

**AGREEMENT -  
WEBB COUNTY BUILDING ROOF REPLACEMENT PROJECT**

PROJECT: RFP 2014-06 "Webb County Building Roof Replacement", located at 4101 Juarez St., Laredo, Texas, Webb County.

This contract Agreement ("Agreement") is made and entered into as of this 11<sup>th</sup> day of August, 2014 ("the effective date") by and between Webb County ("Owner"), 1000 Houston St., Laredo, Texas 78040, acting by and through its County Judge, as authorized by its Commissioners Court and Aftermath Roofing Construction and Renovations, Inc. ("Contractor"), 3100 Guadalupe St., Laredo, Texas 78043, acting by and through its President, Juan Dominguez, duly authorized to execute this Agreement on behalf of Aftermath Roofing Construction and Renovations, Inc. Owner and Contractor are sometimes referred to herein each as a "Party" or collectively as "Parties".

**RECITALS**

- A. WHEREAS, Parties, desired to enter into this Agreement with each other for the project known as **WEBB COUNTY BUILDING ROOF REPLACEMENT** ("Project"); and
- B. WHEREAS, the Parties agree to proceed with the Project in accordance with Quote No. 102159 Contractor submitted to Webb County and Webb County accepted ("Quote"), all of which shall be incorporated into this Agreement and included here as "Exhibit A"; and
- C. WHEREAS, the Contractor represents that he is fully equipped and competent to perform all work and furnish all supervision, labor, materials, plans, tools, equipment, supplies, and anything else necessary for the construction and completion of the installation of roofing system with Owner based on areas mentioned in Quote No. 102159 submitted July 16th, 2014 by Aftermath Roofing.

NOW, THEREFORE, in consideration of the foregoing, and the agreements contained herein, the parties hereto hereby agree as follows:

**1. DEFINITIONS**

**1.1 *Change Orders*** - In the event either Party requests a change from the agreed Scope of Work or Quote in this Agreement, a written change order making such a request shall be prepared by Contractor in accordance with the proposed change. If the Owner or Third Party Inspector ("Inspector") request a change be executed, Owner or Inspector shall, in a timely manner, inform Contractor (via email) of his request. Contractor shall then prepare a written change order in accordance with said request and submit to Owner for Owner's approval and signature. As soon as Owner signs change order approving proposed change, Owner shall submit, via email, approved/signed order to Contractor. Contractor shall begin performance in accordance with change order only after Contractor receives the written and approved/signed change order. If Contractor requests change order, he shall prepare a written change order, submit it to Owner for his approval and signature and will only begin on approved change after Contractor receives signed change order. Change orders may increase the payment Owner must pay Contractor. **IN NO EVENT MAY THE TOTAL COST OF CHANGE ORDERS EXCEED TWENTY-FIVE PERCENT (25%) OF THE TOTAL AMOUNT OF THIS AGREEMENT.**

**1.2 *Estimated Time of Completion (or estimated time to complete)*** - The date to achieve substantial completion is September 30, 2014. Acts of God (such as, but not limited to, rain) and approved

change orders received by Contractor may extend the date to achieve substantial completion or actual time of completion.

Except as described above, Contractor agrees to pay, and agrees to be assessed as liquidated damages, the sum of \$125.00 for each consecutive working day there-in-after as herein provided. For each and every working day CONTRACTOR fails to achieve substantial completion of the work by September 30, 2014. Such liquidated damages will be assessed against on a daily basis on the CONTRACTOR until such time as Substantial Completion is achieved as to the work. Such sums shall be paid by CONTRACTOR to OWNER upon demand, as liquidated damages and not as a penalty, it being agreed by OWNER and CONTRACTOR that such sum is a good faith, bona fide estimate of the amount of damages OWNER will sustain as a result of any such failure by CONTRACTOR to Substantially Complete the work within the contract Time and finally completes the work within deadline of Substantial Completion.

**1.3** *Quarter* – This Project consists of 4 phases or 4 quarters. Each quarter represents 25% of the entire Project.

The first quarter, or the first 25% of the Work, consists of the demolition and installation of ISO Board Insulation, tapered insulation and ready base/underlayment on the northern part of the building. This is described as “Demolition & Installation of A,B, 25% Completion” in the drawing for “Roof Plan” of this Project incorporated into this Agreement and included here as “Exhibit B”.

