AI-23033 **6.D.**

EEOC #31C-2010-01087; Jennifer Morales v. Hidalgo County Public Defender's Office

CC REGULAR

Date: 09/21/2010
Submitted By: Monica Badillo, EXECUTIVE OFFICE
Department: EXECUTIVE OFFICE
Agenda Category: Closed Session

Information

CAPTION

EEOC #31C-2010-01087; Jennifer Morales v. Hidalgo County Public Defender's Office

BACKGROUND

Fiscal Impact

Attachments

No file(s) attached.

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
1	Budget & Management	Sylvia Solis	09/16/2010 03:29 PM	APRV
2	Auditor's Office		09/17/2010 04:52 PM	NEW

Form Started By: Monica Badillo
Started On: 09/16/2010 03:20 PM

Final Approval Date: 09/17/2010

AI-23035 **6.E.**

CL-10-2765-D; Jesse James Trevino v. Valmont Investments, Inc.

CC REGULAR

Date:	09/21/2010
Submitted By:	Monica Badillo, EXECUTIVE OFFICE
Department:	EXECUTIVE OFFICE
Agenda Category:	Closed Session

Information

CAPTION

CL-10-2765-D; Jesse James Trevino v. Valmont Investments, Inc.

BACKGROUND

Fiscal Impact

Attachments

No file(s) attached.

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
1	Budget & Management	Sylvia Solis	09/16/2010 04:26 PM	APRV
2	Auditor's Office		09/17/2010 04:52 PM	NEW

Form Started By: Monica Badillo — Started On: 09/16/2010 03:59 PM

Final Approval Date: 09/17/2010

AI-23039 **6.F.**

C-764-10-E; Patricia Trevino, et al v. Maria Del Rosario Medina, et al

CC REGULAR

Date:	09/21/2010
Submitted By:	Monica Badillo, EXECUTIVE OFFICE
Department:	EXECUTIVE OFFICE
Agenda Category:	Closed Session

Information

CAPTION

C-764-10-E; Patricia Trevino, et al v. Maria Del Rosario Medina, et al

BACKGROUND

Fiscal Impact

Attachments

No file(s) attached.

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
1	Budget & Management	Sylvia Solis	09/16/2010 04:26 PM	APRV
2	Auditor's Office		09/17/2010 04:52 PM	NEW

Form Started By: Monica Badillo — Started On: 09/16/2010 04:25 PM

Final Approval Date: 09/17/2010

AI-23053 **6.G.**

Case 7:10-cv-00268; Francisco De Luna and Elizabeth Diaz, individually and on behalf of all other similarly situated v. Hidalgo County, Texas, et al

CC REGULAR

Date:	09/21/2010
Submitted By:	Monica Badillo, EXECUTIVE OFFICE
Department:	EXECUTIVE OFFICE
Agenda Category:	Closed Session

Information

CAPTION

Case 7:10-cv-00268; Francisco De Luna and Elizabeth Diaz, individually and on behalf of all other similarly situated v. Hidalgo County, Texas, et al

BACKGROUND

Fiscal Impact

Attachments

No file(s) attached.

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
1	Budget & Management	Sylvia Solis	09/17/2010 02:07 PM	APRV
2	Auditor's Office		09/17/2010 04:52 PM	NEW
Form Started By: Monica Badillo			Started On: 09/17/2010 02:04 PM	
Final Approval Date: 09/17/2010				

AI-23034 **7.D.**

EEOC #31C-2010-01087; Jennifer Morales v. Hidalgo County Public Defender's Office

CC REGULAR

Date: 09/21/2010
Submitted By: Monica Badillo, EXECUTIVE OFFICE
Department: EXECUTIVE OFFICE
Agenda Category: Open Session

Information

CAPTION

EEOC #31C-2010-01087; Jennifer Morales v. Hidalgo County Public Defender's Office

BACKGROUND

Fiscal Impact

Attachments

No file(s) attached.

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
1	Budget & Management	Sylvia Solis	09/16/2010 03:29 PM	APRV
2	Auditor's Office		09/17/2010 04:52 PM	NEW

Form Started By: Monica Badillo
Started On: 09/16/2010 03:21 PM

Final Approval Date: 09/17/2010

AI-23036 **7.E.**

CL-10-2765-D; Jesse James Trevino v. Valmont Investments, Inc.

CC REGULAR

Date:	09/21/2010
Submitted By:	Monica Badillo, EXECUTIVE OFFICE
Department:	EXECUTIVE OFFICE
Agenda Category:	Open Session

Information

CAPTION

CL-10-2765-D; Jesse James Trevino v. Valmont Investments, Inc.

BACKGROUND

Fiscal Impact

Attachments

No file(s) attached.

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
1	Budget & Management	Sylvia Solis	09/16/2010 04:26 PM	APRV
2	Auditor's Office		09/17/2010 04:52 PM	NEW

Form Started By: Monica Badillo — Started On: 09/16/2010 04:00 PM

Final Approval Date: 09/17/2010

AI-23040 **7.F.**

C-764-10-E; Patricia Trevino, et al v. Maria Del Rosario Medina, et al

CC REGULAR

Date:	09/21/2010
Submitted By:	Monica Badillo, EXECUTIVE OFFICE
Department:	EXECUTIVE OFFICE
Agenda Category:	Open Session

Information

CAPTION

C-764-10-E; Patricia Trevino, et al v. Maria Del Rosario Medina, et al

BACKGROUND

Fiscal Impact

Attachments

No file(s) attached.

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
1	Budget & Management	Sylvia Solis	09/16/2010 04:26 PM	APRV
2	Auditor's Office		09/17/2010 04:52 PM	NEW

Form Started By: Monica Badillo — Started On: 09/16/2010 04:26 PM

Final Approval Date: 09/17/2010

AI-23054 **7.G.**

Case 7:10-cv-00268; Francisco De Luna and Elizabeth Diaz, individually and on behalf of all other similarly situated v. Hidalgo County, Texas, et al

CC REGULAR

Date:	09/21/2010
Submitted By:	Monica Badillo, EXECUTIVE OFFICE
Department:	EXECUTIVE OFFICE
Agenda Category:	Open Session

Information

CAPTION

Case 7:10-cv-00268; Francisco De Luna and Elizabeth Diaz, individually and on behalf of all other similarly situated v. Hidalgo County, Texas, et al

BACKGROUND

Fiscal Impact

Attachments

No file(s) attached.

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
1	Budget & Management	Sylvia Solis	09/17/2010 02:07 PM	APRV
2	Auditor's Office		09/17/2010 04:52 PM	NEW
Form Started By: Monica Badillo			Started On: 09/17/2010 02:06 PM	
Final Approval Date: 09/17/2010				

AI-22933 **10.B.**

Request by Region ONe for use of courthouse court rooms for Mock Trial

CC REGULAR

Date:	09/21/2010
Submitted By:	Monica Badillo, EXECUTIVE OFFICE
Department:	EXECUTIVE OFFICE
Agenda Category:	Comm. Court Executive Office

Information

CAPTION

Request by Region One for use of courtroom at the Courthouse for the Mock Trial Competition to be held on February 5th & 7th, 2011

BACKGROUND

Fiscal Impact

FISCAL YEAR: **ACCT. #:**

FUNDS AVAILABLE Y/N?: **MATCHING FUNDS Y/N?:**

BUDGETARY IMPACT:

No Budgetary Impact.

Attachments

Link: request

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
1	Budget & Management	Sylvia Solis	09/14/2010 01:29 PM	APRV
2	Sylvia Solis	Sylvia Solis	09/14/2010 01:32 PM	APRV
3	Auditor's Office		09/17/2010 04:52 PM	NEW

Form Started By: Monica Badillo — Started On: 09/10/2010 05:05 PM

Final Approval Date: 09/17/2010

FAX

To: County Judge Ramirez
Company: Hidalgo Co. Courthouse
Fax: 3182699
Phone: 318-2600

From: Diana Gonzalez
Fax: 956-984-7641
Phone: 956-984-6239
E-mail: dgonzalez@esc1.net

NOTES:

Gloria,

It's that time again! Here is our letter of request for the use of the courthouse on Feb. 5 and 7 of 2011. The original letter to follow via USPS.

Thanks!

Date and time of transmission: Monday, August 30, 2010 12:54:02 PM
Number of pages including this cover sheet: 02

Valde

Region One Education Service Center
1900 W. Schunior • Edinburg, TX 78541 • Phone (956) 984-6000 Fax (956) 984-7655

Jack Damron
Executive Director

August 27, 2010

Judge Rene A. Ramirez
Office of the Hidalgo County Judge
100 E. Cano, 2nd Floor
Edinburg, Texas 78539

Judge Ramirez,

We are proud to announce that once again, the Region One ESC Mock Trial Competition held in February 2010 was quite a success. As always, it was a pleasure working with the courthouse judges, court coordinators, security, and custodial crew. Their professionalism was admirable and helped to facilitate the event. We hope to continue this established relationship with the Hidalgo County Courthouse, as we are already making plans for the 2011 Regional Mock Trial Competition. Region One ESC respectfully requests the use of the Hidalgo County Courthouse all day for this competition on Saturday, February 5, 2011 and one courtroom on the evening of Monday, February 7, 2011.

Additionally, we would like to request to have a maintenance person to serve as the custodian for the event. The gentleman assigned the duty this year was extremely easy to work with and he did an excellent job making sure Region One ESC staff and student participants had access to the courthouse and courtrooms and that the facilities were neat and clean. If possible, we would like to maintain contact with that individual throughout the year; as such please notify my office with the individual's name.

Thank you,

Esequiel Martinez III
Region One Education Service Center
Mock Trial Coordinator
Office: (956) 984-6172
Fax: (956) 984-7641

I am supportive what is the process on my end?

AI-22932 **10.C.**

Use of courthouse - Nov. 13, 2010

CC REGULAR

Date:	09/21/2010
Submitted By:	Monica Badillo, EXECUTIVE OFFICE
Department:	EXECUTIVE OFFICE
Agenda Category:	Comm. Court Executive Office

Information

CAPTION

Request by tax attorney for use of courthouse auditorium on November 13, 2010 at 10:00 am for public auction of properties

BACKGROUND

Fiscal Impact

FISCAL YEAR: **ACCT. #:**

FUNDS AVAILABLE Y/N?: **MATCHING FUNDS Y/N?:**

BUDGETARY IMPACT:

No Budgetary Impact.

Attachments

Link: request

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
1	Budget & Management	Sylvia Solis	09/14/2010 01:29 PM	APRV
2	Sylvia Solis	Sylvia Solis	09/14/2010 01:32 PM	APRV
3	Auditor's Office		09/17/2010 04:52 PM	NEW

Form Started By: Monica Badillo — Started On: 09/10/2010 04:57 PM

Final Approval Date: 09/17/2010

LAW OFFICES OF
LINEBARGER GOGGAN BLAIR & SAMPSON, LLP
ATTORNEYS AT LAW
205 SOUTH PIN OAK AVENUE
EDINBURG, TEXAS 78539

Telephone: (956) 383-4500
Facsimile: (956) 383-7820

September 10, 2010

RECEIVED
SEP 10 2010
COUNTY JUDGE

Mr. Daniel Flores, Director
Buildings & Grounds
Hidalgo County
3100 S. Business 281
P.O. Box 1356
Edinburg, TX 78539

RE: Use of County Building – Auditorium for Public Auction
November 13, 2010

Dear Mr. Flores:

As you are aware, our firm annually places for public auction properties held in trust by the taxing authorities via virtue of a tax foreclosure. We have scheduled this auction for **Saturday, November 13, 2010 at 10:00 AM** at the County Auditorium located at Hidalgo County Courthouse, 100 North Closner, Edinburg, Texas. This facility is very familiar to our current buyers and will easily accommodate the numerous bidders anticipated to attend this auction. We are, therefore, submitting this letter as our request for the use of the County Auditorium on November 13, 2009 for the public auction of these properties.

Additionally, we will require your assistance with the following:

1. Personnel (Custodian) to open premises for my staff on **November 13, 2010 at 7:30 AM.** Firm staff will be setting up equipment and supplies for registration.

2. Will require tables and chairs to set up for registration area and area for cashier inside the building.

Please contact me at your earliest convenience so we may discuss these items and resolve any problems/issues you think may arise (e.g. setting up of the different tables for registration and parking areas for bidders, etc.).

I sincerely appreciate your cooperation and assistance in organizing our ninth "**Tax Resale Property Auction**".

Sincerely,

Tito Salinas
Office Manager

TS/eh

cc: Honorable Rene Ramirez
County Judge

Honorable Armando Barrera, Jr.
County Tax Assessor-Collector

AI-22939 **10.D.**

Approval to Adopt DOT drug testing revisions - eff. 10/1/10
CC REGULAR

Date:	09/21/2010
Submitted By:	Monica Badillo, EXECUTIVE OFFICE
Department:	EXECUTIVE OFFICE
Agenda Category:	Comm. Court Executive Office

Information

CAPTION

Safety Division:
Approval to adopt the new standards for drug and alcohol testing and detection levels adopted by the Federal Department of Transportation that become effective October 1, 2010.

BACKGROUND

Fiscal Impact

FISCAL YEAR: **ACCT. #:**

FUNDS AVAILABLE Y/N?: **MATCHING FUNDS Y/N?:**

BUDGETARY IMPACT:

No fiscal impact.

Attachments

Link: revisions

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
1	Budget & Management	Sylvia Solis	09/13/2010 01:52 PM	APRV
2	Ivan Cantu	Ivan Cantu	09/16/2010 01:31 PM	APRV
3	Auditor's Office	Angela Garcia	09/17/2010 04:52 PM	APRV

Form Started By: Monica Badillo — Started On: 09/13/2010 11:34 AM

Final Approval Date: 09/17/2010

negotiated basis) to determine the nature and extent of required repairs.

(2) Upon determination by the Contracting Officer of what work is necessary, the Contractor, if requested by the Contracting Officer, shall negotiate prices for performance of that work. The prices agreed upon shall be set forth in a modification of the job order.

(3) Failure of the parties to agree upon the price shall constitute a dispute under the Disputes clause. In the meantime, the Contractor shall diligently proceed to perform the work ordered.

(End of clause)

[FR Doc. 2010-20168 Filed 8-13-10; 8:45 am]

BILLING CODE 5001-08-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[Docket OST-2010-0026]

RIN 2105-AD95

Procedures for Transportation Workplace Drug and Alcohol Testing Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Department of Transportation (the Department or DOT) is amending certain provisions of its drug testing procedures dealing with laboratory testing of urine specimens. Some of the changes will also affect the training of and procedures used by Medical Review Officers. The changes are intended to create consistency with many, but not all, of the new requirements established by the U.S. Department of Health and Human Services.

DATES: This rule is effective October 1, 2010.

FOR FURTHER INFORMATION CONTACT: Mark Snider, Senior Policy Advisor (S-1), Office of Drug and Alcohol Policy and Compliance, 1200 New Jersey Avenue, SE., Washington, DC 20590; telephone number 202-366-3784 (voice), 202-366-3897 (fax), or mark.snider@dot.gov (e-mail).

SUPPLEMENTARY INFORMATION:

Background and Purpose

On November 25, 2008 (73 FR 7185), the U.S. Department of Health and Human Services (HHS) Substance Abuse and Mental Health Services Administration (SAMHSA) issued a Final Notice of Revisions to the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs (HHS Mandatory Guidelines) that included changes to the procedures for collection and testing of urine specimens, creation of and requirements for the certification of Instrumented Initial Test Facilities (IITFs), collection site oversight requirements, and changes to the role of and standards for collectors and Medical Review Officers (MROs). The HHS Mandatory Guidelines were to become effective May 1, 2010, but on April 30, 2010 (75 FR 22809), HHS postponed implementation until October 1, 2010.

On February 4, 2010, DOT published a Notice of Proposed Rulemaking (NPRM) (75 FR 5722) seeking comments about changing part 40 to be consistent with certain aspects of the HHS Mandatory Guidelines. The final rule responds to the comments and makes a number of changes to the existing rules governing the Department's drug testing program.

Principal Policy Issues

Requirements of the Omnibus Transportation Employee Testing Act of 1991

Several commenters questioned whether and to what extent the Department must follow the HHS Mandatory Guidelines. Some commenters urged the Department to choose a different approach from the HHS regarding the drugs for which testing occurs, the initial testing of all specimens for 6-Acetylmorphine (6-AM), and the use of IITFs. Although since its passage, the Department has cited the Omnibus Transportation Employee Testing Act of 1991, 49 U.S.C. 31300, *et seq.*, 49 U.S.C. 20100, *et seq.*, 49 U.S.C. 5330, *et seq.*, and 49 U.S.C. 45100, *et seq.* (Omnibus Act), as the definitive authority for our reliance on the HHS Mandatory Guidelines for scientific testing issues, several of the commenters have challenged this or otherwise asked the Department to clarify what the Omnibus Act requires.

Even before the Omnibus Act, the Department looked to the HHS Mandatory Guidelines for guidance on scientific matters. In a 1988 Interim Final Rule (IFR) the Department relied upon the HHS for testing methodologies to determine the drugs for which testing would be done and which laboratories to use. Specifically, the Department noted that under "the HHS Guidelines, a Federal agency may test a urine sample *only* for certain specified drugs. The Department's Procedures echo this requirement." (53 FR 47002, Nov. 21, 1988; emphasis in the original) In the same IFR, the Department required regulated transportation employers to use only laboratories certified under the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs. While deciding to utilize many aspects of the HHS Mandatory Guidelines, the Department acknowledged "that the Guidelines, as written by HHS to apply to testing by Federal agencies, do not fit perfectly the circumstances of employers regulated by DOT * * *. Obviously, the circumstances of industries regulated by DOT are very different from those of Federal agencies." (53 FR 47002) Thus, the Department began to lay the foundation for using the technical expertise of the HHS for the scientific aspects of DOT's testing program while relying upon the Department's own authority and that of DOT agencies to tailor many procedural aspects of DOT testing to fit the transportation industries.

In a 1989 final rule, we discussed the applicability of the Fourth Amendment of the United States Constitution to both the Federal agency programs covered by the HHS Mandatory Guidelines and the testing that transportation employers would conduct in response to the Department's requirements. The Department acknowledged that the HHS Mandatory Guidelines had passed Constitutional scrutiny by the Federal courts, all the way up to the Supreme Court of the United States. The Federal courts concluded that HHS had met the Fourth Amendment balancing of the Federal need to ensure safety by drug testing versus individuals' strong interests in their right to privacy. The HHS Mandatory Guidelines had set up a testing system with sound methodology that ensured privacy and accuracy. Given these considerations, the Department decided to rely on HHS for the science of DOT's testing program and for the drugs for which we test, the testing methodologies, and the integrity of the HHS certified laboratories. (54 FR 49854, Dec. 1, 1989)

Congress endorsed the Department's decision by explicitly directing, in the Omnibus Act, the Department to incorporate the HHS scientific and technical guidelines for laboratories and testing procedures for controlled substances. The Omnibus Act specifically requires that we incorporate the HHS scientific and technical guidelines that "establish comprehensive standards for all aspects of laboratory controlled substances testing" in order to ensure full reliability and accuracy in testing. [49 U.S.C. 31306(c)(2)(A), 49 U.S.C. 20140(c)(2)(A), 49 U.S.C. 5331(d)(2)(A) and 49 U.S.C. 45104(2)(A)] The legislative history for the Omnibus Act indicates the following intent: "Incorporating the HHS

guidelines relating to laboratory standards and procedures for testing controlled substances, as proposed by the reported bill and *as DOT has done in part 40* of title 49 CFR, as it exists at this writing, is an essential component of the procedural safeguard." Senate Report 102–54, Omnibus Transportation Employee Testing Act of 1991, Report of the Senate Committee on Commerce, Science and Transportation on S.676, 102nd Congress, 1st Session, May 2, 1991, page 26 (Senate Report 102–54) (emphasis added). The Omnibus Act also requires the Department and DOT agencies to look to the HHS for laboratory certification, the procedures for reviewing laboratories for certification, and the procedures for the revocation of such certification. In addition, the Department must follow the HHS Mandatory Guidelines regarding establishing the list of drugs for which we test and the procedures for use of the Federal Drug Testing Custody and Control Form (CCF) to establish the chain of custody of specimens.

The legislative history of the Omnibus Act indicates that Congress wanted the Department and DOT agencies to continue use of the HHS scientific and technical guidelines and the HHS certified laboratories to ensure accuracy, fairness, and the constitutionality of DOT's drug testing program. While the Omnibus Act was being drafted, opponents of drug testing warned that employees were in danger of "false positives" that would result from initial screening of urine that might indicate levels of illegal drugs. The Senate noted that it had addressed this concern: "By incorporating laboratory certification and testing procedures developed by HHS and DOT and by providing for the subdivision of specimens and the opportunity for an independent test of positive samples, the Committee has taken affirmative steps to ensure accuracy." Senate Report 102–54, pages 6–7. The legislative history for the Omnibus Act makes numerous additional references to the understanding that the Department would work with HHS to ensure testing accuracy.

There is also clear indication in the legislative history that Congress recognized that the HHS standards were likely to be modified over time. The Omnibus Act itself explicitly refers to incorporating the HHS "scientific and technical guidelines dated April 11, 1988, and any subsequent amendments thereto * * *" 49 U.S.C. 31306(c)(2), 49 U.S.C. 20140(c)(2), 49 U.S.C. 5331(d)(2) and 49 U.S.C. 45104(2). Allowing for subsequent amendments, however, did not mean that Congress wanted to lower the standards for testing. "Realizing that these guidelines possibly are subject to future modification, the Committee has acted to specify that the basic elements of certain provisions now in effect are mandated, including the need for comprehensive standards and procedures for all aspects of laboratory testing of drugs, the establishment of a minimum list of controlled substances for which employees may be tested, the establishment of standards and procedures for the periodic review of laboratories, and the development of criteria for laboratory certification." Senate Report 102–54, pages 21–22, 26 and 32.

When the Omnibus Act requires the Department to follow HHS on specified scientific matters, we adhere to the requirements. When the Omnibus Act allows the Department the option of following HHS, we have always and will continue to weigh the costs and benefits of following HHS in light of our mission. However, when the Omnibus Act specifically requires the Department to take a direction different from that which HHS takes, then the Department is prohibited from following HHS on such matters.

In reviewing the Omnibus Act, its legislative history, and the regulatory history of the Department's testing program, it remains clear that, since the inception of our program, the Department has been tied to HHS for the scientific methodology, for identification of the drugs for which we will require testing; the certified laboratories we are to use; and the technical expertise for certifying and decertifying laboratories. These are the core scientific laboratory functions necessary for the Department's program.

However, it is important to note that the Department has discretion concerning many other aspects of the regulations governing testing in the transportation industries' regulated programs.

As far back as 1988, our regulations established the fundamental roles and concepts for the current DOT regulated industry testing program. Our early regulations established how collections were to be done, who could be an MRO or a Substance Abuse Professional (SAP), and the respective training for and responsibilities of these important gatekeepers. While relying on HHS for certain scientific efforts, we did not necessarily follow HHS regarding collection issues, laboratory reporting requirements, how MROs handle certain test results, the rehabilitation and the return-to-duty process, and other areas covered by the HHS Mandatory Guidelines. The Department's regulation and the regulations of DOT agencies set their own processes and procedures for all aspects leading up to and through specimen collection and then picking up from what processes and procedures would occur after a laboratory confirmed a drug test result, including the return-to-duty process for individuals who have non-negative test results. In shaping our program to fit the needs of the transportation industries, the Department and DOT agencies have made adaptations to meet the changing needs of the transportation industries. In some cases we have consequently chosen a different path from the one chosen by HHS on the same or similar non-scientific issues.

The Omnibus Act acknowledged that such Departmental and DOT agency regulations were in place with respect to non-scientific issues. Congress explicitly allowed these regulations to continue in effect, with the option for the Department and DOT agencies to amend or further supplement their respective regulations in the future. 49 U.S.C. 31306(i), 49 U.S.C. 20140(f), and 49 U.S.C. 45106(c).

One example of the Department's divergence from HHS on non-scientific matters covered in the HHS Mandatory Guidelines is the issue of how to conduct direct observation collections. On June 25, 2008, the Department issued a final rule (73 FR 35961) that, among other amendments, modified 49 CFR part 40 at section 40.67(b) and added a new paragraph 40.67(i) to improve direct observation procedures to better address known adulteration and substitution threats. Although HHS addresses direct observation collections in the HHS Mandatory Guidelines, the Department chose to use a different procedure because of evidence regarding cheating and our experience in regulating the transportation industries. In explaining our rationale, we noted that the use of direct observation collections is "a very significant tool the Department employs to combat attempts by employees to cheat on their tests." (74 FR 37949, July 30, 2009) In addition, we stated in the final rule reinstating the direct observation provisions after the court victory, "the Department remains convinced that conducting all return-to-duty and follow-up tests under direct observation is the most prudent course from the viewpoint of safety." (74 FR 37950, quoting the October 22, 2008 final rule preamble at 73 FR 62918)

The Department's regulations concerning direct observation procedures were affirmed by a unanimous court. (*BNSF Railway Company* v. *Department of*

Transportation, 566 F.3d 200 (DC Cir. 2009) In upholding the rule, the U.S. Court of Appeals for the D.C. Circuit noted that the Department had experience, comments, and evidence to support the need to make the improvements to the direct observation procedures. *BNSF Railway Company* v. *Department of Transportation*, 566 F.3d at 204. The Court further found that the improved procedures were constitutional, stating, "[g]iven the combination of the vital importance of transportation safety, the employees' participation in a pervasively regulated industry, their prior violations of the drug regulations, and the ease of obtaining cheating devices capable of defeating standard testing procedures, we find the challenged regulations facially valid under the Fourth Amendment." Id. at 208. Hence, the Department chose a different approach from HHS on direct observation procedures, tailored them to the needs identified, and the Court upheld this approach as constitutional.

Some of the commenters asked the Department to consider deviating from the HHS Mandatory Guidelines regarding the drugs for which testing is required. Some commenters want the Department to exclude Methylenedioxymethamphetamine (MDMA) from the list of drugs, while others want the Department to include synthetic opiates, and others want alternative testing methodologies to be employed.

It is not unusual for the Department to receive requests from commenters to move away from the illegal drugs for which HHS has set the protocols; however, the Department has remained consistent in our responses and our reliance upon HHS as the scientific experts in these matters. What the Department stated in response to similar requests in the late 1990s to move beyond the HHS minimums still remains true: "This is a long-standing issue in the program, and DOT continues to take the position that we ought not to go beyond the testing that HHS has authorized and for which HHS has certified laboratories." (65 FR 79484, Dec. 19, 2000) In response to those who have urged DOT to go beyond the drugs for which HHS tests, we have consistently stated: "we believe the stability and reliability of the program are well served by limiting testing to the 'HHS five.' HHS has established testing protocols and cutoffs for these drugs, and laboratories are subject to HHS certification for testing of these five drugs. This is not true for other drugs." (65 FR 79491, Dec. 19, 2000) Although the HHS has now expanded its panel to include an additional amphetamine, MDMA, the same reasoning holds true and the Department will continue to follow the HHS testing protocols for the reasons we explained in 2000.

Also in 2000, the Department explained, "With respect to alternative testing technologies such as hair testing, saliva testing, and on-site testing, which commenters recommended in context of several sections of the NPRM, the Department will wait upon the action of HHS before proposing to incorporate additional methods. Approval of these or other methods, and establishment of requirements and procedures for them, are matters primarily within the expertise of HHS." (65 FR 79489, Dec. 19, 2000) Furthermore, in the preamble to our Specimen Validity Testing final rule in 2008 (SVT Final Rule), we stated that the Omnibus Act "provides only one way to determine that an employee has tested positive for illicit drug use—a drug test confirmed by an HHS-certified laboratory using HHS scientific and testing protocols and verified by an MRO." (73 FR 35966, June 25, 2008)

The Department, as required by the Omnibus Act, has consistently specifically followed HHS on laboratory certification matters, but we have also created responsibilities for laboratories under part 40 that do not impinge upon the scientific and technical aspects of drug testing. As the Department stated in 2000, "laboratories have responsibilities under part 40 independent of their HHS responsibilities (*e.g.*, with respect to relationships with MROs, release of information, and validity testing), and laboratories must be accountable to DOT in those matters." (65 FR 79484, Dec. 19, 2000)

At times, we have had to adapt certain aspects of technical drug testing matters to fit the needs of the transportation industries. For example, in 2003, the Department issued an interim final rule (2003 IFR) concerning laboratory substitution criteria. (68 FR 31624, May 28, 2003) In the 2003 IFR, we did not, and could not, change the HHS-established laboratory testing substitution criteria, but instead addressed how laboratories were to report out their findings to the MROs on the CCF, what subsequent actions would be required of the MROs with respect to the reported result, and whether to tell the employer to send the employee back in for a direct observation collection. In short, we said that specimens reported by laboratories as substituted with creatinine concentration in the 2–5 ng/mL range would not be considered by MROs to be refusals to test. Instead, transportation employees with such results would require immediate recollections under direct observation.

In a July 2008 interpretation, which is being incorporated in this final rule at section 40.159, the Department instructed MROs on how to "handle laboratory results reported as invalid because of pH greater than or equal to 9.0 but less than or equal to 9.5." This is another example of how the Department has adapted the HHS scientific requirements established for laboratories to the needs of the transportation industries. In fact, the HHS Mandatory Guidelines have adopted our MRO provisions for invalids due to pH in the 9.0–9.5 range.

We read the Omnibus Act to require the Department to follow the HHS on the drugs for which we test and the testing protocols, but the Omnibus Act allows us to, and we have chosen to, diverge from the HHS and the HHS Mandatory Guidelines on collections, MROs, and what laboratories can report. As we said in our 2008 SVT Final Rule preamble, "Since Congress specifically limited the scientific testing methodology upon which DOT can rely in making its drug and alcohol testing regulations; we follow the HHS scientific and technical guidelines, including the amendments to their Mandatory Guidelines." (73 FR 35961, June 25, 2008) In the 2008 SVT Final Rule, we also explained that the "Omnibus Act requires the DOT to incorporate the HHS scientific and technical guidelines, and we do not have the authority to impose additional scientific and technical requirements upon the laboratories." (73 FR 35963, June 25, 2008)

In response to the commenters who would like us to consider alternative specimens such as hair testing and point of collection testing, we reiterate what we said in response to comments on our direct observation final rule in late 2008: "The Department is not opposed to the use of alternative, less intrusive, testing methods as a means of accomplishing the safety purposes of the program while preventing individuals from cheating. Under the Omnibus Transportation Employee Testing Act of 1991, however, the Department is authorized to use only testing methods that have been approved by the Department of Health and Human Services (HHS). To date, HHS has not approved any specimen testing except urine." (73 FR 62917, Oct. 22, 2008) Therefore, we cannot consider alternative specimens at this particular point in time. In fact, DOT would not desire to do so without the HHS

scientific and laboratory certification processes being in place.

Several commenters have asked us to explain how the Omnibus Act affects the Department's determination of whether it will and will not follow HHS. In response, as we explained above, where the Omnibus Act requires the Department to follow the HHS—for the laboratory and testing procedures, the Department will follow the scientific and technical aspects prescribed by the HHS. Where the Omnibus Act limits or otherwise prohibits the Department from following the HHS, the Department must decline to follow the lead of the HHS. For example, when HHS did not embrace a split specimen requirement, the Department departed from the HHS Mandatory Guidelines due to the Omnibus Act's requirements for split specimens. Where the HHS takes a position that we are neither required to follow nor prohibited from following, the Department will continue to view the HHS position as optional. We recognize that the HHS has expertise in the Federal employee testing program for these optional matters, but the Department has its own expertise as the regulator of the largest workplace drug and alcohol testing program in the world. As such, we will consider the optional matters in light of transportation safety, the costs and benefits to our regulated industries, and scientific and forensic considerations.

Use of Instrumented Initial Test Facilities

In our NPRM, we proposed allowing DOT employers to choose between full service laboratories and IITFs. An IITF would be able to provide results to employers only for negative and certain negative dilute specimens, as well as specimens they reject for testing. All other specimens would be forwarded to an HHS certified, full service laboratory. We requested comments as to how this process would impact the industry, specifically employers. The majority of commenters felt that use of IITFs would be detrimental to the turnaround time for reporting of non-negative results and most did not favor use of IITFs. Other commenters believed IITFs would be very useful, accurate, and afford the ability for a rapid turnaround time for their negative results.

DOT Response

The Omnibus Act actually prohibits the Department from following HHS on the issue of IITFs. The Omnibus Act requires "that all laboratories involved in the controlled substances testing of any individual under this section shall have the capability and facility, at such laboratory, of performing screening and confirmation tests." (49 U.S.C. 31306(c)(3), 49 U.S.C. 20140(c)(3), 49 U.S.C. 5331(d)(3) and 49 U.S.C. 45104(3)) An IITF can conduct the initial screening for drugs in a urine specimen, but is not certified to provide a confirmation test.

Since IITFs do not have any confirmation testing capabilities, the Department must not use them in part 40. The Senate Report for S. 676, the bill that subsequently became the Omnibus Act, indicates the intent behind this requirement was to ensure that "[a]ny testing program would be required to include procedures to protect individual privacy, incorporate laboratory certification and testing procedures developed by [HHS] * * * require that all laboratories involved in testing for drugs have the capability of performing screening and confirmation tests at such laboratory." Senate Report 102–54, pages 10–11. Because IITFs do not offer confirmation testing, the Department is prohibited by the Omnibus Act from using laboratory facilities that lack the capability to perform both screening and confirmation tests. Therefore, DOT employers do not have the option of using IITFs. For this reason there are no provisions in this final rule for IITFs, and they will not be authorized for use in DOT's program by our regulated employers.

MDMA Testing

In the NPRM, we proposed to incorporate testing for MDMA into part 40.

Comments

A majority of commenters favored testing for MDMA. A few commenters indicated that their data showed that there would be relatively few positive test results, creating an unnecessary cost burden to employers. One laboratory group opposed the inclusion of MDMA and suggested the Department test instead for "hydromorphone, hydrocodone, oxycodone, and oxymorphone."

Those who favored testing MDMA represented a wide range of interests—MRO groups, third-party administrators, a major employer association, a major service agent association, among them. Most who supported testing for MDMA said that many employers were already testing for MDMA in their non-DOT testing programs. They supported putting MDMA testing into the Federal testing arena.

Some commenters presented information about the use of MDMA, saying that MDMA was no longer a threat; MDMA is strictly a drug for younger persons; MDMA is a "club" drug that is not being used by transportation employees.

Others presented data showing that MDMA use is on the rise and the implication is that the threat of MDMA use will become greater as the current transportation population is replaced via attrition by a younger population.

DOT Response

In this rulemaking, we are adopting the HHS laboratory testing requirements of conducting initial testing for MDMA, conducting confirmatory testing for MDMA, Methylenedioxyamphetamine (MDA), and Methylenedioxyethylamphetamine (MDEA). As we stated in our NPRM, regarding such matters, "past experience has shown that DOT has never deviated from HHS on laboratory testing matters—the drugs for which we test, the specimens we test, specimen validity testing values, initial and confirmatory cutoff values, and laboratory testing processes and procedures, among others. The DOT is required by the Omnibus Transportation Employee Testing Act of 1991 to adhere with the HHS on these important laboratory testing matters." (75 FR 5722–5723, Feb. 4, 2010) We can provide additional guidance to MROs, as appropriate, so that these changes fit the transportation industries. However, we do not read our authority as allowing us to depart from HHS on this subject.

Aside from the fact that the Omnibus Act requires us to test the drugs for which HHS labs are certified to test, we note that, as some commenters said, MDMA is not just a "club drug" any more, it is being marketed to a much larger population in American communities.

The Department of Justice National Drug Intelligence Center's 2010 National Drug Threat Assessment (*http://www.justice.gov/ndic/pubs38/38661/38661p.pdf*) supports DOT's conclusion with regard to MDMA availability, finding:

"Asian DTOs [Drug Trafficking Organizations] are responsible for a resurgence in MDMA availability in the United States, particularly since 2005. These groups produce large quantities of the drug in Canada and smuggle it into the United States across the Northern Border. The smuggling of MDMA into the United States from Canada fueled an increase in the availability of the drug that began in 2005, although availability appears to be stabilizing. Data regarding MDMA availability are limited; nonetheless, analysis of National Forensic Laboratory Information System (NFLIS) data shows a 76 percent increase in the number of MDMA submissions from 2005 to 2008, although

MDMA submissions make up a much smaller percentage of submissions than other illicit drugs, including cannabis, cocaine, methamphetamine, and heroin. National Drug Threat Survey (NDTS) data also provide an indication of MDMA availability. The percentage of state and local law enforcement agencies that reported moderate or high availability of MDMA in their areas increased from 47.2 percent in 2005 to 51.5 percent in 2009.

Seizure data show that the amount of MDMA seized along the U.S.-Canada border increased 156 percent from 2007 to 2008 and that more MDMA was seized at the Northern Border in 2008 than in any year since 2005. MDMA seizure totals declined in 2009 but still exceeded 2007 totals. Although most Northern Border seizures occur at POEs (Points of Entry), the amount of MDMA seized between POEs appears to be increasing, likely because increased scrutiny at POEs has forced smugglers to develop new routes and smuggling methods in an attempt to circumvent law enforcement.

For example, in 2008, more than 243,000 dosage units of MDMA were seized between POEs, compared with none the previous year; seizures between POEs in 2009 exceeded those in 2008.

MDMA seizures along the Southwest Border and through commercial air have also increased, albeit on a much smaller scale. Seizures at or near the Southwest Border show an increase from 114,286 dosage units in 2006 to 387,143 dosage units in 2009. Furthermore, commercial air seizures spiked in 2008, with a 91.4 percent increase from 2007 to 2008 (433,571 dosage units to 829,857 dosage units); MDMA commercial air seizure totals for 2009 decreased, resulting in levels comparable to 2007 levels.

Ready availability of MDMA has enabled distributors to expand their customer base to include new user groups, most notably African American and Hispanic users. Asian DTOs have begun distributing MDMA to African American and Hispanic street gangs, which distribute the drug along with other illicit drugs in markets throughout the United States, most notably in the Southeast, Southwest, and Great Lakes Regions. Moreover, MDMA is no longer exclusively viewed as a "rave" or club drug, which also aids distributors in selling it to nontraditional abusers."

One laboratory group urged DOT to require testing prescription medications and synthetic drugs, rather than MDMA. While DOT shares the group's concern about unauthorized use of the prescription medications and the use of synthetic drugs, testing for prescription medications and synthetic drug and testing for MDMA are separate issues. As part of their non-DOT testing programs, regulated employers can test for prescription medications or synthetic drugs and in many instances it may be appropriate to do so.

Some DOT agencies and the United States Coast Guard (USCG), for instance, have medical qualification standards—for Commercial Drivers License holders, certified pilots and aviation mechanics, and licensed mariners—that focus upon the underlying medical conditions that would require use of prescription medications. Evaluating medical professionals are trained to seek information that would shed light on an individual's use of medicines and their qualification to perform safety sensitive duties.

It is also important to note that employers can expand upon the Department's regulatory requirements, as long as they do not represent the test as being required by DOT. Under their non-DOT testing programs, DOT-regulated companies may test for other drugs of their choosing. Therefore, companies are not prohibited by DOT from testing for additional drugs that may be of concern within their communities and companies.

Lowering Laboratory Cutoff Criteria for Cocaine and Amphetamines

The Department proposed, in the NRPM, to adopt the HHS-lowered laboratory testing cutoffs for cocaine and amphetamines. Initial test cutoffs for cocaine metabolites would go from 300 to 150 ng/mL, while confirmation test cutoffs would go from 150 to 100 ng/mL.

For amphetamines, initial test cutoffs would go from 1000 to 500 ng/mL, while confirmation tests for amphetamines and methamphetamines would go from 500 to 250 ng/mL.

Comments

Most commenters support the Department's conforming to the HHS Mandatory Guidelines in lowering the cutoffs for both cocaine and amphetamines. Most believe doing so will enhance the safety of the traveling public because more users of illicit drugs and more users of non-prescribed medications will be identified. There was no controversy about the new screening and confirmation test levels for cocaine.

Some commenters believed that there could be "false positive" drug tests stemming from the new cutoffs for amphetamines. Some others believed the amphetamine cutoffs could even cause laboratories to report over-the-counter (OTC) medications as confirmed positive test results. Some others believed that lowering the screening cutoffs for amphetamines will provide little value in the confirmation process, serving only to increase the cost of the program.

Some commenters cited the data from one of the laboratories—Clinical Research Laboratory (CRL)—as reason to support the new cutoffs, while others cited the same data as reason to oppose the new cutoffs.

DOT Response

As stated earlier in this document, the Department must follow the laboratory testing protocols and standards that are established by HHS. Therefore, we must and will adhere to the screening and confirmation drug testing cutoffs that HHS has established for the laboratories and for which the laboratories are certified. In addition, taken with the comment data from Quest Laboratories, we believe the laboratory data sets from both Quest and CRL lead likely to some, but not all, of the same conclusions.

Regarding cocaine, based upon data provided by both Quest and CRL, we can expect a marked increase in cocaine users identified using the new screening and confirmation cutoffs that HHS has established. The Department, like the overwhelming number of commenters, considers this to be a beneficial change.

In 2009, there were nearly 13,000 positive DOT drug test results reported by laboratories as having confirmed positives for cocaine. Quest and CRL data show that we can expect a significant number of confirmed positive test results for cocaine using the new cutoffs. These new lower cutoffs should result in the Department identifying more cocaine users, further assuring the traveling public that the transportation system is the safest it can be. Doing so will also permit us to continue to further deter drug use in the transportation industries and get those identified as using drugs referred for evaluation and treatment.

Regarding amphetamine and methamphetamine, the Quest data report on 68,000 regulated and 132,000 non-regulated specimens and indicate that a 40% increase in screening and a 30% increase in confirmation rates are expected; hence, a large number of currently non-detected users would be identified.

A second submission of amphetamine and methamphetamine test data, this from CRL, includes the reanalysis of a much smaller number of regulated specimens. Several important facts about the CRL study protocols and results were not fully explained or clarified in their data submission. As a result, we are concerned that other commenters may have misinterpreted the CRL data as meaning that there will be "false positive" tests results for amphetamines and that some OTC medications—ephedrine, pseudoephedrine, and phenylpropanolamine—will be confirmed and reported as positives by laboratories.

We want to address these commenters' statements that testing at the new amphetamine screening cutoffs will yield "false positive" test results. Neither CRL nor Quest even alluded to there being a "false positive" testing issue with the new amphetamine cutoffs. Concerns about the risks of "false positive" test results are not supported by the available data. In fact, no reportable positive test results were identified in the CRL and Quest data on specimens that did not, in fact, screen and confirm positive for a drug for which DOT tests.

In addition, we want to clarify that no OTC medication that CRL chose to test for—ephedrine, pseudoephedrine, and phenylpropanolamine—would confirm positive on a DOT test and would be reported on a DOT test. We are concerned that the CRL confirmation testing on these specimens may have proven misleading to the groups who read the data and believed that our tests for amphetamines would identify these particular OTC medications. It is our opinion that CRL's inclusion of this confirmation test data does not support CRL's conclusion. Laboratories simply will not conduct confirmation testing for or identify these OTC medications in DOT's program.

It is also important to note that only confirmed positive drug tests are reported to the MRO as positive. No results screened positive are reported as positive until and unless they are also positive on a laboratory confirmation test and for the drugs for which we test. And, no test result is reported to the employer until the MRO properly verifies the result by determining if the employee has a legitimate medical explanation for the positive. If the employee has a legitimate medical explanation, the MRO will report the result to the employer as a negative test. These are "due process" steps that have always been an integral part of DOT's testing program.

We realize that laboratories will certainly screen specimens for amphetamines at the new HHS cutoffs and will not realize the same return rate on confirmed positive testing as they observe now, as CRL points out effectively in their data. CRL is concerned that the cost of confirming the increased number of screened positive tests does not warrant the expense for such a small number of confirmed positives, as shown by their data.

It is important to note that the confirmation rates for opiates and amphetamines is now generally less than that for THC, cocaine, and PCP. Therefore, it is not unusual to see a disparity between screening rates and subsequent confirmation rates, especially for opiates and amphetamines.

However, we will urge HHS to closely monitor this screening issue for amphetamines during the first year the new cutoffs are in place. We believe that the issue will be properly evaluated by HHS with DOT, the Center for Substance Abuse Prevention Drug Testing Advisory Board (CSAP DTAB), and laboratories in determining if the screening cutoffs for amphetamine would need to be modified upward if the added cost largely outweighed the benefits. The CSAP DTAB provides advice to the Administrator, SAMHSA, regarding the drug testing laboratory certification program.

Laboratory Testing for 6–Acetylmorphine (6–AM)

In the NPRM, we proposed to incorporate new HHS criteria for initial testing for 6–AM, a marker for heroin. We also asked if there were factual, evidence-based concerns about the need to show morphine with a 6–AM confirmed positive result. Also, if there were evidence-based systematic research and studies showing that morphine must also be present and quantitations reported, we asked for solutions by laboratories and/or MROs to adequately address the issue.

Comments

A slight majority of commenters expressed support for the new HHS screening and confirmation cutoffs for 6–AM. Some who support the tests for 6–AM do so because they believe transportation safety will be enhanced when more heroin users are identified and removed from their safety-sensitive duties. Several who do not support the provision express concern about the new cutoffs no longer requiring a test for morphine—something they say is imperative to ensure that the person is actually a heroin user. At least one commenter believes no additional heroin users will be identified and expresses concern about the cost of having only one supplier of laboratory reagent for 6–AM.

Several laboratory entities and experts weighed in on the issue. RTI International (RTI) agreed with HHS for screening all specimens for 6–AM and for dropping the requirement to ensure a presence of morphine above 2000 ng/mL. RTI indicated that the new testing will increase the positive rate by 8—29%, but failed to explain the basis for its concern. They also quote three studies as supporting the HHS decision.

Clinical Research Laboratory (CRL) quoted their own study—for which we have no way to assess the adequacy of the study protocols—and stated that out of 820 tests for opiates and 6–AM, all screened at 3 ng/mL, versus the HHS cutoff of 10 ng/mL, and all except one had opiate positive results above the 2,000ng/mL cutoff. CRL did not attempt to explain why this sample tested positive for 6–AM but did not test for morphine. They concluded that there is no published explanation for the detection of 6–AM without the presence of morphine. Therefore, CRL recommended that the Department provide guidance to MROs and laboratories about conferring with one another if there were ever 6–AM without the presence of morphine.

Quest Laboratories reviewed 1.2 million test results. Of those specimen results, 112 tested positive for 6–AM (heroin). The Quest study data indicated that 7 of those 112 6–AM positives also tested positive for morphine in the 300–2000 ng/mL range. The remaining 105 6–AM positives had morphine confirmed above 2000 ng/mL. Quest suggested that "only" six tests out of a million would test positive for 6–AM and not have morphine that was present reported to the MRO. Therefore, Quest recommended that DOT provide additional guidance to MROs to speak with laboratories related to morphine that may be present but not reported by the laboratory.

DOT Response

As stated earlier in this document, the Department must follow the laboratory testing protocols and standards that are established by HHS. Therefore, we must adhere to the screening and confirmation drug testing cutoffs that HHS has established for the laboratories and for which the laboratories are certified.

6–AM is a unique metabolite produced when a person uses the illicit drug heroin. 6–AM is both excreted in the urine and further metabolized to morphine. Morphine can also be excreted in the urine as a result of codeine or morphine use. Thus, morphine is a common metabolite of both heroin and codeine.

It is well established that, in some instances, individuals who are positive for 6–AM are atypically low in the coincident morphine concentration found in urine. That is, their morphine concentrations are below the HHS/DOT cutoff of 2000 ng/mL and even below 300 ng/mL. Therefore, testing programs focused on the morphine concentration as the screening discriminator will fail to identify a number of heroin users

(estimated by some studies referenced in the docket to be about 10% of the opiate positives).

While morphine positives in the absence of 6–AM require significant MRO intervention to differentiate legitimate morphine or codeine sources for morphine, 6–AM is a definitive marker for heroin use and thus requires no MRO intervention. There are simply no legitimate medical explanations for 6–AM positive tests. Although there has been from time to time some anecdotal suggestion that 6–AM can be produced from morphine, existing scientific evidence does not support such a claim.

The atypical finding of a 6–AM positive in the absence of significant morphine findings by CRL may be the result of recent heroin use close to the time of sampling, a metabolic defect in the metabolism of 6–AM resulting in prolonged excretion, shunting of metabolic pathways away from morphine, or interaction with other substances not identified. Therefore, the 6–AM testing does not require confirmation by the simultaneous detection of a specified quantity of morphine.

Multiple scientific publications have concluded that a portion of the population shows urinary concentrations of 6–AM above 10 ng/mL with morphine concentrations below 300 ng/mL, even though the Quest study showed that none of their 6–AM positive results had morphine below a 300 ng/mL cutoff.

Therefore, the salient facts are:

- 6–AM confirmed positive tests do not need a morphine marker;
- Data show that when one looks for morphine as a marker, it most always exists above the morphine confirmation cutoffs or above Limit of Detection (LOD); and
- If the morphine marker does not exist on a 6–AM positive result, there is ample scientific reason to strongly suggest recent heroin use.

Despite these facts and until more information is gathered from DOT's experience with 6–AM testing, when a 6–AM confirmed positive result is reported and morphine for that specimen is not reported at or above the 2000 ng/mL confirmed positive cutoff, the laboratory and MRO must confer to determine if there was confirmed morphine below the 2000 ng/mL, and if not, whether further testing is needed to quantify the amount of morphine present. The laboratory must report the amount of morphine from the test to the MRO.

If a laboratory finds no detectable morphine at its LOD upon further testing, the laboratory must report that fact to DOT's Office of Drug and Alcohol Policy and Compliance (ODAPC) immediately. Based upon the scientific evidence that exists today, we simply do not think that 6–AM with no morphine detected will occur. But we will determine what our first year of 6–AM screening and confirmation testing reveals in this matter. We would work directly with MROs on these cases, if there would be any. We would also work with HHS to determine if additional action is necessary. Ultimately, the MRO, with ODAPC's assistance, would make a verified result determination following these discussions.

Last year, HHS-certified laboratories conducted approximately 5.2 million DOT tests. Quest estimates that there will be 6 tests per one million that would be reported to MROs for 6–AM with morphine concentrations below the established confirmation cutoffs. Extrapolated, this would mean approximately 30 6–AM positive specimen tests a year will be reported to MROs with morphine below 2000 ng/mL. As with other 6–AM positives, the MRO must not accept an assertion that there is a legitimate explanation for the presence of 6–AM in the employee's specimen.

Approval of Medical Review Officer Training and Examination Groups

The HHS Mandatory Guidelines will require that nationally-recognized MRO certification entities or subspecialty boards for medical practitioners in the field of medical review must have their qualifications, training programs, and examinations approved by HHS on an annual basis. The Department requested comments on whether part 40 should require these groups to be approved and if the Department should seek a shared approval process with HHS.

Comments

Commenters were rather evenly divided about whether the Department should require or join the approval process of the nationally-recognized MRO certification and subspecialty boards. Some who support DOT's involvement expressed concern that HHS would be the only approving authority if the Department does not share in that responsibility. Some who did not support the Department's involvement in the approval process also tended not to support HHS approval of these boards, either. Some commenters offered suggestions about basic standards for national certification groups.

DOT Response

While we believe the current MRO training and examination boards have very strong standards, we want to be certain that these groups continue to present well and accurately the Department's part 40 and DOT agency, including the USCG, drug rules. After all, no MRO wants to be in violation of the Department's regulations because of erroneous information presented during training or on a certification examination. Consequently, it makes sense to consider the benefits of additional oversight of MRO certification groups.

Some of the basic standards suggested by one commenter were very similar to our Subpart O requirements for national drug and alcohol counselor certification organizations. Our experience with these counselor certification organizations taught us that having standard requirements rules out up-front substandard counseling organizations. Our SAP experience also taught us that, from the beginning, the major MRO organizations had established highly reputable training and examination modalities. In fact, we used some of the MRO testing standards in laying out the examination requirements that SAP testing organizations now follow.

We liked the idea submitted by one of the commenters for basic standards for the MRO certification organizations and will pass these ideas to HHS. However, we see no pressing need for the Department to use our limited staff time and personnel to participate in or require approval for these established organizations. Again, our experience has been that these national organizations effectively train, test, and certify MROs. As long as they continue to do so, and as long as there are no new MRO certification organizations on the horizon, we see no reason to expend additional resources approving those who have already demonstrated their competence.

We will continue our practice of helping MRO training and examination groups to accurately update DOT's portions of their course materials, manuals, and examination content. We believe our assistance will enable us to make sure that content is DOT-specific and accurate.

We anticipate that HHS approval standards would include all Federal testing programs. However, we do not intend to become involved in this approval process, unless HHS identifies significant deficits with any of the training and examination efforts by any of these boards that affect DOT's

program. For now, DOT will not require these MRO training and examination organizations to obtain HHS approval. Furthermore, MROs in the DOT program will not be required to be trained by an HHS-approved group, as long as the MROs meet DOT's qualification training and requalification training requirements.

Some of the commenters noted that one MRO certification organization reportedly provides an on-line examination. These commenters ask the Department to put a stop to this practice by requiring only proctored testing. One commenter indicated that at least the examination for the initial MRO certification should be proctored. We will defer action on the issue of proctored versus on-line examinations until we know more about the HHS approval process. We would note, however, that the entire issue of proctored versus on-line examinations remains largely unresolved—with supporters in both corners and with studies and literature supporting both camps.[1]

Medical Review Officer Recurrent Requalification Training and Examination

In our NPRM we sought comments on whether part 40, at 49 CFR 40.121(d), should be amended by removing the requirement that MROs must complete 12 Continuing Education Units (CEUs) pertaining to DOT and MRO practices every three years, and instead require MROs to be requalified every five years by an MRO certification board or subspecialty board for medical practitioners.

Comments

Most commenters supported the idea that the Department require MROs to be requalified by being certified on a regular basis. Most also wanted DOT to continue to require MROs to have continuing education (or, Continuing Medical Education) related to their MRO work. Several commenters indicated that they did not see any benefit to changing the requirements, believing that initial qualification training and the continuing education requirement the Department established in 2000 has proven adequate.

DOT Response

Medical review of drug test results is more complex today than when we established the continuing education requirement in 2000. Therefore, we have decided to side with the overwhelming majority of commenters supporting MRO requalification training and reexamination on a regular basis. We will require MRO requalification every five years. However, to offset the associated costs, we will not maintain the requirement for continuing education.

Over the years, it has been somewhat difficult for us to know whether the 12 CEU hours obtained by many MROs every three years were indeed related to DOT's testing program, as required. However, based on our experience to date, we believe that a requalification requirement every five years will assure DOT agency auditors and inspectors and regulated employers that MROs are appropriately qualified.

We anticipate that MROs will continue to obtain CEUs by virtue of their MD and DO licensure requirements. In addition, the MRO certification boards provide their members with MRO manuals and periodic newsletters in an effort to keep everyone up-to-date on the Department's program requirements.

The MRO plays a key role in our important Federal safety program and maintains the Constitutionally mandated balance between the safety and privacy objectives of the program. The MRO's role in gathering and evaluating the medical evidence and providing due process is imperative. These are duties that must be carried out by the MRO and cannot be delegated to anyone.

The MRO is charged with certain important medical and administrative duties. The MRO must have detailed knowledge of the effects of medications and other potential alternative medical explanations for laboratory reported drug test results. He or she is responsible for determining whether legitimate medical explanations are available to explain an employee's drug test result. This medical review process has become far more complex as a result of specimen validity testing and the myriad of medical explanations for adulterated, substituted, and invalid laboratory test results. These complexities have made MRO knowledge of the effects of drugs and medications even more important than it was in 2000.

Part 40 also requires the MRO to confer with prescribing physicians in making decisions about prescription changes so that alternative medications can be used that will not impact public safety. Similarly, the MRO is required to report to employers the employees' prescription and over-the-counter medication use (or dangerous combinations of use) that the MRO believes will negatively affect duty performance. In addition, the MRO is required to medically assess referral physician examinations and evaluations in certain positive and refusal-to-test situations. These, too, have become more complex over time.

For these reasons, we think qualification training and examination followed by requalification and an examination every five years will be much more effective than the current one-time training and examination requirement with periodic CEUs. To ensure that MROs are well qualified, the requalification process must be very similar to the original qualification training (i.e., a full training program addressing all issues required by part 40) and an examination administered by a nationally recognized MRO certification board or subspecialty board for medical practitioners in the field of medical review of DOT-mandated drug tests. A mere "update" type of training will be considered a violation of part 40.

This regulation text lays out the requirements for when this new requalification training is to take place. MROs must maintain documentation about their qualification training and any subsequent continuing education. MROs would simply be required to complete the new requalification training and examination no later than five years from the date of having last met either their qualification training or continuing education requirements. Following the completion of the new requalification requirements, MROs will be required to complete requalification training and examination every five years thereafter.

DOT will continue to use the term "qualification training" rather than "certification training" and will use

[1] "Proctored Versus Unproctored Online Exams: Studying the Impact of Exam Environment on Student Performance," Kimberly K. Hollister and Mark L. Berenson *Decision Sciences Journal of Innovative Education Volume 7 Issue 1*, Pages 271–294 Published Online: 16 Jan 2009 © 2010 Decision Sciences Institute.

"On-line instruction: Are the outcomes the same?" Warren, L., & Holloman, Jr., H. (2005). Journal of Instructional Psychology, 32(2), 148–151.

"Questioning the hybrid model: Student outcomes in different course formats" Reasons, S., Valadares, K., & Slavkin, M., Journal of Asynchronous Learning Networks, (2005) 9(1).

"Comparison of outcomes on like exams administered to in-residence and asynchronous distance-based Pharm. D. students." Ragan, R. & Kleoppel, J. (2004). *Journal of Asynchronous Learning Networks*, 8(4).

"The Relationship Between Performance Levels and Test Delivery Methods," Patricia Royal, Paul Bell; International Journal of Instructional Technology and Distance Learning, July 2008 Vol. 5. No. 7.

"Traditional versus Online Content Delivery and Assessment," Margaret D. Anderson and Mark Connell, International Journal of Instructional Technology and Distance Learning, February 2009, Vol. 6. No. 2.

"requalification training" rather than "recertification training" in part 40.

Medical Review Officer Records Maintenance

In the NPRM we asked for discussion related to MRO records; primarily we asked what documentation of consultation and deliberation should be in MRO records. In the NPRM, we stated that our current recordkeeping requirements for negative and non-negative test results would not change based upon the new HHS MRO recordkeeping requirements.

Comments

Six commenters addressed the issue of MRO records. All supported the idea that MROs should keep records and that the time frame should be the same as that required for employers.

One association said that DOT inspectors are not qualified to question MRO judgments regarding medical information and its relevance. Another commenter indicated that personal information, which was not defined, should be confidential and not part of the MRO file. This same commenter provided a long list of items that should be part of the record, including various dates and times of MRO contacts and conversations with various Designated Employer Representatives (DERs), collectors, and employers. In addition, this commenter believed that information should be included related to contacts with other physicians, laboratories, and pharmacies, although without specific detail.

DOT Response

The DOT agrees with commenters that MRO records are very important and integral to the MRO review process. We believe that records and notes generated by the review process need to be maintained. The purpose of any record is to ensure that proper procedures and results were achieved under part 40 requirements. MRO records must show why a particular specimen is negative or non-negative. At times, the test result must withstand legal challenges.

DOT regulations already require MROs to follow the employer's record retention requirements—five years for non-negatives and one year for negatives. Those will not change.

The notes recorded by the MRO are considered by the Department to be part of the record. These notes generally contain all the information that was discussed by the MRO with the employee and any supplemental information the MRO uses to support the various reasons the employee provides as legitimate medical explanation for a non-negative result. The MRO records may include copies of prescriptions, letters from other physicians, and consultations by the MRO with physicians, pharmacy personnel, laboratory personnel, and other appropriate individuals.

However, a listing of these contacts without specific references as to what was discussed would not be effective. There must be a specific comment or rationale to which the MRO can subsequently refer for support and reasoning about the outcome of the verification process. This is especially true if a decision is challenged in a court or an administrative hearing proceeding.

During the verification interview, the employee may share personal information. Unless a specific issue, such as the use of psychotropic medication, is used as a medical explanation for a drug positive, the MRO should not include the other sensitive, unrelated personal information in the record. From a practical point of view, MROs will primarily record information that is specific to the issue at hand or may have an impact upon safety. The Department is comfortable that MROs are trained, both in their role as physicians and as MROs, to maintain a clear balance between recording of pertinent information versus not recording sensitive information which is not relevant to the verification process or transportation safety.

In reference to inspectors' qualifications to question MROs medical decisions, we want to point out that the purpose of an inspection is not to challenge a physician's medical expertise, but rather to ensure that the MRO is abiding by regulations and current requirements. In most cases, the issue would be whether there is adequate documentation for whatever action the MRO took. For example, if the MRO had his or her staff confer with the pharmacist or a prescribing physician—instead of doing so himself or herself, as the regulations require—the MRO's procedures would be contrary to part 40.

When a positive result is downgraded to a negative result, the inspector would look at the reason for this downgrade. If there is a legitimate medical explanation, the inspector would expect to see this clearly spelled out in the record. For example, if a THC positive confirmed laboratory result were downgraded to negative because of an explanation of "medical marijuana" use, the inspector would rightfully view that as a serious matter, because it remains unacceptable for any safety-sensitive employee subject to DOT drug testing rules to use marijuana.

Additional areas of concern by DOT inspectors and auditors focus upon the person(s) who actually talk(s) with the employee following a non-negative result (*e.g.*, the MRO vs. the MRO staff), how requests for split specimen testing are handled and whether requests are handled in timely manner, and how DERs are notified about non-negative results. The Department also knows that inspectors and auditors are trained to address all of these issues, and they are sensitive to the fact that these MRO records contain medical information and that they must be handled appropriately. We want to reaffirm that inspecting and auditing MRO records has been, and will continue to be, one of the mechanisms that inspectors and auditors use to ensure compliance with DOT regulations.

Section-by-Section Discussion

The following part of the preamble discusses each of the final rule's sections, including responses to comments on each section.

Table of Contents

The Department proposed, in the NPRM, to modify some existing section headings in order to reflect regulation text changes. In all, three section headings have been modified and one has been added. § 40.3, § 40.87, and § 40.139 have been revised, and § 40.140 has been added.

Section 40.3 What do the terms in this part mean?

In order to align more closely the definitions in § 40.3 with definitions contained in the HHS Mandatory Guidelines, in the NPRM, the Department proposed modifying some existing definitions and adding several new ones.

Five commenters supported this proposal and responded by making suggested additions or changes to this section. Several commenters did not support the changes, contending that the Department should not allow DOT-regulated employers to use IITFs. Because the Department is not allowing IITFs, no definitions related to IITFs will be added. A few commenters did not want the Department to change its definition of "cancelled test" because the proposed definition was confusing. After reviewing the comments the Department agrees with the commenters and will keep the current definition of "cancelled test." Other commenters did not want the Department to add definitions that were only applied to the HHS program and not to the DOT

program. We have reviewed those definitions and decided that most will be in the regulation. It is necessary to harmonize our terms with HHS definitions, in order that laboratories and others in the drug testing industry have consistent terms with which to operate.

In all, 13 definitions will be modified or added to harmonize with HHS definitions, and one will be removed. The new or modified definitions are "Adulterated specimen," "Confirmatory drug test," "Initial drug test (also known as a Screening drug test)," "Initial specimen validity test," "Invalid drug test," "Laboratory," "Limit of Detection (LOD)," "Limit of Quantitation," "Negative result," "Positive result," "Reconfirmed," "Rejected for testing," and "Split specimen collection." The term "Initial validity test" was removed.

Section 40.87 What are the cutoff concentrations for drug tests?

The Department will require conducting initial and confirmation testing for MDMA, MDA, and MDEA, conducting initial testing for 6–AM, lowering the initial and confirmation cutoff concentrations for amphetamines, and lowering the initial and confirmation cutoff concentrations for cocaine. We include certain instructions for laboratories (and MROs) related to 6–AM testing. Specific discussions of these issues are included under "Principal Policy Issues" in this preamble.

Section 40.97 What do laboratories report and how do they report it?

The Department added a paragraph to this section instructing the laboratory to contact ODAPC if it ever confirms 6–AM with no detectable morphine at its LOD, upon further testing. A fuller discussion of this matter is in "Principal Policy Issues."

Section 40.121 Who is qualified to act as an MRO?

Commenters had a number of suggestions related to ongoing training for MROs. The DOT reviewed the comments and, as discussed in the "Principal Policy Issues," will require MRO requalification, including training and examination, every five years.

Section 40.139 On what basis does the MRO verify test results for codeine and morphine?

The Department has revised this section by limiting the section to how MROs are to verify laboratory-confirmed codeine and morphine test results. We removed 6–AM verification from this section and moved it to a new section. We also revised the section's heading.

Section 40.140 On what basis does the MRO verify test results for 6-acetylmorphine (6–AM)?

This new section provides instructions to MROs on how they are to verify confirmed positive 6–AM results from laboratories. Instructions include how MROs are to handle 6–AM confirmed positive results when morphine is above the confirmation cutoff, when morphine is confirmed below the confirmation cutoff, when morphine is confirmed above LOD, and if ever morphine is not detected at LOD upon further testing. A fuller discussion of this matter is in "Principal Policy Issues."

Section 40.151 What are MROs prohibited from doing as part of the verification process?

The Department has revised this section by adding MDMA, MDA, and MDEA as being among the drugs for the presence of which there exist no legitimate medical explanations. This instruction is consistent with what the Department has said about PCP and 6–AM.

Section 40.159 What does the MRO do when a drug test is invalid?

In response to the commenters' concerns related to pH, this section is based on a July 2008 guidance authorizing MROs to consider time and temperature in making their verification decisions if pH is in the 9.0–9.5 range. A fuller discussion of this matter is in "Principal Policy Issues."

Section 40.163 How does the MRO report drug test results?

The majority of the commenters wanted DOT to be clear about the records MROs should keep and how long MROs should keep them. Based upon the comments, we have decided to put more specificity about this issue into the MRO rule text section. MROs keep negative and cancelled drug test reports and records for one year, and all positive and refusal drug test reports and records for five years. A fuller discussion of this matter is in "Principal Policy Issues."

Appendix B to Part 40—DOT Drug Testing Semi-Annual Laboratory Report to Employers

The Department has modified the requirements for the semi-annual laboratory reports to employers. The changes require laboratories to also report the total number of MDMA, MDA, and MDEA positive drug test results.

Appendix C to Part 40—DOT Drug Testing Semi-Annual Laboratory Report to DOT

The Department has modified the requirements for the semi-annual laboratory reports to DOT. The changes require laboratories to also delineate the positives for the newly added MDMA, MDA, and MDEA. We are also breaking out the other drugs for which we test in order to make it simpler for laboratories to report and for our staff to tally the reports.

Other Issues

There were several comments that addressed editorial changes and included typographical errors. We appreciate these comments and incorporated a good many of the suggestions and edits.

The Department also received several comments that we consider to be outside of the scope for this rulemaking. However, in order to try to bring closure to these issues, we will provide some explanation and clarification.

One commenter said that section 40.25 stated that the employer was required to obtain consent from the applicant, but the commenter believed that section 40.27 prohibited the employer from obtaining consent for release of the 40.25 information. We would like to point out that section 40.25 requires the employee to sign this written consent in order to perform safety-sensitive duties and is very specific as to the purpose of this consent. Section 40.27 prohibits an employer from requiring the employee to sign a form consenting to participation in the program, a blanket release form for all drug and alcohol testing information, or any type of waiver of indemnification or liability. There is no contradiction between these two requirements.

Another commenter believed that the HHS employer option for a second collection, if the first test result was "negative dilute," was not adopted by DOT. We would point out that this authorization has already been part of our rule for some time and is clearly spelled out in section 40.197.

One commenter wanted the Department to establish a time limit on how long an employee had to wait at a collection site before providing a urine specimen. This commenter thought that two hours should be the maximum timeframe an employee had to wait to provide a specimen. This same commenter also wanted clarification about what constituted a "drug failure"

and that leaving the collection site for a short time should not be considered a refusal, unless the employee left the collection area where the urine sample is actually taken. Additionally, this commenter wanted some grievance procedures to be established should there be problems at a collection site.

Although this commenter was concerned about how long an employee may have to wait to provide a specimen, we would like to emphasize that section 40.61(b) clearly directs the collection site to "begin the testing process without undue delay." The Department's position has always been that testing should start as soon as possible after the employee's arrival at the site. The Department's position has always been that the employee cannot leave the collection site, i.e., the waiting area, even for a short time. Leaving the site provides employees the opportunity to adulterate or substitute their specimens. And finally, collection site problems encountered by employees should be raised to the employer following the collection. The employer is ultimately responsible for the proper operation of its drug testing program.

One association asked for clarification as to what the Department intended by the term "same business day" as it applies under section 40.205. This section directs that if a problem is identified in the testing process, anyone involved in it should make an attempt to correct the problem on the same business day that notification is received about the problem. This commenter provided several scenarios where the employer, the collection site, or the service agent offices are closed, but the information is transmitted to them. The question is how these entities can meet the requirement of responding on the same day that they are notified about a problem.

If an office is closed when information is received, common sense dictates that the next day the office is open is the business day it is received.

Several commenters asked about other HHS Mandatory Guidelines procedures and whether the Department would adopt them. As discussed in the NPRM, the Department identified those HHS Mandatory Guidelines we proposed to adopt and which ones we did not. In this final rule, we have again highlighted those we have adopted.

For example, the Department will not require observers to receive advanced, formalized training to learn about the steps necessary to directly observe a collection. The current process of having a qualified and trained collector provide immediate, precise, and relevant instructions to an observer at the time of a directly observed collection is very appropriate and effective and has been for years. That way, the Department can be assured that the requisite instructions are provided each time that direct observation is required, no matter how many, or few, an observer has already accomplished.

In addition, the costs associated with formally training observers (and the resulting limitation on available observers) does not outweigh any minimal benefits to arguably be obtained by training observers in advance instead of providing timely and relevant instructions on site at the time direct observation is required. The Department is not aware of any cases where it was not effective to have the qualified and trained collector instruct the observer at the time a direct observation must occur, and to do so each and every time, no matter whether the observer has already been trained and properly informed.

Also, DOT will not change our longstanding regulatory position that a collector need not obtain prior approval from a collection site supervisor before performing a directly observed collection. Requiring collectors to get approval from collection site supervisors would create difficult logistical issues that would complicate the process. There are numerous instances where the collector is alone or does not have immediate access to a collection site supervisor. In fact, the collector may be the site supervisor. Many collections occur off-site or in the middle of the night, where and when supervisors would not be available, and requiring consultation with an unavailable supervisor would prove onerous and serve only to delay the process unnecessarily. We believe qualified collectors should continue to make these direct observation collection decisions and to continue basing those decisions upon the clear requirements set forth in part 40.

Also, we will not change the duration of the paperwork retention requirement for collectors. HHS will require collectors to keep Copy 3 for two years. The Department believes the current 30 days is sufficient in DOT's program. Retention for 30 days has proven a sufficient amount of time in which to ensure that a CCF copy with the employee's signature would be available to the MRO when the MRO's CCF copy was not available. Requiring document retention for two years would greatly increase the paperwork burden without any added safety or efficiency benefit.

Under the revised HHS Mandatory Guidelines, Federal agencies will be required to audit five percent or a maximum of 50 of their collection sites annually. The Department believes that creating a parallel requirement for transportation industry employers would be very expensive to employers in DOT's program in terms of time and resources, with few efficiency and/or safety benefits. The Department would anticipate seeing more effective monitoring by the collection site parent organizations in an effort to ensure for employers that sites under their organization umbrellas, with which employers are contracting, are properly conducting collections. The DOT agencies and the U.S. Coast Guard also provide on-site audits and inspections of collection sites. They have also increased their mock collection inspections and their clandestine inspections. All of these provide added oversight to determine whether collection site personnel are properly performing collections and whether collection sites adhere to DOT's strong security and integrity requirements.

The revised HHS Mandatory Guidelines will require at least three percent blind specimen testing, compared to DOT's current one percent. We believe our current requirements represent a good balance between considerations of reducing burdens and maintaining an effective check upon laboratory performance. We have had few, if any, laboratory accuracy problems over the history of the program, and we believe that we can continue to ensure that this pattern continues while reducing burdens and costs on participants. Coupled with the HHS requirements and the additional proficiency testing required for laboratory certification, the blinds submitted to laboratories for quality control testing purposes via DOT requirements are quite ample.

In the NPRM, the Department estimated the total annual cost of testing for MDMA and 6–AM to be $1,361,063. One commenter believed that estimate to be too low, but did not offer any recommended cost figure. We believe there will be approximately 5 million DOT tests per year, and an MDMA test will cost on average $ 0.09 per test, and 6–AM will cost on average $.26 per test. MDMA will cost approximately $450 thousand per year, and 6–AM will cost approximately $1.3 million per year, for a total of $1.75 million per year.

