

STATE OF TEXAS §

KNOW ALL MEN BY THESE PRESENTS

COUNTY OF WEBB §

**PROFESSIONAL SERVICES AGREEMENT
WEBB COUNTY
AND
HOWLAND ENGINEERING & SURVEYING CO., INC.**

This professional services contract is made, entered and executed between the **WEBB COUNTY** hereinafter referred to as “WEBB COUNTY”, and **HOWLAND ENGINEERING & SURVEYING CO., INC.**, hereinafter referred to as “CONSULTANT”, pursuant to **Webb County “RFQ 2018-003 Materials Testing for Pueblo Nuevo Colonia Street Improvements Project”**.

WITNESSETH

WHEREAS, **WEBB COUNTY**, is a political subdivision under the laws of the State of Texas, with its principal place of business located at 1110 Houston Street, Laredo, Texas; and,

WHEREAS, **Howland Engineering & Surveying Co., Inc.**, **CONSULTANT**, is a professional corporation, incorporated in Texas whose local place of business is located at 7615 N. Bartlett Ave., Laredo, Texas 78045; and,

WHEREAS, the **CONSULTANT** was found to be the best qualified to perform the services requested under the Webb County “**RFQ 2018-003 Materials Testing for Pueblo Nuevo Colonia Street Improvements Project**” as needed by the Webb County Economic Development Dept., for this street improvement project in the Pueblo Nuevo Colonia, in Webb County, Texas.

NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, Webb County and the “Engineer” do mutually agree as follows.

ARTICLE I- CONTRACT PERIOD

Upon execution of this contract, **CONSULTANT** shall not proceed with the scope of work outlined under Article II until authorized in writing by the Webb County Engineer/Webb County Engineering Dept. who shall issue the Notice to Proceed as provided in Article XXV - Notice To Proceed. This contract shall terminate at the close of business on March 1, 2019 unless extended by a written supplemental agreement duly executed by the parties prior to the date of termination, as provided in Article XXVII - Supplemental Agreements, or otherwise terminated as provided by Article XIV - Termination. Any work performed or costs incurred after the date of termination shall be ineligible for reimbursement.

CONSULTANT shall notify the Webb County Engineer/Engineering Dept., in writing as soon as possible if it determines, or reasonably anticipates, that the work under this contract cannot be completed before the termination date, and WEBB COUNTY may, in its sole discretion, extend the contract period by timely supplemental agreement as provided in Article XXVII - Supplemental Agreements. CONSULTANT shall allow adequate time for review and approval of the request for time extension by the WEBB COUNTY prior to the expiration of this contract.

ARTICLE II- RESPONSIBILITIES OF THE PARTIES

CONSULTANT shall perform those services for fulfillment of the contract identified as tasks scheduled for completion by March 1, 2019, as set forth in the proposal submitted in response to **Webb County "RFQ 2018-003 Materials Testing for Pueblo Nuevo Colonia Street Improvements Project"**, as set forth in *Exhibit "A"- Scope of Services attached hereto, incorporated by reference*, and made a part hereof for all purposes.

ARTICLE III- COMPENSATION

WEBB COUNTY shall pay up to an amount not to exceed **\$5,000.00** as compensation for the services to be performed under this contract. In the event of a change in the scope of services, additional complexity or a different character of work from that originally anticipated and authorized by the WEBB COUNTY, the amount may be revised only by written agreement of the parties.

CONSULTANT shall prepare and submit to the Webb County Engineer/Engineering Dept. progress reports in sufficient detail to support the progress of the work and in support of invoice(s) precedent to requesting payment for services rendered. Satisfactory progress of work shall be maintained as a condition of payment.

Payments to CONSULTANT for services rendered will be made while work is in progress. CONSULTANT will prepare and submit to the Webb County Engineer/Webb County Engineering Dept. and the Webb County Business Office, no more frequently than once per month, a progress report stating the percent completion of the work accomplished during the billing period and to date, and one original and one copy of an invoice. The submittal shall also include a project assessment report. Payment of the lump sum fee will be in proportion to the percentage completion of work tasks identified in Attachment A. Upon receipt and approval of each complete statement, the County shall make a good faith effort to pay within 30 working days.