The second quarter, or the second 25% of the Work, consists of the demolition and installation of ISO Board Insulation, tapered insulation and ready base/underlayment on the southern part of the building. This is described as “Demolition & Installation of C,D, 25% Completion” in the drawing for “Roof Plan” of this Project incorporated into this Agreement and included here as “Exhibit B”.

The third quarter, or the third 25% of the Work, consists of the Membrane Installation of CAPS Sheet F.R. 250, FR. 190 Flashing, and Metal Flashing on the northern part of the building. This is described as “Membrane Installation of A,B, 25% Completion” in the drawing for “Roof Plan” of this Project incorporated into this Agreement and included here as “Exhibit C”.

The fourth quarter, or the fourth 25% of the Work, consists of the Membrane Installation of CAPS Sheet F.R. 250, FR. 190 Flashing, and Metal Flashing on the southern part of the building. This is described as “Membrane Installation of C,D, 25% Completion” in the drawing for “Roof Plan” of this Project incorporated into this Agreement and included here as “Exhibit C”.

**1.4** *Work* – Scope of Work as described in this Agreement.

**2.** **TERMS**

**Project Number: 00010**

**Payment:** Owner shall pay Contractor, for the performance of the Work, subject to additional cost and expenses due to change order(s), the total sum of **One Hundred Seventy Seven Thousand Two Hundred Eighty and 00/100 (\$177,280.00)**.

Any and all costs and expenses associated with written change orders are not included in the \$177,280.00 payment amount and Owner shall pay Contractor and additional amounts for any and all costs and expenses associated with the written change order(s).

**Payment Schedule:** Owner shall pay Contractor in 4 installment payments, each installment payment due upon completion of each quarter (25%) of the entire Work. Owner shall, however, retain 10% of each payment until final payment is made. The payment schedule is as follows:

Contractor shall submit an invoice to Owner for payment upon completion of the first 25% of the work. Owner shall pay Contractor 25% of the total amount due. Of that first 25%, Owner shall retain 10% to be paid on the day the Project is completed and approved by Owner.

Contractor shall submit an invoice to Owner for payment upon completion of the second 25% of the work. Owner shall pay Contractor 25% of the total amount due. Of that second 25%, Owner shall retain 10% to be paid on the day the Project is completed and approved by Owner.

Contractor shall submit an invoice to Owner for payment upon completion of the third 25% of the work. Owner shall pay Contractor 25% of the total amount due. Of that third 25%, Owner shall retain 10% to be paid on the day the Project is completed and approved by Owner.

Owner shall make final payment (including the costs and expenses incurred due to change order(s) completed during this project and completion of the Work and the release of each of the 10% Owner previously retained) to Contractor on the day the Project is completed and approved by Owner. Owner shall not unreasonably withhold approval.

**Incorporation of Quote:** The terms and conditions contained in the Quote, is incorporated herein by reference as fully written out.

**Warranties:** Contractor shall provide a 2 year warranty on labor performed solely by Contractor. The 2 year warranty begins on date Project is completed. Manufacturer provides a 20-year NDL Water tightness warranty.

**Roof Structure Inspection:** In the event roof structure inspections by the County inspector or by the County's third party inspector reveal a need or recommendation to change roof structure or make any other change due to structure or framing failing or possible structure or framing failing and Owner does not order such change, via a written change order submitted to Contractor, Owner agrees Contractor shall not be liable for the consequences of not submitting such a written change order to Contractor and further agrees to indemnify Contractor for any and all claims, suits, etc., that may arise from failure or possible failure of structure or framing.

**Change Orders:** Any change orders shall be submitted prepared, approved, and conveyed as per Section 1.1 of this Agreement.

**Inspection:** Inspections will be done daily by the County inspector or by the County's third party inspector, throughout the period of the Project from the first date of the first quarter until date of completion. The Third Party Inspector ("Inspector") will act as Owners' agent. Contractor will give inspector 24 hour written notes regarding the work completed that day. Contractor shall develop and establish quality control guidelines and obligations. Inspector shall prepare daily written reports and submit said reports to Owner for Owner's approval. Owner shall submit the approved/signed Inspector's daily report to Contractor before 4 p.m. of the following business day via electronic transmission.

