

THE STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made, by and between **HIDALGO COUNTY**, acting herein by and through the **COMMISSIONER'S COURT**, hereinafter called the "**Owner**", and **S&B INFRASTRUCTURE, LTD.**, professional engineers of McAllen, Texas, hereinafter called the "**Engineer**".

WITNESSETH:

WHEREAS, the **Owner** desires to contract with the **Engineer** to provide professional services for the **Structural and Environmental Assessment of the County Record Retention Building in San Carlos, Texas in Hidalgo County** (incorporated herein by reference as the "**Project**").

NOW, THEREFORE, the **Owner** and the **Engineer** in consideration of the mutual covenants and agreements herein contained do mutually agree as follows:

ARTICLE 1. Employment of Engineer. The **Owner** agrees to employ the **Engineer** and the **Engineer** agrees to perform professional services in connection with the **Project** as stated in the articles to follow, and for having rendered such services, the **Owner** agrees to pay the **Engineer** compensation as stated in the articles to follow.

ARTICLE 2. Character and Extent of Services. This Agreement will provide for the development of the **Project** with the following:

2.1. Scope of Work. The **Owner** will furnish items and provide those services for the development of the **Project** and fulfillment of this Agreement, as identified in **EXHIBIT "A" -Services to be Provided by the Owner**, attached hereto and made a part of this Agreement. The **Engineer** shall render professional services for the development of the **Project** and fulfillment of this Agreement as (more particularly identified in **EXHIBIT "B"-Services to be Provided by the Engineer**, attached hereto and made a part of this Agreement).

2.2 Classification of Services. For this Agreement, the professional services to be provided by the **Engineer**, as more particularly identified in **EXHIBIT "B"**, attached hereto, shall be classified as follows:

- (1) **Basic Services:** Basic services, incorporated herein by reference as "**Basic Services**", includes those professional services not otherwise identified under Article 5.2 of this Agreement.
- (2) **Special Services:** Special services, incorporated herein by reference as "**Special Services**", includes those professional services identified under Article 5.2 of this Agreement.

2.3 Schedule of Work. The **Engineer** shall prepare a schedule of work (hereinafter referred to as "**Work Schedule**") in accordance with the terms identified in **EXHIBIT "C"-Work Schedule**, attached hereto and made a part of this Agreement.

ARTICLE 3. Period of Service. After execution of this Agreement, the **Engineer** shall not proceed with the work outlined under Article 2 hereof until authorized in writing by the **Owner** to proceed as provided in Article 7 hereof.

3.1 Termination Date. This Agreement shall terminate at the close of business on **December 31, 2007** (hereinafter referred to as the "**Termination Date**"), unless extended by written supplemental agreement, as provided in Article 8 hereof, duly executed by the **Engineer** and the **Owner** prior to the **Termination Date**, or otherwise terminated as provided in Article 3.4 herein and below. The **Owner** assumes no liability or obligation for payment to the **Engineer** for work performed or costs incurred by the **Engineer** prior to the date authorized by the **Owner** for the **Engineer** to begin work, during periods when work is suspended, or subsequent to the **Termination Date**.

3.2 Extension of the Termination Date. The **Engineer** shall notify the **Owner** in writing as soon as possible if it is determined, or reasonably anticipated, that the work under this Agreement cannot be completed before the **Termination Date**, and the **Owner** may, at the **Owner's** sole discretion, extend the **Termination Date** by written supplemental agreement as provided in Article 8 hereof. The **Engineer** shall allow adequate time for review and approval by the **Owner** of the written notice and request by the **Engineer** to extend the

Termination Date.

3.3 Suspension of Work. Should the **Owner** desire to suspend the work under this Agreement, but not terminate this Agreement, the **Owner** shall provide thirty (30) calendar days verbal notification to the **Engineer**, followed by written confirmation from the **Owner** to the **Engineer** to that effect. The thirty-day notice may be waived as agreed in writing by both the **Owner** and the **Engineer**. The work under this Agreement may be reinstated and resumed in full force and effect within sixty (60) days of receipt of written notice from the **Owner** to the **Engineer**. The sixty-day notice may be waived as agreed in writing by both the **Owner** and the **Engineer**.

If the **Owner** suspends the work, the **Termination Date** as identified above is not affected, and this Agreement will terminate on the date specified, unless extended by written supplemental agreement, as provided in Article 8 hereof, duly executed by the **Engineer** and the **Owner** prior to the **Termination Date**.

3.4 Termination of Agreement. This Agreement may be terminated before the stated **Termination Date** identified in Article 3.1 herein by any of the following conditions:

- (1) **Commitment of Current Revenues.** In the event that, during any term hereof, the **Owner** does not appropriate sufficient funds to meet to the obligations of this Agreement, the **Owner** may terminate this Agreement upon ninety (90) days written notice to the **Engineer**. The **Owner** 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 the **Owner** 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 **Engineer** and the **Owner**.
- (3) By the **Owner**, upon failure of the **Engineer** to fulfill the **Engineer's** obligations set forth herein in a satisfactory manner as determined by the **Owner** and in sole opinion of the **Owner**, after the **Owner** provides written notice to the **Engineer** of such failure and the **Engineer** has not corrected such failure within (30) days of such written notice by the **Owner**.
- (4) By the **Engineer**, upon failure of the **Owner** to fulfill the **Owner's** obligations set forth herein, after the **Engineer** provides written notice to the **Owner** of such failure and the **Owner** has not corrected such failure within thirty (30) days of such written notice by the **Engineer**.

(5) By the **Owner** without cause upon ninety (90) days written notice to the **Engineer**.

(6) By satisfactory completion of all services and obligations described herein.

Should the **Owner** terminate this Agreement as herein provided, no fees other than fees due and payable at the time of termination shall thereafter be paid to the **Engineer** notwithstanding anything herein to the contrary. In determining the value of the work performed by the **Engineer** prior to termination, the **Owner** 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 **Owner** terminate this Agreement under (5) of the paragraph above, the amount charged during the ninety (90) day notice period shall not exceed the amount charged during the preceding ninety (90) days.

If the termination of this Agreement is due to the failure of the **Engineer** to fulfill the **Engineer's** obligations under this Agreement, the **Owner** may take over the **Project** and prosecute the work to completion. In such case, the **Engineer** shall be liable to the **Owner** for any additional cost occasioned by the **Owner**.

If the **Engineer** defaults in the performance of this Agreement or if the **Owner** terminates this Agreement for fault on the part of the **Engineer**, the **Owner** will give consideration to payment of an amount in settlement to include: the actual costs incurred by the **Engineer** 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 **Owner**, the cost to the **Owner** 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 **Owner** 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 **Engineer**, but all remedies existing at law and in equity may be availed of by either party and shall be cumulative.

The termination of the Agreement and payment of an amount in settlement as prescribed above shall extinguish all rights, duties, and obligations of the **Owner** and the **Engineer** under this Agreement, except the obligations set forth in Articles 11.2, 12, 13, 15, 16, 17, 18.3, 19, 22, and 26, hereto.

ARTICLE 4. Progress and Coordination. The **Engineer** shall, from time to time during the progress of the work, confer with the **Owner**. The **Engineer** shall prepare and present such information as may be pertinent and necessary, or as may be requested by the **Owner**, in order to evaluate features of the **Engineer's** services and work.

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

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

If funds by other agencies or entities are to be used for the development of the **Project** under this Agreement, the **Engineer's** services and work may be subject to periodic review and approval by other agencies or entities, including those of the city, county, state, and/or federal agencies.

Should it be determined that the progress in the production of the **Engineer's** services and work does not satisfy the requirements of the approved **Work Schedule** as provided by **EXHIBIT "C"**, attached hereto, the **Owner** shall review the approved **Work Schedule** with the **Engineer** to determine the corrective action needed by either the **Owner** or the **Engineer**.