Regulatory Analyses and Notices

The statutory authority for this rule derives from the Omnibus Transportation Employee Testing Act of 1991 (49 U.S.C. 102, 301, 322, 5331, 20140, 31306, and 45101 *et seq.*) and the

Department of Transportation Act (49 U.S.C. 322).

The Department estimates there will be approximately 5 million DOT tests per year. An MDMA test will cost on average $0.09 per test, and 6–AM will cost on average $.26 per test. MDMA will cost approximately $450 thousand per year, and 6–AM will cost approximately $1.3 million per year, for a total of $1.75 million per year. Based upon the data discussed in the "Principal Policy Issues," the increased detection of amphetamine, methamphetamine, and cocaine use through drug testing is estimated to be approximately 30% more for amphetamines/methamphetamines, and 30% more for cocaine. In 2009, HHS-certified laboratories reported to DOT that there were 14,195 confirmed DOT positive results for amphetamines/methamphetamines. So, we estimate an increase of over 4,000 confirmed positive amphetamine/methamphetamine test results. Also in 2009, laboratories reported 12,918 DOT cocaine confirmed positive results. Therefore, we estimate an increase of nearly 4,000 confirmed cocaine results. We estimate the cost associated with this increase of 8,000 positive test results for cocaine and amphetamines/methamphetamines to be $500 thousand. The total program cost of the new regulation will be $2.25 million.

It stands to reason that it will be cost beneficial to identify the illegal drug use of an additional 8,000 safety-sensitive transportation employees annually, across all modes—on roads, rails, water, or in the air, over land and underground. Furthermore, if identifying the illicit drug use by these employees prevents a single serious accident, then the economic benefits of the rule will outweigh its costs. As we have stated throughout this preamble, the Omnibus Act requires us to follow HHS on these specific drug testing matters.

We have concluded that this rule is not significant for purposes of Executive Order 12866 or DOT's regulatory policies and procedures. In addition to its low costs, it modifies our overall part 40 procedures and is intended to further align our laboratory procedures and processes, as well as some collection and MRO procedures, in order to harmonize DOT procedures with requirements that are being directed by HHS Mandatory Guidelines, which were themselves deemed to be non-significant rules. The DOT also certifies, under the Regulatory Flexibility Act, that this rule will not have a significant economic impact on a substantial number of small entities. Given the small net change in regulatory costs compared to the present rule, spread over the many thousands of small entities in the transportation industries, the cost impact per entity is expected to be negligible.

There are no new information collection requirements that would be subject to the Paperwork Reduction Act.

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This rule does not include requirements that (1) have substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government, (2) impose substantial direct compliance costs on State and local governments, or (3) preempt State law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

List of Subjects in 49 CFR Part 40

Administrative practice and procedures, Alcohol abuse, Alcohol testing, Drug abuse, Drug testing, Laboratories, Reporting and recordkeeping requirements, Safety, Transportation.

49 CFR subtitle A, Authority and Issuance.

Issued August 10, 2010, at Washington DC.

Ray LaHood,

Secretary of Transportation.

■ For reasons discussed in the preamble, the Department of Transportation amends Title 49 of the Code of Federal Regulations, part 40, as follows:

PART 40—PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS

■ 1. The authority citation for 49 CFR part 40 continues to read as follows:

Authority: 40 U.S.C. 102, 301, 322, 5331, 20140, 31306, and 54101 *et seq.*

* * * * *

■ 2. § 40.3 is amended as follows:

■ A. Revise the section heading.

■ B. Revise the definitions of *Adulterated specimen, Confirmatory drug test, Initial drug test (also known as a Screening drug test), Invalid drug test, Laboratory,* and *Limit of detection (LOD).*

■ C. Add in alphabetical order definitions of *Initial specimen validity test, Limit of Quantitation, Negative result, Positive result, Reconfirmed, Rejected for testing,* and *Split specimen collection.*

■ D. Remove the definition of *Initial validity test.*

The revisions and additions read as follows:

§ 40.3 What do the terms used in this part mean?

* * * * *

Adulterated specimen. A specimen that has been altered, as evidenced by test results showing either a substance that is not a normal constituent for that type of specimen or showing an abnormal concentration of an endogenous substance.

* * * * *

Confirmatory drug test. A second analytical procedure performed on a different aliquot of the original specimen to identify and quantify the presence of a specific drug or drug metabolite.

* * * * *

Initial drug test (also known as a "Screening drug test"). The test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites.

Initial specimen validity test. The first test used to determine if a urine specimen is adulterated, diluted, substituted, or invalid.

Invalid drug test. The result reported by an HHS-certified laboratory in accordance with the criteria established by HHS Mandatory Guidelines when a positive, negative, adulterated, or substituted result cannot be established for a specific drug or specimen validity test.

* * * * *

Laboratory. Any U.S. laboratory certified by HHS under the National Laboratory Certification Program as meeting the minimum standards of Subpart C of the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs; or, in the case of foreign laboratories, a laboratory approved for participation by DOT under this part.

* * * * *

Limit of Detection (LOD). The lowest concentration at which a measurand can be identified, but (for quantitative assays) the concentration cannot be accurately calculated.

Limit of Quantitation. For quantitative assays, the lowest concentration at which the identity and concentration of the measurand can be accurately established.

* * * * *

Negative result. The result reported by an HHS-certified laboratory to an MRO when a specimen contains no drug or the concentration of the drug is less than the cutoff concentration for the

drug or drug class and the specimen is a valid specimen.

* * * * *

Positive result. The result reported by an HHS-certified laboratory when a specimen contains a drug or drug metabolite equal to or greater than the cutoff concentrations.

* * * * *

Reconfirmed. The result reported for a split specimen when the second laboratory is able to corroborate the original result reported for the primary specimen.

* * * * *

Rejected for testing. The result reported by an HHS-certified laboratory when no tests are performed for a specimen because of a fatal flaw or a correctable flaw that is not corrected.

* * * * *

Split specimen collection. A collection in which the urine collected is divided into two separate specimen bottles, the primary specimen (Bottle A) and the split specimen (Bottle B).

* * * * *

■ 3. In § 40. 87, the section heading and paragraph (a) are revised, and paragraph (e) is added, to read as follows:

§ 40.87 What are the cutoff concentrations for drug tests?

(a) As a laboratory, you must use the cutoff concentrations displayed in the following table for initial and confirmatory drug tests. All cutoff concentrations are expressed in nanograms per milliliter (ng/mL). The table follows:

Initial test analyte	Initial test cutoff concentration	Confirmatory test analyte	Confirmatory test cutoff concentration
Marijuana metabolites	50 ng/mL	THCA [1]	15 ng/mL.
Cocaine metabolites	150 ng/mL	Benzoylecgonine	100 ng/mL.
Opiate metabolites			
Codeine/Morphine [2]	2000 ng/mL	Codeine	2000 ng/mL.
		Morphine	2000 ng/mL.
6–Acetylmorphine	10 ng/mL	6–Acetylmorphine	10 ng/mL.
Phencyclidine	25 ng/mL	Phencyclidine	25 ng/mL.
Amphetamines [3]			
AMP/MAMP [4]	500 ng/mL	Amphetamine	250 ng/mL.
		Methamphetamine [5]	250 ng/mL.
MDMA [6]	500 ng/mL	MDMA	250 ng/mL.
		MDA [7]	250 ng/mL.
		MDEA [8]	250 ng/mL.

[1] Delta-9-tetrahydrocannabinol-9-carboxylic acid (THCA).
[2] Morphine is the target analyte for codeine/morphine testing.
[3] Either a single initial test kit or multiple initial test kits may be used provided the single test kit detects each target analyte independently at the specified cutoff.
[4] Methamphetamine is the target analyte for amphetamine/methamphetamine testing.
[5] To be reported positive for methamphetamine, a specimen must also contain amphetamine at a concentration equal to or greater than 100 ng/mL.
[6] Methylenedioxymethamphetamine (MDMA).
[7] Methylenedioxyamphetamine (MDA).
[8] Methylenedioxyethylamphetamine (MDEA).

* * * * *

(e) On a 6–AM confirmed positive result:

(1) When a 6–AM confirmed positive result is reported and morphine for that specimen is not reported at or above the 2000 per ng/mL confirmed positive cutoff, you must confer with the MRO to determine if there was confirmed morphine below 2000 ng/mL.

(2) If morphine was not confirmed below 2000 ng/mL, you and the MRO must determine whether further testing is needed to quantify the amount of morphine concentration present.

(3) If you find no detectable morphine at LOD upon further testing, you must report that fact to ODAPC immediately.

■ 4. In § 40.97, paragraph (g) is added to read as follows:

§ 40.97 What do laboratories report and how do they report it?

* * * * *

(g) If you confirm 6–AM and find no detectable morphine at LOD upon further testing, you must report that fact to ODAPC immediately.

■ 5. In § 40.121, paragraph (d) is revised to read as follows:

§ 40.121 Who is qualified to act as an MRO?

* * * * *

(d) *Requalification Training.* During each five-year period from the date on which you satisfactorily completed the examination under paragraph (c)(2) of this section or have successfully completed the required continuing education requirements which were mandatory prior to October 1, 2010, you must complete requalification training.

(1) This requalification training must meet the requirements of the qualification training under paragraph (c)(1) of this section.

(2) Following your completion of requalification training, you must satisfactorily complete an examination administered by a nationally-recognized MRO certification board or subspecialty board for medical practitioners in the field of medical review of DOT-mandated drug tests. The examination must comprehensively cover all the elements of qualification training listed in paragraph (c)(1) of this section.

* * * * *

■ 6. § 40.139 is revised to read as follows:

§ 40.139 On what basis does the MRO verify test results for codeine and morphine?

As the MRO, you must proceed as follows when you receive a laboratory confirmed positive morphine or codeine test result:

(a) In the absence of 6–AM, if the laboratory detects the presence of either morphine or codeine at 15,000 ng/mL or above, you must verify the test result positive unless the employee presents a legitimate medical explanation for the presence of the drug or drug metabolite in his or her system, as in the case of other drugs (see § 40.137). Consumption of food products (e.g., poppy seeds) must not be considered a legitimate medical explanation for the employee having morphine or codeine at these concentrations.

(b) For all other opiate positive results, you must verify a confirmed positive test result for opiates only if you determine that there is clinical evidence, in addition to the urine test, of unauthorized use of any opium, opiate, or opium derivative (i.e., morphine, heroin, or codeine).

(1) As an MRO, it is your responsibility to use your best professional and ethical judgment and discretion to determine whether there is clinical evidence of unauthorized use of opiates. Examples of information that you may consider in making this judgment include, but are not limited to, the following:

(i) Recent needle tracks;

(ii) Behavioral and psychological signs of acute opiate intoxication or withdrawal;

(iii) Clinical history of unauthorized use recent enough to have produced the laboratory test result;

(iv) Use of a medication from a foreign country. See § 40.137(e) for guidance on how to make this determination.

(2) In order to establish the clinical evidence referenced in paragraphs (b)(1)(i) and (ii) of this section, personal observation of the employee is essential.

(i) Therefore, you, as the MRO, must conduct, or cause another physician to conduct, a face-to-face examination of the employee.

(ii) No face-to-face examination is needed in establishing the clinical evidence referenced in paragraph (b)(1)(iii) or (iv) of this section.

(3) To be the basis of a verified positive result for opiates, the clinical evidence you find must concern a drug that the laboratory found in the specimen. (For example, if the test confirmed the presence of codeine, and the employee admits to unauthorized use of hydrocodone, you do not have grounds for verifying the test positive. The admission must be for the substance that was found).

(4) As the MRO, you have the burden of establishing that there is clinical evidence of unauthorized use of opiates referenced in paragraph (b) of this section. If you cannot make this determination (e.g., there is not sufficient clinical evidence or history), you must verify the test as negative. The employee does not need to show you that a legitimate medical explanation exists if no clinical evidence is established.

■ 7. A new § 40.140 is added to read as follows:

§ 40.140 On what basis does the MRO verify test results for 6-acetylmorphine (6–AM)?

As the MRO, you must proceed as follows when you receive a laboratory confirmed 6–AM test result:

(a) If the laboratory confirms the presence of 6–AM in the specimen and there is also any level of quantitation of morphine, you must verify the test result positive.

(b) When a laboratory 6–AM confirmed positive result is reported and morphine for that specimen is not reported at or above the 2000 per ng/mL confirmed positive cutoff, you must confer with the laboratory to determine if there was confirmed morphine below 2000 ng/mL.

(1) If there was confirmed morphine below 2000 ng/mL, you must verify the test result positive.

(2) If morphine was not confirmed below 2000 ng/mL, you and the laboratory must determine whether further testing is needed to quantify the amount of morphine present.

(c) If a laboratory finds detectable morphine at its LOD upon further testing, you must verify the test result positive.

(d) If a laboratory finds no detectable morphine at its LOD upon further testing, you and the laboratory must report that fact to the ODAPC immediately. Following your discussion with ODAPC, you will make a verified result determination.

■ 8. In § 40.151, paragraph (g) is revised to read as follows:

§ 40.151 What are MROs prohibited from doing as part of the verification process?

* * * * *

(g) You must not accept an assertion that there is a legitimate medical explanation for the presence of PCP, 6–AM, MDMA, MDA, or MDEA in a specimen.

* * * * *

■ 9. In § 40.159, paragraph (a)(6) is added to read as follows:

§ 40.159 What does the MRO do when a drug test is invalid?

(a) * * *

(6) When the test result is invalid because pH is greater than or equal to 9.0 but less than or equal to 9.5 and the employee has no other medical explanation for the pH, you should consider whether there is evidence of elapsed time and increased temperature that could account for the pH value.

(i) You are authorized to consider the temperature conditions that were likely to have existed between the time of collection and transportation of the specimen to the laboratory, and the length of time between the specimen collection and arrival at the laboratory.

(ii) You may talk with the collection site and laboratory to discuss time and temperature issues, including any pertinent information regarding specimen storage.

(iii) If you determine that time and temperature account for the pH value, you must cancel the test and take no further action, as provided at paragraph (a)(4) of this section.

(iv) If you determine that time and temperature fail to account for the pH value, you must cancel the test and direct another collection under direct observation, as provided at paragraph (a)(5) of this section.

* * * * *

■ 10. In § 40.163, paragraph (h) is added to read as follows:

§ 40.163 How does the MRO report drug test results?

* * * * *

(h) You must maintain reports and records related to negatives and cancelled results for one year; you must maintain reports and records related to positives and refusals for five years, unless otherwise specified by applicable DOT agency regulations.

■ 11. Appendix B to part 40 is revised to read as follows:

Appendix B to Part 40—DOT Drug Testing Semi-Annual Laboratory Report to Employers

The following items are required on each laboratory report:

Reporting Period: (inclusive dates)
Laboratory Identification: (name and address)
Employer Identification: (name; may include Billing Code or ID code)
C/TPA Identification: (where applicable; name and address)
1. Specimen Results Reported (total number)
By Test Reason
  (a) Pre-employment (number)
  (b) Post-Accident (number)
  (c) Random (number)
  (d) Reasonable Suspicion/Cause (number)
  (e) Return-to-Duty (number)
  (f) Follow-up (number)
  (g) Type of Test Not Noted on CCF (number)
2. Specimens Reported
  (a) Negative (number)
  (b) Negative and Dilute (number)
3. Specimens Reported as Rejected for Testing (total number)
By Reason
  (a) Fatal flaw (number)
  (b) Uncorrected Flaw (number)
4. Specimens Reported as Positive (total number) By Drug
  (a) Marijuana Metabolite (number)
  (b) Cocaine Metabolite (number)
  (c) Opiates (number)
  (1) Codeine (number)
  (2) Morphine (number)

(3) 6–AM (number)
(d) Phencyclidine (number)
(e) Amphetamines (number)
(1) Amphetamine (number)
(2) Methamphetamine (number)
(3) MDMA (number)
(4) MDA (number)
(5) MDEA (number)
5. Adulterated (number)
6. Substituted (number)
7. Invalid Result (number)

■ 12. Appendix C to part 40 is revised to read as follows:

Appendix C to Part 40—DOT Drug Testing Semi-Annual Laboratory Report to DOT

Mail, fax, or e-mail to: U.S. Department of Transportation, Office of Drug and Alcohol Policy and Compliance, W62–300, 1200 New Jersey Avenue, SE., Washington, DC 20590. Fax: (202) 366–3897. E-mail: *ODAPCWebMail@dot.gov.*

The following items are required on each report:

Reporting Period: (inclusive dates)
Laboratory Identification: (name and address)
1. DOT Specimen Results Reported (total number)
2. Negative Results Reported (total number)
Negative (number)
Negative-Dilute (number)
3. Rejected for Testing Results Reported (total number)
By Reason
(a) Fatal flaw (number)
(b) Uncorrected Flaw (number)
4. Positive Results Reported (total number)
By Drug
(a) Marijuana Metabolite (number)
(b) Cocaine Metabolite (number)
(c) Opiates (number)
(1) Codeine (number)
(2) Morphine (number)
(3) 6–AM (number)
(d) Phencyclidine (number)
(e) Amphetamines (number)
(1) Amphetamine (number)
(2) Methamphetamine (number)
(3) MDMA (number)
(4) MDA (number)
(5) MDEA (number)
5. Adulterated Results Reported (total number)
By Reason (number)
6. Substituted Results Reported (total number).
7. Invalid Results Reported (total number)
By Reason (number)

[FR Doc. 2010–20095 Filed 8–13–10; 8:45 am]
BILLING CODE 4910–9X–P

AI-23050 **10.E.**

extension of security services agreement - Const. 4

CC REGULAR

Date:	09/21/2010
Submitted By:	Monica Badillo, EXECUTIVE OFFICE
Department:	EXECUTIVE OFFICE
Agenda Category:	Comm. Court Executive Office

Information

CAPTION

Constable Pct. #4:
Approval of second extension to Agreement between Hidalgo County and the Department of Homeland Security (FEMA) to provide Security Services.

BACKGROUND

Fiscal Impact

FISCAL YEAR: **ACCT. #:**

FUNDS AVAILABLE Y/N?: **MATCHING FUNDS Y/N?:**

BUDGETARY IMPACT:

NO COST TO COUNTY/ NO FISCAL IMPACT.

Attachments

Link: email

Link: agreement

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
1	Budget & Management	Sylvia Solis	09/17/2010 01:19 PM	APRV
2	Rosalinda Cantu	Rosie Cantu	09/17/2010 04:38 PM	APRV
3	Auditor's Office		09/17/2010 04:52 PM	NEW

Form Started By: Monica Badillo — Started On: 09/17/2010 11:32 AM

Final Approval Date: 09/17/2010

Monica Badillo

From: rey salazar [rey.salazar@co.hidalgo.tx.us]
Sent: Friday, September 17, 2010 11:52 AM
To: Monica Badillo
Subject: FW: AMENDMENT TO AGREEMENT
Attachments: HSFE06-10-P-6101 P00003.pdf

Moni,

Attached please find the DHS/FEMA time extension request.

Thank you.

Reynaldo Salazar
Senior Planning Analyst
Department of Budget and Management
2818 South Business Hwy. 281, Administrative Building
Edinburg, Tx. 78539
(956) 292-7025 Phone
(956) 292-7035 Fax

From: Whitson, John [mailto:John.Whitson@dhs.gov]
Sent: Thursday, September 16, 2010 5:03 PM
To: joel.rivera
Cc: rey salazar
Subject: FW: AMENDMENT TO AGREEMENT

Chief Deputy Constable Rivera,

The funding has been accomplished to allow your constables to provide security through 9/24/10 at the Edinburgh Disaster Recovery Center, 100 E. Cano Street, Edinburgh.

I will be departing this disaster tomorrow. In the event that you need further contact with our Security staff, please call our office (956-718-0452) or my Lead Security Manager Bill Penn at 703-399-9014 (cell). He will be departing this disaster on 9/24 but will be replaced by another Security Manager who is yet to be determined, however, the office number should provide you with contact.

Unless notified otherwise, the Edinburg Disaster Recovery Center operation will cease at Close of Business on September 24, 2010.

Again, I wish to thank you and your entire staff for their professional response to our mission.

Respectfully,

John J. Whitson
DSOB Security Specialist
DHS/FEMA

DR-1931-TX
4805 Maher Ave.
Laredo, TX 78041
703-399-0893 (cell)
956-718-0452 (office)

From: Heggers, Gerard
Sent: Thursday, September 16, 2010 4:18 PM
To: rey salazar
Cc: Whitson, John; Penn, William
Subject: AMENDMENT TO AGREEMENT

Mr. Salazar,

Please find modification P00003 to our agreement HSFE06-10-P-6101.

If there are any questions please advise.

Gerard Heggers
Contracting Officer
DR-1931-TX
4805 Maher Avenue
Laredo, TX 78041
Desk Phone: (956) 718-0443
FAX: (956) 718-0448

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

BPA NO.	1. CONTRACT ID CODE	PAGE	OF
		1	1

2. AMENDMENT/MODIFICATION NO.	3. EFFECTIVE DATE	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO.(If applicable)
P00004	09/17/2010		

6. ISSUED BY CODE	7. ADMINISTERED BY (If other than Item 6) CODE
DEPARTMENT OF HOMELAND SECURITY FEDERAL EMERGENCY MANAGEMENT AGENCY JOINT FIELD OFFICE DR-1931-TX 4805 MAHER AVENUE LAREDO TX 78041	DEPARTMENT OF HOMELAND SECURITY FEDERAL EMERGENCY MANAGEMENT AGENCY JOINT FIELD OFFICE DR-1931-TX 4805 MAHER AVENUE LAREDO TX 78041

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code)	(X)	9A. AMENDMENT OF SOLICITATION NO.
COUNTY OF HIDALGO HIDALGO COUNTY JAIL 701 EL CIBOLO EDINBURG TX 785410000		9B. DATED (SEE ITEM 11)
		10A. MODIFICATION OF CONTRACT/ORDER NO. HSFE06-10-P-6101
CODE / FACILITY CODE	X	10B. DATED (SEE ITEM 13) 08-26-2010

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☐ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers ☐ is extended, ☐ is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

(X)	
	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
X	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
	D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor [X] is not, [ ] is required to sign this document and return _____ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

THIS IS AN ADMINISTRATIVE MODIFICATION AS A RESULT OF VENDOR'S REQUEST.
VENDOR WANTS TO ENSURE THE APPROPRIATE DEPARTMENT WITHIN THE COUNTY OF HILALGO PROVIDING THE SERVICE IS ACCURATELY IDENTIFIED. THIS FOR INTERNAL CONTROLS ONLY. THE FOLLOWING IS SO IDENTIFIED:
HILDALGO COUNTY CONSTABLE
PRECINCT #4
2814 S. BUSINESS HIGHWAY 281
EDINBURG, TX 78539

EXCEPT AS STATED ABOVE ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT.
----------END OF MODIFICATION P00004----------

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)	
		Gerard Heggers Contracting Officer	
15B. CONTRACTOR/OFFEROR (Signature of person authorized to sign)	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA BY _____ (Signature of Contracting Officer)	16C. DATE SIGNED 09-17-2010

AI-23048 **11.A.**

MS4

CC REGULAR

Date:	09/21/2010
Submitted By:	Erika Reyna, COUNTY JUDGE
Department:	COUNTY JUDGE
Agenda Category:	County Judge's Office

Information

CAPTION

1. Discussion of US Environmental Protection Agency (EPA) Clean Water Act and Texas Commission on Environmental Quality (TCEQ) requirement to submit a Storm Water Management Plan.

2. Discussion, consideration, and approval of proposed Hidalgo County Storm Water Management Plan and authorization to partner with Hidalgo County Drainage District #1; or in the alternative,

3. Discussion, consideration, and approval to partner with Hidalgo County Drainage District #1 and other entities in their Storm Water Management Plan.

BACKGROUND

Hidalgo County must submit a Storm Water Management Plan to TCEQ. A proposed Storm Water Management Plan for the county will be presented to Commissioners' Court. Court may opt to adopt the proposed plan, or join Hidalgo County Drainage District #1 and partners and submit/follow their Storm Water Management Plan.

Item presented to CC September 14, 2010.

Fiscal Impact

FISCAL YEAR: **ACCT. #:**

FUNDS AVAILABLE Y/N?: **MATCHING FUNDS Y/N?:**

BUDGETARY IMPACT:

Fiscal impact of options will be presented at court.

Attachments

No file(s) attached.

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
1	Budget & Management	Sylvia Solis	09/17/2010 11:08 AM	APRV
2	Roland Garcia	Rolando Garcia	09/17/2010 04:50 PM	APRV
3	Auditor's Office		09/17/2010 04:52 PM	NEW

Form Started By: Erika Reyna

Started On: 09/17/2010 10:38 AM

Final Approval Date: 09/17/2010

AI-23006 **12.A.**

Approval to waive travel policy for DA investigator - Austin Trip
CC REGULAR

Date:	09/21/2010
Submitted By:	Roy Cazares, DISTRICT ATTORNEY
Submitted For:	Roy Cazares
Department:	DISTRICT ATTORNEY
Agenda Category:	District Attorney

Information

CAPTION

1. Approval to waive travel policy (Section 14 c.) regarding same day travel for trip taken on 08/24/2010 by D.A.'s Investigator to file paperwork with Texas Supreme Court.
2. Approval to reimburse D.A. Investigator, employee no. 175307, for meal expenses in the amount of $30.00 with authority for Hidalgo County Treasurer to issue payment/check after review, audit and processing procedures are completed by the Hidalgo County Auditor.

BACKGROUND

Mr. Guerra instructed our investigator to make a last minute trip to Austin to file mandamus with the Texas Supreme Court. He could have stayed overnight and cost the county additional monies but decided to return the same day. By him returning on the same day he saved the county about $150.00. Our request is only for $30.00 for meals.

Fiscal Impact

FISCAL YEAR: 2010 **ACCT. #:** 0-1100-412-00-080-002-0-583

FUNDS AVAILABLE Y/N?: Y **MATCHING FUNDS Y/N?:** N

BUDGETARY IMPACT:

Funds available as of 09/17/10, refer to P.O. 644687.

Attachments

Link: Travel Policy (14.c.)

Link: Back-up

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
1	Budget & Management	Sylvia Solis	09/16/2010 07:57 AM	APRV
2	Sylvia Solis	Sylvia Solis	09/17/2010 01:48 PM	APRV
3	Auditor's Office		09/17/2010 04:52 PM	NEW

Form Started By: Roy Cazares — Started On: 09/15/2010 05:03 PM

Final Approval Date: 09/17/2010

after 12:00 PM and the location of the meeting or conference is less than 300 miles away.

g. Return on the day after the meeting or conference ends is acceptable whenever same day travel is not practical. However, return the same day that the meeting or conference ends is required if the meeting or conference is taking place within 100 miles from the traveler's normal place of work and the meeting or conference ends at or before 3:00 PM. Return the same day that the conference or meeting ends is encouraged whenever the meeting or conference ends before 12:00 PM and the location of the meeting or conference is less than 300 miles away.

h. Extra hotel nights for personal reasons will be at the officials or employees own expense and will not be reimbursed. Extra hotel nights for personal reasons will not be paid using County funds or the department's travel card.

i. A traveler may not be reimbursed for a lodging expense incurred at a place that is not a commercial lodging establishment.

j. An original lodging receipt showing payment in full must be submitted as supporting documentation for payment or reimbursement. The receipt must include the name and address of the commercial lodging establishment, the name of the employee, the single occupancy room rate, and a daily itemization of the lodging charges.

14. MEALS

a. Meals for out-of-county travel will be reimbursed as follows:

i. Out-of-county – In State Travel

A. Meals, including tips, will be reimbursed based on a per diem basis at $39 per day. This reimbursement limit applies without a carry over from one day to another. The per diem will be prorated for partial days ($ 9-breakfast, $12-lunch and $18-dinner). Trips beginning before 8:00 a.m. will receive $39; trips beginning after 8:00 a.m. but before 1:00 p.m. will receive $30; trips begins after 1:00 p.m. will receive $18. Trips completed before 8:00 a.m. receive $9; trips completed after 8:00 a.m. but before 6:00 p.m. will receive $21; and trips completed after 6:00 p.m. will receive $39. The employee is not required to keep receipts to document the cost of these meals. However, please note that receipts may be required by the County Official or when

utilizing grant funds, questions should be addressed to the County Auditor's Office - Grants Accounting Section at (956) 318-2511.

ii. Out-of-County – Out-of-State Travel

Meals will be reimbursed based on one of the following methods:

A. On a per diem basis at $39 per day. This reimbursement limit applies without a carry over from one day to another. The per diem will be prorated for partial days ($9-breakfast, $12-lunch and $18-dinner). Trips beginning before 8:00 a.m. will receive $39; trips beginning after 8:00 a.m. but before 1:00 p.m. will receive $30; trips beginning after 1:00 p.m. will receive $18. Trips completed before 8:00 a.m. receive $9; trips completed after 8:00 a.m. but before 6:00 p.m. will receive $21; and trips completed after 6:00 p.m. will receive $39. The employee is not required to keep receipts to document the cost of these meals. However, please note that receipts may be required by the County Official or when utilizing grant funds, questions should be addressed to the County Auditor's Office - Grants Accounting Section at (956) 318-2511.

B. Actual cost of meals including taxes and tips/gratuities (up to 15% of the cost of the meal) with original itemized receipts up to a maximum of $64 per day. The $64 maximum amount will be prorated for partial days ($14-breakfast, $20-lunch and $30-dinner). Trips beginning before 8:00 a.m. may receive up to the maximum amount of $64; trips beginning after 8:00 a.m. but before 1:00 p.m. may receive up to a maximum amount of $50; trips beginning after 1:00 p.m. may receive up to a maximum of $30. Trips completed before 8:00 a.m. may receive up to a maximum of $14; trips completed after 8:00 a.m. but before 6:00 p.m. may receive up to a maximum of $34; and trips completed after 6:00 p.m. may receive up to a maximum of $64. The employee is required to keep original itemized receipts to document the cost of these meals. Failure to submit the required receipts for any one day will result in the cost of the meal reimbursement to be based on the per diem basis listed in section 14(a)(ii)(A).

b. Meals that are an integral part of the seminar or conference and are listed separately on the registration materials may be allowed at a rate higher than the applicable per diem rate. However, the daily per diem rate will be reduced by the applicable meal per diem rate. Supporting documentation such as the registration receipt or printed material showing which meal(s) are covered is required.

c. Meals for in-county travel and travel not requiring an overnight stay will not be reimbursed unless the meal cost is part of a conference/ registration fee.

d. Advances for meals will only be provided when traveling out-of-county for two days or longer.

e. The meals for a spouse and/or dependent(s) will not be paid with County funds.

15. NON-REIMBURSABLE EXPENSES:

a. Alcoholic beverages
b. Valet parking (if self-parking is available)
c. Tips and gratuities in excess of 15% of the actual meal cost for out-of – state travel
d. Personal phone calls - all phone calls are deemed personal calls unless proof is submitted that the call was for County business
e. Personal items, such as prescriptions, cosmetics, movies, golf, health club, spas, haircuts, shoe shines, newspapers, laundry/dry cleaning charges, etc.
f. Loss of funds or personal belongings
g. Extra day or days on the trip for personal reasons
f. Luxury & large sports utility vehicle rental cars (see exception in Section 11)
g. Additional charges for accommodations, meals, travel, etc., for individuals not on County business who accompany the traveler on an authorized County business trip
h. Fines, court costs, and related expenses
i. Meals for non-overnight travel
j. Interest, over the limit, or late charges incurred in a personal credit card
k. Expenses deemed unreasonable, excessive, unsupported or unexplained

16. TRAVEL ADVANCES:

a. Employees are encouraged to pay for travel expenses using their own personal funds and seek reimbursement from the County. Nonetheless, travel advances will be allowed if an employee's seminar/conference/

1:39 PM
08/26/10

2010 GENERAL FUND
P.O. REQUEST FOR PAYMENT
0-1100-412-00-080-002-0-

Type	Date	Num	Memo	Account	Class	Amount
JOHN CARRASCO						
Bill	8/24/2010	TX SUPREME COURT	REIMBURSING MEALS	583-OUT...	644687	30.00
Total JOHN CARRASCO						30.00
TOTAL						30.00

RECEIVED BY
COUNTY AUDITOR
2010 SEP 3 AM 8 07

9-9-10
Unable to process. Cannot pay for same day meals.
B. Gerry

FORWARD COVERSHEET WITH DATE PAID TO D.A.'S OFFICE, THANKS.

HIDALGO COUNTY, TEXAS
OUT - OF - COUNTY
FINAL TRAVEL EXPENSE CLAIM

EMPLOYEE NAME :	JOHN CARRASCO	DEPARTMENT:	DISTRICT ATTORNEY
TRAVEL TO CITY :	AUSTIN	STATE:	TEXAS
DEPARTURE DATE:	8/24/2010	RETURN DATE:	8/24/2010
TIME OF DEPARTURE:	8:00 AM	TIME OF RETURN:	10:30 PM

PURPOSE OF TRIP : SUPREME COURT OF TEXAS - FILING OF MOTIONS FOR SPECIAL ELECTION PCT # 1

I. REIMBURSEMENT FOR EXPENDITURES MADE ON ACCOUNT OF OFFICE BUSINESS:

	DATES OF TRAVEL FOR YEAR						2010
	MONTH / DAY	MONTH / DAY	MONTH / DAY	MONTH / DAY	MONTH / DAY	MONTH / DAY	
DESCRIPTION OF TRIP	8/24	8/25	8/26	8/27	8/28	8/29	TOTALS
Airline / Bus / Train							$ -
Car Rental							-
Gasoline for Car Rental							-
Personal Car Mileage ODOMETER READINGS:	Beginning Mileage:		Ending Mileage:		TOTAL MILEAGE: -	(MILEAGE RATE) 0.50	-
NOTE: Mileage is calculated on a point-to-point basis using "Mapquest". Reasonable incidental travel may be reimbursed when the traveler provides specific address destination points by using "Mapquest" to determine mileage. The most direct distance to the destination will be allowed. Any out-of way or unreasonable travel distance as determined by the County Auditor will be at the expense of the traveler.							
Hotel (Excluding Meals)							-
Parking / Tolls							-
Taxi and Other Ground Transportation							-
Telephone							-
Registration Fees							-
MEALS (based upon actual charges)		NOTE: When traveling out of state trip and claiming actual meal expenes, receipts must be provided for all days of travel. If not reimburement will be based on the $39 per diem.					
Type of Travel (In State =1 /Out of State =2)	1						
With Receipts = 1 / Without Receipts = 2	1						
Breakfast ($9 per diem)							
Lunch ($12 per diem)	12.00						
Dinner ($18 per diem)	18.00						
Total Actual Meal Expense	30.00						
Total Allowable Meal Expense per County Policy (County Employee)	30.00						30.00
Other (Please explain below):							-
Explanation Notes:	John Carrasco traveled to file motions at the Supreme Court of Texas - Austin Tx - used county vehicle and used Mr. Guerra's credit card for fuel and used Mr. Guerra's personal check to file motions.						

NO meals since day travel

II. Travel Expenditures paid by COUNTY CHECK or COUNTY CREDIT CARD that were NOT advanced to employee.
(I.e. Airfare, Hotel accommodations,Car Rentals, Registration)

Payee Name	Expense Type	Check No./ PO. No.	Amount
Total			$ -

TOTAL FROM T-4 CONTINUATION FORM	-
TOTAL ALLOWABLE EXPENDITURES	$ 30.00
AMOUNTS ADVANCED TO EMPLOYEE ON :	
TRAVEL EXPENDITURES PAID BY COUNTY CK OR COUNTY CREDIT CARD NOT ADVANCED TO EMPLOYEE	-
REMIT TO ME	$ 30.00
REMITTED TO COUNTY TREASURER ON	
TREASURER RECEIPT NO.	$ 0.00

I Hereby certify that the above information is true and correct to the best of my knowledge. The above funds were used solely for official County business. I have not and do not anticipate to receive reimbursement for the above listed travel expenditures from another source.

John Carrasco — EMPLOYEE SIGNATURE — 8/30/10 — DATE

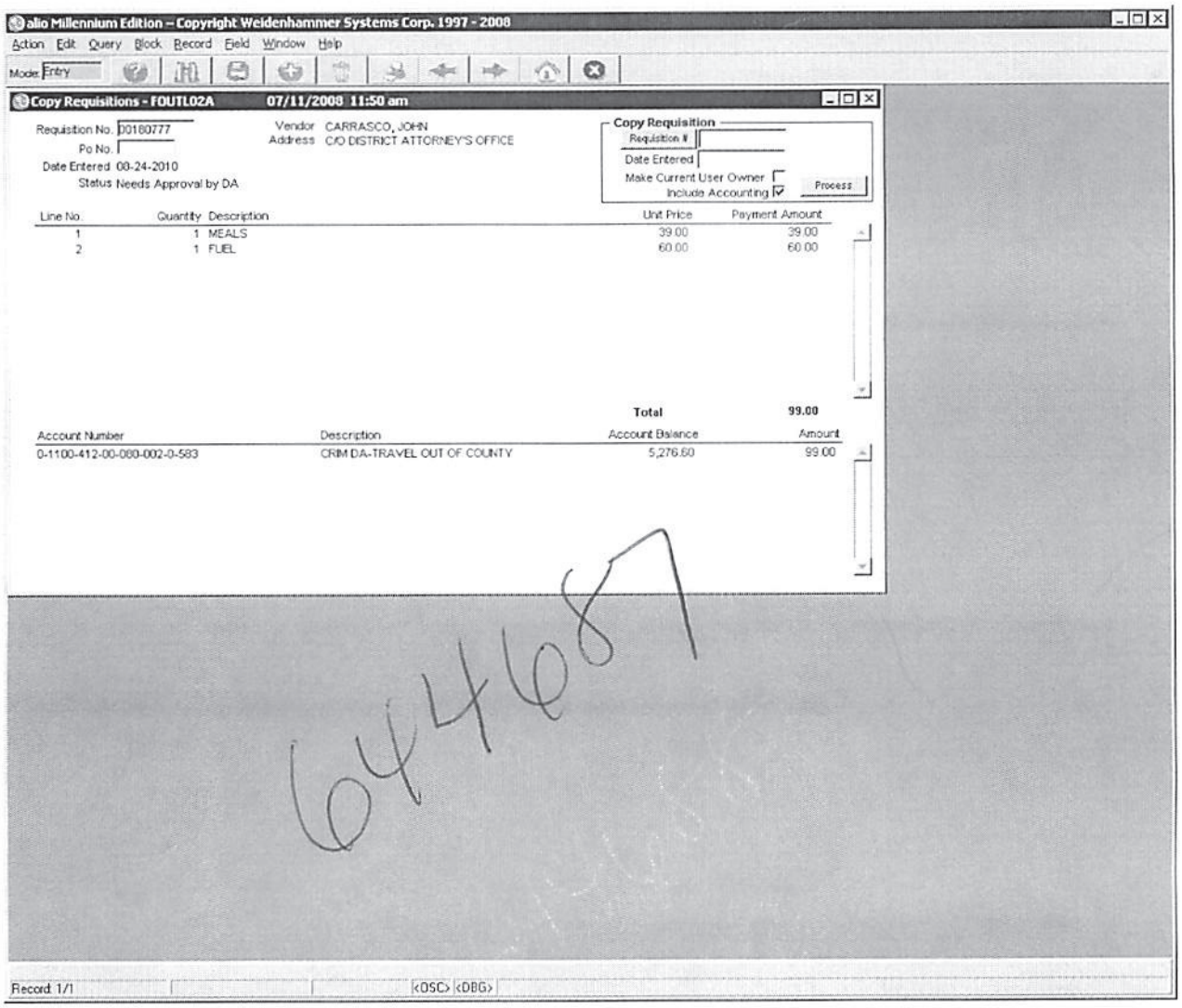
APPROVED BY: FOR RENE GUERRA — DIVISION DIRECTOR/SUPERVISOR — 8/30/2010 — DATE

APPROVED FOR PAYMENT BY: FOR RENE GUERRA — DEPARTMENT HEAD

0-1100-412-00-080-002-0-583 — GENERAL LEDGER ACCOUNT NUMBER

COUNTY AUDITOR'S FORM: T.1.4 (01/10)

Note: This report is due no later than 20 calendar days of return from travel.


alio Millennium Edition – Copyright Weidenhammer Systems Corp. 1997 - 2008
Action Edit Query Block Record Field Window Help
Mode Entry
Copy Requisitions - FOUTL02A 07/11/2008 11:50 am
Requisition No. 00180777
Po No.
Date Entered 08-24-2010
Status Needs Approval by DA
Vendor CARRASCO, JOHN
Address C/O DISTRICT ATTORNEY'S OFFICE
Copy Requisition
Requisition #
Date Entered
Make Current User Owner
Include Accounting
Process
Line No. Quantity Description Unit Price Payment Amount
1 1 MEALS 39.00 39.00
2 1 FUEL 60.00 60.00
Total 99.00
Account Number Description Account Balance Amount
0-1100-412-00-080-002-0-583 CRIM DA-TRAVEL OUT OF COUNTY 5,276.60 99.00
644687
Record 1/1
<OSC> <DBG>

AI-22950 **14.A.**

Equipment purchase - Pct. #1
CC REGULAR

Date: 09/21/2010
Submitted By: Estella Webber, URBAN COUNTY
Submitted For: Lupita Garcia
Department: URBAN COUNTY
Agenda Category: Urban County

Information

CAPTION

Urban County Program on behalf of Hidalgo County Precinct No. 1 is requesting authority to purchase Public Services (General) Equipment (the purchase of Vector Control Equipment) from Adapco, Inc., in the amount of $7,325.00. Hidalgo County Precinct No. 1 - UCP Year 22 (2009) Public Services (General) funds will be utilized.

BACKGROUND

Hidalgo County Precinct No. 1 has obtained three written quotes from possible vendors. The lowest quote received was from Adapco. The Hidalgo County Purchasing department reviewed quotes and purchasing process has been met. (See attached written quotes).

Vendor	Adapco, Inc.
Purchase Amount	$7,325.00
Funds Available	$12,000.00 Year 22 (2009) Hidalgo County Pct. #1 - Public Service (General) funds.

Fiscal Impact

FISCAL YEAR: **ACCT. #:** Urban County Funds
FUNDS AVAILABLE Y/N?: **MATCHING FUNDS Y/N?:**

BUDGETARY IMPACT:

Urban County Year 22 (2009) Precinct #1 Public Services (General) funds will be utilized for the purchase of equipment.

Attachments

Link: vector equipment purchase

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
1	Budget & Management	Sylvia Solis	09/14/2010 01:22 PM	APRV
2	Perla Lopez	Perla Lopez	09/16/2010 10:22 AM	APRV
3	Auditor's Office		09/17/2010 04:52 PM	NEW

Form Started By: Estella Webber — Started On: 09/13/2010 02:54 PM

Final Approval Date: 09/17/2010

URBAN COUNTY PROGRAM
COUNTY OF HIDALGO

Price Quotations

VENDOR #1
Name: Public Health Equipment **Person Contacted:** Charles Reeves **Phone:** 210-532-9203

Item#	Quantity	Description	Amount
PH 1020	1	PH 1020 Titan, Heavy Duty ULV ~~Aerosol~~ aerosol	2,395
		generator	

VENDOR #2
Name: Adapco **Person Contacted:** Larry Heller **Phone:** 800-369-0654

Item#	Quantity	Description	Amount
190ES	1	Guardian 190ES Ultra Low Volume aerosol	2,325
		generator	

VENDOR #3
Name: Phesco **Person Contacted:** Phesco @ Phesco **Phone:** 800-~~884~~-0106

Item#	Quantity	Description	Amount
		no quote Submitted	

Recommendation: Adapco submitted low quote for machine matching specifications

Requested by: _____ Date **Approved by:** _____ 9-7-10 Date

Form UCA - 5

SEP 3 2010

COUNTY of HIDALGO



A.C. CUELLAR, JR.
County Commissioner, Pct. 1
1902 Joe Stephens Ave.
Weslaco, TX 78596
(956) 968-8733

MEMORANDUM

September 1, 2010

To: **Diana Serna, Program Director URBAN County Program**

From: **Arturo A.C. Cuellar, Hidalgo County Commissioner Pct. One**

Copy: **Raul Lozano, Chief of Staff Pct. One**

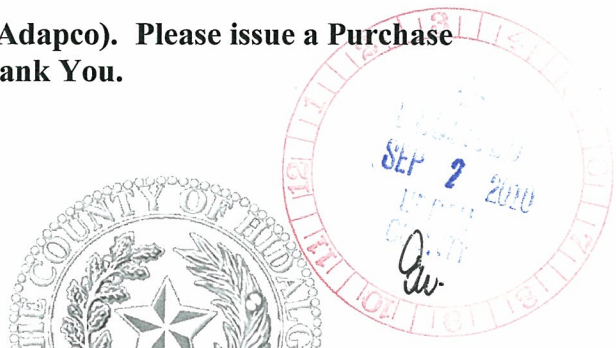
Subject: **Vehicle Mounted Mosquito Fogger**

We received two quotes out of three companies that we approached last week:

Public Health Equipment & Supply out of San Antonio gave us a quote of $ 7,395. which includes onsite training and a limited three (3) year warranty. This is the provider of our current machine. Our operator is very happy with the machine and the service we get on parts and labor. Mr. Elizardo Ramos of the Health Department recommends this machine.

Adapco is located in Sanford, Florida, but their representative is located in Comfort, Texas gave us a quote of $ 7,325. They provide free full service including routine parts and labor. Mr. Serna of the Health Department recommended this machine stating that this machine sprays droplets instead of a mist and he says it is more effective in killing mosquitoes and larva (eggs).

After further review we have decided to go with the low bidder (Adapco). Please issue a Purchase Order so that we may order this critical piece of equipment. Thank You.





QUOTE SHEET
VEHICLE MOUNTED MOSQUITO FOGGER
URBAN COUNTY PROGRAM PCT. #1

Please provide the minimum required specifications for a vehicle mounted mosquito fogger. Other vendors/manufacturer's makes/models that meet or exceed the following specifications will be considered.

ENGINE:	18HP, OHV, BELT DRIVEN, UNLEADED GASOLINE, 8 GALLONS MINIMUM OR BETTER
AIR PUMP:	350 CFM-BLOWER OR BETTER
NOZZLE:	CHEMICAL COMPATIBLE to Mosquito Fogger (Adulticized)
FORMULATION TANK:	(CHEMICAL 15 GALLONS 56.7 liter)

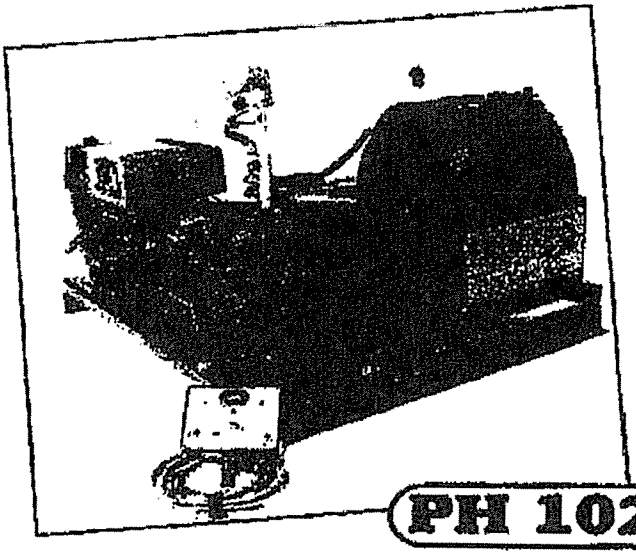
Quote must include but not limited to the following descriptions:
FIXED FLOW, DIMENSIONS, WEIGHT, TYPE OF GUAGES, CONTROLS AND ANY FEATURES AND APPURTENANCES TO PROPOSED VEHICLE MOUNTED MOSQUITO FOGGER.

VENDOR SUBMITTING QUOTE: Public Health Equipment Supply
VENDOR ADDRESS: 1830 S. Presa, San Antonio, TX 78210
VENDOR PHONE #: 210-532-9331
VENDOR FAX NO.: 210-532-9703
E-MAIL ADDRESS: phesco@phesco.com
AUTHORIZED REPRESENTATIVE:

ITEM	TOTAL COST
MOSQUITO FOGGER	$ 7795.00
TRAINING (HOURLY RATE)	$??
ESTIMATED DELIVERY DATE	3-4 working days A.R.O.

SIGNATURE — 8/20/10 DATE

Charles Keever, President — 8/20/10 DATE
PRINT NAME & TITLE





PH 1020 Titan

The all new TITAN, manufactured from the frame up to it's unique nozzle with the highest quality components for reliability, long life and heavy duty performance. Designed for easy use, system simplicity and low maintenance. Exceptional value in a compact package to handle any job with power to spare.

PH 1020 TITAN, heavy-duty ULV aerosol generator

Specifications:

ENGINE:	10 horsepower, KOHLER COMMAND overhead valve, electric start 18 amp charging system, 10 hours run time without refueling
AIR PUMP:	V-4 cylinder, 28 CFM capacity, dual belt driven
NOZZLE:	Unique design, fully adjustable, 360° articulating, chemical resistant, quick release, positive shut-off
FUEL TANK:	6 gallons, visible fuel level
FORMULATION TANK:	15 GALLON, HDPE with locking filler cap
CONTROLS:	Remote engine choke, start, stop, spray on-off. Hour meter to record actual spray time, engine low oil level alert, security key lock
FLOW RATE:	Orifice disc metered syphon flow 0-10 ounces per minute
FRAME:	Powder coated steel, skid-mounted for easy handling and mounting
HARDWARE:	STAINLESS STEEL fasteners
DIMENSIONS	45"L 39"W 30"H
WEIGHT	425 LBS.
OPTIONS	Tun-L-Rat Storm Drain Fogging Accessory Machine Cover

1(800) 284-0106

MAIN OFFICE
P.O. Box 10488
San Antonio, TX 78210
210.532.5848
1.800.284.0106 FAX 210.532.9709
Web Site: www.PHESCO.com
E-Mail phesco@phesco.com

Fort Worth
817.238.8000 Fax 817.568.6881

For Mexico call:
(800) 284-0106

Public Health Equipment & Supply Co. Inc.
Professional Mosquito Control Products
Since 1947

Chemical Pump	
Make	FMI for fixed or variable flow
Model	QB
Type	Positive displacement Piston
Piston	3/8" ceramic
or	
Make	MicroPump for variable flow only
Model	MFC
Type	Gear
Gear material	PEEK
Flush valve	
Configuration	3-way diverter
Power	12V dc
Consumption	7 watts
Gauges	
Fuel	Analog gauge, tank float in cap
Pressure	0-15 PSI, glycerin filled, panel mounted with pressure switch pump lockout
Throttle & Choke Control	
Throttle	Solenoid actuator 12V dc
Choke	Solenoid actuator 12V dc
Finish	
Type	Epoxy Powder Coat chassis
Dimensions	
Length	45"
Width	37.6
Height	29.9" horizontal, 43.2" Vertical
Weight	490 lbs. (dry)

ADAPCO
more in control

Quotation

August 20, 2010
Quotation # LDH-082010
Customer ID

ADAPCO, Inc. is pleased to provide the following quotation to:

Quotation To: Hidalgo Co.
Special Projects Pct 1
Jamie E. Garza
1902 Stephens Ave.
Weslaco, TX 78596

Quotation valid until: 12/31/2010

Comments or special instructions:

Description	Qty	Unit Price	Sub-Total
Guardian 190ES Ultra Low Volume Aerosol Generator	1	$7,125.00	$7,125.00
Shipping/Freight	1	$200.00	$200.00
Free annual full service including routine service parts and labor	1	$300.00	$0.00
			$7,325.00

Please feel free to visit our web site at www.myadapco.com to view MSDS and Labels and much more. Terms Net 30 days.

Lowest Quote meeting specifications

Should you have any questions or immediate needs, please contact me at 877-923-2726 or 321-377-2017. We look forward to hearing from you.

Regards,

Larry D. Heller

Larry D. Heller
Outside Sales South/West Texas
111 Edgewood Dr.
Comfort, TX 78013

ADAPCO
more in control



Guardian 190 ES Specifications

Engine		
	Make	Kawasaki
	Model	FH601D
	Horse Power	19
	Engine Type	Air cooled, 4-stroke, OHV, V-twin cylinder
	Bore & Stroke	75.2 x 76 mm (2.96 x 2.99 in.)
	Displacement	675 mL (41.19 cu. In)
	Ignition System	Solid-state
	Direction of Rotation	Counterclockwise facing the PTO shaft
	Starting System	Electric start
	Charging System	13 A
	Dry Weight	44.5 (98.1 lbs)
	Fuel	Unleaded gasoline
	Safety Switch	Low oil shutdown
Blower		
	Make	Dresser Roots
	Model	URAI-45UJ
	Dia. Outlet/Inlet	2 ½"- FPT
	Max Performance	3550 RPM
		9 PSIG
		354 CFM
		18 BHP
	Configuration	Horizontal mount
		Left hand drive facing the PTO shaft
	Weight	106 lbs.
	Shaft Diameter	.875 (7/8")
	Paint	Black
Drive Couple		
	Method	Belt, triple V
Nozzle		
	Model	"VAAT" (Vectored Air Atomization Technology"
	Size	2.5" pipe
	Material	Aluminum 6061-T6
	Chem. Feed	Rear center, 3/8" OD tube, ¼" NPT
	No. of Pieces	2, nozzle body, nozzle hood
	Mounting	4" OD flange, 3.625" 4-hole bolt pattern
		Equally spaced, ¼" fasteners
	Nozzle Rotation	360º horizontally, 360º vertically
Capacity		
	Fuel	8.3 Gallon, bottom feed
	Formulation	15 Gallon (56.7 liters)
		Lockable formulation tank cap or non lockable, std option
	Flush	1.5 quart (1.42 liter)

QUOTE SHEET
VEHICLE MOUNTED MOSQUITO FOGGER
URBAN COUNTY PROGRAM PCT. #1

Please provide the minimum required specifications for a vehicle mounted mosquito fogger. Other vendors/manufacturer's makes/models that meet or exceed the following specifications will be considered.

ENGINE:	18HP, OHV, BELT DRIVEN, UNLEADED GASOLINE, 8 GALLONS MINIMUM OR **BETTER**
AIR PUMP:	350 CFM-BLOWER; OR BETTER
NOZZLE:	CHEMICAL COMPATIBLE to Mosquito Fogger (Adulticized)
FORMULATION TANK:	(CHEMICAL 15 GALLONS 56.7 liter)

Quote must include but not limited to the following descriptions:
FIXED FLOW, DIMENSIONS, WEIGHT, TYPE OF GUAGES, CONTROLS AND ANY FEATURES AND APPURTENANCES TO PROPOSED VEHICLE MOUNTED MOSQUITO FOGGER.

VENDOR SUBMITTING QUOTE:	ADAPCO, INC.
VENDOR ADDRESS:	111 Edgewood Dr. Comfort TX 78013
VENDOR PHONE #:	877 923-2726, 321 377-2017
VENDOR FAX NO.:	866 330-9888
E-MAIL ADDRESS:	lheller@myadapco.com
AUTHORIZED REPRESENTATIVE:	Larry Heller

ITEM	TOTAL COST
MOSQUITO FOGGER	$ 7,325.00 ✓
TRAINING (HOURLY RATE)	$ -0-
ESTIMATED DELIVERY DATE	3-5 DAYS ARO

Larry D. Heller
SIGNATURE

Larry D. Heller Sales Rep.
PRINT NAME & TITLE

8/20/10
DATE

DATE

RECEIVED
SEP 2 2010

Jaime Garza

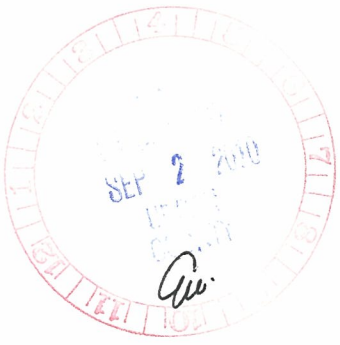
From: Jaime Garza [jaime.garza@co.hidalgo.tx.us]
Sent: Thursday, August 19, 2010 12:03 PM
To: 'phesco@phesco.com'
Subject: Request for Quote
Attachments: Specs for Mosquito Sprayers Pct 1.pdf

Please provide a quote for a vehicle mounted mosquito fogger on the attached sheet. Call me if you have any questions

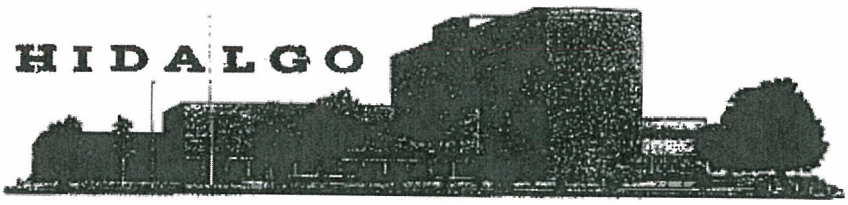
Thank You!

Jaime E. Garza
Special Projects Pct. 1
1902 Stephens Ave.
Weslaco, Texas 78596
email: jaime.garza@co.hidalgo.tx.us
Phone 956-968-8733 Ext. 1020

Phesco did not response; refer to as NO BID



COUNTY of HIDALGO



A.C. CUELLAR
County Commissioner, Pct. 1
1902 Joe Stephens Ave.
Weslaco, TX. 78596
(956) 968-8733

FACSIMILE TRANSMITTAL SHEET

TO:	Oscar Garza	**FROM:**	Jaime Garza
COMPANY:	Purchasing	**DATE:**	9-2-10
RECIPIENT'S FAX NUMBER:	(956) 292-7612	**TOTAL NO. OF PAGES**	3
SENDER'S PHONE NUMBER:	(956) 968-8733 Ext 1020	**SENDERS FAX NUMBER:**	(956) 969-1417

RE: Sent with this cover sheet is a request for a quote to Phesco for a mosquitoes sprayer specifications for a titan 1020 as per your request.

_____Urgent _____For Review _____Please Comment _____Please Reply _____Please Recycle

The information contained in or attached to this facsimile message is privileged and confidential information intended only for the use of the individual or entity name above. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination, distribution or coping of this communication is strictly prohibited. If you have received this communication in error, please notify us by telephone and return the original message to us via mail at the above stated address. Thank you.





AI-23010 **14.B.**

Engineering services - Pct. 4 Street Improvements

CC REGULAR

Date:	09/21/2010
Submitted By:	Estella Webber, URBAN COUNTY
Submitted For:	Monica Leal
Department:	URBAN COUNTY
Agenda Category:	Urban County

Information

CAPTION

1. Requesting exemption from competitive bidding requirements under the Texas Local Government Code 262.024 (a)(4) for professional engineering services;

2. Presentation of the scoring grid for the purposes of ranking by CC of at least three (3) engineering firms from the County's approved "pool" as graded and evaluated by Hidalgo County Precinct No. 4, Urban County Program and Hidalgo County Purchasing Department in connection with and funded through Hidalgo County Urban County Program Year 21 (2008) Precinct No. 4, Street Improvements – Ingle Road.

Firm	Grade	Rank
Quintanilla, Headley and Associates	97.67	
R. Gutierrez Engineering, Inc.	95.33	
R. E. Garcia and Associates	92.33	

3. Authority to negotiate a professional engineering service contract with the No. 1 ranked firm _____
for an Urban County Program – Hidalgo County Precinct No. 4, Street Improvements - Ingle Road.

BACKGROUND

The three firms rated from the County's approved "pool" are Quintanilla, Headley and Associates, R. Gutierrez Engineering, Inc. and R. E. Garcia and Associates for the Street Improvements – Ingle Road. Attached see grading grid for your review.

Funds Available: $ 240,542.10

Fiscal Impact

FISCAL YEAR: **ACCT. #:** Urban County Funds

FUNDS AVAILABLE Y/N?: **MATCHING FUNDS Y/N?:**

BUDGETARY IMPACT:

Urban County funds will be utilized for this project.

Attachments

Link: grading ranking grid

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
1	Budget & Management	Sylvia Solis	09/16/2010 11:15 AM	APRV
2	Perla Lopez	Perla Lopez	09/16/2010 11:33 AM	APRV
3	Auditor's Office		09/17/2010 04:52 PM	NEW

Form Started By: Estella Webber Started On: 09/16/2010 08:59 AM

Final Approval Date: 09/17/2010

Hidalgo County Precinct No. 4
Professional Engineering Services
Street Improvements – Ingle Road
Year 21 (2008)
Grading-Ranking Grid

Criteria	Quintanilla, Headley and Associates, Inc.			R. Gutierrez Engineering, Inc.			R.E. Garcia and Associates		
	Grader 1	Grader 2	Grader 3	Grader 1	Grader 2	Grader 3	Grader 1	Grader 2	Grader 3
Professional Qualifications of Team	20	20	20	18	20	20	18	20	20
Experience of Project Team	24	25	23	21	25	22	22	21	20
Experience/ Availability of Project Manager	19	18	20	18	19	20	18	19	20
Understanding of Project	24	25	25	23	25	25	24	25	20
Familiarity with Applicable Rules & Regulations	10	10	10	10	10	10	10	10	10
TOTALS	97	98	98	90	99	97	92	95	90
AVERAGES	293÷3=97.67%			286÷3=95.33%			277÷3=92.33%		
RATING									

AI-23007 **14.C.**

Rescind action -Professional service contract

CC REGULAR

Date:	09/21/2010
Submitted By:	Hilda Bazan, URBAN COUNTY
Submitted For:	Candace Armenta
Department:	URBAN COUNTY
Agenda Category:	Urban County

Information

CAPTION

Urban County Program is requesting County Commissioners' Court to rescind action taken on June 15, 2010 for the following request:

Negotiate a professional service contract with the highest ranked architectural firm, Alcocer Garcia & Associates for the Peñitas Park & Recreational Facilities Improvements project at Peñitas Memorial Park.

BACKGROUND

On June 15th, 2010, Urban County Program submitted an agenda to negotiate a professional service contract with the highest ranked architectural firm for the 2008/2009 Parks & Recreational Facilities Improvements at Memorial Park.

On July 20th, 2010 Urban County Program submitted an agenda to amend the 2008/2009 Parks & Recreational Facilities project funds into a new Water/Sewer Improvements activity.

Although Commissioners' Court approved to begin negotiations with the highest ranked architectural firm, a contract with the highest ranked architectural firm was never drafted nor implemented. A copy of the June 15th and July 20th Commissioners' Court Agendas are attached for reference.

Fiscal Impact

Attachments

Link: Rescind action - professional service contract

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
1	Budget & Management	Sylvia Solis	09/16/2010 11:15 AM	APRV
2	Perla Lopez	Perla Lopez	09/16/2010 02:55 PM	APRV
3	Auditor's Office		09/17/2010 04:52 PM	NEW

Form Started By: Hilda Bazan — Started On: 09/16/2010 08:28 AM

Final Approval Date: 09/17/2010

URBAN COUNTY PROGRAM

Hidalgo County Commissioners' Court Agenda Request Form

COPY

No. 2154

Date: June 3, 2010
Deadline for Action: June 15, 2010
Department: *Urban County Program*

Meeting Date Request: June 15, 2010
Contact Person: Diana R. Serna
Phone: (956) 787-8127 Fax: (956) 787-5291

Diana R. Serna, UCP Director DRS

Caption:

a. Requesting exemption from competitive bidding requirements under the Texas Local Government Code 262.024 (a)(4) for professional architect services.

b. Presentation of the scoring grid for the purposes of ranking by CC of at least three (3) architect firms from the County's approved "pool" as graded and evaluated by City of Peñitas, Urban County Program, and Hidalgo County Purchasing Department, in connection with and funded through Hidalgo County Urban County Program Year 22 (2009) City of Peñitas Parks & Recreational Facility Improvements Project at Veterans Memorial Park.

	Grade	Ranked
Alcocer Garcia & Associates, Inc.	99	1st
Rike Ogden, Figueroa Allex Architects	96	2nd
ERO Architects	94	3rd

c. Authority to negotiate a professional architect service contract with the No. 1 ranked firm of Alcocer Garcia & Assoc. Inc for the provision of architect services for an Urban County Program – City of Peñitas – Parks & Recreational Facility Improvements Project at Veterans Memorial Park.

Background:

The three architect firms rated from the County's approved "pool" are Alcocer Garcia & Associates, Inc., Rike Ogden, Ficroa Allex Architects, and ERO Architects, for the City of Peñitas – Parks & Recreational Facility Improvements Project at Veterans Memorial Park.

Funds Available: $ 100,000.00

Manager _____ Finance _____

Please initial for approval:

Legal Counsel_____ Budget_____ Human Resources_____
Dept./Fund No:_____ Amt. Expended: $_____ Funds/Staffing Budgeted: Yes_____No_____
Account code:_____Impact on Future budget: Yes_____No

Comments:

APPROVED Co. Comm. Ct.
DATE 6/15/10 #45

Action taken by Commissioner's Court:

Approved_____ Tabled _____ Denied _____ Motion made by _____ Seconded _____ Vote _____

URBAN COUNTY PROGRAM

Hidalgo County Commissioners' Court

Consent ~~Agenda~~ **Request Form**

COPY

No. 22035

Date: July 13, 2010
Deadline for Action: July 20, 2010
Department: ***Urban County Program***
Diana R. Serna, UCP Director H.B. for D.R.S.

Meeting Date Request: July 20, 2010
Contact Person: ***Diana R. Serna***
Phone: **(956) 787-8127** Fax: **(956)787-5291**

Caption:

Urban County Program is requesting approval of a Budget and Program Amendment for the City of Peñitas Urban County Program Year 17 (2004), Year 21 (2008), and Year 22 (2009). The amendment will create a Water & Sewer Improvements activity for the construction of a wastewater treatment plant.

Background:

The proposed amendment for the City of Peñitas will affect the existing work plans in Year 17 (2004), Year 21 (2008), and Year 22 (2009). A Public Hearing was held on June 23, 2010 at 6:30 p.m., and citizen participation requirements have been met. See attached detailed amendment.

The proposed budget and program amendment will **amend** funds as follows for the purpose of **creating** a Water & Sewer Improvements activity for each respective year for the *wastewater treatment plant to include engineering services, testing, facility construction, construction of a parking lot, equipment, supplies, and all other related appurtenances.*

Year 17 (2004):

Decrease Parks & Recreational Facility funds in the amount of $41, 585.17 and
Allocate funds for the Water & Sewer Improvements activity.

Year 21 (2008):

Decrease Parks & Recreational Facility funds in the amount of $95,125.32 and
Decrease Planning funds in the amount of $42,352.00 and
Allocate funds in the total amount of $137,477.32 for the Water & Sewer Improvements activity.

Year 22 (2009):

Decrease Parks & Recreational funds in the amount of $108,230.44 and
Allocate funds in the total amount of $108,230.44 for the Water & Sewer Improvements activity.

Manager: _____ Finance: _____

Please initial for approval:

Legal Counsel _____ **Budget** _____ **Human Resources** _____
Dept./Fund No._____ Amt. Expended: $ _____ Funds/Staffing Budgeted: Yes:_____ No:_____
Account Code: _____ Impact on Future Budget: Yes _____ No _____

Comments:

APPROVED Co. Comm. Ct.
DATE 7-20-10

Action taken by Commissioner's Court:
Approved _____ Tabled _____ Denied _____ Motion made by _____ Seconded _____ Vote _____

AI-22979 **14.D.**

Colonia Construction Grant approval

CC REGULAR

Date:	09/21/2010
Submitted By:	Estella Webber, URBAN COUNTY
Submitted For:	Pete De la Cruz
Department:	URBAN COUNTY
Agenda Category:	Urban County

Information

CAPTION

Requesting approval of award of bid for TDRA 2010 Colonia Construction Grant #729055 and approval of contract with O.G. Construction Co., LLC of Edinburg, Texas (the lowest and responsible bidder meeting all specifications and requirements) in the amount of $103,496.00 for first time sewer improvements to include yard lines and septic tank remediation to Trenton Terrace located in the City of Edinburg's ETJ area in Pct. #4.

BACKGROUND

The project consists of first time sewer improvements including sewer service yard lines, septic tank remediations and related appurtenances to fourteen (14) homes in Trenton Terrace located in the City of Edinburg's ETJ area in Pct. # 4. Bid opening was held on Wednesday, September 1, 2010 and O.G. Construction Co., LLC was the lowest of four (4) bidders.
Attached please find the engineer's recommendation and the bid tabulation sheet.

UCP Colonia staff recommends approval.

Contractor:	O.G. Construction Co., LLC
2010 Colonia Construction Grant # 729055:	$ 103,496.00
Total Contract Amount:	$ 103,496.00
2010 TDRA Colonia Construction Funds Available:	$ 140,240.00

Fiscal Impact

FISCAL YEAR: **ACCT. #:** Urban County Funds

FUNDS AVAILABLE Y/N?: **MATCHING FUNDS Y/N?:**

BUDGETARY IMPACT:

Urban County will utilize 2010 TDRA Colonia Construction funds for the sewer improvement project to Trenton Terrance.

Attachments

Link: colonia sewer line imp.

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
1	Budget & Management	Sylvia Solis	09/15/2010 01:56 PM	APRV
2	Perla Lopez	Perla Lopez	09/16/2010 02:46 PM	APRV
3	Auditor's Office		09/17/2010 04:52 PM	NEW

Form Started By: Estella Webber

Started On: 09/15/2010 01:09 PM

Final Approval Date: 09/17/2010

• Municipal Projects
• Subdivisions
• Surveys

Quintanilla, Headley and Associates, Inc.
Consulting Engineers • Land Surveyors

124 E. Stubbs, Edinburg, Texas 78539 Phone: (956) 381-6480 Fax: (956) 381-0527

Alfonso Quintanilla, P.E., R.P.L.S.
Eulalio Ramirez, P.E.

Registration Number
F-1513

September 7, 2010

Mr. Pete De La Cruz
Colonia Coordinator
Hidalgo County Urban County Program
1916 Tesoro Blvd.
Pharr, Texas 78577

Re: **Re: Trenton Terrace - Sanitary Sewer Line Improvements**
TDRA Contract # 729055

Dear Mr. De La Cruz:

Bids for the above mentioned project were received and opened on September 1, 2010. Four bids were received and are as follows:

	Base Bid	Alternate A	Total Bid
1. Saenz Utility Contractor	$ 170,000.00	$11,450.00	$184,150.00
2. United Contracting, Inc.	$ 176,087.00	$13,706.00	$189,793.00
3. O.G. Construction Co., L.L.C.	$ 103,496.00	$10,630.00	$114,126.00
4. Sascon Inc.	$ 168,110.00	$14,030.00	$182,140.00

We have reviewed and checked the bids and they are correct. We recommend that this contract be awarded to the lowest responsive bid from O.G. Construction in the base bid amount of $103,496.00.

Should you have any questions or require additional information, please let us know. Thank You.

Respectfully,

Eulalio Ramirez, P.E.
Project Manager

HIDALGO COUNTY PURCHASING DEPARTMENT
BID TABULATION SHEET

DEPARTMENT NAME: COUNTY OF HIDALGO URBAN COUNTY PROGRAM

BID OPENING DATE: Wednesday, September 01, 2010 | BID OPENING TIME: 9:30 A.M.

DESCRIPTION OF BID: 2010 Colonia Construction Contract # 729055 "Trenton Terrace Sewer Improvements to include Sewer Improvements to include Sanitary Sewer Yard Lines Connections & Septic Tank Remediation"

BID NO." PROCUREMETN SPECIALIST:

BID NO.	BIDDER/COMPANY NAME	Bid Amount 2010 TDRA Grant # 729055 Total Base Bid	√ Bid Bond	Total Base Bid Alternate A City of Edinburg	Total Bid	√ Bid Bond
1	Saenz Utility Contractors	$ 170,000.00	Bid Bond Included	$ 11,450.00	$ 181,450.00	Bid Bond Included
2	Sanchez United Contractor	$ 136,087.00	Bid Bond Included	$ 13,706.00	$ 149,793.00	Bid Bond Included
3	O. G. Construction Co., LLC	$ 103,496.00	Bid Bond Included	$ 10,630.00	$ 114,126.00	Bid Bond Included
4	Sascon, Inc.	$ 168,110.00	Bid Bond Included	$ 14,030.00	$ 182,140.00	Bid Bond Included
5						
6						
7						
8						
9						

*TYPED AS READ AT BID OPENING, INFORMATION/AMOUNTS NOT VERIFIED/CALCULATED.

AI-22961 **15.A.**

2010 - Full Service Contract - City of Palmview

CC REGULAR

Date:	09/21/2010
Submitted By:	Sandra Aguirre, ELECTIONS DEPT.
Submitted For:	Yvonne Ramon
Department:	ELECTIONS DEPT.
Agenda Category:	Elections Administration **Sub-category:** Elections

Information

CAPTION

Approval of Full Contract for Election Services between Hidalgo County and the City of Palmview for their election to be held on November 2, 2010.

