An "insured contract" does not include that part of a contract or agreement:

- a. That indemnifies an architect, engineer or surveyor for an injury or damages arising out of:

(1) Preparing, approving or failing to prepare or approve:

- (a) Maps;
- (b) Drawings;
- (c) Opinions;
- (d) Reports;
- (e) Surveys;
- (f) Change orders;
- (g) Designs; or
- (h) Specifications; or

(2) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;

- b. Under which the insured, if an architect, engineer or surveyor, assumes liability for injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in a.(1) above and supervisory, inspection or engineering services; or

- c. That indemnifies a person or organization for damage by fire to premises rented or loaned to an insured.

7. **"Loading or unloading"** means the handling of property:

- a. After it is moved from the place where it is accepted for movement into or onto an "aircraft," "watercraft" or "automobile";
- b. While it is in or on an "aircraft," "watercraft" or "automobile"; or
- c. While it is being moved from an "aircraft," "watercraft" or "automobile" to the place where it is finally delivered;

but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the "aircraft," "watercraft" or "automobile."

8. **"Mobile equipment"** means any of the following types of land vehicles, including any attached machinery or equipment:

- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b. Vehicles that travel on crawler treads;
- c. Vehicles maintained for use solely on or next to premises you own or rent;
- d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
 - (1) Power cranes, shovels, loaders, diggers or drills; or
 - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - (1) Air compressors, pumps, and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following type of permanently attached equipment are not "mobile equipment" but will be considered "automobiles":

- (1) Equipment designed primarily for:
 - (a) Snow removal ;
 - (b) Road maintenance, but not construction or resurfacing; or
 - (c) Street cleaning;
- (2) Cherry pickers and similar devices mounted on "automobiles" or truck chassis and used to raise or lower workers; and
- (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged. Land vehicles subject to a

compulsory or financial responsibility law or other motor vehicle insurance law are considered "automobiles"

9. **"Incident"**

- a. With respect to "bodily injury" and "property damage," "incident" means an occurrence. An occurrence means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
- b. With respect to "personal and advertising injury," "incident" means an offense arising out of your business.

10. **"Personal and Advertising Injury"** means injury, including consequential "bodily injury," arising out of one or more of the following offenses:

- a. False arrest, detention or imprisonment;
- b. Malicious prosecution or abuse of process;
- c. Wrongful eviction from, wrongful entry into, or the invasion of the right of private occupancy of a room, dwelling or premises that a person occupies committed by or on behalf of its owner, landlord or lessor;
- d. Discrimination, unless such insurance is prohibited by law;
- e. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- f. Oral or written publication, in any manner, of material that violates a person's right of privacy;
- g. The use of another's advertising idea in your "advertisement;"
- h. Infringing upon another's copyright, trade dress or slogan in your "advertisement."

11. a. **"Products-completed operations hazard"** includes "bodily injury" and "property damage" occurring away from premises an insured owns or rents and arising out of "your product" or "your work" except:

- (1) Products in your physical possession; or
- (2) Work not yet completed or abandoned.

b. "Your work" will be deemed completed at the earliest of the following:

- (1) When all work called for in the "insured contract" has been completed;
- (2) When all of the work to be done at the site has been completed if the "insured's contract" calls for work at more than one site; or



- (3) When that part of the work done at a job site has been put to its intended use by a person or organization other than another contractor or subcontractor working on the same project. Work that may need:

- (a) Service;
- (b) Maintenance;
- (c) Correction;
- (d) Repair; or
- (e) Replacement;

but which is otherwise complete, will be treated as completed.

- c. This hazard does not include "bodily injury" or "property damage" arising out of:

- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle created by the "loading or unloading" of it; or
- (2) The existence of:
 - (a) Tools;
 - (b) Uninstalled equipment; or
 - (c) Abandoned or unused materials.

12. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss shall be deemed to occur at the time of the occurrence that caused it.

For the purposes of this insurance, "electronic data" is not tangible property.

13. "Suit" means a civil proceeding in which damages because of:

- a. "Bodily injury";
- b. "Property damage"; or
- c. "Personal and advertising injury";

to which this insurance applies are alleged. "Suit" includes:

- a. An arbitration proceeding alleging such damages to which you must submit with our consent; or
- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which you submit with our consent.