The **Engineer** shall promptly advise the **Owner** in writing of events which have a significant impact upon the progress of the **Engineer's** services and work and the approved **Work Schedule**, including:

- (1) problems, delays, adverse conditions which will materially affect the ability to attain contract objectives, prevent the meeting of time schedules and goals, or preclude the timely completion and submittal of **Project** deliverables by the **Engineer** within established time periods; this disclosure will be accompanied by a statement by the **Engineer** of recommended or immediate action taken, or contemplated, and any **Owner** or other agency or entity assistance needed to resolve the situation; and

(2) favorable developments or events which enable meeting the **Work Schedule** goals sooner than anticipated.

ARTICLE 5. Compensation and Fees. For and in consideration of the services to be rendered by the **Engineer**, the **Owner** shall compensate the **Engineer** a lump sum fee of **twenty-two thousand nine hundred five dollars (\$22,905)**, as outlined in **EXHIBIT "D"**, attached hereto.

5.1 Basic Services. Compensation to the **Engineer**, for and in consideration of the **Basic Services** to be rendered by the **Engineer**, as identified in Article 2 and more particularly identified in **EXHIBIT "B"** attached hereto, are included in the lump sum fee, as outlined in **EXHIBIT "D"**, attached hereto. Payments to the **Engineer** for **Basic Services** shall be made by the **Owner**, upon presentation by the **Engineer** of the monthly **Request for Payment**, in accordance with the terms and provisions of Article 6 herein.

5.2 Special Services. Those services to be provided by the **Engineer** as **Special Services** are set forth below and more particularly described in **EXHIBIT "B"**, attached hereto. Compensation to the **Engineer**, for and in consideration of the **Special Services** to be rendered by the **Engineer**, as identified in Article 2 and more particularly identified in **EXHIBIT "B"** attached hereto, are included in the lump sum fee and negotiated based upon manhours required for performance of service and as follows:

<u>Special Service</u>	<u>Basis of Compensation</u>
1. FIELD SURVEYING Actual performance of field surveying for the purpose of establishing horizontal and vertical control and obtaining topographic information for preliminary project planning and development, preliminary engineering, final design, right of way data, monumentation or staking and construction staking.	By Engineer at Contract Rates shown in EXHIBIT "D" , attached hereto, and/or negotiated subcontract expense plus a 10% service charge.
2. AERIAL PHOTOGRAMMETRY Actual performance of services to develop and provide photogrammetric products (contact prints, mosaics, planimetric maps, contour maps, cross-sections, and digital terrain models).	By Engineer at Contract Rates shown in EXHIBIT "D" , attached hereto, and/or negotiated subcontract expense plus a 10% service charge.
3. RIGHT OF WAY MAPPING	By Engineer at Contract Rates shown in

Special Service

Actual performance of services to develop and provide abstracting, right of way map, field note descriptions, and parcel plats.

4. GEOTECHNICAL ENGINEERING

Actual performance of obtaining test borings, sampling and testing, analyses, recommendations, reports for foundation investigations and other related analyses.

5. LABORATORY OR SITE TESTING

Actual performance of laboratory, shop and mill tests, or site testing of materials or equipment provided and construction work performed, including actual performance of record testing and independent assurance testing.

6. RESIDENT OR SITE ENGINEER, INSPECTOR

Actual performance of services of project site engineer, resident engineer and/or inspector, if required by **Owner**.

7. DOCUMENT COPIES

Actual performance and / or providing of additional copies (over 5) of reports; additional copies (over 5) of plans (contract drawings), specifications, and estimates (PS&E); additional copies (over 5) of bidding documents; additional copies (over 5) of as-built drawings.

8. EXTRA TRAVEL

Extra travel required of **Engineer** and authorized by **Owner** to points outside of Hidalgo County.

9. EXPERT WITNESS

Assistance to the **Owner** as expert witness in any litigation with third parties, arising from the development or construction of the **Project**.

Basis of Compensation

EXHIBIT "D", attached hereto, and/or negotiated subcontract expense plus a 10% service charge.

By **Engineer** at **Contract Rates** shown in **EXHIBIT "D"**, attached hereto, and/or negotiated subcontract expense plus a 10% service charge.

By **Engineer** at **Contract Rates** shown in **EXHIBIT "D"**, attached hereto, and/or negotiated subcontract expense plus a 10% service charge.

By **Engineer** at **Contract Rates** shown **EXHIBIT "D"**, attached hereto, and/or negotiated subcontract expense plus a 10% service charge.

By **Engineer** at **Contract Rates** shown in **EXHIBIT "D"**, attached hereto, and/or negotiated subcontract expense plus a 10% service charge.

At the rates authorized by Hidalgo County for its County officials (shown in **EXHIBIT "D"**, attached hereto).

By **Engineer** at **Contract Rates** shown in **EXHIBIT "D"**, attached hereto, and/or negotiated subcontract expense plus a 10% service charge. Notwithstanding the previous sentence, compensation to the Engineer for condemnation hearing testimony will only include expense for time involved in actual testimony, no preparation time will be eligible for reimbursement as **Special Service**. Expert witness for condemnation hearings shall not be subcontracted.

Special Service

Basis of Compensation

10. 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 and public involvement; appraisals, valuations, and material audits; or inventories required for certification of force account construction performed by the **Owner**; preparation of change orders for extra work done by the **Contractor**.

By **Engineer** at **Contract Rates** shown in **EXHIBIT "D"**, attached hereto, and/or negotiated subcontract expense plus a 10% service charge.

Payments to the **Engineer** for *Special Services* shall be made by the **Owner**, upon presentation by the **Engineer** of the monthly **Request for Payment**, in accordance with the terms and provisions of Article 6 herein.

ARTICLE 6. Method of Payment.

6.1 Request for Payment. Payments to the **Engineer** for services rendered will be made while work is in progress. The **Engineer** shall prepare and submit to the **Owner** 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 **Engineer** 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 **Engineer** shall submit to the **Owner** for approval a **Request for Payment**. Payment of the lump sum fee identified in the **Request for Payment** will be in proportion to the percent completion of the work tasks together with a detailed breakdown of the amount and the sum of all prior payments. The **Owner** shall review each such **Request for Payment** and may make such exceptions as the **Owner** reasonably deems necessary or appropriate under the circumstances then existing. About ten (10) working days after the Commissioners Court of the **Owner** meets approving such payment, the **Owner** shall make payment to the **Engineer** in the amount approved as aforesaid subject to Article 6.3 herein and below.

6.2 Final Payment. After final completion of the work and acceptance thereof by the **Owner**, the **Engineer** shall submit a final request for payment ("**Final Request for Payment**") which shall set forth all amounts due and remaining unpaid to the **Engineer** and upon approval thereof by the **Owner**, the **Owner** shall pay to the **Engineer** the amount due ("**Final Payment**") under such **Final Request for Payment** in accordance with the provisions of Article 6.1 hereof. The **Final Payment** shall not be made until the **Engineer** delivers to the **Owner** an affidavit that so far as the **Engineer** has knowledge or information any and all amounts due for materials and services over which the **Engineer** has control have been paid.

6.3 Qualification on Obligations to Pay. Any provision hereof to the contrary notwithstanding, the **Owner** shall not be obligated to make any payment (whether a payment under Article 6.1 hereof or **Final Payment**) to the **Engineer** hereunder if any one or more of the following conditions precedent exist:

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

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

6.5 The **Engineer** shall promptly pay all bills for labor and material performed and furnished by others in connection with the performance of the **Engineer's** services.