WEBB COUNTY shall reserve the right to withhold payment pending verification of satisfactory work performed. CONSULTANT shall be required to submit adequate proof that the task was completed. Payment of costs incurred is further governed by cost principles outlined in the Federal Acquisition Regulation, 48 CFR, Chapter 1, Part 31, Subpart 31.2, Contracts with Commercial Organizations.

The progress report shall show the total amount earned to the date of submission and the amount due and payable as of the date of the current statement. Five percent (5%) of each partial payment shall be withheld pending completion of the scope of work to be

performed under this contract. Final payment of any money due shall be made to CONSULTANT upon satisfactory completion of all services and obligations covered in this contract. The release of any retainage does not relieve CONSULTANT of the responsibility for correcting any errors and/or omissions resulting from its negligence.

Acceptance and approval of the final plans and specifications, reports or documents by WEBB COUNTY shall not constitute nor be deemed a release of the responsibility and liability of the CONSULTANT for the accuracy and competency of its designs, working drawings, plans, specifications, or other documents and work performed under this contract. No approval or acceptance by or in behalf of WEBB COUNTY shall be deemed to be an assumption of such responsibility by the WEBB COUNTY for any defect, error, or omission in the said designs, working drawings, specifications or other documents as prepared by the CONSULTANT.

ARTICLE IV- CONTRACT AMENDMENTS

Significant changes in the terms and conditions of this contract can be made only by written amendment executed by the parties hereto prior to the changes being made. Any such amendment must be approved by the WEBB COUNTY COMMISSIONER'S COURT.

ARTICLE V- ADDITIONAL WORK

If CONSULTANT is of the opinion that any work it has been directed to perform is beyond the scope of this agreement and constitutes extra work, it shall promptly notify the Webb County Engineer/Engineering Dept., in writing. In the event that the Webb County Engineer/Engineering Dept. finds that such work does constitute additional work and will exceed the maximum amount specified in Article III, the Webb County Engineer/Engineering Dept. shall so advise the Webb County Commissioner's Court, and the CONSULTANT and a written supplemental agreement may be executed between the parties as provided in Article XXVII- Supplemental Agreements. CONSULTANT shall not perform any additional work or incur any additional costs prior to the signing by both parties, of a supplemental agreement approved by the Webb County Commissioner's Court. WEBB COUNTY shall not be responsible for the actions of CONSULTANT or any costs incurred by CONSULTANT relating to additional work not directly associated with the performance authorized in this contract, or as amended.

ARTICLE VI- CHANGES IN WORK

If the Webb County Engineer/Engineering Dept. finds it necessary to request changes to previously satisfactorily completed work or parts thereof which involve changes to the original scope of services or character of work under the contract, CONSULTANT shall make such revisions ONLY if requested and as directed and approved in writing by the Webb County Commissioner's Court. This will be considered additional work and paid for as specified in Article V - Additional Work.

CONSULTANT shall make such revisions to the work authorized in this contract, including but not limited to any re-designs, required as a result of the CONSULTANT's development of the designs, plans, specifications, or documents which are a result of

CONSULTANT's negligence or which are necessary to correct errors appearing therein. No additional compensation shall be paid for this work.

ARTICLE VII- INDEMNIFICATION

CONSULTANT shall save and hold harmless WEBB COUNTY, from all claims and liability due to the activities of itself, its agents or employees, performed under this contract and which are caused by or result from negligent error, omission, or act of CONSULTANT or of any person employed by CONSULTANT. CONSULTANT shall also save harmless the WEBB COUNTY from any and all expense, including but not limited to, reasonable attorney fees which may be incurred in litigation or otherwise resisting said claim or liabilities which may be imposed as a result of the activities of CONSULTANT, its agents or employees.