BACKGROUND

Two (2) originals - Contract for Election Services

Fiscal Impact

FISCAL YEAR: 2010 **ACCT. #:**

FUNDS AVAILABLE Y/N?: **MATCHING FUNDS Y/N?:**

BUDGETARY IMPACT:

All costs and applicable fees associated with the election services shall be paid by the entities requesting the services as outlined in the caption (reimbursement basis to Elections Department).

Attachments

Link: City of Palmview - November 2010

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
1	Yvonne Ramon	Yvonne Ramon	09/15/2010 04:30 PM	APRV
2	Budget & Management	Sylvia Solis	09/15/2010 04:48 PM	APRV
3	Roland Garcia	Rolando Garcia	09/17/2010 09:49 AM	APRV
4	Auditor's Office		09/17/2010 04:52 PM	NEW

Form Started By: Sandra Aguirre Started On: 09/14/2010 02:39 PM

Final Approval Date: 09/17/2010

THE STATE OF TEXAS §
§ **CONTRACT FOR ELECTION SERVICES**
COUNTY OF HIDALGO §

This Contract is entered into by and between the HIDALGO COUNTY ELECTIONS ADMINISTRATOR ("ADMINISTRATOR"), Yvonne Ramón, on behalf of Hidalgo County, a political subdivision of the State of Texas, and the City of Palmview, hereinafter referred to as "THE ENTITY," pursuant to Texas Election Code Section 31.092.

RECITALS

WHEREAS, THE ENTITY, by appropriate action of its governing body acting in accordance with all applicable laws, has called an election to be held on November 2, 2010.

WHEREAS, pursuant to Section 31.092(a) of the Texas Election Code, the County Election Officer may contract with the governing body of a political subdivision situated wholly or partly in the county served by the officer to perform election services in any one or more elections ordered by an authority of the political subdivision; and

WHEREAS, Section 271.002 (a) of the Texas Election Code authorizes two or more political subdivisions to enter into an agreement to hold elections jointly in the election precincts that can be served by common polling places subject to Section 271.003; and

WHEREAS, pursuant to Section 31.091(1) of the Texas Election Code, the County Election Officer means the Election Administrator for Hidalgo County; and

WHEREAS, THE ENTITY is a political subdivision in Hidalgo County that desires the County to conduct and supervise the November 2, 2010 election of THE ENTITY (the "Election"); and

WHEREAS, the County agrees to perform election services for THE ENTITY; and

WHEREAS, THE ENTITY AND ADMINISTRATOR desire to enter into a contract setting out the respective responsibilities of the parties; and

WHEREAS, THE ADMINISTRATOR has provided costs for election services to be rendered by ADMINISTRATOR'S office pursuant to the terms of this Contract, which costs are set out in Article VI hereof; and

NOW, THEREFORE, the County and THE ENTITY for good and valuable consideration, the adequacy and receipt of which is hereby acknowledge, do hereby agree to hold contract, covenant and agree as follows:

Article I. PURPOSE

Section 1.01 The parties hereto have entered into this Contract for election services described in Article II to be provided to THE ENTITY for its election to be held on November 2, 2010 and any Runoff, if applicable.

Article II. SERVICES

Section 2.01 The COUNTY, through the ADMINISTRATOR, agrees to provide to THE ENTITY the following:

(A) Procure, provide, prepare, program and distribute Direct Recording Electronic (DREs) voting systems and necessary election equipment, as well as an ADA voting system, and transport equipment to and from the polling locations, including early voting substations and election day, for THE ENTITY;
(B) Procure, provide, prepare and program an Electronic Poll Book per polling location with the Voter Registration Database. This includes laptop, insurance, and delivery fee, as well as supplies such as, but not limited to, labels and printer. When an Electronic Poll Book is not accessible, the charge of a regular Poll Book will be charged as set by Elections Department;
(C) Provide and prepare all mail-in ballot supplies, including applications paper ballots, envelopes and postage;
(D) Provide training for Judges/Clerks;
(E) Prepare, distribute, and publicize all notices and newspaper advertisements;
(F) Procure, provide, prepare, and distribute all necessary election supplies, including;
    1. Ballots (preparation and distribution only);
    2. Election kits; and
    3. Ballots boxes and voting booths
(G) Procure Early Voting polling places and Election Day polling places, as ordered and agreed to by both parties;
(H) Prepare Writ of Election to election officers and notice of appointment to Presiding and Alternate judges, as required by law;
(I) Notify the election judges of the date, time and place of the election;
(J) Procure and pay election judges and clerks for early voting and election day voting;
(K) Provide the general overall supervision of the Election and provide the advisory services in connection with the decisions to be made and the actions to be taken by THE ENTITY;
(L) Procure and pay Ballot Board members;
(M) Provide information for election officers;
(N) Prepare U.S. Department of Justice pre-clearance for the election;
(O) Prepare any submission of voting changes to be submitted to the U.S. Department of Justice under the Federal Voting Rights Act of 1965, as amended for the election;
(P) Provide such incidental related services as may be necessary to effect the election;
(Q) Serve as the Early Voting Clerk; and
(R) Establish a Central Counting Station for the purpose of tabulating ballots.

Section 2.02 **THE ENTITY** shall be responsible for performing the following:

(A) Payment of all necessary election supplies as required by the County, including but not limited to ballots, election kits, mail-in ballot supplies, laptop rental, labels and combination forms;

(B) Pay the cost of judges and election workers directly from payment vouchers submitted by the County Elections Administrator at the rate of $9.00 per hour for Election Judges and $8.00 per hour for Alternate Judges and Early Voting Clerks for both Early Voting and General Election;

(C) Reimburse the County for liability insurance coverage for election workers employed for both Early Voting and General Election;

(D) Tabulate the Election results for canvassing by THE ENTITY'S governing body;

(E) As stated in Section 31.096 of the Texas Election Code, this Contract may not change:

1. The authority with whom applications of candidates for a place on a ballot are filed;
2. The authority with whom documents are filed under Title 15; or
3. The authority to serve as custodian of voted ballots or other election records, except that the contract may provide that the County Election Officer will be the custodian of voted ballots. Under this Contract, the Hidalgo County Elections Administrator shall be the custodian of voted ballots.

(F) The County Elections Administrator shall be the agent of THE ENTITY for the purposes of contracting with third parties with respect to the election expenses within the scope of the County Elections Administrator's duties;

(G) The County shall file copies of this Contract with the County Treasurer and the County Auditor; and

(H) In accordance with Section 31.100(b) of the Texas Election Code, only actual expenses directly attributable to this Contract may be paid. The County Elections Administrator shall submit the actual costs for items contracted pursuant to the Contract with THE ENTITY no sooner than ten (10) days after the Election and/or as soon as all invoices from third party vendors are received.

Article III. SCHEDULE FOR PERFORMANCE OF SERVICES

Section 3.01 Specific services to be provided related to the general services identified in Article II shall be performed in accordance with the time requirements set out in the Texas Election Code.

Article IV. SERVICES NOT PROVIDED BY COUNTY

Section 4.01 ADMINISTRATOR shall have no responsibility for insuring the passage of the appropriate Election Order by THE ENTITY, as required by the Texas Election Code Section 3.005, or canvassing election results.

Article V. TERM

Section 5.01 Except as hereinafter set out, the term of this Contract shall be from the time of execution until all items with respect to this Contract and the election held hereunder have been completed.

Article VI. COST OF SERVICE AND BILLING

In consideration for the services provided hereunder by ADMINISTRATOR, THE ENTITY agrees to pay ADMINISTRATOR for the following costs of services:

Section 6.01 iVotronic Machines:

(A) One Base charge of $150.00 for Programming iVotronic ballot for voting machines; additional ballots style(s) and request for change of programmed ballot at an additional cost;
(B) A $10.00 recording fee for English and Spanish Audio Files for each Contest, or Office, or Proposition questions;
(C) A $10.00 recording fee for English and Spanish Audio Files for each Contest, or Office, or Proposition answers;
(D) Cost of creating election media, such as, but not limited to Personal Electronic Ballot (PEB) cartridges, compact flash cards, labels, bags, keys, etc.;
(E) The amount of $150.00 leasing fee for each iVotronic;
(F) The amount of $150.00 leasing fee for each ADA iVotronic;
(G) Delivery and Pick-up Fee charge based on the price of renting commercial truck(s) and fuel cost;
(H) The above described fees for each machine and programming fee shall be additionally charged for any Runoff Election.

Section 6.02 Electronic Poll Book:

(A) Database access at $100.00 per day;
(B) Laptop rental, insurance and delivery fee of $150.00 per location; includes bar code scanner and Dymo printer;
(C) Printer label fee of $.03 per label (price subject to change);
(D) Creation of separate Username and Password for each polling location at $20.00 per location;

Section 6.03 Poll book cost for printing poll book(s) as set by Elections Department.

Section 6.04 Training for Judges and Clerks at $7.00 per hour per person;

Section 6.05 If optional supplies and/or services are requested by THE ENTITY, fees will be charged in accordance with third party vendors or county fees; such as fee for Early Voting and General Election Combination forms; Election kits (provisional bags, table tops, ballot boxes and custom signs) and 100 sample ballots additional ballots $.20 per ballot (price subject to change);

Section 6.06 Mail-in ballot supplies, including applications, paper ballots, envelopes and postage at price set by third party vendors at time of election;

Section 6.07 Reimbursement fee for publication of all notices and newspaper advertisements;

Section 6.08 Reimbursement rental fees incurred for early voting polling places and Election Day polling places, as ordered;

Section 6.09 Cost of judges and election workers directly from payment vouchers submitted by the County Elections Administrator. THE ENTITY shall pay the election workers at $9.00 per hour

for Election Judge, $8.00 per hour for Alternate Judge and Deputy Early Voting Clerk(s) and $8.00 per hour for Clerks;

Section 6.10 Pay for the cost of the Ballot Board judge at $9.00 per hour and Ballot Board clerks at $8.00 per hour;

Section 6.11 Canvass Reports – tabulation of the election results for canvassing by THE ENTITY's governing body.

Section 6.12 Reimbursement to the County for liability insurance coverage as set by the County for all election workers employed for the elections;

Section 6.13 Reimbursement to the County for the use of wireless cell phones at polling locations with the rate set by the wireless vendor at the time of usage;

Section 6.14 Billing:

(A) The form of the invoice to be used in the billing by the County, including a good faith estimate of costs, is attached hereto as Exhibit A. THE ENTITY shall submit to the County, an administrative fee of ten percent (10%) of the entire estimated cost of the Election, as shown in Exhibit A referenced above. This fee shall be submitted to the County with this signed contract. The parties agree that time is of the essence on this payment obligation. The ten percent (10%) administrative fee is prescribed by Section 31.100(d) of the Election Code.

(B) The Administrator shall, as soon as practicable after the Election, prepare and send an itemized invoice with the actual costs of the Election to THE ENTITY.

(C) Full payment of the remaining balance, if any, shall be made by THE ENTITY within thirty (30) days of receipt of the invoice.

(D) Payment shall be made by check payable to the Hidalgo County Elections Administrator.

Notice: Except as may be otherwise specifically provided in this contract, all notices, demands, requests or communication required or permitted hereunder shall be in writing and shall either be (i)personally delivered against a written receipt, or (ii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth below, or at such other addresses as may have been theretofore specified by written notice delivered in accordance herewith:

Yvonne Ramón
Hidalgo County Elections Administrator
PO Box 659
Edinburg, Texas 78540

John V. Alaniz, City Manager
400 W. Veteran's Blvd.
Palmview, TX 78572

Section 6.15 Any balances, if any remain after the payment of all costs of election bills, shall be the property of the THE ENTITY and returned to it.

Article VII. LIABILITY

Section 7.01 IF ANY OF THE ELECTION EQUIPMENT IS LOST, STOLEN, DESTROYED, OR DAMAGED, THE CITY, SCHOOL DISTRICT OR ENTITY WHO LEASED THE EQUIPMENT IS LIABLE FOR THE DAMAGE AND AGREES TO PAY THE ADMINISTRATOR THE COST OF THE REPLACEMENT OR REPAIR OF THE ELECTION EQUIPMENT SO LOST, STOLEN, DESTROYED OR DAMAGED.

Article VIII. GENERAL PROVISIONS

Section 8.01 This Contract shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Hidalgo County, Texas.

Section 8.02 In case any one or more of the provisions contained in this Contract 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 Contract shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

Section 8.03 This Contract constitutes the sole and only agreement of the parties hereto and supersedes any prior understanding or written or oral agreement between the parties respecting the written subject matter.

Section 8.04 No amendment, modification, or alteration of the term hereof shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

SIGNED this _____ day of _____, 2010

APPROVAL COUNTY OF HIDALGO:

BY: _____
RENE RAMIREZ
COUNTY JUDGE

ATTEST BY:

_____
ARTURO GUAJARDO, JR.
COUNTY CLERK

ELECTION ADMINISTRATOR

BY: _____
YVONNE RAMÓN

APPROVED AS TO LEGAL FORM:
ATLAS & HALL L. L. P.,

BY: _____
STEPHEN L. CRAIN

BY: **City of Palmview**
ENTITY NAME

BY: Jorge G. Garcia

PRINT: Jorge G. Garcia

TITLE: Mayor

ATTEST
BY: Aida Rivas

PRINT: Aida Rivas

TITLE: City Secretary

AI-22995 **15.B.**

La Joya - Election Day Poll Location Discussion and Approval
CC REGULAR

Date: 09/21/2010
Submitted By: Sandra Aguirre, ELECTIONS DEPT.
Submitted For: Yvonne Ramon
Department: ELECTIONS DEPT.
Agenda Category: Elections Administration **Sub-category:** Elections

Information

CAPTION

Discussion and Approval of addition and/or changes of approved Election Day Poll Locations for the November 2, 2010 General Election.

BACKGROUND

November 2010 Election Day - Poll Location

Fiscal Impact

FISCAL YEAR: **ACCT. #:**

FUNDS AVAILABLE Y/N?: **MATCHING FUNDS Y/N?:**

BUDGETARY IMPACT:

No Fiscal Impact - changes in location only.

Attachments

Link: Fax - J. Munoz - La Joya School Board Election

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
1	Yvonne Ramon	Yvonne Ramon	09/16/2010 05:12 PM	APRV
2	Budget & Management	Sylvia Solis	09/17/2010 08:08 AM	APRV
3	Roland Garcia	Rolando Garcia	09/17/2010 09:52 AM	APRV
4	Auditor's Office		09/17/2010 04:52 PM	NEW

Form Started By: Sandra Aguirre Started On: 09/15/2010 04:06 PM

Final Approval Date: 09/17/2010

muñoz

Jaime J. Muñoz
attorney at law

P.O. Box 47
San Juan, Texas
Telephone (956)781-5444
Facsimile (956)787-9175

FACSIMILE COVER SHEET

PLEASE DELIVER THE FOLLOWING PAGES IMMEDIATELY

Confidentiality Notice: The information contained in, or accompanying, this facsimile is confidential and is intended only for the recipient(s) named below, nothing in this facsimile is intended to constitute a waiver of the confidentiality of the message. If you have received this facsimile in error, please notify me immediately by telephone to arrange for return of the original document(s) to me. You are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this transmitted information is strictly prohibited.

Date: 9/14/2010

To: Yvonne Ramon

Fax: 956 393 2039

From: Law Office of Jaime J. Muñoz

Re: La Joya ISD Elections

No. of Pages: (Including cover)

If you have any problems regarding receipt of this transmission, or if you have not received all of the pages, please call our Office at (956) 781-5444.

Comments:

muñoz

Jaime Jerry Muñoz
attorney at law

P.O. Box 47
San Juan, Texas 78589
Telephone (956)781-5444
Facsimile (956)787-9175

September 14, 2010

VIA FACSIMILE: (956) 393 - 2039
Yvonne Ramon
Elections Administrator
Hidalgo County Elections Department

Re: *La Joya School Board Election*

Dear Ms. Ramon,

First and foremost, I would like to thank you and your office for the attention and consideration you have provided in favor of the La Joya Independent School District with regard to the selection of voting sites for the upcoming elections.

As stated in my previous correspondence to you, the District proposes the Palmview Multi-Purpose Center as an additional site to the Hidalgo County Precinct #3 Offices. As we discussed in our previous conversations, the District feels that the Precinct #3 offices may present logistical concerns because of the many constituents they service as a Precinct. Additionally, the District voiced concerns with the proposed Sullivan City Fire Station polling location and hereby proposes Sam Fordyce Elementary (801 FM 886, Sullivan City, Texas) as another additional site.

As we discussed, the La Joya Independent School District will be responsible for costs associated with these additional sites.

The District would like to thank you in advance for you cooperation with this most pressing matter. It has been a pleasure working through these issues with your office. If my office can be of any assistance to you, please do not hesitate to contact me at 956-781-5444.

Sincerely,

Jaime J. Muñoz
School Attorney

Dr. Alda T. Benavides
Superintendent of Schools

AI-22994 **15.C.**

HP Mini Notebook Laptops

CC REGULAR

Date:	09/21/2010
Submitted By:	Griselda Salazar, IT DEPARTMENT
Submitted For:	Renan Ramirez
Department:	IT DEPARTMENT
Agenda Category:	Elections Administration

Information

CAPTION

Requesting authority to purchase (24) HP Mini 311 Notebook Laptops through our membership/participation with (DIR) Department of Information Resource awarded vendor, Verizon Wireless contract DIR-SDD-604 for the Elections Department through requisition #181709 for the amount of $99.99/each (equipment) total of equipment $2,399.76 & $37.99/month each broadband laptop access for the total requisition amount of $5,135.04 effective upon approval.

BACKGROUND

Fiscal Impact

FISCAL YEAR: 2010 **ACCT. #:** 0-1283-414-00-130-010-8-XXX

FUNDS AVAILABLE Y/N?: Y **MATCHING FUNDS Y/N?:**

BUDGETARY IMPACT:

PO#645611 has available balance of $5,135.04 for Verizon Wireless

HAVA GRANT FUNDING

Attachments

Link: Quote

Link: Req181709

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
1	Budget & Management	Sylvia Solis	09/16/2010 07:54 AM	APRV
2	Roland Garcia	Rolando Garcia	09/17/2010 10:12 AM	APRV
3	Auditor's Office		09/17/2010 04:52 PM	NEW

Form Started By: Griselda Salazar — Started On: 09/15/2010 03:43 PM

Final Approval Date: 09/17/2010

09-01-10

verizon wireless

Summary of Quote for Data Services

For

Hidalgo County - Elections

August 18th, 2010

Donnie Avina
Government Accounts Manager
South Texas Markets

CONFIDENTIAL AND PROPRIETARY MATERIALS / NOT FOR DISCLOSURE WITHOUT WRITTEN PERMISSION FROM VERIZON WIRELESS

Offer 1 (State of TX price plans-DIR-SDD-604)

verizon wireless

Cost Summary

- **24 Total Lines of Service**
  - ✓ Unlimited Mobile Broadband Plan - $37.99 per month
- **Unlimited Mobile Broadband**
  - ✓ 3G Network
  - ✓ Onsite support for deployment as needed
  - ✓ FREE activation
- **$1899.50 per month (ALL LINES)**
  - ✓ Discount built-in to State of TX plans
  - ✓ $37.99 average cost per line per month
- **Equipment costs: $99.99**
  - ✓ 24 HP Mini 311 - $2399.76

3 months
X 24
X 37.99
$2,735.28

FREE value-added services

- ✓Local field account management
- ✓Best, most-reliable network
- ✓Quarterly account/rate plan reviews
- ✓My Business Account online account management
- ✓Change rate plans at any time
- ✓On-site device support and training
- ✓Worry Free Guarantee
- ✓30-day satisfaction guarantee
- ✓Keep your existing numbers
- ✓Migration from your current wireless provider to VZW at your location(s)
- ✓25% discount for Texas government employees

CONFIDENTIAL AND PROPRIETARY MATERIALS / NOT FOR DISCLOSURE WITHOUT WRITTEN PERMISSION FROM VERIZON WIRELESS

Offer Details

verizon wireless

Equipment

Equipment Model: HP Mini 311

Rate Plan: Unlimited Mobile Broadband - $37.99



Contract Details

- ✓One Year State of Texas - DIR Contract # DIR-SDD-604
- ✓No Early Termination Fees
- ✓No Suspension Fees
- ✓Back-up Assistant
- ✓Change rate plans at any time
- ✓On-site device support and training
- ✓Worry Free Guarantee
- ✓30-day satisfaction guarantee
- ✓Unauthorized usage prevention
  - ✓ Call restrictions (on some models)
  - ✓ Block text/picture messaging, downloads, etc.
- ✓Keep your existing numbers
- ✓e-Cycle trade-in program
- ✓Migration from your current wireless provider to VZW at your location(s)
- ✓25% discount for Texas government employees

CONFIDENTIAL AND PROPRIETARY MATERIALS / NOT FOR DISCLOSURE WITHOUT WRITTEN PERMISSION FROM VERIZON WIRELESS

Requisition

Req # 00181709

PO # 645611
Date: 09/09/10

Bill To: x
x

Vendor : 287024
VERIZON WIRELESS
P.O. BOX 660108
DALLAS TX 75266-0108

Ship To: ELECTIONS
101 S. 10TH AVENUE
EDINBURG TX 78539

Contact: **TERRY TRUJILLO**
956-318-2570

Contract No: **DIR-SDD-604**

Special Instructions:
REQ # 165

QUANTITY	UOM	DESCRIPTION	UNIT PRICE	AMOUNT
		AS PER THE DIR-SDD-604 CATALOG PRICING DO NOT DUPLICATE ORDER		
24.00	EACH	HP MINI 311 NOTEBOOK LAPTOPS	99.99	2,399.76
3.00	MONTH	BROADBAND ACCESS @ 37.99 PER LINE	911.76	2,735.28
		Account No	Encumbrance	
		0-1283-414-00-130-010-8-532	2,735.28	
		0-1283-414-00-130-010-8-601	2,399.76	
			Freight	.00
			Total	5,135.04
		REPORT ROAD HAZARDS 1-866-HCR-SAFE OR 1-866-427-7233		

Authorized By: _____

AI-22965 **15.D.**

2010 - Full Service Contract - City of Progreso

CC REGULAR

Date:	09/21/2010
Submitted By:	Sandra Aguirre, ELECTIONS DEPT.
Submitted For:	Yvonne Ramon
Department:	ELECTIONS DEPT.
Agenda Category:	Elections Administration **Sub-category:** Elections

Information

CAPTION

Approval of Full Contract for Election Services between Hidalgo County and the City of Progreso for their election to be held on November 2, 2010.

BACKGROUND

Two (2) originals - Contract for Election Services

Fiscal Impact

FISCAL YEAR: 2010 **ACCT. #:**

FUNDS AVAILABLE Y/N?: **MATCHING FUNDS Y/N?:**

BUDGETARY IMPACT:

All costs and applicable fees associated with the election services shall be paid by the entities requesting the services as outlined in the caption (reimbursement basis to Elections Department).

Attachments

Link: City of Progreso - Novemember 2010

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
1	Yvonne Ramon	Yvonne Ramon	09/15/2010 04:30 PM	APRV
2	Budget & Management	Sylvia Solis	09/15/2010 04:50 PM	APRV
3	Roland Garcia	Rolando Garcia	09/17/2010 09:53 AM	APRV
4	Auditor's Office		09/17/2010 04:52 PM	NEW

Form Started By: Sandra Aguirre Started On: 09/14/2010 03:08 PM

Final Approval Date: 09/17/2010

THE STATE OF TEXAS §
§ **CONTRACT FOR ELECTION SERVICES**
COUNTY OF HIDALGO §

This Contract is entered into by and between the HIDALGO COUNTY ELECTIONS ADMINISTRATOR ("ADMINISTRATOR"), Yvonne Ramón, on behalf of Hidalgo County, a political subdivision of the State of Texas, and the City of Progreso, hereinafter referred to as "THE ENTITY," pursuant to Texas Election Code Section 31.092.

RECITALS

WHEREAS, THE ENTITY, by appropriate action of its governing body acting in accordance with all applicable laws, has called an election to be held on November 2, 2010.

WHEREAS, pursuant to Section 31.092(a) of the Texas Election Code, the County Election Officer may contract with the governing body of a political subdivision situated wholly or partly in the county served by the officer to perform election services in any one or more elections ordered by an authority of the political subdivision; and

WHEREAS, Section 271.002 (a) of the Texas Election Code authorizes two or more political subdivisions to enter into an agreement to hold elections jointly in the election precincts that can be served by common polling places subject to Section 271.003; and

WHEREAS, pursuant to Section 31.091(1) of the Texas Election Code, the County Election Officer means the Election Administrator for Hidalgo County; and

WHEREAS, THE ENTITY is a political subdivision in Hidalgo County that desires the County to conduct and supervise the November 2, 2010 election of THE ENTITY (the "Election"); and

WHEREAS, the County agrees to perform election services for THE ENTITY; and

WHEREAS, THE ENTITY AND ADMINISTRATOR desire to enter into a contract setting out the respective responsibilities of the parties; and

WHEREAS, THE ADMINISTRATOR has provided costs for election services to be rendered by ADMINISTRATOR'S office pursuant to the terms of this Contract, which costs are set out in Article VI hereof; and

NOW, THEREFORE, the County and THE ENTITY for good and valuable consideration, the adequacy and receipt of which is hereby acknowledge, do hereby agree to hold contract, covenant and agree as follows:

Article I. PURPOSE

Section 1.01 The parties hereto have entered into this Contract for election services described in Article II to be provided to THE ENTITY for its election to be held on November 2, 2010 and any Runoff, if applicable.

Article II. SERVICES

Section 2.01 The COUNTY, through the ADMINISTRATOR, agrees to provide to THE ENTITY the following:

(A) Procure, provide, prepare, program and distribute Direct Recording Electronic (DREs) voting systems and necessary election equipment, as well as an ADA voting system, and transport equipment to and from the polling locations, including early voting substations and election day, for THE ENTITY;
(B) Procure, provide, prepare and program an Electronic Poll Book per polling location with the Voter Registration Database. This includes laptop, insurance, and delivery fee, as well as supplies such as, but not limited to, labels and printer. When an Electronic Poll Book is not accessible, the charge of a regular Poll Book will be charged as set by Elections Department;
(C) Provide and prepare all mail-in ballot supplies, including applications paper ballots, envelopes and postage;
(D) Provide training for Judges/Clerks;
(E) Prepare, distribute, and publicize all notices and newspaper advertisements;
(F) Procure, provide, prepare, and distribute all necessary election supplies, including;
    1. Ballots (preparation and distribution only);
    2. Election kits; and
    3. Ballots boxes and voting booths
(G) Procure Early Voting polling places and Election Day polling places, as ordered and agreed to by both parties;
(H) Prepare Writ of Election to election officers and notice of appointment to Presiding and Alternate judges, as required by law;
(I) Notify the election judges of the date, time and place of the election;
(J) Procure and pay election judges and clerks for early voting and election day voting;
(K) Provide the general overall supervision of the Election and provide the advisory services in connection with the decisions to be made and the actions to be taken by THE ENTITY;
(L) Procure and pay Ballot Board members;
(M) Provide information for election officers;
(N) Prepare U.S. Department of Justice pre-clearance for the election;
(O) Prepare any submission of voting changes to be submitted to the U.S. Department of Justice under the Federal Voting Rights Act of 1965, as amended for the election;
(P) Provide such incidental related services as may be necessary to effect the election;
(Q) Serve as the Early Voting Clerk; and
(R) Establish a Central Counting Station for the purpose of tabulating ballots.

Section 2.02 **THE ENTITY** shall be responsible for performing the following:

(A) Payment of all necessary election supplies as required by the County, including but not limited to ballots, election kits, mail-in ballot supplies, laptop rental, labels and combination forms;

(B) Pay the cost of judges and election workers directly from payment vouchers submitted by the County Elections Administrator at the rate of $9.00 per hour for Election Judges and $8.00 per hour for Alternate Judges and Early Voting Clerks for both Early Voting and General Election;

(C) Reimburse the County for liability insurance coverage for election workers employed for both Early Voting and General Election;

(D) Tabulate the Election results for canvassing by THE ENTITY'S governing body;

(E) As stated in Section 31.096 of the Texas Election Code, this Contract may not change:

1. The authority with whom applications of candidates for a place on a ballot are filed;
2. The authority with whom documents are filed under Title 15; or
3. The authority to serve as custodian of voted ballots or other election records, except that the contract may provide that the County Election Officer will be the custodian of voted ballots. Under this Contract, the Hidalgo County Elections Administrator shall be the custodian of voted ballots.

(F) The County Elections Administrator shall be the agent of THE ENTITY for the purposes of contracting with third parties with respect to the election expenses within the scope of the County Elections Administrator's duties;

(G) The County shall file copies of this Contract with the County Treasurer and the County Auditor; and

(H) In accordance with Section 31.100(b) of the Texas Election Code, only actual expenses directly attributable to this Contract may be paid. The County Elections Administrator shall submit the actual costs for items contracted pursuant to the Contract with THE ENTITY no sooner than ten (10) days after the Election and/or as soon as all invoices from third party vendors are received.

Article III. SCHEDULE FOR PERFORMANCE OF SERVICES

Section 3.01 Specific services to be provided related to the general services identified in Article II shall be performed in accordance with the time requirements set out in the Texas Election Code.

Article IV. SERVICES NOT PROVIDED BY COUNTY

Section 4.01 ADMINISTRATOR shall have no responsibility for insuring the passage of the appropriate Election Order by THE ENTITY, as required by the Texas Election Code Section 3.005, or canvassing election results.

Article V. TERM

Section 5.01 Except as hereinafter set out, the term of this Contract shall be from the time of execution until all items with respect to this Contract and the election held hereunder have been completed.

Article VI. COST OF SERVICE AND BILLING

In consideration for the services provided hereunder by ADMINISTRATOR, THE ENTITY agrees to pay ADMINISTRATOR for the following costs of services:

Section 6.01 iVotronic Machines:

(A) One Base charge of $150.00 for Programming iVotronic ballot for voting machines; additional ballots style(s) and request for change of programmed ballot at an additional cost;
(B) A $10.00 recording fee for English and Spanish Audio Files for each Contest, or Office, or Proposition questions;
(C) A $10.00 recording fee for English and Spanish Audio Files for each Contest, or Office, or Proposition answers;
(D) Cost of creating election media, such as, but not limited to Personal Electronic Ballot (PEB) cartridges, compact flash cards, labels, bags, keys, etc.;
(E) The amount of $150.00 leasing fee for each iVotronic;
(F) The amount of $150.00 leasing fee for each ADA iVotronic;
(G) Delivery and Pick-up Fee charge based on the price of renting commercial truck(s) and fuel cost;
(H) The above described fees for each machine and programming fee shall be additionally charged for any Runoff Election.

Section 6.02 Electronic Poll Book:

(A) Database access at $100.00 per day;
(B) Laptop rental, insurance and delivery fee of $150.00 per location; includes bar code scanner and Dymo printer;
(C) Printer label fee of $.03 per label (price subject to change);
(D) Creation of separate Username and Password for each polling location at $20.00 per location;

Section 6.03 Poll book cost for printing poll book(s) as set by Elections Department.

Section 6.04 Training for Judges and Clerks at $7.00 per hour per person;

Section 6.05 If optional supplies and/or services are requested by THE ENTITY, fees will be charged in accordance with third party vendors or county fees; such as fee for Early Voting and General Election Combination forms; Election kits (provisional bags, table tops, ballot boxes and custom signs) and 100 sample ballots additional ballots $.20 per ballot (price subject to change);

Section 6.06 Mail-in ballot supplies, including applications, paper ballots, envelopes and postage at price set by third party vendors at time of election;

Section 6.07 Reimbursement fee for publication of all notices and newspaper advertisements;

Section 6.08 Reimbursement rental fees incurred for early voting polling places and Election Day polling places, as ordered;

Section 6.09 Cost of judges and election workers directly from payment vouchers submitted by

the County Elections Administrator. THE ENTITY shall pay the election workers at $9.00 per hour for Election Judge, $8.00 per hour for Alternate Judge and Deputy Early Voting Clerk(s) and $8.00 per hour for Clerks;

Section 6.10 Pay for the cost of the Ballot Board judge at $9.00 per hour and Ballot Board clerks at $8.00 per hour;

Section 6.11 Canvass Reports – tabulation of the election results for canvassing by THE ENTITY's governing body.

Section 6.12 Reimbursement to the County for liability insurance coverage as set by the County for all election workers employed for the elections;

Section 6.13 Reimbursement to the County for the use of wireless cell phones at polling locations with the rate set by the wireless vendor at the time of usage;

Section 6.14 Billing:

(A) The form of the invoice to be used in the billing by the County, including a good faith estimate of costs, is attached hereto as Exhibit A. THE ENTITY shall submit to the County, an administrative fee of ten percent (10%) of the entire estimated cost of the Election, as shown in Exhibit A referenced above. This fee shall be submitted to the County with this signed contract. The parties agree that time is of the essence on this payment obligation. The ten percent (10%) administrative fee is prescribed by Section 31.100(d) of the Election Code.

(B) The Administrator shall, as soon as practicable after the Election, prepare and send an itemized invoice with the actual costs of the Election to THE ENTITY.

(C) Full payment of the remaining balance, if any, shall be made by THE ENTITY within thirty (30) days of receipt of the invoice.

(D) Payment shall be made by check payable to the Hidalgo County Elections Administrator.

Notice: Except as may be otherwise specifically provided in this contract, all notices, demands, requests or communication required or permitted hereunder shall be in writing and shall either be (i)personally delivered against a written receipt, or (ii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth below, or at such other addresses as may have been theretofore specified by written notice delivered in accordance herewith:

Yvonne Ramón
Hidalgo County Elections Administrator
PO Box 659
Edinburg, Texas 78540

Alfredo Espinoza, City Administrator
P.O. Box 699
Progreso, TX 78579

Section 6.15 Any balances, if any remain after the payment of all costs of election bills, shall be the property of the THE ENTITY and returned to it.

Article VII. LIABILITY

Section 7.01 IF ANY OF THE ELECTION EQUIPMENT IS LOST, STOLEN, DESTROYED, OR DAMAGED, THE CITY, SCHOOL DISTRICT OR ENTITY WHO LEASED THE EQUIPMENT IS LIABLE FOR THE DAMAGE AND AGREES TO PAY THE ADMINISTRATOR THE COST OF THE REPLACEMENT OR REPAIR OF THE ELECTION EQUIPMENT SO LOST, STOLEN, DESTROYED OR DAMAGED.

Article VIII. GENERAL PROVISIONS

Section 8.01 This Contract shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Hidalgo County, Texas.

Section 8.02 In case any one or more of the provisions contained in this Contract 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 Contract shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

Section 8.03 This Contract constitutes the sole and only agreement of the parties hereto and supersedes any prior understanding or written or oral agreement between the parties respecting the written subject matter.

Section 8.04 No amendment, modification, or alteration of the term hereof shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

SIGNED this _____ day of _____, 2010

APPROVAL COUNTY OF HIDALGO:

BY: _____
RENE RAMIREZ
COUNTY JUDGE

ATTEST BY:

_____
ARTURO GUAJARDO, JR.
COUNTY CLERK

ELECTION ADMINISTRATOR

BY: _____
YVONNE RAMÓN

APPROVED AS TO LEGAL FORM:
ATLAS & HALL L. L. P.,

BY: _____
STEPHEN L. CRAIN

BY: **City of Progreso**
ENTITY NAME

BY: Alfredo Espinosa

PRINT: Alfredo Espinosa

TITLE: City Administrator

ATTEST
BY: Frank Valdez

PRINT: Frank Valdez

TITLE: City Secretary

AI-22922 **16.A.**

Carry Forward Application

CC REGULAR

Date:	09/21/2010
Submitted By:	Linda Galaviz, HEAD START
Submitted For:	Edmundo Garcia
Department:	HEAD START
Agenda Category:	Head Start

Information

CAPTION

Discussion/Approval to Submit an Application to Carry Forward Unobligated Fund Balance Awarded Under the ARRA for Expansion in 2009-2010

BACKGROUND

Policy Council Approval: 09.15.10

Fiscal Impact

FISCAL YEAR: **ACCT. #:**

FUNDS AVAILABLE Y/N?: **MATCHING FUNDS Y/N?:**

BUDGETARY IMPACT:

No Fiscal Impact to County

Attachments

Link: Carry Forward

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
1	Budget & Management	Sylvia Solis	09/15/2010 08:55 AM	APRV
2	Roland Garcia	Rolando Garcia	09/17/2010 10:32 AM	APRV
3	Auditor's Office		09/17/2010 04:52 PM	NEW
Form Started By: Linda Galaviz			Started On: 09/10/2010 04:13 PM	
Final Approval Date: 09/17/2010				

Hidalgo County Head Start Program

Policy Council Agenda

DATE: September 15, 2010

SUBJECT: Discussion/Approval to Submit an Application to Carry Forward Unobligated Fund Balance Awarded Under the ARRA for Expansion in 2009-2010

RATIONALE/NEED: To reallocate remaining balance in the expansion grant under ARRA in order to purchase supplies and equipment.

RECOMMENDATION: Administration recommends approval.

COST: N/A

RELATED INFORMATION INCLUDES: Memorandum

****

INITIATED BY: Edmundo Garcia, Assistant Program Director

REVIEWED BY: Teresa Flores, Executive Director Teresa Flores

EXECUTIVE DIRECTOR'S APPROVAL: Teresa Flores

Hidalgo County Head Start Program
Memorandum

Date: September 9, 2010

To: Hidalgo County Head Start Policy Council and Commissioners' Court

From: Edmundo Garcia, Assistant Program Director

Through: Teresa Flores, Executive Director

Subject: Carry Forward Request

The Hidalgo County Head Start Program received funding under the American Recovery and Reinvestment Act of 2009(ARRA) to expand Head Start services to one hundred and twenty (120) additional children. The initial award totaling $1,174,645 was for the budget period beginning 9/30/2009 and ending 9/29/2010.

The Initial Allocation and Year to Date Expenditures are as follow:

Personnel	$399,495	$233,615	**$165,880**
Fringe Benefits	$138,565	$68,440	**$70,125**
Equipment	$70,000	$89,724	-$19,724
Facilities/Construction	$543,552	$345,287	**$198,265**
Other(T&TA)	$23,033	$4,088	**$18,945**
Total	$1,174,645	$741,154	**$433,491**

Under this Expansion funding the Program was able to hire additional personnel, construct three facilities and purchase the necessary supplies and equipment to enroll the additional children.

Favorable variances or positive balances still remain in various line items. In the Personnel line item the Program has a remaining balance of **$165,880,** due primarily to the lengthy process required to hire qualified personnel. In the Fringe Benefits category the Program experienced a balance of **$70,125** as well.

Under Facilities/Construction, savings were also realized, as the actual construction bids received, were under the proposed budget by **$198,265.** The Other category was used to account for training and technical assistance for the personnel hired under the expansion grant, **$18,945** still remain unexpended in this category. The Program anticipates a remaining balance in this fund of approximately**$433,491**.

As is customary, the Program contacted Mr. Alfredo Huerta, Regional Program Specialist, who asked us to submit an application to carry forward the remaining balance in to the next funding beginning 9/30/2010. The remaining **$433,491**, if authorized by the Department of Health and Human Services, will be added to the existing funding application of $918,000 for the budget period beginning 9/30/2010 and ending 9/29/2011.

The Program proposes to ask for authorization to carry forward these funds and utilize them in the following manner:

To expand and upgrade our transportation capabilities by purchasing two school buses capable of transporting 35 children each. These new buses will be equipped with age appropriate restraint systems and will be used to transport children from our most rural areas. The Program will be able to provide transportation in vehicles with the latest technology while realizing savings in fuel consumption. Most of our existing vehicles are over ten years old and require an exorbitant amount of resources and expense to keep them operable.

Equipment cost is estimated at $180,000.

To expand and upgrade our **classrooms and play ground materials**. The Program will purchase additional classroom materials which will be age appropriate for three and four year olds. These supplies will complement the existing curriculum and provide children with the appropriate developmental tools. The playground materials will upgrade the outdoor areas with new and modern playground pieces, while at the same time expanding our outdoor areas into a much more modern and ergonomically designed playground promoting a greener friendlier environment. These will include:

- Art Easels especially built for outdoors to enrich the children's perception of the outdoors while simultaneously increasing their participation in world that surrounds them.
- Green garden walls, to teach the children how to cultivate indigenous plants and develop appreciation for recycling and alternate sources of energy.
- Playground materials (slides and animals) that are developmentally appropriate for the children we serve.
- Books and supplies for Learning Centers to continue to enrich their imagination and further develop their cognitive skills.

Total Classroom and Playground of Supplies $188,491

To expand our capabilities of parking spaces at Palmview III facility as well as the spaces to station and accommodate all buses purchased under the expansion grant, at the administration complex. With the purchase of additional buses it is essential that an appropriate storage area is prepared to properly secure and maintain all buses. Currently these areas are topped off with caliche, a substance that turns into a muddy mass once it rains thus creating riskier conditions during the dropping off and picking children at the center. The Program proposes to alleviate these conditions by utilizing the County's resources through a collaborative effort. Head Start will provide the supplies for resurfacing the areas and the County will provide the equipment and labor to accomplish this task.

Total Other Supplies $65,000

AI-22924 **16.B.**

Enter into a Contract with Jose Salinas

CC REGULAR

Date:	09/21/2010
Submitted By:	Linda Galaviz, HEAD START
Submitted For:	Edmundo Garcia
Department:	HEAD START
Agenda Category:	Head Start

Information

CAPTION

Approval of final negotiated contract for Professional Services with Jose Salinas to provide training/staff development to Policy Council/Grantee Board, authorized by Commissioners' Court on 08/24/10.

BACKGROUND

Policy Council Approval: 09.15.10

Fiscal Impact

FISCAL YEAR: **ACCT. #:**

FUNDS AVAILABLE Y/N?: **MATCHING FUNDS Y/N?:**

BUDGETARY IMPACT:

No Fiscal Impact

Attachments

Link: Contract with Jose Salinas

Link: backup

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
1	Budget & Management	Sylvia Solis	09/15/2010 10:04 AM	APRV
2	Roland Garcia	Rolando Garcia	09/17/2010 10:36 AM	APRV
3	Auditor's Office		09/17/2010 04:52 PM	NEW

Form Started By: Linda Galaviz — Started On: 09/10/2010 04:21 PM

Final Approval Date: 09/17/2010

Hidalgo County Head Start Program
Policy Council Agenda Request

DATE: September 15, 2010

SUBJECT: Approval to Enter Into a Contract for Professional Services With Jose Salinas to Provide Training/Staff Development to Policy Council/ Grantee Board

RATIONALE/NEED: Governance Training for the Policy Council and Grantee Board. Two and half (2½) days of training are scheduled each year after the Policy Council has been elected or appointed. This is a requirement of the Head Start Performance Standards. Mr. Salinas will provide one and a half (1½) day of training.

RECOMMENDATION: Administration recommends approval

COST: $1,568.00

RELATED INFORMATION INCLUDED: Contract for Professional Services

* * * *

THE STATE OF TEXAS §
§
COUNTY OF HIDALGO §

CONTRACT FOR CONSULTING SERVICES
C-10-034-08-24

THIS AGREEMENT (The "Agreement") is made effective on the **25th day of October, 2010** by and between **HIDALGO COUNTY HEAD START PROGRAM,** (hereinafter "The Program") a federally funded program under the auspices of HIDALGO COUNTY, TEXAS, a political subdivision of the State of Texas and **Jose Salinas** (hereinafter" Consultant") to serve at the pleasure of the Program.

W I T N E S S E T H:

WHEREAS, Program desires to contract with a Consultant to provide the services necessary to the Program that are more specifically set forth hereinafter; and

WHEREAS, Consultant has agreed to provide the services enumerated hereinafter to Hidalgo County Head Start Program.

NOW, THEREFORE, for the mutual consideration expressed hereinafter, Program and Consultant agree as follows:

1. Consultant agrees to provide the Program the consulting services required by Hidalgo County Head Start Program in connection with the **"Governance Training"** ("services"). Pursuant to Article 262.024 of the Texas Local Government Code, the Program exempted the service of the Consultant from

Section 262.023 of the Local Government Code, provided however the Program requested proposals from professional consultants to assist the Program in providing consulting services to the Plan. The services include, but are not limited to, the items listed on Appendix A, which is attached and made a part of this Agreement.

2. As consideration for the services of Consultant described herein, Program Agrees to pay Consultant the fees as outlined in Appendix B, which is attached to and made a part of this Agreement.

3. Consultant must comply with all applicable Program and Hidalgo County policies. Notwithstanding the foregoing sentence, Consultant represents and maintains that it is an independent consultant and is not an employee of Program or any agency thereof, and represents and warrants that Consultant does not desire or request any fringe benefits provided to employees of Program. Consultant agrees to be responsible for any federal income tax, withholding or social security tax liability that might arise from payments received hereunder.

4. Any Agreement award to Consultant will be in effect until (a) the Agreement expires, (b) delivery and acceptance of products, and/or performance of services ordered, or (c) terminated by Program without cause on thirty (30 days) written notice prior to cancellation.

5. Consultant may not assign the obligations or rights under this Agreement to any person without the prior written consent of Program.

6. Consultant agrees to comply with the Title VI of the Civil Rights Act of 1964.

The term of this Agreement will be effective as of October 25th, 2010 and

expires on November 1st, 2010.

7. Notice. Except as may be otherwise specifically provided in this Agreement, all notices, demands, requests or communications required or permitted hereunder shall be in writing and shall either be sent personally against a written receipt, or (ii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth below, or at such other addresses as may have been theretofore specified by written notice delivered in accordance herewith.

If to Program:
Hidalgo County Head Start Program
Attn: Teresa Flores, Executive Director
P.O Box 0117
Edinburg, Texas 78540

If to Consultant:
Jose Salinas
P.O. BOX 651
Uvalde, Texas 78802

Each notice, demand, request or communication which shall be delivered or mailed in the manner described above shall be deemed sufficiently given for all purposes at such time as it is personally delivered to the addressee or, if mailed, at such time at it is deposited in the United States mail.

8. Conflict with Applicable Law. Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law, and whenever there is any conflict between any provision of this Agreement and any present or future law, ordinance or administrative, executive or judicial

regulation, order or decree, or amendment hereof, contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event the affected provision or provisions of this Agreement shall be modified only to the extent necessary to bring them within the legal requirements and only during the time such conflict exists.

9. No Waiver. No waiver by Program of any breach of any provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision hereof.

10. Entire Agreement. This contract contains the entire agreement between the parties hereto, and each party acknowledges that neither has made (either directly or through any agent or representative) any representations or agreements in connection with this Contract not specifically set forth herein. This Contract may be modified or amended only by contract in writing executed by Program and Consultant and not otherwise.

11. Texas Law to Apply. This Contract shall be construed under and in Accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Hidalgo County, Texas. The parties hereby consent to personal jurisdiction in Hidalgo County, Texas.

12. Additional Documents. The parties hereto covenant and agree that they will execute such other further instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this Contract.

13. Successors. This *Contract* shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrator, legal

representatives, successors, and assigns where permitted by this Contract.

14. Assignment. This Agreement shall not be assignable; provided, however, that Consultant may assign its right to receive payments hereunder for the purpose of obtaining financing so long as Consultant is not excused from and/or does not delegate its duties hereunder.

15. Headings. The headings and captions contained in this Agreement are solely for convenient reference and shall not be deemed to affect the meaning or interpretation of any provision or paragraph hereof.

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

17. Authority to Execute. The execution and performance of this Agreement by Program and Consultant have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes and valid and enforceable obligations of Program and Consultant in accordance with its terms.

18. Ethical Provision. It is understood that the employee of Program or individuals acting as agents for Program are not authorized to receive any type of personal payment, reimbursement, compensation, commission, gift or gratuity for services provided under this Agreement. Consultant warrants that no employee or agent of the Program has been retained to solicit or secure this Agreement and that Consultant has not paid or agreed to pay any employee of

Program any fee, commission, percentage brokerage fee, gift or any other consideration contingent upon the making of this Agreement, or as an inducement for entering into this Agreement. The unauthorized offering or receipt of such payments may result in the immediate termination of this Agreement.

19. Commitment of Current Revenues Only. In the event that, during any term hereof, the Commissioners Court does not appropriate sufficient funds to meet the obligations of the Program under this Agreement, Program may terminate this Agreement upon thirty (30) days written notice to Consultant. Program, 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 Program pursuant to the provision of Tex. Loc. Govt. Code Ann §271.903 (Vernon Supp. 1995).

20. Indemnity and Hold Harmless. Consultant agrees to indemnify and hold Program harmless from any loss, costs, liabilities or damages which are incurred by Program which are primarily attributable to the acts or omissions of Consultant or the acts or omissions of Consultant's employees, agents or other representatives, including the violation of any law or regulation related to Consultant's duties under this Agreement.

To the extent permitted by applicable law, Program agrees to indemnify and hold Consultant harmless from any loss, costs, liabilities or damages which are incurred by Consultant which are primarily attributable to the acts or omissions of Program or the acts or omissions of Program employees, agents

or other representatives, including the violation of any law or regulation related to Program's duties under this Agreement.

21. Representation and Warranties. In the event any representation or warranty of Consultant hereunder is or become incorrect or untrue, Consultant agrees to promptly notify Program thereof, in which event Program may, in its sole discretion, elect to terminate this Agreement, for cause. Consultant acknowledges and agrees that Program has relied and continues to rely upon the representations and warranties of Consultant as herein contained.

EXECUTED and effective as of the_____ day and _____, 2010 first written above.

APPROVED BY COMMISSIONERS COURT ON: August 24, 2010

Consultant:
Jose Salinas

BY:_____
(Consultant Name)

BY:_____
(Print Name)

BY:_____
(Title)

BY:_____
Rene Ramirez, County Judge

BY:_____
Teresa Flores, Executive Director

BY:_____
Arturo Guajardo, Jr., County Clerk

APPROVED AS TO FROM:
OXFORD & GONZALEZ

BY:_____
Ricardo Gonzalez

APPROVED AS TO FROM
ATLAS & HALL, L.L.P.

BY:_____
Stephen L. Crain

APPENDIX "A"

The services include, but are not limited to, the items listed below;

1. Consultant agrees to conduct the Governance Training on Saturday, October 30th, 2010, from 8:00 a.m. to 4:00 p.m.

2. Consultant agrees to assist the Program by helping participants understand the structural relationship between the decision making groups in the Program.

3. Consultant agrees to assist the Program by helping the participants identify their roles and responsibilities has it pertains to the Head Start Program.

4. Consultant agrees to assist the Program by increasing the participant's knowledge of the Performance Standards and the Head Start Act.

5. Members will participate enhance their knowledge of not only their roles and responsibilities but the regulations that govern the Head Start Program and recently in enacted legislation that affects the composition of these groups.

6. Consultant agrees to conduct training at the Sheraton Fiesta South Padre Island.

7. Consultant agrees to pay own lodging and meals.

APPENDIX “B”
CONSULTANT FEE

Program agrees to pay a professional consultant fee in the amount of One Thousand Five Hundred Sixty Eight 00/100 ($1,568.00).

CONTRACT WITH JOSE SALINAS

VI. PROGRAM OPERATIONS

F.2. Contract for Professional Educational Services with Jose Salinas

Hidalgo County Head Start Program
Policy Council Agenda Request

DATE: August 18, 2010

SUBJECT: 1. Requesting exemption from competitive bidding requirements under the Texas Local Government Code 262.024 (a)(4) a professional services;

2. Authority to Negotiate a Contract for Professional Services with Jose Salinas to Provide Training/Staff Development to Policy Council/Grantee Board

RATIONALE/NEED: Governance Training for the Policy Council and Grantee Board. Two and half (2 ½) days of training are scheduled each year after the Policy Council has been elected or appointed. This is a requirement of the Head Start Performance Standards. Mr. Salinas will provide one and a half (1 ½) day of training.

RECOMMENDATION: Administration recommends approval.

COST: N/A

RELATED INFORMATION INCLUDED: Contract for Professional Services

* *

INITIATED BY: Ambrosio Tovar, Procurement Director

REVIEWED BY: Mr. Edmundo Garcia, Assistant Director

PROGRAM DIRECTOR'S APPROVAL: _____

THE STATE OF TEXAS §
§
COUNTY OF HIDALGO §

CONTRACT FOR CONSULTING SERVICES
C-10-034-08-24

THIS AGREEMENT (The "Agreement") is made effective on the **25th day of October, 2010** by and between **HIDALGO COUNTY HEAD START PROGRAM,** (hereinafter "The Program") a federally funded program under the auspices of HIDALGO COUNTY, TEXAS, a political subdivision of the State of Texas and _____ (hereinafter" Consultant") to serve at the pleasure of the Program.

W I T N E S S E T H:

WHEREAS, Program desires to contract with a Consultant to provide the services necessary to the Program that are more specifically set forth hereinafter; and

WHEREAS, Consultant has agreed to provide the services enumerated hereinafter to Hidalgo County Head Start Program.

NOW, THEREFORE, for the mutual consideration expressed hereinafter, Program and Consultant agree as follows:

1. Consultant agrees to provide the Program the consulting services required by Hidalgo County Head Start Program in connection with the **"Governance Training"** ("services"). Pursuant to Article 262.024 of the Texas Local

Government Code, the Program exempted the service of the Consultant from Section 262.023 of the Local Government Code, to assist the Program in providing consulting services to the Plan. The services include, but are not limited to, the items listed on Appendix A, which is attached and made a part of this Agreement.

2. As consideration for the services of Consultant described herein, Program Agrees to pay Consultant the fees as outlined in Appendix B, which is attached to and made a part of this Agreement.

3. Consultant must comply with all applicable Program and Hidalgo County policies. Notwithstanding the foregoing sentence, Consultant represents and maintains that it is an independent consultant and is not an employee of Program or any agency thereof, and represents and warrants that Consultant does not desire or request any fringe benefits provided to employees of Program. Consultant agrees to be responsible for any federal income tax, withholding or social security tax liability that might arise from payments received hereunder.

4. Any Agreement award to Consultant will be in effect until (a) the Agreement expires, (b) delivery and acceptance of products, and/or performance of services ordered, or (c) terminated by Program without cause on thirty (30 days) written notice prior to cancellation.

5. Consultant may not assign the obligations or rights under this Agreement to any person without the prior written consent of Program.

6. Consultant agrees to comply with the Title VI of the Civil Rights Act of 1964.

The term of this Agreement will be effective as of October 25th, 2010 and

expires on November 1st, 2010.

7. Notice. Except as may be otherwise specifically provided in this Agreement, all notices, demands, requests or communications required or permitted hereunder shall be in writing and shall either be sent personally against a written receipt, or (ii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth below, or at such other addresses as may have been theretofore specified by written notice delivered in accordance herewith.

If to Program:
Hidalgo County Head Start Program
Attn: Teresa Flores, Executive Director
P.O Box 0117
Edinburg, Texas 78540

If to Consultant:
_____
_____
_____

Each notice, demand, request or communication which shall be delivered or mailed in the manner described above shall be deemed sufficiently given for all purposes at such time as it is personally delivered to the addressee or, if mailed, at such time at it is deposited in the United States mail.

8. Conflict with Applicable Law. Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law, and whenever there is any conflict between any provision of this Agreement and any present or future law, ordinance or administrative, executive or judicial

regulation, order or decree, or amendment hereof, contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event the affected provision or provisions of this Agreement shall be modified only to the extent necessary to bring them within the legal requirements and only during the time such conflict exists.

9. No Waiver. No waiver by Program of any breach of any provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision hereof.

10. Entire Agreement. This contract contains the entire agreement between the parties hereto, and each party acknowledges that neither has made (either directly or through any agent or representative) any representations or agreements in connection with this Contract not specifically set forth herein. This Contract may be modified or amended only by contract in writing executed by Program and Consultant and not otherwise.

11. Texas Law to Apply. This Contract shall be construed under and in Accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Hidalgo County, Texas. The parties hereby consent to personal jurisdiction in Hidalgo County, Texas.

12. Additional Documents. The parties hereto covenant and agree that they will execute such other further instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this Contract.

13. Successors. This *Contract* shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrator, legal

representatives, successors, and assigns where permitted by this Contract.

14. Assignment. This Agreement shall not be assignable; provided, however, that Consultant may assign its right to receive payments hereunder for the purpose of obtaining financing so long as Consultant is not excused from and/or does not delegate its duties hereunder.

15. Headings. The headings and captions contained in this Agreement are solely for convenient reference and shall not be deemed to affect the meaning or interpretation of any provision or paragraph hereof.

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

17. Authority to Execute. The execution and performance of this Agreement by Program and Consultant have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes and valid and enforceable obligations of Program and Consultant in accordance with its terms.

18. Ethical Provision. It is understood that the employee of Program or individuals acting as agents for Program are not authorized to receive any type of personal payment, reimbursement, compensation, commission, gift or gratuity for services provided under this Agreement. Consultant warrants that no employee or agent of the Program has been retained to solicit or secure this Agreement and that Consultant has not paid or agreed to pay any employee of

Program any fee, commission, percentage brokerage fee, gift or any other consideration contingent upon the making of this Agreement, or as an inducement for entering into this Agreement. The unauthorized offering or receipt of such payments may result in the immediate termination of this Agreement.

19. Commitment of Current Revenues Only. In the event that, during any term hereof, the Commissioners Court does not appropriate sufficient funds to meet the obligations of the Program under this Agreement, Program may terminate this Agreement upon thirty (30) days written notice to Consultant. Program, 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 Program pursuant to the provision of Tex. Loc. Govt. Code Ann §271.903 (Vernon Supp. 1995).

20. Indemnity and Hold Harmless. Consultant agrees to indemnify and hold Program harmless from any loss, costs, liabilities or damages which are incurred by Program which are primarily attributable to the acts or omissions of Consultant or the acts or omissions of Consultant's employees, agents or other representatives, including the violation of any law or regulation related to Consultant's duties under this Agreement.

To the extent permitted by applicable law, Program agrees to indemnify and hold Consultant harmless from any loss, costs, liabilities or damages which are incurred by Consultant which are primarily attributable to the acts or omissions of Program or the acts or omissions of Program employees, agents

or other representatives, including the violation of any law or regulation related to Program's duties under this Agreement.

21. Representation and Warranties. In the event any representation or warranty of Consultant hereunder is or becomes incorrect or untrue, Consultant agrees to promptly notify Program thereof, in which event Program may, in its sole discretion, elect to terminate this Agreement, for cause. Consultant acknowledges and agrees that Program has relied and continues to rely upon the representations and warranties of Consultant as herein contained.

EXECUTED and effective as of the_____ day and _____, 2010 first written above.

APPROVED BY COMMISSIONERS COURT ON: August 24, 2010

Consultant:

BY:_____
(Consultant Name)

BY:_____
(Print Name)

BY:_____
(Title)

BY:_____
Rene Ramirez, County Judge

BY:_____
Teresa Flores, Executive Director

BY:_____
Arturo Guajardo, Jr., County Clerk

APPROVED AS TO FROM:
OXFORD & GONZALEZ

BY:_____
Ricardo Gonzalez

APPROVED AS TO FROM
ATLAS & HALL, L.L.P.

BY:_____
Stephen L. Crain

APPENDIX "A"

The services include, but are not limited to, the items listed below;

1. Consultant agrees to conduct the Governance Training on Saturday, October 30th, 2010, from 8:00 a.m. to 4:00 p.m.

2. Consultant agrees to assist the Program by helping participants understand the structural relationship between the decision making groups in the Program.

3. Consultant agrees to assist the Program by helping the participants identify their roles and responsibilities has it pertains to the Head Start Program.

4. Consultant agrees to assist the Program by increasing the participant's knowledge of the Performance Standards and the Head Start Act.

5. Members will participate enhance their knowledge of not only their roles and responsibilities but the regulations that govern the Head Start Program and recently in enacted legislation that affects the composition of these groups.

6. Consultant agrees to conduct training at the Sheraton Fiesta South Padre Island.

7. Consultant agrees to pay own lodging and meals.

APPENDIX “B”
CONSULTANT FEE

Program agrees to pay a professional consultant fee in the amount of

_____

AI-22920 **16.C.**

Area Distribution

CC REGULAR

Date:	09/21/2010
Submitted By:	Linda Galaviz, HEAD START
Submitted For:	Edmundo Garcia
Department:	HEAD START
Agenda Category:	Head Start

Information

CAPTION

Discussion/Approval of the Hidalgo County Head Start Program Area Distribution for 2010-2011

BACKGROUND

Policy Council Approval: 09.15.10

Fiscal Impact

FISCAL YEAR: **ACCT. #:**

FUNDS AVAILABLE Y/N?: **MATCHING FUNDS Y/N?:**

BUDGETARY IMPACT:

No Fiscal Impact

Attachments

Link: Area Distribution

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
1	Budget & Management	Sylvia Solis	09/15/2010 08:55 AM	APRV
2	Roland Garcia	Rolando Garcia	09/17/2010 10:30 AM	APRV
3	Auditor's Office		09/17/2010 04:52 PM	NEW

Form Started By: Linda Galaviz — Started On: 09/10/2010 04:10 PM

Final Approval Date: 09/17/2010

Hidalgo County Head Start Program

Policy Council Agenda

DATE: September 15, 2010

SUBJECT: Discussion/Approval of the Hidalgo County Head Start Program Area Distribution for 2010-2011

RATIONALE/NEED: The Hidalgo County Head Start Program Area Distribution reflects the one-hundred twenty (120) children increased due to the expansion. This increase brings the total enrollment to three-thousand six-hundred ninety (3,690).

RECOMMENDATION: Administration recommends approval.

COST: None

RELATED INFORMATION INCLUDES: 2010-2011 Area Distribution

****

INITIATED BY: Nora S. Munoz, Assistant Program

REVIEWED BY: Teresa Flores, Executive Director

EXECUTIVE DIRECTOR'S APPROVAL: Teresa Flores

Hidalgo County Head Start Program

Area Distribution 2010 – 2011

Number of Centers: 43	Number of Children: 3690	Number of Classrooms: 199

Area 1			Area 2		
Center	# of Classrooms	# of Children	Center	# of Classrooms	# of Children
LA JOYA	5	91	ALTON	5	100
PALMVIEW I	8	148	WESTERN ROAD	3	57
PALMVIEW II	8	148	MCALLEN IV	3	51
SULLIVAN	5	94	MCALLEN VI	3	51
PALMVIEW III	6	108	MISSION I	4	80
			MISSION II	8	148
			MISSION IV	3	55
			MISSION III	3	51
TOTAL:	32	589	TOTAL:	32	593

Area 3			Area 4		
Center	# of Classrooms	# of Children	Center	# of Classrooms	# of Children
MCALLEN II	6	111	ALAMO	6	117
MCALLEN V	3	57	DONNA I	8	136
VINE TERRACE	3	56	DONNA II	3	60
PHARR	5	95	DONNA IV	2	33
LAS MILPAS I	6	114	SAN JUAN I	3	54
LAS MILPAS II	3	51	SAN JUAN II	8	145
HIDALGO	3	54	SAN CARLOS	4	80
TOTAL:	29	538	TOTAL:	36	659

Area 5			Area 6		
Center	# of Classrooms	# of Children	Center	# of Classrooms	# of Children
ELSA	3	57	EDCOUCH	10	182
LA HERENCIA	3	52	EDINBURG I	3	57
MERCEDES I	6	117	EDINBURG II	2	34
MERCEDES II	2	34	EDINBURG III	3	51
MONTE ALTO	2	37	EDINBURG IV	8	160
PROGRESO	3	57	EDINBURG V	6	120
WESLACO I	4	77	U.T.P.A.	2	37
WESLACO II	4	74			
WESLACO III	5	97			
TOTAL:	32	602	TOTAL:	38	709

Policy Council Approval:
Comm. Court Approval:

Rev. 08/18 /2010

AI-22923 **16.D.**

Consideration & Acceptance of Providers RFQs

CC REGULAR

Date:	09/21/2010
Submitted By:	Linda Galaviz, HEAD START
Submitted For:	Edmundo Garcia
Department:	HEAD START
Agenda Category:	Head Start

Information

CAPTION

1. Presentation of the providers submitting responses to the following Hidalgo County Head Start Program's Request for Qualifications and meeting the minimum requirements as set forth in the procurement packets and as determined by the Head Start Program staff grading/scoring said responses for the purposes of Commissioners Court accepting the providers as "qualified" in order to proceed to the next phase of the procurement process – negotiating contracts:

a. Medical RFQ #2010-030-09-08 – Industrial & Family Medicine; and Sarojini G. Bose M.D.

b. Dental RFQ #2010-030-09-08 – Linda T. Burke DDS. PA; Palmview Pediatric Dentistry; and Weslaco pediatric Dentistry.

c. Mental Health RFQ #2010-031-09-08 –

1. Gonzalez Counseling Services	3. Modern View Counseling Services
2. Amando Gonzalez, LPC	4. Norma Villanueva, LCSW

d. Special Services RFQ #2010-032-09-08

1. Step & Stride Rehabilitation Center	4. Impact Therapeutic Services, PLLC
2. Total Care Rehabilitation Center	5. Kidding Around Therapy, INC.
3. Children's Speech & Language Center	6. Best-Beyond Expectations Speech Therapy, LLC

2. Approval of the negotiated contracts (approved as to form by legal counsels) for all the professional services providers as requested through the Hidalgo County Head Start Program's RFQ for said services and as detailed above and attached hereto.

BACKGROUND

Policy Council Approval: 09.15.10

Fiscal Impact

FISCAL YEAR: **ACCT. #:**

FUNDS AVAILABLE Y/N?: **MATCHING FUNDS Y/N?:**

BUDGETARY IMPACT:

No Fiscal Impact.

Attachments

Link: RFQs

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
1	Budget & Management	Sylvia Solis	09/15/2010 10:04 AM	APRV
2	Roland Garcia	Rolando Garcia	09/17/2010 10:34 AM	APRV
3	Auditor's Office		09/17/2010 04:52 PM	NEW
Form Started By: Linda Galaviz			Started On: 09/10/2010 04:17 PM	
Final Approval Date: 09/17/2010				

Hidalgo County Head Start Program
Policy Council Agenda

DATE: September 15, 2010

SUBJECT: Discussion/Approval for Consideration and Acceptance of Providers Meeting all Specifications and Requirements for the Following Request for Qualifications (RFQ):

1. Medical & Dental RFQ #2010-030-09-08
2. Mental Health RFQ #2010-031-09-08
3. Special Services RFQ #2010-032-09-08

RATIONALE/NEED: Contracts need to be secured in order to provide services to the children and families.

RECOMMENDATION: Administration Recommends Approval

COST: As Specified On Services Required

RELATED INFORMATION INCLUDED: Memos/Contracts

* * * *

HIDALGO COUNTY HEAD START PROGRAM
P.O. BOX 0117
EDINBURG, TX 78540-0117
TEL. (956) 383-0706 FAX (956) 380-2588

TO: Ambrosio Tovar, Procurement Director

FROM: Connie Horta, Special Services Director

SUBJECT: RFQ Recommendations

DATE: September 8, 2010

The RFQ packets have been reviewed. The following list of providers is being recommended for the 2010/2011 school year.

If you have any questions, please feel free to call 380-4192 or 380-4170.

Step & Stride Rehabilitation Center
Total Care Rehabilitation Center
Children's Speech & Language Center
Impact Therapeutic Services, PLLC
Kidding Around Therapy, INC.
Best-Beyond Expectations Speech Therapy, LLC

Hidalgo County Head Start Program

P.O. BOX 0117 · EDINBURG, TEXAS 78540-0117 · TEL: (956) 383-0706 · FAX: (956) 380-2588

Memorandum

TO: Mr. Ambrosio Tovar

FROM: Ms. Lupita Valdez, Health Services Director

DATE: September 8, 2010

CC: Ms. Teresa Flores, Executive Director
Ms. Nora Muñoz, Asst. Program Director
Mr. Edmundo Garcia, Asst. Program Director

The Request for Qualifications packets has been reviewed. I would like to advise you the following providers are recommended for the 2010-2011 Hidalgo County Head Start Program school year.

Medical: Industrial & Family Medicine, Dr. Sarojini G. Bose M.D.

Dental: Linda T. Burke DDS. PA
Palmview Pediatric Dentistry
Weslaco pediatric Dentistry

Mental Health: Gonzalez Counseling Services, Amando Gonzalez, LPC
Modern View Couseling Services, Norma Villanueva, LCSW

Should you have any questions, please do not hesitate to contact me. Thank you for your prompt attention to this matter.

Hidalgo County Head Start Program

RFQ 2010-032-09-08

Name of Provider	Professional Qualifications	Experience of Project Manager	Experience/ Availability of Project Manager	Understanding of Project	Familiarity with Applicable Rules and Regulation	Total
Step N Stride Rehab	20	25	20	25	10	100
Beyond Expectatons Speech Therapy	20	25	20	25	10	100
Kidding Around Therapy INC.	20	25	20	25	10	100
Total Care Rehab Center	20	25	20	25	10	100
Children's Speech & Language Center	20	25	20	25	10	100
Impact Therapeutic Services	20	25	20	25	10	100

*NA – Agencies that have not worked with Head Start before.

Hidalgo County Head Start Program
SPECIAL SERVICES
RFQ № 2010-032-09-08

Selection Criteria	Points	Score
1. Professional Qualifications of Team	20	_____
Comments/Rationale For Points: _____		
2. Experience of Project Manager	25	_____
Comments/Rationale For Points: _____		
3. Experience/Availability of Project Manager	20	_____
Comments/Rationale For Points: _____		
4. Understanding of Project	25	_____
Comments/Rationale For Points: _____		
5. Familiarity with Applicable Rules and Regulations	10	_____
Comments/Rationale For Points: _____		

Provider: _____

Evaluator(s): _____ Date: _____

Hidalgo County Head Start Program

Mental Health & Health Services Department

Mental Health RFQ 2010-031-09-08

Health RFQ 2010-030-09-08

Name of Provider MENTAL HEALTH	Professional Qualifications	Experience of Project Manager	Experience/ Availability of Project Manager	Understanding of Project	Familiarity with Applicable Rules and Regulation	Total
Modern View, Norma Villanueva	20	25	20	25	10	100
Gonzalez Counseling Services, Amando Gonzalez	20	25	20	25	10	100
HEALTH DEPT.						
Industrial & Family Medicine, Dr. Bose M.D	20	25	20	25	10	100
Linda T. Burke DDS. PA	20	25	20	25	10	100
Palmview Pediatric Dentistry	20	25	20	25	10	100
Weslaco Pediatric Dentistry	20	25	20	25	10	100

Hidalgo County Head Start Program
MEDICAL & DENTAL PROVIDERS
RFQ № 2010-030-09-08

Selection Criteria	Points	Score
1. Professional Qualifications of Team	20	_____
Comments/Rationale for Points: _____		
_____		
_____		
2. Experience of Project Manager	25	_____
Comments/Rationale For Points: _____		
_____		
_____		
3. Experience/Availability of Project Manager	20	_____
Comments/Rationale For Points: _____		
_____		
_____		
4. Understanding of Project	25	_____
Comments/Rationale For Points: _____		
_____		
_____		
5. Familiarity with Applicable Rules and Regulations	10	_____
Comments/Rationale For Points: _____		
_____		
_____		

Provider: _____

Evaluator(s): _____ Date: _____

Hidalgo County Head Start Program
MENTAL HEALTH PROVIDERS
RFQ № 2010-031-09-08

Selection Criteria	Points	Score
1. Professional Qualifications of Team	20	_____
Comments/Rationale For Points: _____		
_____		
_____		
2. Experience of Project Manager	25	_____
Comments/Rationale For Points: _____		
_____		
_____		
3. Experience/Availability of Project Manager	20	_____
Comments/Rationale For Points: _____		
_____		
_____		
4. Understanding of Project	25	_____
Comments/Rationale For Points: _____		
_____		
_____		
5. Familiarity with Applicable Rules and Regulations	10	_____
Comments/Rationale For Points: _____		
_____		
_____		

Provider: _____

Evaluator(s): _____ Date: _____

EVALUATION CRITERIA

The respondent's RFQ will be evaluated based on the criteria presented below. These criteria will be scored on the scales shown on the enclosed "RFQ Evaluation Form."

1. **STAFFING OF PROJECT TEAM (20)**
   The firms should provide information on their proposed professional team members i.e. applicable certifications/registrations and other pertinent information that demonstrates their qualifications to perform the contract. The professional team members shall have experience in performing similar contracts for counties or other clients as stated in the Request For Qualifications (RFQ). Similar experience gained through other clients should be substantiated by reference. A list of, and scope of, the various projects, for comparative purposes, shall be included in an appendix.

2. **EXPERIENCE OF PROJECT TEAM/ABILITY TO COMMIT RESOURCES (25)**
   The provider shall designate experienced therapy staff to completely and efficiently perform the work. The designated individuals may not be replaced during the project unless approved by the County. The proposal shall identify the project team composition, project leadership, reporting responsibilities and address how sub-providers, if any, will fit into the management structure. Résumés of the key technical staff members, limited to two (2) pages per person must be included in an appendix, as well as narrative descriptions of projects proposed as similar work experience. Also, in this section, outline the firm's contingency plans for servicing the project in the event that one or more key personnel are not available for any reason during the period of performance.