6.6 **Waiver.** The making of the **Final Payment** shall constitute a waiver of all claims by the **Owner** except those arising from (1) faulty or defective services of the **Engineer** appearing after completion of the **Project**, (2) failure of the **Engineer's** services to comply with the requirements of this Agreement or any contracts or Agreements related to the **Project**, or (3) terms of any special warranties required by this Agreement or provided at law or in equity. The acceptance of **Final Payment** shall constitute a waiver of all claims by the **Engineer** except those previously made in writing and identified by the **Engineer** as unsettled at the time of the **Final Request for Payment**.

ARTICLE 7. Work Authorization. Upon execution of this Agreement, the **Engineer** shall proceed with the work outlined under Article 2 hereof.

ARTICLE 8. Supplemental Agreements. The terms of this Agreement may be amended by supplemental agreement if the **Owner** determines that (1) there is a need to extend the **Termination Date** identified in Article 3.1 hereof, (2) there has been a significant change in the scope, complexity or character of the services to be performed by the **Engineer**, and/or (3) for any other reason agreeable to the **Owner** and the **Engineer**. All supplemental agreements will be developed in the form identified in **EXHIBIT "F" – Supplemental Agreement Form**, attached hereto and made a part of this Agreement, and incorporated herein by reference as "**Supplemental Agreement**".

If determined appropriate by the **Owner**, additional compensation to the **Engineer** for (1), (2) and/or (3) above shall be paid as a negotiated lump sum fee at the **Contract Rates** specified in **EXHIBIT "D"**, attached hereto. The negotiated lump sum fee shall be incorporated into the **Supplemental Agreement**.

Any **Supplemental Agreement** must be executed by both the **Engineer** and the **Owner** prior to the **Termination Date** specified in Article 3 hereof.

It is distinctly understood and agreed that no claim by the **Engineer** for additional work, as identified in

Article 9 hereof, or changes or revisions in work, as identified in Article 10 hereof, shall be made by the **Engineer** until full execution of the **Supplemental Agreement** and authorization to proceed is granted by the **Owner**. The **Owner** reserves the right to withhold payment to the **Engineer** pending verification of satisfactory work performed by the **Engineer**.

ARTICLE 9. Additional Work. If the **Engineer** 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 **Engineer** shall promptly notify the **Owner** in writing. In the event the **Owner** finds that such work does constitute extra work or requests that the **Engineer** provide services for extra work, the **Owner** shall so advise the **Engineer** and a written supplemental agreement will be executed between the **Owner** and the **Engineer** as provided herein. The **Engineer** shall not perform any proposed additional work or incur any additional costs prior to the execution by both the **Engineer** and the **Owner** of a supplemental agreement. Additional compensation from the **Owner** to the **Engineer** shall be paid as a negotiated lump sum fee at the **Contract Rates** specified in **EXHIBIT "D"**, attached hereto. The negotiated lump sum fee shall be incorporated into the supplemental agreement as specified in Article 8 hereof. The **Owner** shall not be liable or under any obligation to compensate the **Engineer** for work performed or costs incurred by the **Engineer** relating to additional work not directly associated with the performance of the work authorized in this Agreement or as amended through supplemental agreement.

ARTICLE 10. Changes or Revisions in Work. If the **Owner** finds it necessary to request changes to the work, and the changes are within the applications of sound engineering principles, the **Engineer** shall make such revisions if requested and directed by the **Owner**.

10.1 Preliminary Work. The **Engineer** will make, without expense to the **Owner**, such revisions of any preliminary reports or drawings as may be required to meet the needs of the **Owner** and the applications of sound engineering principles.

10.2 Previously Approved or Satisfactorily Completed Work. If the **Owner** finds it necessary to request the **Engineer** to make changes to work previously approved by the **Owner** or work satisfactorily

completed for which the **Owner** approves or, after a definite plan has been approved by the **Owner**, if a decision is subsequently made by the **Owner**, 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 **Owner** to the **Engineer** will be in accordance with Article 9 hereof.

10.3 Project Delays. If the **Engineer** is required to perform additional work due to delays by the imposition of causes not within the **Engineer'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 **Engineer** shall be compensated by the **Owner** for such extra services and expense in accordance with Article 9 hereof.

10.4 Reduction of Project Cost. Notwithstanding any provision herein to the contrary, in the event it is necessary for the **Owner** 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 **Engineer**, the **Engineer** will be required to make such revisions or changes. These changes will only be considered additional work by the **Engineer**, if the **Engineer** previously provided these same changes as options to the **Owner** at the stage of preliminary work or prior to the approval of the final plan of the **Project**, and the option or options were not selected or approved by the **Owner** to be incorporated into the final plan of the **Project**. Payment for this additional work will then be made to the **Engineer** in accordance with Article 9 hereof. If the **Engineer** failed to provide these changes as an option or options to the **Owner** 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 **Engineer**.

ARTICLE 11. Ownership and Release of Documents.

11.1 Ownership of Documents. Original drawings and specifications are the property of the **Engineer**; however, the **Project** is the property of the **Owner**, and the **Engineer** may not use the drawings and specifications thereof for any purpose not relating to the **Project** without the **Owner's** consent. The **Owner** shall

be furnished with such reproductions of drawings and specifications as the **Owner** may reasonably require. Upon completion of the work or any earlier termination of this Agreement under Article 3.4 hereof, the **Engineer** will revise drawings to reflect changes made during construction and will promptly furnish the **Owner** with one complete set of reproducible record prints. Prints shall be furnished by the **Engineer**, as an additional service, at any other time requested by **Owner**. All such reproductions shall be the property of the **Owner** who may use them without the **Engineer'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 **Owner** to a drawing signed, sealed, and dated by a registered professional engineer, shall be made in accordance with the Texas Engineering Practice Act and the Rules of the State Board of Registration for Professional Engineers.

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

11.2 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.

ARTICLE 12. Discounts, Rebates, Refunds. In connection with procurement services rendered by the **Engineer**, if procurement services are required of the **Engineer** hereunder, all discounts, rebates and refunds shall accrue to the **Owner**. For some purchases, the **Engineer** 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 **Engineer** shall promptly notify the **Owner** so that a course of action may be mutually agreed upon by the **Owner** and the **Engineer**.

ARTICLE 13. Records, Accounting, Inspection. The **Engineer** shall keep full and detailed records and accounts in a manner approved by the **Owner**. The **Engineer** shall afford the **Owner's** authorized personnel and independent auditors, if any, full access to the work performed by the **Engineer** regarding the **Project** and to all of the **Engineer's** books, records, correspondence, instructions, drawings, receipts, vouchers and other

documents relating to such work under this Agreement, and the **Engineer** shall preserve all such records for three (3) years after final payment. The **Engineer** shall deliver to the **Owner** upon completion of such work, a statement of the cost of such work detailed according to the accounting procedures of the **Owner**.

ARTICLE 14. Subcontracting and Assignment. The **Engineer** shall bind every subconsultant by written subcontract to observe all the terms of this Agreement to the extent that they may be applicable to each subconsultant. No subcontract relieves the **Engineer** of any responsibilities under this Agreement.

The **Engineer** and the **Owner**, do hereby bind themselves, their successors, executors, administrators and assigns to each other party of this Agreement and to the successors, executors, administrators, and assigns of such other party in respect to all covenants of this Agreement.

ARTICLE 15. Patents. The **Engineer** shall indemnify and save the **Owner** 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 **Engineer** or from the use of any process designed by the **Engineer** or effected by said apparatus or equipment, and the **Engineer** shall indemnify and save the **Owner** 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 **Owner** shall promptly transmit to the **Engineer** all papers served on the **Owner** in any suit involving such claim of infringement, and provided further, that the **Owner** permits the **Engineer** 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 **Engineer** 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 **Engineer** hereby grants to the **Owner** a non-exclusive, royalty-free license under patents now or hereafter owned by the **Engineer** covering any machines, apparatus, processes, articles, or products included in the **Engineer's** work hereunder.

