



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

### **ARTICLE 3 Period of Service**

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

**3.1 Termination Date.** This Agreement shall terminate at the close of business upon completion of this project (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 7 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 7 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 thirty (30) 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 thirty (30) 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 thirty (30) 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 Work Schedule,

Exhibit "C" 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, 13, 14.3 and 15 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 will 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 Scope of Services as provided by the engineer, the **Owner** shall review the approved Scope of Services 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 Scope of Services, including:

- (1) problems, delays, adverse conditions which will materially affect the ability to attain contract objectives, prevent the meeting of time schedules and goals, 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 Scope of Services 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** as follows:

**5.1 Services.** For and in consideration of the **Services** to be rendered by the **Engineer**, as identified in Article 2 and more particularly identified in **EXHIBIT "B"**, attached hereto, the amount payable by the **Owner** to the **Engineer** for **Services** will be in the amount of \$ \_\_\_\_\_, subject to adjustment in accordance with Article 6.1 herein, will be provided in **EXHIBIT D1- Fee Breakdown** attached. Payments to the **Engineer** for **Services** shall be made by the **Owner**, upon presentation by the **Engineer** of the **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 as executed through a lump sum fee assigned. 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 identified 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 6.4 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 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**, or (2) failure of the **Engineer's** services to comply with the requirements of this Agreement. 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 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**.

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 "DI"**, 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 8 hereof, or changes or revisions in work, as identified in Article 9 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 8 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, 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 "DI"**, attached hereto. The negotiated lump sum fee shall be incorporated into the supplemental agreement as specified in Article 7 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 9 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**.

**9.1 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.

**ARTICLE 10**  
**Ownership and Release of Documents**

**10.1 Ownership of Documents.** 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.

**ARTICLE 11**  
**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 Work Schedule Exhibit "C" 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 procedure and requirements of the **Owner**.

**ARTICLE 12**  
**Subcontracting and Assignment**

The **Engineer** shall not assign, subcontract or transfer the **Engineer's** interest in this Agreement without the prior written consent of the **Owner**. The **Engineer** shall bind every sub-consultant by written subcontract to observe all the terms of this Agreement to the extent that they may be applicable to each sub-consultant. No subcontract relieves the **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 contract.

**ARTICLE 13**  
**Engineer's Seal, Responsibility and Warranties**

**13.1 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.

**13.2 Engineer's Responsibility.** The **Engineer** shall be responsible for the accuracy of the work performed, 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 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.

#### **ARTICLE 14 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.

**14.1 Project Manager.** The **Engineer** shall provide a manager (**Project Manager**) 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 Work Authorization 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 improvements, the **Engineer** will submit a request to change the **Project Manager** to the **Owner** for approval.

**14.2 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 Work Authorization 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.

**14.3 Documents/Information Exchange.** The purpose of this Article is to define the required automated resources, format for graphics files, and information exchange. Taking into consideration that the **Owner** has a significant investment in the development of the information provided, 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 improvement. Therefore, the **Engineer** shall provide the **Owner** with documents and information in accordance with the special requirements outlined in **EXHIBIT "B"** attached hereto.

#### **ARTICLE 15 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, 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 negligent 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 16** **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 17** **Insurance**

The **Engineer** shall obtain and maintain insurance in the 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 15 and Article 16 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 15 and Article 16 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 "E"- 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 notice to proceed by the **Owner**.

#### **ARTICLE 18 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 19 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 20 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 21**

### **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:** Hidalgo County  
100 East Cano, 2<sup>nd</sup> Floor  
Edinburg, Texas 78539

**Engineer:** S & B Infrastructure, LTD  
5408 North 10<sup>th</sup> Street  
McAllen, Texas 78504

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

## **ARTICLE 22**

### **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 7 herein.

**ARTICLE 23**  
**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 \_\_\_\_\_, 2009.

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

**BY:** \_\_\_\_\_  
Daniel O. Rios, P.E., Senior Vice President

**OWNER:**  
**HIDALGO COUNTY**

**BY:** \_\_\_\_\_  
Juan D. Salinas, III, County Judge

**ATTEST:**

\_\_\_\_\_  
Arturo Guajardo, Jr., County Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_