ARTICLE VIII- INSPECTION OF WORK

WEBB COUNTY and any authorized representative, shall have the right at all reasonable times to review or otherwise evaluate the work performed or being performed hereunder.

ARTICLE IX- DISPUTES

CONSULTANT shall be responsible for the settlement of all contractual and administrative issues arising out of procurements entered into in support of contract work. WEBB COUNTY shall act as referee in all disputes regarding non - procurement issues and WEBB COUNTY's decision shall be final and binding.

ARTICLE X- NONCOLLUSION

CONSULTANT warrants that it has not employed or retained any company or persons other than a bona fide employee working solely for CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warranty, WEBB COUNTY shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or compensation, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gifts, or contingent fee.

ARTICLE XI- REPORTING

CONSULTANT shall from time to time during the progress of the work, confer with the Webb County Engineer/Engineering Dept. CONSULTANT shall prepare and present such information as may be pertinent and necessary, or as may be requested by the Webb County Engineer/Engineering Dept., in order to evaluate the features of the work.

Upon the request of the Webb County Engineer/Engineering Dept. or CONSULTANT, conferences shall be provided at the offices of the Webb County Engineer/Engineering Dept., or at any other locations designated by the Webb County Engineer/Engineering Dept. These conferences shall also include evaluation of the services and work of CONSULTANT when requested by WEBB COUNTY. All work performed pursuant to the contract is subject to review by WEBB COUNTY.

CONSULTANT shall promptly advise the Webb County Engineer/Engineering Dept.in writing of events that have significant impact upon the progress of work, including but not limited to:

- (1) Problems, delays, or adverse conditions which will materially affect the ability to attain program objectives, prevent the meeting of time schedules and goals, or preclude the attainment of project work units by established time periods; this disclosure will be accompanied by statement of the action taken or contemplated;
- (2) Favorable developments or events which enable work schedule goals to be completed sooner than anticipated or scheduled.

All notices called for or contemplated hereunder shall be in writing and shall be deemed to have been duly given when personally delivered or forty eight (48) hours after mailed to each party by electronic mail (e-mail), certified mail, return receipt requested, postage prepaid as follows:

BY E-MAIL, CERTIFIED MAIL OR HAND DELIVERY

WEBB COUNTY:

Luis Perez-Garcia, P.E.
Webb County Engineer
1620 Santa Ursula
Laredo, Texas 78040
lperezgarcia@webbcountytx.gov
Ph. (956) 523-5652

ENGINEER/CONSULTANT:

Roberto P. Martinez, Partner
Geo-Science Division
Howland Engineering & Surveying Co., Inc.
7615 Bartlett Ave.
Laredo, Texas 78045
rmartinez@howlandcompanies.com
Ph. (956) 722-4411

ARTICLE XII- RECORDS

WEBB COUNTY, shall have the right to examine the books and records of CONSULTANT for the purpose of checking the amount of work performed at the time of contract termination. CONSULTANT shall maintain all books, records, documents, papers, accounting records and other evidence pertaining to costs incurred for a period of four years from the date of final contract payment or until pending litigation has been fully and completely resolved, whichever occurs last. Records pertinent to this contract shall be made available for inspection during normal business hours to the authorized representatives of the WEBB COUNTY.

ARTICLE XIII- SUBCONTRACTS

CONSULTANT shall not assign, subcontract, or transfer any portion of the work under this contract without the prior written approval of WEBB COUNTY, which approval shall not be unreasonably withheld. All sums due and payable under this contract shall be made to the order of CONSULTANT and to no other. All subcontracts shall include the provisions required in this contract and shall be approved as to form, in writing, by the WEBB COUNTY ENGINEER/ENGINEERING DEPT., prior to work being

performed under the subcontract. No subcontract relieves CONSULTANT of responsibilities for performance under this contract.

ARTICLE XIV- TERMINATION

The contract may be terminated before the stated termination date by any of the following conditions:

- (1) By mutual agreement and consent, in writing, of both parties.
- (2) In writing, by the WEBB COUNTY as a consequence of CONSULTANT's failure to perform the services set forth herein.
- (3) By either party, upon the failure of the other party to fulfill its obligations as set forth herein with proper notice given.
- (4) Upon thirty (30) days written notice to CONSULTANT.
- (5) By satisfactory completion of all services and obligations described herein.