In an effort to avoid delays in the estimated time of completion, Inspector shall make daily roof inspection and shall immediately inform Contractor, in writing, of his recommendation(s) for a change order(s), if any, so that Contractor can prepare the change order and submit to Owner for his review and approval.

The Contractor will proceed with the Work in a prompt and diligent manner, in accordance with the estimated time of completion.

Contractor shall be liable to Owner for delays in estimated time of completion due to the negligence or non-performance of the Contractor.

**Scope of Work:**

**Type of Roof Proposal: Re-Roof**  
**Roof Dimensions: 15,244 Sq. Ft. (covering sections mentioned in Quote No. 102159)**

**1st Motion: Demolition**

Contractor shall remove existing modified roof system, metal flashing and insulation leaving metal decking exposed. Contractor shall clean off dirt and dust to determine the conditions of the metal deck in order to install new modified SBS Modified Roof System.

**2nd Motion: Inspection**

Contractor shall check metal deck and replace damaged areas if needed in the process of demolition.

**\*\*Note\*\*** The metal deck must comply with the requirements of the Roof MFG System such as the minimum thickness of Gauge #22 in good conditions to approve the required warranty as per specifications.

Contractor shall remove the existing rough carpentry and replace with treated lumber as per specifications and following the roofing manufactures details to obtain proper installation.

**3rd Motion: Inspection on Mechanical Units**

Contractor shall check existing A/C unit curbs and send a detailed report to the Owner identifying whether the curbs are in good conditions. In the event, Contractor finds that a change order is recommended (for example, replacement of a/c unit curb is required), Contractor shall submit said change order and wait for Owner's signed approval of said change order before proceeding with recommended change. If Contractor finds the curbs are in good condition, Contractor shall proceed with roof insulation.

**4th Motion: Roof System Installation**

Contractor shall install 2" Polyisocyanurate insulation and tapered roof system mechanically attached using fasteners and metal plates by roofing MFG directly to metal deck.

Contractor shall taper insulation  $\frac{1}{4}$  per ft. to obtain proper slope direct to existing roof drains, and install  $\frac{1}{2}$ " cover board as per specifications.

Contractor shall apply asphalt primer on all metal flashing and wood nailers by MFG.

Contractor shall install new metal flashings required by MFG details; Gauge #24 Galvanized as per specifications.

Contractor shall install 1 ply of ready base covering ISO board to obtain waterproof surface and cover with 1 ply SBS FR 250 US PLY MFG. Hot mopping application and 190 FR membrane on flashing areas.

Contractor shall install new stock flashings and chem curbs approved by MFG on existing conduits

penetrations.

Contractor shall install walkway pads covering A/C units for maintenance service and roof perimeter access for roof protection as per specifications.

**5th Motion: Clean Up**

Contractor shall clean up all roof debris daily and disposal to the local city landfill. Contractor shall leave roof and parking area clean, and conduct roof inspections daily in an effort to prevent any damage to the building and injury to individuals at the moment the roof work is in progress.

**\*\*NOTE\*\*** Change order may be required at the time of demolition once metal deck is exposed depending on the decks condition.

**Required time to complete the Project:** See definition of "estimated time to complete" in Section 1.2 of this Agreement which establishes this requirement.

**Safety Equipment:** Contractor is committed to provide the equipment necessary to complete the roof project in an effort to avoid injury to our workers.

**Stop of work:** Work may be stopped or delayed only by reason of Owner's default on the Agreement, change orders, or Act of God (such as, but not limited to bad weather conditions).

**Clean up:** Contractor shall, on a daily basis clean and dispose in dumpster on site, leaving work areas clean.

**DISCLAIMER:** Parties agree Contractor shall not be responsible or liable for unauthorized vehicles or personnel within the restricted area of Project (including on roof or surrounding property). Any modifications to the roof without Contractor's knowledge may cause the labor or craftsmanship warranty and NDL warranty to become null and void by the manufacturer. Parties agree Contractor is not responsible or liable for leaks or any other damage or delay caused by third parties such as, but not limited to, air conditioner or electrical penetrations to the roof, improper installation or improperly installed equipment or performance or labor or equipment not complying with Contractor's plans, or is out of schedule (not following Contractor's procedures).