**ATTACHMENTS:**

- |                    |   |
|--------------------|---|
| <b>EXHIBIT A</b>   | -Scope of Services to be Provided by the Owner      |
| <b>EXHIBIT B</b>   | -Scope of Services to be Provided by the Engineer   |
| <b>EXHIBIT C</b>   | -Work Schedule                                      |
| <b>EXHIBIT D</b>   | -Engineer's Contract Rates                          |
| <b>EXHIBIT D I</b> | -Fee Breakdown                                      |
| <b>EXHIBIT E</b>   | -Certificate of Insurance ( <i>Hidalgo County</i> ) |

## **EXHIBIT A**

-Scope of Services to be  
Provided by the Owner

# **Exhibit "A"**

## **Services to be Provided by County**

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

### **General**

The Owner will provide to the Engineer the following:

- 1) Provide the authorization to proceed with services through coordination with the project consulting and design Engineer.
- 2) Payment for work performed by the Engineer and accepted by the Owner in accordance with Article 6 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 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 agreement upon work schedule prepared in accordance with Exhibit "C" attached to this Agreement.
- 6) Attend and participate in progress meetings as required and as coordination and conducted by the Engineer.
- 7) Provide the authorization to proceed with services on project by project basis through consulting design and construction engineer.

## **EXHIBIT B**

-Scope of Services to be  
Provided by the Engineer

# **EXHIBIT C**

-Work Schedule

**EXHIBIT “C”**  
**Services to be Provided by the Engineer**

A detailed work schedule for each **Work Authorization**, identified and more particularly described in Article 7 of this Agreement, shall be prepared by the **Engineer** to be submitted and approved at the Design Concept Conference for each **Work Authorization**. The work schedule will provide specific work sequence and definite review times by the **Owner** and the **Engineer** of the work performed.

The **Engineer** will diligently pursue the completion of each **Work Authorization** as defined by the milestones and deliverable due dates outlined in each **Work Authorization**'s associated work schedule.

The **Engineer** will inform the **Owner** (in reasonable advance of the delay) should the **Engineer** encounter delays that would prevent the performance of all work in accordance with the established work schedule.

**EXHIBIT D**  
-Engineer's Contract Rates

## EXHIBIT "D"

### Contract Rates

The following rates for the Engineer will be used in negotiating Work Authorizations in the development of the Project.

#### Rate Schedule - S&B Infrastructure, Ltd.

LABOR						
Fiscal Year	2009		2010		2011	
	Base Rate *	Contract Rate**	Base Rate *	Contract Rate**	Base Rate *	Contract Rate**
<b>PRIME PROVIDER</b>						
Principal	\$113.65	\$332.06	\$119.33	\$348.67	\$125.30	\$366.10
Director of QC / QA	\$110.82	\$323.79	\$116.36	\$339.98	\$122.18	\$356.98
Project Manager	\$73.88	\$215.86	\$77.57	\$226.66	\$81.45	\$237.99
Engineer (V), Structural	\$62.00	\$181.15	\$65.10	\$190.21	\$68.36	\$199.72
Engineer (V), Hydra / Civil	\$56.89	\$166.22	\$59.73	\$174.53	\$62.72	\$183.26
Engineer (III, IV) Civil	\$50.24	\$146.79	\$52.75	\$154.13	\$55.39	\$161.84
Engineer (V), MEP	\$65.00	\$189.92	\$68.25	\$199.41	\$71.66	\$209.38
Architect	\$63.00	\$184.07	\$66.15	\$193.28	\$69.46	\$202.94
Resident Engineer	\$53.18	\$155.38	\$55.84	\$163.15	\$58.63	\$171.31
Construction Inspector	\$31.04	\$90.69	\$32.59	\$95.23	\$34.22	\$99.99
Environmental Scientist	\$42.84	\$125.17	\$44.98	\$131.43	\$47.23	\$138.00
GIS Manager	\$42.00	\$122.72	\$44.10	\$128.85	\$46.31	\$135.29
GIS Technician	\$30.00	\$87.65	\$31.50	\$92.04	\$33.08	\$96.64
CADD Operator	\$21.44	\$62.64	\$22.51	\$65.78	\$23.64	\$69.06
Project Accountant	\$26.81	\$78.33	\$28.15	\$82.25	\$29.56	\$86.36
Secretary	\$17.42	\$50.90	\$18.29	\$53.44	\$19.21	\$56.11

\* Base Rate = estimated raw salary without burden  
 \*\* These are the labor rates to be used to negotiate work authorizations as the work progresses, including special services and/or additional work.