Should WEBB COUNTY terminate this contract as herein provided, no fees other than fees due and payable at the time of termination shall be paid to CONSULTANT. Compensation for work at termination will be based on the percentage of work completed at that time. The value of work charged during the time after notice of termination is received shall not exceed the value of the work performed in the preceding thirty-day period.

If CONSULTANT defaults in the performance of this contract or if WEBB COUNTY terminates this contract for fault on the part of CONSULTANT, consideration will be given to the actual costs incurred by CONSULTANT in performing the work up to the date of default. This includes the amount of work that was satisfactorily completed, the value of the work that is usable, the cost of securing a substitute CONSULTANT for completion of the work, and other factors affecting the value of the work performed at the time of default.

The termination of this contract and the payment of an amount in settlement as prescribed above shall extinguish all rights, duties, and obligations of the WEBB COUNTY and CONSULTANT, except the obligations set forth in Article XVI – Compliance with Laws of this agreement. If the termination of this contract is due to the failure of CONSULTANT to fulfill its contract obligations, the WEBB COUNTY staff may complete the work. In such case, CONSULTANT shall be liable for any additional cost occasioned by such failure.

ARTICLE XV- REMEDIES

Any violation of contract terms or breach of contract by CONSULTANT shall be grounds for termination of the contract and any increased cost arising from the default of CONSULTANT shall be paid solely by CONSULTANT.

This agreement shall not be considered as specifying the exclusive remedy for any default, but all remedies existing at law and in equity may be availed of by either party and shall be cumulative.

ARTICLE XVI- COMPLIANCE WITH LAWS

CONSULTANT shall comply with all applicable Federal, State and local laws, statutes, codes, ordinances, rules and regulations, and orders and decrees of any court or administrative body or tribunal in any manner affecting the performance of this contract, including without limitation, worker's compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, CONSULTANT shall furnish in writing satisfactory proof of its compliance therewith.

ARTICLE XVII- SUCCESSORS AND ASSIGNS

WEBB COUNTY and the CONSULTANT each binds itself, its successors, executors, assigns and administrators to each other party of this agreement and to the successors, executors, assigns and administrators of such other party in respect to all covenants of this contract. Neither Webb County nor the CONSULTANT shall assign, sublet, or transfer its interest in this contract without written consent of the other.

ARTICLE XVIII- OWNERSHIP OF DOCUMENTS

All data, basic sketches, charts, calculations, plans, specifications, and other documents created, or collected under the terms of this contract are the exclusive property of the City and shall be furnished to WEBB COUNTY ENGINEER/ENGINEERING DEPT., upon request. All documents prepared by CONSULTANT and all documents furnished by CONSULTANT shall be delivered to the Webb County Utilities Director upon completion or termination of this contract. CONSULTANT, at its own expense, may retain copies of such documents or any other data that it has furnished to Webb County under this contract. The release of any information shall be in conformance with the Texas Open Records Act.

ARTICLE XIX- SIGNATORY WARRANTY

The undersigned signatory for the CONSULTANT hereby represents and warrants that he is an officer of the organization for which he has executed this contract and that he has full and complete authority to enter into this contract on behalf of his firm. The above-stated representations and warranties are made for the purpose of inducing WEBB COUNTY to enter into this contract.

ARTICLE XX- CONSULTANT RESOURCES

CONSULTANT shall furnish and maintain, at its own expense, quarters for the performance of all services, and adequate and sufficient personnel and equipment to perform the services required. All employees of CONSULTANT shall have such knowledge and experience as will enable them to perform the duties assigned to them.

Any employee of CONSULTANT who, in the opinion of the Webb County Engineer is incompetent, or whose conduct becomes detrimental to the work shall immediately be

removed from association with the project when so instructed in writing. CONSULTANT certifies that it presently has adequate qualified personnel in its employment for performance of the services required under this contract, or will be able to obtain such personnel from sources other than WEBB COUNTY.