**3. DEFAULT AND TERMINATION:** In the event either Party interferes with the general progress of this Project intentionally or by negligence or intentional or negligent delay the non-defaulting Party may complete the same or cause the same to be completed and charge all sums of money so expended for the completion of this Agreement against defaulting Party, and defaulting Party shall reimburse the non-defaulting Party for any loss sustained thereby.

**4. OWNER'S RIGHT TO TERMINATE:** OWNER may terminate this Agreement upon thirty (30) days written notice. If OWNER terminates this Agreement, CONTRACTOR shall only be paid for the work performed or expenses incurred prior to the receipt of the notice of termination.

**5. INDEMNIFICATION:** CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY AND ALL LOSS, EXPENSE, COST OR LIABILITY (INCLUDING REASONABLE LEGAL FEES AND EXPENSES), ARISING FROM ANY CLAIM OR CAUSE OF ACTION FOR ANY LOSS OR DAMAGE CAUSED BY OR ARISING FROM THE PERFORMANCE OF CONTRACTOR'S OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THE CONDUCT OF CONTRACTOR'S EMPLOYEES

AND/OR ANY ACTS PERFORMED UNDER THIS CONTRACT AND THAT RESULT FROM ANY NEGLIGENT ACT, ERROR OR OMISSION OF THE CONTRACTOR OR OF ANY PERSON EMPLOYED BY THE CONTRACTOR. IN CASE OF ANY SUCH CLAIM, CONTRACTOR, UPON NOTICE FROM OWNER, COVENANTS TO DEFEND ANY SUCH ACTION OR PROCEEDING. THE CONTRACTOR SHALL ALSO SAVE AND HOLD HARMLESS OWNER FROM AND AGAINST ANY AND ALL EXPENSES, COURT COSTS, INCLUDING BUT NOT LIMITED TO ATTORNEY'S FEES THAT MIGHT BE INCURRED, IN LITIGATION OR OTHERWISE DEFENDING OR PROSECUTING CLAIMS.

## 6. GENERAL

**6.1 SEVERABILITY:** Should any part of this Agreement be rendered or declared invalid by a court of competent jurisdiction of the State of Texas, such invalidation of such part or portion of this Agreement should not invalidate the remaining portions thereof, and they shall remain in full force and effect.

**6.2 NOTICES:** Any notice of communication required or permitted hereunder shall be sufficiently given if sent by electronic transmission:

To Contractor at: [jd@roofingaftermath.com](mailto:jd@roofingaftermath.com)

To Owner at: [lperezgarcia@webbcountytx.gov](mailto:lperezgarcia@webbcountytx.gov)

**6.3 SUCCESSORS AND ASSIGNS:** This Agreement may not be assigned or subcontracted, in full or in part, by Parties without first obtaining written consent of Parties. Parties shall not be relieved of its full responsibility for completion of work because of subletting of any portion of the work. This Agreement shall be binding upon and shall ensure to the benefit of the parties hereto and their respective successors, transferees and assigns.

**7. CONTRACTOR AND SUBCONTRACTOR INSURANCE:** The financial integrity of Contractor is of interest to Webb County, therefore, subject to the right of Contractor to maintain reasonable deductibles in such amounts as are approved by Webb County. Contractor shall obtain and maintain in full force and effect for the entire duration of this agreement, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated B+ or better by A.M. Best Company (Best's Key Rating Guide, 2005 Edition, and as amended) and/or otherwise acceptable to Webb County, the following types and amounts:

The Contractor shall not commence work under this Contract until he/she has obtained all the insurance required under this paragraph and such insurance has been approved by the Owner, nor shall the Contractor allow any subcontractor to commence work on his/her Sub-Contract until the insurance required of the Subcontractor has been so obtained and approved.