14. "Your product" means:

- a. Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (1) You;
 - (2) Others trading under your name; or
 - (3) A person or organization whose business or assets you have acquired; and
- b. Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

"Your product" includes warranties or representations made with respect to the fitness, quality, durability, performance or use of "your product" and the providing of or failure to provide warnings or instructions.

"Your product" does not include vending machines or other property rented to or located for the use of others but not sold.

15. "Your work" means:

- a. Work or operations performed by you or on your behalf; and
- b. Materials, parts or equipment furnished in connection with such work or operations.

"Your work" includes warranties or representations made with respect to the fitness, quality, durability, performance or use of "your work" and the providing of or failure to provide warnings or instructions.

16. "Retained limit" means the amount stated as such in the Declarations. The "retained limit" is retained and payable by the insured as respects all "incidents" not covered by "scheduled underlying insurance" or by "unscheduled underlying insurance."

17. "Scheduled underlying insurance" means the insurance policies listed in the Schedule of Underlying Insurance including renewal or replacement of such contracts which are not more restrictive than those listed in the aforementioned Schedule of Underlying Insurance.

18. "Ultimate net loss"

- a. "Ultimate net loss" means the actual damages the insured is legally obligated to pay, either through:

- (1) Final adjudication on the merits; or
- (2) Through compromise settlement with our written consent or direction;

because of "incident(s)" covered by this policy.

However, it includes the above mentioned sums only after deducting all other recoveries and salvages.

b. "Ultimate net loss" does not include the following:

(1) Costs or expenses related to:

- (a) Litigation,
- (b) Settlement;
- (c) Adjustment; or
- (d) Appeals;

nor costs or expenses incident to the same which an "underlying insurer" has paid, incurred or is obligated to pay to or on behalf of the insured;

- (2) Pre-judgment interest;
- (3) Office costs and expenses and salaries and expenses of the employees of an insured;
- (4) Our office costs and expenses and salaries of our employees; or
- (5) General retainer and/or monitoring fees of counsel retained by the insured.

19. **"Underlying insurer"** means an insurer whose policy covers "bodily injury," "property damage" or "personal and advertising injury" also covered by this policy but does not include insurers whose policies were purchased specifically to be in excess of this policy. It includes all insurers providing:

- a. "Unscheduled underlying insurance"; and
- b. "Scheduled underlying insurance."

20. **"Unscheduled underlying insurance"**

- a. "Unscheduled underlying insurance" means insurance policies available to an insured, whether:
 - (1) Primary;
 - (2) Excess;
 - (3) Excess-contingent; or
 - (4) Otherwise;

except the policies listed in the Schedule of Underlying Insurance.

- b. "Unscheduled underlying insurance" does not include insurance purchased specifically to be excess of this policy.

21. **"Watercraft"** means a vehicle designed to transport persons or property in or on water.

22. **"Authorized Insured"** means any named insured or any employee authorized by a named insured to give or receive notice of a claim or "suit."

23. **"Electronic data"** means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including

systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

24. **"Pollutants"** means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

25. **"Fungi or microbes"** means:

- a. Any form of fungus, yeast, mold, mildew, or mushroom, including mycotoxins, spores, scents, byproducts or other substances produced or released by fungi; and
- b. Any bacteria, virus, or any other non-fungal, single celled or colony-form organism, including any toxins, scents, byproducts or other substances it produces or releases, whose injurious source is in or on a building or its contents.

But "fungi and microbes" does not include fungi that were deliberately grown for human consumption, microbes that were transmitted directly from person to person, or microbes that caused food poisoning, if your business is food processing, sales, or serving.

26. **"Silica"** means the chemical compound silicon dioxide (SiO₂) in any form, including dust which contains "silica."

27. **"Asbestos"** means the mineral in any form whether or not the asbestos was at any time:

- a. Airborne as a fiber, particle or dust;
- b. Contained in or formed a part of a product, structure or other real or personal property;
- c. Carried on clothing;
- d. Inhaled or ingested; or
- e. Transmitted by any other means.