Any change in the Project Manager shall be requested in writing and shall be approved by the Webb County Commissioner's Court, upon written recommendation of the Webb County Engineer.

CONSULTANT represents that the services under this Agreement shall be performed in a manner consistent with that level of care, diligence and skill ordinarily exercised by other professionals in the same discipline under the same or similar circumstances at the time the services are performed.

ARTICLE XXI- EQUAL EMPLOYMENT OPPORTUNITY

The CONSULTANT agrees to comply with Executive Order 11246 entitled "Equal Employment Opportunity" as amended by Executive Order 11375 and as supplemented in Department of Labor Regulations (41 CFR 60).

ARTICLE XXII- NONDISCRIMINATION

During the performance of this contract, the CONSULTANT, its assigns and successors in interest, agrees as follows:

1. *Compliance with Regulations:* The CONSULTANT shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the U.S. Department of Transportation, Title 49, Code of Federal Regulations, Part 21 and Title 23, Code of Federal Regulations, Part 710.405(b), as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

2. *Nondiscrimination:* The CONSULTANT, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 and Part 710.405(b) of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

The CONSULTANT will take affirmative steps to ensure that applicants and employees are treated during employment without regard to their race, color, religion, national, origin, sex, age, handicap, or political belief or affiliation. Specifically, the CONSULTANT agrees to abide by all applicable provisions of the Non-discrimination Clause as contained in the WEBB COUNTY's current Affirmation Action Plan on file in Webb County Human Resources Dept. In the event non-compliance occurs, the CONSULTANT, upon written notifications by WEBB COUNTY will commence compliance procedures within thirty (30) days.

3. *Solicitations for Subcontracts, Including Procurements of Materials and Equipment:* In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this contract and the Regulations relative to nondiscrimination of the grounds of race, color, sex, or national origin.

4. *Information and Reports:* The CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by Webb County. Where any information required of the CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, the CONSULTANT shall so certify to Webb County and shall set forth what efforts it has made to obtain the information.

5. *Sanctions for Noncompliance:* In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this contract, Webb County may determine to be appropriate, including but not limited to:

- a. Withholding of payments to the CONSULTANT under the contract until the CONSULTANT complies, and/or,
- b. Cancellation, termination, or suspension of the contract in whole or in part.

6. *Incorporation of Provisions:* The CONSULTANT shall include the provisions of paragraphs 1 through 6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any subcontract or procurement as Webb County may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a CONSULTANT becomes involved in, or is threatened with litigation with a subcontractor or supplier as a result of such direction, the CONSULTANT may request Webb County to enter into such litigation to protect the interests of Webb County; in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

ARTICLE XXIII- MINORITY BUSINESS ENTERPRISES

It is the policy of the U.S. Government that Minority Business Enterprises as defined in 49 CFR 23, Subpart A, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds. Consequently the Minority Business Enterprise requirements of 49 CFR 23, exclusive of Subpart D, apply to this contract as follows:

The CONSULTANT agrees to insure that Minority Business Enterprises as defined in 49 CFR 23, Subpart A, have the maximum opportunity in the performance of contracts and subcontracts financed in whole or in part with Federal funds. In this regard, the CONSULTANT shall take all necessary and reasonable steps in accordance with 49 CFR 23, exclusive of Subpart D, to insure that Minority Business Enterprises have the maximum opportunity to compete for and perform contracts.

The CONSULTANT and any subcontractor shall not discriminate on the basis of race, color, sex, or national origin in the award and performance of contracts funded in whole or in part with Federal funds.

These requirements shall be physically included in any subcontract. Failure to carry out the requirements set forth above shall constitute a breach of contract and, after the notification of Webb County, may result in termination of the contract by Webb County or other such remedy as Webb County deems appropriate.