- a) Compensation Insurance: The Contractor shall procure and shall maintain during the life of this Contract Workmen's Compensation Insurance as required by applicable State or Territorial law for all of his/her employees to be engaged in work at the site of the project under this Contract and, in case of any such work sublet, the Contractor shall require the Subcontractor similarly to provide Workmen's Compensation Insurance for all of the

latter's employees to be engaged in such work unless such employees are covered by the protection afforded by the Contractor's Workmen's Compensation Insurance. In the case where any class of employees engaged in hazardous work on the project under this Contract and is not protected under the Workmen's Compensation Statute, The Contractor shall provide and shall cause each Subcontractor to provide adequate employee's liability insurance for the protection of such of his/her employee as are not otherwise protected.

- b) Contractor's General Liability and Property Damage Insurance and Vehicle Liability Insurance: The Contractor shall procure and shall maintain during the life of his Contract: Contractor's Public Liability Insurance, Contractor's Property Damage Insurance and Vehicle Liability Insurance in the amount of not less than \$200,000 for bodily injury, including accidental death, to any one person and an amount not less than \$300,000 on account of any one occurrence: Property Damage in the amount not less than \$100,000 per occurrence and \$200,000 aggregate; and Vehicle Liability of \$100,000 for any one person or \$200,000 for each occurrence.
- c) Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance: The Contractor shall either (1) require each of his/her Subcontractor to procure and shall maintain during the life of his /her Subcontractor, Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance of the type and in the amount specified in Subparagraph b. above or, (2) insure the activities of his/her Subcontractors in his/her policy specified in Subparagraph b. above.
- d) Scope of Insurance and Special Hazards: The insurance required under Subparagraph b. and c. above shall provide adequate protection for the Contractor and his/her Subcontractor's, respectively, against damage claims which may arise from operations under this Contract, whether such operations be by the insured or by any one directly or indirectly employed by him/her and also against any of the special hazard which may be encountered in the performance of this Contract.
- e) Builder's Risk Insurance (Fire and Extended Coverage): The Contractor shall procure and shall maintain during the life of this Contract Builder's Risk Insurance (Fire and Extended Coverage) on a 100 percent (100%) completed value basis on the insurable portion of the project. The Owner, the Contractor, and Subcontractor (as their interests may appear), shall be named as the Insured.
- f) Proof of Carriage of Insurance: The Contractor shall furnish the Owner with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of policies. Such certificates shall also contain substantially the following statement: "The Insurance covered by this certificate will not be cancelled or materially altered, except after ten (10) days written notice has been received by the Owner".
- g) The Owner, the Contractor, and Subcontractor (as their interests may appear), shall be named as the Insured.
- h) Webb County, Texas, a political subdivision of the State of Texas shall be named as an additional insured with respect to General Liability and Automobile Liability. A blanket waiver of subrogation in favor of Webb County, Texas, a political subdivision of the State of Texas shall be contained in the Workers Compensation, and all liability policies