3. **METHODOLOGY** (20)
   The RFQ should provide a description of the firm's approach to the methodology and management to the scope of services for the project.

4. **UNDERSTANDING OF PROJECT/SIMILAR PROJECTS (25)**
   The proposal shall include the following:
   - demonstrate an understanding of the scope of services
   - address appropriate Federal/State/Local regulations and policies
   - identify information to be gathered or obtained

   The firms should provide as much background information as to its experience in providing similar services to State, City, County or any other governmental agencies. Reference information should be as current as possible, especially contact persons and telephone numbers.

5. **FAMILIARITY WITH APPLICABLE RULES AND REGULATIONS (10)**
   The RFQ should indicate through past experience of the proposed Team that they possess sufficient knowledge of governmental regulations, appropriate codes, guidelines, professional standards and policies (as required).

MEDICAL & DENTAL

CONTRACT FOR SERVICES
MEDICAL & DENTAL
2010-030-09-08

STATE OF TEXAS &
&
COUNTY OF HIDALGO &

THIS AGREEMENT (The "Agreement") is made effective the **1st** day of **September, 2010** by and between the HIDALGO COUNTY HEAD START PROGRAM, (hereinafter "The Program") a federally funded program under the auspices of HIDALGO COUNTY, TEXAS, a political subdivision of the State of Texas and _____(hereinafter "Provider") to serve at the pleasure of the Program. This Contract for Services may be extended for an additional year on terms as maybe mutually agreed to by the parties. This agreement terminates on the **31st** day of **August, 2011** or as provided herein**.**

WITNESSETH:

WHEREAS, Program requires certain services which Provider is licensed to provide, a description of each service is attached hereto as Exhibit "A" and incorporated herein for all purposes; and

WHEREAS, the Provider has agreed to provide the services enumerated in this Agreement for the Program; and

WHEREAS, the Program is the recipient of certain federal funds to be utilized for the provision of services to the participants of the Program; and

WHEREAS, Program participants' (students) are examined and treated by the Provider; and

WHEREAS, the Provider will examined and treat the program participants on the terms and conditions hereinafter set forth; and

NOW, THEREFORE, in consideration of the foregoing and the following Provider and Program agrees as follows:

A. 1. Provider represents that (s)he is licensed by the State of Texas and qualified to perform and execute services provided in this Agreement. If such license is suspended or revoked, this Contract shall automatically be terminated. Provider shall immediately notify the Program of such suspension or revocation.

2. The Provider shall prepare, maintain and submit all records which are designated, required or prescribed by the Program, federal grantor agency, or County of Hidalgo. In addition, the Provider shall permit the Program, the Department of Health and Human Services and the County of Hidalgo to audit, inspect records and reports, review services and /or evaluate the performance of the services provided hereunder at any reasonable time. The Provider shall provide access to all its records, books, reports and other pertinent data and information needed to accomplish review of its activities, services and expenditures billed to the Program.

3. In consideration for the above and foregoing, the Provider shall submit a monthly billing statement to the Program at:

Hidalgo County Head Start Program
P.O. Box 0117
Edinburg, Texas, 78540

Said statement must provide an itemized list of services rendered to the Program during the statement period. Upon receipt of said statement, the Program will process the requisition for payment in the usual customary manner utilized by the Program. The Provider shall be compensated based on the Program's fee schedule, a copy of which is attached as Exhibit "B" hereto.

4. The Provider must comply with all applicable Program and Hidalgo County

policies. Notwithstanding the foregoing sentence, the Provider represents and maintains that (s)he is an independent provider and is not an employee of the Program or Hidalgo County, Texas, or any agency thereof, and further represents and warrants that (s)he does not desire or request any fringe benefits provided to employees of the Program or Hidalgo County, Texas, and/or agency thereof, including, but not limited to benefits associated with Hidalgo County's civil service program. The Provider agrees to be responsible for any federal income tax, withholding or social security tax liability which might arise from payments received pursuant to this Agreement.

5. The Program and the Provider agree that either party may terminate this contract at any time for any reason or no reason at all upon thirty (30) days prior written notice to the other party. Proper Notice shall be submitted through certified letter to:

Teresa Flores, Executive Director
Hidalgo County Head Start Program
P.O. Box 0117
Edinburg, Texas 78540-0117

6. Provider agrees to be insured for professional liability, premises liability and auto liability insurance covering his/her employee's activities and services to the Program in coverage limits not less than the minimum amounts prescribed by the Texas Tort Claims Act, §101.001, et seq., Texas Civil Practices and Remedies Code. Provider shall furnish the Program a certificate issued by their insurer that such insurance is in full force and effect.

DRAFT

7. Except as otherwise herein provided, the Provider may not assign the obligations or rights under this Contract to any person without the prior written consent of the Program.

B. The Provider's employees, if any, who perform services for the Program under this Agreement shall be bound by the provisions of the terms of this Agreement. At the request of the Program, the Provider shall provide adequate evidence that such persons are the Provider's employees.

C. The Provider will indemnify and hold harmless and defend the Program and the County of Hidalgo from any and all claims, actions, liability, and expenses including all cost of judgments, settlements, court cost, and attorney's fees regardless of the outcome of such claim(s) or action(s) caused by, resulting from, or alleging negligent or intentional acts or omission(s) or any failure to perform any obligation(s) undertaken or any covenant(s) in this Agreement, and further, whether such act, omission, or failure to perform any obligation undertaken or any covenant in this Agreement was the Provider's or that of any person providing services hereunder through or for Provider. Upon written notice from the County and the Program, Provider will resist and defend at its own expenses, and by counsel reasonably satisfactory to the County and the Program, any such claim(s) or action(s).

D. This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performance in Hidalgo County, Texas.

E. In case 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

DRAFT

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

F. Contract Extension. Hidalgo County Head Start Program reserves the right to extend this agreement for ninety (90) days from the date of termination (August 31st, 2011) of the Contract period at the such rate and terms as negotiated by the parties. A thirty (30) day written notice of intention to extend this agreement will be provided prior to its expiration by Hidalgo County Head Start Program.

G. No amendment, modification or alteration of the terms hereof shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

H. Provider will not discriminate on the basis of race, color, sex, age, religion, national origin, or handicap in providing the services under this Agreement or in the selection of associates, employees, or independent providers.

I. Provider will perform its services at all times in compliance with federal, state, and local laws, rules and regulations, the policies, rule and regulations of the Program, and all currently accepted and approved methods and practices of the professional specialty relating to the services.

DRAFT

IN WITNESS WHEREOF, the parties have caused their names to be hereunto subscribed personally or by a duly authorized officer of agent of each party, effective the day and year first written above. EXECUTED as of the day and year first written above.

PROVIDER:

HIDALGO COUNTY
HEAD START PROGRAM

BY: _____
(Provider's Name)

_____
(Print Name)

_____
(Title)

BY: _____
Rene Ramirez, County Judge

BY: _____
Teresa Flores, Executive Director

BY: _____
Arturo Guajardo, Jr., County Clerk

APPROVED AS TO FORM:
OXFORD & GONZALEZ

By: _____
Ricardo Gonzalez

APPROVED AS TO FORM:
ATLAS & HALL, L.L.P.

By: _____
Stephen L. Crain

DRAFT

Exhibit A

Description of Services-Dental Health Services

The Provider agrees to provide any services deem necessary to evaluate any and all children referred to the Provider by Head Start.

The Provider agrees to continue such services until such time as the Executive Director of the Program (or designee) determine that there is no longer a need for the services.

Provider shall provide copies of records to Head Start for each child it affords services. Copies of these records shall be free of charge.

The services provided by the Provider will included the following and in addition all services will be provided on schedule with Head Start 1304:

1. The provider will perform a complete and comprehensive dental examination at his/her respective practice on the initial visit. The **"Dental Health Form"** will be shown with date of exam, signature of the Provider, referral and or treatment done.

2. A complete and comprehensive dental examination-on the initial examination the dentist will provide a complete examination as agreed to by Medicaid every twelve (12) months. The examination will consist of:
    1. A visual examination
    2. X-Rays
    3. Prophylaxis(cleaning)
    4. Nutritional Counseling
    5. Behavior management, if necessary.

3. Periodic Oral Examination-Every six (6) months the child must receive a periodic oral examination as agreed to by Medicaid guidelines.

4. Referral- If an abnormality arises and provider is not able to treat the condition, the parent will be notified as soon as abnormality is found or detected, and the parent will be given the opportunity to select a specialist (if such an option is available) in the appropriate dental field from a roster of recommended "List of Providers" by the dental provider.

5. Confidentiality of medical records will be maintained in accordance of examination.

6. Upon completion of **"HEAD START: Dental Health Form"** signature of provider and date will be written on the bottom page. RECOMMENDATIONS will be written accordingly. Remit a copy to the HIDALGO COUNTY HEAD START PROGRAM, a copy for the Provider's records and a copy to the parent. The same procedure will follow the same for a Texas Health Step exam.

7. The Provider's statement, which lists the child's name/center and the total cost of the exam provided is to be returned to HIDALGO COUNTY HEAD START PROGRAM for payment. Six (6) weeks may be required for processing payment.

8. The total number of children provided dental services will be submitted to the HIDALGO COUNTY HEAD START PROGRAM with the provider's name after every examination day.

HIDALGO COUNTY HEAD START PROGRAM will be responsible to:

1. Encourage the child's parent to be present during dental exam. If parent is unable to attend, a brief medical history will be obtained from parent.

2. Provide **"HEAD START: Dental Health Form"** with child's name and address.

MENTAL HEALTH

CONTRACT FOR SERVICES
MENTAL HEALTH
2010-031-09-08

STATE OF TEXAS &
&
COUNTY OF HIDALGO &

THIS AGREEMENT (The "Agreement") is made effective the **1st** day of **September, 2010** by and between the HIDALGO COUNTY HEAD START PROGRAM, (hereinafter "The Program") a federally funded program under the auspices of HIDALGO COUNTY, TEXAS, a political subdivision of the State of Texas and_____ (hereinafter "Provider") to serve at the pleasure of the Program. This Contract for Services may be extended for an additional year on terms as maybe mutually agreed to by the parties. This agreement terminates on the **31st** day of **August, 2011** or as provided herein.

WITNESSETH:

WHEREAS, Program requires certain services which Provider is licensed to provide, a description of each service is attached hereto as Exhibit "A" and incorporated herein for all purposes; and

WHEREAS, the Provider has agreed to provide the services enumerated in this Agreement for the Program; and

WHEREAS, the Program is the recipient of certain federal funds to be utilized for the provision of services to the participants of the Program; and

WHEREAS, Program participants' (students) are examined and treated by the Provider; and

WHEREAS, the Provider will examined and treat the program participants on the terms and conditions hereinafter set forth; and

DRAFT

NOW, THEREFORE, in consideration of the foregoing and the following Provider and Program agrees as follows:

A. 1. Provider represents that (s)he is licensed by the State of Texas and qualified to perform and execute services provided in this Agreement. If such license is suspended or revoked, this Contract shall automatically be terminated. Provider shall immediately notify the Program of such suspension or revocation.

2. The Provider shall prepare, maintain and submit all records which are designated, required or prescribed by the Program, federal grantor agency, or County of Hidalgo. In addition, the Provider shall permit the Program, the Department of Health and Human Services and the County of Hidalgo to audit, inspect records and reports, review services and /or evaluate the performance of the services provided hereunder at any reasonable time. The Provider shall provide access to all its records, books, reports and other pertinent data and information needed to accomplish review of its activities, services and expenditures billed to the Program.

3. In consideration for the above and foregoing, the Provider shall submit a monthly billing statement to the Program at:

Hidalgo County Head Start Program
P.O. Box 0117
Edinburg, Texas, 78540

Said statement must provide an itemized list of services rendered to the Program during the statement period. Upon receipt of said statement, the Program will process the requisition for payment in the usual customary manner utilized by the Program. The Provider shall be compensated based on the Program's fee schedule, a copy of which is attached as Exhibit "B" hereto.

4. The Provider must comply with all applicable Program and Hidalgo County

policies. Notwithstanding the foregoing sentence, the Provider represents and maintains that (s)he is an independent provider and is not an employee of the Program or Hidalgo County, Texas, or any agency thereof, and further represents and warrants that (s)he does not desire or request any fringe benefits provided to employees of the Program or Hidalgo County, Texas, and/or agency thereof, including, but not limited to benefits associated with Hidalgo County's civil service program. The Provider agrees to be responsible for any federal income tax, withholding or social security tax liability which might arise from payments received pursuant to this Agreement.

5. The Program and the Provider agree that either party may terminate this contract at any time for any reason or no reason at all upon thirty (30) days prior written notice to the other party. Proper Notice shall be submitted through certified letter to:

Teresa Flores, Executive Director
Hidalgo County Head Start Program
P.O. Box 0117
Edinburg, Texas 78540-0117

6. Provider agrees to be insured for professional liability, premises liability and auto liability insurance covering his/her employee's activities and services to the Program in coverage limits not less than the minimum amounts prescribed by the Texas Tort Claims Act, §101.001, et seq., Texas Civil Practices and Remedies Code. Provider shall furnish the Program a certificate issued by their insurer that such insurance is in full force and effect.

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7. Except as otherwise herein provided, the Provider may not assign the obligations or rights under this Contract to any person without the prior written consent of the Program.

B. The Provider's employees, if any, who perform services for the Program under this Agreement shall be bound by the provisions of the terms of this Agreement. At the request of the Program, the Provider shall provide adequate evidence that such persons are the Provider's employees.

C. The Provider will indemnify and hold harmless and defend the Program and the County of Hidalgo from any and all claims, actions, liability, and expenses including all cost of judgments, settlements, court cost, and attorney's fees regardless of the outcome of such claim(s) or action(s) caused by, resulting from, or alleging negligent or intentional acts or omission(s) or any failure to perform any obligation(s) undertaken or any covenant(s) in this Agreement, and further, whether such act, omission, or failure to perform any obligation undertaken or any covenant in this Agreement was the Provider's or that of any person providing services hereunder through or for Provider. Upon written notice from the County and the Program, Provider will resist and defend at its own expenses, and by counsel reasonably satisfactory to the County and the Program, any such claim(s) or action(s).

D. This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performance in Hidalgo County, Texas.

E. In case 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

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

F. Contract Extension. Hidalgo County Head Start Program reserves the right to extend this agreement for ninety (90) days from the date of termination (August 31st, 2011) of the Contract period at the such rate and terms as negotiated by the parties. A thirty (30) day written notice of intention to extend this agreement will be provided prior to its expiration by Hidalgo County Head Start Program.

G. No amendment, modification or alteration of the terms hereof shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

H. Provider will not discriminate on the basis of race, color, sex, age, religion, national origin, or handicap in providing the services under this Agreement or in the selection of associates, employees, or independent providers.

I. Provider will perform its services at all times in compliance with federal, state, and local laws, rules and regulations, the policies, rule and regulations of the Program, and all currently accepted and approved methods and practices of the professional specialty relating to the services.

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IN WITNESS WHEREOF, the parties have caused their names to be hereunto subscribed personally or by a duly authorized officer of agent of each party, effective the day and year first written above. EXECUTED as of the day and year first written above.

PROVIDER:

BY: _____
(Provider's Name)

_____
(Print Name)

_____
(Title)

HIDALGO COUNTY
HEAD START PROGRAM

BY: _____
Rene Ramirez, County Judge

BY: _____
Teresa Flores, Executive Director

BY: _____
Arturo Guajardo, Jr., County Clerk

APPROVED AS TO FORM:
OXFORD & GONZALEZ

By: _____
Ricardo Gonzalez

APPROVED AS TO FORM:
ATLAS & HALL, L.L.P.

By: _____
Stephen L. Crain

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Exhibit A
Description of Mental Health Services

The providers shall in a satisfactory and proper manner, as determined by the Program, perform the following Behavioral Health Services on an “as needed basis”.

(a) Assist in planning mental health program activities.
(b) Provide workshop/in-service training on mental health topics to Head Start staff/parents.
(c) Perform Classroom Observations
(d) **Submit a typed written report on findings and recommendations to the Head Start Program b two weeks from date of referral**.
(e) Provide Developmental Evaluation for children to determine nature of problem and /or rule out medical problems.
(f) Provide individual and/or family counseling to those Head Start Children and Families that are referred.
(g) Advise in the utilization of other community resources and referrals.
(h) A summary report of services rendered will be submitted to the Head Start Program on a monthly basis and at the completion of therapy.
(i) Indemnification- The contractor agreed to indemnify and hold harmless the Agency, it’s director, officers, servants, and agents for any and all reasonable expenses, claims lawsuits, and judgments which may incur as a result of any negligence on malpractice of the part of the contractor in rendering services contemplated by this agreement.

The program shall furnish the following services, data and information to Provider:

(a) A completed referral on children exhibiting typical and emotional behaviors **is referred by site staff or parental concern**.
(b) Information released on a referral form will remain specific to the need for referral and services being requested.
(c) The program will identify and provide names of children referred whose families have health insurance of Medicaid. The provider will submit insurance on Medicaid claims directly to insurance companies for services provided to minimize coast reimbursement due to Program.

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TERMS OF CONTRACT:

1. The provider shall commence services on, September 2010 and shall complete services no later than August, 2011. **Note**: All initial referrals to be assessed within five (5) days of the date of referral.
2. The contract may be terminated by either party by providing thirty (30) days written notice to the other party.
3. Confidentiality: Each party shall maintain the confidentiality of information of the records of "Covered Person" in accordance with applicable state and federal laws and regulations of other applicable laws, and shall not divulge or release such information, Except as permitted by law and in accordance with a validity executed written release or upon lawful order of a court or public authority which order right to business. In the event of any such disclosure, the disclosing party shall immediately notify the other party in writing, detailing the circumstances and extent of such disclosure.

IN-KIND SERVICE BY CONTRACTOR:

1. The provider will provide the Program with a monthly listing of the following in-king services provided when deemed appropriate:

    (a) Classroom Observation and recommendation
    (b) Developmental evaluation
    (c) Individual/ family counseling (per hour)
    (d) Workshop/In-Service/Training

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SPECIAL SERVICES

CONTRACT FOR SERVICES
DISABILITY
2010-032-09-08

STATE OF TEXAS &
&
COUNTY OF HIDALGO &

THIS AGREEMENT (The "Agreement") is made effective the **1st** day of **September, 2010** by and between the HIDALGO COUNTY HEAD START PROGRAM, (hereinafter "The Program") a federally funded program under the auspices of HIDALGO COUNTY, TEXAS, a political subdivision of the State of Texas and _____**,** (hereinafter "Provider") to serve at the pleasure of the Program. This Contract for Services may be extended for an additional year on terms mutually agreed to by the parties. This agreement will terminate on the 31st day of August, 2011 or as provided herein.

WITNESSETH:

WHEREAS, Program requires certain services which Provider is licensed to provide, a description of each service is attached hereto as Exhibit "A" and incorporated herein for all purposes; and

WHEREAS, the Provider has agreed to provide the services enumerated in this Agreement for the Program; and

WHEREAS, the Program is the recipient of certain federal funds to be utilized for the provision of services to the participants of the Program; and

WHEREAS, Program participants' (students) are examined and treated by the Provider; and

WHEREAS, the Provider will examined and treat the program participants on the terms and conditions hereinafter set forth; and

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WHEREAS, the provider will examined and treat the program participants on the terms and conditions hereinafter set forth; and

NOW, THEREFORE, in consideration of the foregoing and the following Provider and Program agrees as follows:

A. 1. Provider represents that (s)he is licensed by the State of Texas and qualified to perform and execute services provided in this Agreement. If such license is suspended or revoked, this Contract shall automatically be terminated. Provider shall immediately notify the Program of such suspension or revocation.

2. The Provider shall prepare, maintain and submit all records which are designated, required or prescribed by the Program, federal grantor agency, or County of Hidalgo. In addition, the Provider shall permit the Program, the Department of Health and Human Services and the County of Hidalgo to audit, inspect records and reports, review services and /or evaluate the performance of the services provided hereunder at any reasonable time. The Provider shall provide access to all its records, books, reports and other pertinent data and information needed to accomplish review of its activities, services and expenditures billed to the Program.

3. In consideration for the above and foregoing, the Provider shall submit a monthly billing statement to the Program at:

Hidalgo County Head Start Program
P.O. Box 0117
Edinburg, Texas, 78540

Said statement must provide an itemized list of services rendered to the Program during the statement period. Upon receipt of said statement, the Program will process the requisition for payment in the usual customary manner utilized by the

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Program. The Provider shall be compensated based on the Program's fee schedule, a copy of which is attached as Exhibit "B" hereto.

4. The Provider must comply with all applicable Program and Hidalgo County policies. Notwithstanding the foregoing sentence, the Provider represents and maintains that (s) he is an independent provider and is not an employee of the Program or Hidalgo County, Texas, or any agency thereof, and further represents and warrants that (s)he does not desire or request any fringe benefits provided to employees of the Program or Hidalgo County, Texas, and/or agency thereof, including, but not limited to benefits associated with Hidalgo County's civil service program. The Provider agrees to be responsible for any federal income tax, withholding or social security tax liability which might arise from payments received pursuant to this Agreement.

5. The Program and the Provider agree that either party may terminate this contract at any time for any reason or no reason at all upon thirty (30) days prior written notice to the other party. Proper Notice shall be submitted through certified letter to:

Teresa Flores, Executive Director
Hidalgo County Head Start Program
P.O. Box 0117
Edinburg, Texas 78540-0117

6. Provider agrees to be insured for professional liability, premises liability and auto liability insurance covering his/her employee's activities and services to the Program in coverage limits not less than the minimum amounts prescribed by the Texas Tort Claims Act, §101.001, et seq., Texas Civil Practices and

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Remedies Code. Provider shall furnish the Program a certificate issued by their insurer that such insurance is in full force and effect.

7. Except as otherwise herein provided, the Provider may not assign the obligations or rights under this Contract to any person without the prior written consent of the Program.

B. The Provider's employees, if any, who perform services for the Program under this Agreement shall be bound by the provisions of the terms of this Agreement. At the request of the Program, the Provider shall provide adequate evidence that such persons are the Provider's employees.

C. The Provider will indemnify and hold harmless and defend the Program and the County of Hidalgo from any and all claims, actions, liability, and expenses including all cost of judgments, settlements, court cost, and attorney's fees regardless of the outcome of such claim(s) or action(s) caused by, resulting from, or alleging negligent or intentional acts or omission(s) or any failure to perform any obligation(s) undertaken or any covenant(s) in this Agreement, and further, whether such act, omission, or failure to perform any obligation undertaken or any covenant in this Agreement was the Provider's or that of any person providing services hereunder through or for Provider. Upon written notice from the County and the Program, Provider will resist and defend at its own expenses, and by counsel reasonably satisfactory to the County and the Program, any such claim(s) or action(s).

D. This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performance in Hidalgo County, Texas.

E. In case any one or more of the provisions contained in this Agreement

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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.

F. Contract Extension. Hidalgo County Head Start Program reserves the right to extend this agreement for ninety (90) days from the date of termination (August 31st, 2011) of the Contract period at such rate and terms as negotiated by the parties. A thirty (30) day written notice of intention to extend this agreement will be provided prior to its expiration by Hidalgo County Head Start Program.

G. No amendment, modification or alteration of the terms hereof shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

H. Provider will not discriminate on the basis of race, color, sex, age, religion, national origin, or handicap in providing the services under this Agreement or in the selection of associates, employees, or independent providers.

I. Provider will perform its services at all times in compliance with federal, state, and local laws, rules and regulations, the policies, rule and regulations of the Program, and all currently accepted and approved methods and practices of the professional specialty relating to the services.

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IN WITNESS WHEREOF, the parties have caused their names to be hereunto subscribed personally or by a duly authorized officer of agent of each party, effective the day and year first written above. EXECUTED as of the day and year first written above.

PROVIDER:

BY: _____
(Provider's Name)

_____
(Print Name)

_____
(Title)

HIDALGO COUNTY HEAD START PROGRAM

BY: _____
Rene Ramirez, County Judge

BY: _____
Teresa Flores, Executive Director

BY: _____
Arturo Guajardo, Jr., County Clerk

APPROVED AS TO FORM:
OXFORD & GONZALEZ

By: _____
Ricardo Gonzalez

APPROVED AS TO FORM:
ATLAS & HALL, L.L.P.

By: _____
Stephen L. Crain

DRAFT

Exhibit A

Description of Services – Disability

The Provider agrees to provide any services deem necessary to evaluate any and all children referred to the Provider by the Hidalgo County Head Start Program.

The Provider agrees to continue such services until such time as the Executive Director of the Program (or designee) determine that there is no longer a need for the services.

The services provided by the Provider will included the following and in addition all services will be provided on schedule with Head Start 1308.4.

(a) Physical Therapy & Evaluation
(b) Occupational Therapy & Evaluation
(c) Speech Therapy & Evaluation
(d) Admission Review and Dismissal (ARD) to include Individual Education Plan (I.E.P.)
(e) Assessment Report
(f) Head Start Diagnostic Report
(g) Eligibility and Determination Form

The provider agrees to transport Head Start child (ren) to and from Head Start Centers, to its facilities where it will be providing services.

The Provider agrees that it will permit the Executive Director of the Program (or designee) to examine and evaluate its scope of services provided under this contract and to inspect its records relating to said services, as they apply to clients of the Program.

Provider will also furnish the Hidalgo County Head Start Program such information as may be requested relating to the services herein described.

Provider shall provide copies of children records to Head Start for each child it affords services. Copies of these records shall be free of charge.

The Hidalgo County Head Start Program agrees to ensure that:

(a) Consent/release; social case history; medical referral are completed;
(b) Transportation of clients to and from the Provider is arranged as deemed necessary;
(c) Will honor the Provider's scheduling procedure, making every effort to coordinate referring schedules with the existing patient load of the Provider.

The transition phase of any child into or out of the Head Start Program will be met by working closely together with Early Childhood Intervention (ECI) and Local Education Agency (LEA's) to assure the continuum of services that the child is receiving.

The Hidalgo County Head Start Program will identify and provide names of children referred whose families have health insurance or Medicaid. The Provider will submit insurance or Medicaid claims directly to insurance companies for services provided to minimize Program cost.

DRAFT

AI-22949 **16.E.**

Bid Awards & Contracts for Roof Repairs

CC REGULAR

Date:	09/21/2010
Submitted By:	Linda Galaviz, HEAD START
Submitted For:	Edmundo Garcia
Department:	HEAD START
Agenda Category:	Head Start

Information

CAPTION

Discussion/Approval of Bid Awards and Contracts to Lowest Bidder Meeting all Specifications for Roof Repairs as Follows:

1. Bid #2010-028-09-15: Roof Repairs - Palmview II Head Start Center
2. Bid #2010-028-09-15: Roof Repairs - San Juan II Head Start Center

BACKGROUND

Policy Council Approval: 09.15.10

Fiscal Impact

FISCAL YEAR: **ACCT. #:**

FUNDS AVAILABLE Y/N?: **MATCHING FUNDS Y/N?:**

BUDGETARY IMPACT:

No Fiscal Impact

Attachments

Link: backup

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
1	Budget & Management	Sylvia Solis	09/15/2010 10:04 AM	APRV
2	Roland Garcia	Rolando Garcia	09/17/2010 03:01 PM	APRV
3	Auditor's Office		09/17/2010 04:52 PM	NEW

Form Started By: Linda Galaviz — Started On: 09/13/2010 02:43 PM

Final Approval Date: 09/17/2010

Hidalgo County Head Start Program
Policy Council Agenda

DATE: September 15, 2010

SUBJECT: Discussion/Approval of Bid Awards and Contracts to Lowest Bidder Meeting All Specifications for Roof Repairs as Follows:

1. Bid #2010-028-09-15:Roof Repair- Palmview II
2. Bid #2010-029-09-15:Roof Repair- San Juan II

RATIONALE/NEED: Repairs of roofs on buildings are needed.

RECOMMENDATION: Administration recommends approval of bid awards to:

1. Artex Industrial Products, LLC
   Bid #2010-029-09-08: Roof Repair-Palmview II
2. Artex Industrial Products, LLC
   Bid #2010-028-09-08: Roof Repair-San Juan II

COST: $59,600.00

RELATED INFORMATION INCLUDED: Memo/Contract

* *

INITIATED BY: Ambrosio Tovar, Procurement Director

REVIEWED BY: Mr. Edmundo Garcia, Assistant Director

PROGRAM DIRECTOR'S APPROVAL: _____.

HIDALGO COUNTY HEAD START PROGRAM

P. O. BOX 0117 ♠ EDINBURG, TEXAS 78540♠ TEL: (956) 383-0706 ♠ FAX: (956) 380-2588

TO: Edmundo Garcia, Assistant Director

FROM: Ambrosio Tovar, Procurement Director

DATE: September 14, 2010

SUBJ: Recommendations of Bids "Roof Repairs"

On Wednesday, September 8, 2010 we had the bid openings for the following roof repairs projects; Bid #2010-028-09-08; Roof Repairs Palmview II and Bid #2010-029-09-08; Roof Repairs San Juan II. Five vendors pick the bid package for the two roof projects. They were Grande Valley Builders, Inc., Artex Industrial Products, LLC, P&E Construction, Vega Roofing, Inc. and Del Sol Homes. (See Attached).

The following is a summary for each project;

Bid #2010-028-09-08; Roof Repairs Palmview II

Bids Submitted:

Company	Bid Amount
1. Grande Valley Builders, Inc.	$20,800.00
2. Artex Industrial Products, LLC	$29,800.00

Bid #2010-028-09-08; Roof Repairs San Juan II

Company	Bid Amount
1. Grande Valley Builders, Inc.	$20,800.00
2. Artex Industrial Products, LLC	$29,800.00

RECOMMENDED: Artex Industrial Products, LLC

The recommended roofer is the best bid meeting all the requirements. The total cost for these two projects is $59,600.00.

Should you have any questions please call me. Thank you.

TABULATION OF BIDS

BID NO. 2010-028-09-08 PALMVIEW II ROOF REPAIRS
BID NO. 2010-029-09-08 SAN JUAN II ROOF REPAIRS

HIDALGO COUNTY HEAD START PROGRAM
BID OPENING DATE: Wednesday September 8, 2010 – 2:00 p.m.

COMPANY NAME AND BID AMOUNT

PROJECT NAME AND BID	***Artex Industrial Products***	***P & E Construction***	***Vega Roofing Co.***	***Grande Valley Builders***	***Del Sol Homes***
PALMVIEW II BID# 2010-028-09-08	***$ 29,800.00***	***NO BID***	***NO BID***	***$ 20,800.00***	***NO BID***
SAN JUAN II BID# 2010-029-09-08	***$29,800.00***	***NO BID***	***NO BID***	***$20,800.00***	***NO BID***

PALMVIEW II

THE STATE OF TEXAS §
§
COUNTY OF HIDALGO §

SERVICE CONTRACT
C-10-028-09-21

THIS CONTRACT is made and entered into this 21st day of September, 2010 by and between **HIDALGO COUNTY HEAD START PROGRAM,** (the "Program") a federally funded program under the auspices of HIDALGO COUNTY, TEXAS, a political subdivision of the State of Texas and Artex Industrial Products, LLC. (The "Company").

WHEREAS, Company responded to requests for sealed bids for **Roof Repairs** for PALMVIEW II Head Start Center (the "Services");

WHEREAS, Company submitted a bid to provide services in accordance with the specifications as bid, a copy of such specifications and bid being attached hereto as Exhibits "A" and "B" ("Vendor's Bid") respectively, and incorporated herein for all purposes (the "RFB Packet"); and

WHEREAS, in recognition of and in consideration of Company's agreement to perform the Services in accordance with the Specifications, the Commissioners Court of Hidalgo County awarded the bid to Company;

WHEREAS, Program requires that vendors comply with the prevailing wages determined in accordance with the Davis Bacon Act, CFR 29, U.S. Department of Labor.

NOW, THEREFORE, in mutual consideration of the foregoing and the further consideration of the following, the parties hereto agree as follows:

1. Program and Company hereby agrees that this Contract is entered into in order to provide the Services as described herein. This Contract does not extend to any third parties any duties or benefits conferred in any manner hereunder or otherwise.

2. Company hereby promises and agrees to render and provide, during the term of this Contract, and shall be obligated to render and provide the Services in accordance with the Specifications within Hidalgo

County Head Start Program following a request for Services by the Hidalgo County Head Start Program Field Operations Department Head or his designated agent. Company agrees in performing the Services that it will use proper professional standards, comply with any and all appropriate laws and regulations in providing the Services, and devote such time as is necessary to safely and efficiently provide the Services.

3. **Term**. This Contract shall be for a period beginning **September 21st, 2010 and** ending upon the completion of project and may be extended at the sole discretion of Program for an additional thirty (30) days, unless this Contract is terminated pursuant to the provisions herein, whichever occurs first.

4. As a condition of this Contract, Company shall hold and maintain throughout the term of this Contract all licenses and permits required, or which may be required by any authority during the term hereof to provide the Services.

5. All trucks or vehicles operated by the Company to perform the Services shall contain all equipment required by any authority to operate on streets and roads and all persons in the employ of Company who operate such trucks or vehicles shall have the required licenses, qualifications, skill and expertise to perform such Services and shall comply with all laws, rules and regulations prescribed by any agency or authority having jurisdiction with regard to the operation of such trucks or vehicles in providing the Services.

6. As consideration for rendering the Service provided for in this Contract, the Program agrees to pay Company the amounts specified in Exhibit "B" attached hereto payable against written invoice submitted by Company.

7. Company shall provide current insurance on all its vehicles and all persons connected with providing the Services under this Contract naming Program as an additional insured (with coverage in the amounts described in Exhibit "C" attached hereto and incorporated herein for all purposes), and shall furnish to Program certificates of such insurance coverage.

8. Company shall provide a sufficient number of trucks, vehicles, personnel and equipment available to safely and efficiently provide the Services.

9. Company shall indemnify and hold harmless Program, its elected officials, employees and agents from any and all claims, damages, losses, and expenses including attorney's fees for the defense of any action against Program arising out of, resulting from, or connected with the provision of the Service by Company under this Contract. Said indemnity shall cover any act or failure to act by the Company, its agents or employees.

10. **Entire Agreement.** This Agreement contains the entire contract between the parties hereto and each party acknowledges that neither has made (either directly or through any agent or representative) any representation or agreement in connection with this Agreement not specifically set forth herein. This Agreement may be modified or amended only by agreement in writing executed by Program, and not otherwise.

11. **Non-Assignment.** This Contract shall not be assignable in whole or in part by either party without prior written consent of the other party, which consent shall not be unreasonably withheld.

12. **No Waiver**. No waiver of a breach of any provision of this Agreement shall be construed to be a waiver of any breach of any other provision. No delay in acting with regard to any breach of any provision of this Agreement shall be construed to be a waiver of such breach.

13. **Independent Contractor.** It is expressly agreed that this Contract and the performance by the parties hereunder does not create any agency relationship or master-servant relationship and Program has no supervision of the performance of the Services provided by Company, and that Company is an independent contractor under this Contract.

14. **Wages**. Company agrees to comply with the prevailing wages determined in accordance with the Davis Bacon Act, CFR 29, U.S. Department of Labor.

15. **Notice**. Except as may be otherwise specifically provided in this Agreement, all notices, demands, requests or communication required or permitted hereunder shall be in writing and shall either be (i) personally delivered against a written receipt, or (ii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth below, or at such other addresses as may

have been theretofore specified by written notice delivered in accordance herewith:

If to Program: Hidalgo County Head Start Program
Attn: Teresa Flores
1901 W. Hwy 107
McAllen, Texas 78504

If to Company: Artex Industrial Products, LLC
Attn: Ricardo Lopez
451 W. Nolana #8
Pharr, TX 78577

Each notice, demand, request or communication which shall be delivered or mailed in the manner described above shall be deemed sufficiently given for all purposes at such time as it is personally delivered to the addressee or, if mailed, at such time as it is deposited in the United States mail.

16. In case 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.

17. **Amendments.** This Contract shall constitute the entire understanding of the parties with respect to the subject matter and supersedes any prior understandings or written or oral agreement between the parties respecting the subject matter within. Further, no amendment, modification or alteration of terms shall be binding unless the same is in writing, and duly executed by the parties.

18. **Successors.** This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Contract.

19. **Texas Law To Apply.** The provisions of this Contract will be construed under and in accordance with the provisions of the laws of the State of Texas, and all obligations of the parties created hereunder and performable in Hidalgo County, Texas.

20. **Termination**. Any contract award to a successful bidder will be in effect until

(a) the contract expires, (b) delivery and acceptance of products, and/or performance of services ordered, or (c) terminated without cause by Program with thirty day's written notice prior to cancellation.

21. **Commitment of Current Revenues.** In the event that, during any term hereof, the governing body of any party does not appropriate sufficient funds to meet the obligations of such party under this Contract, then any party may terminate this Contract upon sixty (60) days written notice to the other party. Each of the parties hereto agrees, however, to use its best 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 each party hereto pursuant to the provisions of Tex. Loc. Govt. Code Ann. § 271.903.

22. **Warranty.** Company warrants that its work is Free of defect for a period of one year from the date of completion of the work performed under this contract

WITNESS our hands in duplicate originals this 21st day of September, 2010

APPROVED BY COMMISSIONERS COURT ON: September 21st, 2010

Company:

By:_____
Artex Industrial Products LLC

By:_____
Ricardo Lopez

By:_____
Manager

By:_____
Rene Ramirez, County Judge

By: _____
Teresa Flores, Executive Director

By:_____
Arturo Guajardo, Jr., County Clerk

APPROVED AS TO FROM:
OXFORD & GONZALEZ

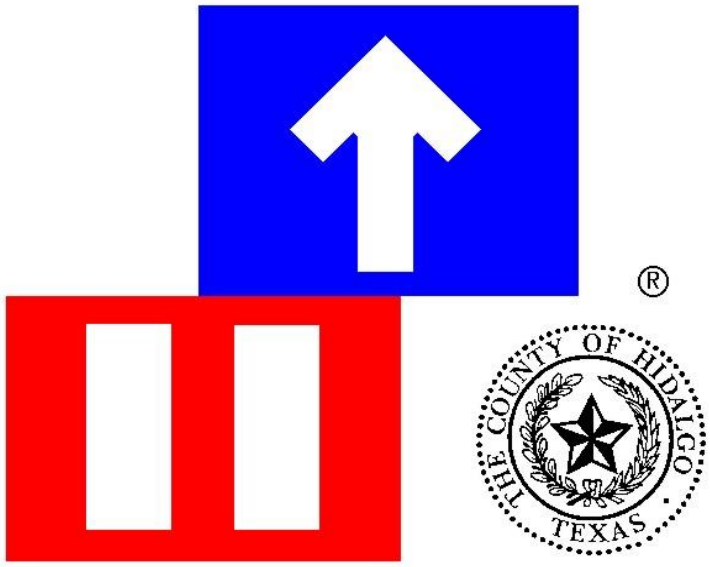
By: _____
Ricardo Gonzalez

APPROVED AS TO FROM
ATLAS & HALL, L.L.P.

By: _____
Stephen L. Crain

EXHIBIT “A”

RFB PACKET



Hidalgo County Head Start Program

Bid No: 2010-028-09-08	Procurement Director: Ambrosio Tovar	Tel. No: (956) 380-4149

HIDALGO COUNTY HEAD START PROGRAM

REQUEST FOR BIDS

ROOF REPAIRS PALMVIEW II

BID #2010-028-09-08

McAllen, Texas

August 24, 2010

Contact Person:

Ambrosio Tovar, Procurement Director
Hidalgo County Head Start Program
1901 W. State Hwy 107
McAllen, TX 78504
956-380-4149

REQUEST FOR BID (RFB) CHECKLIST

HIDALGO COUNTY HEAD START PROGRAM
"ROOF REPAIRS PALMVIEW II" BID #2010-028-09-08
for Hidalgo County Head Start Program

1. Request for Bid Letter, consisting of 1 page.
2. Request for Bid, Legal Notice, consisting of 6 pages.
3. Specifications, Exhibit A, consisting of 3 pages.
4. Bid Page, Exhibit B, consisting of 1 page.
5. Insurance Requirements, Exhibit C, consisting of 3 pages.
6. Conflict of Interest Questionnaire, Exhibit D, consisting of 1 pages.
7. Proposer's Affidavit, Exhibit E, consisting of 1 page.
8. Bidder/Vendor Application, consisting of 1 page.
9. Historically Underutilized Business (HUB) Declaration, consisting of 1 page.
10. Certification Regarding Debarment, Suspension consisting of 1 page.
11. Bid Tabulation Sheet consisting of 1 page.
12. Draft Contract consisting of 6 pages.
13. W-9 Form (Request for Taxpayer ID) consisting of 1 pages.

The above mentioned items shall be found in the Request for Bid (RFB) packet that is attached herewith. Should you find that any of the items are not attached in its entirety please contact Procurement Department by calling (956) 380-4149, to advise of missing documentation, and Procurement will forward information either through facsimile or by U.S. Mail.

Thank you.

Ambrosio Tovar, Procurement Director August 24, 2010

August 24, 2010

Re: **HIDALGO COUNTY HEAD START PROGRAM**
REQUEST FOR BIDS (RFB)
"ROOF REPAIRS PALMVIEW II"
BID № 2010-028-09-08

Dear Respondents:

Enclosed please find a Request for Bid (RFB) packet for you review and consideration.

Hidalgo County Head Start Program welcomes and appreciates your participation in the bid process.

If any further assistance is required, please do not hesitate to call the Procurement Department 956-380-4149.

Sincerely,

Ambrosio Tovar
Procurement Director
Hidalgo County Head Start Program

LEGAL NOTICE

Bid No: 2010-028-09-08

1. Sealed bids will be received for **"ROOF REPAIRS PALMVIEW II" FOR HIDALGO COUNTY HEAD START PROGRAM** in accordance with the specifications attached as Exhibit "A" hereto. Bids should address all specifications set forth. Bidders may suggest substitutions of features which they feel would be in the best interest of Hidalgo County ("County"). Strong rationale must be presented for any deviation from the specifications. Hidalgo County Head Start Program reserves the right to reject the deviation and its effect on the overall bid.

2. One (1) original and three (3) copies of bid are required with bidders name and return address clearly typed/printed on upper left hand corner and the proper notation clearly typed/printed on the lower left hand corner of the enveloped and/or package, **"RFB No. 2010-028-09-08 ROOF REPAIRS PALMVIEW II" FOR HIDALGO COUNTY HEAD START PROGRAM"** located 1901 West State Highway 107, McAllen, Texas, **on or before 2:00 p.m. Wednesday, September 8, 2010.**

   NO FACSIMILES OR LATE ARRIVALS WILL BE ACCEPTED. ANY RFB RECEIVED AFTER THAT TIME WILL NOT BE OPENED AND WILL BE RETURNED. OVERNIGHT MAIL MUST ALSO BE PROPERLY LABELED ON THE OUTSIDE OF EXPRESS ENVELOPE OR PACKAGE IN REFERENCE TO "RFB 2010-028-09-08 ROOF REPAIRS PALMVIEW II FOR HIDALGO COUNTY HEAD START PROGRAM".

   Hidalgo County Reserves the right to refuse and reject any/all bids and to waive any/all formalities or technicalities, or to accept the bid considered the best and most advantageous to Hidalgo County.

3. Hidalgo County Head Start Program reserves the right to: **A)** separate and accept, or eliminate any item(s) listed under this bid that it deems necessary to accommodate budgetary and/or operational requirements; **B)** reject any or all bids submitted and further reserves the right to design the evaluation criteria to be used in selecting the lowest and best bid for approval; and **C)** award the bid to one bidder or to multiple bidders if the County determines it is in its best interest to do so.

4. The Bidder shall not substitute items named in the bid without the express written consent of Hidalgo County Head Start Program. Failure of the delivered item to perform as specified or failure to meet the stated delivery schedule shall release Hidalgo County Head Start Program from all obligations to the contracting party with regard to the item(s) in question. In such event, Hidalgo County Head Start Program may elect to award the contract to the next-lowest responsible bidder, or to reject all bids and re-advertise..

5. For work to be performed at an Hidalgo County Head Start Program owned or operated location, each bidder shall, in its sole discretion, visit the job site before preparing the bid and thoroughly familiarize himself/herself with existing conditions. Bidder should take field dimensions and note all circumstances which affect the dollar amount of the bid.

6. Descriptive specifications are referenced in this document to indicate the general kind and quality of equipment desired by Hidalgo County Head Start Program. Due to various styles and models of equipment, bidders are required to include illustrations, specifications, explanation of warranties, and service data with their bid including catalogue numbers and any necessary references.

7. No bid may be withdrawn within thirty (30) days from the scheduled time to open bids

8. Proposed prices are to remain firm for a minimum of thirty (30) days after bid opening.

9. Any interpretations, amendments, corrections or changes to this bid document must be in a written addendum and signed by the Hidalgo County Head Start Program Director or designee. Addenda will be mailed to all who are known to have received a copy of the Request for Bids. Bidders shall acknowledge receipt of all addenda as a part of their bid.

10. Hidalgo County Head Start Program reserves the right to accept or reject any or all bids.

11. Costs are to be net F.O.B., Hidalgo County Head Start Program Prepaid.

12. Hidalgo County Head Start Program is exempt from Federal Excise Tax, State Tax and Local Tax. Do not include tax in cost figure. If it is determined that tax was included in the cost figures it will not be included in the tabulation of any awards. Tax exemption certificates will be furnished upon request.

13. Funds for this procurement have been provided through the Hidalgo County Head Start Program budget for this fiscal year only. Hidalgo County Head Start on an annual basis has the right to reconsider a contract during the budget process for ensuing years if financial resources of County are insufficient to meet the liabilities of said contract. The award of a bid or contract hereunder will not be construed to create a debt of the Hidalgo County Head Start which is payable out beyond the current fiscal year.

14. Upon award and prior to execution of a contract. Sole Proprietorships are required to submit a copy of their social security card to the Hidalgo County Head Start Finance Department in order to establish an account with the Head Start Program. All awarded vendors must submit a complete W-9 and a copy of their Federal ID Number Certificate.

15. **DELIVERY INSTRUCTIONS:**

- No deliveries accepted after 4:00 P.M., Monday-Friday.

- At least seventy two (72) hours prior notice of delivery must be given to, Ambrosio Tovar, Procurement Director before delivery will be accepted.

- If you need additional information call the office listed below:

  Hidalgo County Head Start Program
  Ambrosio Tovar, Procurement Director
  (956) 380-4149

16. BILLING AND PAYMENT INSTRUCTIONS:

- Invoices must include:
  a) Name and address of successful bidder
  b) Name and address of receiving department or official
  c) Purchase Order Number (if any)
  d) Notation-**"HIDALGO COUNTY HEAD START PROGRAM ROOF REPAIR SERVICES PALMVIEW II"** Descriptive information as to the items or services delivered, including product code, item number, quantity, etc.

- Discount payments will be considered when offered.

- Contract person for Billing and Payment questions:

  Attn: Hidalgo County Head Start Program
  Elma Keller Finance Department
  1901 W. State Hwy 107
  McAllen, TX. 78504
  (956) 383-0706

17. Schedule of Events

Bid Opening, 2:00 P.M.	September 8, 2010
Project Award of Contract or Issuance of Purchase Order	_____
Project Commence Work or Deliver Products	_____

18. **BID OR PERFORMANCE BOND AND DEBARMENT CERTIFICATION; PAYMENT UNDER CONTRACT:**

. If the contract proposed is for the construction of public works or is for a contract for goods & services $100,000, all bidders shall furnish a good and sufficient bid bond in the amount of five percent of the total contract price. A bid bond must be executed with a surety company authorized to do business in Texas. All bidders are also required to furnish a certification or acknowledgment stating that the contractor or vendor is free from suspension or debarment pursuant to federal regulation 45 CFR Part 76.

. Together with the signing of a contract or issuance of a purchase order following the acceptance of a bid, and prior to commencement of the actual work, the bidder shall furnish a performance bond to the Hidalgo County Head Start Program for the full amount of the contract, if that contract exceeds $50,000.

. If the contract is for $50,000 or less, no money will be paid to the contractor until completion and acceptance of the work or the fulfillment of the purchase obligation to the Hidalgo County Head Start Program, and, if applicable, the receipt by Hidalgo County Head Start Program of satisfactory evidence that all subcontractors and material men have been paid.

. If a contract is for the construction, alteration or repair of public buildings or public works, the contractor *shall* provide a payment bond for a contract in excess of Twenty Five Thousand Dollars ($25,000.00), as required by Tex. Govt. Code Ch. 2253

. For requirements contracts, bond requirements are determined by applying the proposed unit price to the estimated quantities included in the specifications.

19. **Ethical Standards:**

. It shall be a breach of ethics to offer, give or agree to give any elected official, department head or employee, or former elected official, department head or employee, of the County, or for any elected official, department head or employee or former elected official, department head or employee of County, to solicit, demand, accept or agree to accept from another person, entity or organization, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore pending before any department or agency of the Hidalgo County Head Start Program.

. It shall be a breach of ethics for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor for any contract for the County, or any person associated therewith, as an inducement for the award of a subcontract or order.

. No public official shall have an interest in a contract awarded hereunder except in accordance with Tex. Loc. Govt. Code Chapter 171.

20. **Disclosure of Conflict of Interest**

. Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that any vendor, person, consultant or contractor considering doing business with Hidalgo County Head Start Program (the County) to disclose in the Conflict of Interest Questionnaire (the "CIQ") attached as Exhibit D, the vendor, person, consultant or contractor's affiliation or business relationship that might cause a conflict of interest with the Hidalgo County Head Start Program. By law, the CIQ must be filed with the Hidalgo County Clerk's Office no later than the seventh business day after the date the person becomes aware of

facts that require that statement to be filed. The disclosure requirement applies to a person or business that contracts or seeks to contract with Hidalgo County Head Start Program for the sale or purchase of property, goods, or service. Any purchase order or contract resulting from this process shall be considered null and void if the successful bidder fails to comply with Texas Local Government Code Chapter 176. Vendors, consultants, contractors and others who desire to conduct business with Hidalgo County Head Start Program are encouraged to refer to Texas Local Government Code Chapter 176 for the details of this law. An offense under Texas Local Government Code Chapter 176 is a Class C Misdemeanor.

Please Submit completed CIQ forms to the Hidalgo County Head Start Program office located at 1901 W. State Hwy 107 McAllen, TX 7804 – Head Start Program
COMPLETION AND SUBMISSION OF FORM CIQ IS THE SOLE RESPONSIBILITY OF THE PROSPECTIVE BIDDER.

21. If, during the life of any contract or bid awarded, the successful bidder's net prices generally available to other customer for items awarded herein are reduced below the contracted price, it is understood and agreed that the benefits of such reduction shall be extended to Hidalgo County Head Start Program.

22. Bids, and all goods and services provided hereunder, shall comply with all federal, state and local laws concerning this type(s) of goods and/or services.

23. Minimum Standards for Responsible Prospective Bidders: A prospective bidder must affirmatively demonstrate bidder's responsibility. A prospective bidder, by submitting a bid, represents to County that it meets the following requirements:

. Possess and submit a Certificate of Account Status indicating bidder is in "Good Standing" with the Texas Comptroller of Public Accounts if such bidder is incorporated in the State of Texas. If the bidder is not incorporated with the Texas, the bidder must submit the appropriate evidence of filing with the Texas Secretary of State stating that the business is authorized to transact business in Texas.
. Possess or is able to obtain adequate financial resources as required to perform under the bid;
. Be able to comply with the required or proposed delivery schedule;
. Have a satisfactory record of performance;
. Have a satisfactory record of integrity and ethics;
. Be otherwise qualified and eligible to receive an award.

24. Successful bidder will pay or cause to be paid, without cost or expenses to Hidalgo County Head Start Program all FICA, FUTA/SUTA and Federal Income Withholding Taxes of all employees, and all wages and benefits as required by Federal or State law. Successful bidder's officers, agents and/or employees will not be entitled to any benefits of an employee or elected official of County, including, but not limited to, benefits associated with County's civil service system.

25. Any contract award to a successful bidder will be in effect until (a) the contract expires, (b) delivery and acceptance of products and/or performance of services ordered, or (c) terminated by Hidalgo County Head Start Program with thirty day's written notice prior to cancellation.

26. County reserves the right to enforce performance of any contract awarded hereunder in any manner prescribed by law or deemed to be in the best interest of the Hidalgo County Head Start Program in the event of breach or default by successful bidder; Hidalgo County Head Start Program reserves the right to terminate any contract immediately in the event a successful bidder fails to:

(A) Meet schedules;
(B) Pay any required fees or taxes; or
(C) Otherwise perform in accordance with the specifications.

27. Successful bidder shall defend, indemnify and save harmless County and all its elected officials, officers, agents and employees from all suits, actions, or other claims of any character, name and description brought for or on account of any injuries or damages received or sustained by any person ,persons or property on account of any negligent act or fault of the successful bidder, or of any agent, employee, subcontractor or supplier of successful bidder in the execution of, or performance under, any contract which may result from bid award or which arises

from any event or casualty happening on or within County premises themselves or happening upon or in any halls, elevators, entrances, stairways or approaches of or to such County facilities. Successful bidder shall pay any judgment with costs which may be obtained against County growing out of such injury or damages, and shall, upon request, provide a defense to County by counsel reasonably acceptable to County. Successful bidder's indemnity hereunder shall include, but is not limited to, claims relating to patent, copyright or trademark infringement, and the like, arising out of the goods and services provided by successful bidder.

28. Successful bidder shall warrant that all items/services shall conform with the specifications and/or all warranties provided under the Uniform Commercial Code and be free from all defects in material, workmanship and the like. Items supplied under a contract pursuant to this Request for Bids shall be subject to County's approval. Items found to be defective or not meeting specifications shall be replaced by successful bidder within two business days at no expense to County. Items not picked up within one (1) week after notification shall be deemed a donation to County and may be used or disposed of at County's discretion and without waiver of any other rights of County as to the item's nonconformity.

29. Vendors hereby assigns to purchaser any and all claims for overcharges associated with this contract which arise under the antitrust laws of the United States, 15 USCA, Section 1 et. Seq., and which arise under the antitrust laws of the State of Texas, Bus. & Com. Code, section 15.01, et. Seq.

30. This document and any disputes arising hereunder shall be governed and construed according to the laws of the State of Texas, and will be performable exclusively in Hidalgo County Head Start Program, Texas.

31. The successful bidder shall not assign, sell, transfer or convey its rights under any awarded contract, in whole or in part, without the prior written consent of Hidalgo County Head Start Program.

Bid
for
HIDALGO COUNTY HEAD START PROGRAM
"ROOF REPAIRS - PALMVIEW II HEAD START"
August 24, 2010

To: Hidalgo County Head Start Program
Ambrosio Tovar, Procurement Director
1901 West State Hwy 107
McAllen, Texas 78504

In accordance with the requirements, and subject to all laws and regulations of the United States and state and local laws, the undersigned respondent proposes and commits to furnish all labor, equipment, material, software and services as set forth in the documents hereinbefore mentioned. The undersigned respondent further agrees, upon acceptance of its bid, to execute a contract and/or Purchase Order issued by Hidalgo County Head Start Program for performing and completing the work described in the requirements within the time stated and for the prices bided in the documents attached hereto and made a part hereof.

Respondent acknowledges receipt of all of the pages of the documents referenced in the Request for Sealed Bids Checklist presented in connection with this procurement. Respondent understands that Hidalgo County Head Start Program reserves the right to reject any or all BIDS and further reserves the right to design the evaluation criteria to be used in selecting the lowest and best bid.

Respondent agrees that this bid shall be good and may not be withdrawn for a period of ninety (90) calendar days after the scheduled closing time for accepting BID, as contained in the requirements.

Respectfully submitted,

Respondent:_____

Address:_____

_____

By:_____

Printed Name:_____

Title:_____

(*THIS PAGE MUST BE SUBMITTED WITH BID)*

HIDALGO COUNTY HEAD START PROGRAM
REQUEST FOR BIDS

"ROOF REPAIRS PALMVIEW II"

EXHIBIT "A"

SPECIFICATIONS

EXHIBIT "A"

HIDALGO COUNTY HEAD START PROGRAM

SPECIFICATIONS FOR ROOF REPAIR PALMVIEW II:

REQUEST FOR SEALED BIDS: The required contents and limitations for the preparation of the BID are described in this section. Failure to provide the requested information or adhere to any County limitations will result in disqualification of the submitted BID. A total of one (1) original and three (3) copies of the RFB shall be submitted to the address on the cover letter.

Project Overview:

It is the intention of the Hidalgo County Head Start Program to receive BIDS from interested individuals for the purposes of Repair for the centers referenced within.

Contents:

The required contents for the sealed bids are presented below in the order they should be incorporated into the submitted document.

SPECIFICATIONS – GENERAL: All replacement materials must be at minimum, equal to or better than the existing materials

I. Head Start will select roof shingle color **Scope of Services Roof Repairs:** Scope of Repairs include, but may not be limited to the following:

- Remove gutters in order to roof under the shingle roof properly
- A ½" layer of primed dens-deck board will be fastened over the roof
- Repairs to the shingle roof will be made where nails appear to be pushing up through the shingle
- A 50 mil layer of Duro-Last membrane will be fully adhere (glued) to the dens-deck board The Duro-Last material will be applied up the vertical area behind the gutters and underneath the first coarse of critical point
- Walk way pads will be applied around the A/C units
- The gutters will be re-installed.
- Small sections of downspout will be added in order to channel the water off of the roof
- Twenty year guarantee
- Remove debris from premises daily
- Must meet Davis Bacon Act requirements
- Building located at: 618 Breyfogle Rd., PALMVIEW, TX

BILLING SPECIFICATIONS:

All Invoices must be submitted to the Field Operations Department. The following information must be listed on the submitted invoice.

1) Center Location
2) Date
3) Description of service being performed
4) Purchase Order
5) Confirmation Signature from Field Operations Director

ACCESS TO CENTER:

Field Operations Director or designated representative of Hidalgo County Head Start Program Field Operations Director shall establish mutually agreeable schedule for performance of service, schedule of normal operating hours, points of access, and other information necessary to insure optimum convenience to all concerned.

LETTERS OF RECOMMENDATION:

Bidder must submit three letters of recommendation (example: schools, cafeterias, day cares, or other government entities) on services provided to any of the entities mentioned above. Original letters must be included in bid package, no copies will be accepted.

INSPECTION AND ACCEPTANCE:

The Hidalgo County Head Start Program Field Operations Director, or its designated representative for each department, is hereby designated to participate in the administration of this contract to insure contractor's compliance with its technical requirements, including inspection and acceptance of the services for the Hidalgo County Head Start Program the performance site.

TERM:

The initial term of these contracts will be from date awarded and upon completion. The Hidalgo County Head Start Program may terminate the contracts upon thirty (30) days advance written notice to contractors.

SUBCONTRACTING:

The vendor awarded the contract shall not engage the service of a subcontractor without prior written consent of Hidalgo County Head Start Program. When requesting consent from Hidalgo County Head Start Program for the retention of a subcontractor to perform services, hereunder, the successful bidders must present evidence that the proposed subcontractor possesses all necessary licenses and permits to perform the services described herein, and that the subcontractor and the successful vendor have obtained the required insurance coverage and policies as required by Hidalgo County Head Start Program. Payment to subcontractor must be made by vendors.

RESPONSIBILITY OF CONTRACTOR:

a) The vendor awarded the contract shall present evidence, that vendor possesses all necessary licenses and permits to perform the services described herein, and that the successful vendor has obtained the required insurance coverage and policies as required by Hidalgo County Head Start Program. Termination, suspension or revocation of required licenses or permits are grounds for immediate termination of any awarded contract.

b) Interested vendors must have the capabilities to address two or more jobs at one time.

NEW SITES:

The contracts will not automatically entitle vendors to any rights for any new buildings which may be acquired during the contract term.

AWARD:

Hidalgo County Head Start Program reserves the right to award the bid on a lump sum basis to one bidder or to multiple bidders if the County determines it is in its best interest to do so.

HIDALGO COUNTY HEAD START PROGRAM
REQUEST FOR SEALED BID

"ROOF REPAIRS –
PALMVIEW II HEAD START"

EXHIBIT B

BID PAGE

SELECTION PROCEDURES: The SEALED BID shall be submitted according to the schedule below. The respondent should be able to submit a Cost Bid.

SEALED BID SUBMITTED TO: An original and three (3) copies of Sealed Bid should be submitted to:

Ambrosio Tovar, Procurement Director
Hidalgo County Head Start Program
P. O. Box 0117
Edinburg, TX 78540-0117

BID must be submitted NO LATER THAN 2:00 p.m. on Wednesday, September 8, 2010.

COST:

PALMVIEW II CENTER

Roof Repair Cost: $_____

Bidder's signature indicates an understanding and intent to comply with all Federal state and local regulations associated with implementing a Head Start Program and that the listed bid price will be valid for a period of ninety (90) days.

BIDDER'S NAME:_____

ADDRESS:_____

CITY/STATE/ZIP CODE:_____

PHONE NUMBER:_____FAX NUMBER:_____

AUTHORIZED SIGNATURE:_____

TITLE:_____

DATE:_____

*******It is Mandatory that Bid Page be included in Bid Package*******

HIDALGO COUNTY HEAD START PROGRAM
REQUEST FOR BIDS

"ROOF REPAIRS PALMVIEW II"

EXHIBIT "C"

INSURANCE REQUIREMENTS

EXHIBIT "C"

Insurance Requirements
Professional Services

The proposer/applicant awarded the contract shall furnish proof of insurance, which will also include any subcontractor that is subcontracted by the Bidder in at least the following limits, to be in place prior to providing any services under this Contract and to continue at all times in force in effect during the term of this Contract:

1. Professional liability insurance policy with limits of at least One Million Dollars ($1,000,000.00) per occurrence, or limited to claims made, include at least a five (5) year extended reporting period.
2. A Five Hundred Thousand Dollars ($500,000.00) Comprehensive General Liability insurance policy providing additional coverage to all underlying liabilities of County.

3. Automobile liability insurance policy with limits of at least Three Hundred Thousand Dollars ($300,000.00) per person and Five hundred thousand ($500,000.00) per occurrence, consistent with potential exposure to County under the Texas Tort Claims Act. Coverage should include injury to or death of persons and property damage claims (with limits up to $500,000.00) arising out of the services provided to County hereunder;

4. Uninsured/Underinsured motorist coverage in an amount equal to the bodily injury limits set forth immediately above;

5. Workers compensation insurance in amounts established by Texas law, unless the respondent is specifically exempted from the Texas Workers' Compensation Act, Texas Labor Code Chapter 401, et. seq.

Hidalgo County Head Start Program will only accept certificates of insurance on an Acord form. Certificates of insurance naming Hidalgo County Head Start Program as an additional insured shall be submitted to County for approval prior to any services being performed by Contractor. Each policy of insurance required hereunder shall extend for a period equivalent to, or longer than the term of the Contract, and any insurer hereunder shall be required to give at least thirty (30) days written notice to the County prior to the cancellation of any such coverage on the termination date, or otherwise. This Contract shall be automatically suspended upon the cancellation, or other termination, of any required policy of insurance hereunder, and such suspension shall continue until evidence adequate replacement coverage is provided to County. If replacement coverage is not provided within thirty (30) days following suspension of the Contract, this Contract shall automatically terminate.

INSURANCE REQUIREMENT ACKNOWLEDGEMENT

I, _____, authorized representative for_____,
Company/Vendor
hereby acknowledge receipt of the County's required insurance limits. Said requirements:

- will be acquired within 10 days after notification from Purchasing Department of bid awarded by the Hidalgo County Commissioners' Court; (*An insurance certificate for the required insurance limits shall be provided to the Procurement Department in order to qualify for award of bid and to execute a contract between our Company and the County.)

- will acquire additional amount needed to meet the County's requirements within 10 working days after notification from Purchasing Department of bid awarded by the Hidalgo County Commissioners' Court: currently carry the following:

  Automobile Liability: $_____General Liability: $_____.

  (*An insurance certificate for the required insurance limits shall be provided to the Procurement Department in order to qualify for award of bid and to execute a contract between our Company and the County.) **OR**

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

_____ _____
Authorized Representative Date

NOTICE TO BIDDER: Failure to provide Certificates of Insurance at Purchasing Department will cause the bid award to be rescinded and then awarded to next lowest bidder. Certificates of Insurance will be monitored/verified on a quarterly basis to ensure coverage policy is in place. It is the Company's obligation to maintain the appropriate insurance coverage throughout

THIS FORM MUST ACCOMPANY BID PACKET

PROJECT REQURIEMENTS ACKNOWLEDGMENT

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

1) Licenses:_____
2) Bonds:_____
3) Certificates:_____

   _____
4) Permits:_____
5) Other:_____

Necessary to carry out the required project. Furthermore, I am providing copies of the required documentation so that, if my company is awarded this bid, I may be eligible to enter into a contract with Hidalgo County Head Start Program and proceed to complete the project in a timely manner.

*Any licenses, bonds, certificates, permits, etc. which are required must be presented as part of the bid packet in order to expedite the bid evaluation process, failure to provide said documentation will result in the disqualification of your bid.

_____ _____

Authorized Signature Date

_____

Company

_____

Address

_____

City, State, Zip

HIDALGO COUNTY HEAD START PROGRAM
REQUEST FOR BIDS

"ROOF REPAIRS PALMVIEW II"

EXHIBIT "D"

CONFLICT OF INTEREST

EXHIBIT D

CONFLICT OF INTEREST QUESTIONNAIRE — FORM CIQ

For vendor or other person doing business with local governmental entity

This questionnaire is being filed in accordance with chapter 176 of the Local Government Code by a person doing business with the governmental entity.

By law this questionnaire must be filed with the records administrator of the local government not later than the 7th business day after the date the person Becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.

A person commits an offense if the person violates Section 176.006 Local Government Code. An Offense under this section is a Class C misdemeanor.

OFFICE USE ONLY
Date Received

1 Name of person doing business with local governmental entity.

2 ☐ Check this box if you are filling an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

3 Name of local government officer with whom filer has employment or business relationship.

_____

Name of Officer

This section (item 3 including subparts A,B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001 (1-a), Local Government Code. Attach additonal pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income other than investment income from the filer of the questionnaire?

☐ Yes ☐ No

B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local government entity?

☐ Yes ☐ No

C. Is the filer of the questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

☐ Yes ☐ No

D. Describe each employment or business relationship with the local government officer named in this section.

4

_____ _____

Signature of person doing business with the governmental entity — Date

EXHIBIT D

DISCLOSURE OF CONFLICT OF INTEREST

Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that any vendor, person, consultant or contractor considering doing business with Hidalgo County ("the County") to disclose in the Conflict of Interest Questionnaire (the "CIQ") attached as Exhibit D, the vendor, person, consultant or contractor's affiliation or business relationship that might cause a conflict of interest with the Hidalgo County Head Start Program. By law, the CIQ must be filed with the Hidalgo County Clerk's Office no later than the seventh business day after the date the person becomes aware of facts that require that statement to be filed. The disclosure requirement applies to a person or business that contracts or seeks to contract with Hidalgo County for the sale or purchase of property, goods or service. Any purchase order or contract resulting from this process shall be considered null and void if the successful participant fails to comply with Texas Local Government Code Chapter 176. Vendors, consultants, contractor and others who desire to conduct business with Hidalgo County Head Start Program are encouraged to refer to Texas Local Government Code Chapter 176 for the details of this law. An offense under Texas Local Government Code Chapter 176 is a Class C. Misdemeanor.

Please Submit completed forms to the Hidalgo County Clerk's Office located at 100 North Closner, Edinburg, Texas 78539-Hidalgo County Courthouse.

COMPLETION AND SUBMISSION OF FORM CIQ IS THE SOLE RESPONSIBILITY OF THE RESPECTIVE PARTICIPANT.

EXHIBIT "E"
PROPOSER'S AFFIDAVIT

PROPOSER'S AFFIDAVIT OF NON-COLLUSION
NON-CONFILICT OF INTREST, AND ANTI-LOBBYING
FOR "ROOF REPAIRS SAN JUAN I"

STATE OF TEXAS
COUNTY OF HIDALGO

Affiant, _____, being first duly sworn, deposes that:

(1) Affiant does hereby state neither the Proposer nor any of the Proposer's officers, partners, owners, agents, representatives, employees, or parties in interest, has in any way colluded, conspired, agreed, directly or indirectly with any person, firm, corporation, or other proposer, or potential proposer, to provide any money or other valuable consideration for assistance in procuring or attempting to procure a contract or fix the prices in the attached proposed or the proposal of any other proposer, and further states that no such money or other reward will be hereinafter paid.

(2) Affiant further states they have neither recommended or suggested to Hidalgo County or nay of its officials or employees, any of the terms or provisions set forth in their Request fro Proposal and subsequent agreement, except at a meeting open to all interested proposers, of which proper notice was give.

(3) Affiant, further states their officers, employees, or agents have not, and will not attempt to lobby, directly or indirectly, the Hidalgo County Commissioner's Court between proposal submission date and award by the Hidalgo County Commissioner's Court.

(4) Affiant further States no officer, or stockholder of the Proposer is a member of the staff, or related to any employee of the Hidalgo County except as noted herein below:

Signature/ Title: _____

Subscribed and sworn to before me this _____day of _____, 2010.

Notary Public _____

My Commission expires: _____, 2010

HIDALGO COUNTY HEAD START PROGRAM
Bidder/Vendor Application

Complete in print or type. It is the vendor's responsibility to return this application to Hidalgo County Head Start Program Procurement Department.

Company Name **Telephone No. ( )**
Mailing Address **Fax No. ( )**
City, State, Zip **Tax I.D. No.**
Remit to Address **City, State, Zip**
Representative(s) Name(s) & Title(s)
Type of Organization (check one): _____ Individual _____ Partnership _____ Corporation _____ LLC _____ Other, Specify **Federal Identification No. or (if individual) SS No.**
State of Incorporation: _____ Other:
Type of Business (check one): _____ Manufacturer _____ Wholesaler _____ Retailer _____ Broker_____ Distributor _____ Service Organization _____ Other, Specify
Name & Title of Person(s) Authorized to Sign Bids, Proposals, and/or Contracts:
Small and/or Disadvantaged Business Information (check application criteria) **Small Business:** **Disadvantaged Business (At Least 51% Ownership)** · Less than 125,000 annual gross receipt · Black American · Native American · Less than 250,000 annual gross receipt · Hispanic American · Women · Less than 499,000 annual gross receipt · Asian Pacific American · Other · More than 500,000 annual gross receipt **Have you been certified as a HUB or an MBE/WBE source?: · Yes · No** **Indicate Certification No.(s): _____ or are Certificate(s) attached?: · Yes · No**
What type of product(s) is/are solicited by your company?: **Would you like to be provided with specifications for procurements of such products?: · Yes · No**

HISTORICALLY UNDERUTILIZED BUSINESS (HUB) DECLARATION

The primary objective of the Hidalgo County HUB Program is to ensure Historically Underutilized Businesses receive a fair and equal opportunity for participation in the Hidalgo County Head Start Program procurement process. This fact holds true for Services (Professional & Non-Professional), Commodities, and Construction contracts and any subcontracts thereto. The program strongly encourages Prime Contractors to provide subcontracting opportunities to Certified Hub Contractors/Vendors. Our goal for HUB contractor/vendor participation, as well as HUB subcontractor participation is 30%. To be considered as a "Certified HUB Contractor/Vendor" the contractor/vendor must have been certified by, and hold a current and valid certification with any of the three agencies listed below.

Have you been Certified as a HUB or an MBE/WBE source?: ·Yes · No

If yes, by whom?: · State General Services Commission · Other

Indicate Certification No(s).:_____ or Are Certificate(s) Attached?: · Yes · No

LIST OF CERTIFIED HUB SUBCONTRACTORS

(Attach additional pages if necessary)

What percentage of the Bid or RFQ is to be subcontracted with Certified HUB sources? _____% (List HUB Subcontractor information below).

HUB Subcontractor Name: _____ HUB Status:

Certifying Agency (Check all applicable): · State General Services Commission · other

Address: _____ City: _____ State: _____ Zip: _____Contact Person: _____ Title: _____ Phone No.: ( )_____Subcontract Amount: $_____ Description of Work to be Performed: _____.
HUB Subcontractor Name: _____. _____ HUB Status: _____.

Certifying Agency (Check all applicable): · State General Services Commission · Other

Address: _____ City: _____ State: _____ Zip: _____Contact Person: _____ Title: _____ Phone No.: ( )_____Subcontract Amount: $_____ Description of Work to be Performed:
HUB Subcontractor Name: _____ HUB Status:

Certifying Agency (Check all applicable): · State General Services Commission · Other
Address: _____ City: _____ State: _____ Zip:
Contact Person: _____ Title: _____ Phone No.: ( )_____Subcontract Amount: $_____ Description of Work to be Performed:

Certification For
Primary Covered Transactions

1. The _____ (Vendor Name) certifies to the best of its knowledge and belief, that it and its principals:

   a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

   b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

   c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

   d) Have not within a three-year period preceding this request for qualifications had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the _____ (Vendor Name) is unable to certify to any of the statements in this certification, such prospective vendor shall attach an explanation to this RFQ.