ARTICLE 16. Confidential Information, Inventions and Other Restrictions.

16.1 Confidential Information. The **Engineer** 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 **Owner**, or any other confidential information given to the **Engineer** by any of the **Owner's** commissioners, elected officials, employees, or representatives or acquired by the **Engineer** 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 **Engineer's** possession prior to such disclosure to the **Engineer** by the **Owner** or which is or shall lawfully be published or become part of general knowledge from sources other than the **Engineer** or which otherwise shall lawfully become available to the **Engineer** from a source other than the **Owner**, 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 **Engineer** in performing such work. Such information may, of course, be disclosed to the proper officials or employees of the **Owner** if necessary to perform the work hereunder. The **Engineer** shall, however, inform each of its employees who receive such information of these restrictions and the **Engineer** 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 **Owner**, effectuating the purposes of this Article.

16.2 Inventions. The **Engineer** shall communicate to the **Owner** at once, and require the **Engineer's** employees assigned to this **Project** to communicate to the **Owner** all inventions and improvements which any of the **Engineer's** employees, either alone or in conjunction with any of the **Owner'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 **Owner** that relates to the processes, products, compositions, machinery or plants of the **Owner**, or relating in any way to any of the operations in which the **Owner** has been or is engaged at the time, and such inventions and improvements shall become the sole, exclusive property of the **Owner** without any obligation on

its part to make any payment therefor in addition to any sums which the **Owner** may be obligated to pay to the **Engineer** as compensation for services rendered by the **Engineer** under contract with the **Owner**. The **Engineer** shall require its employees to execute patent applications and assignments thereof to the **Owner** or its nominees, and powers of attorney relating thereto for any country the **Owner** may designate, and shall take all other actions as the **Owner** may request to maintain and protect such inventions and improvements. The **Owner** shall pay all costs or charges incurred in protecting such inventions and improvements if the **Owner** desires to protect them. Before assigning any of the **Engineer's** employees to work under any contract with the **Owner** concerning this **Project**, the **Engineer** shall obtain from them agreements satisfactory to **Owner** complying in all respects with the terms and provisions of this Article.

16.3 The rights and obligations set forth in Article 16 shall survive the performance of this Agreement, or any termination, discharge or cancellation thereof.

ARTICLE 17. Engineer's Seal, Responsibility and Warranties.

17.1 Engineer's Seal. The **Engineer** shall assign a responsible engineer or engineers licensed to practice in the State of Texas, who shall sign, seal and date all appropriate engineering submissions to the **Owner** in accordance with the Texas Engineering Practice Act and the Rules of the State Board of Registration for Professional Engineers.

17.2 Engineer's Responsibility. The **Engineer** 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 **Engineer**. No additional compensation will be made to the **Engineer** for any necessary revisions or corrections resulting from errors, omissions, or negligent acts by the **Engineer**.

The **Engineer's** responsibility for all questions arising from design errors and/or omissions will be determined by the **Owner** or a designee appointed by the **Owner**. The **Engineer** 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.

17.3 Warranties.

- (1) The **Engineer** warrants that engineering design work performed by the **Engineer** hereunder shall be in accordance with sound engineering design practices and in conformance with applicable code and standards established for such work.
- (2) Notwithstanding anything to the contrary contained in this Agreement, the **Owner** and the **Engineer** agree and acknowledge that the **Owner** is entering into this Agreement in reliance on the **Engineer's** experience and abilities with respect to performing the **Engineer's** services hereunder. The **Engineer** accepts the relationship of trust and confidence established between it and the **Owner** by this Agreement. The **Engineer** covenants with the **Owner** to use the **Engineer's** best efforts, skill, judgment and abilities to design the **Project** and to further the interests of the **Owner** in accordance with the **Owner'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. Prior to the commencement of construction, the **Engineer** shall certify in writing to the **Owner** that the plans, specifications, and estimates ("**PS&E**") for the **Project**, as identified in Article 2.1 hereof, and the improvements when built in accordance therewith conform to all applicable governmental regulations, statutes and ordinances then in effect. The **Engineer** represents, covenants and agrees that there are no obligations, commitments or impediments of any kind that will limit or prevent performance of the **Engineer's** services.
- (3) The **Engineer** represents, covenants and agrees that all of **Engineer's** services to be furnished by the **Engineer** 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 engineers of similar experience, knowledge, skill and ability engaged in engineering practice throughout Texas under the same or similar circumstances involving the design and construction of a **Project** such as the **Project** with all the amenities as set forth in the **PS&E**.
- (4) The **Engineer** represents, covenants and agrees that the **Engineer's** special talent, training and experience cause the **Engineer** to be the prime professional on the **Project**; that because of such talent and training, the **Engineer** envisions the construction of the **Project** in its entirety, and possesses the special skills which enable the **Engineer** to recognize dangerous conditions that a reasonable, prudent engineer having such special skills could anticipate may arise from

the proper use of the **Project** after acceptance by **Owner**; that as the design professional, the **Engineer** has some measure of control over any such dangerous conditions; that the **Engineer** has knowledge which will enable the **Engineer** to recognize specific dangers that may arise from the proper use of the **Project** after acceptance by **Owner**; and, that the **Engineer** recognizes that any commissioners, elected officials, employees, and agents of the **Owner**, plus residents and owners 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.

(5) The **Engineer** represents, covenants and agrees that the **PS&E** of the **Project** will be accurate and free from any material errors. The **Engineer** 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 the **PS&E** of the **Project**; that the result of the **PS&E**, if built in accordance therewith, will be suitable for purposes for which the **Project** is designed; that the result of **Engineer's** inspection of the **Project** 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 **Engineer's** responsibilities as set forth herein shall at no time be in any way diminished by reason of any approval by the **Owner** of the **PS&E** nor shall the **Engineer** be released from any liability by reason of such approval by the **Owner**, it being understood that the **Owner** at all times is ultimately relying upon the **Engineer's** skill and knowledge in preparing the **PS&E**.

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

ARTICLE 18. Engineer's Resources. The **Engineer** shall furnish and maintain, at the **Engineer'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.

18.1 Project Manager. The **Engineer** shall provide a manager (**Project Manager**) for the **Project** that is a registered professional engineer in the State of Texas. The **Project Manager** shall have such knowledge and experience as will enable the **Project Manager** to perform the duties required for the services under this

Agreement. The **Engineer** may not change the **Project Manager** during the course of the **Project** without prior consent of the **Owner**. If, due to situations beyond the control of the **Engineer**, the **Engineer** must change the **Project Manager** prior to the completion and acceptance of the **Project**, the **Engineer** will submit a request to change the **Project Manager** to the **Owner** for approval.

18.2 Employees of the Engineer. All employees of the **Engineer** 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 **Engineer** who, in the opinion of the **Owner**, 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 **Owner**. The **Engineer** certifies that the **Engineer** presently has employed sufficient and qualified personnel, and will maintain sufficient and qualified personnel for performance of the services under this Agreement.

18.3 Documents/Information Exchange. The purpose of this Article is to define the required automated resources, format for graphics files, and information exchange pertaining to the **Project**. Recognizing that there may be several subconsultants participating in the development of the **Project**, and taking into consideration that the **Owner** has a significant investment in the development of the **Project**, there is a need for the **Engineer** 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 **Engineer** shall provide the **Owner** with documents and information in accordance with the special requirements outlined in **EXHIBIT "G"- Computer Documents and Information Exchange**, attached hereto and made a part of this Agreement.