28. **"Volunteer worker"** means a person who is not your employee, and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

SECTION VI – DEFENSE PAYMENT AND RELATED DUTIES

1. If a claim or "suit" alleges damages covered by underlying policies and the obligation of all "underlying insurers" either to:

- a. Investigate and defend the insured; or
- b. Pay the cost of such investigation and defense;

ceases solely through exhaustion of all underlying limits of insurance through payment of a combination



of covered expenses, settlements or judgments for "bodily injury," "property damage" or "personal and advertising injury" taking place during our policy period, then we will either:

- a. Assume the investigation and defense of the insured against "suits" seeking damages; or
 - b. If we elect not to assume the investigation and defense in 1.a. above, we will reimburse the insured for reasonable defense costs and expenses incurred with our written consent. However, such reimbursement excludes:
 - (1) Office expenses of the insured;
 - (2) Salaries and expenses of employees; and
 - (3) General retainer fees of counsel retained by the insured.
2. We will investigate and defend an insured or reimburse an insured for "suits" brought against an insured for a claim or "suit" that alleges damages because of "bodily injury," "property damage" or "personal and advertising injury" not covered under:
- a. "Scheduled underlying insurance"; and
 - b. "Unscheduled underlying insurance";
- but which seeks damages because of "bodily injury," "property damage" or "personal and advertising injury" otherwise covered under this policy. Costs and expenses of such investigation and defense are not subject to the "retained limit."
3. We will investigate and defend an insured or reimburse an insured for such costs of investigation and defense described in either 1. or 2. above, even if the allegations of a "suit" are:
- a. Groundless;
 - b. False; or
 - c. Fraudulent;
- but only until we make payment or offer to pay or deposit in court that part of judgment(s) not exceeding our limit of insurance.
4. We shall also have the sole right to make settlement of a "suit" as we deem expedient.
5. If not permitted by law or otherwise to perform these duties, we will pay an insured for defense costs and expenses incurred with our prior written consent.
6. Amounts we pay or incur pursuant to the obligation to defend or pay the costs and expenses of defense are in addition to, and not subject to, the limits of insurance stated in the Declarations.
7. In addition to our limits of insurance, we will pay prejudgment interest awarded against an insured on that part of a judgment covered by this policy. We will

not pay prejudgment interest on that period of time after we offer to pay:

- a. Our limit of insurance; or
 - b. That portion of our limit of insurance which equals the amount of a settlement demand when combined with the limits of "underlying insurers."
8. We will pay interest on a judgment that accrues after entry of that judgment, but before we have:
- a. Paid;
 - b. Offered to pay; or
 - c. Deposited in court

that part of the judgment that is within the limit of insurance of this policy. The amount of interest we pay will be in direct proportion that amount we pay as damages bears to the total amount of judgment. We will not pay additional interest that accrues after we have:

- a. Paid;
- b. Offered to pay;
- c. Deposited in court

that part of the judgment that is within the limit of insurance of this policy.

9. We will pay all reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit." This includes actual loss of earnings up to liability \$250. a day because of time off from work.

NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT (BROAD FORM)

It is agreed that:

- I. This policy does not apply:
 - A. Under Liability Coverage to "bodily injury" "personal and advertising injury" or "property damage"
 1. With respect to which an insured under this policy, is also an insured under a nuclear energy liability policy issued by the:
 - a. Nuclear Energy Liability Insurance Association;
 - b. Mutual Atomic Energy Liability Underwriters; or
 - c. Nuclear Insurance Association of Canada;
- or any of their successors, or would be an insured under any such policy but for its

termination upon exhaustion of its limit of liability; or

2. Resulting from the "hazardous properties" of "nuclear material" and with respect to which:
 - a. Any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law or amendment thereof; or
 - b. The insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
- B. Under any Supplementary Payments provision relating to first aid, to expenses incurred with respect to "bodily injury" resulting from the "hazardous properties" of "nuclear material," and arising out of the operation of a "nuclear facility" by any person or organization.
- C. Under any Liability Coverage, to "bodily injury" "personal and advertising injury" or "property damage" resulting from the "hazardous properties" of "nuclear material," if:
 1. The "nuclear material":
 - a. Is at any "nuclear facility" owned by, or operated by or on behalf of, an insured; or
 - b. Has been discharged or dispersed therefrom;
 2. The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or
 3. The "bodily injury," "personal and advertising injury," or "property damage" arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the:
 - a. Planning;
 - b. Construction;
 - c. Maintenance;
 - d. Operation; or
 - e. Use of

any "nuclear facility," but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (C.3.) applies only to "property damage" to such "nuclear facility" and any property threat.