Signature:_____

Print Name:_____

Title:_____

Telephone No.:_____ Date: _____

HIDALGO COUNTY HEAD START PROGRAM
PROCUREMENT DEPARTMENT
BID TABULATION SHEET

DEPARTMENT NAME: **Hidalgo County Head Start Program**

BID OPENING DATE: **SEPTEMBER 8, 2010** | BID OPENING TIME: **2:00 P.M.**

DESCRIPTION OF BID: **"ROOF REPAIRS – PALMVIEW II HEAD START"**

BID NUMBER 2010-028-09-08

BID # RFB#	NAME OF COMPANY		CONTRACTOR'S PRICE	
#1				
#2				
#3				
#4				
#5				
#6				
#7				
#8				

THE STATE OF TEXAS §
§
COUNTY OF HIDALGO §

SERVICE CONTRACT
C-10-028-09-21

THIS CONTRACT is made and entered into this 21st day of September, 2010 by and between **HIDALGO COUNTY HEAD START PROGRAM,** (the "Program") a federally funded program under the auspices of HIDALGO COUNTY, TEXAS, a political subdivision of the State of Texas and _____(the "Company").

WHEREAS, Company responded to requests for sealed bids for **Roof Repairs** for PALMVIEW II Head Start Center (the "Services");

WHEREAS, Company submitted a bid to provide services in accordance with the specifications as bid, a copy of such specifications and bid being attached hereto as Exhibits "A" and "B" ("Vendor's Bid") respectively, and incorporated herein for all purposes (the "RFB Packet"); and

WHEREAS, in recognition of and in consideration of Company's agreement to perform the Services in accordance with the Specifications, the Commissioners Court of Hidalgo County awarded the bid to Company;

WHEREAS, Program requires that vendors comply with the prevailing wages determined in accordance with the Davis Bacon Act, CFR 29, U.S. Department of Labor.

NOW, THEREFORE, in mutual consideration of the foregoing and the further consideration of the following, the parties hereto agree as follows:

1. Program and Company hereby agrees that this Contract is entered into in order to provide the Services as described herein. This Contract does not extend to any third parties any duties or benefits conferred in any manner hereunder or otherwise.

2. Company hereby promises and agrees to render and provide, during the term of this Contract, and shall be obligated to render and provide the Services in accordance with the Specifications within Hidalgo County Head Start Program following a request for Services by the Hidalgo County Head Start Program Field Operations Department Head or his designated agent. Company agrees in performing the Services that it will use proper professional standards, comply with any and all appropriate laws and regulations in providing the Services, and devote such time as is necessary to safely and efficiently provide the Services.

3. **Term**. This Contract shall be for a period beginning _____ **and** ending upon the completion of project and may be extended at the sole discretion of Program for an additional thirty (30) days, unless this Contract is terminated pursuant to the provisions herein, whichever occurs first.

4. As a condition of this Contract, Company shall hold and maintain throughout the term of this Contract all licenses and permits required, or which may be required by any authority during the term hereof to provide the Services.

5. All trucks or vehicles operated by the Company to perform the Services shall contain all equipment required by any authority to operate on streets and roads and all persons in the employ of Company who operate such trucks or vehicles shall have the required licenses, qualifications, skill and expertise to perform such Services and shall comply with all laws, rules and regulations prescribed by any agency or

authority having jurisdiction with regard to the operation of such trucks or vehicles in providing the Services.

6. As consideration for rendering the Service provided for in this Contract, the Program agrees to pay Company the amounts specified in Exhibit "B" attached hereto payable against written invoice submitted by Company.

7. Company shall provide current insurance on all its vehicles and all persons connected with providing the Services under this Contract naming Program as an additional insured (with coverage in the amounts described in Exhibit "C" attached hereto and incorporated herein for all purposes), and shall furnish to Program certificates of such insurance coverage.

8. Company shall provide a sufficient number of trucks, vehicles, personnel and equipment available to safely and efficiently provide the Services.

9. Company shall indemnify and hold harmless Program, its elected officials, employees and agents from any and all claims, damages, losses, and expenses including attorney's fees for the defense of any action against Program arising out of, resulting from, or connected with the provision of the Service by Company under this Contract. Said indemnity shall cover any act or failure to act by the Company, its agents or employees.

10. **Entire Agreement.** This Agreement contains the entire contract between the parties hereto and each party acknowledges that neither has made (either directly or through any agent or representative) any representation or agreement in connection with this Agreement not specifically set forth herein. This Agreement may be modified or amended only by agreement in writing executed by Program, and not otherwise.

11. **Non-Assignment.** This Contract shall not be assignable in whole or in part by either party without prior written consent of the other party, which consent shall not be unreasonably withheld.

12. **No Waiver**. No waiver of a breach of any provision of this Agreement shall be construed to be a waiver of any breach of any other provision. No delay in acting with regard to any breach of any provision of this Agreement shall be construed to be a waiver of such breach.

13. **Independent Contractor.** It is expressly agreed that this Contract and the performance by the parties hereunder does not create any agency relationship or master-servant relationship and Program has no supervision of the performance of the Services provided by Company, and that Company is an independent contractor under this Contract.

14. **Wages**. Company agrees to comply with the prevailing wages determined in accordance with the Davis Bacon Act, CFR 29, U.S. Department of Labor.

15. **Notice**. Except as may be otherwise specifically provided in this Agreement, all notices, demands, requests or communication required or permitted hereunder shall be in writing and shall either be (i) personally delivered against a written receipt, or (ii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth below, or at such other addresses as may have been theretofore specified by written notice delivered in accordance herewith:

If to Program: Hidalgo County Head Start Program
Attn: Teresa Flores
1901 W. Hwy 107
McAllen, Texas 78504

If to Company: _____
_____
_____

Each notice, demand, request or communication which shall be delivered or mailed in the manner described above shall be deemed sufficiently given for all purposes at such time as it is personally delivered to the addressee or, if mailed, at such time as it is deposited in the United States mail.

16. In case 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.

17. **Amendments.** This Contract shall constitute the entire understanding of the parties with respect to the subject matter and supersedes any prior understandings or written or oral agreement between the parties respecting the subject matter within. Further, no amendment, modification or alteration of terms shall be binding unless the same is in writing, and duly executed by the parties.

18. **Successors.** This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Contract.

19. **TEXAS LAW TO APPLY.** The provisions of this Contract will be construed under and in accordance with the provisions of the laws of the State of Texas, and all obligations of the parties created hereunder and performable in Hidalgo County, Texas.

20. **Termination**. Any contract award to a successful bidder will be in effect until

(a) the contract expires, (b) delivery and acceptance of products, and/or performance of

services ordered, or (c) terminated without cause by Program with thirty day's written notice prior to cancellation.

21. **Commitment of Current Revenues.** In the event that, during any term hereof, the governing body of any party does not appropriate sufficient funds to meet the obligations of such party under this Contract, then any party may terminate this Contract upon sixty (60) days written notice to the other party. Each of the parties hereto agrees, however, to use its best 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 each party hereto pursuant to the provisions of Tex. Loc. Govt. Code Ann. § 271.903.

22. **Warranty.** Company warrants that its work is Free of defect for a period of one year from the date of completion of the work performed under this contract

WITNESS our hands in duplicate originals this _____, 2010

APPROVED BY COMMISSIONERS COURT ON: _____, 2010

Company:

By:_____
(Company Name)

By:_____
(Print Name)

By:_____
(Title)

By:_____
Rene Ramirez, County Judge

By:_____
Teresa Flores, Executive Director

By:_____
Arturo Guajardo, Jr., County Clerk

APPROVED AS TO FROM:
OXFORD & GONZALEZ

By: _____
Ricardo Gonzalez

APPROVED AS TO FROM
ATLAS & HALL, L.L.P.

By: _____
Stephen L. Crain

.

Form **W-9**
(Rev. January 2006)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Give form to the requester. Do not send to the IRS.

Print or type
See Specific Instructions on page 2.

Name (as shown on your income tax return)

Business name, if different from above

Check appropriate box: ☐ Individual/ Sole proprietor ☐ Corporation ☐ Partnership ☐ Other ▶ ..... ☐ Exempt from backup withholding

Address (number, street, and apt. or suite no.) | Requester's name and address (optional)

City, state, and ZIP code

List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. *If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.*

Social security number
___ ___ ___ – ___ ___ – ___ ___ ___ ___

or

Employer identification number
___ ___ – ___ ___ ___ ___ ___ ___ ___

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. person (including a U.S. resident alien).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See the instructions on page 4.)

Sign Here Signature of U.S. person ▶ Date ▶

Purpose of Form

A person who is required to file an information return with the IRS, must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

U.S. person. Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee.

Note. *If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.*

For federal tax purposes you are considered a person if you are:

- An individual who is a citizen or resident of the United States,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States, or
- Any estate (other than a foreign estate) or trust. See Regulations sections 301.7701-6(a) and 7(a) for additional information.

Foreign person. If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the recipient has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.

EXHIBIT “B”
BID PAGE

Bid
for
HIDALGO COUNTY HEAD START PROGRAM
"ROOF REPAIRS - PALMVIEW II HEAD START"
August 24, 2010

To: Hidalgo County Head Start Program
Ambrosio Tovar, Procurement Director
1901 West State Hwy 107
McAllen, Texas 78504

In accordance with the requirements, and subject to all laws and regulations of the United States and state and local laws, the undersigned respondent proposes and commits to furnish all labor, equipment, material, software and services as set forth in the documents hereinbefore mentioned. The undersigned respondent further agrees, upon acceptance of its bid, to execute a contract and/or Purchase Order issued by Hidalgo County Head Start Program for performing and completing the work described in the requirements within the time stated and for the prices bided in the documents attached hereto and made a part hereof.

Respondent acknowledges receipt of all of the pages of the documents referenced in the Request for Sealed Bids Checklist presented in connection with this procurement. Respondent understands that Hidalgo County Head Start Program reserves the right to reject any or all BIDS and further reserves the right to design the evaluation criteria to be used in selecting the lowest and best bid.

Respondent agrees that this bid shall be good and may not be withdrawn for a period of ninety (90) calendar days after the scheduled closing time for accepting BID, as contained in the requirements.

Respectfully submitted,

Respondent: Arter Industrial Products LLC

Address: 451 W. Nolana #8
Pharr Tx 78577

By: [signature]

Printed Name: Ricardo Lopez

Title: Manager

(THIS PAGE MUST BE SUBMITTED WITH BID)

SELECTION PROCEDURES: The SEALED BID shall be submitted according to the schedule below. The respondent should be able to submit a Cost Bid.

SEALED BID SUBMITTED TO: An original and three (3) copies of Sealed Bid should be submitted to:

Ambrosio Tovar, Procurement Director
Hidalgo County Head Start Program
P. O. Box 0117
Edinburg, TX 78540-0117

BID must be submitted NO LATER THAN 2:00 p.m. on Wednesday, September 8, 2010.

COST:

PALMVIEW II CENTER

Roof Repair Cost: $ 29,800.00

Bidder's signature indicates an understanding and intent to comply with all Federal state and local regulations associated with implementing a Head Start Program and that the listed bid price will be valid for a period of ninety (90) days.

BIDDER'S NAME: Artex Industrial Products LLC

ADDRESS: 451 W. Nolana #8

CITY/STATE/ZIP CODE: Pharr TX 78577

PHONE NUMBER: 956-781-8555 FAX NUMBER: 956-781-8865

AUTHORIZED SIGNATURE:

TITLE: Manager

DATE: 9-8-2010

*****It is Mandatory that Bid Page be included in Bid Package*****

EXHIBIT “C”
INSURANCE REQUIREMENTS

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 07/13/2010

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Myron F. Steves & Company
6800 Park Ten Blvd., Suite 160-S
San Antonio, TX 78213

CONTACT NAME:
PHONE A/C, No Ext):
FAX A/C, No Ext):
E-MAIL ADDRESS:
PRODUCER CUSTOMER ID#:

INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A:	Markel Essex Insurance Company	39020
INSURER B:		
INSURER C:		
INSURER D:		
INSURER E:		
INSURER F:		

INSURED
Artex Industrial Products, LLC.
451 West Nolana, Ste. 8
Pharr, TX 78577

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY ☑ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☑ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☑ POLICY ☐ PRO-JECT ☐ LOC	Y	Y	3DD8314	06/04/2010	06/04/2011	EACH OCCURRENCE	$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 100,000
							MED EXP (Any one person)	$ 5,000
							PERSONAL & ADV INJURY	$ 1,000,000
							GENERAL AGGREGATE	$ 2,000,000
							PRODUCTS - COMP/OP AGG	$ 1,000,000
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ☐ NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident)	$
							BODILY INJURY (Per person)	$
							BODILY INJURY (Per accident)	$
							PROPERTY DAMAGE (PER ACCIDENT)	$
								$
								$
	UMBRELLA LIAB ☐ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DEDUCTIBLE ☐ RETENTION						EACH OCCURRENCE	$
							AGGREGATE	$
								$
								$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N ☐ N/A (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						☐ WC STATU-TORY LIMITS ☐ OTH-ER	
							E.L. EACH ACCIDENT	$
							E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$
								$
								$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
Certificate Holder is listed as an Additional Insured with a Waiver of Subrogation but only with respects to the Named Insured's business operations.

CERTIFICATE HOLDER

CANCELLATION
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE Fred Steves

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 7/13/2010

PRODUCER (956)631-1911 FAX: (956)631-3911
Safeguard Insurance Agency
33[illegible] N. McColl Rd.
McAllen TX 78501

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
ARTEX INDUSTRIAL PRODUCTS LLC
451 W NOLANA STE 8
PHARR TX 78577

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: Progressive County Mutual	29203
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 LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
		GENERAL LIABILITY				EACH OCCURRENCE	$
		COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	$
		[ ] CLAIMS MADE [ ] OCCUR				MED EXP (Any one person)	$
						PERSONAL & ADV INJURY	$
						GENERAL AGGREGATE	$
		GEN'L AGGREGATE LIMIT APPLIES PER:				PRODUCTS - COMP/OP AGG	$
		[ ] POLICY [ ] PRO-JECT [ ] LOC					
		AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (Ea accident)	$ 500,000
		[ ] ANY AUTO					
A		[ ] ALL OWNED AUTOS	04738138-0	6/4/2010	6/4/2011	BODILY INJURY (Per person)	$
		[X] SCHEDULED AUTOS					
		[X] HIRED AUTOS				BODILY INJURY (Per accident)	$
		[ ] NON-OWNED AUTOS					
						PROPERTY DAMAGE (Per accident)	$
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	$
		[ ] ANY AUTO				OTHER THAN AUTO ONLY: EA ACC	$
						AGG	$
		EXCESS / UMBRELLA LIABILITY				EACH OCCURRENCE	$
		[ ] OCCUR [ ] CLAIMS MADE				AGGREGATE	$
							$
		[ ] DEDUCTIBLE					$
		[ ] RETENTION $					$
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATU-TORY LIMITS / OTH-ER	
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N [ ]				E.L. EACH ACCIDENT	$
		If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE	$
						E.L. DISEASE - POLICY LIMIT	$
		OTHER					

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

CERTIFICATE HOLDER

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 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
Denora Garza/DGARZA
Denora V. Garza

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 7/13/2010

PRODUCER (956) 631-1911 FAX: (956) 631-3911
Safeguard Insurance Agency
33[illegible] N. McColl Rd.
McAllen TX 78501

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INSURED
Artex Industrial Products, LLC
451 West Nolana, Ste 8
Pharr TX 78577

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: Texas Mutual Fund	
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 LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
		GENERAL LIABILITY				EACH OCCURRENCE	$
		COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	$
		CLAIMS MADE ☐ OCCUR ☐				MED EXP (Any one person)	$
						PERSONAL & ADV INJURY	$
						GENERAL AGGREGATE	$
		GEN'L AGGREGATE LIMIT APPLIES PER:				PRODUCTS - COMP/OP AGG	$
		POLICY ☐ PRO-JECT ☐ LOC ☐					
		AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (Ea accident)	$
		ANY AUTO				BODILY INJURY (Per person)	$
		ALL OWNED AUTOS					
		SCHEDULED AUTOS				BODILY INJURY (Per accident)	$
		HIRED AUTOS					
		NON-OWNED AUTOS				PROPERTY DAMAGE (Per accident)	$
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	$
		ANY AUTO				OTHER THAN AUTO ONLY: EA ACC	$
						AGG	$
		EXCESS / UMBRELLA LIABILITY				EACH OCCURRENCE	$
		OCCUR ☐ CLAIMS MADE ☐				AGGREGATE	$
							$
		DEDUCTIBLE					$
		RETENTION $					$
A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				X WC STATU-TORY LIMITS ☐ OTH-ER	
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N ☐	SBP-0001212952	6/9/2010	6/9/2011	E.L. EACH ACCIDENT	$ 1,000,000
		If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
						E.L. DISEASE - POLICY LIMIT	$ 1,000,000
		OTHER					

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

Certificate Holder is listed as Waiver of Subrogation but only in respects to the Named Insured's business operations.

CERTIFICATE HOLDER

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 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
Denora Garza/DGARZA Denora V. Garza

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DEBARMENT FORM

Certification For
Primary Covered Transactions

1. The Arter Industrial Products (Vendor Name) certifies to the best of its knowledge and belief, that it and its principals:

   a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

   b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

   c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

   d) Have not within a three-year period preceding this request for qualifications had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the Arter Industrial Products (Vendor Name) is unable to certify to any of the statements in this certification, such prospective vendor shall attach an explanation to this RFQ.

Signature: _____

Print Name: RICARDO LOPEZ

Title: MANAGER

Telephone No.: 956-781-8555 Date: 9/8/16

CONFLICT OF INTEREST FORM

EXHIBIT D

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor or other person doing business with local governmental entity

This questionnaire is being filed in accordance with chapter 176 of the Local Government Code by a person doing business with the governmental entity.

By law this questionnaire must be filed with the records administrator of the local government not later than the 7th business day after the date the person Becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.

A person commits an offense if the person violates Section 176.006 Local Government Code. An Offense under this section is a Class C misdemeanor.

OFFICE USE ONLY
Date Received

1 Name of person doing business with local governmental entity. Rhardo Lopez

2 ☐ Check this box if you are filling an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

3 Name of local government officer with whom filer has employment or business relationship.

Name of Officer

This section (item 3 including subparts A,B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001 (1-a), Local Government Code. Attach additonal pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income other than investment income from the filer of the questionnaire?

☐ Yes ☒ No

B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local government entity?

☐ Yes ☒ No

C. Is the filer of the questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

☐ Yes ☒ No

D. Describe each employment or business relationship with the local government officer named in this section.

4

Signature of person doing business with the governmental entity

9-8-2010
Date

BIDDER/VENDOR APPLICATION

HIDALGO COUNTY HEAD START PROGRAM
Bidder/Vendor Application

Complete in print or type. It is the vendor's responsibility to return this application to Hidalgo County Head Start Program Procurement Department.

Company Name Arter Industrial Products — **Telephone No. ( )** 956-781-8555

Mailing Address 451 W Polaris #8 — **Fax No. ( )** 956-781-8865

City, State, Zip Pharr TX 78577 — **Tax I.D. No.** 27-1827750

Remit to Address — **City, State, Zip**

Representative(s) Name(s) & Title(s)

Type of Organization (check one): _____ Individual _____ Partnership _____ Corporation
__X__ LLC _____ Other, Specify
Federal Identification No. or (if individual) SS No.

State of Incorporation: Texas **Other:**

Type of Business (check one): _____ Manufacturer _____ Wholesaler _____ Retailer _____
Broker_____ Distributor _____ Service Organization __X__ Other, Specify Construction

Name & Title of Person(s) Authorized to Sign Bids, Proposals, and/or Contracts:
Ricardo Lopez

Small and/or Disadvantaged Business Information (check application criteria)

Small Business:
- Less than 125,000 annual gross receipt
- Less than 250,000 annual gross receipt
- Less than 499,000 annual gross receipt
- More than 500,000 annual gross receipt

Disadvantaged Business (At Least 51% Ownership)
- Black American
- Hispanic American
- Asian Pacific American
- Native American
- Women
- Other

Have you been certified as a HUB or an MBE/WBE source?: · Yes · (No)
Indicate Certification No.(s): _____ **or are Certificate(s) attached?:** · Yes · (No)

What type of product(s) is/are solicited by your company?: Construction
Would you like to be provided with specifications for procurements of such products?: (Yes) · No

Form **W-9**
(Rev. November 2005)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Give form to the requester. Do not send to the IRS.

Print or type
See Specific Instructions on page 2.

Name (as shown on your income tax return)
Artex Industrial Products LLC.

Business name, if different from above

Check appropriate box: ☐ Individual/ Sole proprietor ☐ Corporation ☐ Partnership ☒ Other ▶ L.L.C. ☐ Exempt from backup withholding

Address (number, street, and apt. or suite no.)
451 W. Nolana #8

Requester's name and address (optional)

City, state, and ZIP code
Pharr TX 78577

List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number
			–			–		

or

Employer identification number
2	7	–	1	8	2	7	7	5	0

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. person (including a U.S. resident alien).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See the instructions on page 4.)

Sign Here — Signature of U.S. person ▶ [signature] Date ▶ 4-28-10

Purpose of Form

A person who is required to file an information return with the IRS, must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

U.S. person. Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee.

In 3 above, if applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

For federal tax purposes, you are considered a person if you are:

- An individual who is a citizen or resident of the United States,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States, or
- Any estate (other than a foreign estate) or trust. See Regulations sections 301.7701-6(a) and 7(a) for additional information.

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

SAN JUAN II

THE STATE OF TEXAS §
§
COUNTY OF HIDALGO §

SERVICE CONTRACT
C-10-029-09-21

THIS CONTRACT is made and entered into this 21st day of September, 2010 by and between **HIDALGO COUNTY HEAD START PROGRAM,** (the "Program") a federally funded program under the auspices of HIDALGO COUNTY, TEXAS, a political subdivision of the State of Texas and Artex Industrial Products, LLC. (the "Company").

WHEREAS, Company responded to requests for sealed bids for **Roof Repairs** for SAN JUAN II Head Start Center (the "Services");

WHEREAS, Company submitted a bid to provide services in accordance with the specifications as bid, a copy of such specifications and bid being attached hereto as Exhibits "A" and "B" ("Vendor's Bid") respectively, and incorporated herein for all purposes (the "RFB Packet"); and

WHEREAS, in recognition of and in consideration of Company's agreement to perform the Services in accordance with the Specifications, the Commissioners Court of Hidalgo County awarded the bid to Company;

WHEREAS, Program requires that vendors comply with the prevailing wages determined in accordance with the Davis Bacon Act, CFR 29, U.S. Department of Labor.

NOW, THEREFORE, in mutual consideration of the foregoing and the further consideration of the following, the parties hereto agree as follows:

1. Program and Company hereby agrees that this Contract is entered into in order to provide the Services as described herein. This Contract does not extend to any third parties any duties or benefits conferred in any manner hereunder or otherwise.

2. Company hereby promises and agrees to render and provide, during the term of this Contract, and shall be obligated to render and provide the Services in accordance with the Specifications within Hidalgo

County Head Start Program following a request for Services by the Hidalgo County Head Start Program Field Operations Department Head or his designated agent. Company agrees in performing the Services that it will use proper professional standards, comply with any and all appropriate laws and regulations in providing the Services, and devote such time as is necessary to safely and efficiently provide the Services.

3. **Term**. This Contract shall be for a period beginning **September 21st, 2010 and** ending upon the completion of project and may be extended at the sole discretion of Program for an additional thirty (30) days, unless this Contract is terminated pursuant to the provisions herein, whichever occurs first.

4. As a condition of this Contract, Company shall hold and maintain throughout the term of this Contract all licenses and permits required, or which may be required by any authority during the term hereof to provide the Services.

5. All trucks or vehicles operated by the Company to perform the Services shall contain all equipment required by any authority to operate on streets and roads and all persons in the employ of Company who operate such trucks or vehicles shall have the required licenses, qualifications, skill and expertise to perform such Services and shall comply with all laws, rules and regulations prescribed by any agency or authority having jurisdiction with regard to the operation of such trucks or vehicles in providing the Services.

6. As consideration for rendering the Service provided for in this Contract, the Program agrees to pay Company the amounts specified in Exhibit "B" attached hereto payable against written invoice submitted by Company.

7. Company shall provide current insurance on all its vehicles and all persons connected with providing the Services under this Contract naming Program as an additional insured (with coverage in the amounts described in Exhibit "C" attached hereto and incorporated herein for all purposes), and shall furnish to Program certificates of such insurance coverage.

8. Company shall provide a sufficient number of trucks, vehicles, personnel and equipment available to safely and efficiently provide the Services.

9. Company shall indemnify and hold harmless Program, its elected officials, employees and agents from any and all claims, damages, losses, and expenses including attorney's fees for the defense of any action against Program arising out of, resulting from, or connected with the provision of the Service by Company under this Contract. Said indemnity shall cover any act or failure to act by the Company, its agents or employees.

10. **Entire Agreement.** This Agreement contains the entire contract between the parties hereto and each party acknowledges that neither has made (either directly or through any agent or representative) any representation or agreement in connection with this Agreement not specifically set forth herein. This Agreement may be modified or amended only by agreement in writing executed by Program, and not otherwise.

11. **Non-Assignment.** This Contract shall not be assignable in whole or in part by either party without prior written consent of the other party, which consent shall not be unreasonably withheld.

12. **No Waiver**. No waiver of a breach of any provision of this Agreement shall be construed to be a waiver of any breach of any other provision. No delay in acting with regard to any breach of any provision of this Agreement shall be construed to be a waiver of such breach.

13. **Independent Contractor.** It is expressly agreed that this Contract and the performance by the parties hereunder does not create any agency relationship or master-servant relationship and Program has no supervision of the performance of the Services provided by Company, and that Company is an independent contractor under this Contract.

14. **Wages**. Company agrees to comply with the prevailing wages determined in accordance with the Davis Bacon Act, CFR 29, U.S. Department of Labor.

15. **Notice**. Except as may be otherwise specifically provided in this Agreement, all notices, demands, requests or communication required or permitted hereunder shall be in writing and shall either be (i) personally delivered against a written receipt, or (ii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth below, or at such other addresses as may

have been theretofore specified by written notice delivered in accordance herewith:

If to Program: Hidalgo County Head Start Program
Attn: Teresa Flores
1901 W. Hwy 107
McAllen, Texas 78504

If to Company: Artex Industrial Products, LLC.
Attn: Ricardo Lopez
451 W. Nolana #8
Pharr, TX 78577

Each notice, demand, request or communication which shall be delivered or mailed in the manner described above shall be deemed sufficiently given for all purposes at such time as it is personally delivered to the addressee or, if mailed, at such time as it is deposited in the United States mail.

16. In case 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.

17. **Amendments.** This Contract shall constitute the entire understanding of the parties with respect to the subject matter and supersedes any prior understandings or written or oral agreement between the parties respecting the subject matter within. Further, no amendment, modification or alteration of terms shall be binding unless the same is in writing, and duly executed by the parties.

18. **Successors.** This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Contract.

19. **Texas Law To Apply.** The provisions of this Contract will be construed under and in accordance with the provisions of the laws of the State of Texas, and all obligations of the parties created hereunder and performable in Hidalgo County, Texas.

20. **Termination**. Any contract award to a successful bidder will be in effect until

(a) the contract expires, (b) delivery and acceptance of products, and/or performance of services ordered, or (c) terminated without cause by Program with thirty day's written notice prior to cancellation.

21. **Commitment of Current Revenues.** In the event that, during any term hereof, the governing body of any party does not appropriate sufficient funds to meet the obligations of such party under this Contract, then any party may terminate this Contract upon sixty (60) days written notice to the other party. Each of the parties hereto agrees, however, to use its best 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 each party hereto pursuant to the provisions of Tex. Loc. Govt. Code Ann. § 271.903.

22. **Warranty.** Company warrants that its work is Free of defect for a period of one year from the date of completion of the work performed under this contract

WITNESS our hands in duplicate originals this 21st day of September, 2010

APPROVED BY COMMISSIONERS COURT ON: September 21st, 2010

Company:

By:_____
Artex Industrial Products, LLC

By:_____
Ricardo Lopez

By:_____
Manager

By:_____
Rene Ramirez, County Judge

By:_____
Teresa Flores, Executive Director

By:_____
Arturo Guajardo, Jr., County Clerk

APPROVED AS TO FROM:
OXFORD & GONZALEZ

By: _____
Ricardo Gonzalez

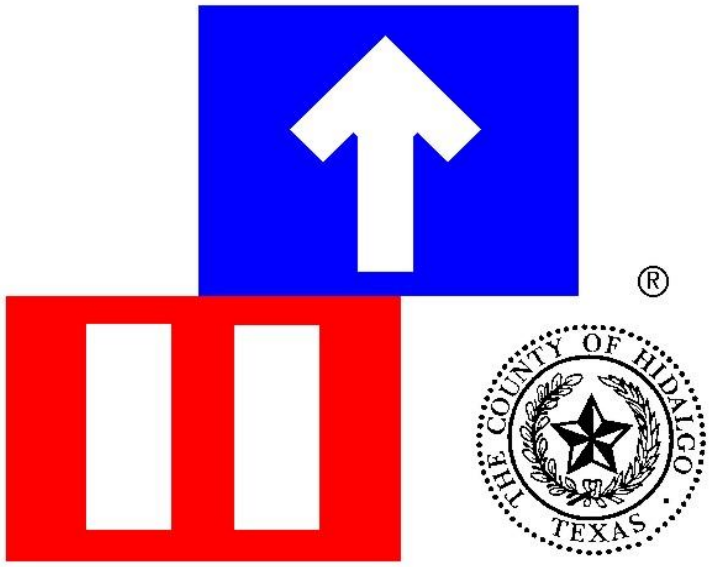
APPROVED AS TO FROM
ATLAS & HALL, L.L.P.

By: _____
Stephen L. Crain

.

EXHIBIT “A”

RFB PACKET



Hidalgo County Head Start Program

Bid No: 2010-029-09-08	Procurement Director: Ambrosio Tovar	Tel. No: (956) 380-4149

HIDALGO COUNTY HEAD START PROGRAM

REQUEST FOR BIDS

ROOF REPAIRS SAN JUAN II

BID #2010-029-09-08

McAllen, Texas

August 24, 2010

Contact Person:

Ambrosio Tovar, Procurement Director
Hidalgo County Head Start Program
1901 W. State Hwy 107
McAllen, TX 78504
956-380-4149

REQUEST FOR BID (RFB) CHECKLIST

HIDALGO COUNTY HEAD START PROGRAM
"ROOF REPAIRS SAN JUAN II BID #2010-029-09-08
for Hidalgo County Head Start Program

1. Request for Bid Letter, consisting of 1 page.
2. Request for Bid, Legal Notice, consisting of 6 pages.
3. Specifications, Exhibit A, consisting of 3 pages.
4. Bid Page, Exhibit B, consisting of 1 page.
5. Insurance Requirements, Exhibit C, consisting of 3 pages.
6. Conflict of Interest Questionnaire, Exhibit D, consisting of 2 pages.
7. Proposer's Affidavit, Exhibit E, consisting of 1 page.
8. Bidder/Vendor Application, consisting of 1 page.
9. Historically Underutilized Business (HUB) Declaration, consisting of 1 page.
10. Certification Regarding Debarment, Suspension consisting of 1 page.
11. Bid Tabulation Sheet consisting of 1 page.
12. Draft Contract consisting of 6 pages.
13. W-9 Form (Request for Taxpayer ID) consisting of 1 pages.

The above mentioned items shall be found in the Request for Bid (RFB) packet that is attached herewith. Should you find that any of the items are not attached in its entirety please contact Procurement Department by calling (956) 380-4149, to advise of missing documentation, and Procurement will forward information either through facsimile or by U.S. Mail.

Thank you.

Ambrosio Tovar, Procurement Director August 24, 2010

August 24, 2010

Re: **HIDALGO COUNTY HEAD START PROGRAM**
REQUEST FOR BIDS (RFB)
"ROOF REPAIRS SAN JUAN II"
BID № 2010-029-09-08

Dear Respondents:

Enclosed please find a Request for Bid (RFB) packet for you review and consideration.

Hidalgo County Head Start Program welcomes and appreciates your participation in the bid process.

If any further assistance is required, please do not hesitate to call the Procurement Department 956-380-4149.

Sincerely,

Ambrosio Tovar
Procurement Director
Hidalgo County Head Start Program

LEGAL NOTICE

Bid No: 2010-029-09-08

1. Sealed bids will be received for **"ROOF REPAIRS SAN JUAN II" FOR HIDALGO COUNTY HEAD START PROGRAM** in accordance with the specifications attached as Exhibit "A" hereto. Bids should address all specifications set forth. Bidders may suggest substitutions of features which they feel would be in the best interest of Hidalgo County ("County"). Strong rationale must be presented for any deviation from the specifications. Hidalgo County Head Start Program reserves the right to reject the deviation and its effect on the overall bid.

2. One (1) original and three (3) copies of bid are required with bidders name and return address clearly typed/printed on upper left hand corner and the proper notation clearly typed/printed on the lower left hand corner of the enveloped and/or package, **"RFB No. 2010-029-09-08 ROOF REPAIRS SAN JUAN II" FOR HIDALGO COUNTY HEAD START PROGRAM** located 1901 West State Highway 107, McAllen, Texas, **on or before 2:00 p.m. Wednesday, September 8, 2010.**

   NO FACSIMILES OR LATE ARRIVALS WILL BE ACCEPTED. ANY RFB RECEIVED AFTER THAT TIME WILL NOT BE OPENED AND WILL BE RETURNED. OVERNIGHT MAIL MUST ALSO BE PROPERLY LABELED ON THE OUTSIDE OF EXPRESS ENVELOPE OR PACKAGE IN REFERENCE TO "RFB 2010-029-09-08 ROOF REPAIRS SAN JUAN II FOR HIDALGO COUNTY HEAD START PROGRAM".

   Hidalgo County Reserves the right to refuse and reject any/all bids and to waive any/all formalities or technicalities, or to accept the bid considered the best and most advantageous to Hidalgo County.

3. Hidalgo County Head Start Program reserves the right to: **A)** separate and accept, or eliminate any item(s) listed under this bid that it deems necessary to accommodate budgetary and/or operational requirements; **B)** reject any or all bids submitted and further reserves the right to design the evaluation criteria to be used in selecting the lowest and best bid for approval; and **C)** award the bid to one bidder or to multiple bidders if the County determines it is in its best interest to do so.

4. The Bidder shall not substitute items named in the bid without the express written consent of Hidalgo County Head Start Program. Failure of the delivered item to perform as specified or failure to meet the stated delivery schedule shall release Hidalgo County Head Start Program from all obligations to the contracting party with regard to the item(s) in question. In such event, Hidalgo County Head Start Program may elect to award the contract to the next-lowest responsible bidder, or to reject all bids and re-advertise..

5. For work to be performed at an Hidalgo County Head Start Program owned or operated location, each bidder shall, in its sole discretion, visit the job site before preparing the bid and thoroughly familiarize himself/herself with existing conditions. Bidder should take field dimensions and note all circumstances which affect the dollar amount of the bid.

6. Descriptive specifications are referenced in this document to indicate the general kind and quality of equipment desired by Hidalgo County Head Start Program. Due to various styles and models of equipment, bidders are required to include illustrations, specifications, explanation of warranties, and service data with their bid including catalogue numbers and any necessary references.

7. No bid may be withdrawn within thirty (30) days from the scheduled time to open bids

8. Proposed prices are to remain firm for a minimum of thirty (30) days after bid opening.

9. Any interpretations, amendments, corrections or changes to this bid document must be in a written addendum and signed by the Hidalgo County Head Start Program Director or designee. Addenda will be mailed to all who are known to have received a copy of the Request for Bids. Bidders shall acknowledge receipt of all addenda as a part of their bid.

10. Hidalgo County Head Start Program reserves the right to accept or reject any or all bids.

11. Costs are to be net F.O.B., Hidalgo County Head Start Program Prepaid.

12. Hidalgo County Head Start Program is exempt from Federal Excise Tax, State Tax and Local Tax. Do not include tax in cost figure. If it is determined that tax was included in the cost figures it will not be included in the tabulation of any awards. Tax exemption certificates will be furnished upon request.

13. Funds for this procurement have been provided through the Hidalgo County Head Start Program budget for this fiscal year only. Hidalgo County Head Start on an annual basis has the right to reconsider a contract during the budget process for ensuing years if financial resources of County are insufficient to meet the liabilities of said contract. The award of a bid or contract hereunder will not be construed to create a debt of the Hidalgo County Head Start which is payable out beyond the current fiscal year.

14. Upon award and prior to execution of a contract. Sole Proprietorships are required to submit a copy of their social security card to the Hidalgo County Head Start Finance Department in order to establish an account with the Head Start Program. All awarded vendors must submit a complete W-9 and a copy of their Federal ID Number Certificate.

15. **DELIVERY INSTRUCTIONS:**

- No deliveries accepted after 4:00 P.M., Monday-Friday.

- At least seventy two (72) hours prior notice of delivery must be given to, Ambrosio Tovar, Procurement Director before delivery will be accepted.

- If you need additional information call the office listed below:

  Hidalgo County Head Start Program
  Ambrosio Tovar, Procurement Director
  (956) 380-4149

16. BILLING AND PAYMENT INSTRUCTIONS:

- Invoices must include:
  a) Name and address of successful bidder
  b) Name and address of receiving department or official
  c) Purchase Order Number (if any)
  d) Notation-**"HIDALGO COUNTY HEAD START PROGRAM ROOF REPAIR SERVICES SAN JUAN II"** Descriptive information as to the items or services delivered, including product code, item number, quantity, etc.

- Discount payments will be considered when offered.

- Contract person for Billing and Payment questions:

  Attn: Hidalgo County Head Start Program
  Elma Keller Finance Department
  1901 W. State Hwy 107
  McAllen, TX. 78504
  (956) 383-0706

17. Schedule of Events

Bid Opening, 2:00 P.M.	September 8, 2010
Project Award of Contract or Issuance of Purchase Order	_____
Project Commence Work or Deliver Products	_____

18. **BID OR PERFORMANCE BOND AND DEBARMENT CERTIFICATION; PAYMENT UNDER CONTRACT:**

. If the contract proposed is for the construction of public works or is for a contract for goods & services $100,000, all bidders shall furnish a good and sufficient bid bond in the amount of five percent of the total contract price. A bid bond must be executed with a surety company authorized to do business in Texas. All bidders are also required to furnish a certification or acknowledgment stating that the contractor or vendor is free from suspension or debarment pursuant to federal regulation 45 CFR Part 76.

. Together with the signing of a contract or issuance of a purchase order following the acceptance of a bid, and prior to commencement of the actual work, the bidder shall furnish a performance bond to the Hidalgo County Head Start Program for the full amount of the contract, if that contract exceeds $50,000.

. If the contract is for $50,000 or less, no money will be paid to the contractor until completion and acceptance of the work or the fulfillment of the purchase obligation to the Hidalgo County Head Start Program, and, if applicable, the receipt by Hidalgo County Head Start Program of satisfactory evidence that all subcontractors and material men have been paid.

. If a contract is for the construction, alteration or repair of public buildings or public works, the contractor *shall* provide a payment bond for a contract in excess of Twenty Five Thousand Dollars ($25,000.00), as required by Tex. Govt. Code Ch. 2253

. For requirements contracts, bond requirements are determined by applying the proposed unit price to the estimated quantities included in the specifications.

19. **Ethical Standards:**

. It shall be a breach of ethics to offer, give or agree to give any elected official, department head or employee, or former elected official, department head or employee, of the County, or for any elected official, department head or employee or former elected official, department head or employee of County, to solicit, demand, accept or agree to accept from another person, entity or organization, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore pending before any department or agency of the Hidalgo County Head Start Program.

. It shall be a breach of ethics for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor for any contract for the County, or any person associated therewith, as an inducement for the award of a subcontract or order.

. No public official shall have an interest in a contract awarded hereunder except in accordance with Tex. Loc. Govt. Code Chapter 171.

20. **Disclosure of Conflict of Interest**

. Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that any vendor, person, consultant or contractor considering doing business with Hidalgo County Head Start Program (the County) to disclose in the Conflict of Interest Questionnaire (the "CIQ") attached as Exhibit D, the vendor, person, consultant or contractor's affiliation or business relationship that might cause a conflict of interest with the Hidalgo County Head Start Program. By law, the CIQ must be filed with the Hidalgo County Clerk's Office no later than the seventh business day after the date the person becomes aware of

facts that require that statement to be filed. The disclosure requirement applies to a person or business that contracts or seeks to contract with Hidalgo County Head Start Program for the sale or purchase of property, goods, or service. Any purchase order or contract resulting from this process shall be considered null and void if the successful bidder fails to comply with Texas Local Government Code Chapter 176. Vendors, consultants, contractors and others who desire to conduct business with Hidalgo County Head Start Program are encouraged to refer to Texas Local Government Code Chapter 176 for the details of this law. An offense under Texas Local Government Code Chapter 176 is a Class C Misdemeanor.

Please Submit completed CIQ forms to the Hidalgo County Head Start Program office located at 1901 W. State Hwy 107 McAllen, TX 7804 – Head Start Program
COMPLETION AND SUBMISSION OF FORM CIQ IS THE SOLE RESPONSIBILITY OF THE PROSPECTIVE BIDDER.

21. If, during the life of any contract or bid awarded, the successful bidder's net prices generally available to other customer for items awarded herein are reduced below the contracted price, it is understood and agreed that the benefits of such reduction shall be extended to Hidalgo County Head Start Program.

22. Bids, and all goods and services provided hereunder, shall comply with all federal, state and local laws concerning this type(s) of goods and/or services.

23. Minimum Standards for Responsible Prospective Bidders: A prospective bidder must affirmatively demonstrate bidder's responsibility. A prospective bidder, by submitting a bid, represents to County that it meets the following requirements:

. Possess and submit a Certificate of Account Status indicating bidder is in "Good Standing" with the Texas Comptroller of Public Accounts if such bidder is incorporated in the State of Texas. If the bidder is not incorporated with the Texas, the bidder must submit the appropriate evidence of filing with the Texas Secretary of State stating that the business is authorized to transact business in Texas.
. Possess or is able to obtain adequate financial resources as required to perform under the bid;
. Be able to comply with the required or proposed delivery schedule;
. Have a satisfactory record of performance;
. Have a satisfactory record of integrity and ethics;
. Be otherwise qualified and eligible to receive an award.

24. Successful bidder will pay or cause to be paid, without cost or expenses to Hidalgo County Head Start Program all FICA, FUTA/SUTA and Federal Income Withholding Taxes of all employees, and all wages and benefits as required by Federal or State law. Successful bidder's officers, agents and/or employees will not be entitled to any benefits of an employee or elected official of County, including, but not limited to, benefits associated with County's civil service system.

25. Any contract award to a successful bidder will be in effect until (a) the contract expires, (b) delivery and acceptance of products and/or performance of services ordered, or (c) terminated by Hidalgo County Head Start Program with thirty day's written notice prior to cancellation.

26. County reserves the right to enforce performance of any contract awarded hereunder in any manner prescribed by law or deemed to be in the best interest of the Hidalgo County Head Start Program in the event of breach or default by successful bidder; Hidalgo County Head Start Program reserves the right to terminate any contract immediately in the event a successful bidder fails to:

(A) Meet schedules;
(B) Pay any required fees or taxes; or
(C) Otherwise perform in accordance with the specifications.

27. Successful bidder shall defend, indemnify and save harmless County and all its elected officials, officers, agents and employees from all suits, actions, or other claims of any character, name and description brought for or on account of any injuries or damages received or sustained by any person ,persons or property on account of any negligent act or fault of the successful bidder, or of any agent, employee, subcontractor or supplier of successful bidder in the execution of, or performance under, any contract which may result from bid award or which arises

from any event or casualty happening on or within County premises themselves or happening upon or in any halls, elevators, entrances, stairways or approaches of or to such County facilities. Successful bidder shall pay any judgment with costs which may be obtained against County growing out of such injury or damages, and shall, upon request, provide a defense to County by counsel reasonably acceptable to County. Successful bidder's indemnity hereunder shall include, but is not limited to, claims relating to patent, copyright or trademark infringement, and the like, arising out of the goods and services provided by successful bidder.

28. Successful bidder shall warrant that all items/services shall conform with the specifications and/or all warranties provided under the Uniform Commercial Code and be free from all defects in material, workmanship and the like. Items supplied under a contract pursuant to this Request for Bids shall be subject to County's approval. Items found to be defective or not meeting specifications shall be replaced by successful bidder within two business days at no expense to County. Items not picked up within one (1) week after notification shall be deemed a donation to County and may be used or disposed of at County's discretion and without waiver of any other rights of County as to the item's nonconformity.

29. Vendors hereby assigns to purchaser any and all claims for overcharges associated with this contract which arise under the antitrust laws of the United States, 15 USCA, Section 1 et. Seq., and which arise under the antitrust laws of the State of Texas, Bus. & Com. Code, section 15.01, et. Seq.

30. This document and any disputes arising hereunder shall be governed and construed according to the laws of the State of Texas, and will be performable exclusively in Hidalgo County Head Start Program, Texas.

31. The successful bidder shall not assign, sell, transfer or convey its rights under any awarded contract, in whole or in part, without the prior written consent of Hidalgo County Head Start Program.

BID
for
HIDALGO COUNTY HEAD START PROGRAM
"ROOF REPAIRS - SAN JUAN II HEAD START"
August 24, 2010

To: Hidalgo County Head Start Program
Ambrosio Tovar, Procurement Director
1901 West State Hwy 107
McAllen, Texas 78504

In accordance with the requirements, and subject to all laws and regulations of the United States and state and local laws, the undersigned respondent proposes and commits to furnish all labor, equipment, material, software and services as set forth in the documents hereinbefore mentioned. The undersigned respondent further agrees, upon acceptance of its bid, to execute a contract and/or Purchase Order issued by Hidalgo County Head Start Program for performing and completing the work described in the requirements within the time stated and for the prices bided in the documents attached hereto and made a part hereof.

Respondent acknowledges receipt of all of the pages of the documents referenced in the Request for Sealed Bids Checklist presented in connection with this procurement. Respondent understands that Hidalgo County Head Start Program reserves the right to reject any or all BIDS and further reserves the right to design the evaluation criteria to be used in selecting the lowest and best bid.

Respondent agrees that this bid shall be good and may not be withdrawn for a period of ninety (90) calendar days after the scheduled closing time for accepting BID, as contained in the requirements.

Respectfully submitted,

Respondent:_____

Address:_____

_____

By:_____

Printed Name:_____

Title:_____

(THIS PAGE MUST BE SUBMITTED WITH BID)

HIDALGO COUNTY HEAD START PROGRAM
REQUEST FOR BIDS

"ROOF REPAIRS SAN JUAN II"

EXHIBIT "A"

SPECIFICATIONS

EXHIBIT "A"

HIDALGO COUNTY HEAD START PROGRAM

SPECIFICATIONS FOR ROOF REPAIR SAN JUAN II:

REQUEST FOR SEALED BIDS: The required contents and limitations for the preparation of the BID are described in this section. Failure to provide the requested information or adhere to any County limitations will result in disqualification of the submitted BID. A total of one (1) original and three (3) copies of the RFB shall be submitted to the address on the cover letter.

Project Overview:

It is the intention of the Hidalgo County Head Start Program to receive BIDS from interested individuals for the purposes of Repair for the centers referenced within.

Contents:

The required contents for the sealed bids are presented below in the order they should be incorporated into the submitted document.

SPECIFICATIONS – GENERAL: All replacement materials must be at minimum, equal to or better than the existing materials

I. Head Start will select roof shingle color **Scope of Services Roof Repairs:** Scope of Repairs include, but may not be limited to the following:

- Remove gutters in order to roof under the shingle roof properly
- A ½" layer of primed dens-deck board will be fastened over the roof
- Repairs to the shingle roof will be made where nails appear to be pushing up through the shingle
- A 50 mil layer of Duro-Last membrane will be fully adhere (glued) to the dens-deck board The Duro-Last material will be applied up the vertical area behind the gutters and underneath the first coarse of critical point
- Walk way pads will be applied around the A/C units
- The gutters will be re-installed.
- Small sections of downspout will be added in order to channel the water off of the roof
- Twenty year guarantee
- Remove debris from premises daily
- Must meet Davis Bacon Act requirements
- Building located at: 601 Earling Rd., San Juan, TX

BILLING SPECIFICATIONS:

All Invoices must be submitted to the Field Operations Department. The following information must be listed on the submitted invoice.

1) Center Location
2) Date
3) Description of service being performed
4) Purchase Order
5) Confirmation Signature from Field Operations Director

ACCESS TO CENTER:

Field Operations Director or designated representative of Hidalgo County Head Start Program Field Operations Director shall establish mutually agreeable schedule for performance of service, schedule of normal operating hours, points of access, and other information necessary to insure optimum convenience to all concerned.

LETTERS OF RECOMMENDATION:

Bidder must submit three letters of recommendation (example: schools, cafeterias, day cares, or other government entities) on services provided to any of the entities mentioned above. Original letters must be included in bid package, no copies will be accepted.

INSPECTION AND ACCEPTANCE:

The Hidalgo County Head Start Program Field Operations Director, or its designated representative for each department, is hereby designated to participate in the administration of this contract to insure contractor's compliance with its technical requirements, including inspection and acceptance of the services for the Hidalgo County Head Start Program the performance site.

TERM:

The initial term of these contracts will be from date awarded and upon completion. The Hidalgo County Head Start Program may terminate the contracts upon thirty (30) days advance written notice to contractors.

SUBCONTRACTING:

The vendor awarded the contract shall not engage the service of a subcontractor without prior written consent of Hidalgo County Head Start Program. When requesting consent from Hidalgo County Head Start Program for the retention of a subcontractor to perform services, hereunder, the successful bidders must present evidence that the proposed subcontractor possesses all necessary licenses and permits to perform the services described herein, and that the subcontractor and the successful vendor have obtained the required insurance coverage and policies as required by Hidalgo County Head Start Program. Payment to subcontractor must be made by vendors.

RESPONSIBILITY OF CONTRACTOR:

a) The vendor awarded the contract shall present evidence, that vendor possesses all necessary licenses and permits to perform the services described herein, and that the successful vendor has obtained the required insurance coverage and policies as required by Hidalgo County Head Start Program. Termination, suspension or revocation of required licenses or permits are grounds for immediate termination of any awarded contract.

b) Interested vendors must have the capabilities to address two or more jobs at one time.

NEW SITES:

The contracts will not automatically entitle vendors to any rights for any new buildings which may be acquired during the contract term.

AWARD:

Hidalgo County Head Start Program reserves the right to award the bid on a lump sum basis to one bidder or to multiple bidders if the County determines it is in its best interest to do so.

HIDALGO COUNTY HEAD START PROGRAM
REQUEST FOR SEALED BID

"ROOF REPAIRS –
SAN JUAN II HEAD START"

EXHIBIT B

BID PAGE

SELECTION PROCEDURES: The SEALED BID shall be submitted according to the schedule below. The respondent should be able to submit a Cost Bid.

SEALED BID SUBMITTED TO: An original and three (3) copies of Sealed Bid should be submitted to:

Ambrosio Tovar, Procurement Director
Hidalgo County Head Start Program
P. O. Box 0117
Edinburg, TX 78540-0117

BID must be submitted NO LATER THAN 2:00 p.m. on Wednesday, September 8, 2010.

COST:

SAN JUAN II CENTER

Roof Repair Cost: $_____

Bidder's signature indicates an understanding and intent to comply with all Federal state and local regulations associated with implementing a Head Start Program and that the listed bid price will be valid for a period of ninety (90) days.

BIDDER'S NAME:_____

ADDRESS:_____

CITY/STATE/ZIP CODE:_____

PHONE NUMBER:_____FAX NUMBER:_____

AUTHORIZED SIGNATURE:_____

TITLE:_____

DATE:_____

*******It is Mandatory that Bid Page be included in Bid Package*******

HIDALGO COUNTY HEAD START PROGRAM
REQUEST FOR BIDS

"ROOF REPAIRS SAN JUAN II"

EXHIBIT "C"

INSURANCE REQUIREMENTS

EXHIBIT "C"

Insurance Requirements
Professional Services

The proposer/applicant awarded the contract shall furnish proof of insurance, which will also include any subcontractor that is subcontracted by the Bidder in at least the following limits, to be in place prior to providing any services under this Contract and to continue at all times in force in effect during the term of this Contract:

1. Professional liability insurance policy with limits of at least One Million Dollars ($1,000,000.00) per occurrence, or limited to claims made, include at least a five (5) year extended reporting period.
2. A Five Hundred Thousand Dollars ($500,000.00) Comprehensive General Liability insurance policy providing additional coverage to all underlying liabilities of County.

3. Automobile liability insurance policy with limits of at least Three Hundred Thousand Dollars ($300,000.00) per person and Five hundred thousand ($500,000.00) per occurrence, consistent with potential exposure to County under the Texas Tort Claims Act. Coverage should include injury to or death of persons and property damage claims (with limits up to $500,000.00) arising out of the services provided to County hereunder;

4. Uninsured/Underinsured motorist coverage in an amount equal to the bodily injury limits set forth immediately above;

5. Workers compensation insurance in amounts established by Texas law, unless the respondent is specifically exempted from the Texas Workers' Compensation Act, Texas Labor Code Chapter 401, et. seq.

Hidalgo County Head Start Program will only accept certificates of insurance on an Acord form. Certificates of insurance naming Hidalgo County Head Start Program as an additional insured shall be submitted to County for approval prior to any services being performed by Contractor. Each policy of insurance required hereunder shall extend for a period equivalent to, or longer than the term of the Contract, and any insurer hereunder shall be required to give at least thirty (30) days written notice to the County prior to the cancellation of any such coverage on the termination date, or otherwise. This Contract shall be automatically suspended upon the cancellation, or other termination, of any required policy of insurance hereunder, and such suspension shall continue until evidence adequate replacement coverage is provided to County. If replacement coverage is not provided within thirty (30) days following suspension of the Contract, this Contract shall automatically terminate.

INSURANCE REQUIREMENT ACKNOWLEDGEMENT

I, _____, authorized representative for_____,
Company/Vendor
hereby acknowledge receipt of the County's required insurance limits. Said requirements:

- will be acquired within 10 days after notification from Purchasing Department of bid awarded by the Hidalgo County Commissioners' Court; (*An insurance certificate for the required insurance limits shall be provided to the Procurement Department in order to qualify for award of bid and to execute a contract between our Company and the County.)

- will acquire additional amount needed to meet the County's requirements within 10 working days after notification from Purchasing Department of bid awarded by the Hidalgo County Commissioners' Court: currently carry the following:

  Automobile Liability: $_____General Liability: $_____.

  (*An insurance certificate for the required insurance limits shall be provided to the Procurement Department in order to qualify for award of bid and to execute a contract between our Company and the County.) **OR**

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

_____ _____
Authorized Representative Date

NOTICE TO BIDDER: Failure to provide Certificates of Insurance at Purchasing Department will cause the bid award to be rescinded and then awarded to next lowest bidder. Certificates of Insurance will be monitored/verified on a quarterly basis to ensure coverage policy is in place. It is the Company's obligation to maintain the appropriate insurance coverage throughout

THIS FORM MUST ACCOMPANY BID PACKET

PROJECT REQURIEMENTS ACKNOWLEDGMENT

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

1) Licenses:_____
2) Bonds:_____
3) Certificates:_____

   _____
4) Permits:_____
5) Other:_____

Necessary to carry out the required project. Furthermore, I am providing copies of the required documentation so that, if my company is awarded this bid, I may be eligible to enter into a contract with Hidalgo County Head Start Program and proceed to complete the project in a timely manner.

*Any licenses, bonds, certificates, permits, etc. which are required must be presented as part of the bid packet in order to expedite the bid evaluation process, failure to provide said documentation will result in the disqualification of your bid.

_____ _____

Authorized Signature Date

_____

Company

_____

Address

_____

City, State, Zip

HIDALGO COUNTY HEAD START PROGRAM
REQUEST FOR BIDS

"ROOF REPAIRS SAN JUAN II"

EXHIBIT "D"

CONFLICT OF INTEREST

EXHIBIT D

CONFLICT OF INTEREST QUESTIONNAIRE — FORM CIQ

For vendor or other person doing business with local governmental entity

This questionnaire is being filed in accordance with chapter 176 of the Local Government Code by a person doing business with the governmental entity.

By law this questionnaire must be filed with the records administrator of the local government not later than the 7th business day after the date the person Becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.

A person commits an offense if the person violates Section 176.006 Local Government Code. An Offense under this section is a Class C misdemeanor.

OFFICE USE ONLY
Date Received

1 Name of person doing business with local governmental entity.

2 ☐ Check this box if you are filling an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

3 Name of local government officer with whom filer has employment or business relationship.

_____

Name of Officer

This section (item 3 including subparts A,B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001 (1-a), Local Government Code. Attach additonal pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income other than investment income from the filer of the questionnaire?

☐ Yes ☐ No

B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local government entity?

☐ Yes ☐ No

C. Is the filer of the questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

☐ Yes ☐ No

D. Describe each employment or business relationship with the local government officer named in this section.

4

_____ _____

Signature of person doing business with the governmental entity — Date

EXHIBIT D

DISCLOSURE OF CONFLICT OF INTEREST

Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that any vendor, person, consultant or contractor considering doing business with Hidalgo County ("the County") to disclose in the Conflict of Interest Questionnaire (the "CIQ") attached as Exhibit D, the vendor, person, consultant or contractor's affiliation or business relationship that might cause a conflict of interest with the Hidalgo County Head Start Program. By law, the CIQ must be filed with the Hidalgo County Clerk's Office no later than the seventh business day after the date the person becomes aware of facts that require that statement to be filed. The disclosure requirement applies to a person or business that contracts or seeks to contract with Hidalgo County for the sale or purchase of property, goods or service. Any purchase order or contract resulting from this process shall be considered null and void if the successful participant fails to comply with Texas Local Government Code Chapter 176. Vendors, consultants, contractor and others who desire to conduct business with Hidalgo County Head Start Program are encouraged to refer to Texas Local Government Code Chapter 176 for the details of this law. An offense under Texas Local Government Code Chapter 176 is a Class C. Misdemeanor.

Please Submit completed forms to the Hidalgo County Clerk's Office located at 100 North Closner, Edinburg, Texas 78539-Hidalgo County Courthouse.

COMPLETION AND SUBMISSION OF FORM CIQ IS THE SOLE RESPONSIBILITY OF THE RESPECTIVE PARTICIPANT.

EXHIBIT "E"
PROPOSER'S AFFIDAVIT

PROPOSER'S AFFIDAVIT OF NON-COLLUSION
NON-CONFILICT OF INTREST, AND ANTI-LOBBYING
FOR "ROOF REPAIRS SAN JUAN I"

STATE OF TEXAS
COUNTY OF HIDALGO

Affiant, _____, being first duly sworn, deposes that:

(1) Affiant does hereby state neither the Proposer nor any of the Proposer's officers, partners, owners, agents, representatives, employees, or parties in interest, has in any way colluded, conspired, agreed, directly or indirectly with any person, firm, corporation, or other proposer, or potential proposer, to provide any money or other valuable consideration for assistance in procuring or attempting to procure a contract or fix the prices in the attached proposed or the proposal of any other proposer, and further states that no such money or other reward will be hereinafter paid.

(2) Affiant further states they have neither recommended or suggested to Hidalgo County or nay of its officials or employees, any of the terms or provisions set forth in their Request fro Proposal and subsequent agreement, except at a meeting open to all interested proposers, of which proper notice was give.

(3) Affiant, further states their officers, employees, or agents have not, and will not attempt to lobby, directly or indirectly, the Hidalgo County Commissioner's Court between proposal submission date and award by the Hidalgo County Commissioner's Court.

(4) Affiant further States no officer, or stockholder of the Proposer is a member of the staff, or related to any employee of the Hidalgo County except as noted herein below:

Signature/ Title: _____

Subscribed and sworn to before me this _____day of _____, 2010.

Notary Public _____

My Commission expires: _____, 2010

HIDALGO COUNTY HEAD START PROGRAM
Bidder/Vendor Application

Complete in print or type. It is the vendor's responsibility to return this application to Hidalgo County Head Start Program Procurement Department.

Company Name **Telephone No. ( )**
Mailing Address **Fax No. ( )**
City, State, Zip **Tax I.D. No.**
Remit to Address **City, State, Zip**
Representative(s) Name(s) & Title(s)
Type of Organization (check one): _____ Individual _____ Partnership _____ Corporation _____ LLC _____ Other, Specify **Federal Identification No. or (if individual) SS No.**
State of Incorporation: _____ Other:
Type of Business (check one): _____ Manufacturer _____ Wholesaler _____ Retailer _____ Broker_____ Distributor _____ Service Organization _____ Other, Specify
Name & Title of Person(s) Authorized to Sign Bids, Proposals, and/or Contracts:
Small and/or Disadvantaged Business Information (check application criteria) **Small Business:** **Disadvantaged Business (At Least 51% Ownership)** · Less than 125,000 annual gross receipt · Black American · Native American · Less than 250,000 annual gross receipt · Hispanic American · Women · Less than 499,000 annual gross receipt · Asian Pacific American · Other · More than 500,000 annual gross receipt **Have you been certified as a HUB or an MBE/WBE source?: · Yes · No** **Indicate Certification No.(s): _____ or are Certificate(s) attached?: · Yes · No**
What type of product(s) is/are solicited by your company?: **Would you like to be provided with specifications for procurements of such products?: · Yes · No**

HISTORICALLY UNDERUTILIZED BUSINESS (HUB) DECLARATION

The primary objective of the Hidalgo County HUB Program is to ensure Historically Underutilized Businesses receive a fair and equal opportunity for participation in the Hidalgo County Head Start Program procurement process. This fact holds true for Services (Professional & Non-Professional), Commodities, and Construction contracts and any subcontracts thereto. The program strongly encourages Prime Contractors to provide subcontracting opportunities to Certified Hub Contractors/Vendors. Our goal for HUB contractor/vendor participation, as well as HUB subcontractor participation is 30%. To be considered as a "Certified HUB Contractor/Vendor" the contractor/vendor must have been certified by, and hold a current and valid certification with any of the three agencies listed below.

Have you been Certified as a HUB or an MBE/WBE source?: ·Yes · No

If yes, by whom?: · State General Services Commission · Other

Indicate Certification No(s).:_____ or Are Certificate(s) Attached?: · Yes · No

LIST OF CERTIFIED HUB SUBCONTRACTORS

(Attach additional pages if necessary)

What percentage of the Bid or RFQ is to be subcontracted with Certified HUB sources? _____% (List HUB Subcontractor information below).

HUB Subcontractor Name: _____ HUB Status:

Certifying Agency (Check all applicable): · State General Services Commission · other

Address: _____ City: _____ State: _____ Zip: _____Contact Person: _____ Title: _____ Phone No.: ( )_____Subcontract Amount: $_____ Description of Work to be Performed: _____.
HUB Subcontractor Name: _____. _____ HUB Status: _____.

Certifying Agency (Check all applicable): · State General Services Commission · Other

Address: _____ City: _____ State: _____ Zip: _____Contact Person: _____ Title: _____ Phone No.: ( )_____Subcontract Amount: $_____ Description of Work to be Performed:
HUB Subcontractor Name: _____ HUB Status:

Certifying Agency (Check all applicable): · State General Services Commission · Other
Address: _____ City: _____ State: _____ Zip:
Contact Person: _____ Title: _____ Phone No.: ( )_____Subcontract Amount: $_____ Description of Work to be Performed:

Certification For
Primary Covered Transactions

1. The _____ (Vendor Name) certifies to the best of its knowledge and belief, that it and its principals:

   a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

   b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

   c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

   d) Have not within a three-year period preceding this request for qualifications had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the _____ (Vendor Name) is unable to certify to any of the statements in this certification, such prospective vendor shall attach an explanation to this RFQ.

Signature:_____

Print Name:_____

Title:_____

Telephone No.:_____ Date: _____

HIDALGO COUNTY HEAD START PROGRAM
PROCUREMENT DEPARTMENT
BID TABULATION SHEET

DEPARTMENT NAME: **Hidalgo County Head Start Program**

BID OPENING DATE: **SEPTEMBER 8, 2010** | BID OPENING TIME: **2:00 P.M.**

DESCRIPTION OF BID: **"ROOF REPAIRS – SAN JUAN II HEAD START"**

BID NUMBER 2010-029-09-08

BID # RFB#	NAME OF COMPANY		CONTRACTOR'S PRICE	
#1				
#2				
#3				
#4				
#5				
#6				
#7				
#8				

THE STATE OF TEXAS §
§
COUNTY OF HIDALGO §

SERVICE CONTRACT
C-10-029-09-21

THIS CONTRACT is made and entered into this 21st day of September, 2010 by and between **HIDALGO COUNTY HEAD START PROGRAM,** (the "Program") a federally funded program under the auspices of HIDALGO COUNTY, TEXAS, a political subdivision of the State of Texas and _____(the "Company").

WHEREAS, Company responded to requests for sealed bids for **Roof Repairs** for SAN JUAN II Head Start Center (the "Services");

WHEREAS, Company submitted a bid to provide services in accordance with the specifications as bid, a copy of such specifications and bid being attached hereto as Exhibits "A" and "B" ("Vendor's Bid") respectively, and incorporated herein for all purposes (the "RFB Packet"); and

WHEREAS, in recognition of and in consideration of Company's agreement to perform the Services in accordance with the Specifications, the Commissioners Court of Hidalgo County awarded the bid to Company;

WHEREAS, Program requires that vendors comply with the prevailing wages determined in accordance with the Davis Bacon Act, CFR 29, U.S. Department of Labor.

NOW, THEREFORE, in mutual consideration of the foregoing and the further consideration of the following, the parties hereto agree as follows:

1. Program and Company hereby agrees that this Contract is entered into in order to provide the Services as described herein. This Contract does not extend to any third parties any duties or benefits conferred in any manner hereunder or otherwise.

2. Company hereby promises and agrees to render and provide, during the term of this Contract, and shall be obligated to render and provide the Services in accordance with the Specifications within Hidalgo County Head Start Program following a request for Services by the Hidalgo County Head Start Program Field Operations Department Head or his designated agent. Company agrees in performing the Services that it will use proper professional standards, comply with any and all appropriate laws and regulations in providing the Services, and devote such time as is necessary to safely and efficiently provide the Services.

3. **Term**. This Contract shall be for a period beginning _____ **and** ending upon the completion of project and may be extended at the sole discretion of Program for an additional thirty (30) days, unless this Contract is terminated pursuant to the provisions herein, whichever occurs first.

4. As a condition of this Contract, Company shall hold and maintain throughout the term of this Contract all licenses and permits required, or which may be required by any authority during the term hereof to provide the Services.

5. All trucks or vehicles operated by the Company to perform the Services shall contain all equipment required by any authority to operate on streets and roads and all persons in the employ of Company who operate such trucks or vehicles shall have the required licenses, qualifications, skill and expertise to perform such Services and shall comply with all laws, rules and regulations prescribed by any agency or authority having jurisdiction with regard to the operation of such trucks or vehicles in providing the Services.

6. As consideration for rendering the Service provided for in this Contract, the Program agrees to pay Company the amounts specified in Exhibit "B" attached hereto payable against written invoice submitted by Company.

7. Company shall provide current insurance on all its vehicles and all persons connected with providing the Services under this Contract naming Program as an additional insured (with coverage in the amounts described in Exhibit "C" attached hereto and incorporated herein for all purposes), and shall furnish to Program certificates of such insurance coverage.

8. Company shall provide a sufficient number of trucks, vehicles, personnel and equipment available to safely and efficiently provide the Services.

9. Company shall indemnify and hold harmless Program, its elected officials, employees and agents from any and all claims, damages, losses, and expenses including attorney's fees for the defense of any action against Program arising out of, resulting from, or connected with the provision of the Service by Company under this Contract. Said indemnity shall cover any act or failure to act by the Company, its agents or employees.

10. **Entire Agreement.** This Agreement contains the entire contract between the parties hereto and each party acknowledges that neither has made (either directly or through any agent or representative) any representation or agreement in connection with this Agreement not specifically set forth herein. This Agreement may be modified or amended only by agreement in writing executed by Program, and not otherwise.

11. **Non-Assignment.** This Contract shall not be assignable in whole or in part by either party without prior written consent of the other party, which consent shall not be unreasonably withheld.

12. **No Waiver**. No waiver of a breach of any provision of this Agreement shall be construed to be a waiver of any breach of any other provision. No delay in acting with regard to any breach of any provision of this Agreement shall be construed to be a waiver of such breach.

13. **Independent Contractor.** It is expressly agreed that this Contract and the performance by the parties hereunder does not create any agency relationship or master-servant relationship and Program has no supervision of the performance of the Services provided by Company, and that Company is an independent contractor under this Contract.

14. **Wages**. Company agrees to comply with the prevailing wages determined in accordance with the Davis Bacon Act, CFR 29, U.S. Department of Labor.

15. **Notice**. Except as may be otherwise specifically provided in this Agreement, all notices, demands, requests or communication required or permitted hereunder shall be in writing and shall either be (i) personally delivered against a written receipt, or (ii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth below, or at such other addresses as may have been theretofore specified by written notice delivered in accordance herewith:

If to Program: Hidalgo County Head Start Program
Attn: Teresa Flores
1901 W. Hwy 107
McAllen, Texas 78504

If to Company: _____
_____
_____
_____

Each notice, demand, request or communication which shall be delivered or mailed in the manner described above shall be deemed sufficiently given for all purposes at such time as it is personally delivered to the addressee or, if mailed, at such time as it is deposited in the United States mail.

16. In case 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.

17. **Amendments.** This Contract shall constitute the entire understanding of the parties with respect to the subject matter and supersedes any prior understandings or written or oral agreement between the parties respecting the subject matter within. Further, no amendment, modification or alteration of terms shall be binding unless the same is in writing, and duly executed by the parties.

18. **Successors.** This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Contract.

19. **TEXAS LAW TO APPLY.** The provisions of this Contract will be construed under and in accordance with the provisions of the laws of the State of Texas, and all obligations of the parties created hereunder and performable in Hidalgo County, Texas.

20. **Termination**. Any contract award to a successful bidder will be in effect until

(a) the contract expires, (b) delivery and acceptance of products, and/or performance of services ordered, or (c) terminated without cause by Program with thirty day's written notice prior to cancellation.

21. **Commitment of Current Revenues.** In the event that, during any term hereof, the governing body of any party does not appropriate sufficient funds to meet the obligations of such party under this Contract, then any party may terminate this Contract upon sixty (60) days written notice to the other party. Each of the parties hereto agrees, however, to use its best 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 each party hereto pursuant to the provisions of Tex. Loc. Govt. Code Ann. § 271.903.

22. **Warranty.** Company warrants that its work is Free of defect for a period of one year from the date of completion of the work performed under this contract

WITNESS our hands in duplicate originals this _____, 2010

APPROVED BY COMMISSIONERS COURT ON: _____, 2010

Company:

By:_____ By:_____
(Company Name) Rene Ramirez, County Judge

By:_____
(Print Name)

By:_____ By:_____
(Title) Teresa Flores, Executive Director

By:_____
Arturo Guajardo, Jr., County Clerk

APPROVED AS TO FROM:
OXFORD & GONZALEZ

By: _____
Ricardo Gonzalez

APPROVED AS TO FROM
ATLAS & HALL, L.L.P.

By: _____
Stephen L. Crain

.

Form **W-9**
(Rev. January 2006)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Give form to the requester. Do not send to the IRS.

Print or type
See Specific Instructions on page 2.

Name (as shown on your income tax return)

Business name, if different from above

Check appropriate box: ☐ Individual/ Sole proprietor ☐ Corporation ☐ Partnership ☐ Other ► _____ ☐ Exempt from backup withholding

Address (number, street, and apt. or suite no.) | Requester's name and address (optional)

City, state, and ZIP code

List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. *If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.*

Social security number
___ ___ ___ - ___ ___ - ___ ___ ___ ___

or

Employer identification number
___ ___ - ___ ___ ___ ___ ___ ___ ___

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. person (including a U.S. resident alien).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See the instructions on page 4.)

Sign Here Signature of U.S. person ► Date ►

Purpose of Form

A person who is required to file an information return with the IRS, must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

U.S. person. Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee.

Note. *If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.*

For federal tax purposes you are considered a person if you are:

- An individual who is a citizen or resident of the United States,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States, or
- Any estate (other than a foreign estate) or trust. See Regulations sections 301.7701-6(a) and 7(a) for additional information.

Foreign person. If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the recipient has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.