ARTICLE 19. Indemnification. To the fullest extent permitted by applicable law, the **Engineer** and its agents, partners, subcontractors, and consultants (collectively "**Indemnitors**") shall and do agree to indemnify, protect, defend and hold harmless the **Owner**, the **Owner's** respective directors, elected officials, employees and agents (collectively "**Indemnitees**") 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 performance of the **Engineer's** services through activities of the **Engineer**, 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 **Engineer** or of any person employed or contracted by the **Engineer** 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 **Engineer**, anyone directly or indirectly employed by the **Engineer** or anyone for whose acts the **Engineer** may be legally liable. The **Engineer** shall also save harmless the **Owner** from any and all expense, including, but not limited to, attorney fees which may be incurred by the **Owner** in litigation or otherwise resisting said claim or liabilities which may be imposed on the **Owner** as a result of such activities by the **Engineer**, its agents, partners, subcontractors and/or consultants. In this connection, it is agreed and understood that the **Engineer** shall not be responsible for any portion of the liability proximately caused by the **Owner's** negligence.

ARTICLE 20. Joint and Several Liability. In the event more than one of the **Indemnitors** are connected with an accident or occurrence covered by the indemnification in Article 19 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 **Indemnitee**. The provisions of this Article shall not be construed to eliminate or reduce any other indemnification or right which the **Owner** or any of the **Indemnitees** has by law.

ARTICLE 21. Insurance. The **Engineer** shall obtain and maintain insurance in the minimum limits of liability for each of the types of insurance coverage identified as follows:

- (1) Workers' Compensation, endorsed with a waiver of subrogation in favor of the **Owner** in accordance with the statutory obligations imposed by Worker's Compensation or Occupational Disease laws under the Texas Workers' Compensation Law ("**Statutory Texas**").
- (2) Commercial General Liability, endorsed with the **Owner** as an additional insured and endorsed with a waiver of subrogation in favor of the **Owner** *all to the extent of the liabilities assumed by the Engineer under Article 19 and Article 20 herein*, in limits of liability not less than one million dollars (**\$1,000,000**) combined single limit each occurrence and in the aggregate for bodily injury and property damage.
- (3) Texas Business Automobile Policy, endorsed with the **Owner** as an additional insured and endorsed with a waiver of subrogation in favor of the **Owner** *all to the extent of the liabilities assumed by the Engineer under Article 19 and Article 20 herein*, in limits of liability not less than two hundred fifty thousand dollars (**\$250,000**) each person for bodily injury, five hundred thousand dollars (**\$500,000**) each occurrence for bodily injury, and one hundred thousand dollars (**\$100,000**) each occurrence for property damage.
- (4) Professional Liability in limits of \$1,000,000 each claim and aggregate.

The **Engineer** covenants and agrees to maintain an insurance policy in the minimum limits of liability for each of the types of insurance coverage identified above. The **Engineer** shall furnish the **Owner** with a certificate of insurance (*Hidalgo County Certificate of Insurance*) showing the said policy to be in full force and effect during the period of service, identified in Article 3 hereto, for this Agreement. The completed *Hidalgo County Certificate of Insurance* shall be attached hereto and identified as **EXHIBIT "H"- Hidalgo County Certificate of Insurance**. The **Engineer** will be considered in breach of contract should the **Engineer** 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 Article 3.4 hereto. Additionally, the **Engineer** 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 the **Owner**.

ARTICLE 22. Compliance with Laws. The **Engineer** 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, worker's compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the **Engineer** shall furnish the **Owner** with satisfactory proof of its compliance therewith.

ARTICLE 23. Noncollusion. The **Engineer** warrants that the **Engineer** has not employed or retained any company or persons, other than a bona fide employee working solely for the **Engineer**, to solicit or secure this Agreement, and that the **Engineer** has not paid or agreed to pay any company, engineer 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 **Owner** shall have the right to annul this Agreement without liability or, in the **Owner's** discretion, to deduct from the lump sum fee as identified in Article 5, hereto and respectively, or otherwise recover, the full amount of each fee, commission, percentage, brokerage fee, gift or contingent fee.

ARTICLE 24. Gratuities. The **Owner** mandates that employees of the **Owner** shall not accept any benefits, gifts or favors from any person doing business or who reasonably speaking may do business with the **Owner** under this Agreement; the only exceptions allowed are ordinary business meals. Any person doing business with or who may reasonably seeking to do business with the **Owner** under this Agreement may not make any offer of benefits, gifts or favors to **Owner** employees, except as mentioned herein above. Failure on the part of the **Engineer** to adhere to this provision may result in the termination of this Agreement.

ARTICLE 25. Payment of Franchise Tax. The **Engineer** hereby certifies that the **Engineer** is not delinquent in Texas franchise tax payments, or that the **Engineer** is exempt from, or not subject to, such a tax. A false statement concerning corporation's franchise tax status shall constitute grounds for termination of the Agreement at the sole option of the **Owner**.

ARTICLE 26. Disputes. The **Engineer** shall be responsible for the settlement of all contractual and

administrative issues arising out of any procurement made by the **Engineer** in support of the services under this Agreement.

ARTICLE 27. 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 thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

ARTICLE 28. Notices. All notices to either party by the other required under this Agreement shall be personally delivered or mailed to such party at the following respective addresses:

OWNER:	<i>Hidalgo County</i>	ENGINEER:	<i>S&B Infrastructure, Ltd.</i>
	<i>100 E. Cano</i>		<i>5408 North 10th Street</i>
	<i>Edinburg, Texas 78539</i>		<i>McAllen, Texas 78504</i>

The address may be changed by either party by written notice, and notice so mailed shall be effective upon mailing.

ARTICLE 29. Miscellaneous Provisions.

(a) This Agreement constitutes the entire Agreement between the **Engineer** and the **Owner** relating to the work herein described, and supersedes any prior understanding or written or oral contracts between the parties respecting the subject matter defined herein. There are no previous or contemporary representations or warranties of the **Owner** or the **Engineer** not set forth herein.

(b) Except as specifically provided herein, no modification, waiver, termination, rescission, discharge, or cancellation of this Agreement or of any terms thereof shall be binding on the **Owner** unless in writing and executed by an officer or employee of the **Owner** specifically authorized to do so.

(c) No waiver of any provision of or a default under this Agreement shall affect the right of the **Owner** 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 of any

terms thereof shall impair the **Owner's** rights with respect to any liabilities, whether or not liquidated, of the **Engineer** to the **Owner** theretofore accrued.

(e) All rights and remedies of the **Owner** specified in this Agreement are in addition to the **Owner's** other rights and remedies.

(f) The **Engineer** shall remain an independent contractor and shall have no power, nor shall the **Engineer** represent that the **Engineer** has any power, to bind the **Owner** or to assume or to create any obligation express or implied on behalf of the **Owner** except as specifically authorized in advance by the **Owner**.

(g) The Agreement shall be construed under the laws of the State of Texas and is performable in Hidalgo County, Texas.

(h) This Agreement may only be amended by a written document executed by the **Owner** and the **Engineer** as provided by Article 8 herein.

ARTICLE 30. Signatory Warranty The undersigned signatory or signatories for the **Engineer** hereby represent and warrant that the signatory is an officer of the organization for which he or she has executed this Agreement, and that he or she has full and complete authority to enter into this Agreement on behalf of the **Engineer**. The above-stated representations and warranties are made for the purpose of inducing the **Owner** to enter into this Agreement.

IN WITNESS WHEREOF, the **Engineer** and the **Owner** have caused this **Agreement for Professional Services** to be effective as of the ____ day of **June 2007**.

ENGINEER:
S&B INFRASTRUCTURE, LTD.