8. **PAYMENT AND PERFORMANCE BONDS:** A performance bond is required for construction work if the contract is in excess of \$100,000 and a payment bond is required if a construction contract is in excess of \$25,000. Contractor shall supply the required bonds to the County Engineer within ten days of execution of this Agreement failure to provide said bonds shall constitute a default and Webb County may award the contract to the next lowest bidder or re-advertise for bids/proposals.
9. **MATERIALMEN/SUPPLIERS:** Contractor within 10 days from the date of the execution of this agreement shall provide an updated and current listing of all SUBCONTRACTORS AND/OR MATERIALMEN or SUPPLIERS; used by the Contractor to Webb County and contractor shall notify Webb County in writing whenever changes occur, and contractor shall provide Webb County with an updated listing within 5 business days of upon request for an updated listing. Contractor will notify Webb County in writing of any SUBCONTRACTORS AND/OR MATERIALMEN or SUPPLIER, (independent contractors, and/or other such materialmen and/or suppliers services) that are discontinued, and/or that have been added to their workforce within 10 business days after change.
10. **RELATIONSHIP OF PARTIES:** Contractor is engaged under this Agreement as an independent contractor and not as an agent or employee of Owner. Contractor is not entitled to benefits of any kind to which Owner's employees are entitled, including but not limited to unemployment compensation, workers compensation, health insurance or retirement benefits. Contractor assumes full responsibility for payment of all federal, state and local taxes or contributions, including but not limited to, unemployment insurance, social security, Medicare and income taxes with respect to Contractor and Contractor's employees. This Agreement does not create a partnership or a joint venture between the parties hereto, nor does it authorize either Party to serve as the legal representative or agent of the other. Neither Party has any right or authority to assume, create, or incur any liability or any obligation of any kind, express or implied, against or in the name of or on behalf of the other Party.
11. **COMPLIANCE WITH LAWS:** Contractor agrees that it will, in its performance of its obligations hereunder, fully comply with all applicable laws, regulations and ordinances of all relevant authorities, including but not limited to those pertaining to safety, and shall obtain all licenses, registrations or other approvals required in order to fully perform its obligations hereunder. Contractor represents and warrants that all improvements made to the property shall comply with the Americans with Disabilities Act and all other applicable codes, regulations and laws. Contractor agrees to comply at all times with all federal, state, county and city rules, regulations, ordinances and laws, and Contractor shall not permit the Premises or any part thereof to be used for (a) any offensive, noisy, or dangerous activity that would pose a health or safety risk; (b) the creation or maintenance of a public nuisance, (c) anything which is against public regulations or rules of any public authority at any time applicable to the Leased Premises; or (d) any purpose or any manner which will obstruct, interfere with, or infringe on the rights of other tenants or adjoining properties.
12. **ENTIRE AGREEMENT:** This Agreement and its Exhibits shall constitute the complete and exclusive written expression of the intentions of the parties hereto and shall supersede all previous communications, representations, agreements, promises or statements, either oral or written, by and between either Parties. Any modifications to this Agreement must be in writing signed by both Parties.
13. **ATTORNEY'S FEES:** In the event either Party breaches any of the terms of this Agreement whereby the non-defaulting party employs attorneys to protect or enforce its rights hereunder and prevails, then the defaulting Party agrees to pay the non-defaulting Party's reasonable attorney's fees reasonably incurred.



14. **REQUEST FOR PAYMENT SUBMISSION:** All request for payments are to be made payable to Contractor by dated and signed invoice(s). Said invoice and/or request for payments can be mailed or hand-delivered to Webb County Purchasing Dept. 1110 Washington St., Laredo, Webb County, Texas 78040 or via email addressed to Dr. Cecilia Moreno at [cmaymoreno@webbcountytexas.gov](mailto:cmaymoreno@webbcountytexas.gov). Payment will be mailed to Contractor.

15. **LEGAL CONSTRUCTION:** In case any one or more of the provisions contained in the 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 thereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

16. **GOVERNING LAW:** This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Texas, without regard to choice of law rules of any jurisdiction. The Parties agree venue lies exclusively in Webb County.

17. **AMENDMENT:** No amendment, modification or alteration of the terms of this agreement hereof shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by both of the Parties hereto.

18. **TIME OF ESSENCE:** Time is of the essence of this Agreement and each and every covenant, condition and provision herein contained.

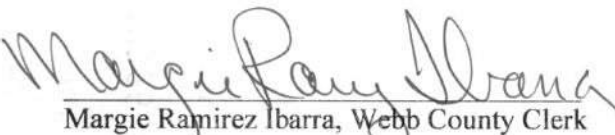
IN WITNESS WHEREOF, the parties aforesaid have duly executed the foregoing instrument, or caused the same to be executed in duplicate originals on this 2<sup>th</sup> day of AUGUST, 2014.

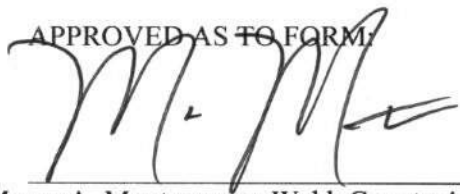
This Agreement is effective and approved by the Webb Commissioner's Court on the 11<sup>th</sup> day of August, 2014.

  
\_\_\_\_\_  
Danny Valdez, Webb County Judge

  
\_\_\_\_\_  
Juan Dominguez, Aftermath President

ATTEST:

  
\_\_\_\_\_  
Margie Ramirez Ibarra, Webb County Clerk

APPROVED AS TO FORM:  
  
\_\_\_\_\_  
Marco A. Montemayor, Webb County Attorney