EXHIBIT “B”
BID PAGE

BID
for
HIDALGO COUNTY HEAD START PROGRAM
"ROOF REPAIRS - SAN JUAN II HEAD START"
August 24, 2010

To: Hidalgo County Head Start Program
Ambrosio Tovar, Procurement Director
1901 West State Hwy 107
McAllen, Texas 78504

In accordance with the requirements, and subject to all laws and regulations of the United States and state and local laws, the undersigned respondent proposes and commits to furnish all labor, equipment, material, software and services as set forth in the documents hereinbefore mentioned. The undersigned respondent further agrees, upon acceptance of its bid, to execute a contract and/or Purchase Order issued by Hidalgo County Head Start Program for performing and completing the work described in the requirements within the time stated and for the prices bided in the documents attached hereto and made a part hereof.

Respondent acknowledges receipt of all of the pages of the documents referenced in the Request for Sealed Bids Checklist presented in connection with this procurement. Respondent understands that Hidalgo County Head Start Program reserves the right to reject any or all BIDS and further reserves the right to design the evaluation criteria to be used in selecting the lowest and best bid.

Respondent agrees that this bid shall be good and may not be withdrawn for a period of ninety (90) calendar days after the scheduled closing time for accepting BID, as contained in the requirements.

Respectfully submitted,

Respondent: Artex Industrial Products LLC

Address: 451 W. Volana #8

Pharr TX 78577

By: [signature]

Printed Name: Ricardo Lopez

Title: Manager

(THIS PAGE MUST BE SUBMITTED WITH BID)

SELECTION PROCEDURES: The SEALED BID shall be submitted according to the schedule below. The respondent should be able to submit a Cost Bid.

SEALED BID SUBMITTED TO: An original and three (3) copies of Sealed Bid should be submitted to:

Ambrosio Tovar, Procurement Director
Hidalgo County Head Start Program
P. O. Box 0117
Edinburg, TX 78540-0117

BID must be submitted NO LATER THAN 2:00 p.m. on Wednesday, September 8, 2010.

COST:

SAN JUAN II CENTER

Roof Repair Cost: $ 29,800.00

Bidder's signature indicates an understanding and intent to comply with all Federal state and local regulations associated with implementing a Head Start Program and that the listed bid price will be valid for a period of ninety (90) days.

BIDDER'S NAME: Artex Industrial Products LLC

ADDRESS: 451 W. Polana

CITY/STATE/ZIP CODE: Pharr TX

PHONE NUMBER: 956-781-8555 FAX NUMBER: 956-781-8865

AUTHORIZED SIGNATURE: [signature]

TITLE: Manager

DATE: 9-8-2010

*****It is Mandatory that Bid Page be included in Bid Package*****

EXHIBIT “C”
INSURANCE REQUIREMENTS

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 7/13/2010

PRODUCER (956)631-1911 FAX: (956)631-3911
Safeguard Insurance Agency
33[illegible] N. McColl Rd.
McAllen TX 78501

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
ARTEX INDUSTRIAL PRODUCTS LLC
451 W NOLANA STE 8
PHARR TX 78577

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: Progressive County Mutual	29203
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 LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
		GENERAL LIABILITY				EACH OCCURRENCE	$
		COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	$
		[ ] CLAIMS MADE [ ] OCCUR				MED EXP (Any one person)	$
						PERSONAL & ADV INJURY	$
						GENERAL AGGREGATE	$
		GEN'L AGGREGATE LIMIT APPLIES PER:				PRODUCTS - COMP/OP AGG	$
		[ ] POLICY [ ] PRO-JECT [ ] LOC					
		AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (Ea accident)	$ 500,000
		[ ] ANY AUTO					
A		[ ] ALL OWNED AUTOS	04738138-0	6/4/2010	6/4/2011	BODILY INJURY (Per person)	$
		[X] SCHEDULED AUTOS					
		[X] HIRED AUTOS				BODILY INJURY (Per accident)	$
		[ ] NON-OWNED AUTOS					
						PROPERTY DAMAGE (Per accident)	$
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	$
		[ ] ANY AUTO				OTHER THAN AUTO ONLY: EA ACC	$
						AGG	$
		EXCESS / UMBRELLA LIABILITY				EACH OCCURRENCE	$
		[ ] OCCUR [ ] CLAIMS MADE				AGGREGATE	$
							$
		[ ] DEDUCTIBLE					$
		[ ] RETENTION $					$
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATU-TORY LIMITS / OTH-ER	
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N [ ]				E.L. EACH ACCIDENT	$
		If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE	$
						E.L. DISEASE - POLICY LIMIT	$
		OTHER					

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

CERTIFICATE HOLDER

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 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
Denora Garza/DGARZA
Denora V. Garza

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 7/13/2010

PRODUCER (956) 631-1911 FAX: (956) 631-3911
Safeguard Insurance Agency
33[illegible] N. McColl Rd.
McAllen TX 78501

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
Artex Industrial Products, LLC
451 West Nolana, Ste 8
Pharr TX 78577

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: Texas Mutual Fund	
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 LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
		GENERAL LIABILITY				EACH OCCURRENCE	$
		COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	$
		CLAIMS MADE ☐ OCCUR ☐				MED EXP (Any one person)	$
						PERSONAL & ADV INJURY	$
						GENERAL AGGREGATE	$
		GEN'L AGGREGATE LIMIT APPLIES PER:				PRODUCTS - COMP/OP AGG	$
		POLICY ☐ PRO-JECT ☐ LOC ☐					
		AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (Ea accident)	$
		ANY AUTO				BODILY INJURY (Per person)	$
		ALL OWNED AUTOS					
		SCHEDULED AUTOS				BODILY INJURY (Per accident)	$
		HIRED AUTOS					
		NON-OWNED AUTOS				PROPERTY DAMAGE (Per accident)	$
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	$
		ANY AUTO				OTHER THAN AUTO ONLY: EA ACC	$
						AGG	$
		EXCESS / UMBRELLA LIABILITY				EACH OCCURRENCE	$
		OCCUR ☐ CLAIMS MADE ☐				AGGREGATE	$
							$
		DEDUCTIBLE					$
		RETENTION $					$
A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				X WC STATU-TORY LIMITS ☐ OTH-ER	
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N ☐	SBP-0001212952	6/9/2010	6/9/2011	E.L. EACH ACCIDENT	$ 1,000,000
		If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
						E.L. DISEASE - POLICY LIMIT	$ 1,000,000
		OTHER					

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

Certificate Holder is listed as Waiver of Subrogation but only in respects to the Named Insured's business operations.

CERTIFICATE HOLDER

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 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
Denora Garza/DGARZA Denora V. Garza

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 07/13/2010

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Myron F. Steves & Company
6800 Park Ten Blvd., Suite 160-S
San Antonio, TX 78213

CONTACT NAME:
PHONE A/C, No Ext):
FAX A/C, No Ext):
E-MAIL ADDRESS:
PRODUCER CUSTOMER ID#:

INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A:	Markel Essex Insurance Company	39020
INSURER B:		
INSURER C:		
INSURER D:		
INSURER E:		
INSURER F:		

INSURED
Artex Industrial Products, LLC.
451 West Nolana, Ste. 8
Pharr, TX 78577

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY ☑ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☑ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☑ POLICY ☐ PRO-JECT ☐ LOC	Y	Y	3DD8314	06/04/2010	06/04/2011	EACH OCCURRENCE	$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 100,000
							MED EXP (Any one person)	$ 5,000
							PERSONAL & ADV INJURY	$ 1,000,000
							GENERAL AGGREGATE	$ 2,000,000
							PRODUCTS - COMP/OP AGG	$ 1,000,000
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ☐ NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident)	$
							BODILY INJURY (Per person)	$
							BODILY INJURY (Per accident)	$
							PROPERTY DAMAGE (PER ACCIDENT)	$
								$
								$
	UMBRELLA LIAB ☐ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DEDUCTIBLE ☐ RETENTION						EACH OCCURRENCE	$
							AGGREGATE	$
								$
								$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N ☐ N/A (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						☐ WC STATU-TORY LIMITS ☐ OTH-ER	
							E.L. EACH ACCIDENT	$
							E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$
								$
								$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
Certificate Holder is listed as an Additional Insured with a Waiver of Subrogation but only with respects to the Named Insured's business operations.

CERTIFICATE HOLDER

CANCELLATION
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE Fred Steves

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DEBARMENT FORM

Certification For
Primary Covered Transactions

1. The Arter Industrial Products (Vendor Name) certifies to the best of its knowledge and belief, that it and its principals:

   a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

   b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

   c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

   d) Have not within a three-year period preceding this request for qualifications had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the Arter Industrial Products (Vendor Name) is unable to certify to any of the statements in this certification, such prospective vendor shall attach an explanation to this RFQ.

Signature: _____

Print Name: RICARDO LOPEZ

Title: MANAGER

Telephone No.: 956-781-8555 Date: 9/8/16

CONFLICT OF INTEREST FORM

EXHIBIT D

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor or other person doing business with local governmental entity

This questionnaire is being filed in accordance with chapter 176 of the Local Government Code by a person doing business with the governmental entity.

By law this questionnaire must be filed with the records administrator of the local government not later than the 7th business day after the date the person Becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.

A person commits an offense if the person violates Section 176.006 Local Government Code. An Offense under this section is a Class C misdemeanor.

OFFICE USE ONLY
Date Received

1 Name of person doing business with local governmental entity. Rhardo Lopez

2 ☐ Check this box if you are filling an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

3 Name of local government officer with whom filer has employment or business relationship.

Name of Officer

This section (item 3 including subparts A,B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001 (1-a), Local Government Code. Attach additonal pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income other than investment income from the filer of the questionnaire?

☐ Yes ☒ No

B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local government entity?

☐ Yes ☒ No

C. Is the filer of the questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

☐ Yes ☒ No

D. Describe each employment or business relationship with the local government officer named in this section.

4

Signature of person doing business with the governmental entity

9-8-2010
Date

W-9 FORM

Form **W-9**
(Rev. November 2005)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Give form to the requester. Do not send to the IRS.

Print or type
See Specific Instructions on page 2.

Name (as shown on your income tax return)
Artex Industrial Products LLC.

Business name, if different from above

Check appropriate box: ☐ Individual/ Sole proprietor ☐ Corporation ☐ Partnership ☒ Other ▶ L.L.C. ☐ Exempt from backup withholding

Address (number, street, and apt. or suite no.)
451 W. Nolana #8

Requester's name and address (optional)

City, state, and ZIP code
Pharr TX 78577

List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number
			–			–		

or

Employer identification number
2	7	–	1	8	2	7	7	5	0

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. person (including a U.S. resident alien).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See the instructions on page 4.)

Sign Here — Signature of U.S. person ▶ [signature] Date ▶ 4-28-10

Purpose of Form

A person who is required to file an information return with the IRS, must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

U.S. person. Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee.

In 3 above, if applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

For federal tax purposes, you are considered a person if you are:

- An individual who is a citizen or resident of the United States,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States, or
- Any estate (other than a foreign estate) or trust. See Regulations sections 301.7701-6(a) and 7(a) for additional information.

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

BIDDER/VENDOR APPLICATION

HIDALGO COUNTY HEAD START PROGRAM
Bidder/Vendor Application

Complete in print or type. It is the vendor's responsibility to return this application to Hidalgo County Head Start Program Procurement Department.

Company Name Arter Industrial Products — **Telephone No. ( )** 956-781-8555

Mailing Address 451 W Polaris #8 — **Fax No. ( )** 956-781-8865

City, State, Zip Pharr TX 78577 — **Tax I.D. No.** 27-1827750

Remit to Address — **City, State, Zip**

Representative(s) Name(s) & Title(s)

Type of Organization (check one): _____ Individual _____ Partnership _____ Corporation
__X__ LLC _____ Other, Specify
Federal Identification No. or (if individual) SS No.

State of Incorporation: Texas **Other:**

Type of Business (check one): _____ Manufacturer _____ Wholesaler _____ Retailer _____
Broker_____ Distributor _____ Service Organization __X__ Other, Specify Construction

Name & Title of Person(s) Authorized to Sign Bids, Proposals, and/or Contracts:
Ricardo Lopez

Small and/or Disadvantaged Business Information (check application criteria)

Small Business:
- Less than 125,000 annual gross receipt
- Less than 250,000 annual gross receipt
- Less than 499,000 annual gross receipt
- More than 500,000 annual gross receipt

Disadvantaged Business (At Least 51% Ownership)
- Black American
- Hispanic American
- Asian Pacific American
- Native American
- Women
- Other

Have you been certified as a HUB or an MBE/WBE source?: · Yes · (No)
Indicate Certification No.(s): _____ **or are Certificate(s) attached?:** · Yes · (No)

What type of product(s) is/are solicited by your company?: Construction
Would you like to be provided with specifications for procurements of such products?: (Yes) · No

AI-22948 **16.F.**

Contract with Dannenbaum Engineering

CC REGULAR

Date:	09/21/2010
Submitted By:	Linda Galaviz, HEAD START
Submitted For:	Edmundo Garcia
Department:	HEAD START
Agenda Category:	Head Start

Information

CAPTION

Discussion/Approval to Enter into Contract for Professional Services with Dannenbaum Engineering-McAllen, LLC, for the Project of doing Roof Repairs on the San Juan II and Palmview II Head Start Centers

BACKGROUND

Policy Council Approval: 09.15.10

Fiscal Impact

FISCAL YEAR: **ACCT. #:**

FUNDS AVAILABLE Y/N?: **MATCHING FUNDS Y/N?:**

BUDGETARY IMPACT:

No Fiscal Impact

Attachments

Link: Dannenbaum Engineering (revised)

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
1	Budget & Management	Sylvia Solis	09/15/2010 10:04 AM	APRV
2	Roland Garcia	Rolando Garcia	09/17/2010 03:01 PM	APRV
3	Auditor's Office		09/17/2010 04:52 PM	NEW
Form Started By: Linda Galaviz			Started On: 09/13/2010 02:41 PM	
Final Approval Date: 09/17/2010				

Hidalgo County Head Start Program
Policy Council Agenda Request

DATE: September 15, 2010

SUBJECT: Approval to Enter Into Contract for Professional Services With Dannenbaum Engineering-McAllen, LLC, for the project of Doing Roof Repairs on the San Juan II and Palmview II Head Start Centers

RATIONALE/NEED: Funding for this project was awarded by the U.S. Department of Health & Human Services under the American Re-Investment Recovery Act (ARRA).

RECOMMENDATION: Administration recommends approval.

COST: $13,416.76

RELATED INFORMATION INCLUDED: Contract for Professional Services

* *

INITIATED BY: Ambrosio Tovar, Procurement Director

REVIEWED BY: Mr. Edmundo Garcia, Assistant Director

PROGRAM DIRECTOR'S APPROVAL: Teresa Flores

THE STATE OF TEXAS §
§
COUNTY OF HIDALGO §

AGREEMENT FOR PROFESSIONAL SERVICES
C-10-027-02-24

THIS AGREEMENT is made, by and between **HIDALGO COUNTY HEAD START PROGRAM**, acting herein by and through the **Commissioner's Court,** hereinafter called the "**Owner",** and Dannenbaum Engineering Company-McAllen, LLC Professional Engineers of **McAllen, Texas,** hereinafter called the "**Engineer".**

WITNESSETH:

WHEREAREAS, the **Owner** desires to contract with the **Engineer** to provide professional engineering services related to "**Palmview II and San Juan II Head Start Buildings Roof Repairs"** hereinafter referred to 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 engineering 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 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.

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.

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

3.1 Termination Date. This Agreement will terminate on October 6, 2010 (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** 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.**

If the **Owner** suspends the work, the **Termination Dates** 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 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 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 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 five consideration to payment of an amount in settlement to include: 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 cumulative.

The termination of the Agreement and payment of an amount is 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 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 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 as follows:

5.1 ***Basic 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 maximum amount payable by the **Owner** to the **Engineer** for ***Services***, subject to adjustment in accordance with Article 6.1 herein, will be provided in each work authorization issued. Payments to the **Engineer** for ***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 that may be required to provided by the **Engineer** as ***Special Services*** are set forth below and more particularly described in **ESHIBIT "B"**, attached hereto. For and in consideration of these ***Special Services*** rendered as required by the **Engineer,** the **Owner** shall pay the **Engineer** a negotiated lump sum fee (hereafter referred to as **"Special Services Fee")** at the hourly labor rates and non-labor rates (hereinafter referred to as **"Contract Rates"**) specified in **EXHIBIT "D" –** ***Contract Rates,*** attached hereto and made a part of this Agreement, and as follows:

1.- **RESIDENT OR SITE ENGINEER, INSPECTOR** Actual performance of services of project site engineer, resident engineer and/or inspector, if required by **Owner.**

2.- DOCUMENT COPIES Actual performance and/or providing of additional copies (over 10) of report; additional copies (over 10) of plans (contract drawings), specifications and estimates (PS&E); additional copies (over 10) of bidding documents: additional copies (over 10) of as-built drawings.

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

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

5.- **MISCELLANEOUS.** Investigations involving detailed consideration of operation, maintenance and overhead expenses and (unless otherwise agreed) the preparation of rate schedules, earning and expense statements; preparation of feasibility studies; environmental document preparation; appraisals, valuations, and material audits; or inventories required for certification of force account construction performed by the **Owner;** preparation of change orders for extra work done by the **Contractor.**

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 to each work authorization (hereinafter referred to as **"Work Authorization")** in accordance with **Article 7** herein. For each **Work Authorization,** 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 services, the **Engineer** shall submit to the **Owner** for approval a **Request for Payment.** Payment of the lump sum fee for each **Work Authorization** identified in the **Request for Payment** will be in proportion to the percent completion of the work tasks identified in such **Work Authorizations** 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 exception as the **Owner** reasonably deems necessary or appropriate under the circumstances then existing. About ten (10) working days after the Commissioner 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.

If the **Project,** or any portion(s) thereof, are deleted or otherwise not constructed, compensation to the **Engineer** by the **Owner** for the **Project** or such portions of the project shall be only the amounts paid the **Engineer** fir actual work performed in accordance with the **Work Authorization(s)** approved by the **Owner.**

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 of **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** 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 the 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. After execution of this Agreement, the **Engineer** shall proceed with the work outlined under Article 2 hereof, only as authorized by the **Owner** through an agreed **Work Authorization** document in the form identified in **EXHIBIT "E" – *Work Authorization Forms*,** attached hereto and made a part of this Agreement. The **Engineer** will identify, as approved by the **Owner,** the needed services for the **Project**, as required through the course of the development to the **Project.** The **Owner** shall authorize the **Engineer** to perform one or more of the agreed tasks identified in **EXHIBIT "B",** attached hereto, in the form of individual work authorizations. Upon authorization from the **Owner,** the **Engineer** will prepare a **Work Authorization** document, which will include a description of the work to be performed, including a description of the tasks and milestones, a work schedule, and an estimated cost proposal agreed upon by the **Owner** and the **Engineer.** The estimated cost proposal shall set forth in detail the computation of the cost of each work task, at the hourly rates established and identified in **EXHIBIT "D"**, attached hereto. The **Work Authorizations** shall not waive the **Owner's** and the **Engineer's** responsibilities and obligations established in this Agreement.

The estimated cost proposal for each **Work Authorization,** developed by the **Engineer** and Approved by the **Owner** shall be used by the **Owner** to appropriate a purchase order for the **Work**

Authorization. Each executed **Work Authorization** shall become a part of this **Agreement.** Upon Satisfactory completion of the **Work Authorization,** the **Engineer** shall submit the **project's** deliverables as specified in the executed **Work Authorization** to the **Owner** for review and acceptance.

Work included in a **Work Authorization** shall not begin until the **Owner** and the **Engineer** have signed the **Work Authorization**. All work must be completed on or before the completion date specified in the **work Authorization**, unless extended by written agreement by the **Engineer** and the **Owner.** The **Engineer** shall promptly notify the **Owner** of any event that will effect completion of the **Work Authorization.** All **Work Authorization** must be executed and completed by both the **Engineer** and The **Owner** within the period established for this Agreement as specified in Article 3 hereof.

The final acceptance by the **Owner** for each **Work Authorization** for the **Project** shall serve as evidence of completion, on the part of the **Engineer**, of all service under this Agreement insofar as they pertain to the portion of work on the **Project** identified in the applicable work authorization.

ARTICLE 8. Supplemental Agreements. The terms of this Agreement may be amended by Supplemental agreement of 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 of character of the service to be performed by the **Engineer**, and/or (3) for any other reason agreeable to the Owner and the Engineer. All supplemental agreement 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 **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 Article3 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 changes or revisions in work, as identified in Article 10 hereof, shall be made by **Engineer** until full execution of **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 option 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 find 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** shall so advise the **Engineer** as provided herein. The **Engineer** shall not perform any proposal additional work or incur any additional cost 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 cost incurred by the **Engineer** relating to additional work no directly associated with the performance of the work authorization 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 previous Approved or Satisfactorily Completed Work. If the **Owner** fund it necessary to request the **Engineer** to make changes to work previously approved by the **Owner** or work satisfactory 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 the 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 compensated by the **Owner** for such extra services and expense in accordance with Article 9 hereof.

10.4 Reduction of project cost. Notwithstanding any provisions herein to the contrary, in the event it is necessary for the **Owner** to required changes in the final plan of the **project** to enable it to the reduce the construction cost of the **Project** to an amount with 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 for 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 **Released of Documents.**

11.1 Ownership of Documents. Original drawing 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** with the **Owner's** consent. The Owner shall be furnished with such reproductions of drawing and 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 drawing 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 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's** own expense, and 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 other regarding the **Project** will be accordance with the Texas public information Act.

ARTICLE 12 Discounts, Rebates, Refunds. In connection with procurement services rendered by the **Engineer,** if procurement is 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 other consideration 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, drawing, 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 14. Subcontracting and Assignment. The **Engineer** shall not assign, subcontract or transferred the **Engineer's** interested in this Agreement without the prior written consent of the **Owner.** The **Engineer** shall bind every sub consultant by written subcontract o observe all the terms of this Agreement to the extent that they may be applicable to each sub consultant. No subcontract relives the **Engineers** 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 assign of such other party in respect to all covenants of this contract.

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** shall indemnify and save the **Owner** harmless from and against all cost, 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 paper served on the **owners** 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 if 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 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 or of as 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** possession prior such as 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 subjected 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. **Engineer** shall, however, inform each 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 purpose of this Article.

16.2 Inventions. The **Engineer** shall communicate to the **Owner** at once, and required the **Engineer's** employees assigned to this **project** to communicated 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** 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 is employees to execute patent applications and assignment thereof to the **Owner** or its nominees, and powers of attorney relating thereto for any county the **Owner** may designated, 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** desired to protect them. Before assigned 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 terminations, discharge or cancellation thereof

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

17.1 Engineer's Seal. The **Engineers** 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 Stare Board of Registration for Professional Engineers.

17.2 Engineer's Responsibility. The **Engineer** shall e 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 for 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 clarifications of any ambiguities until after the construction phase of the **Project** has been completed.

17.3 Warranties.

(a) 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.

(b) 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 **Engineers's** best efforts, skill, judgment and abilities to design the **Project** and to further the interest 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 law, regulations, code, ordinance, orders and with those of any other body having jurisdiction. If the development of plans, specifications and estimates (hereinafter referred to as **"PS&E"**) are identified in this Agreement under Article 2 hereof or **EXHIBIT "B" ,** attached hereto, as part of the service to be provided by the **Engineer** for the **Project** , prior the commencement of construction, the **Engineer** shall certify in writing to the **Owner** that the **PS&E** for the **Project,** and the improvements with built in accordance therewith, conform to all applicable governmental regulations, statutes and ordinance 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.

(c) 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 inspection 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 abilities engaged in engineer practice throughout Texas under the same or similar circumstances involving the design and construction of **Project.**

(d) The **Engineer** represents, covenants and agrees that all of **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** to be the prime professional on the **Project** in its entirely and possesses the special skill which enable the **Engineer** to recognize that any commissioners, elected officials, employees and agents of the **Owner,** plus resident 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.

(e) if the development of **PS& E** is identified in this agreement under Article 2 hereof or **EXIBIT 'B',** attached hereto, as part of the services to be provided by the **Engineer** for the **Project**, 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 any **PS&E** developed by the **Engineer** for the **Project;** that the result of such **PS&E,** if built in accordance there with, 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 **PS&E** developed by the **Engineer** for the Project, 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 such **PS&E.**

(f) In connection with the **Engineer's** performance of procurement services hereunder, if any, the **Engineer** uses its best affords to obtain from all vendors of equipment and materials, fullest possible warranties against detective materials and workmanship for the benefit of **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 that **Project Manager** to manage 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 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 Document/Information Exchange The purpose of the Article is to define the required automated resources, format for graphics files, and information exchange pertaining to the **Project.** Taking into consideration that the **Owner** has a significant investment is the development of **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 requirement outlined in **EXHIBIT"B"** attached hereto.

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, and hold harmless the **Owner,** the **Owner's** respective directors, elected officials, employees and agent (collectively **"indemnities"**) 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 there from and (2) are caused in whole or in part by any negligent act or omission of the **Engineer,** anyone directly 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 **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 **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 **Indemnitees** has by law.

ARTICLE 21 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 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 **Owner** as an additional insured and endorsed with a waiver of subrogation in favor of 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 fifty 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 minimum limits of liability for each of the types of insurance coverage identified above. The **Engineer** shall furnish the **Owner** with certificate of insurance **(Hidalgo County Certificate of Insurance)** showing the said policy to be in full force and 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 for this Agreement. The completed Hidalgo County Certificate Of Insurance shall be attached hereto and identified as **EXHIBIT"G"** – 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 Agreement as outlined in Article3.4 hereto. Additionally, the **Engineer** covenants and agrees to use its best effort 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 **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 wages statutes and regulations and licensing laws and regulations. When required the **Engineer** shall furnish the **Owner** with satisfactory proof of its compliance therewith.

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 as 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 all 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 constructed 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:	**ENGINEER:**
Hidalgo County Head Start Program	**Dannenbaum Engineering Company**
ATT: Teresa Flores	**Attn: Louis H. Jones, Jr.**
1901 W. State Highway 107	**1109 Nolana Loop, suite 208**
McAllen, Texas 78504	**McAllen, Texas 78504**

The Address may be changed by either party by written notice and notice sol 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. These 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 Agreement or of any terms thereof shall impair the **Owner's** right 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 Agreement.

WITNESS WHEREOF, the **Engineer** and the **Owner** have caused this **Agreement for Professional Services** to be effective as of the **24th day of August, 2010**

ENGINEER:
Dannenbaum Engineering Company-McAllen, LLC

BY: _____
Louis H. Jones, Jr. P.E. – President

OWNER:
HIDALGO COUNTY HEAD START PROGRAM

BY: _____
Teresa Flores, Program Director

ATTEST:

BY: _____
Arturo Guajardo, Jr. County Clerk

HIDALGO COUNTY

BY: _____
Rene A. Ramirez, County Judge

APPROVED AS TO FORM:

Atlas & Hall, L.L.P.

BY: _____
Stephen Crain

Oxford & Gonzalez

BY: _____
Ricardo Gonzalez

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	-Certificate Of Insurance (Hidalgo County Head Start)

EXHIBIT A

SCOPE OF SERVICES TO BE PROVIDED BY THE OWNER

EXHIBIT "A"
Services to be Provided by the Owner for the Headstart Roof Repair Project

The following provides an outline of the services to be provided by the **Owner** in the development of the **Project** (as defined and more particularly identified in **EXHIBIT "B1"** attached to this Agreement).

I. 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.**

(7) Provide a copy of any studies, previously prepared by other parties contracted by the **Owner** and incorporated herein by reference as the ***"Building Repairs and/or Renovations for the Hidalgo County Precinct 3 Area"***, and any associated documentation that may be relevant to the **Engineer** in the evaluation and verification of any projects under the ***"Building Repairs and/or Renovations for the Hidalgo County Precinct 3 Area"***.

II. PRELIMINARY PROJECT PLANNING & DEVELOPMENT

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

(1) Approve the **Work** Plan prepared by the **Engineer** and more particularly identified in **EXHIBIT "B"** attached to this Agreement.

(2) Approve the **Project Schedule** prepared by the **Engineer** and more particularly identified in **EXHIBIT "B"** attached to this Agreement.

(3) **Construction Estimate.** Provide the **Engineer** a copy of historical bid tabulations, if available, for similar projects and periodically review and approve the **Construction Estimate** as developed and prepared by the Engineer and more particularly identified in **EXHIBIT "B"** attached to this Agreement.

(4) Submit all required applications prepared by the **Engineer** as relevant for funding sources.

III. FINAL DESIGN & CONSTRUCTION

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

Construction Documents

(1) Review and approve plan, specifications, and estimate (PS&E) for the **Project** or portions of the **Project** as prepared or by the **Engineer** and/or prepared by the **Owner** and reviewed by the **Engineer** and more particularly identified in **EXHIBIT "B"** attached to this Agreement.

Construction

(2) Review and approve all services provided by the **Engineer** (and more particularly identified in attached to this Agreement) regarding advertising for each authorized construction contract for the Project, the opening and tabulation of bids, and the preparation of contract document for the award of construction contracts.

(3) Review and approve change orders as required and prepared by the **Engineer.**

EXHIBIT B

SCOPE OF SERVICES TO BE PROVIDED BY THE ENGINEER

EXHIBIT "B"
Services to be Provided by the Engineer
for the Headstart Roof Repair Project

I. BASIS SERVICES
PROJECT PLANNING / ENGINEERING

Construction Administration.

The **Engineer** shall provide construction administrative services for the **Project.** The **Engineer** shall also assist the **Owner** in the assessment of the issued construction bids, the tabulation of the bids, provide a recommendation as to the proper action on all bid proposals received, and assist in the preparation of formal contract documents for the award of contract. Specific work activities to be provided by the **Engineer** will include:

(1) **Construction Bidding Documents.** The **Engineer** shall perform the following in regard to the construction bidding documents:

a. The **Engineer** shall review the documents which were prepared by the County and issued for bidding purposes.

b. The **Engineer** shall issue a written opinion to the Owner regarding the effectiveness of the documents provided by the County to solicit bids for the required work**.**

c. The **Engineer** shall review the bids received by the County and recommend to the **Owner** as to the proper action on all bid proposals received.

d. The **Engineer** shall assist the **Owner** in the preparation of formal contract documents for the award of the construction contract.

(2) **Owner's Representative.** In general, the **Engineer** shall provide the activities required for consultation and advisement to the **Owner** during construction, and act as the **Owner's** representative as provided in the General Conditions of the Construction Contract. The extent and limitations of the duties, responsibilities and the authority of the **Engineer** as assigned in the General Conditions of the Contract shall not be modified, except as the **Engineer** may otherwise agree in writing.

(3) **Defects and Deficiencies.** In providing the administration of the authorized construction contract, the **Engineer** shall use the **Engineer**'s best efforts to protect the **Owner** against defects and deficiencies in the work of the construction contractor, hereinafter called the **"Contractor"**. The **Engineer** does not guarantee the performance of the **Contractor;** however, the **Engineer** will promptly notify the **Owner** of any such defect or deficiency, and take all steps possible to require the **Contractor** to correct the defect or deficiency.

(4) **Contractor Payment**. The **Engineer** shall obtain the measurements and calculated quantities

prepared under the ***engineering*** activities identified under II – Preliminary Engineering, Design, and Construction (**Construction**) in this exhibit, and review and approve the monthly and final estimates for payments to the **Contractor** for those items of work accepted and conforming to the construction contract specifications. The **Engineer** will furnish to the **Owner** any necessary certifications as to payments to the **Contractor** and suppliers. *Note: The **Engineer** is not responsible for actual payments to the **Contractor.***

(5) **Construction Observation**. The **Engineer** will coordinate and monitor the **Project** site representation of the authorized construction contract by providing the following special services, if authorized by **Owner**:

Project Manager. The **Engineer** will provide visits by the ***Project Manager*** or a competent representative of the **Engineer** to the site of construction at least once a month for the purpose of monitoring the **Contractor**'s progress and conformance to the construction contract plans and specifications as basic services. Additional visits shall be provided as special services at the request of the **Owner**. In the capacity of site inspection, the **Engineer** will issue instructions from the **Owner** to the **Contractor**, issuing necessary interpretations and clarifications of construction contract documents, and make recommendations to the **Owner** as to the acceptability of the **Contractor**'s progress and work.

(7) **Change Orders**. When applicable, the **Engineer** will review and provide recommendations for all change orders developed under II – Preliminary Engineering, Design, and Construction (**Construction**) in this exhibit for purpose of preparing construction contract change orders. These change orders may be required due to actual field conditions encountered or new requirements directed by the **Owner**. The **Engineer** will prepare, explain, and submit proposed change orders, when applicable.

(8) **Final Acceptance.** Following the completion of construction by the **Contractor**, the **Engineer** will provide the services required for the final inspection and recommendation for **Project** acceptance. This will include coordinating the activities required for the inspection for conformance and recordkeeping of the necessary performance tests required by the construction contract specifications. The **Engineer** will also review and approve all as-built drawings (to show the work as actually constructed), and furnish to the **Owner** one set of prints of the as-built drawings. *Note: Services to be provided by the **Engineer** for Items II and III primarily involve the **engineering** work tasks for the **Project.***

EXHIBIT C

WORK SCHEDULE

EXHIBIT "C"
Work Schedule
for the Headstart Roof Repair Project

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 by the **Owner** in writing 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.

Engineer's Work Schedule
Calendar Days

Day 1	Engineer Notice to Proceed
Day 8	Document and Bid review response conference
Day 22	Contract award
Day 24	Preconstruction Meeting
Day 52	Substantial Completion inspection
Day 59	Final Inspection
Day 68	Final Payment

EXHIBIT D

ENGINEER'S RATES

Dannenbaum Engineering Company - McAllen, LLC
Client: Hidalgo County Precinct 3
Project Name: Hidalgo County Pct 3 Headstart Building Roof Repairs
Project Number: 4513-02

EXHIBIT "D"
FEE BUDGET ESTIMATE
BASIC SERVICES - ENGINEERING
HEADSTART BUILDING ROOF REPAIRS - PALMVIEW AND SAN JUAN FACILITY
SPECIFICATIONS REVIEW/ BID TABULATION AND SELECTION REVIEW / CPS
WORK AUTHORIZATION NO. 1

Prepared by: _____
Reviewed by: _____
Checked by: _____

DEC TASK CODE	DESCRIPTION OF WORK TASK	BASIS OF MANHOUR ESTIMATE QNTY	UNIT	PRINCIPAL (VIII) $388.49	PROJ MGR (VII) $247.92	SENIOR ENGR (V) $229.83	PROJ ENG (III) (IV) $201.95	ENGINEER (I) (II) $195.32	SR. ENG DGNR (III) $161.82	ENVIRON SCIENTIST $147.75	ENG DGNR (I)(II) $138.70	CADD OPER (I) (II) $97.42	SECTY $87.78	CONST MANANGER $168.18	CONST REP $101.18	TOTAL MH'S PER TASK	TOTAL FEE PER TASK
	PRELIMINARY ENGINEERING																
4200	**PROJECT START-UP AND COORDINATION**																
	COORDINATION WITH COUNTY/CITY OF MISSION						4						4			8	$1,158.92
	SUBTOTAL			0	0	0	4	0	0	0	0	0	4	0	0	8	$ 1,158.92
				$0.00	$0.00	$0.00	$807.80	$0.00	$0.00	$0.00	$0.00	$0.00	$351.12	$0.00	$0.00		
4210	**DATA GATHERING / DESIGN CRITIERIA**																
	COLLECT AND REVIEW COUNTY/HEADSTART DATA						4									4	$807.80
	VISIT SITE WITH CLIENT REPRESENTATIVES						4									4	$807.80
	SUBTOTAL			0	0	0	8	0	0	0	0	0	0	0	0	8	$1,615.60
				$0.00	$0.00	$0.00	$1,615.60	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00		
	TOTAL HOURS - PRELIM ENG			**0**	**0**	**0**	**12**	**0**	**0**	**0**	**0**	**0**	**4**	**0**	**0**	**16**	
	TOTAL COST - PRELIM ENG			**$0.00**	**$0.00**	**$0.00**	**$2,423.40**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$351.12**	**$0.00**	**$0.00**		**$2,774.52**
	TOTAL COST - PRELIMINARY ENGINEERING																**$2,774.52**
	% OF TOTAL HOURS PER CLASSIFICATION			0.00%	0.00%	0.00%	75.00%	0.00%	0.00%	0.00%	0.00%	0.00%	25.00%	0.00%	0.00%	100.00%	
	CONSTRUCTION PHASE																
5040	**BIDDING PHASE ENGINEERING**																
	RECOMMENDATION OF AWARD						6						2			8	$1,387.26
	REVIEW AND ASSEMBLE CONTRACTS **NOT IN CONTRACT**															0	$0.00
	SUBTOTAL			0	0	0	6	0	0	0	0	0	2	0	0	8	$ 1,387.26
				$0.00	$0.00	$0.00	$1,211.70	$0.00	$0.00	$0.00	$0.00	$0.00	$175.56	$0.00	$0.00		
5050	**CONSTRUCTION PHASE ENGINEERING**																
	NOTICE TO PROCEED						4						2			6	$983.36
	SITE VISITS / INSPECTION						20									20	$4,039.00
	INTERPRETATIONS AND CLARIFICATIONS						4									4	$807.80
	CHANGE ORDERS															0	$0.00
	SUBTOTAL			0	0	0	28	0	0	0	0	0	2	0	0	30	$ 5,830.16
				$0.00	$0.00	$0.00	$5,654.60	$0.00	$0.00	$0.00	$0.00	$0.00	$175.56	$0.00	$0.00		
5060	**PROJECT COMPLETION / FINAL ACCEPTANCE**																
	FINAL INSPECTION						8									8	$1,615.60
	CONTRACTOR'S FINAL PAY ESTIMATE						4									4	$807.80
	CERTIFICATE OF COMPLETION						4						2			6	$983.36
	SUBTOTAL			0	0	0	16	0	0	0	0	0	2	0	0	18	$ 3,406.76
				$0.00	$0.00	$0.00	$3,231.20	$0.00	$0.00	$0.00	$0.00	$0.00	$175.56	$0.00	$0.00		
	TOTAL HOURS - CONSTRUCTION PHASE			**0**	**0**	**0**	**50**	**0**	**0**	**0**	**0**	**0**	**6**	**0**	**0**	**56**	
	TOTAL COST - CONSTRUCTION PHASE			**$0.00**	**$0.00**	**$0.00**	**$10,097.50**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$526.68**	**$0.00**	**$0.00**		**$10,624.18**
	TOTAL COST - CONSTRUCTION PHASE																**$10,624.18**
	% OF TOTAL HOURS PER CLASSIFICATION			0.00%	0.00%	0.00%	89.29%	0.00%	0.00%	0.00%	0.00%	0.00%	10.71%	0.00%	0.00%	100.00%	
	TOTAL HOURS - PRELIM ENG / CONSTRUCTION PHASE			**0**	**0**	**0**	**62**	**0**	**0**	**0**	**0**	**0**	**10**	**0**	**0**	**72**	
	TOTAL COST - PRELIM ENG /CONSTRUCTION PHASE			**$0.00**	**$0.00**	**$0.00**	**$12,520.90**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$877.80**	**$0.00**	**$0.00**		**$13,398.70**
	% OF TOTAL HOURS PER CLASSIFICATION			0.00%	0.00%	0.00%	86.11%	0.00%	0.00%	0.00%	0.00%	0.00%	13.89%	0.00%	0.00%	100.00%	

DIRECT EXPENSES	NO.	UNIT	QUANTITY/UNIT	QUANTITY	UNIT PRICE	AMOUNT
PLOTTING - 11 X 17 PAPER PLOTS		SETS	PLOTS/SET	0	1.50	$ -
PLOTTING - 22 X 34 PAPER PLOTS		SETS	PLOTS/SET	0	6.00	$ -
PLOTTING - COLOR PLOTS		SETS	PLOTS/SET	0	10.00	$ -
MYLAR PLOTS - 11 X 17		SETS	PLOTS/SET	0	10.00	$ -
REPRODUCTION - 8.5 X 11 PAPER COPIES		SETS	COPIES/SET	0	0.12	$ -
REPRODUCTION - 11 X 17 PAPER COPIES		SETS	COPIES/SET	0	0.15	$ -
OVERNIGHT CARRIER COST		PKGS	EACH	0	30.00	$ -
AUTO EXPENSE (Mileage)	2	TRIPS	100 MI /TRIP	200	0.55	$ 110.00
TRAVEL-AT COST (MCALLEN TO --------)		TRIPS	COST/TRIP	0	0.00	$ -
TRAVEL-AT COST (HOUSTON TO --------)		TRIPS	COST/TRIP	0	0.00	$ -
TRAVEL-AT COST (HOUSTON TO MCALLEN)		TRIPS	COST/TRIP	0	0.00	$ -
TOTAL DIRECT EXPENSES (FOR 5.3 MILES)						**$ 110.00**

* **Travel costs include airfare, hotel, car rental and per diem.**

PRELIMINARY ENGINERING	$2,774.52
CONSTRUCTION PHASE SVS	$10,624.18
OTHER DIRECT EXPENSES	$ 110.00
GRAND TOTAL	**$ 13,508.70**

EXHIBIT E

WORK AUTHORIZATION FORM

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 **HIDAGLO COUNTY HEAD START PROGRAM,** 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 Engineer*** attached hereto.

PART 2 ESTIMATED COST
The estimated cost for services under this Work Authorization is _____. This amount is based upon the cost 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._____ shall be funded through funding source:
Account No.__-____-_____-__-____-____-_____-__-____
Requisition Number_____(MUST BE INCLUDED AFTER CC APPROVAL)

PART 5 PERIOD OF SERVICE
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 or (DATE).

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 Precinct No.____ Commissioner_____ as to content and detail of this Work Authorization No. #____.

HIDALGO COUNTY
COMMISSIONER PRECINCT NO.___:

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 _____,2010

THE ENGINEER	THE OWNER
Dannenbaum Engineering Company-McAllen, LLC	HIDALGO COUNTY HEAD START PROGRAM
_____	**_____**
By: (TYPE NAME)	**Teresa Flores, Program Director**
ATTEST:	
_____	**_____**
Arturo Guajardo, Jr. County Clerk	**Rene Ramirez, County Judge**

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

EXHIBIT F

SUPPLEMENTAL AGREEMENT FORM

THE STATE OF TEXAS §

COUNTY OF HIDALGO §

EXHIBIT "F"
Supplemental Agreement Form

SUPPLEMENTAL AGREEMENT NO. ___
TO AGREEMENT FOR PROFESSIONAL SERVICES

THIS SUPPLEMENTAL AGREEMENT is made pursuant to the terms and conditions of Article 7 of the Agreement made by and between **HIDALGO COUNTY HEAD START PROGRAM,** acting herein by and through its **BOARD OF DIRECTORS,** hereinafter called the **OWNER** and **DANNENBAUM ENGINEERING COMPANY – MCALLEN, LLC.** Professional engineers of McAllen, Texas, hereinafter called the **ENGINEER.**

W I T N E S S E T H

WHEREAS, the **OWNER** and the **ENGINEER** executed the Agreement on the day of _____, 2010 concerning "*Building Repairs and/or Renovations on an as Needed Basis for the Hidalgo County Precinct 3 Area"* (hereinafter referred to as the "Project"); and Work Authorization No.___ on the day of _____, 2010 for (description of Work Authorization);

And,

WHEREAS, Section _____of the Agreement, _____*(Section Title)*_____ establishes _____; and,

WHEREAS, it has become necessary to amend the contract _____

_____

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

I. Section _____of the Agreement, ___*(Section Title*____is revised to _____

_____

_____

IN WITNESS WHEREOF, the **ENGINEER** and the **OWNER** have caused this **Supplemental Agreement No.____** to be effective as of the _____day of _____, 2010.

ENGINEER:
DANNENBAUM ENGINEERING COMAPANY – MCALLEN, LLC

BY: _____
Louis H. Jones, Jr., P.E., President

HIDALGO COUNTY HEAD START PROGRAM

BY: _____
Rene Ramirez, County Judge

BY: _____
Teresa Flores, Program Director

ATTEST:

BY: _____
Arturo Guajardo Jr., County Clerk

APPROVED AS TO FORM:

OXFORD & GONZALEZ

BY: _____
Ricardo Gonzalez

APPROVED AS TO FORM:

ATLAS & HALL, L.L.P.

BY: _____
Stephen L. Crain

WORK AUTHORIZATION NO.1

ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID: i
DANNE-1

DATE (MM/DD/YYYY): 08/03/10

PRODUCER

Barmore Insurance Agency, Inc.
P.O. Box 34796
Houston TX 77234-4796
Phone: 713-209-2800 Fax: 713-209-2899

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

Dannenbaum Engineering Corp.,
see comments for full name ins
ETAL
P O Box 22292
Houston TX 77027

INSURERS AFFORDING COVERAGE		NAIC #
INSURER A:	Continental Casualty	20443
INSURER B:	Valley Forge Insurance Co	20508
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 LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
A		GENERAL LIABILITY X COMMERCIAL GENERAL LIABILITY CLAIMS MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY X PRO-JECT LOC	2053853648 CONTRACTUAL LIAB INCLUDED	06/01/10	06/01/11	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1000000 $ 700000 $ 5000 $ 1000000 $ 2000000 $ 2000000
B		AUTOMOBILE LIABILITY X ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS	C 1015348305	06/01/10	06/01/11	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1,000,000 $ $ $
		GARAGE LIABILITY ANY AUTO				AUTO ONLY - EA ACCIDENT OTHER THAN AUTO ONLY: EA ACC AGG	$ $ $
A		EXCESS / UMBRELLA LIABILITY X OCCUR CLAIMS MADE DEDUCTIBLE X RETENTION $	2053853049	06/01/10	06/01/11	EACH OCCURRENCE AGGREGATE	$ 10,000,000 $ 10,000,000 $ $ $
B		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y / N If yes, describe under SPECIAL PROVISIONS below	WC 1 22022126	06/01/10	06/01/11	X WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ 1000000 $ 1000000 $ 1000000
A		OTHER Professional Liab Ded $200,000	AEH 25 405 50 21 CLAIMS MADE	04/01/10	04/01/11	Per Claim Aggregate	$2,000,000 $4,000,000

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

CERTIFICATE HOLDER

HIDCEDI

HIDALGO CO HEAD START PROGRAM
PO BOX 117
EDINBURG TX 78540

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 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
JM Barmore

ACORD 25 (2009/01)

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AI-22926 **16.G.**

Enter into a Contract with Bill Crawford, Ph.D.

CC REGULAR

Date:	09/21/2010
Submitted By:	Linda Galaviz, HEAD START
Department:	HEAD START
Agenda Category:	Head Start

Information

CAPTION

Approval of final negotiated contract for Professional Educational Services with Bill Crawford, PhD to provide training/staff development to Executive team members to improve management/communication skills, authorized by Commissioners' Court on 08/24/10.

BACKGROUND

Policy Council Approval: 09.15.10

Fiscal Impact

FISCAL YEAR: **ACCT. #:**

FUNDS AVAILABLE Y/N?: **MATCHING FUNDS Y/N?:**

BUDGETARY IMPACT:

No Fiscal Impact

Attachments

Link: Contract with Bill Crawford

Link: backup

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
1	Budget & Management	Sylvia Solis	09/15/2010 10:04 AM	APRV
2	Roland Garcia	Rolando Garcia	09/17/2010 10:37 AM	APRV
3	Auditor's Office		09/17/2010 04:52 PM	NEW
Form Started By: Linda Galaviz			Started On: 09/10/2010 04:25 PM	
Final Approval Date: 09/17/2010				

Hidalgo County Head Start Program
Policy Council Agenda Request

DATE: September 15, 2010

SUBJECT: Approval to Enter Into Contract for Professional Educational Services With Bill Crawford, PhD to Provide Training/Staff Development to Executive Team Members to Improve Management/ Communication Skills

RATIONALE/NEED: This training is being provided by a renowned consultant with a Ph.D. in Counseling Psychology. This training will enhance staff's skills in management and communication.

RECOMMENDATION: Administration recommends approval.

COST: $4,950.00

RELATED INFORMATION INCLUDED: Contract for Professional Services

* *

INITIATED BY: Ambrosio Tovar, Procurement Director A. Salinas for A. Tovar

REVIEWED BY: Mr. Edmundo Garcia, Assistant Director

PROGRAM DIRECTOR'S APPROVAL: Teresa Flores

THE STATE OF TEXAS §
§
COUNTY OF HIDALGO §

CONTRACT FOR CONSULTING SERVICES
C-10-033-08-24

THIS AGREEMENT (The "Agreement") is made effective the **25th day of October, 2010** by and between **HIDALGO COUNTY HEAD START PROGRAM,** (hereinafter "the Program") a federally funded program under the auspices of HIDALGO COUNTY, TEXAS, a political subdivision of the State of Texas and **Bill Crawford** (hereinafter" Consultant") to serve at the pleasure of the Hidalgo County Head Start Program.

W I T N E S S E T H:

WHEREAS, Program desires to contract with a Consultant to provide the services necessary to the Program that are more specifically set forth hereinafter; and

WHEREAS, Consultant has agreed to provide the services enumerated hereinafter to Hidalgo County Head Start Program.

NOW, THEREFORE, for the mutual consideration expressed hereinafter, Program and Consultant agree as follows:

1. Consultant agrees to provide the Program the consulting services required by Head Start Program in connection with the **"Clarity, Confidence & Creativity-Communication and Problem Solving from the Top of the Mind".**

("services"). Pursuant to Article 262.024 of the Texas Local Government Code, the Program exempted the service of the Consultant from Section 262.023 of the Local Government Code, to assist the Program in providing consulting services to the Plan. The services include, but are not limited to, the items listed on Appendix A, which is attached and made a part of this Agreement.

2. As consideration for the services of Consultant described herein, Program Agrees to pay Consultant the fees as outlined in Appendix B, which is attached, to and made a part of this Agreement.

3. Consultant must comply with all applicable Program policies. Notwithstanding the foregoing sentence, Consultant represents and maintains that it is an independent consultant and is not an employee of the Program or any agency thereof, and represents and warrants that Consultant does not desire or request any fringe benefits provided to employees of the Program. Consultant agrees to be responsible for any federal income tax, withholding or social security tax liability that might arise from payments received hereunder.

4. Any contract award to Consultant will be in effect until (a) the Agreement expires, (b) delivery and acceptance of products, and/or performance of services ordered, or (c) terminated by Program without cause on thirty (30 days) written notice prior to cancellation.

5. Consultant may not assign the obligations or rights under this Agreement to any person without the prior written consent of the Program.

6. Consultant agrees to comply with the Title VI of the Civil Rights Act of 1964. The term of this Agreement will be effective as of October 25th, 2010,

and expires November 1st 2010.

7. Notice. Except as may be otherwise specifically provided in this Agreement, all notices, demands, requests or communications required or permitted hereunder shall be in writing and shall either be sent personally against a written receipt, or (ii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth below, or at such other addresses as may have been theretofore specified by written notice delivered in accordance herewith.

If to Program:	Hidalgo County Head Start Program Attn: Teresa Flores P.O. BOX 0117 Edinburg, Texas 78540
If to Consultant:	Bill Crawford 1306 Devon Glen Dr. Houston, TX 77077

Each notice, demand, request or communication which shall be delivered or mailed in the manner described above shall be deemed sufficiently given for all purposes at such time as it is personally delivered to the addressee or, if mailed, at such time at it is deposited in the United States mail.

8. Conflict with Applicable Law. Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law, and whenever there is any conflict between any provision of this Agreement and any present or future law, ordinance or administrative, executive or judicial

regulation, order or decree, or amendment hereof, contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event the affected provision or provisions of this Agreement shall be modified only to the extent necessary to bring them within the legal requirements and only during the time such conflict exists.

9. No Waiver. No waiver by County of any breach of any provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision hereof.

10. Entire Agreement. This Agreement contains the entire contract between the parties hereto, and each party acknowledges that neither has made (either directly or through any agent or representative) any representations or agreements in connection with this Agreement not specifically set forth herein. This Agreement may be modified or amended only by agreement in writing executed by Program and Consultant and not otherwise.

11. Texas Law to Apply. This Contract shall be construed under and in Accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Hidalgo County, Texas. The parties hereby consent to personal jurisdiction in Hidalgo County, Texas.

12. Additional Documents. The parties hereto covenant and agree that they will execute such other further instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this Agreement.

13. Successors. This Agreement shall be binding upon and inure to the

benefit of the parties hereto and their respective heirs, executors, administrator, legal representatives, successors, and assigns where permitted by this Agreement.

14. Assignment. This Agreement shall not be assignable; provided, however, that Consultant may assign its right to receive payments hereunder for the purpose of obtaining financing so long as Consultant is not excused from and/or does not delegate its duties hereunder.

15. Headings. The headings and captions contained in this Agreement are solely for convenient reference and shall not be deemed to affect the meaning or interpretation of any provision or paragraph hereof.

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

17. Authority to Execute. The execution and performance of this Contract by Program and Consultant have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes and valid and enforceable obligations of Program and Consultant in accordance with its terms.

18. Ethical Provision. It is understood that the employee of Program or individuals acting as agents for Program are not authorized to receive any type of personal payment, reimbursement, compensation, commission, gift or gratuity for services provided under this Agreement. Consultant warrants that

no employee or agent of the Program has been retained to solicit or secure this Agreement and that Consultant has not paid or agreed to pay any employee of Program any fee, commission, percentage brokerage fee, gift or any other consideration contingent upon the making of this Agreement, or as an inducement for entering into this Agreement. The unauthorized offering or receipt of such payments may result in the immediate termination of this Agreement.

19. Commitment of Current Revenues Only. In the event that, during any term hereof, the Head Start Program does not appropriate sufficient funds to meet the obligations of the Program under this Agreement, Program may terminate this Agreement upon thirty (30) days written notice to Consultant. Program, 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 Program pursuant to the provision of Tex. Loc. Govt. Code Ann §271.903 (Vernon Supp. 1995).

20. Indemnity and Hold Harmless. Consultant agrees to indemnify and hold Program harmless from any loss, costs, liabilities or damages which are incurred by Program which are primarily attributable to the acts or omissions of Consultant or the acts or omissions of Consultant's employees, agents or other representatives, including the violation of any law or regulation related to Consultant's duties under this Agreement.

To the extent permitted by applicable law, Program agrees to indemnify

and hold Consultant harmless from any loss, costs, liabilities or damages which are incurred by Consultant which are primarily attributable to the acts or omissions of Program or the acts or omissions of Program employees, agents or other representatives, including the violation of any law or regulation related to Program's duties under this Agreement.

21. Representation and Warranties. In the event any representation or warranty of Consultant hereunder is or becomes incorrect or untrue, Consultant agrees to promptly notify Program thereof, in which event Program may, in its sole discretion, elect to terminate this Agreement, for cause. Consultant acknowledges and agrees that Program has relied and continues to rely upon the representations and warranties of Consultant as herein contained.

EXECUTED and effective as of the_____ day and _____, 2010 first written above.

APPROVED BY COMMISSIONERS COURT ON: August 24, 2010

Consultant:
Bill Crawford

BY:_____
(Consultant Name)

BY:_____
(Print Name)

BY:_____
(Title)

BY:_____
Rene Ramirez, County Judge

BY:_____
Teresa Flores, Executive Director

BY:_____
Arturo Guajardo, Jr., County Clerk

APPROVED AS TO FROM:
OXFORD & GONZALEZ

BY: _____
Ricardo Gonzalez

APPROVED AS TO FROM
ATLAS & HALL, L.L.P.

BY: _____
Stephen L. Crain

APPENDIX "A"

The Services include, but are not limited to, the items listed below;

1. Consultant agrees to conduct the Clarity, Confidence & Creativity- Communication and Problem Solving from the Top of the Mind Training on Friday, October 29, 2010, from 8:00 a.m. to 5:00 p.m.

2. Consultant agrees to assist the Program in developing how disagreements, frustration and debate can activate the lower reactive parts of our brain and block access to our higher order thinking.

3. Consultant agrees to assist the Program in developing how to shift from this lower 20% of the brain up to the neocortex (or upper 80% and access the interpersonal skills and problem-solving skills necessary for success).

4. Consultant agrees to assist the Program in developing how to stay in this more intelligent and purposeful part of the brain even when there is disagreement.

5. Consultant agrees to assist the Program in developing specific criteria to consult so that they take more individual responsibility for the quality of clarity of their communications.

6. Consultant agrees to assist the Program in developing a specific model for communication that ensures understanding and collaboration and that builds consensus.

7. Consultant agrees to assist the Program in developing how different personality types communicate differently and make decisions differently and how to use these differences to come to more holistic decisions.

8. Consultant agrees to conduct training at the Sheraton Fiesta South Padre Island.

9. Consultant agrees to pay own transportation, lodging and meals.

APPENDIX "B"
CONSULTANT FEE

Program agrees to pay a professional consultant fee in the amount of Four Thousand Nine Hundred Fifty Dollars ($4,950.00).

CONTRACT WITH BILL CRAWFORD

VI. PROGRAM OPERATIONS

F.1. Contract for Professional Educational Services with Bill Crawford, Ph.D.

Hidalgo County Head Start Program
Policy Council Agenda Request

DATE: August 18, 2010

SUBJECT: 1. Requesting exemption from competitive bidding requirements under the Texas Local Government Code 262.024 (a)(4) a professional services;

2. Authority to Negotiate a Contract for Professional Services with Bill Crawford, PhD to Provide Training/Staff Development to Executive Team Members to Improve Management/ Communication Skills.

RATIONALE/NEED: This training is being provided by a renowned consultant with a PH.D. in Counseling Psychology. This training will enhance staff's skills in management and communication.

RECOMMENDATION: Administration recommends approval.

COST: N/A

RELATED INFORMATION INCLUDED: Contract for Professional Services

* *

INITIATED BY: Ambrosio Tovar, Procurement Director

REVIEWED BY: Mr. Edmundo Garcia, Assistant Director

PROGRAM DIRECTOR'S APPROVAL: _____

THE STATE OF TEXAS §
§
COUNTY OF HIDALGO §

CONTRACT FOR CONSULTING SERVICES
C-10-033-08-24

THIS AGREEMENT (The "Agreement") is made effective the _____, 2010 by and between **HIDALGO COUNTY HEAD START PROGRAM,** (hereinafter "the Program") a federally funded program under the auspices of HIDALGO COUNTY, TEXAS, a political subdivision of the State of Texas and _____ (hereinafter" Consultant") to serve at the pleasure of the Hidalgo County Head Start Program.

W I T N E S S E T H:

WHEREAS, Program desires to contract with a Consultant to provide the services necessary to the Program that are more specifically set forth hereinafter; and

WHEREAS, Consultant has agreed to provide the services enumerated hereinafter to Hidalgo County Head Start Program.

NOW, THEREFORE, for the mutual consideration expressed hereinafter, Program and Consultant agree as follows:

1. Consultant agrees to provide the Program the consulting services required by Head Start Program in connection with the **"Clarity, Confidence & Creativity-Communication and Problem Solving from the Top of the Mind".**

("services"). Pursuant to Article 262.024 of the Texas Local Government Code, the Program exempted the service of the Consultant from Section 262.023 of the Local Government Code, to assist the Program in providing consulting services to the Plan. The services include, but are not limited to, the items listed on Appendix A, which is attached and made a part of this Agreement.

2. As consideration for the services of Consultant described herein, Program Agrees to pay Consultant the fees as outlined in Appendix B, which is attached, to and made a part of this Agreement.

3. Consultant must comply with all applicable Program policies. Notwithstanding the foregoing sentence, Consultant represents and maintains that it is an independent consultant and is not an employee of the Program or any agency thereof, and represents and warrants that Consultant does not desire or request any fringe benefits provided to employees of the Program. Consultant agrees to be responsible for any federal income tax, withholding or social security tax liability that might arise from payments received hereunder.

4. Any contract award to Consultant will be in effect until (a) the Agreement expires, (b) delivery and acceptance of products, and/or performance of services ordered, or (c) terminated by Program without cause on thirty (30 days) written notice prior to cancellation.

5. Consultant may not assign the obligations or rights under this Agreement to any person without the prior written consent of the Program.

6. Consultant agrees to comply with the Title VI of the Civil Rights Act of 1964. The term of this Agreement will be effective as of October 25th, 2010,

and expires November 1st 2010.

7. Notice. Except as may be otherwise specifically provided in this Agreement, all notices, demands, requests or communications required or permitted hereunder shall be in writing and shall either be sent personally against a written receipt, or (ii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth below, or at such other addresses as may have been theretofore specified by written notice delivered in accordance herewith.

If to Program:	Hidalgo County Head Start Program Attn: Teresa Flores P.O. BOX 0117 Edinburg, Texas 78540
If to Consultant:	_____ _____ _____

Each notice, demand, request or communication which shall be delivered or mailed in the manner described above shall be deemed sufficiently given for all purposes at such time as it is personally delivered to the addressee or, if mailed, at such time at it is deposited in the United States mail.

8. Conflict with Applicable Law. Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law, and whenever there is any conflict between any provision of this Agreement and any present or future law, ordinance or administrative, executive or judicial

regulation, order or decree, or amendment hereof, contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event the affected provision or provisions of this Agreement shall be modified only to the extent necessary to bring them within the legal requirements and only during the time such conflict exists.

9. No Waiver. No waiver by County of any breach of any provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision hereof.

10. Entire Agreement. This Agreement contains the entire contract between the parties hereto, and each party acknowledges that neither has made (either directly or through any agent or representative) any representations or agreements in connection with this Agreement not specifically set forth herein. This Agreement may be modified or amended only by agreement in writing executed by Program and Consultant and not otherwise.

11. Texas Law to Apply. This Contract shall be construed under and in Accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Hidalgo County, Texas. The parties hereby consent to personal jurisdiction in Hidalgo County, Texas.

12. Additional Documents. The parties hereto covenant and agree that they will execute such other further instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this Agreement.

13. Successors. This Agreement shall be binding upon and inure to the

benefit of the parties hereto and their respective heirs, executors, administrator, legal representatives, successors, and assigns where permitted by this Agreement.

14. Assignment. This Agreement shall not be assignable; provided, however, that Consultant may assign its right to receive payments hereunder for the purpose of obtaining financing so long as Consultant is not excused from and/or does not delegate its duties hereunder.

15. Headings. The headings and captions contained in this Agreement are solely for convenient reference and shall not be deemed to affect the meaning or interpretation of any provision or paragraph hereof.

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

17. Authority to Execute. The execution and performance of this Contract by Program and Consultant have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes and valid and enforceable obligations of Program and Consultant in accordance with its terms.

18. Ethical Provision. It is understood that the employee of Program or individuals acting as agents for Program are not authorized to receive any type of personal payment, reimbursement, compensation, commission, gift or gratuity for services provided under this Agreement. Consultant warrants that

no employee or agent of the Program has been retained to solicit or secure this Agreement and that Consultant has not paid or agreed to pay any employee of Program any fee, commission, percentage brokerage fee, gift or any other consideration contingent upon the making of this Agreement, or as an inducement for entering into this Agreement. The unauthorized offering or receipt of such payments may result in the immediate termination of this Agreement.

19. Commitment of Current Revenues Only. In the event that, during any term hereof, the Head Start Program does not appropriate sufficient funds to meet the obligations of the Program under this Agreement, Program may terminate this Agreement upon thirty (30) days written notice to Consultant. Program, 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 Program pursuant to the provision of Tex. Loc. Govt. Code Ann §271.903 (Vernon Supp. 1995).

20. Indemnity and Hold Harmless. Consultant agrees to indemnify and hold Program harmless from any loss, costs, liabilities or damages which are incurred by Program which are primarily attributable to the acts or omissions of Consultant or the acts or omissions of Consultant's employees, agents or other representatives, including the violation of any law or regulation related to Consultant's duties under this Agreement.

To the extent permitted by applicable law, Program agrees to indemnify

and hold Consultant harmless from any loss, costs, liabilities or damages which are incurred by Consultant which are primarily attributable to the acts or omissions of Program or the acts or omissions of Program employees, agents or other representatives, including the violation of any law or regulation related to Program's duties under this Agreement.

21. Representation and Warranties. In the event any representation or warranty of Consultant hereunder is or becomes incorrect or untrue, Consultant agrees to promptly notify Program thereof, in which event Program may, in its sole discretion, elect to terminate this Agreement, for cause. Consultant acknowledges and agrees that Program has relied and continues to rely upon the representations and warranties of Consultant as herein contained.

EXECUTED and effective as of the_____ day and _____, 2010 first written above.

APPROVED BY COMMISSIONERS COURT ON: August 24, 2010

Consultant:

BY:_____
(Consultant Name)

BY:_____
(Print Name)

BY:_____
(Title)

BY:_____
Rene Ramirez, County Judge

BY:_____
Teresa Flores, Executive Director

BY:_____
Arturo Guajardo, Jr., County Clerk

APPROVED AS TO FROM:
OXFORD & GONZALEZ

BY: _____
Ricardo Gonzalez

APPROVED AS TO FROM
ATLAS & HALL, L.L.P.

BY: _____
Stephen L. Crain

APPENDIX "A"

The Services include, but are not limited to, the items listed below;

1. Consultant agrees to conduct the Clarity, Confidence & Creativity- Communication and Problem Solving from the Top of the Mind Training on Friday, October 29, 2010, from 8:00 a.m. to 5:00 p.m.

2. Consultant agrees to assist the Program in developing how disagreements, frustration and debate can activate the lower reactive parts of our brain and block access to our higher order thinking.

3. Consultant agrees to assist the Program in developing how to shift from this lower 20% of the brain up to the neocortex (or upper 80% and access the interpersonal skills and problem-solving skills necessary for success).

4. Consultant agrees to assist the Program in developing how to stay in this more intelligent and purposeful part of the brain even when there is disagreement.

5. Consultant agrees to assist the Program in developing specific criteria to consult so that they take more individual responsibility for the quality of clarity of their communications.

6. Consultant agrees to assist the Program in developing a specific model for communication that ensures understanding and collaboration and that builds consensus.

7. Consultant agrees to assist the Program in developing how different personality types communicate differently and make decisions differently and how to use these differences to come to more holistic decisions.

8. Consultant agrees to conduct training at the Sheraton Fiesta South Padre Island.

9. Consultant agrees to pay own transportation, lodging and meals.

APPENDIX “B”
CONSULTANT FEE

Program agrees to pay a professional consultant fee in the amount of

_____

AI-22946 **16.H.**

Change Order No. 1

CC REGULAR

Date:	09/21/2010
Submitted By:	Linda Galaviz, HEAD START
Submitted For:	Edmundo Garcia
Department:	HEAD START
Agenda Category:	Head Start

Information

CAPTION

Discussion/Approval of Change Order No. 1 in Connection with the "Head Start Program Portable Buildings" in the Amount of $30,569.33 Credit, as Verified by Project Architect Rike, Ogden, Figueroa, Allex Architects, Inc.

BACKGROUND

Policy Council Approval: 09.15.10

Fiscal Impact

FISCAL YEAR: **ACCT. #:**

FUNDS AVAILABLE Y/N?: **MATCHING FUNDS Y/N?:**

BUDGETARY IMPACT:

No Fiscal Impact

Attachments

Link: Change Order #1

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
1	Budget & Management	Sylvia Solis	09/15/2010 08:55 AM	APRV
2	Roland Garcia	Rolando Garcia	09/17/2010 11:03 AM	APRV
3	Auditor's Office		09/17/2010 04:52 PM	NEW
Form Started By: Linda Galaviz			Started On: 09/13/2010 02:34 PM	
Final Approval Date: 09/17/2010				

Hidalgo County Head Start Program
Policy Council Agenda

DATE: September 15, 2010

SUBJECT: Discussion/Approval of Change Order No. 1 in Connection with the "Head Start Program Portable Buildings" in the amount of $30,569.33 credit, as verified by Project Architect, Rike Ogden Figueroa Allex Architects, Inc.

RATIONALE/NEED: Change Order #1 consists of amounts of all allowances not used as per original contract.

RECOMMENDATION: Administration recommends approval.

COST: $30,569.33 Credit

RELATED INFORMATION INCLUDED: Change Order

* * * *

AIA® Document G701™ – 2001

Change Order

PROJECT *(Name and address)*:
29009 HEADSTART EXPANSION 2009

CHANGE ORDER NUMBER: 001
DATE: August 8, 2010

OWNER: ☐
ARCHITECT: ☐
CONTRACTOR: ☐
FIELD: ☐
OTHER: ☐

TO CONTRACTOR *(Name and address)*:
Rigney Construction & Development, LLC
3201 State Hwy 107
McAllen, Texas 78501

ARCHITECT'S PROJECT NUMBER: 29009
CONTRACT DATE:
CONTRACT FOR: General Construction

THE CONTRACT IS CHANGED AS FOLLOWS:
(Include, where applicable, any undisputed amount attributable to previously executed Construction Change Directives)
Item No. 1 - Allowances

Edinburg No. 4:	
Contingency Allowance Balance:	$ 5,000.00
MEP/Electrical Allowance Balance :	$ 1,902.99
Edinburg No. 5:	
Contingency Allowance Balance:	$ 4,500.00
MEP/Electrical Allowance Balance:	$ 1,903.00
San Juan No. 2:	
Contingency Allowance Balance:	$ 2,630.00
MEP/Electrical Allowance Balance:	$ 1,903.00
Demark Allowance Balance:	$11,000.00
Total amount of Allowances to be credited	($28,838.99)

That amount to credit balance of all allowances not used to Original Contract ($28,838.99) plus OH & Profit @ 6% = $1,730.34 = ($30,569.33)

The original Contract Sum was	$	350,000.00
The net change by previously authorized Change Orders	$	0.00
The Contract Sum prior to this Change Order was	$	350,000.00
The Contract Sum will be increased by this Change Order in the amount of	$	-30,569.33
The new Contract Sum including this Change Order will be	$	319,430.67

The Contract Time will be increased by Zero (0) days.
The date of Substantial Completion as of the date of this Change Order therefore is

NOTE: This Change Order does not include changes in the Contract Sum, Contract Time or Guaranteed Maximum Price which have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.

Rike Ogden Figueroa Allex Architects Inc.	Rigney Construction & Development, LLC	Hidalgo County Head Start Program
ARCHITECT *(Firm name)*	**CONTRACTOR** *(Firm name)*	**OWNER** *(Firm name)*
1007 Walnut Avenue, McAllen, Texas 78501	3201 State Hwy 107, McAllen, Texas 78501	1901 W. State Hwy 107, Edinburg, Texas 78540

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User Notes:
(1851282037)

ADDRESS	ADDRESS	ADDRESS
BY *(Signature)*	BY *(Signature)*	BY *(Signature)*
Mr. Luis A. Figueroa, AIA	CARLOS OZUNA	Teresa Flores
(Typed name)	*(Typed name)*	*(Typed name)*
8.20.10	08/12/10	8-25-10
DATE	DATE	DATE

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User Notes:
(1851282037)

AI-22947 **16.I.**

Certificate of Payment #6

CC REGULAR

Date:	09/21/2010
Submitted By:	Linda Galaviz, HEAD START
Submitted For:	Edmundo Garcia
Department:	HEAD START
Agenda Category:	Head Start

Information

CAPTION

Presentation for Discussion and Approval of Certificate of Payment #6 to Rigney Construction & Development, LLC, for the Construction of Three (3) Portable Two (2) Classroom Buildings, Under Purchase Order No 78991

BACKGROUND

Policy Council Approval: 09.15.10

Fiscal Impact

FISCAL YEAR: **ACCT. #:**

FUNDS AVAILABLE Y/N?: **MATCHING FUNDS Y/N?:**

BUDGETARY IMPACT:

No Fiscal Impact to County - PO issued through Headstart funding. Payment amount $17,046.21

Attachments

Link: Payment #6

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
1	Budget & Management	Sylvia Solis	09/15/2010 08:56 AM	APRV
2	Roland Garcia	Rolando Garcia	09/17/2010 11:07 AM	APRV
3	Auditor's Office		09/17/2010 04:52 PM	NEW

Form Started By: Linda Galaviz — Started On: 09/13/2010 02:37 PM

Final Approval Date: 09/17/2010

Hidalgo County Head Start Program
Policy Council Agenda

DATE: September 15, 2010

SUBJECT: Presentation for Discussion and Approval of Certificate of Payment #6 to Rigney Construction & Development, LLC, for the Construction of Three (3) Portable Two Classroom Buildings, Under Purchase Order № 78991

RATIONALE/NEED: This is the sixth and final payment for the construction work performed by Rigney Construction & Development LLC, on the three (3) portable two classroom buildings.

RECOMMENDATION: Administration recommends approval.

COST: $17,046.21

RELATED INFORMATION INCLUDED: Memo/Application & Certification for Payment

* * * *

HIDALGO COUNTY HEAD START PROGRAM

P. O. BOX 0117 ♠ EDINBURG, TEXAS 78540♠ TEL: (956) 383-0706 ♠ FAX: (956) 380-2588

TO: Edmundo Garcia, Assistant Director

FROM: Ambrosio Tovar, Procurement Director A. Salinas for A. Tovar

DATE: September 8, 2010

SUBJ: Final - Application and Certificate for Payment #6

Rigney Construction & Development, LLC has submitted the sixth and final "Application and Certificate for Payment" for the construction of the three portable classrooms. The payment has been certified by the architectural firm of Rike Ogden Figueroa Allex, who are managing the construction.