ARTICLE XXIV- DELINQUENT TAX CERTIFICATION

Pursuant to Article 2.45 of the Business Corporation Act, Texas Civil Statutes, which prohibits the State from awarding a contract to a corporation that is delinquent in paying taxes under Chapter 171, Tax Code, the CONSULTANT hereby certifies that it is not delinquent in its Texas franchise tax payments, or that it is exempt from or not subject to such tax. A false statement concerning the corporation's franchise tax status shall constitute grounds for cancellation of the contract at the sole option of the WEBB COUNTY.

ARTICLE XXV- NOTICE TO PROCEED

The Webb County Engineer and/or the Webb County Engineering Dept. will issue a written authorization to proceed with the work identified in the scope of services. WEBB COUNTY shall not be responsible for actions by CONSULTANT or any costs incurred by CONSULTANT relating to additional work not included in Exhibit "A" - Scope of Services.

ARTICLE XXVI- SUSPENSION

Should WEBB COUNTY desire to suspend the work, but not terminate the contract, this may be done by giving thirty (30) days verbal notification followed by written confirmation from the Webb County Engineer/Engineering Dept., to that effect. The thirty-day notice may be waived in writing by both parties. The work may be reinstated and resumed in full force and effect within sixty (60) days of receipt of written notice from the Webb County Utilities Director to resume work. The sixty-day notice may be waived by both parties in writing. If WEBB COUNTY suspends the work, the contract period as determined in Article I- Contract Period is not affected and the contract will terminate on the date specified unless the contract is amended.

WEBB COUNTY assumes no liability for work performed or costs incurred prior to the date of the notice to proceed authorized by WEBB COUNTY to begin work, during periods when work is suspended, or subject to contract completion date.

ARTICLE XXVII- SUPPLEMENTAL AGREEMENTS

The terms of this contract may be modified by supplemental agreement if WEBB COUNTY, determines that there has been a significant change in the:

- (1) Scope, complexity, character of the service to be performed; or
- (2) The duration of work.

Additional compensation, if appropriate, shall be identified in writing as provided in Article III-Compensation, and the supplemental agreement shall state what, if any, additional compensation shall be provided. WEBB COUNTY shall issue a notice to proceed for work authorized under the supplementary agreement in accordance with the provisions of Article XXV- Notice to Proceed. Any supplemental agreement must be executed in writing by both parties within the contract period specified in Article I - Contract Period.

It is distinctly understood and agreed that no claim for extra work done or materials furnished shall be made by CONSULTANT until full execution of the supplemental agreement and authorization to proceed is granted. WEBB COUNTY reserves the right to withhold payment pending verification of satisfactory work performed in accordance with Article III-Compensation of this agreement.

ARTICLE XXVIII- SUBMISSION OF REPORTS

All applicable study reports shall be submitted in preliminary form for approval before a final report is issued. The comments of the Webb County Engineer/Engineering Dept. shall be noted and addressed in the final report.

ARTICLE XXIX- INSURANCE

CONSULTANT shall furnish a properly completed Certificate of Insurance, in a form approved by the fiscal agent of WEBB COUNTY prior to beginning work under this contract and shall maintain insurance through the contract period.

The CONSULTANT shall provide and maintain, until the work covered in the contract is completed and accepted by The WEBB COUNTY, the minimum insurance coverages as follows:

1. Commercial General Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence and \$2,000,000 general aggregate for bodily injury and property damage, which coverage shall include products/completed operations (\$1,000,000 products/completed operations aggregate), and XCU (Explosion, Collapse, Underground) hazards. Coverage must be written on an occurrence form. Contractual Liability must be maintained covering the Contractors obligations contained in the contract.