BY: 
Daniel O. Rios, PE, Senior Vice-President


OWNER:
HIDALGO COUNTY

BY: _____
Juan D. Salinas, III, County Judge

ATTEST:

BY: _____
Arturo Guajardo, Hidalgo County Clerk

APPROVED AS TO FORM:
ATLAS & HALL, LLP

BY: 

ATTACHMENTS:

- Exhibit A** - Scope of Services to be provided by the Owner
- Exhibit B** - Scope of Services to be provided by the Engineer
- Exhibit C** - Work Schedule
- Exhibit D** - Engineer's Rates
- Exhibit E** - Work Authorization Form
- Exhibit F** - Supplemental Agreement Form
- Exhibit G** - Computer Graphics Files
- Exhibit H** - Certificates of Insurance (Hidalgo County)

EXHIBIT "A"
Services to be Provided by the Owner

The following provides an outline of the services to be provided by the **Owner** in the development of the **Project**.

GENERAL

The **Owner** will provide to the **Engineer** the following:

- (1) Authorization to the **Engineer** to begin work in accordance with Article 7 of this Agreement.
- (2) Payment for work performed by the **Engineer** and accepted by the **Owner** in accordance with Article 5 and Article 6, both of this Agreement.
- (3) Assistance to the **Engineer**, as necessary, to obtain the required data and information from other local, regional, **State** and Federal agencies that the **Engineer** cannot easily obtain.
- (4) Provide any available relevant data the **Owner** may have on file concerning the **Project**.
- (5) Provide timely review and decisions in response to the **Engineer's** request for information and/or required submittals and deliverables, in order for the **Engineer** to maintain the agreed-upon work schedule prepared in accordance with **EXHIBIT "C"** attached to this Agreement.
- (6) Attend and participate in progress meetings as required and as coordinated and conducted by the **Engineer**.

EXHIBIT "B"

Services to be Provided by the Engineer

BACKGROUND

ENGINEER understands the County Record Retention Building is located north of SH 107 in San Carlos, Texas. The building is a concrete block building with a concrete slab floor and an aluminum roof which was repaired approximately 6 to 7 years ago with an asphalt/gravel composite roof. It is thought to be constructed in the early 1900's.

SCOPE OF WORK

ENGINEER will perform a Structural and Environmental Inspection to determine if the building can be renovated to a state of the art record detention facility or need to be replaced with a completely new building for the stated purpose. The scope of work is outlined below:

STRUCTURAL

1. **ENGINEER** will conduct a field inspection of the warehouse building, which will include but not be limited to identifying any cracks on foundation and walls, determine if there is any foundation settlement, rust of structure members, roof leakage, etc. During the site inspection **ENGINEER** will survey the warehouse site, measure building size and structure elements dimensions, and determine structure material strength. For this task the **Owner** will need to provide access to reach the roof, truss/joist frame.
2. **ENGINEER** will provide a geotechnical engineer (Millennium Engineers Group, Inc.) to provide boring logs and soil information including foundation bearing capacity from two 30 feet deep boring. Based on survey and geotechnical information, **ENGINEER** will perform a structure analysis to determine if all structure elements are adequate based on current IBC Building code (including foundation, concrete block wall, columns, frames and roof). The **Owner** will be responsible for on site utility locate and clearance.
3. Based on the information, **ENGINEER** will make a recommendation as to whether this building meets public safety codes or if it needs to be repaired. **ENGINEER** will provide the County with a cost proposal for the structural repair if necessary.

ENVIRONMENTAL

1. **ENGINEER** will conduct a modified Phase I Environmental Site Assessment according to ASTM 1527-05, to identify to the extent feasible recognized environmental conditions in connection with the property. The Phase I ESA will conduct a record review, site reconnaissance, and conduct interviews.
2. A Texas Department of State Health Service (DSHS) licensed asbestos inspector will conduct a visual inspection of the facility for suspect asbestos containing materials (ACM). The inspector will collect six bulk samples of suspected materials, which will be delivered to a DSHS licensed laboratory and subject to polarized light microscopy (PLM) analysis for asbestos fiber identification.

Hidalgo County / **ENGINEER** Infrastructure, Ltd.
Agreement for Professional Services – County Record Detention Building in San Carlos, Texas

3. Six paint samples will be collected from the interior and exterior of the building. The samples will be analyzed using EPA Standard Test Method SW-846-6010B. The number of suspected ACM and LPB samples collected will be determined by the number of homogeneous areas identified during the field inspection. If more samples are necessary the **Owner** will be notified of the additional scope and cost associated with the additional samples.
4. **ENGINEER** will prepare a written report documenting the findings. If our findings warrant continuation to a Phase II Assessment (subsurface investigations, site sampling, laboratory analysis, risk assessment, remedial actions and regulatory compliance assessment), **ENGINEER** will provide you with the expanded scope of work and its associated budget. Unless directed otherwise, the **Owner** is the only recipient of our report, and no copies will be distributed without the **Owner's** prior approval.

Services which will not be provided as part of the environmental services include:

- Surveys for radon
- Texas Historical Commission coordination of any historic sites and/or structures
- Section 4(f)/6(f) parkland coordination
- Phase II Environmental Site Assessments
- Endangered Species Act Section 7 Consultation with the US Fish Wildlife Service
- Coordination of US Army Corps of Engineers wetland delineation or permitting.

Hidalgo County / **ENGINEER** Infrastructure, Ltd.
Agreement for Professional Services – County Record Detention Building in San Carlos, Texas

EXHIBIT "B"
Page 2 of 2

EXHIBIT "C"

Work Schedule

Note: The scheduled activities will begin following receipt of a signed contract.

Task	Engineereks			
	1	2	3	4
STRUCTURAL				
Task 1: Structural Survey				
Task 2: Geotechnical				
Task 3: Structural Cost Comparison				
ENVIRONMENTAL				
Task 1: Compilation and Review of Public Record				
Task 2: Site Reconnaissance				
Task 3: Asbestos inspection and lead base paint analysis				
Task 4: Report Preparation				

ENGINEER is prepared to initiate this project within five working days of receiving authorization to proceed. It is anticipated to provide a written report of findings within four weeks of written authorization. Please note that ability to complete the services involved in review of the public record within the above referenced time frame may be dependent upon the availability of relevant maps and records, and the schedule of pertinent public officials. If difficulties arise, **Engineer** will inform the **Owner** at the earliest possible time and obtain **Owner's** concurrence on extending the evaluation period or continuing without the benefit of the information in question.

Hidalgo County / **ENGINEER** Infrastructure, Ltd.
 Agreement for Professional Services – *County Record Detention Building in San Carlos, Texas*

PROJECT: Record Retention Warehouse
 CLIENT: Hidalgo County
 CONTRACT: X
 COUNTY: X
 S & B JOB NO.: XXX