Overhead = 154.07%

Multiplier = 2.9218

NON-LABOR	
Mileage	◇
Car Rental	**
Car Rental - Gas	**
Lodging	◇
Meals	◇
Air Travel	**
B&W Copy, 8-1/2 x 11	\$.04 / sheet
B&W Copy, 11 x 17	\$.08 / sheet
Color Copy, 8-1/2 x 11	\$.50 / sheet
Color Copy, 11 x 17	\$1.00 / sheet
B&W Mylars / Vallum, 11 X 17, including Plotting	\$2.00 / sheet
Postage	**
Express Delivery	**

◇ at rates authorized by Hidalgo County for County Officials  
 \*\* at cost or negotiated per work authorization

Hidalgo County Precinct 4 / S&B Infrastructure, Ltd.  
 Agreement for Professional Services – Building Repairs and/or Renovations”

# **EXHIBIT D1**

## -Fee Breakdown

**EXHIBIT E**  
-Certificate of Insurance (*Hidalgo County*)

# ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID SM  
SBINF-1

DATE (MM/DD/YYYY)  
12/29/08

**PRODUCER**  
ProTECH Insurance Agency, Inc.  
3120 Southwest Freeway, #100  
Houston TX 77098  
Phone: 713-520-1090 Fax: 713-529-7505

**INSURED**  
S & B Infrastructure, Ltd.  
Attn: Diane Larrivee  
P.O. Box 266245  
Houston TX 77207-6245

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.

INSURERS AFFORDING COVERAGE		NAIC #
INSURER A:	Zurich-American Insurance Co.	16535
INSURER B:		
INSURER C:		
INSURER D:		
INSURER E:		

## 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	X	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	GLO 3729647-04	01/01/09	01/01/10	EACH OCCURRENCE \$ 1000000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1000000 MED EXP (Any one person) \$ 5000 PERSONAL & ADV INJURY \$ 1000000 GENERAL AGGREGATE \$ 2000000 PRODUCTS - COMP/OP AGG \$ 2000000
A	X	<b>AUTOMOBILE LIABILITY</b> <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 3729648-04	01/01/09	01/01/10	COMBINED SINGLE LIMIT (Ea accident) \$ 1000000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC AGG \$
		<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
		<b>EXCESS/UMBRELLA LIABILITY</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  DEDUCTIBLE \$ RETENTION \$				WC STATUTORY LIMITS <input checked="" type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ 1000000 E.L. DISEASE - EA EMPLOYEE \$ 1000000 E.L. DISEASE - POLICY LIMIT \$ 1000000
A		<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	WC 5343557-04	01/01/09	01/01/10	
		OTHER				

RECEIVED  
JAN 05 2009  
By: [Signature]

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 County  
Purchasing Department  
2812 S Highway Bus 291  
Edinburgh 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  
C. S. Madeira

**EXHIBIT F**  
-Supplemental Agreement Form

**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 **HIDALGO COUNTY**, acting herein by and through the **Commissioner's Court**, hereinafter called the "**Owner**", and \_\_\_\_\_, Professional Engineers of, \_\_\_\_\_, Texas, hereinafter called the "**Engineer**".

**WITNESSETH**

**WHEREAS**, the **Owner** and the **Engineer** executed the **Agreement** on the \_\_\_\_ day of \_\_\_\_\_ **2009** concerning engineering for \_\_\_\_\_ (hereinafter referred to as the "**Project**"); and,

**WHEREAS**, Article \_\_\_ of the **Agreement**, (article title), establishes \_\_\_\_\_; and,

**WHEREAS**, it has become necessary to amend the contract to \_\_\_\_\_

**A.     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.**

**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:  
ENGINEER**

**BY:** \_\_\_\_\_

**THE OWNER:  
HIDALGO COUNTY**

**BY:** \_\_\_\_\_  
Juan D. Salinas III, County Judge

LIST OF ATTACHMENTS

(as required)