II. As used in this endorsement:

- A. "Hazardous properties" include radioactive, toxic or explosive properties.
- B. "Nuclear material" means "source material," "special nuclear material" or "byproduct material."
- C. "Source material," "special nuclear material" and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.
- D. "Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor."
- E. "Waste" means waste material:
 1. Containing "by-product material" other than the tailings or waste produced by the extraction or concentration of uranium or thorium from ore processed primarily for its "source material" content; and
 2. Resulting from the operation by any person or organization, of a "nuclear facility" included within paragraphs 1. and 2. of the definition of "nuclear facility."
- F. "Nuclear facility" means:
 1. Any "nuclear reactor";
 2. Any equipment or device designed or used for:
 - a. Separating the isotopes of uranium or plutonium;
 - b. Processing or utilizing "spent fuel"; or
 - c. handling, processing or packaging "waste";
 3. Any equipment or device used for the processing, fabricating or alloying of special "nuclear material" if at any time the total amount of such material in the custody of the insured at the premises where such equipment is located consists of or contains more than:
 - a. 25 grams of plutonium or uranium 233 or any combination thereof; or
 - b. 250 grams of uranium 235;
 4. Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste";

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.



G. "Nuclear reactor" means an apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

H. "Property damage" includes all forms of radioactive contamination of property.

TEXAS WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

This endorsement applies only to the insurance provided by the policy because Texas is shown in item 3.A. of the Information Page.

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule, but this waiver applies only with respect to bodily injury arising out of the operations described in the schedule where you are required by a written contract to obtain this waiver from us.

This endorsement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

The premium for this endorsement is shown in the Schedule.

Schedule

1. () Specific Waiver

Name of person or organization

(X) Blanket Waiver

Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.

2. Operations: ALL TEXAS OPERATIONS

3. Premium:

The premium charge for this endorsement shall be **2.00** percent of the premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described.

4. Advance Premium: Included, see Information Page

This endorsement changes the policy to which it is attached effective on the inception date of the policy unless a different date is indicated below.
(The following "attaching clause" need be completed only when this endorsement is issued subsequent to preparation of the policy.)

This endorsement, effective on 3/11/22 at 12:01 a.m. standard time, forms a part of:

Policy no. 0001155533 of Texas Mutual Insurance Company effective on 3/11/22

Issued to: GOERO INTERNATIONAL LLC



Authorized representative

This is not a bill

NCCI Carrier Code: 29939

2/19/22

C-22-0688-01-01 -ERO Architects

Final Audit Report

2022-12-22

Created:	2022-12-21
By:	Jasmin Cantu (jasmin.cantu@co.hidalgo.tx.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAFXxjgVKzxTCNwI4ABOVHekMQ3V9A5VQa

"C-22-0688-01-01 -ERO Architects" History

-  Document created by Jasmin Cantu (jasmin.cantu@co.hidalgo.tx.us)
2022-12-21 - 5:10:23 PM GMT
-  Document emailed to eli@goero.com for signature
2022-12-21 - 5:13:01 PM GMT
-  Email viewed by eli@goero.com
2022-12-21 - 7:19:23 PM GMT
-  Signer eli@goero.com entered name at signing as Eli R. Ochoa
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-  Document e-signed by Eli R. Ochoa (eli@goero.com)
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-  Document emailed to Monica Salinas (monica.salinas@co.hidalgo.tx.us) for approval
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-  Jasmin Cantu (jasmin.cantu@co.hidalgo.tx.us) added alternate approver margaret.mungia@co.hidalgo.tx.us.
The original approver Monica Salinas (monica.salinas@co.hidalgo.tx.us) can still approve.
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-  Email viewed by margaret.mungia@co.hidalgo.tx.us
2022-12-21 - 8:47:20 PM GMT
-  Signer margaret.mungia@co.hidalgo.tx.us entered name at signing as Margaret Mungia
2022-12-21 - 8:47:34 PM GMT
-  Document approved by Margaret Mungia (margaret.mungia@co.hidalgo.tx.us)
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Signer robert.vina@da.co.hidalgo.tx.us entered name at signing as Robert Viña, III

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 Agreement completed.

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