The amount of this request is for $17,046.21, bringing the total earned in the amount of $319,430.67 (91.27%). After this payment, the balance of $30,569.33 (8.73%) remains.

This balance of $30,569.33, which is the balance of the unused allowance and the 6% overhead, is being credited back with the change order. Attached is a schedule summarizing the activities for the project.

Should you have any questions please let me know.

Thank you.

Rigney Construction & Development, LLC

PAYMENT SCHEDULE

For The Period Ending 8/31/10

CONTRACT AMOUNT			$350,000.00	
PAYMENT:				
PMT #1	40,568.79	11.59%		
PMT #2	35,650.26	10.19%		
PMT #3	100,503.84	28.72%		
PMT #4	94,258.29	26.93%		
PMT #5	31,403.28	8.97%		
PMT #6	17,046.21	4.87%		
TOTAL EARNED			319,430.67	91.27%
BALANCE			$30,569.33	8.73%
CHANGE ORDER #1 (CREDIT)			-30,569.33	
FINAL BALANCE			$0.00	

APPLICATION AND CERTIFICATE FOR PAYMENT

SUBMITTED TO: Hidalgo County Head Start Program
1901 W. State Hwy 107
Edinburg, TX 78540

PROJECT: HC Head Start Program 3 Portable Buildings

APPLICATION NO: 06
PERIOD TO: 7/25/10
PROJECT NO: 09.112
ARCH PROJ NO: 29009
CONTRACT DATE:
APPLICATION DATE: 9/9/10
INVOICE NO: 06

Distribution To:
[X] OWNER
[X] ARCHITECT
[X] CONTRACTOR
[ ]
[ ]

SUBMITTED FROM: Rigney Construction & Development, LLC
7011 N. Seminary Rd.
Edinburg, Texas 78541

ARCHITECT: Rike Ogden Figueroa Allex Architects
1007 Walnue Ave.
McAllen, TX 78501

CONTRACT FOR: General Construction

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheets are attached to substantiate this application.

ORIGINAL CONTRACT SUM	$	350,000.00
NET CHANGE BY CHANGE ORDERS	$	-30,569.33
CONTRACT SUM TO DATE	$	319,430.67
TOTAL COMPLETED AND STORED TO DATE	$	319,430.67
RETAINAGE:		
0% OF COMPLETED WORK	$	0.00
5 % OF STORED MATERIAL	$	0.00
TOTAL RETAINAGE	$	0.00
TOTAL EARNED LESS RETAINAGE	$	319,430.67
LESS OWNER DIRECT PAYMENT BY PURCHASE ORDER	$	0.00
LESS PREVIOUS CERTIFICATES FOR PAYMENT	$	302,384.46
CURRENT PAYMENT DUE	$	17,046.21
BALANCE TO FINISH INCLUDING RETAINAGE	$	0.00

(See Attached Pages for Original Contract and Change Order Breakdown.)

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application For Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were payments have been received from Owner, and the current payment shown herein is now due.

CONTRACTOR: Rigney Construction & Development, LLC

By: _____ Date: September 9, 2010
Carlos Ozuna

State of: Texas
County of: Hidalgo
Subscribed and sworn to before me this September 9, 2010

NOTARY PUBLIC: Rosalinda Rodriguez
My Commission Expires: 3/30/2013

ROSALINDA RODRIGUEZ
My Commission Expires
March 30, 2013

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certify to the Owner that to the best of their knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Construction Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED $ 17,046.21

(Attach explanation if amount certified differs from the amount applied for. initial all figures on this application and on the Continuation Sheets that changed to conform to the amount certified.)

ARCHITECT: Rike Ogden Figueroa Allex Architects

By: _____ Date: 9.9.10

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

SUBMITTED FROM: Rigney Construction & Development, LLC
7011 N. Seminary Rd.
Edinburg, Texas 78541

CONTRACT FOR: General Construction

PROJECT: HC Head Start Program 3 Portable Buildings

CONTRACTOR'S PROJECT NO: 09.112

ARCHITECT'S PROJECT NO: 29009

APPLICATION NUMBER: 06

APPLICATION DATE: 9/9/10

PERIOD FROM: 5/1/10 TO: 7/25/10

A	B	C	D	E	F	G		H	I
ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED			TOTAL COMPLETE AND STORED TO DATE (D+E+F)	% G/C	BALANCE TO FINISH (C-G)	RETAINAGE
			PREVIOUS APPLICATIONS	THIS APPLICATION					
				WORK IN PLACE	STORED MATERIALS				
	EDINBURG NO. 4		0.00	0.00	0.00	0.00	?	0.00	0.00
1	General Conditions	1,233.33	1,233.33			1,233.33	100%	0.00	0.00
2	Bonds	2,083.33	2,083.33			2,083.33	100%	0.00	0.00
3	Permits	250.00	250.00			250.00	100%	0.00	0.00
4	Project Management	1,956.00	1,956.00			1,956.00	100%	0.00	0.00
5	Project Superintendent	2,666.66	2,666.66			2,666.66	100%	0.00	0.00
6	Final Cleaning	500.00	500.00			500.00	100%	0.00	0.00
7	Contingency Allowance	5,000.00		5,000.00		5,000.00	100%	0.00	0.00
8	MEP Allowance	2,666.66		2,666.66		2,666.66	100%	0.00	0.00
9	Selective Demolition	400.00	400.00			400.00	100%	0.00	0.00
10	Sitework	1,900.00	1,900.00			1,900.00	100%	0.00	0.00
11	Termite Control	191.66	191.66			191.66	100%	0.00	0.00
12	Site Utilities	3,666.66	3,666.66			3,666.66	100%	0.00	0.00
13	Concrete Accessories	96.66	96.66			96.66	100%	0.00	0.00
14	Reinforcing Steel	276.66	276.66			276.66	100%	0.00	0.00
15	Concrete	692.33	692.33			692.33	100%	0.00	0.00
16	Concrete Foundation	533.33	533.33			533.33	100%	0.00	0.00
17	Misc Steel	2,546.00	2,546.00			2,546.00	100%	0.00	0.00
18	Lumber	10,707.00	10,707.00			10,707.00	100%	0.00	0.00
19	Rough Carpentry	4,666.66	4,666.66			4,666.66	100%	0.00	0.00
20	Finish Carpentry	500.00	500.00			500.00	100%	0.00	0.00
21	Wood Trusses	1,455.00	1,455.00			1,455.00	100%	0.00	0.00
22	Vinyl Gutter	550.00	550.00			550.00	100%	0.00	0.00
23	Rubber Ramp	0.00					?	0.00	
24	Building Insulation	1,050.00	1,050.00			1,050.00	100%	0.00	0.00
25	Asphalt Shingles	2,088.00	2,088.00			2,088.00	100%	0.00	0.00
26	HM Doors/Frames	2,880.00	2,880.00			2,880.00	100%	0.00	0.00
27	Wood Doors	1,795.00	1,795.00			1,795.00	100%	0.00	0.00
28	Aluminum Windows	480.00	480.00			480.00	100%	0.00	0.00
29	FInish Hardware	4,088.00	4,088.00			4,088.00	100%	0.00	0.00
30	Gypsum Drywall	984.00	984.00			984.00	100%	0.00	0.00
31	Glass-Mat Faced Gypsum	90.66	90.66			90.66	100%	0.00	0.00
32	Ceramic Tile	2,000.00	1,929.42	70.58		2,000.00	100%	0.00	0.00
	Contract Page 2 Totals	$59,993.60	$52,256.36	$7,737.24	$0.00	$59,993.60	100%	$0.00	$0.00

SUBMITTED FROM: Rigney Construction & Development, LLC
7011 N. Seminary Rd.
Edinburg, Texas 78541

CONTRACT FOR: General Construction

PROJECT: HC Head Start Program 3 Portable Buildings

CONTRACTOR'S PROJECT NO: 09.112

ARCHITECT'S PROJECT NO: 29009

PAGE NO: 3 OF: 76

APPLICATION NUMBER: 06

APPLICATION DATE: 9/9/10

PERIOD FROM: 5/1/10 TO: 7/25/10

A	B	C	D	E	F	G		H	I
ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED			TOTAL COMPLETE AND STORED TO DATE (D+E+F)	% G/C	BALANCE TO FINISH (C-G)	RETAINAGE
			PREVIOUS APPLICATIONS	THIS APPLICATION					
				WORK IN PLACE	STORED MATERIALS				
33	Acoustical Ceilings	3,333.33	3,333.33	0.00	0.00	3,333.33	100%	0.00	0.00
34	Resilient Flooring/Base	2,394.00	2,394.00			2,394.00	100%	0.00	0.00
35	Painting	4,333.33	4,333.33			4,333.33	100%	0.00	0.00
36	Marker Boards/Tack Boards	1,228.00	1,228.00			1,228.00	100%	0.00	0.00
37	Fire Extinguishers	475.00	475.00			475.00	100%	0.00	0.00
38	Toilet Accessories	875.00	875.00			875.00	100%	0.00	0.00
39	Room Signage	383.33	383.33			383.33	100%	0.00	0.00
40	Plumbing	8,000.00	8,000.00			8,000.00	100%	0.00	0.00
41	HVAC	10,666.66	10,666.66			10,666.66	100%	0.00	0.00
42	Electrical	12,333.33	12,333.33			12,333.33	100%	0.00	0.00
43	Fire Alarm	4,000.00	4,000.00			4,000.00	100%	0.00	0.00
44	Profit	3,384.66	3,384.66			3,384.66	100%	0.00	0.00
	EDINBURG NO. 5								
45	General Conditions	1,233.33	1,233.33			1,233.33	100%	0.00	0.00
46	Bonds	2,083.33	2,083.33			2,083.33	100%	0.00	0.00
47	Permits	250.00	250.00			250.00	100%	0.00	0.00
48	Project Management	1,956.00	1,956.00			1,956.00	100%	0.00	0.00
49	Project Superintendent	2,666.67	2,666.67			2,666.67	100%	0.00	0.00
50	Final Cleaning	500.00	500.00			500.00	100%	0.00	0.00
51	Contingency Allowance	5,000.00		5,000.00		5,000.00	100%	0.00	0.00
52	MEP Allowance	2,666.67		2,666.67		2,666.67	100%	0.00	0.00
53	Selective Demolition	400.00	400.00			400.00	100%	0.00	0.00
54	Sitework	0.00	0.00			0.00	?	0.00	0.00
55	Termite Control	191.67	191.67			191.67	100%	0.00	0.00
56	Site Utilities	3,666.67	3,666.67			3,666.67	100%	0.00	0.00
57	Concrete Accessories	96.67	96.67			96.67	100%	0.00	0.00
58	Reinforcing Steel	276.67	276.67			276.67	100%	0.00	0.00
59	Concrete	692.33	692.33			692.33	100%	0.00	0.00
60	Concrete Foundation	533.33	533.33			533.33	100%	0.00	0.00
61	Misc Steel	2,546.00	2,546.00			2,546.00	100%	0.00	0.00
62	Lumber	10,707.00	10,707.00			10,707.00	100%	0.00	0.00
	Contract Page 3 Totals	$86,872.98	$79,206.31	$7,666.67	$0.00	$86,872.98	100%	$0.00	$0.00
	Pages 2 - 3 Totals	$146,866.58	$131,462.67	$15,403.91	$0.00	$146,866.58	100%	$0.00	$0.00

SUBMITTED FROM: Rigney Construction & Development, LLC
7011 N. Seminary Rd.
Edinburg, Texas 78541

CONTRACT FOR: General Construction

PROJECT: HC Head Start Program 3 Portable Buildings

CONTRACTOR'S PROJECT NO: 09.112

ARCHITECT'S PROJECT NO: 29009

APPLICATION NUMBER: 06

APPLICATION DATE: 9/9/10

PERIOD FROM: 5/1/10 TO: 7/25/10

A	B	C	D	E	F	G		H	I
ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED			TOTAL COMPLETE AND STORED TO DATE (D+E+F)	% G/C	BALANCE TO FINISH (C-G)	RETAINAGE
			PREVIOUS APPLICATIONS	THIS APPLICATION					
				WORK IN PLACE	STORED MATERIALS				
63	Rough Carpentry	4,666.67	4,666.67	0.00	0.00	4,666.67	100%	0.00	0.00
64	Finish Carpentry	500.00	500.00			500.00	100%	0.00	0.00
65	Wood Trusses	1,455.00	1,455.00			1,455.00	100%	0.00	0.00
66	Vinyl Gutter	550.00	550.00			550.00	100%	0.00	0.00
67	Rubber Ramp	699.00	699.00			699.00	100%	0.00	0.00
68	Building Insulation	1,050.00	1,050.00			1,050.00	100%	0.00	0.00
69	Asphalt Shingles	2,088.00	2,088.00			2,088.00	100%	0.00	0.00
70	HM Doors/Frames	2,880.00	2,880.00			2,880.00	100%	0.00	0.00
71	Wood Doors	1,795.00	1,795.00			1,795.00	100%	0.00	0.00
72	Aluminum Windows	480.00	480.00			480.00	100%	0.00	0.00
73	Finish Hardware	4,088.00	4,088.00			4,088.00	100%	0.00	0.00
74	Gypsum Drywall	984.00	984.00			984.00	100%	0.00	0.00
75	Glass-Mat Faced Gypsum	90.67	90.67			90.67	100%	0.00	0.00
76	Ceramic Tile	2,000.00	2,000.00			2,000.00	100%	0.00	0.00
77	Acoustical Ceilings	3,333.33	3,333.33			3,333.33	100%	0.00	0.00
78	Resilient Flooring/Base	2,394.00	2,394.00			2,394.00	100%	0.00	0.00
79	Painting	4,333.33	4,333.33			4,333.33	100%	0.00	0.00
80	Marker Boards/Tack Boards	1,228.00	1,228.00			1,228.00	100%	0.00	0.00
81	Fire Extinguishers	475.00	475.00			475.00	100%	0.00	0.00
82	Toilet Accessories	875.00	875.00			875.00	100%	0.00	0.00
83	Room Signage	383.33	383.33			383.33	100%	0.00	0.00
84	Plumbing	8,000.00	8,000.00			8,000.00	100%	0.00	0.00
85	HVAC	10,666.67	10,666.67			10,666.67	100%	0.00	0.00
86	Electrical	12,333.33	12,333.33			12,333.33	100%	0.00	0.00
87	Fire Alarm	4,000.00	4,000.00			4,000.00	100%	0.00	0.00
88	Profit	3,384.67	3,384.67			3,384.67	100%	0.00	0.00
	SAN JUAN NO. 2								
89	General Conditions	1,233.34	1,233.34			1,233.34	100%	0.00	0.00
90	Bonds	2,083.34	2,083.34			2,083.34	100%	0.00	0.00
91	Permits	250.00	250.00			250.00	100%	0.00	0.00
92	Project Management	1,956.00	1,956.00			1,956.00	100%	0.00	0.00
	Contract Page 4 Totals	$80,255.68	$80,255.68	$0.00	$0.00	$80,255.68	100%	$0.00	$0.00
	Pages 2 - 4 Totals	$227,122.26	$211,718.35	$15,403.91	$0.00	$227,122.26	100%	$0.00	$0.00

SUBMITTED FROM: Rigney Construction & Development, LLC
7011 N. Seminary Rd.
Edinburg, Texas 78541

CONTRACT FOR: General Construction

PROJECT: HC Head Start Program 3 Portable Buildings

CONTRACTOR'S PROJECT NO: 09.112

ARCHITECT'S PROJECT NO: 29009

APPLICATION NUMBER: 06

APPLICATION DATE: 9/9/10

PERIOD FROM: 5/1/10 TO: 7/25/10

A	B	C	D	E	F	G		H	I
ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED			TOTAL COMPLETE AND STORED TO DATE (D+E+F)	% G/C	BALANCE TO FINISH (C-G)	RETAINAGE
			PREVIOUS APPLICATIONS	THIS APPLICATION					
				WORK IN PLACE	STORED MATERIALS				
93	Project Superintendent	2,666.67	2,666.67	0.00	0.00	2,666.67	100%	0.00	0.00
94	Final Cleaning	500.00	500.00			500.00	100%	0.00	0.00
95	Contingency Allowance	5,000.00	2,370.00	2,630.00		5,000.00	100%	0.00	0.00
96	MEP Allowance	2,666.67		2,666.67		2,666.67	100%	0.00	0.00
97	Demark Allowance San Juan	17,000.00	6,000.00	11,000.00		17,000.00	100%	0.00	0.00
98	Sitework	1,900.00	1,900.00			1,900.00	100%	0.00	0.00
99	Selective Demolition	400.00	400.00			400.00	100%	0.00	0.00
100	Termite Control	191.67	191.67			191.67	100%	0.00	0.00
101	Site Utilities	3,666.67	3,666.67			3,666.67	100%	0.00	0.00
102	Concrete Accessories	96.67	96.67			96.67	100%	0.00	0.00
103	Reinforcing Steel	276.67	276.67			276.67	100%	0.00	0.00
104	Concrete	692.34	692.34			692.34	100%	0.00	0.00
105	Concrete Foundation	533.34	533.34			533.34	100%	0.00	0.00
106	Misc Steel	2,546.00	2,546.00			2,546.00	100%	0.00	0.00
107	Lumber	10,707.00	10,707.00			10,707.00	100%	0.00	0.00
108	Rough Carpentry	4,666.67	4,666.67			4,666.67	100%	0.00	0.00
109	Finish Carpentry	500.00	500.00			500.00	100%	0.00	0.00
110	Wood Trusses	1,455.00	1,455.00			1,455.00	100%	0.00	0.00
111	Vinyl Gutters	550.00	550.00			550.00	100%	0.00	0.00
112	Rubber Ramp	0.00					?	0.00	
113	Building Insulation	1,050.00	1,050.00			1,050.00	100%	0.00	0.00
114	Asphalt Shingles	2,088.00	2,088.00			2,088.00	100%	0.00	0.00
115	HM Doors/Frames	2,880.00	2,880.00			2,880.00	100%	0.00	0.00
116	Wood Doors	1,795.00	1,795.00			1,795.00	100%	0.00	0.00
117	Aluminum Windows	480.00	480.00			480.00	100%	0.00	0.00
118	Finish Hardware	4,088.00	4,088.00			4,088.00	100%	0.00	0.00
119	Gypsum Drywall	984.00	984.00			984.00	100%	0.00	0.00
120	Glass-Mat Faced Gypsum	90.67	90.67			90.67	100%	0.00	0.00
121	Ceramic Tile	2,000.00	2,000.00			2,000.00	100%	0.00	0.00
122	Acoustical Ceilings	3,333.34	3,333.34			3,333.34	100%	0.00	0.00
123	Resilient Flooring/Base	2,394.00	2,394.00			2,394.00	100%	0.00	0.00
124	Painting	4,333.34	4,333.34			4,333.34	100%	0.00	0.00
	Contract Page 5 Totals	$81,531.72	$65,235.05	$16,296.67	$0.00	$81,531.72	100%	$0.00	$0.00
	Pages 2 - 5 Totals	$308,653.98	$276,953.40	$31,700.58	$0.00	$308,653.98	100%	$0.00	$0.00

SUBMITTED FROM: Rigney Construction & Development, LLC
7011 N. Seminary Rd.
Edinburg, Texas 78541

CONTRACT FOR: General Construction

PROJECT: HC Head Start Program 3 Portable Buildings

CONTRACTOR'S PROJECT NO: 09.112

ARCHITECT'S PROJECT NO: 29009

PAGE NO: 6 OF: 7

APPLICATION NUMBER: 06

APPLICATION DATE: 9/9/10

PERIOD FROM: 5/1/10 TO: 7/25/10

A	B	C	D	E	F	G		H	I
ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED			TOTAL COMPLETE AND STORED TO DATE (D+E+F)	% G/C	BALANCE TO FINISH (C-G)	RETAINAGE
			PREVIOUS APPLICATIONS	THIS APPLICATION					
				WORK IN PLACE	STORED MATERIALS				
125	Marker Boards/Tack Boards	1,228.00	1,228.00	0.00	0.00	1,228.00	100%	0.00	0.00
126	Fire Extinguishers	475.00	475.00			475.00	100%	0.00	0.00
127	Toilet Accessories	875.00	875.00			875.00	100%	0.00	0.00
128	Room Signage	383.34	383.34			383.34	100%	0.00	0.00
129	Plumbing	8,000.00	8,000.00			8,000.00	100%	0.00	0.00
130	HVAC	10,666.67	10,666.67			10,666.67	100%	0.00	0.00
131	Electrical	12,333.34	12,333.34			12,333.34	100%	0.00	0.00
132	Fire Alarm	4,000.00	4,000.00			4,000.00	100%	0.00	0.00
133	Profit	3,384.67	3,384.67			3,384.67	100%	0.00	0.00
	Contract Page 6 Totals	$41,346.02	$41,346.02	$0.00	$0.00	$41,346.02	100%	$0.00	$0.00
	Pages 2 - 6 Totals	$350,000.00	$318,299.42	$31,700.58	$0.00	$350,000.00	100%	$0.00	$0.00

SUBMITTED FROM: Rigney Construction & Development, LLC
7011 N. Seminary Rd.
Edinburg, Texas 78541

CONTRACT FOR: General Construction

PROJECT: HC Head Start Program 3 Portable Buildings

CONTRACTOR'S PROJECT NO: 09.112

ARCHITECT'S PROJECT NO: 29009

PAGE NO: 7 OF: 7

APPLICATION NUMBER: 06

APPLICATION DATE: 9/9/10

PERIOD FROM: 5/1/10 TO: 7/25/10

A	B	C	D	E	F	G		H	I
ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED			TOTAL COMPLETE AND STORED TO DATE (D+E+F)	% G/C	BALANCE TO FINISH (C-G)	RETAINAGE
			PREVIOUS APPLICATIONS	THIS APPLICATION					
				WORK IN PLACE	STORED MATERIALS				
	Cost Issue No. - 05	-30,569.33	0.00	-30,569.33	0.00	-30,569.33	100%	0.00	0.00
	Page 7 C. O. Totals	-$30,569.33	$0.00	-$30,569.33	$0.00	-$30,569.33	100%	$0.00	$0.00
	Change Order Grand Totals	-$30,569.33	$0.00	-$30,569.33	$0.00	-$30,569.33	100%	$0.00	$0.00
	Original Contract Totals	350,000.00	318,299.42	31,700.58	0.00	350,000.00	100%	0.00	0.00
	Project Grand Totals	$319,430.67	$318,299.42	$1,131.25	$0.00	$319,430.67	100%	$0.00	$0.00

AI-23049 **17.A.**

Proposed Budget

CC REGULAR

Date:	09/21/2010
Submitted By:	Sergio Cruz, BUDGET & MANAGEMENT
Department:	BUDGET & MANAGEMENT
Agenda Category:	Budget and Management

Information

CAPTION

2011 Budget Process:
1. Presentation of Fiscal Year 2011 Proposed Budget to be filed with the County Clerk and County Auditor as per Local Government Code - Section 111.066.
2. Presentation of Tax Assessor-Collector's Fiscal Year 2011 Special Funds Budget filed with the County Budget Officer as per Local Government Code - Section 111.095.
3. Set date, time, and place to adopt the 2010 Tax Rate.
4. Set date, time, and place to adopt the 2011 Annual Budget.

BACKGROUND

Fiscal Impact

Attachments

No file(s) attached.

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
1	Budget & Management	Sylvia Solis	09/17/2010 03:10 PM	APRV
2	Auditor's Office		09/17/2010 04:52 PM	NEW
Form Started By: Sergio Cruz			Started On: 09/17/2010 11:32 AM	
Final Approval Date: 09/17/2010				

AI-23008 **17.B.**

Deobligaiton of funds for the Recreational Trails Grant to City of Mission and (1287)

CC REGULAR

Date:	09/21/2010
Submitted By:	Ivan Cantu, BUDGET & MANAGEMENT
Department:	BUDGET & MANAGEMENT

Agenda Category: Budget and Management **Sub-category:** Budget & Management

Information

CAPTION

Co. Judge-National Recreational Trails Grant (1287):
Approval to deobligate cash match funds from the National Recreational Trails Grant (fund 1287, program #071) and appropriate into Countywide Adm.-Contingency (fund 1100) in the amount of $27,266.70.

BACKGROUND

The City of Mission has identified property that will be used for the walk/hike trail grant, furthermore the County could not build the trail as the county's land identified for the project could not be used for anything else other than drainage.

Please refer to attachments.

Grant award accepted on CC 10-30-07, AI #6282, item 8.A.
State funding is $100,000.00 (79%); County cash match is $27,266.70 (21%).
Grant period is from Oct. 30, 2007 to Aug. 31, 2010.

Fiscal Impact

FISCAL YEAR: 2010 **ACCT. #:** 0-1287-452-00-110-071-0-XXX

FUNDS AVAILABLE Y/N?: Y **MATCHING FUNDS Y/N?:**

BUDGETARY IMPACT:

Deobligation of unused cash match funds from the National Recreational Trail Grant in the amount of $27,266.70 and appropriation to Co. Wide Adm. Contingency 0-1100-415-00-115-002-0-899

Attachments

Link: Trail Grant deobligation

Link: Recreational Trail Grant

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
1	Ivan Cantu (Originator)	Ivan Cantu	09/16/2010 10:03 AM	APRV
2	Budget & Management	Sylvia Solis	09/16/2010 11:22 AM	APRV

3	Roland Garcia	Rolando Garcia	09/17/2010 03:45 PM	APRV
4	Auditor's Office		09/17/2010 04:52 PM	NEW

Form Started By: Ivan Cantu

Started On: 09/16/2010 08:46 AM

Final Approval Date: 09/17/2010

DATE: September 21, 2010

DEPARTMENT HEAD: Raul Silguero, Jr.

DEPARTMENT NAME: Department of Budget & Management for Co. Judge-National Recreational Trial Grant

ACCOUNT NUMBER: **0-1XXX-X91-01-000-X0X-0-XXX**

2010
Deobligation

CONTACT PERSON: Ivan Cantu **PHONE:** 292-7025 ext. 5425

SUBJECT: **Interfund & BA - Transfer/s (transfer in/out) (increase/decrease) in Accordance with Local Government Code Chapter 111, Subchapter C.**

Honorable Commissioner's Court of Hidalgo County:

I would like to request the following amendments (increases) to my departmental budget in accordance with Local Government Code, Chapter 111 Subchapter C.

INCREASE/DECREASE ACCOUNT NUMBER		ACCOUNT (OBJECT) NAME		AMOUNT
0-1100-415-00-115-002-0-	899	Co. Wide Adm.-	Contingency	27,266.70
0-1100-491-01-000-287-0	**891**	**Transfers Out-**	**Desig. Purp. Lvl 7**	**(27,266.70)**
0-1287-391-01-000-100-0-	**000**	**Transfers In-**	**General Fund**	**(27,266.70)**
0-1287-452-00-110-071-0-	739	National Recreational-	Other Structures	(27,266.70)
			TOTAL BUDGET INCREASE (DECREASE)	**27,266.70**

REASON: To deobligate unused cash match funds for the National Recreational Trail Grant. This grant will be transferred to the City of Mission, pending CC approval.

DEPARTMENT HEAD SIGNATURE

APPROVED COMMISSIONERS' COURT / / **DATE** **ATTEST COUNTY CLERK**

Hidalgo County Judge

Rene A. Ramirez

July 6, 2010

Andy Goldbloom, Manager
Texas Recreational Trails Program
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, TX 78744

Re: Transfer of Recreational Trail Grant # RT-0714

Dear Mr. Goldbloom:

Through this letter, I reiterate Hidalgo County's desire to have Grant # RT-0714 transferred from Hidalgo County to the City of Mission. Hidalgo County was awarded a grant from the Texas Parks and Wildlife Department Texas Recreational Trails Fund in 2007 for the development of a walk/hike trail in the City of Mission, Texas; however, it has been brought to our attention that the land identified for this project may not be used for any purpose other than drainage improvements. Fortunately, the City of Mission has identified property that can be used for this purpose and is interested in continuing the development of the trail.

Hidalgo County has been working with the City of Mission for the development of a walk/hike trail in that city that connects to existing trails. City officials have identified available land in the northwest portion of the city that connects to an existing trail. The City of Mission is aware that there is a $27,266.70 local match and agrees to contribute those funds toward the development of the walk/hike trail. Mr. Randy Perez, Grants Administrator for the City of Mission, will be the city's contact. He may be reached at (956) 580-8732 or via email at rperez@mission.lib.tx.us.

I would greatly appreciate your favorable consideration of this request. If you have any questions or if I may be of assistance please contact me or Erika Reyna at (956) 318-2600 or via email at rene.ramirez@hidalgocountyjudge.com.

Sincerely,

Rene A. Ramirez,
Hidalgo County Judge

RR:er

AI-6282 **8.A.**

Acceptance of Contract
CC REGULAR

Date: 10/30/2007
Submitted By: Mari Gutierrez, COUNTY JUDGE
Department: COUNTY JUDGE
Agenda Category: County Judge's Office

Information

CAPTION

1. Approval to accept grant award for the National Recreational Trails Grant from the Texas Parks & Wildlife in the total amount of $127,266.70 for the period of October 30, 2007 through August 31, 2010.
2. Approval to appropriate funds in the total amount of $127,266.70 for the period of October 30, 2007 to August 31, 2010 (account no. 7-1287-452-00-110-071-0-XXX) including County cash match (100,000.00 State funding; 27,266.70 County cash match).
3. Approval of interfund transfer from Countywide Administration - Contingency (1100) to National Recreational Trails Grant (1287) in the amount of $27,266.70.

BACKGROUND

State funding is 100,000.00 (79%); County cash match is 27,266.70 (21%). Grant will be used to construct a recreational trail and install benches and trash cans from Bryan Rd. to Shary Rd. (Pct. 3). Allocation is going to be for object codes 739, 664, and 899.

Fiscal Impact

FISCAL YEAR: 2007 **ACCT. #:** 7-1287-452-00-110-071-0-XXX
FUNDS AVAILABLE Y/N?: Y **MATCHING FUNDS Y/N?:**
BUDGETARY IMPACT:
Appropriation of funds in the total amount of $127,266.70 (State funding 100,000.00, County match 27,266.70) for the National Recreational Trails Grant.

Revenue Acct #7-1287-334-10-110-071-0-000- National Recreational Trails Grant Revenues.

FISCAL YEAR: 2007 **ACCT. #:** 7-1100-415-00-115-002-0-899
FUNDS AVAILABLE Y/N?: Y **MATCHING FUNDS Y/N?:**
BUDGETARY IMPACT:
7-1100-415-00-115-002-0-899 --> 7-1100-491-01-000-287-8-891 $27,266.70, Available Balance as of 10-26-07 $1,958,142.27.

Attachments

Link: 6282 National Recreational Trail Grant
Link: interfund tranfer
Link: budget amendment

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
1	Budget & Management		10/26/2007 05:11 PM	PEND
2	Ivan Cantu	Ivan Cantu	10/26/2007 05:01 PM	APRV
3	Purchasing Department		10/26/2007 05:11 PM	NEW

Form Started By: Mari Gutierrez Started On: 10/26/2007 11:53 AM

Final Approval Date: 10/26/2007

RECEIVED
AUG 27 2007
COUNTY JUDGE

TEXAS PARKS & WILDLIFE

COMMISSIONERS

JOSEPH B.C. FITZSIMONS
CHAIRMAN
SAN ANTONIO

DONATO D. RANCO
VICE-CHAIRMAN
LAREDO

MARK E. BIVINS
AMARILLO

J. ROBERT BROWN
EL PASO

T. DAN FRIEDKIN
HOUSTON

NED S. HOLMES
HOUSTON

PETER M. HOLT
SAN ANTONIO

PHILIP MONTGOMERY
DALLAS

JOHN D. PARKER
LUFKIN

LEE M. BASS
CHAIRMAN-EMERITUS
FORT WORTH

ROBERT L. COOK
EXECUTIVE DIRECTOR

August 24, 2007

Mr. Chris Trevino
Hidalgo County
100 E. Cano, 2nd Floor
Edinburg, Texas 78539

Dear Mr. Trevino:

I am pleased to inform you that earlier today the Texas Parks and Wildlife Commission awarded National Recreational Trails Grant funds and your Hidalgo County Trails project was awarded $100,000 of grant funding. Congratulations, competition for funding was fierce with over twice the request for funds as funds available.

We now begin environmental and historical resource reviews of the awarded projects. After these reviews are completed, I will make arrangements to meet with you and view the trail site and proposed work to be accomplished with the grant funds. At this time, you will receive copies of our billing procedures and a project agreement to execute.

$25,000 cash match

Please remember that this program will only reimburse you for 80% of the project cost, up to the amount approved, for costs incurred after the project agreement has been fully executed. **Do not start your project or incur any costs until this agreement is signed by all parties. By law, you can not be reimbursed for costs incurred prior to the execution of the project agreement.**

Please feel free to contact me at (512) 912-7128 if you have any questions. Again, congratulations for developing such a worthy trail project and compiling a successful grant application.

Sincerely,

Andrew Goldbloom
Program Manager

Enclosure

ENJOY THE TEXAS OUTDOORS!

Take a kid hunting or fishing

• • •

Visit a state park or historic site

4200 SMITH SCHOOL ROAD
AUSTIN, TEXAS 78744-3291
512.389.4800
www.tpwd.state.tx.us

To manage and conserve the natural and cultural resources of Texas and to provide hunting, fishing and outdoor recreation opportunities for the use and enjoyment of present and future generations.

COST ESTIMATE FOR CITY OF McALLEN WALK/HIKE PATH

PHASE I - Walk/Hike Path (Bryan Rd to Shary Rd)					
	DESCRIPTION	QTY.	UNIT	UNIT COST	AMOUNT
A1	Grubbing and removal (14' Wide removal)	14,800	SY	$0.50	$7,400.00
A2	4" Crushed Granite with Sealer (8' Wide Path)	9,514	LF	$10.50	$99,897.00
A3	Concrete Bench with Small Roof Structure	3	EA	$2,500.00	$7,500.00
A4	Trash Cans	3	EA	$300.00	$900.00
	SUBTOTAL				$115,697.00
	10% Contingency				$11,569.70
	TOTAL PHASE I IMPROVEMENTS COST:				$127,266.70

$100,000.00 → State TPW
$ 27,266.70 →

PHASE II - Walk/Hike Path (Conway Ave to Bryan Rd)					
	DESCRIPTION	QTY.	UNIT	UNIT COST	AMOUNT
B1	Grubbing and removal (14' Wide removal)	10,752	SY	$0.70	$7,526.40
B2	4" Crushed Granite with Sealer (8' Wide Path)	6,912	LF	$11.00	$76,032.00
B3	Concrete Bench with Small Roof Structure	3	EA	$2,750.00	$8,250.00
B4	Trash Cans	3	EA	$400.00	$1,200.00
	SUBTOTAL				$93,008.40
	10% Contingency				$9,300.84
	TOTAL PHASE II IMPROVEMENTS COST:				$102,309.24

TEXAS PARKS AND WILDLIFE DEPARTMENT

NATIONAL RECREATIONAL TRAILS FUND AGREEMENT

This agreement between Texas Parks and Wildlife Department (hereinafter TPWD) and Hidalgo County (hereinafter Sponsor) for construction of a recreational trail in Hidalgo County, Texas is made under Texas Recreational Trails Fund.

. BACKGROUND

The TPWD Recreational Trails Program, which administers the Texas Recreational Trails Fund (hereinafter TRTF) made available under the National Recreational Trails Act (hereinafter The Act), awards reimbursement-type grants to eligible public entities and private organizations to be used on trails and trail-related projects. To be eligible, the project must have been planned and developed under existing federal laws and state laws, and all related policies and administrative procedures; and

Hidalgo County, eligible under The Act, made a grant application for a suitable trail project and was awarded a TRTF grant.

THEREFORE, for and in consideration of the mutual covenants and benefits hereof, TPWD and the Sponsor hereby agree as follows:

. TERMS

Sponsor will conduct resource assessments, construct a 9,500 linear foot long +/- recreational trail and install benches and trash cans along the drainage structure from Bryan Road to Shary Road in accordance with approved plan (hereinafter the Project) by August 31, 2010.

While doing any work under the terms of this agreement, Sponsor will adhere to all requirements established for the National Recreational Trials Fund including those set out in Procedural Guidelines, Project Development and Grant Reimbursement Procedures, and Acquisition Project Procedures and by the signature of its authorized agent below asserts that it had read all of the foregoing requirements.

The undersigned is subject to Title VI of the Civil Rights Act of 1964, Section 504 or Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and offers all persons the opportunity to participate in programs or activities regardless of race, color, national origin, age, sex or disability. Further, it is agreed that no individual will be turned away or otherwise denied access to or benefit from any program or activity that is directly associated with a program on the basis of race, color, national origin, age, sex or disability.

Sponsor will properly and adequately maintain the Project into the foreseeable future so that it is available and safe for use by the public.

TPWD and Sponsor agree that the total cost of the Project is estimated to be One Hundred Twenty Five Thousand Dollars ($125,000) and that reimbursement to Sponsor for work performed under this agreement will not exceed Eighty Percent (80%) of the project cost up to the grant funds approved, One Hundred Thousand Dollars ($100,000). Sponsor will be paid up to $100,000 after submitting acceptable billings to TPWD for approved work

Sponsor may begin site planning and resource assessment work after execution of this agreement. After the project is cleared of resource impacts, by TPWD, the Texas Historical Commission and the U.S. Fish and Wildlife Service for potential impacts to natural and cultural resources, the Sponsor will receive a notice to proceed with construction. Any construction activities conducted prior to receiving the notice to proceed, will not be eligible for reimbursement.

This contract is subject to cancellation, without penalty, either in whole or in part, if funds are not appropriated by the Texas Legislature, or otherwise made available, to the Texas Parks and Wildlife Department. The performance period of this contract may be extended up to twelve months by mutual agreement of both parties.

Contractor understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Contractor further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is include in any subcontract it awards.

This agreement will be in effect on the last date of the signatures below.

TEXAS PARKS AND WILDLIFE DEPARTMENT

_____ Date:_____

HIDALGO COUNTY

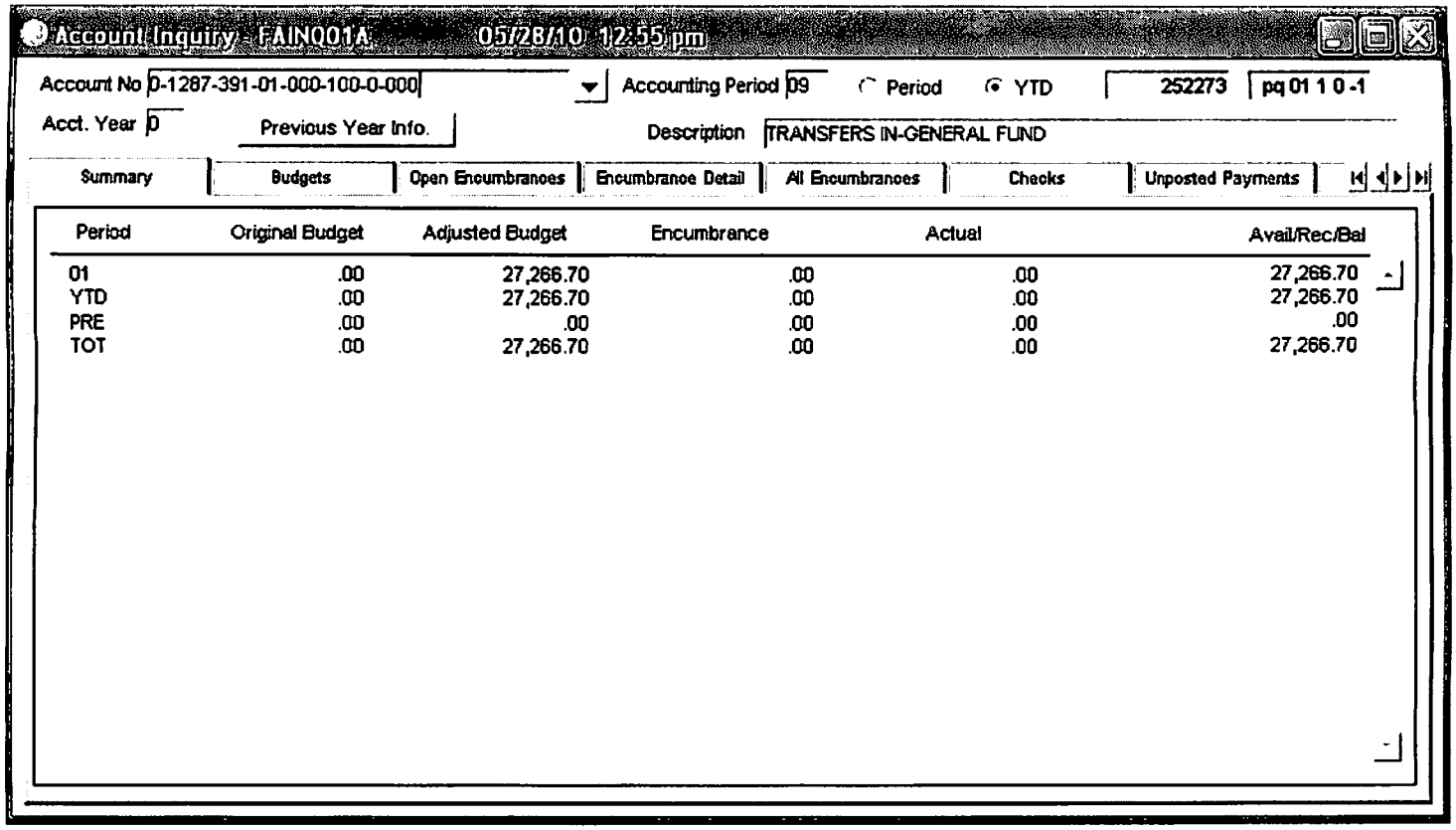
_____ Date:_____

Hidalgo County

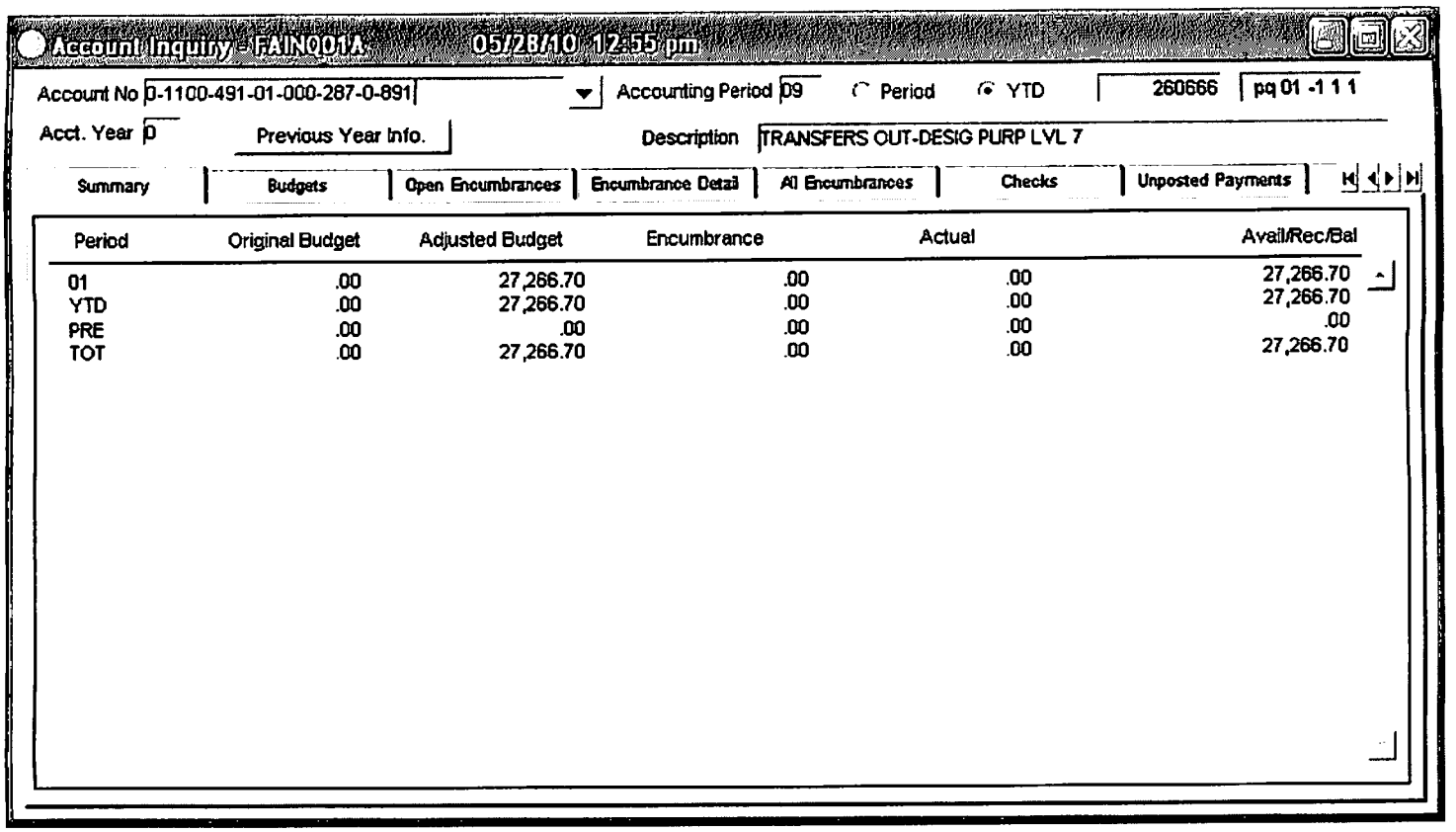
Expenditure Summary Report

Standard Report Format

Account Number / Description		Original Budget	Adjusted Budget	Y-T-D Encumbrance	Y-T-D Expended	Available Balance	Percent Used
1287 DESIGNATED PURPOSE GRANTS LVL 7							
0-1287-452-00-110-071-0-664	NATIONAL RECREATIONAL-OTHER MINOR EQUIP	.00	900.00	.00	.00	900.00	.00
0-1287-452-00-110-071-0-739	NATIONAL RECREATIONAL-OTHER STRUCTURES	.00	114,797.00	.00	.00	114,797.00	.00
0-1287-452-00-110-071-0-899	NATIONAL RECREATIONAL-CONTINGENCY	.00	11,569.70	.00	.00	11,569.70	.00
1287 DESIGNATED PURPOSE GRANTS LVL 7		.00	127,266.70	.00	.00	127,266.70	.00
0 YEAR 0		.00	127,266.70	.00	.00	127,266.70	.00



Period	Original Budget	Adjusted Budget	Encumbrance	Actual	Avail/Rec/Bal
01	.00	27,266.70	.00	.00	27,266.70
YTD	.00	27,266.70	.00	.00	27,266.70
PRE	.00	.00	.00	.00	.00
TOT	.00	27,266.70	.00	.00	27,266.70



Period	Original Budget	Adjusted Budget	Encumbrance	Actual	Avail/Rec/Bal
01	.00	27,266.70	.00	.00	27,266.70
YTD	.00	27,266.70	.00	.00	27,266.70
PRE	.00	.00	.00	.00	.00
TOT	.00	27,266.70	.00	.00	27,266.70

AI-23016 **18.A.4.**

Nomination for Lease of Land for Mineral Development

CC REGULAR

Date:	09/21/2010
Submitted By:	Gricelda Villarreal, PURCHASING DEPT.
Submitted For:	Marty Salazar
Department:	PURCHASING DEPT.
Agenda Category:	Purchasing Department **Sub-category:** Hidalgo County

Information

CAPTION

a. Acceptance and action asto the sole bid/nomination received (from Dewbre Petroleum Corporation) to the RFB-"Nomination of Intention to Lease Land for Mineral Development" for the project/property decribed as:

Tract I: “That portion of Lots Three (3) and Four (4), Ebony Grove and River Side Subdivisions, Hidalgo County, Texas the map and plat of which is of record in Volume 1, Page 59, Map Records, Hidalgo County, Texas and being more particularly described by metes and bounds.”

b. Requesting approval to execute "Paid-up Oil, Gas and Mineral Lease" document from Dewbre Petroleum Corporation for the property described herein with a term of three years including acceptance of nomination amount of $5,000.00.

BACKGROUND

Fiscal Impact

FISCAL YEAR: **ACCT. #:**

FUNDS AVAILABLE Y/N?: **MATCHING FUNDS Y/N?:**

BUDGETARY IMPACT:

Contract is for lease of land to Debrew Pretroleum Corp.; lots (3) & (4) Ebony Grove and River Side subdivisions.
County has "potential to receive 5,000.00 per month in royalties" from production of oil.
Fiscal impact is in the form of revenue.

Attachments

Link: Nomination Memo

Link: Paid Up Lease

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
1	Purchasing Department	Marty Salazar	09/16/2010 11:22 AM	APRV
2	Budget & Management	Sylvia Solis	09/16/2010 01:10 PM	APRV
3	Rosalinda Cantu	Rosie Cantu	09/16/2010 03:52 PM	APRV

4	Auditor's Office	09/17/2010 04:52 PM	NEW
Form Started By: Gricelda Villarreal		Started On: 09/16/2010 10:34 AM	
Final Approval Date: 09/17/2010			

Dewbre Petroleum Corporation

September 1, 2010

OPENED
9:44 am
9-8-2010
Witnessed

Hidalgo County
Martha L. Salazar
Hidalgo County Purchasing Agent
2812 S. Business Hwy 281
New Administration Building
Edinburg, Texas 78539

Re: Bid No. 10-288-09-08CGV
18.05 gross acres/18.05 net mineral acres
DeGoche Prospect
Hidalgo County, Texas

Dear Ms. Salazar:

Dewbre Petroleum Corporation ("Dewbre") would like to bid/lease your interest in the following described acreage in Hidalgo County, Texas:

18.05 acres of land, more or less, being out of Lot 3 and Lot 4 of the Ebony Groves Subdivision, La Blanca Grant, A-57, being more particularly descried in that certain Deed dated May 15, 1935 from W. E. Richey, Trustee to Hidalgo County, recorded in Vol. 403, Page 133, Deed Records of Hidalgo, County, Texas.

For the following terms:

Term:	Three (3) years
Total Bonus:	Five Thousand Dollars ($5,000.00)
Royalty:	One Fourth (1/4th)

Dewbre Petroleum has already completed a well and intends to unitize the subject lands (once leased) in order to join in the production from the DeGoche #1 well. The County has the potential to receive $5,000.00 each month in royalties, more or less, depending on production from the well and the prices of oil and gas. Therefore, leasing to any other entity would ensure that the County would NOT participate in the production unit for this well, and would have very little chance of getting a well drilled within a legal location from our lease and on an existing levee.

If you should have any questions regarding the above proposal, please feel free to give me a call at the number shown below.

Sincerely,
DEWBRE PETROLEUM CORPORATION

Chris Yonker
Landman

802 N. Carancahua, Suite 1800 ■ Corpus Christi, Texas 78470
(361) 888-7978 ■ Fax (361) 888-7980
email: info@dewbre.com

This document is printed on white paper with colored ink and contains document protective watermarks on reverse side.

CORPUS CHRISTI, TEXAS 78466-6469
361 / 992-9911

278238

Date:09/07/2010

AmericanBank
ABC 4024 (5/04)

Cashier's Check

Pay Exactly $5,000.00
DOLLAR FIVE COMMA ZERO ZERO ZERO PERIOD ZERO ZERO

PAY Five Thousand Dollars and Zero Cents

TO THE ORDER OF Hidalgo County

Remitter: Dewbre Petroleum Corporation

Void If Over: $5,000.00

NOTICE TO CUSTOMER: Texas State Law requires a 90 day waiting period before the bank can accept a Declaration of Loss on a Cashier's Check without an Indemnity Bond. American Bank retains the right to require the remitter or payee to purchase an Indemnity Bond at any time.

Authorized Signature C.G.

⑈278238⑈ ⑆114903284⑆ ⑈100004006⑈

PAID UP
OIL, GAS AND MINERAL LEASE

THIS AGREEMENT made and entered into this 1st day of September, 2010, between **Hidalgo County ,** hereinafter called "Lessor" (whether one or more), whose address is 2802 S. Bus. Hwy 281, New Administration Building, Edinburg, Texas 78539 and **DEWBRE PETROLEUM CORPORATION**, hereinafter called "Lessee", whose address is 802 N. Carancahua, Suite 1800, Corpus Christi, Texas 78401-0033.

1. Lessor, in consideration of Ten & no/100's, and other valuable consideration Dollars ($10.00) in hand paid, receipt of which is hereby acknowledged, of the royalties herein provided, and of the agreements of Lessee herein contained, hereby grants, leases and lets, exclusively unto Lessee for the purpose of investigating, exploring, prospecting, drilling, mining and operating for and producing oil, gas and all other minerals, injecting gas, waters and other fluids, air and other gaseous substances into subsurface strata, laying pipe lines, storing oil, building tanks, power stations, electric transmission lines, telephone lines and other structures and things thereon to produce, save, take care of, treat, process, store and transport said minerals and other products manufactured therefrom, and housing and otherwise caring for its employees, the following described land in Hidalgo County, Texas, to-wit:

   18.05 acres of land, more or less, being out of Lot 3 and Lot 4 of the Ebony Groves Subdivision, La Blanca Grant, A-57, Lino Cavazos original Grantee, Hidalgo County, Texas, and being more particularly described in that certain Deed dated May 15, 1935 from W. E. Richey, Trustee to Hidalgo County, recorded in Vol. 403, Page 133, Deed Records of Hidalgo County, Texas.

Notwithstanding any particular description, it is nevertheless the intention of Lessor to include this lease, and Lessor does not hereby lease, not only the land described but also any and all other land owned or claimed by Lessor in the herein named survey or surveys, or in adjoining surveys, the herein described land up to the boundaries of the abutting landowners, the lease lands being hereinafter referred to as "said land". For the purpose of determining the amount of any bonus or other payment hereunder, said land shall be deemed to contain 18.05 acres, whether actually containing more or less. Lessor agrees to execute any supplemental instrument(s) requested by Lessee for a more complete or accurate description of said land or instrument(s) to perfect title deficiencies.

2. Subject to other provisions herein contained, this lease shall remain in force for a term of 3 years from this date (called "primary term") and as long thereafter as oil, gas or other mineral is produced from said physical land or land with which said land or any part thereof is pooled, or this lease is maintained by virtue of some other provision hereof.
3. This is a PAID-UP LEASE. In consideration of the down cash payment, Lessor agrees that Lessee shall not be obligated, except as otherwise provided herein, to commence or continue any operations during the primary term.
4. The royalties to be paid by Lessee are: (a) deliver in kind to Lessor, at the well, or to the credit of Lessor into the pipeline or storage tank to which the well may be connected, the 1/4th part of all oil (including condensate) produced and saved from the leased premises. In lieu thereof, Lessee shall have the option, at any time, to sell lessor's oil, in which case Lessor's royalty shall be based on lessee's net proceeds at the lease, or to purchase lessor's oil for the value of such oil at the lease. In any event, lessor's interest shall be free of all costs of production, but shall bear its proportionate part of production and similar taxes, and shall share proportionately with Lessee in any costs to market, transport, or condition the oil; (b) to pay Lessor for gas (including casing head gas, all gaseous substances, and all other constituents thereof) produced and sold from the leased premises, 1/4th part of the net proceeds at the lease from the sale of such gas, after deducting lessor's proportionate part of the production, and other similar taxes: lessor's interest to be free of all costs of production, but to bear proportionately with lessee any costs incurred by lessee to market the gas, to deliver the gas to market off the leased premises, or to dehydrate, compress, process, treat, or otherwise place such gas marketable condition; (c) on gas, including casing head gas and all gaseous substances, produced from said land and used of said land by Lessee and not benefiting Lessor, the market at the mouth of the well of 1/4th of the gas so used of said land; (d) on all minerals mined and marketed, 1/4th, either in kind or value at the well or mine, at Lessee's election, except that on sulphur the royalty shall be one dollar ($1.00) per long ton; and (e) if at any time while there is a gas well or wells on the said land or land pooled therewith (for the purpose of this clause (e) the term "gas well" shall include wells capable

of producing natural gas, condensate, distillate or any gaseous substance and wells classified as gas wells by any governmental authority) and such well or wells are shut-in, and this lease is not being maintained otherwise as provided herein, this lease shall nevertheless remain in force and effect following the shutting in of the well(s), whether it be during or after the primary term (unless released by Lessee), and it shall be considered that gas is being produced from the land covered by this lease. When the lease is continued in force in this manner and the well or wells are shut-in for a period of at least ninety (90) consecutive days. Lessee shall pay or tender as advanced annual royalty to the parties who at the time of such payment would be entitled to receive royalty hereunder if the well were producing, or deposit to their credit in the SEND DIRECTLY TO LESSOR'S ADDRESS Bank (Account No.) Dollars $.00 per net acre for the acreage then held under this lease by the party making such payment or tender. The first payment of sum shall be made on or before either (1) ninety (90) days from the date such well or wells are shut-in; (2) ninety (90) days from the effective date for inclusion of said land or a portion thereof within a unit on which is located a shut-in gas well; or (3) ninety (90) days from the date this lease ceases to be otherwise maintained as provided herein, whichever is the late date, and it shall be considered that gas is being produced from said land in paying quantities within the meaning of Paragraph 2 hereof for one (1) year from the date of such payment, and in like manner subsequent advance annual royalty payments may be made or tendered and it will be considered that gas is being produced from said land in paying quantities within the meaning of said Paragraph 2 during any annual period for which such royalty is so paid or tendered; such advanced annual royalty payment shall be credited against any royalty accruing to the owners thereof any production from said land during any annual period for which such advanced annual payment has been made. Lessee's failure to pay or tender or to pay or tender properly of timely any such sum as royalty shall render Lessee liable for the amount but it shall not operate to terminate this lease. All royalty interest, whether or not owned by the undersigned, shall be paid out of the royalty as provided for in said lease.

5. Lessee shall have the right but not the obligation to pool all or any part of the leased premises or interest therein with any other lands or interest, as to any or all depths or zones, and as to any or all substances covered by this lease, either before or after the commencement of production, whenever Lessee at its sole discretion deems it necessary or proper to do in order to develop or operate prudently the lease premises, whether or not similar pooling authority exists with respect to such other lands or interests. The unit formed by such pooling for an oil well which is not horizontal completion shall not exceed 80 acres plus a maximum acreage tolerance of 10%, and for a gas well or horizontal completion shall not exceed 640 acres plus a maximum acreage tolerance of 10%; provided that a larger unit may be formed for an oil or gas well or horizontal completion to conform to any well spacing or density pattern that may be prescribed or permitted by any governmental authority having jurisdiction to do so. For the purpose of the foregoing, the term "horizontal completion" means a well in which the horizontal component of the gross completion interval in the reservoir is at least one hundred (100) feet. In exercising its pooling rights hereunder, Lessee shall file of record a written declaration describing the unit and stating the effective date of pooling. Production, drilling, completion, or reworking operations anywhere on a unit which includes all or any part of the leased premises shall be treated as if it were production, drilling, completion, or reworking operations on the leased premises, except that the production on which Lessor's royalty is calculated shall be that proportion of the total unit production which the net acreage covered by this lease and included in the unit bears to the total gross acreage in the unit. Pooling in one or more instances shall not exhaust Lessee's pooling rights hereunder, and Lessee shall have the recurring right but not the obligation to revise any unit formed hereunder by expansion or contraction or both, either before or after commencement of production, so long as the total acreage therein or produced therefrom, may from time to time be enlarged and extended by Lessee to include additionally any other formation or formations and any other mineral or minerals therein of produced therefrom. In making such a revision, Lessee shall file or record a written declaration describing the revised unit and stating the effective date of revision. To the extent any portion of the leased premises is included in or excluded from the unit by virtue of such revision, the proportion of unit production on which royalties are payable hereunder shall thereafter be adjusted accordingly. Lessee may place and use on each unit created hereunder common measuring and reworking tanks for production from such unit. In the absence of production in paying quantities from a unit, or upon permanent cessation thereof, Lesee may terminate the unit by filing of record a written declaration describing the unit and stating the date of termination. Pooling hereunder shall not constitute a cross-conveyance of interests.

6. If at the expiration of the primary term, oil, gas, or other mineral is not being produced on said land, or from the land pooled therewith, but Lessee is then engaged in operations for drilling, mining or reworking of any well or mine thereon or shall have completed a dry hole thereon within ninety (90) days prior to the end of the primary term, this lease shall remain in force so long as operations on said well or for the drilling or reworking of an additional well are commenced and prosecuted (whether on the same or successor wells) with no cessation of more than ninety (90) consecutive days, and, if the result in the production, so long thereafter as oil, gas or other mineral is produced from said land or land pooled therewith. If, after the expiration of the primary term of this lease and after oil, gas, or other mineral is produced from said land, or land pooled therewith, production thereof should cease from any cause, this lease shall not terminate if

Lessee commences operations for drilling or reworking within ninety (90) days after the cessation of such production, but shall remain in force and effect so long as such operations are prosecuted with no cessation of more than ninety (90) consecutive days, and if they result in the production of oil, gas, or other mineral, so long thereafter as oil, gas, or other mineral is produced from said land, or land pooled therewith. In the event a well or wells producing oil or gas in paying quantities should be brought in or adjacent land and within two hundred (200) feet of and draining said land, Lessee agrees to drill such offset wells as a reasonably prudent operator would drill under the same or similar circumstances. The judgment of the Lessee, when not fraudulently exercised, in carrying out the purpose of this lease shall be conclusive.

7. Lessee shall have free use of oil, gas and water from said land, except water from Lessor's wells and tanks, for all operations hereunder including re-pressuring, pressure maintenance, cycling and secondary recovery operations, and the royalty shall be computed after deducting any so used. Any structures and facilities placed on said land by Lessee for operations hereunder and any well or wells on said land drilled or used for the injection of salt water or other fluids may also be used for Lessee's operations on other lands in the same area. Lessee shall have the right at any time during this lease to remove all property and fixtures placed by Lessee on said land, including the right to draw and remove all casing. When required by Lessor, Lessee will bury all pipelines below ordinary plow depth, and no well shall be drilled within two hundred (200) feet of any residence or barn now on said land without Lessor's consent.

8. The rights of either party hereunder may be assigned in whole or in part, and the provisions hereof shall extend to their heirs, representatives, successors and assigns; but no change or division in ownership of the land, or royalties, however accomplished, shall operate to enlarge the obligations or diminish the rights of Lessee. No such change or division in the ownership of the land or royalties shall be binding upon Lessee for any purposes until such person acquiring any interest has furnished Lessee with the instrument or instruments or certified copies thereof, constituting the chain of title from the original Lessor. An assignment of this lease, in whole, or in part, shall, to the extent of such assignment, relive and discharge Lessee of any obligations thereunder, and if, Lessee or assignees of part or parts hereof shall fail to comply with any provision of this lease, such default shall not affect this lease insofar as it covers a part of said land upon which Lessee or any assigns thereof shall not be in default. Should more than six parties become entitled to royalties hereunder, Lessee may require the appointment of a single agent to receive payment for all and may withhold payment until such appointment has been made.

9. When drilling or other operations are delayed or interrupted by storm, flood, or other act of God, fire, war, rebellion, insurrection, riot strikes, differences with workmen, unavailability of material or equipment, failure of carriers to transportation, some order, requisition or necessity of the government or as a result of any cause whatsoever beyond the control of the Lessee, the time of such delay or interruption shall not be counted against Lessee, anything in this lease to the contrary notwithstanding. All express or implied covenants of this lease shall be subject to all Federal and State Laws. Executive order, rules or regulations and this lease shall not be terminated, in whole or in part, nor Lessee held liable in damages for failure to comply therewith if compliance is prevented by, or if such failure is the result of, any such law, order, rule or regulation. If from such causes Lessee is prevented from conducting drilling or reworking operations on, or producing oil or gas from said land or land pooled therewith, the time while Lessee is so prevented shall not be counted against Lessee, and this lease shall be extended for a period of time equal to that during which such Lessee is so prevented from conducting drilling or reworking operations on or producing oil or gas from said land or land pooled therewith, not withstanding any other provision hereof.

10. The breach by Lessee of any obligation arising hereunder shall not work a forfeiture or termination of this lease nor cause a termination or reversion of the estate created hereby nor be grounds for cancellation hereof in whole or in part. In the event Lessor considers that operations are not at any time being conducted in compliance with this lease, Lessor shall notify Lessee in writing of the facts relied upon as constituting a breach hereof, and Lessee, if in default shall have sixty (60) days after receipt of notice in which to commence the compliance with the obligations imposed by virtue of this instrument. After the discovery of oil, gas or other mineral in paying quantities on said land, Lessee shall reasonably develop the acreage retained hereunder, but in discharging this obligation it shall in no event be required to drill more than one (1) well per forty (40) acres, plus an acreage tolerance not to exceed ten percent (10%) of forty (40) acres of the area retained hereunder and capable of producing oil in paying quantities and one (1) well per six hundred forty (640) acres, plus an acreage tolerance not to exceed ten percent (10%) of six hundred forty (640) acres of the area retained hereunder and capable of producing gas or other mineral in paying quantities.

11. Lessor hereby warrants and agrees to defend the title to said land, and agrees that Lessee, at its option, may discharge any tax, mortgage or other lien upon said land in the event of default of payment by Lessor, and in the event Lessee does so, it shall be subrogated to such lien with the right to enforce same and apply royalties accruing hereunder toward satisfying same. Without impairment of Lessee's rights under the warranty in the event of failure of title, it is agreed that if Lessor owns an interest in said land less than the entire fee simple estate, whether stated herein above as a whole or

partial interest, then the royalties to be paid Lessor shall be reduced proportionately. All royalty interest covered by this lease (whether or not owned by Lessor) shall be paid out of the royalty herein provided. Should anyone or more of the parties named herein above as Lessors fail to execute this lease, it shall nevertheless be binding upon the party or parties executing the same.

12. Lessee, its successors and assigns, shall have the right at any time to surrender this lease, in whole or in part, to Lessor or Lessor's heirs, representatives, successors and assigns by delivering or mailing a release thereof to the Lessor, or by placing a release thereof of record in the county in which said land is situated; thereupon Lessee shall be relieved from all obligations, express or implied, of this agreement as to the acreage so surrendered, and thereafter the advance annual royalties payable hereunder shall be reduced in the portion that the acreage covered hereby is reduced by said release or releases.

13. Notwithstanding anything contained herein to the contrary, if, at the expiration of the primary term of this lease, this lease or any portion thereof, is not being maintained in effect in any manner provided herein, including, but not limited to operations upon or production from the leased premises or on land pooled therewith, or through the payment of shut-in gas royalties, Lessee shall have the exclusive right and option to renew and extend this lease as to the lands then covered thereby or any portion chosen by Lessee for an additional two (2) years primary term, commencing September 1, 2013 by payment or tender to Lessor or to the credit of Lessor in the above named depository bank, on or before said date, a sum of money equal to Two Hundred Dollars ($250.00) per net mineral acre; provided that such sum, shall be reduced under the applicable lease provisions, including but not limited to proportionate reduction based on ownership of Lessor.

IN WITNESS WHEREOF, this instrument is effective on the date first above written.

Lessor:
HIDALGO COUNTY

By:_____
Name:_____
Title:_____

STATE OF TEXAS §
§
COUNTY OF _____ §

This instrument was acknowledged before me on this ____ day of _____, 2010, by _____, as _____ on behalf of said Hidalgo County, in the capacity therein stated for purposes and consideration therein expressed.

_____
NOTARY PUBLIC - STATE OF TEXAS

Exhibit "A"

HIDALGO COUNTY
RFB-"NOTICE OF INTENTION TO LEASE LAND FOR MINERAL DEVELOPMENT"
RFB NO: 10-288-09-08CGV

Hidalgo County Mineral Acreage Descriptions:

Tract I: **"That portion of Lots Three (3) and Four (4), Ebony Grove and River Side Subdivisions, Hidalgo County, Texas as per map or plat thereof recorded in Volume 1, Page 59, Map Records, Hidalgo County, Texas and being more particularly described by metes and bounds."**

AI-23012 **18.A.5.**

PATHOLOGIST TO PROVIDE TURNKEY AUTOPSY AND RELATED SERVICES CC REGULAR

Date:	09/21/2010
Submitted By:	Olga Montero, PURCHASING DEPT.
Submitted For:	Marty Salazar
Department:	PURCHASING DEPT.
Agenda Category:	Purchasing Department **Sub-category:** Hidalgo County

Information

CAPTION

a. Presentation of the scoring/evaluation grid for the purposes of ranking by Commissioners' Court as "qualified" to proceed to the next phase of the process, the sole Statements of Qualifications (SOQs) received (from Dr. Norma J. Farley) in connection with the RFQ/P project advertised for "Pathologist to Provide Turnkey Autopsy and Related Services for Hidalgo County";

b. Requesting authorization for Purchasing Department to negotiate a contract with the Dr. Norma J. Farley, the sole "qualified" respondent to Hidalgo County's RFQ project:-"Pathologist to Provide Turnkey Autopsy and Related Services for Hidalgo County".

BACKGROUND

Fiscal Impact

FISCAL YEAR: 2010 **ACCT. #:** 1100-421-00-080-003-0-344

FUNDS AVAILABLE Y/N?: Y **MATCHING FUNDS Y/N?:** N

BUDGETARY IMPACT:

Funds in the amount of $360,497.84 as of 09/16/10.

Attachments

Link: scoring grid

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
1	Purchasing Department	Marty Salazar	09/16/2010 11:19 AM	APRV
2	Budget & Management	Sylvia Solis	09/16/2010 11:21 AM	APRV
3	Sylvia Solis	Sylvia Solis	09/16/2010 02:07 PM	APRV
4	Auditor's Office		09/17/2010 04:52 PM	NEW

Form Started By: Olga Montero Started On: 09/16/2010 09:44 AM

Final Approval Date: 09/17/2010

HIDALGO COUNTY
"PATHOLOGIST TO PROVIDE TURNKEY AUTOPSY AND RELATED SERVICES"
RFQ NO. 2010-002-06-30-otm

TOTAL COMMITTEE GRADERS	PROPOSER: DR. NORMA J. FARLEY
GRADER NO. 1	120
GRADER NO. 2	120
GRADER NO. 3	120
TOTAL SCORE	360
AVERAGE	120
RANKING BY: CC	

AI-23009 **18.A.6.**

Dead Body Pick-Up and Transport Services

CC REGULAR

Date:	09/21/2010
Submitted By:	Vangie Garcia, PURCHASING DEPT.
Submitted For:	Marty Salazar
Department:	PURCHASING DEPT.
Agenda Category:	Purchasing Department **Sub-category:** Hidalgo County

Information

CAPTION

a. Recommending approval to cease negotiations with "All Valley Mortuary Services" (as approved by C C on 09/14/10) inasmuch as the vendor showed no-interest and failed to show up for scheduled meeting; and

b. Requesting exemption from competitive bidding requirements under Texas Local Government Code, Chapter 262, Section 024(a)(2)-"an item necessary to preserve or protect the public safety of the residents of the County"; and

c. Authority to negotiate a contract with "RGV Transport Services LLC" for the Dead Body Pick-Up and Transport Services.

BACKGROUND

Fiscal Impact

FISCAL YEAR: 2010 **ACCT. #:** 1100-421-00-080-003-0-344

FUNDS AVAILABLE Y/N?: Y **MATCHING FUNDS Y/N?:** N

BUDGETARY IMPACT:

Funds in the amount of $360,497.84 as of 09/16/10.

Attachments

Link: Local Gov. Code

Link: Bid Tabulation

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
1	Purchasing Department	Marty Salazar	09/16/2010 11:08 AM	APRV
2	Budget & Management	Sylvia Solis	09/16/2010 11:19 AM	APRV
3	Sylvia Solis	Sylvia Solis	09/16/2010 02:22 PM	APRV
4	Auditor's Office		09/17/2010 04:52 PM	NEW

Form Started By: Vangie Garcia Started On: 09/16/2010 08:52 AM

Final Approval Date: 09/17/2010

plies, separate purchases of supplies by an individual department are not considered to be part of a single purchase and single contract by the county if a specific intent to avoid the requirements of this subchapter is not present.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, § 57(a), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 1250, § 9, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 16, § 13.02(b), eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 757, §§ 13, 38, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 442, § 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 505, § 2, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 436, § 4, eff. May 28, 2001; Acts 2001, 77th Leg., ch. 1063, § 2, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1409, § 4, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, § 12.004, eff. Sept. 1, 2003.

[1] V.T.C.A., Local Government Code § 271.041 et seq.

Section 15(a) of Acts 2001, 77th Leg., ch. 1409 provides:

"The changes in law made by this Act apply only to a contract for which requests for bids, requests for proposals, or requests for qualifications are published or distributed after September 1, 2001."

§ 262.0235. Procedures Adopted by County Purchasing Agents for Electronic Bids or Proposals

The county purchasing agent, before receiving electronic bids or proposals, shall adopt rules in conformance with Section 262.011(o) to ensure the identification, security, and confidentiality of electronic bids or proposals.