EXHIBIT D - FEE SCHEDULE

06/05/07

ACTIVITY CODE	FUNCTION CODE	DESCRIPTION from Attachment B	FIRM	SERVICE	Principal (XV)	Director of Operations (XVI)	Project Manager (VII) (VM)	Engineer (VI) (SENV)	Engineer (IV)	Env. Scientist II (Ih)	Engineer (Ih)	Design (V)	CADD Operator (I)	Secretary	TOTAL HRS	ESTIMATED FEE	TOTALS
BUILDING INSPECTION																	
683440	1	Survey Site, Building Size, Structure Dia.	S & B	BASIC				1							17	\$1,524.55	
683440	1a	Determine Structure Material Strength	S & B	BASIC				1							9	\$817.51	
683410	2	Geotechnical Structural Borings	S & B	BASIC				1	16						17	\$1,524.55	
683430	3a	Repair and Strengthening	S & B	BASIC				6	20						26	\$2,265.82	
683430	3b	Design New Building	S & B	BASIC				5	16						21	\$2,010.59	
683430	3c	Cost Comparison for Repair Existing and New Building	S & B	BASIC				1	4						5	\$475.03	
683430	3c	Cost Engineering Drawing	S & B	BASIC				1	5						6	\$4,874.77	
ENVIRONMENTAL SCOPE																	
683430	1	Photograph, Interview, Measurements, Report Preparation	S & B	BASIC				2							10	\$853.74	
683430	2	Photograph, Interview, Measurements, Report Preparation	S & B	BASIC				4							44	\$3,430.76	
683430	3	Photograph, Interview, Measurements, Report Preparation	S & B	BASIC				4							0	\$0.00	
Sub Total (- BUILDING INSPECTION)																	
0																	
LABOR TOTALS																	
Sub Total (102 -)																	
0																	
LABOR TOTALS																	
Sub Total (102 -)																	
0																	
CONTRACT RATES (\$/MAN-HOUR)																	
207.14																	
BASE RATES (\$/MAN-HOUR)																	
75.00																	
MULTIPLIER																	
2.7619																	
NON LABOR																	
62300	160	a Regulatory Database, Historical Information	S & B													\$400.00	
50550		b ACH and LSP Survey	S & B													\$350.00	
50550		c Film Development	S & B													\$0.00	
50550		d Mylar Film Outside reproduction	S & B													\$0.00	
52400		e Travel - Mileage	S & B													\$0.00	
52400		f Travel to District Area Office - Mileage	S & B													\$0.00	
52400		g Travel - Mileage	S & B													\$0.00	
52400		h Travel - Mileage	S & B													\$0.00	
52400		i Travel - Airfare	S & B													\$225.00	
52400		j Travel - Rental Vehicle	S & B													\$75.00	
Sub Total (F.C. 160)																	
1,755.00																	
NON LABOR TOTAL																	
1,755.00																	
BASIC SERVICE TOTAL																	
200,541.75																	
SPECIAL SERVICE TOTAL																	
0.00																	
Project on ODC																	
Project on Subcontractors																	
Total Project																	
222,905.00																	

EXHIBIT "E"

Work Authorization

HIDALGO COUNTY

Professional Engineering Services

Contract # _____

Work Authorization Form

WORK AUTHORIZATION NO. ____

THIS WORK AUTHORIZATION is made pursuant to the terms and conditions of Section I.A. of the Agreement made by and between **HIDALGO COUNTY**, action herein by and through the **Commissioner's Court**, hereinafter called the "**Owner**," and, _____, professional engineers of _____, Texas, hereinafter called "**Engineer**".

PART 1. SCOPE OF WORK

The purpose of this Work Authorization is for the **Engineer** to provide

The scope of services to be provided by the **Owner** is identified in **EXHIBIT "A" – Scope of Services to be Provided by the Owner** attached hereto.

The scope of services to be provided by the **Engineer** is identified in **EXHIBIT "B" – Scope of Services to be Provided by the Engineer** attached hereto.

PART 2. ESTIMATED COST

The estimated cost for services under this Work Authorization is \$ _____.

This amount is based upon the costs outlined in the Estimated **Cost Proposal** attached hereto as **EXHIBIT "D"**.

PART 3. PAYMENT

Compensation and payment to the **Engineer** for the services established under this Work Authorization shall be made in accordance with **Article/Part/Section**____ of the Agreement.

PART 4. FUNDING

This Work Authorization No. 1 shall be funded through funding source:

Account No. _____

Requisition Number _____ (MUST BE INCLUDED AFTER CC APPROVAL)

PART 5. PERIOD OF SERVICE

Hidalgo County / **ENGINEER** Infrastructure, Ltd.
Agreement for Professional Services – County Record Detention Building in San Carlos, Texas

This Work Authorization shall become effective on the date of final acceptance of the parties hereto, and terminate upon completion of scopes of the work authorization.

PART 6. RESPONSIBILITIES AND OBLIGATIONS

This Authorization does not waive the parties' responsibilities and obligations provided under the **Agreement**.

PART 7. ACKNOWLEDGEMENT AND CONFIRMATION

Acknowledgement and confirmation by **Hidalgo County** _____, Commissioner _____ as to content and detail of this **Work Authorization** No. ____.

HIDALGO COUNTY

BY: _____

PART 8. ACCEPTANCE AND APPROVAL

This Work Authorization is hereby accepted, approved by Hidalgo County Commissioners' Court on _____ as indicated below and effective as of ____ day of _____, 2006.

THE ENGINEER:

**THE OWNER:
HIDALGO COUNTY**

By: Engineer

**By: Juan D. Salinas, III
County Judge**

ATTEST:

By: Arturo Guajardo, Jr., County Clerk

LIST OF ATTACHMENTS

- ATTACHMENT "A" - Service to be Provided by the Owner
- ATTACHMENT "B" - Services to be Provided by the Engineer
- ATTACHMENT "C" - Work Schedule
- ATTACHMENT "D" - Cost Proposal

Hidalgo County / **ENGINEER** Infrastructure, Ltd.
Agreement for Professional Services – County Record Detention Building in San Carlos, Texas

EXHIBIT "F"
Supplemental Agreement Form

THE STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

SUPPLEMENTAL AGREEMENT NO. ____
TO AGREEMENT FOR PROFESSIONAL SERVICES

THIS SUPPLEMENTAL AGREEMENT is made pursuant to the terms and conditions of Article 8 of the **Agreement** made by and between the **HIDALGO COUNTY**, acting herein by and through the **COMMISSIONER'S COURT**, hereinafter called the "**Owner**", and **S&B INFRASTRUCTURE, LTD.**, professional engineers of McAllen, Texas, hereinafter called the "**Engineer**".

WITNESSETH

WHEREAS, the **Owner** and the **Engineer** executed the **Agreement** on the 11th day of October 2005 concerning professional engineering services for the **structural and environmental assessment of the County Record Detention Building in San Carlos, Texas in Hidalgo County** (incorporated herein by reference as the "**Project**"); and,

WHEREAS, Article ____ of the **Agreement**, (article title), establishes _____; and,

WHEREAS, it has become necessary to amend the contract to _____

AGREEMENT

NOW THEREFORE, premises considered, the **Owner** and the **Engineer** agree that said **Agreement** is amended as follows:

- I. Article ____ of the **Agreement**, (article title), is revised to _____

All other provisions are unchanged and remain in full force and effect.

Hidalgo County / S&B Infrastructure, Ltd.
Agreement for Professional Services –GIS Phase I – Architectural and System Design

IN WITNESS WHEREOF, the **Engineer** and the **Owner** have caused this Supplemental Agreement to the Agreement for Professional Services to be executed as of the _____ day of _____, 20__.

**THE ENGINEER:
S&B INFRASTRUCTURE, LTD.**

BY: _____
_____, (officer title)

**THE OWNER:
HIDALGO COUNTY**

BY: _____
_____, County Judge

ATTEST:

_____, Hidalgo County Clerk

LIST OF ATTACHMENTS

(as required)

Hidalgo County / S&B Infrastructure, Ltd.
Agreement for Professional Services –GIS Phase I – Architectural and System Design

EXHIBIT "F"
Page 2 of 2

EXHIBIT "G"
Computer Documents and Information Exchange

PURPOSE. The purpose of this exhibit is to define the format for computer files and information exchange pertaining to the **Project**. Recognizing that there will be several team members participating in the development of the overall **Project**, and taking into consideration that the **Owner** has a significant investment in the development of the **Project**, there is a need for consistency in document development for the purpose of review and production to help facilitate an economically efficient product.

FORMAT OF COMPUTER FILES FURNISHED TO THE OWNER BY THE ENGINEER. All computer document files furnished to the **Owner** by the **Engineer** shall be furnished on a CD-ROM created utilizing DOS software. Retrieval documentation relating to file storage on the designated delivery media shall be prepared by the **Engineer** and provided to the **Owner**. It is the intent of the **Engineer** and this Agreement to secure computer files from all project team members that are composed of elements of the same precision, integrity, singularity and attributes.