2. Workers Compensation insurance at statutory limits, including Employers Liability coverage a minimum limits of \$1,000,000 each-occurrence each accident/\$1,000,000 by disease each-occurrence/\$1,000,000 by disease aggregate.
3. Commercial Automobile Liability insurance at minimum combined single limits of 1,000,000 per-occurrence for bodily injury and property damage, including owned, non-owned, and hired car coverage.
4. Errors & Omissions coverage may not be required for all services. If The WEBB COUNTY deems such coverage necessary, the following conditions will apply:
 - a. Professional Liability with minimum limits of \$1,000,000 or higher, depending on the type, size, and scope of services.
 - b. This coverage must be maintained for at least two (2) years after the project is completed. If coverage is written on a claims-made basis, a policy retroactive date equivalent to the inception date of the contract (or earlier) must be maintained during the full term the contract.

The required limits may be satisfied by any combination of primary, excess, or umbrella liability insurances, provided the primary policy complies with the above requirements and the excess umbrella is following-form. The Contractor may maintain reasonable and customary deductibles, subject to approval by the WEBB COUNTY.

Any Subcontractor(s) hired by the Contractor shall maintain insurance coverage equal to that required of the Contractor. It is the responsibility of the Contractor to assure compliance with this provision. The WEBB COUNTY accepts no responsibility arising from the conduct, or lack of conduct, of the Subcontractor.

A Comprehensive General Liability insurance form may be used in lieu of a Commercial General Liability insurance form. In this event, coverage must be written on an occurrence basis, at limits of \$1,000,000 each-occurrence, combined single limit, and coverage must include a broad form Comprehensive General Liability Endorsement, products/completed operations, XCU hazards, and contractual liability.

With reference to the foregoing insurance requirement, Contractor shall specifically endorse applicable insurance policies as follows:

1. The WEBB COUNTY shall be named as an additional insured with respect to General Liability and Automobile Liability.
2. All liability policies shall contain no cross liability exclusions or insured versus insured restrictions.
3. A waiver of subrogation in favor of the WEBB COUNTY shall be contained in the Workers Compensation, and all liability policies.

4. All insurance policies shall be endorsed to require the insurer to immediately notify the WEBB COUNTY of any material change in the insurance coverage.
5. All insurance policies shall be endorsed to the effect that the WEBB COUNTY will receive at least sixty- (60) days' notice prior to cancellation or non-renewal of the insurance.
6. All insurance policies, which name the WEBB COUNTY as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.
7. Required limits may be satisfied by any combination of primary and umbrella liability insurances.
8. Contractor may maintain reasonable and customary deductibles, subject to approval by WEBB COUNTY.
9. Insurance must be purchased from insurers that are financially acceptable to WEBB COUNTY.

All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent and shall contain provisions representing and warranting the following:

1. Sets forth all endorsements and insurance coverages according to requirements and instructions contained herein.
2. Shall specifically set forth the notice-of-cancellation or termination provisions to WEBB COUNTY.

Upon request, Contractor shall furnish WEBB COUNTY with certified copies of all insurance policies.

ARTICLE XXX- GRATUITIES

No member of WEBB COUNTY shall accept any benefits, gifts or favors from any person doing business with the City under this contract, nor shall any person doing business with or who may reasonably do business with Webb County under this contract make an offer of benefits, gifts, or favors to Webb County personnel or staff.

ARTICLE XXXI- DEBARMENT, SUSPENSION AND DISCIPLINARY ACTION

By execution of this agreement, CONSULTANT warrants that it has not been disbarred, suspended, or subject to disciplinary action which would affect its ability to perform the services contracted. It further warrants that it is in compliance with regulations relating to Equal Employment Opportunity and Civil Rights Regulations.

ARTICLE XXXII- PATENT AND COPYRIGHT

WEBB COUNTY shall have the non-exclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize the use by others any reports developed by CONSULTANT for governmental purposes and all such documents so created by CONSULTANT shall become the property of WEBB COUNTY.

ARTICLE XXXIII- SEVERABILITY

In the event any one or more of the provisions contained in this contract shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this contract shall be construed as if such invalid, illegal or unenforceable provision had never been contained therein.

ARTICLE XXXIV- PRIOR CONTRACT SUPERSEDED

This contract constitutes the sole and only agreement between the parties hereto and supersedes any prior understandings or written or oral contract between the parties respecting the subject matter defined herein.