MISCELLANEOUS

All plots and graphics media provided by the **Engineer**, as a result of this Agreement, shall be delivered to the **Owner**. Final payment for documents and/or associated, applicable project files will not be made until the files furnished by the **Engineer** have been demonstrated to be usable in the formats described above and herein.

EXHIBIT "H"

Certificate of Insurance Form – Hidalgo County

Hidalgo County
CERTIFICATE OF INSURANCE



NOTE: Copies of the endorsements listed below are not required as attachments to this certificate.

The named Engineer, Consultant or Contractor shall not commence work until he/she has obtained the minimum insurance specified in Section II, below, and obtained the following endorsements: **Hidalgo County** as an **Additional Insured** for coverages 3 and 4, and a **Waiver of Subrogation** in favor of the **Hidalgo County** under coverages 2, 3 and 4. Only certificates of insurance published by **Hidalgo County** are acceptable as proof of insurance; commercial carriers' certificates are unacceptable.

SECTION I IDENTIFICATION DATA

1.1 Insured Name (of Engineer, Consultant or Contractor)

1.2 Street/Mailing Address

1.3 City

1.4 State

1.5 Zip

1.6 Phone Number

Area Code ()

SECTION II TYPE OF INSURANCE

Type	Policy Number:	Effective Date:	Expiration Date:	Limits of Liability Not Less Than:
2. WORKERS' COMPENSATION				
	2.1 _____	2.2 _____	2.3 _____	Statutory Texas
Endorsed with a Waiver of Subrogation in favor of Hidalgo County				
3. COMMERCIAL GENERAL LIABILITY				
Bodily Injury/Property Damage	3.1 _____	3.2 _____	3.3 _____	\$1,000,000 combined single limit each occurrence and in the aggregate
Endorsed with Hidalgo County as an Additional Insured and endorsed with a Waiver of Subrogation in favor of Hidalgo County .				
4. TEXAS BUSINESS AUTOMOBILE POLICY				
A. Bodily Injury	4.1 _____	4.2 _____	4.3 _____	\$250,000 ea. Person \$500,000 ea. Occurrence
B. Property Damage	4.4 _____	4.5 _____	4.6 _____	\$100,000 ea. Occurrence
Endorsed with Hidalgo County as an Additional Insured and endorsed with a Waiver of Subrogation in favor of Hidalgo County .				
5. PROFESSIONAL LIABILITY				
	5.1 _____	5.2 _____	5.3 _____	\$1,000,000 combined single limit each occurrence and in the aggregate

SECTION III CERTIFICATION

This Certificate of Insurance neither affirmatively or negatively amends, extends, or alters the coverage afforded by the above insurance policies issued by the insurance company named below.

Cancellation of the insurance policies shall not be made until THIRTY DAYS AFTER the undersigned agent or his/her company has sent written notices by certified mail to the Engineer, Consultant or Contractor and **Hidalgo County**.

THIS IS TO CERTIFY to Hidalgo County that the insurance policies above meet all the requirements stipulated above and such policies are in full force and effect.

6.1 Name of Insurance Company			7.1 Name of Authorized Agent		
6.2 Company Address			7.2 Agent's Address		
6.3 City	6.4 State	6.5 Zip	7.3 City	7.4 State	7.5 Zip
7.6 Authorized Agent's Phone No. Area Code ()			Original Signature of Authorized Agent _____		
			Date _____		

Hidalgo County / S&B Infrastructure, Ltd.
Agreement for Professional Services – County Record Detention Building in San Carlos, Texas

Hidalgo County
Certificate of Insurance Requirements

Only the Hidalgo County Certificate of Insurance (COI) forms are acceptable as proof of insurance.

The named insured on the COI and the name of the Engineer, Consultant, or Contractor, as it appears on the Agreement for Professional Services, must be the same.

The signature of the agent must be original in ink; stamped/typed/printed signatures are unacceptable.

WORKER'S COMPENSATION

The following requirements apply to *WORKER'S COMPENSATION* coverage:

- If the Engineer, Consultant, or Contractor has *any* employees, in addition to himself/herself, then the Engineer, Consultant, or Contractor is required to have workers' compensation insurance.
- The word STATUTORY, under limits of liability, means that the benefits allowed under the Texas Workers' Compensation Law will be paid by the insurer.
- Relatives of the Engineer, Consultant or Contractor (spouse, sons, daughters) must be covered by workers' compensation insurance.

GROUP HEALTH insurance may not be substituted for *WORKERS' COMPENSATION* insurance.

COMMERCIAL GENERAL LIABILITY

COMMERCIAL GENERAL & PROFESSIONAL LIABILITY insurance is usually sold in only Combined Single Limit coverage. In the event the coverages are specified separately, they must be *at least* these amounts:

Bodily Injury	-	\$750,000 each occurrence
Property Damage	-	\$250,000 each occurrence
		\$1,000,000 aggregate

Note: This coverage was previously known as Comprehensive General Liability insurance. Some older policies may still carry this identification. This is acceptable.

MANUFACTURERS' AND CONTRACTORS' LIABILITY insurance is not an acceptable substitute for *COMMERCIAL GENERAL LIABILITY* insurance.

TEXAS BUSINESS AUTOMOBILE POLICY

The coverage amount for a *TEXAS BUSINESS AUTOMOBILE POLICY* may be shown as a minimum of \$1,000,000 Combined Single Limit for bodily injury and property damage by a typed or printed entry and deletion of the specific amounts listed for Bodily Injury and Property Damage.

BASIC AUTOMOBILE LIABILITY insurance is *not* an acceptable substitute for a *TEXAS BUSINESS AUTOMOBILE POLICY* or *COMPREHENSIVE AUTOMOBILE LIABILITY* insurance.

Hidalgo County / S&B Infrastructure, Ltd.
Agreement for Professional Services – County Record Detention Building in San Carlos, Texas

ACORD CERTIFICATE OF LIABILITY INSURANCE		OP ID L5 SBINF-1	DATE (MM/DD/YYYY) 05/17/07
PRODUCER ProTECH Insurance Agency, Inc. 3120 Southwest Freeway, #100 Houston TX 77098 Phone: 713-520-1090 Fax: 713-529-7505		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW	
INSURED S & B Infrastructure, Ltd. Attn: Diane Larrivee P.O. Box 266245 Houston TX 77207-6245		INSURERS AFFORDING COVERAGE INSURER A: Zurich-American Insurance Co. INSURER B: Steadfast Insurance Co. INSURER C: INSURER D: INSURER E:	NAIC # 16535 19070

COVERAGES

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. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR	GLO 3729647-02	01/01/07	01/01/08	EACH OCCURRENCE \$ 1000000
	GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1000000 MED EXP (Any one person) \$ 5000 PERSONAL & ADV INJURY \$ 1000000 GENERAL AGGREGATE \$ 2000000 PRODUCTS - COM/OP AGG \$ 2000000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	BAP 3729648-02	01/01/07	01/01/08	COMBINED SINGLE LIMIT (Ea accident) \$ 1000000
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY AGG \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	WC 5343557-02	01/01/07	01/01/08	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1000000 E.L. DISEASE - EA EMPLOYEE \$ 1000000 E.L. DISEASE - POLICY LIMIT \$ 1000000
B	Professional Liability	EOC 5343434-02	01/01/07	01/01/08	Ea Claim 1000000 Aggregate 1000000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Certificate Holder is included as an Additional Insured to the extent agreed by written and signed contract.

CERTIFICATE HOLDER HIDALGO Hidalgo County Administration Bldg 100 E Cano, 4th Floor Edinburg TX 78539	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE <i>C. S. Madeira</i>
---	---