ARTICLE XXXV- FORCE MAJEURE

Neither party to this agreement shall be required to perform any term, condition, or covenant in this agreement so long as performance is delayed or prevented by force majeure, which shall mean acts of God, strikes, lockouts, material or labor restrictions by a governmental authority, civil riots, floods, and any other cause not reasonably within the control of either party to this agreement and which by the exercise of due diligence such party is unable, wholly or in part, to prevent or overcome. If by reason of force majeure either party is prevented from full performance of its obligations under this agreement, written notice shall be provided to the other party within three days.

ARTICLE XXXVI- APPLICABLE LAW/VENUE

This agreement shall be construed under, and in accordance with, the laws of the State of Texas as amended from time to time, and all obligations of the parties created by this agreement are performable and enforceable in Webb County, Texas, and the parties further stipulate and agree that Webb County shall be the exclusive venue for any litigation and/or lawsuits regarding this contract.

ARTICLE XXXVII- ADDITIONAL PROVISIONS

Time of the Essence. Time is of the essence with respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.

Inconsistencies. Where there exists any inconsistency between this Agreement and other provisions of collateral contractual agreements that are made a part hereof by reference or otherwise, the provisions of this Agreement shall control.

Entire Agreement. This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements, and understandings have been merged into this written Agreement. No other prior agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless signed by both parties and attached hereto and/or embodied herein.

Amendment. No changes to this Agreement shall be made except upon written agreement of both parties.

Confidentiality. Any confidential information provided to or developed by CONSULTANT in the performance of this Agreement shall be kept confidential, unless otherwise provided by law, and shall not be made available to any individual or organization without the prior approval of WEBB COUNTY.

Headings. The headings used herein are for convenience of reference only and shall not constitute a part hereof or affect the construction or interpretation hereof.

Waiver. The failure on the part of any party to exercise or to delay in exercising, and no course of dealing with respect to any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies provided herein are cumulative and not exclusive of any remedies provided by law or in equity, except as expressly set forth herein.

Consequential Damages. Neither party shall be liable to the other for consequential damages, including, without limitation, loss of use or loss of profits, incurred by one another or their subsidiaries or successors, regardless of whether such damages are caused by breach of contract, willful misconduct, negligent act or omission, or other wrongful act of either of them.

Counterparts. This Agreement may be executed in any number of and by the different parties hereto on separate counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same document.

Terminology and Definitions. All personal pronouns used herein, whether used in the masculine, feminine, or neutral, shall include all other genders; the singular shall include the plural and the plural shall include the singular.

Rule of Construction. The parties hereto acknowledge that each party and its legal counsel have reviewed and revised this agreement, and the parties hereby agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this agreement or any amendments or exhibits hereto.

This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed.

IN WITNESS WHEREOF, WEBB COUNTY COMMISSIONERS COURT, acting by and through its COUNTY JUDGE, and HOWLAND ENGINEERING & SURVEYING CO., INC., acting by and thru its duly authorized Corporate Officer have executed this agreement in duplicate originals, each of equal dignity.

EXECUTED in duplicate originals on this 27th day of NOVEMBER, 2018.

WEBB COUNTY, TEXAS

FOR:

Tano E. Tijerina
Webb County Judge
Signed: Nov. 27, 2018

HOWLAND ENGINEERING & SURVEYING CO., INC.

ROBERTO P. MARTINEZ, Partner
GeoScience Manager
Howland Engineering & Surveying Co., Inc.
Signed: November 26, 2018

ATTESTED:

Margie Ramirez-Ibarra
Webb County Clerk

APPROVED AS TO FORM:

Ray Rodriguez-Attorney
Webb County Civil Legal Division *

*By law, this office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval of their own respective attorney(s).

**Passed and approved by the Webb County Commissioners Court
On October 22ND, 2018; item no. 8k.**



MARGIE R. IBARRA
COUNTY CLERK
FILED

2019 OCT 24 AM 11:13

WEBB COUNTY, TEXAS

BY Jr DEPUTY