Added by Acts 2001, 77th Leg., ch. 1063, § 3, eff. Sept. 1, 2001.

§ 262.024. Discretionary Exemptions

(a) A contract for the purchase of any of the following items is exempt from the requirement established by Section 262.023 if the commissioners court by order grants the exemption:

(1) an item that must be purchased in a case of public calamity if it is necessary to make the purchase promptly to relieve the necessity of the citizens or to preserve the property of the county;

(2) an item necessary to preserve or protect the public health or safety of the residents of the county;

(3) an item necessary because of unforeseen damage to public property;

(4) a personal or professional service;

(5) any individual work performed and paid for by the day, as the work progresses, provided that no individual is compensated under this subsection for more than 20 working days in any three month period;

(6) any land or right-of-way;

(7) an item that can be obtained from only one source, including:

(A) items for which competition is precluded because of the existence of patents, copyrights, secret processes, or monopolies;

(B) films, manuscripts, or books;

(C) electric power, gas, water, and other utility services; and

(D) captive replacement parts or components for equipment;

(8) an item of food;

(9) personal property sold:

(A) at an auction by a state licensed auctioneer;

(B) at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; or

(C) by a political subdivision of this state, a state agency of this state, or an entity of the federal government; or

(10) any work performed under a contract for community and economic development made by a county under Section 381.004.

(b) The renewal or extension of a lease or of an equipment maintenance agreement is exempt from the requirement established by Section 262.023 if the commissioners court by order grants the exemption and if:

(1) the lease or agreement has gone through the competitive bidding procedure within the preceding year;

(2) the renewal or extension does not exceed one year; and

(3) the renewal or extension is the first renewal or extension of the lease or agreement.

(c) If an item exempted under Subsection (a)(7) is purchased, the commissioners court, after accepting a signed statement from the county official who makes purchases for the county as to the existence of only one source, must enter in its minutes a statement to that effect.

(d) The exemption granted under Subsection (a)(8) of this section shall apply only to the sealed competitive bidding requirements on food purchases. Counties shall solicit at least three bids for purchases of food items by telephone or written quotation at intervals specified by the commissioners court. Counties

HIDALGO COUNTY PURCHASING DEPARTMENT
BID TABULATION SHEET

DEPARTMENT NAME: HIDALGO COUNTY

BID OPENING DATE: MAY 26, 2010 | **BID OPENING TIME:** 9:30 A.M.

DESCRIPTION OF BID: "DEAD BODY PICK-UP AND TRANSPORT SERVICES"

BID NO: 2010-003-05-26-YZV | **BUYER:** Yolanda Velasquez

BID Nº	NAME OF COMPANY	ACKNOWLEDGE	Cost for transporting one (1) body from locations within Hidalgo County to the Hidalgo County Facility **with** body bag	Cost for transporting one (1) body from locations within Hidalgo County to the Hidalgo County Facility **without** body bag (County supplies bag).
#1	**Mortuary Transport Services Hidalgo, Texas**	√	**$75.00**	**$55.00**
#2	**RGV Transport Services McAllen, Texas**	√	**$80.00**	**$60.00**
#3	**All Valley Mortuary Transport Edinburg, Texas**	√	**$75.00**	**$65.00**
#4	**Ceballos Funeral Home, Inc. McAllen, Texas**	√	**$110.00**	**$90.00**
#5	**Lord & I Co. Mission, Texas**	√	**$121.00**	**$100.00**
#6				
#7				

AI-23005 **18.A.7.**

Authority to Advertise-Financial Advisory Services-Hidalgo County

CC REGULAR

Date:	09/21/2010
Submitted By:	Darlene Betancourt, PURCHASING DEPT.
Submitted For:	Marty Salazar
Department:	PURCHASING DEPT.
Agenda Category:	Purchasing Department **Sub-category:** Hidalgo County

Information

CAPTION

Requesting authority to advertise for the sealed procurement of a Request for Proposals (with qualifications) for the engagement/contracting for Financial Advisory Services-Hidalgo County, including approval of basic draft scope of services, requirements and qualifications.

BACKGROUND

Fiscal Impact

FISCAL YEAR: **ACCT. #:**

FUNDS AVAILABLE Y/N?: **MATCHING FUNDS Y/N?:**

BUDGETARY IMPACT:

Services are paid from issuance of certificates of obligation expenses.

Attachments

Link: Draft Requirements

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
1	Purchasing Department	Marty Salazar	09/16/2010 11:28 AM	APRV
2	Budget & Management	Sylvia Solis	09/16/2010 01:02 PM	APRV
3	Rosalinda Cantu	Rosie Cantu	09/16/2010 03:35 PM	APRV
4	Auditor's Office		09/17/2010 04:52 PM	NEW

Form Started By: Darlene Betancourt — Started On: 09/15/2010 04:52 PM

Final Approval Date: 09/17/2010

Hidalgo County is requesting proposals from competent, interested and qualified financial firms for the purpose of providing Financial Advisory services. The County of Hidalgo is seeking to engage & enter into a professional services contract with qualified state-licensed/registered (Texas) financial firm to provide Financial Advisory Services. The Hidalgo County Purchasing Department will receive sealed envelopes containing proposals for the provision of **RFP-Financial Advisory Services for Hidalgo County** as specified herein. Proposals will be accepted until **9:30 A.M., Wednesday, _____, 2010 . ANY RFP RECEIVED AFTER THAT DATE AND TIME WILL NOT BE ACCEPTED AND WILL BE RETURNED UNOPENED.**

Deliver Submittal to:

RFP No: 10-00-00-00-

US Postal Mail Address:
Martha L. Salazar, CPPB, Purchasing Agent
Hidalgo County Purchasing Department
New Administration Building
2812 S. Business Hwy 281
Edinburg, Texas 78539

Physical Address:
Martha L. Salazar, CPPB, Purchasing Agent
Hidalgo County Purchasing Department
New Administration Building
2802 S. Business Hwy. 281
Edinburg, Texas 78539

The Submittal Envelope Must Show the RFP Number, Name and Acceptance Date.

The following outlines the Request for proposals and Proposal:

SECTION I: GENERAL TERMS AND CONDITIONS

ADDITIONAL INFORMATION: Hidalgo County is requesting that question, inquiries and/or clarifications for the proposals and proposals be routed to Martha L. Salazar, CPPB, Purchasing Agent, or buyer, 2812 S. Business Highway 281, New Administration Building, Edinburg, Texas 78539. **WRITTEN QUESTIONS WILL BE ACCEPTED VIA FACSIMILE BY NO LATER THAN** Wednesday, _____, at 5:00 P.M. at (956) 318-2629. Responses will be sent to all applicants via e-mail by Friday, . **TELEPHONE INQUIRIES WILL NOT BE ACCEPTED**.

PROPOSER'S AFFIDAVIT:
Respondents to this RFP must submit a signed Proposer's Affidavit (attached herein in Exhibit "D") certifying that the submission is (1) not the result of Collusion as described in the Proposer's Affidavit; (2) that the Respondent does not have a Conflict of Interest as described in the Proposer's Affidavit; or that the Respondent has not and will not attempt to lobby directly or indirectly as described in the Proposer's Affidavit.

REQUIREMENT FOR DISCLOSURE OF CONFLICT OF INTEREST:

A person, vendor, consultant or contractor required to file a conflict of interest must file an updated questionnaire each year that a contractual relationship or negotiation is pending with the County.

DISCLOSURE OF CONFLICT OF INTEREST:
Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that any vendor, person, consultant or contractor considering doing business with Hidalgo County ("the County") to disclose in the Conflict of Interest Questionnaire ("the CIQ") attached as **Exhibit D**, the vendor, person, consultant or contractor's affiliation or business relationship that might cause a conflict of interest with the County. By law, the CIQ must be filed with the Hidalgo County Clerk's Office no later than the seventh business day after the date the person becomes aware of facts that require that statement to be filed. The disclosure requirement applies to a person or business who contracts or seeks to contract with Hidalgo County for the sale or purchase of property, goods or service. Any purchase order or contract resulting from this process shall be considered null and void if the successful participant fails to comply with Texas Local Government Code Chapter 176. Vendors, consultants, contractors and others who desire to conduct business with Hidalgo County are encouraged to refer to Texas Local Government Code Chapter 176 for the details of this law. An offense under Texas Local Government Code Chapter 176 is a Class C Misdemeanor.

Please Submit completed CIQ forms to the Hidalgo County Clerk's Office located at 100 N. Closner, Edinburg, Texas 78539-Hidalgo County Courthouse. COMPLETION AND SUBMISSION OF FORM CIQ IS THE SOLE RESPONSIBILITY OF THE PROPOSPECTIVE BIDDER.

NON-COLLUSION: Submitters, by submitting a signed submission, certify that the accompanying submission is not the result of, or affected by, any unlawful act of collusion with any other person or company engaged in the same line of business or commerce, or any other fraudulent act punishable under Texas or United States law.

NON-DISCRIMINATION: Submitters, during the performance of this contract, will not discriminate against any employee or applicant for employment because of race, religion, sex, national origin or disability except where religion, sex, national origin or disability is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor.

PROCESSING TIME FOR PAYMENT: Submitters are advised that a minimum of thirty (30) days is required to process invoices for payment.

ELECTRONIC TRANSMISSION OF BIDS: Hidalgo County's Purchasing Department will

not accept telegraphic or electronically transmitted submissions.

PROOF OF FINANCIAL AND BUSINESS CAPABILITY: Submitters must, upon request, furnish satisfactory evidence of their ability to furnish products or services in accordance with the terms and conditions of these requirements. Hidalgo County will make the final determination as to the submitter's ability.

SUBMITTER DEFAULT: Hidalgo County reserves the right, in case of submitter default, to procure the articles or services from other sources and hold the defaulting submitter responsible for any excess costs occasioned thereby.

RESTRICTIVE OR AMBIGUOUS REQUIREMENTS: It is the responsibility of the submitter to review the Request for Proposal (RFP) packet and to notify the Purchasing Department if the requirements are formulated in a manner that would unnecessarily restrict competition. Any such protest or question regarding the requirements or bidding procedures must be received in the Purchasing Department not less than seventy-two hours prior to the time set for the opening. These criteria also apply to requirements that are ambiguous.

PROPOSAL DELIVERY: Hidalgo County requires submitters, when hand delivering qualifications, to have a Purchasing Department representative time/date stamp and initial the envelope when submitting their RFP Packet Response.

SIGNING OF PROPOSALS: In order to be considered all submittals **must** be signed. **Please sign the original in blue ink**.

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

SUBCONTRACTING: The successful submitter may not subcontract the award without the written consent of the Commissioners' Court of Hidalgo County.

TERM OF CONTRACT:
The term of the contract shall be for an initial three (3) years with the County's option to renew for two (2) additional years, under the same rates, terms and conditions.

Hidalgo County reserves the right to continue this proposal for an additional sixty (60) day Grace Period at the end of the contract under the same rates, terms and conditions, due to unforeseen delay during the procurement process.

ADDITIONAL INFORMATION TO TERMS AND CONDITIONS: All costs and expenses associated with the preparation and submission of (bids, proposals, statements of qualifications and/or quotes) shall be the responsibility of the bidder/proposer or respondent and no reimbursements for such charges or expenses shall be passed onto Hidalgo County.

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SECTION II: RFP REQUIREMENTS/ SCOPE OF SERVICES/ QUALIFICATIONS/

Request for Proposal: The required contents and limitations for the preparation of the RFP are described in this section. Failure to provide the requested information or adhere to any County limitations will result in disqualification of the submitted RFP. A total of **one (1) original and seven (7) copies** of the RFP shall be submitted to the address on the cover letter.

Contents: The required contents for the RFP are presented below in the order they should be incorporated into the submitted document.

Understanding of the Project: This section should demonstrate the submitter's understanding of the project needs, the work required, and any local issues or concerns. This description should be concise, candid, and limited to 3 pages in length.

SCOPE OF SERVICES: Hidalgo County is requesting proposals from experienced financial firm(s) to provide ongoing financial advisory services primarily as they relate to General Obligation and Revenue Bond Sales for Hidalgo County. The successful firm will be an impartial third party experienced in public entity finance and bond issuance and the theories and practices behind them. The financial advisory service**s** contract will encompass all project-related financial and consulting services to the County of Hidalgo including, but not limited to, the following:

The consultant shall provide financial advisory and consulting services to "County" for financing initiated by the "County" during the contract period.

Such services may include, but are not limited to the following, in no particular order:

a. Assist in the planning and structuring of bond issues and training of the "County" staff on new concepts;

b. Assessment of the market conditions prior to, concurrent with, and subsequent to bonds sales and keep the "County" abreast of market developments and financing techniques which might be applicable to the "County" financing program;

c. Preparation, printing and distribution to prospective bidders of the preliminary and final official statements and other relevant financing documents;

d. Technical support to meet the need of the "County" including calculations related to competitive and negotiated sales and the possibility of electronic sales.

e. Providing advice on the principal amount of bonds to be sold;

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f. Development of debt scenarios for preparing debt service budgets, financial feasibility studies and alternative financing plans for capital projects;

g. Working with citizen committees in the development of capital projects priorities and bond authorizations;

h. Coordinate the preparation and submission of SEC disclosure documents required under Rule 15C212 to NRMSIRs and SIDs;

i. Development of the materials for presentation to the rating agencies which may include written, oral and video presentations;

j. Solicitation and verification of bids received on sale date;

k. Provide advice on the investment of proceeds;

l. Provide advice on related compliance with arbitrage regulations;

m. Evaluate State and Federal legislation as it related to County's finance;

n. Monitor and make recommendations as to feasibility of early refunding;

o. Summarize the reception of the bonds in the market and evaluate performance relative to the market and other securities of similar credit;

p. Provide advice relative to maintaining the "County's" current excellent credit rating under various conditions;

q. Develop financial analysis programs and computer models to be used in conjunction with the "County's" financing programs using software compatible with the "County's" standard packages;

r. Establish and maintain automated interface to include full ability to transmit information via email, diskette, fax and Internet;

s. Review and advice on various projects involving potential "County" financing as requested by "County"staff';

t. Coordinate and participate in the closing of the bond sale;

u. Work closely with the "County's" bond counsel in development of the bond sale documents;

v. Recommend method of sale of dept instruments;

w. Arrange for reports of independent consultants (if applicable);

x. Recommend as to the advisability of obtaining credit ratings and coordinate preparation and submission of information to rating agency;

y. Coordinate efforts for delivery of debt instruments and preparation and verification of closing figures including installment deliveries of an issue;

z. Assist "County" staff at advertised sale with receipt, tabulation and comparison of bids and advice as to best bid;

aa. Coordinate efforts for delivery of debt instruments and preparation and verification of closing figures including installment deliveries of an issue;

bb. Counsel in selection of paying agent/registrar;

cc. Deliver schedules of annual debt requirements on debt instruments including installment deliveries of a DWSRF issue;

dd. Attend meetings as requested;

ee. Advise of changes in Federal and State laws and regulations;

ff. Testify in litigation as requested;

Firm Qualifications: The County of Hidalgo is seeking to contract with a competent financial firm(s), registered and licensed to practice in the State of Texas that has had experience in, but not limited to, the following areas:

- Firm must provide history of the company or firm, the size of the firm (s), including the location of the office(s) from which the work on this engagement is to be performed and the number and nature of the professional staff to be employed in this engagement on a full-time and part time basis.

- Firm must identify any existing or potential conflicts of interest relative to the performance of the requirements of this request for proposals. Additionally, respondent must identify current government agency clients who have overlapping debt with the "County".

- The firm shall outline how they would handle interviews and reports to non-English speaking citizens of the "County".

- The firm should provide a list of all the principal(s) and/or owners as well as supervisory and management staff who would be assigned to the engagement. The firm shall provide as much information as possible regarding the number, qualifications, experience and training of the specific staff to be assigned to this engagement.

- The firm shall also indicate how the quality of staff over the term of the engagement would be assured.

- The firm must provide references (name, address, and phone number) for at least three clients whom you have served as financial advisor.

Additionally, this section should include a description of the firm's project personnel and their most recent similar projects. For each project, a client contract name and phone number should be included for reference purposes. Additionally, the names of the personnel proposed for this project who participated in the listed projects should be provided. This project list is limited to 5 pages.

Personnel and Staffing: The firm should provide an organizational chart for the project and a summary paragraph of the project work to be performed by each proposed staff member. Biographic summaries that highlight the experience relevant to the specific project responsibilities should be provided for all proposed personnel. There is a one (1) page limitation for each biographic summary provided.

Required Certifications and Submittal: This section will contain any licenses and certifications as required by HIDALGO COUNTY, the STATE OF TEXAS, etc.. **The financial firm(s) should add copies of their current certificate for Professional Liability Insurance.** Also, please provide information pertaining to the firm's compliance with licensing and other requirements of the Securities Exchange Commission, the National Association of Securities Dealers and Municipal Securities Rule Making Board.

NUMBER OF COPIES TO BE SUBMITTED: Hidalgo County requires **one (1) original submittal and seven (7) copies**.

PART III: SELECTION AND SCHEDULES

SELECTION PROCEDURES/EVALUATION CRITERIA-PART I:

The evaluation consists of a 100-point scoring system based on the Evaluation Criteria - Exhibit B. However, after the 100-point evaluation, Hidalgo County's Court may elect to narrow the participating providers and request presentations.

(A) The Hidalgo County Commissioners' Court and/or an Evaluation Committee (selected and/or designated by Commissioner's Court) will review, score and evaluate the RFPs received in response to this Hidalgo County request for proposals.

(B) After the RFPs have been reviewed, scored and evaluated, the committee will present a grid to the Hidalgo County Commissioner's Court for the purposes of ranking.

NEGOTIATION PROCESS- EVALUATION CRITERIA- PART II:
The number one ranked firm will be contacted to submit a letter of engagement/contract for final negotiations based on the Evaluation Criteria Exhibit B-Part II. If negotiations prove unsuccessful, the next highest ranked company will be contacted. The County of Hidalgo reserves the right to reject any and all RFPs

Any contract awarded to a successful firm will be in effect until (a) the contract expires, (b) delivery and acceptance of products and/or performance of services ordered, or (c) terminated by County with thirty day's written notice prior to cancellation.

PROPOSAL SUBMITTED TO: An original and seven (7) copies of RFPs should be submitted to:

Martha L. Salazar, Purchasing Agent
Hidalgo County Purchasing Department
New Administration Building;
2812 S. Business Highway 281
Edinburg, Texas 78539

RFPs must be submitted by **no later than 9:30 a.m. on Wednesday**,_____.

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EXHIBIT B
SELECTION CRITERIA

HIDALGO COUNTY
REQUEST FOR PROPOSALS

RFP-Financial Advisory Services for Hidalgo County
RFP-10-00-00-00

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EVALUATION CRITERIA
Hidalgo County
RFP-Financial Advisory Services
10-00-00-00-

RFP Evaluation Criteria

Proposals evaluation criteria will include, but not be limited to, the items listed below.

1. Firm's Qualifications and Staffing of Project Team (25)

The professional team members shall have experience in performing similar contracts for counties, cities, or other clients as stated in the Request for proposals and Proposal (RFP). The firm should provide the résume of each of the firm professionals. Any specializations or board certifications should also be detailed in each résume. Copies of current valid licenses, certifications should be included in this section.

2. Understanding of Project/Similar Projects (25)

* demonstrate an understanding of the scope of services
* address appropriate Federal/State/Local regulations and policies
* identify information to be gathered or obtained

The firm should provide as much background information as to its experience in providing similar services to City, County, School or any other governmental agencies. Reference information should be as current as possible, especially contact persons and telephone numbers. A minimum of three references are required.

3. Experience of Project Team/Ability to Commit Resources (25)

The professional team members shall have experience in performing similar contracts for counties, cities, or other clients as stated in the Request for Proposal (RFP).

The firm shall designate experienced staff to completely and efficiently perform the work. The designated individuals may not be replaced during the project unless approved by the County. The proposal shall identify the project team composition, project leadership, reporting responsibilities and address how sub-providers, if any, will fit into the management structure. Résumés of the key technical staff members, limited to two (2) pages per person must be included in an appendix, as well as narrative descriptions of projects proposed as similar work experience. Also in this section, outline the firm's contingency plans for servicing the project in the event that one or more key personnel are not available for any reason during the period of performance.

4. Fees Schedule/Cost (25)

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HIDALGO COUNTY
Financial Advisory Services
RFP No. 10-00-00-00

RFP- EVALUATION FORM

1. Firm's Qualifications and Staffing of Project Team (25) 0-25 _____

The professional team members shall have experience in performing similar contracts for counties, cities, or other clients as stated in the Request for proposals and Proposal (RFP). The firm should provide the résume of each of the firm professionals. Any specializations or board certifications should also be detailed in each résume. Copies of current valid licenses, certifications should be included in this section

Comments/Rationale for Points:_____
_____
_____

2. Understanding of Project/Similar Projects (25) 0-25 _____

* demonstrate an understanding of the scope of services
* address appropriate Federal/State/Local regulations and policies
* identify information to be gathered or obtained

The firm should provide as much background information as to its experience in providing similar services to City, County, School or any other governmental agencies. Reference information should be as current as possible, especially contact persons and telephone numbers. A minimum of three references are required.

Comments/Rationale for Points:_____
_____
_____

3. Experience of Project Team/Ability to Commit Resources (25) 0-25 _____

The professional team members shall have experience in performing similar contracts for counties, cities, or other clients as stated in the Request for proposals and Proposal (RFP).

The firm shall designate experienced staff to completely and efficiently perform the work. The designated individuals may not be replaced during the project unless approved by the County. The proposal shall identify the project team composition, project leadership, reporting responsibilities and address how sub-providers, if any, will fit into the management structure. Résumés of the key technical staff members, limited to two (2) pages per person must be included in an appendix, as well as narrative descriptions of projects proposed as similar work experience. Also in this section, outline the firm's contingency plans for servicing the project in the event that one or more key personnel are not available for any reason during the period of performance.

Comments/Rationale for Points:_____
_____
_____

4. Fee Schedule/Cost

Provider: _____
Evaluator: _____ Date: _____

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AI-22985 **18.A.8.**

Request for Vacated Space/Status of Third Floor Renovations/Status of Publishing 1st. & 2nd. Floor Renovations

CC REGULAR

Date:	09/21/2010
Submitted By:	Marty Salazar, PURCHASING DEPT.
Submitted For:	Marty Salazar
Department:	PURCHASING DEPT.
Agenda Category:	Purchasing Department **Sub-category:** Hidalgo County

Information

CAPTION

a. Request from DA's Office for Commissioners Court to assign/designate the current area/space occupied by the "Hot Check" division upon it's relocation to the Administration Building (100 E. Cano-Edinburg, Tx) to the District Attorney;

b. Status report (as requested by CC on 9-14-10) by Richard Sunday, Facilites Management, on the current on-going renovations to the third floor of the Adm. Bldg.;

c. Status report by project architect, Alcocer/Garcia Associates, Inc. on the (Renovation of First and Second Floors including South wing of Adm. Bldg.-100 E. Cano, Edinburg, Tx) plans and specifications of the project, with applicable action/approval including, but not limited to the following:

1. Proceed to advertise the project with the current approved plans/specifications;
2. Approval to add renovation of current area occupied by County Judge and staff;
3. Other related issues

BACKGROUND

Fiscal Impact

FISCAL YEAR: **ACCT. #:**

FUNDS AVAILABLE Y/N?: **MATCHING FUNDS Y/N?:**

BUDGETARY IMPACT:

2006/2010 C/O proceeds would be used for renovations to Adm. Bldg., 100 E. Cano, Edinburg, Tx.

Attachments

Link: email

Link: email

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
1	Purchasing Department (Originator)	Marty Salazar	09/16/2010 11:23 AM	APRV

2	Budget & Management	Sylvia Solis	09/16/2010 01:02 PM	APRV
3	Rosalinda Cantu	Rosie Cantu	09/16/2010 02:13 PM	APRV
4	Auditor's Office		09/17/2010 04:52 PM	NEW

Form Started By: Marty Salazar

Started On: 09/15/2010 02:12 PM

Final Approval Date: 09/17/2010

From: Martha Salazar [martha.salazar@co.hidalgo.tx.us]
Sent: Thursday, September 16, 2010 9:48 AM
To: 'Nielda Cavazos'
Subject: FW: Checks Section

Ms. Nielda:
Please print this e-mail and attach it to AI#22985.
Thanks,
Marty

From: Roy Cazares [mailto:roy.cazares@da.co.hidalgo.tx.us]
Sent: Wednesday, September 15, 2010 5:50 PM
To: 'Martha Salazar'
Subject: Checks Section

Marty,

As we previously discussed, our office will have a need for some space in the courthouse once we move to the old county administration building. I am request that the Checks Section be the area that we get assigned to our office. The Grand Jury Room will not be moved to the old administration section and we would like for it to continue in the same area.

We need the space in the courthouse to store electrical equipment (TVs, Elmos, Projectors, etc…), a waiting area for victims/witnesses, an area for our Asst DAs to interview victims/witnesses during trials and an area to house staff when needed in the courthouse.

Thank you in advance for your consideration to this request.

Roy Cazares
Personnel Director
Hidalgo County District Attorney's Office
100 N. Closner, Room 303
Edinburg, TX 78539
(956) 318-2300 Ext. 758
Fax (956) 318-2078

roy.cazares@da.co.hidalgo.tx.us

From: Martha Salazar [martha.salazar@co.hidalgo.tx.us]
Sent: Thursday, September 16, 2010 10:11 AM
To: 'Nielda Cavazos'
Subject: FW: Hidalgo County Old Administration Building Remodel

Print and attach AI#22985
Thx

From: Edo [mailto:edo@agadc.com]
Sent: Thursday, September 16, 2010 10:04 AM
To: martha.salazar@co.hidalgo.tx.us
Subject: Hidalgo County Old Administration Building Remodel

September 16, 2010

Ms. Martha Salazar
Purchasing Agent
Hidalgo County Purchasing Department
Edinburg, Texas 78539

Re: 1st and 2nd floor Remodeling
Old Hidalgo County Administration Building
Edinburg, Texas

Dear Ms. Salazar:

We are in the process of renewing our professional liability insurance and need to know whether to list the above referenced project as 'on-going'. If not, please advise.

We are approximately 98% complete with the A/E documents. The plans and specifications are based on meetings with staff from County Judges Office and District Attorney's Office.

On May 2009, we were instructed to stop work on the project.

If project is still active, we need to schedule a meeting with staff to finalize plans and specifications.

We are available at anytime.

Eduardo Alcocer

956.607.6671

AI-22935 **18.B.1.**

Pleasantview Road between Mile 5 and 6 North

CC REGULAR

Date:	09/21/2010
Submitted By:	Nielda Cavazos, PURCHASING DEPT.
Submitted For:	Nielda Cavazos
Department:	PURCHASING DEPT.
Agenda Category:	Purchasing Department **Sub-category:** Prct. 1

Information

CAPTION

a. Requesting exemption from competitive bidding requirements under the Texas Local Government Code, Section 262.024 (A) (4) a professional service/engineering services;

b. Presentation of scoring grid (for the purposes of ranking by CC) of the firms graded & evaluated through the County's approved "pool" of engineers in connection to required engineering services for Pleasantview Road between Mile 5 and 6 North Roads located in Precinct #1:

1. MEG Engineering- Score 78-Rank:_____;
2. TEDSI Infrastructure Group-Score 92-Rank:_____;
3. The Alex Group- Score 74-Rank:_____;

c. Authority for the Purchasing Department to negotiate a professional Engineering Services Contract with the No.1 ranked firm of _____ for the provision of Engineering Services for Pleasantview Road between Mile 5 and 6 North Roads located in Precinct #1.

BACKGROUND

Fiscal Impact

FISCAL YEAR: **ACCT. #:** Fund 1342

FUNDS AVAILABLE Y/N?: **MATCHING FUNDS Y/N?:**

BUDGETARY IMPACT:

Fiscal impact to be determined once contract negotiations are completed and contract is executed and approved by CC.
Possible funding source CO 2010 Fund 1342.

Attachments

Link: Grid

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
1	Purchasing Department (Originator)	Nielda Cavazos	09/16/2010 01:41 PM	APRV

2	Budget & Management	Sylvia Solis	09/16/2010 01:43 PM	APRV
3	Ivan Cantu	Ivan Cantu	09/16/2010 02:16 PM	APRV
4	Auditor's Office		09/17/2010 04:52 PM	NEW

Form Started By: Nielda Cavazos

Started On: 09/13/2010 08:52 AM

Final Approval Date: 09/17/2010

HIDALGO COUNTY PRECINCT NO 1

Professional Engineering Services

For Pleasantview Road between Mile 5 and 6 North

Scoring & Evaluation GRID

Engineering Services

Total Scores	MEG Engineers	The Alex Group	TEDSI Infrastructure Group
Scores	78	74	92
RANKING			

*SCORING & EVALUATION COMPLETED BY PCT NO 1

AI-23047 **18.B.2.**

Request to Rescind Action with Authority to Purchase/Pct. #1
CC REGULAR

Date:	09/21/2010
Submitted By:	Oscar Garza, PURCHASING DEPT.
Submitted For:	Marty Salazar
Department:	PURCHASING DEPT.
Agenda Category:	Purchasing Department **Sub-category:** Prct. 1

Information

CAPTION

a. Approval to **rescind** CC action of 9-07-10-21.B.1 AI-22788; and

b. Authority to **purchase** heavy machinery and/or equipment detailed herein from the following awarded vendor Alamo Sales Corp. (through Hidalgo County's participation/membership) with HGAC-Contract #GR01-10: One (1) 6430 JD Deere 4x4 Tractor to include, but not limited to, a 28' Axtreme Boom Mower, Mount Labor Oil-$102,000.00 (which includes pricing, warranties, delivery and administration fee's)-Project #2010-329-OGG.

BACKGROUND

Approval of proposed purchase will save the County 579.58, and purchase is more advantageous to Pct. #1 by purchasing a 4x4 tractor with required equipment as needed as opposed to a 2 wheel tractor.

Fiscal Impact

FISCAL YEAR: 2010 **ACCT. #:** 0-1342-431-00-121-041-0-742

FUNDS AVAILABLE Y/N?: Y **MATCHING FUNDS Y/N?:**

BUDGETARY IMPACT:

req #181616 for John Deere will be deleted and a new req will be issued out for the new vendor Alamo Sales Corp., pending CC approval.

Funds available pending deletion of req #181616.

Attachments

Link: quote

Link: AI-22788

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
1	Purchasing Department	Marty Salazar	09/17/2010 11:49 AM	APRV
2	Budget & Management	Sylvia Solis	09/17/2010 01:19 PM	APRV
3	Ivan Cantu	Ivan Cantu	09/17/2010 02:48 PM	APRV

4	Auditor's Office	09/17/2010 04:52 PM	NEW
Form Started By: Oscar Garza		Started On: 09/17/2010 09:49 AM	
Final Approval Date: 09/17/2010			

CONTRACT PRICING WORKSHEET

for All Products Except Motor Vehicles

This Form must be prepared by Contractor, and provided to End User to attach to Purchase Order, with copy to H-GAC. The H-GAC fee shall be calculated and shown as a separate line item.

Buying Agency:	HIDALGO COUNTY PCT. #1	Contractor:	ALAMO SALES CORP.
Contact Person:	RAUL LOZANO/OSCAR GARZA	Prepared By:	H & V EQUIPMENT INC.-THAD R. MOORE
Phone:	(956) 968-8733	Phone:	(956) 565-3788
Location City, State:	WESLACO, TX 78596	Contract No.:	GR01-10
Date:	9/10/2010	Product Code:	*JIMMY GARCIA-ALAMO REP (830-560-6463
Product Description:	ALAMO 28' AXTREME BOOM MOWER		

A. Item Base Unit Price Per H-GAC Contract: 04812628 **28' AXTREME/JOYSTICK** **A:** $37,048.00

B. Published Options (Itemize below and attach additional sheet(s) if necessary)

Code	Description	Cost	Code	Description	Cost
02986203	60" ROTARY	8686.00			
02985029	MOUNT LABOR-OIL	3764.00			
02986360	6430 JOHN DEERE 4x4	52502.00			
				Subtotal From Additional Sheet(s):	
				Subtotal B:	64,952.00

Note: Published Options are options submitted with the contractor's bid.

C. Unpublished Options (Itemize below and attach additional sheet(s) if necessary)

Code	Description	Cost	Code	Description	Cost
				Subtotal From Additional Sheet(s):	
				Subtotal C:	
Check: Total cost of Unpublished Options (C) cannot exceed 25% of the total of the Base Unit Price plus Published Options (A+B). For this transaction, the percentage is:					

D. Other Price Adjustments (E.G. Installation, Freight, Delivery, Etc.)

Subtotal D:	-

E. Unit Cost of Item Before Fee & Non-Equipment Charges (A+B+C+D)		102,000.00
Quantity Ordered	X	1
	Subtotal E:	102,000.00
F. H-GAC Admin Fee (1.5% of Subtotal E)	**Subtotal F:**	$0.00

G. Non-Equipment Charges (Trade-In, Extended Warranty, etc.)

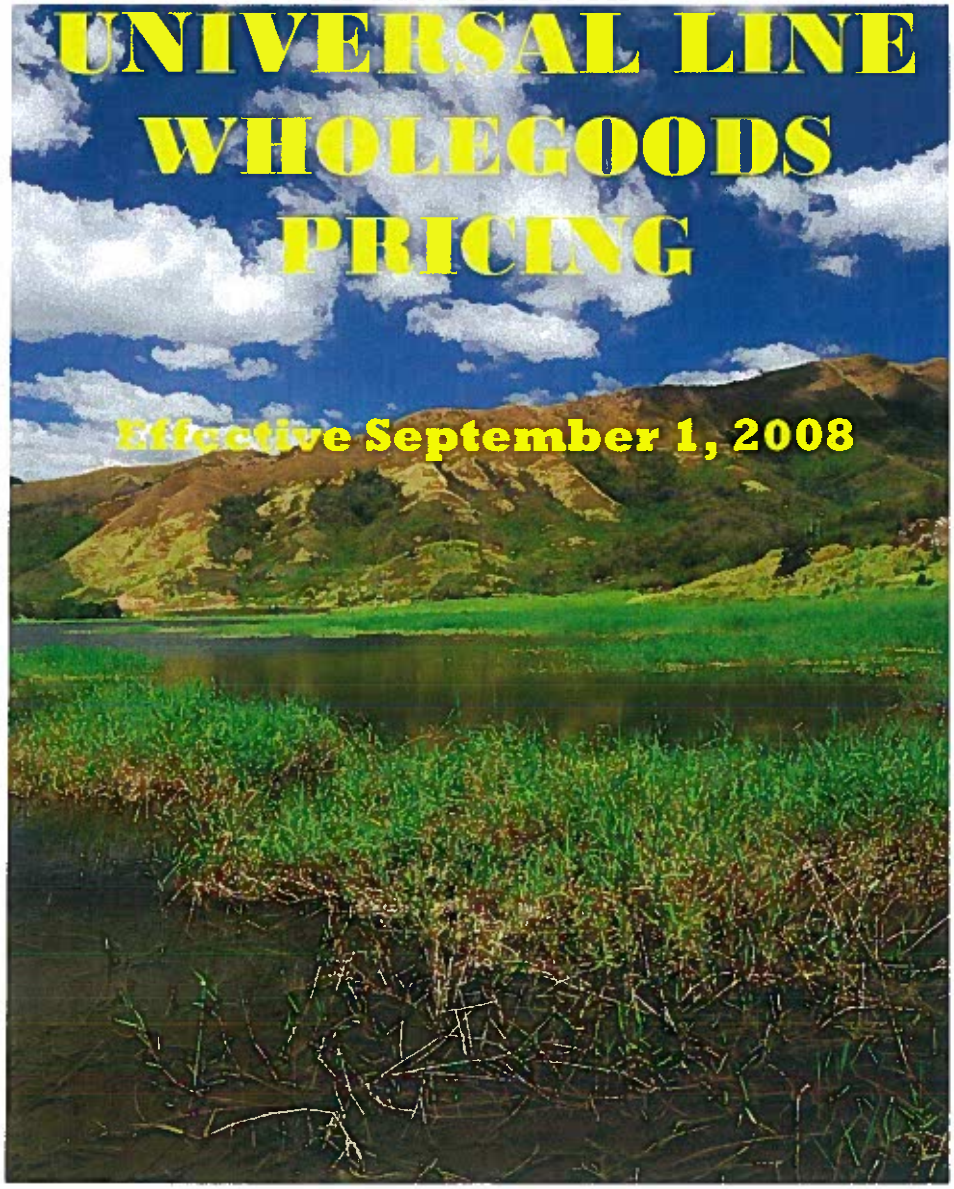
Subtotal G:	-

H. **Total Purchase Price (E+F+G):** $102,000

Estimated Delivery Date:

ALAMO INDUSTRIAL™

H-GAC PRICE BOOK



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MEMBER OF THE ALAMO GROUP
ALWAYS ON THE CUTTING EDGE.

AXTREME 28 BOOM

28' TELESCOPING MODEL

F.O.B. Seguin, TX

STANDARD SPECIFICATIONS

- Bolt-On Undermount with Front and Rear Attached Rails
- Exclusive Slewing Ring Bearing is Featured for Boom Maneuverability
- Standard Boom Structure Made from Alloy Steel
- Main Pivot Features 2" Chrome Pins with Greaseable, Hardened Steel Bushings
- Self Contained Front Mounted Hydraulic System
- Oil-to-Air Cooler with Electric Fan
- Ability to Mow Horizontally within 6" of Rear Tire with Swivel Heads
- Boom Features Dipper and Lift
- Boom Reach: Up-24' 2", Out-27', Down-17' 6"
- 180° Horizontal Boom Swing
- Axle-Mounted Boom Rest
- Mount Kit, all Wheel Weight, and Polycarbonate Window Included in Base Price
- Tractor Req: Min of 8,500 lbs and 90 HP, Min 90" Wheelbase and 18" Ground Clearance

HEAD SPECIFICATIONS

- 58" Cutting Diameter
- Alloy Deck Material with Double Wall Side Skirt
- 4-1/2"x9" Heat-Treated Alloy Spindle
- 152 HP Motor Direct-Coupled
- 2-1/2" x 5" Stacked Three-Leaf Blade Bar, Alloy Steel
- 5/8" x 5" High-Carbon Alloy Steel Blade, 360° Swing
- Standard (1) year limited parts and labor warranty.

PRODUCT ORDER CODE	DESCRIPTION	APPRX. WEIGHT		LIST PRICE
	28' Base Unit *(One Choice Required)*			
04812528	28' Axtreme Boom with 6 spool valve	0		39,865
04812628	28' Axtreme Boom with Joystick	0		45,739
	MOWER HEAD *(One Choice Required)*			
02986190 & 02986331	60" Rotary w/Ctr Hyd Door, Blade Bar & Head Swivel (Joystick Remote)	1,115		12,440
TBA	60" Rotary w/Ctr Hyd Door, Blade Bar & Head Swivel (Cable Remote)	1,115		12,440
02986203	60" Rotary w/Ctr Hyd Door, Blade Bar (No Head Swivel)	1,061		10,724
02986212 & 02986331	50" Rotary w/Ctr Hyd Door, Blade Bar & Head Swivel (Joystick Remote)	---		11,849
TBA	50" Rotary w/Ctr Hyd Door, Blade Bar & Head Swivel (Cable Remote)	---		11,849
02986211	50" Rotary w/Ctr Hyd Door, Blade Bar (No Head Swivel)	---		10,133
02986213 & 02986331	50" Rotary w/Ctr Hyd Door, Blade Pan & Head Swivel (Joystick Remote)	---		11,152
TBA	50" Rotary w/Ctr Hyd Door, Blade Pan & Head Swivel (Cable Remote)	---		11,152
02986210	50" Rotary w/Ctr Hyd Door, Blade Pan (No Head Swivel)	---		9,436
	OPTIONS			
02983328A	Additional Operators and Parts Manuals			41
TBA	Quick Hitch Kit* - SEE NOTE BELOW			3,343
TBA	Hydraulic Kit for Quick Hitch Head** - SEE NOTE BELOW			443
02985029	Mounting Labor & Oil		NET	4,101
02791800	Special Mower Paint		NET	869
02968967	Special Tractor Paint		NET	3,627
00889899	Additional 12 Month Warranty		NET	2,472

Quote:$37,048.00
Exceeds required
8% discount

** Includes all components to convert boom and (1) head to Quick Hitch*

*** Required to convert additional heads to Quick Hitch*

SAMURAI 18 BOOM

18' ARTICULATED MODEL

F.O.B. Seguin, TX

STANDARD SPECIFICATIONS

- 4" X 4" Square Tubular Frame
- Features a 2 1/2" greaseable "king post" style turning arm.
- Main pivots points utilize 2" pins with greaseable, hardened steel bushings.
- Self contained hydraulic system w/integrated oil cooler.
- 20 gal Front-Mounted Reservoir/35 gal Total System Volume
- Motor Circuit: Gear Pump Rated @ 30 gpm (66.5 hp) & 3,800 psi @ 2,200 rpm.
- Control Circuit: Gear Pump Rated @ 12 gpm (21 hp) & 3,000 psi @ 2,200 rpm.
- Inner Boom Arm 6"x6"x1/4" Alloy Steel Tubing
- Outer Boom Arm 5"x5"x1/4" Alloy Steel Tubing
- 120° Horizontal Boom Swing
- Boom Reach: Up-18' 7", Out-18', Down-5' 1"
- Mount Kit, Wheel Weight, and Polycarbonate Window Included in Base Price
- Tractor Req: Min of 8,500 lbs and 90 eng. hp. Min 90" Wheelbase and 18" Ground Clearance

HEAD SPECIFICATIONS

- 58" Cutting Diameter
- Alloy Deck Material with Double Wall Side Skirt
- 4-1/2"x9" Heat-Treated Alloy Spindle
- 152 HP Direct-Coupled Gear Motor
- Stacked Three-Leaf, Alloy Steel Blade Bar
- 5/8" x 5" Double -Edged, Tempered Steel Blades, 360° Swing
- Standard (1) year limited partsand labor warranty.

PRODUCT ORDER CODE	DESCRIPTION	APPRX. WEIGHT		LIST PRICE
	18' Base Unit *(One Choice Required)*			
04851801	18' Samurai Boom - 2wd w/Cable Remote	----		29,448
04851803	18' Samurai Boom - 4wd w/Cable Remote	----		29,448
04851800	18' Samurai Boom - 2wd w/Joystick	----		35,158
04851802	18' Samurai Boom - 4wd w/Joystick	----		35,158
	MOWER HEAD *(One Choice Required)*			
02986190 & 02986331	60" Rotary w/Ctr Hyd Door, Blade Bar & Head Swivel (Joystick Remote)	1,115		12,440
TBA	60" Rotary w/Ctr Hyd Door, Blade Bar & Head Swivel (Cable Remote)	1,115		12,440
02986203	60" Rotary w/Ctr Hyd Door, Blade Bar (No Head Swivel)	1,061		10,724
02986212 & 02986331	50" Rotary w/Ctr Hyd Door, Blade Bar & Head Swivel (Joystick Remote)	---		11,849
TBA	50" Rotary w/Ctr Hyd Door, Blade Bar & Head Swivel (Cable Remote)	---		11,849
02986211	50" Rotary w/Ctr Hyd Door, Blade Bar (No Head Swivel)	---		10,133
02986213 & 02986331	50" Rotary w/Ctr Hyd Door, Blade Pan & Head Swivel (Joystick Remote)	---		11,152
TBA	50" Rotary w/Ctr Hyd Door, Blade Pan & Head Swivel (Cable Remote)	---		11,152
02986210	50" Rotary w/Ctr Hyd Door, Blade Pan (No Head Swivel)	---		9,436
TBA	48" Flail-Axe w/Head Swivel (Joystick Remote)	---		12,314
TBA	48" Flail-Axe w/Head Swivel (Cable Remote)	---		12,314
TBA	48" Flail-Axe (No Head Swivel)	777		10,598
TBA	48" Flail-Axe, SHD Cuttershaft (3 oz Knives) w/Head Swivel (Joystick Remote)	---		13,321
TBA	48" Flail-Axe, SHD Cuttershaft (3 oz Knives) w/Head Swivel (Cable Remote)	---		13,321
TBA	48" Flail-Axe, SHD Cuttershaft (4 oz Knives) (No Head Swivel)	---		11,760
TBA	48" Grass Flail, SHD Cuttershaft	---		11,605
TBA	60" Grass Flail, SHD Cuttershaft	800		11,697
TBA	5' Timber Cat Sickle Bar	682		11,116
TBA	7' Timber Cat Sickle Bar	770		11,308
TBA	90" Buzzbar (4 Blade)	1098		13,209
TBA	69" Buzzbar (3 Blade)	---		11,724
TBA	48" Buzzbar (2 Blade)	550		9,399
TBA	Ditcher Head (Hitch Post Mounted)	---		10,898
	OPTIONS			
02986950A	Additional Operators and Parts Manuals			41
TBA	Quick Hitch Kit* - SEE NOTE BELOW			3,343
TBA	Hydraulic Kit for Quick Hitch Head** - SEE NOTE BELOW			443
02975647	Flail-Axe Jack Stand Kit*** - SEE NOTE BELOW			273
TBA	Case-IH Maxxum Frt Axle Stabilizer Kit			955
TBA	JD 6030 Frt Axle Stabilizer Kit			955
TBA	JD 7030 Frt Axle Stabilizer Kit			955
TBA	NH T6000 Series Frt Axle Stabilizer Kit			955
02985029	Mounting Labor & Oil		NET	4,101
02791800	Special Mower Paint		NET	869
02968967	Special Tractor Paint		NET	3,627
00889899	Additional 12 Month Warranty		NET	1,966

Quote: $8,686.00 exceeds required 8% discount

discounted price $3,764.00

** Includes all components to convert boom and (1) head to Quick Hitch*

*** Required to convert additional heads to Quick Hitch*

**** Required to level Flail-Axe for Quick Hitch*

JOHN DEERE 6430 PREMIUM AND MID-SPEC TRACTORS

F.O.B. Seguin, TX



Illustration includes tires & other options not available on standard tractors.

PREMIUM TRACTOR SPECIFICATIONS

- 95 PTO HP at 2300 RPM
- John Deere PowerTech Plus 4-Valve Common Rail Diesel Engine
- Wet Clutch
- 276 C.I.D/ 4 cylinder engine
- Cat II 3-point hitch
- Hyd. Differential lock
- Flange Axle
- John Deere Green

MID-SPEC SPECIFICATIONS

- 95 PTO HP at 2300 RPM
- John Deere Diesel Engine
- Wet Clutch
- 276 C.I.D/ 4 cylinder engine
- Cat II 3-point hitch
- Hyd. Differential lock
- Flange Axle
- John Deere Green

PREMIUM SERIES TRACTORS

Part Number	Model	Transmission	Tire Sizes	List Price
02984929	6430 Cab 2wd	16x16 PQ/LH Rev.	10.00-16 18.4-34	56,379
02984928	6430 Cab 2wd	16x16 PQ/LH Rev.–Creeper	10.00-16 18.4-34	58,250
02984931	6430 Cab 4wd	16x16 PQ/LH Rev.	12.4-24 18.4-30	63,636
02984930	6430 Cab 4wd	16x16 PQ/LH Rev.–Creeper	12.4-24 18.4-30	65,465
02984933	6430 Cab 4wd	16x16 PQ/LH Rev.	13.6-24 18.4-34	64,254
02984932	6430 Cab 4wd	16x16 PQ/LH Rev.–Creeper	13.6-24 18.4-34	66,127

MID-SPEC SERIES TRACTORS

Part Number	Model	Transmission	Tire Sizes	List Price
02986359	6430 Cab 2wd	16x16 SyncroPlus/LH Mechanical Reverser	10.00-16 18.4-34	49,381
02986360	6430 Cab 4wd	16x16 SyncroPlus/LH Mechanical Reverser	13.6-24 18.4-34	57,068
02986304	6430 Cab 4wd	16x16 SyncroPlus/LH Mechanical Reverser w/Creeper	13.6-24 18.4-34	59,135

Discounted Price:
$52,502.00
Required 8% discount

accordance with the terms and conditions of the Cooperative Purchasing Agreement between Beck Disaster Recovery, Inc. and Hidalgo County.

B. Pct. 1

1. AI-22788

approved

Authority to purchase heavy machinery and/or equipment detailed herein from the following awarded vendor through Hidalgo County's participation/membership with TASB Buyboard Contract #292-08:

a. One (1) 6330 JD Standard Cab with a HX15 Rot Cut 540 mower - **$58,496.62;**

Rescind item b.

b. One (1) 7130 JD Standard Cab including: 28' Diamond Boom Mower & Accessories needed- **$ 102,579.58**

a combined total of **$161,076.20** (which includes pricing, delivery, TASB fees & warranty under-Project #2010-329-OGG.

2. AI-22757

approved

a. Approval to exercise the thirty (30) day written notice of termination (a provided in Article 14, Page 4 of 8 of agreement) of Contract No. C-10-009A-04-13-Javier Garza, dba, International Materials for "Hauling Services For All Road Materials" for Precinct No. 1; and

approved

b. Approval to award to the next low bidder Universal Truckers, Inc. (with a current Contract #C-10-009-04-13) meeting all specifications/requirements for the "Hauling Services For For All Road Materials" for Precinct No. 1(this project was a multiple award-approved by CC-04/13/10).

C. Pct. 2

1. AI-22814

all approved a- h

Discussion, consideration and action including, but not limited to, the following items in connection with Interlocal Cooperation Agreements for Cesar Chavez Drainage, Minnesota Drain and El Gato Road Improvement Projects:
a. Approval of "Order to Rescind Action" taken by CC-6/01/2010 #22/B/1/AI-21391 an Interlocal Cooperation Agreement between Hidalgo County and PSJA ISD;
b. Approval of Interlocal Cooperation Agreement Project, aka, Exhibit "C" - Sioux, Alamo and Cesar Chavez Roads for a drainage improvement Project;
c. Approval of Interlocal Cooperation Agreement between Hidalgo County, PSJA ISD and City of Alamo for Cesar Chavez Drainage Improvement Project located in the vicinity of Sioux, Alamo and Cesar Chavez Roads;
d. Approval to rescind action taken by CC-8/03/2010 #24/B/5/AI-22294 an Interlocal Cooperation Agreement between Hidalgo County and the City of San Juan in connection with the Minnesota Drainage Improvement Project;
e. Approval of Interlocal Cooperation Agreement Project, aka, Exhibit "C" - by Raul Longoria Road on the west, Nolana Loop on the south, Owassa Road on the north and Cesar Chavez of the east, aka, Minnesota Drainage Improvement Project;
f. Approval of Interlocal Cooperation Agreement between Hidalgo County and the City of San Juan in connection with Minnesota Road Improvement Project;
g. Approval of Interlocal Cooperation Agreement Project, aka, Exhibit "C" - El Gato Road from Tower to Alamo Roads Improvements;

AI-22955 **18.C.1.**

Building Repairs/Renovations

CC REGULAR

Date:	09/21/2010
Submitted By:	Nielda Cavazos, PURCHASING DEPT.
Submitted For:	Nielda Cavazos
Department:	PURCHASING DEPT.
Agenda Category:	Purchasing Department **Sub-category:** Prct. 4

Information

CAPTION

a. Requesting exemption from competitive bidding requirements under the Texas Local Government Code, Section 262.024 (A) (4) a professional service for Engineering Services;

b. Presentation of scoring grid (for the purposes of ranking by CC) of the firms graded & evaluated through the County's approved "pool" of engineers in connection with professional engineering services required for: County-owned Building Repairs/Renovations Projects located in Precinct #4;

1. Sigler,Winston, Greenwood & Assoc.- Score: 93 - Rank: _____
2. S&B Infrastructure, LTD. - Score: 96 - Rank: _____
3. HALFF Assoc. - Score: 97.50- Rank: _____

c. Authority for the Purchasing Department to negotiate a professional engineering services Contract with the No.1 ranked firm of _____ for the provision of engineering services for: County-owned Building Repairs/ Renovations Projects located in Precinct #4.

BACKGROUND

Fiscal Impact

FISCAL YEAR: **ACCT. #:**

FUNDS AVAILABLE Y/N?: **MATCHING FUNDS Y/N?:**

BUDGETARY IMPACT:

Funding will be determined as contract/Work Authorizations are issued.

Attachments

Link: Grid

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
1	Purchasing Department (Originator)	Nielda Cavazos	09/16/2010 01:41 PM	APRV
2	Budget & Management	Sylvia Solis	09/16/2010 01:43 PM	APRV

3	Manuel Chapa	Manuel Chapa	09/17/2010 10:57 AM	APRV
4	Auditor's Office		09/17/2010 04:52 PM	NEW

Form Started By: Nielda Cavazos

Started On: 09/14/2010 10:08 AM

Final Approval Date: 09/17/2010

HIDALGO COUNTY PRECINCT NO 4

FOR

Building Repairs/ Renovations

Scoring & Evaluation GRID

Engineering Services

Total Scores	Sigler, Winston, Greenwood & Assoc.	S&B Infrastructure, LTD	HALFF Associates, Inc.
Grader 1	94	96	97
Grader 2	92	96	98
Average	93	96	97.50
Ranking			

*SCORING & EVALUATION COMPLETED BY PCT NO 4

AI-22974 **18.D.1.**

"Award" Purchase of New High Density Power Station Trailer

CC REGULAR

Date:	09/21/2010		
Submitted By:	Elena Gomez, PURCHASING DEPT.		
Submitted For:	Marty Salazar		
Department:	PURCHASING DEPT.		
Agenda Category:	Purchasing Department	**Sub-category:**	Health & Human Services Dept.

Information

CAPTION

Recommending award of bid to the sole bidder, Texas Association of Local Health Officials (TALHO), meeting all specifications/requirements, terms and conditions as attached hereto for: Hidalgo County - Health Department - "New High Density Power Station Trailer" not to exceed $73,000.00- Bid No. 2010-284-09-15-MEG

BACKGROUND

Grant funds:
Timelines to purchase and issue PO before 09/30/10 as per directions from dept.

Fiscal Impact

FISCAL YEAR: 2010 **ACCT. #:** 0-1293-441-00-340-047-1-748

FUNDS AVAILABLE Y/N?: y **MATCHING FUNDS Y/N?:**

BUDGETARY IMPACT:

Available balance as of 9-17-10 $76,746.00.

Attachments

Link: Bid Packet from Vendor

Link: Acceptance Sheets/Sign in Sheet/CIQ etc

Link: memo & tabulation

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
1	Purchasing Department	Marty Salazar	09/15/2010 04:40 PM	APRV
2	Budget & Management	Sylvia Solis	09/16/2010 07:50 AM	APRV
3	Manuel Chapa	Manuel Chapa	09/17/2010 11:39 AM	APRV
4	Auditor's Office		09/17/2010 04:52 PM	NEW

Form Started By: Elena Gomez Started On: 09/15/2010 10:59 AM

Final Approval Date: 09/17/2010

COPY

Bid
for
HIDALGO COUNTY HEALTH & HUMAN SERVICES -

BID NO.: 2010-284-09-15-MEG

To: Martha L. Salazar, CPPB, Purchasing Agent
Hidalgo County Purchasing Department
2812 S Business Hwy 281 -New Administration Building
Edinburg, Texas 78539

In accordance with the Specifications, and subject to all laws and regulations of the United States and state and local laws, the undersigned bidder proposes and commits to furnish all labor, equipment, material, software and services as set forth in the documents hereinbefore mentioned. The undersigned bidder further agrees, upon acceptance of its bid, to execute a contract and/or Purchase Order issued by Hidalgo County for performing and completing the work described in the Specifications within the time stated and for the prices proposed in the documents attached hereto and made a part hereof.

Bidder acknowledges receipt of all of the pages of the documents referenced in the Invitation to Bid Checklist presented in connection with this procurement. Bidder understands that Hidalgo County reserves the right to reject any or all bids and further reserves the right to design the evaluation criteria to be used in selecting the lowest and best bid.

Bidder agrees that this bid shall be good and may not be withdrawn for a period of ninety (90) calendar days after the scheduled closing time for receiving bids, as contained in the Specifications.

Respectfully submitted,

Bidder: Texas Association of Local Health Officials

Address: 2600 McHale Court, Suite 100, Austin, TX 78758

By: [signature]

Printed Name: Lee Lane

Title: Executive Director

PURCHASING DEPARTMENT
County Of Hidalgo

September 2, 2010

RE: ADDENDUM NO.1
FOR RFB No: 2010-284-09-15-MEG HIDALGO COUNTY HEALTH & HUMAN SERVICES-"PURCHASE OF NEW HIGH DENSITY POWER STATION TRAILER"

Dear Bidder:

Attached you will find **ADDENDUM NO. 1,** in connection with **HIDALGO COUNTY HEALTH & HUMAN SERVICES**-Request for Sealed Bids for the **"PURCHASE OF NEW HIGH DENSITY POWER STATION TRAILER".**

Please add this **ADDENDUM NO. 1** to your procurement packet, to permit your company to submit a complete packet. See original procurement packet LEGAL NOTICE page 3 paragraph 9.

ACKNOWLEDGE RECEIPT of ADDENDUM NO. 1 by signing and returning this notice to by no later than September 15, 2010 at 9:30 a.m. via e-mail to elena.gomez@co.hidalgo.tx.us or via fax to (956)292-7612.

If you do not receive all pages of **ADDENDUM NO. 1** please notify us immediately at (956) 318-2626.

Please be advised that this **ADDENDUM NO. 1** will complete your procurement packet for **HIDALGO COUNTY HEALTH & HUMAN SERVICES -"PURCHASE OF NEW HIGH DENSITY POWER STATION TRAILER".**

Thank you for your prompt attention to this matter.

Martha L. Salazar, CPPB
Hidalgo County Purchasing Agent

BY: _____
ADDENDUM NO 1
ACKNOWLEDEMENT OF RECEIPT

Texas Association of Local Health Officials
Firm's Name

MLS/meg
Enclosures

2812 S. Business Highway 281 ★ Edinburg, Texas 78539 ★ (956) 318-2626 ★ Fax (956) 318-2629

ADDENDUM NO. 1
SEPTEMBER 2, 2010

HIDALGO COUNTY HEALTH & HUMAN SERVICES
"PURCHASE OF NEW HIGH DENSITY POWER STATION TRAILER"
RFB NO. 2010-284-09-15-MEG

PLEASE NOTE THE FOLLOWING **CHANGES:**

1. REPLACE EXHIBIT "B" with REVISED EXHIBIT "B" (bid page)-consisting of 1 page.

I, Lee Lane, acknowledge receipt of ADDENDUM NO. 1 dated, September 2, 2010 for RFB NO.: 2010-284-09-15-MEG **"Hidalgo County Health & Human Services –"PURCHASE OF NEW HIGH DENSITY POWER STATION TRAILER"**

Texas Association of Local Health Officials
Print VENDOR's Name

9/13/10
Date

***NOTE: THIS ORIGINAL ADDENDUM MUST BE SUBMITTED WITH YOUR PROCUREMENT PACKET RESPONSE.**

EXHIBIT "A"

SPECIFICATIONS/REQUIREMENTS

HIDALGO COUNTY HEALTH & HUMAN SERVICES
"PURCHASE OF NEW HIGH DENSITY
POWER STATION TRAILER"

BID NO. 2010-284-09-15-MEG

SPECIFICATIONS:
The following are the minimum requirements and/or specifications that will be acceptable to the County. These requirements and/or specifications may be equal or better. Any bid that does not meet the minimum requirements and/or specifications will be rejected.

Hidalgo County Health Department is seeking to purchase "One (1) High Density Power Station Trailer" as a Turnkey (ready to operate) from a qualified vendor, to include but not limited to the following:

SERVICE SPECIFICATIONS:
A "High Density Power Station Manual" that outlines general features and trailer use is supplied. Bidder must specify if any other Equipment and/or Accessories will be included.

One (1) New High Density Power Station Trailer"

MINIMUM SPECIFICATION:
Purchase One (1) High Density Power Station Trailer" unit with the following equipment, all equipment mentioned below will be equal or better as follows.

- 2400 Amp Hours of charge supplied by lithium, iron phosphate 12V battery system with remote battery management and monitoring system.
- Battery charging system for charging from generator
- 2800 watt inverter to supply AC power from the battery system
- 6000 watt Honda super quiet 120/240 generator with inverter system for ultraclean sine wave power, equipped for tri-fuel operation on gas, LP, and propane
- 840 watt solar panel array on a telescoping hydraulic system with sun tracking system and MPPT solar charge controller with remote management module
- 200lbs of propane storage
- Air compressor for light duty tolls and inflation purposes
- Battery charging station to accommodate two 12V car batteries, 4 lantern batteries, capacity for numerous smaller AA, AAA,9V,D,C batteries
- Rechargeable handheld spotlight and 8 rechargeable flashlights with a charging station
- 65qt refrigerator/freezer
- Mini-microwave
- 250 watt LED flood-lamp
- 2000 watt pod of halogen flood-lamp on telescoping mast
- 120 and 240 watt shore power connector for charging and distribution of power
- 12V DC power outlets

EXHIBIT "A"
HIDALGO COUNTY HEALTH AND HUMAN SERVICES
"PURCHASE ONE (1) HIGH DENSITY POWER STATION TRAILER"
BID NO.: 2010-284-09-15-MEG

TERMS & CONDITIONS:

1. All tangible goods being bid must be new and unused, unless otherwise specified, in first-class condition, of current manufacture, and furnished ready to use. All items not specifically mentioned that are required for a complete unit shall be furnished.

2. Hidalgo County reserves the right to reject any/all bids, to waive any/all formalities or technicalities, or to accept the bid considered the best and most advantageous to the County.

3. **AWARD:** Bid award will be made to the lowest, responsive, responsible bidder meeting all specifications /and or requirements.

4. **MAINTENANCE:** Maintenance required for equipment bid should be available in Hidalgo County by authorized manufacturer. Cost for this service shall be included in this bid. If Hidalgo County opts to include maintenance, it shall be so stated in the purchase order and said cost will be included. Service will commence only upon expiration of applicable.

5. **WARRANTY:** Bidder's submission must include warranty information, a 1-800 service number for the use of clients and/or agency staff and documentation that the proposed product meets minimum efficiency requirements.

6. **INSURANCE (REQUIREMENTS)** certificates must be submitted to Hidalgo County Purchasing Department for approval prior to delivery or any services being performed which is applicable to the awarded bidder in accordance to **Exhibit "C" attached.**

7. All costs and expenses associated with the preparation and submission of bids shall be the responsibility of the bidder and no reimbursements for such charges or expenses shall be passed on to Hidalgo County.

8. **DESCRIPTIONS:** Unless otherwise specified, any reference to make, manufacturer and/or model used in the bid specifications is merely descriptive and not restrictive, and is used only to indicate type, style, or quality of material desired.

9. Hidalgo County reserves the right to purchase from state contracts whenever it is in the best interest to do so.

10. Vendor must thoroughly fill in each section of the Bid Page (Exhibit "B") if applicable **INCOMPLETE** submittals shall be considered a probable cause for disqualification.

11. All items must be shipped **F.O.B. INSIDE DELIVERY.**

ADDITIONAL INFORMATION:

Hidalgo County is requesting that any and all questions, inquiries, and clarifications regarding quotes, bids, proposals, or statements of qualifications be addressed to, Martha L. Salazar, CPPB, Purchasing Agent, 2812 S. Business Hwy. 281, Edinburg, Texas 78539. **TELEPHONE INQUIRIES WILL NOT BE ACCEPTED.**

ALL WRITTEN INQUIRIES WILL BE ACCEPTED VIA FACSIMILE TO (956) 292-7612 OR VIA E-MAIL TO Elena.gomez@co.hidalgo.tx.us by NO LATER THAN WEDNESDAY, SEPTEMBER 8, 2010 @ 5:00 P.M. Responses will be sent to all applicants via facsimile or e-mail by no later than FRIDAY, SEPTEMBER 10, 2010 @ 5:00 P.M.

EXHIBIT "B"

BID PAGE

HIDALGO COUNTY HEALTH & HUMAN SERVICES
"PURCHASE OF NEW HIGH DENSITY
POWER STATION TRAILER"

BID NO. 2010-284-09-15-MEG

EXHIBIT "B"
HIDALGO COUNTY HEALTH DEPARTMENT
"PURCHASE NEW HIGH DENSITY POWER STATION TRAILER"
RFB NO.: 2010-284-09-15-MEG

Description	Prices
TRAILER	$ 73,000
MAINTENANCE	$ N/A - 90 days / no cost
WARRANTY	$ N/A - 90 days / no cost
FRIEGHT	$ N/A - no cost

BIDDER/COMPANY NAME:	Lee Lane / Texas Association of Local Health Officials
ADDRESS:	2600 McHale Court, Suite 100, Austin TX 78757
CITY/STATE/ZIP:	
PHONE NO/FAX NO:	(512) 814-2546 phone (512) 814-2557
E-MAIL ADDRESS:	mhernandez@talho.org
AUTHORIZED SIGNATURE:	
TITLE:	Executive Director

OPENED
9:57am
9-15-2010
Witnessed

EXHIBIT "D"

CIQ FORM

HIDALGO COUNTY HEALTH & HUMAN SERVICES
"PURCHASE OF NEW HIGH DENSITY
POWER STATION TRAILER"

BID NO. 2010-284-09-15-MEG

EXHIBIT "D"

CONFLICT OF INTEREST QUESTIONNAIRE — FORM CIQ

For vendor or other person doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. *See* Section 176.006, Local Government Code.

A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

OFFICE USE ONLY
Date Received

1 **Name of person who has a business relationship with local governmental entity.**

N/A

2 ☐ **Check this box if you are filing an update to a previously filed questionnaire.**

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

3 **Name of local government officer with whom filer has employment or business relationship.**

N/A
Name of Officer

This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?

☐ Yes ☐ No

B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

☐ Yes ☐ No

C Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

☐ Yes ☐ No

D. Describe each employment or business relationship with the local government officer named in this section.

4

Signature of person doing business with the governmental entity

9/13/10
Date

Adopted 06/29/2007

VENDOR'S APPLICATION
&
W-9 FORM

HIDALGO COUNTY HEALTH & HUMAN SERVICES
"PURCHASE OF NEW HIGH DENSITY
POWER STATION TRAILER"

BID NO. 2010-284-09-15-MEG

HIDALGO COUNTY
PURCHASING DEPARTMENT
Bidder/Vendor Application

Complete in print or type. Please return this application to the Hidalgo County Purchasing Department thru Facsimile: (956) 318-2629 or (956) 292-7612 in person or regular mail to: Mailing/Postal Address: 2812 S. Business Hwy. 281 Physical Address: 2802 S. Business Hwy. 281 Edinburg, Texas 78539 or e-mail: purchasing@co.hidalgo.tx.us

Company Name: Texas Association of Local Health Officials **Telephone No.** (512) 814-2546

dba Name: N/A

Legal Name: Texas Association of Local Health Officials

Mailing Address: 2600 McHale Ct, Suite 100 **Fax No.** (512) 814-2551

Physical Address: 2600 McHale Court, Suite 100

City, State, Zip Austin, TX 78758 **Tax I.D. No.** 74 2897556

Remit to Address : 2600 McHale Ct. Suite 100 **City, State, Zip** Austin TX 78758

E-Mail Address: mhernandez@talho.org

Representative(s) Name(s) & Title(s) Lee Lane, Exec. Director / Mary Hernandez, CFO COO

Type of Organization (check one): ____ Individual ____ Partnership ____ Corporation X Non-Profit ____ LLC ____ Sole Proprietor ____ Other, Specify

State Identification No. _____ **(Please attached completed W-9 form with this application)**

Federal Identification No. or (if individual) SS No.

State of Incorporation: Texas **Date:** 1/27/98 **Other:**

Type of Business (check one): ____ Manufacturer ____ Wholesaler ____ Retailer ____ Broker ____ Distributor ____ Service Organization X Other, Specify private, non profit

Name & Title of Person(s) Authorized to Sign Bids, Proposals, and/or Contracts:

Lee Lane, Exec. Director / Mary Hernandez, CFO/COO

Small and/or Disadvantaged Business Information (check application criteria)

Small Business:

- ☐ Less than 125,000 annual gross receipt
- ☐ Less than 250,000 annual gross receipt
- ☐ Less than 499,000 annual gross receipt
- ☐ More than 500,000 annual gross receipt

N/A

Disadvantaged Business (At Least 51% Ownership)

- ☐ Black American
- ☐ Hispanic American
- ☐ Asian Pacific American
- ☐ Native American
- ☐ Women
- ☐ Other

Have you been certified as a HUB or an MBE/WBE source?: ☐ Yes ☒ No

Indicate Certification No.(s): N/A **or are Certificate(s) attached?:** ☐ Yes ☐ No

What type of product(s) is/are solicited by your company?:

Would you like to be provided with specifications for procurements of such products?: ☐ Yes ☒ No

To Be Completed by the County: Rec'd by (Purchasing): _____ **Date Rec'd by (Purchasing):**

Date Forwarded Information to Auditor's Office: _____ **Entry Date:** _____ **Vendor No.:**

Revised12/14/06

HISTORICALLY UNDERUTILIZED BUSINESS (HUB) DECLARATION

The primary objective of the Hidalgo County HUB Program is to ensure Historically Underutilized Businesses receive a fair and equal opportunity for participation in the County's procurement process. This fact holds true for Services (Professional & Non-Professional), Commodities, and Construction contracts and any subcontracts thereto. The program strongly encourages Prime Contractors to provide subcontracting opportunities to Certified Hub Contractors/Vendors. Our goal for HUB contractor/vendor participation, as well as HUB subcontractor participation is 30%. To be considered as a "Certified HUB Contractor/Vendor" the contractor/vendor must have been certified by, and hold a current and valid certification with any of the three agencies listed below.

Have you been Certified as a HUB or an MBE/WBE source? ☐Yes ☐ No

If yes, by whom? ☐ Texas Building & Procurement Commission ☐ Other_____

Indicate Certification No(s).:_____ or Are Certificate(s) Attached?: ☐ Yes ☐ No

LIST OF CERTIFIED HUB SUBCONTRACTORS

(Attach additional pages if necessary)

What percentage of the Bid, RFP, or RFQ is to be subcontracted with Certified HUB sources? _____% (List HUB Subcontractor information below).

HUB Subcontractor Name: _____ HUB Status:
Certifying Agency (Check all applicable): ☐Texas Building & Procurement Commission ☐ other
Address: _____ City: _____ State: _____ Zip:
Contact Person: _____ Title: _____ Phone No.: ( )
Subcontract Amount: $_____ Description of Work to be Performed:

HUB Subcontractor Name: _____ HUB Status:
Certifying Agency (Check all applicable): ☐Texas Building & Procurement Commission ☐ other
Address: _____ City: _____ State: _____ Zip:
Contact Person: _____ Title: _____ Phone No.: ( )
Subcontract Amount: $_____ Description of Work to be Performed:

HUB Subcontractor Name: _____ HUB Status:
Certifying Agency (Check all applicable): ☐Texas Building & Procurement Commission ☐ other
Address: _____ City: _____ State: _____ Zip:
Contact Person: _____ Title: _____ Phone No.: ( )
Subcontract Amount: $_____ Description of Work to be Performed:

N/A

Form **W-9**
(Rev. October 2007)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Give form to the requester. Do not send to the IRS.

Print or type See Specific Instructions on page 2.

Name (as shown on your income tax return)
Texas Association of Local Health Officials

Business name, if different from above

Check appropriate box: ☐ Individual/Sole proprietor ☐ Corporation ☐ Partnership
☐ Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶ .....
☑ Other (see instructions) ▶ **Non-profit**

☐ Exempt payee

Address (number, street, and apt. or suite no.)
2600 McHale Court, Suite 100

Requester's name and address (optional)

City, state, and ZIP code
Austin, Texas 78758

List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number
: :

or

Employer identification number
74 : **2897556**

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here Signature of U.S. person ▶ [signature] Date ▶ 9/13/10

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),

2. Certify that you are not subject to backup withholding, or

3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

CERTIFICATION REGARDING DEBARMENT

HIDALGO COUNTY HEALTH & HUMAN SERVICES
"PURCHASE OF NEW HIGH DENSITY
POWER STATION TRAILER"

BID NO. 2010-284-09-15-MEG

Certification
Regarding Debarment, Suspension and Ineligibility

As is required by the Federal Regulations Implementing Executive Order 12549, Debarment and Suspension, 45 CFR Part 76, Government-wide Debarment and Suspension, the applicant certifies, to the best of his or her knowledge and belief, that both it and its principals:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency;

b. Have not within a three-year period preceding this bid proposal and/or application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction, violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicated for or otherwise criminally or civilly charged by a government entity with commission of any of the offenses enumerated herein; and

d. Have not within a three-year period preceding this bid proposal and/or application had one or more public transactions terminated for cause or default.

Signature: Lee Lane
Print Name: Lee Lane
Title: Executive Director
Telephone Number: (512) 814-2546
Date: 9/13/10

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

HIDALGO COUNTY PURCHASING DEPARTMENT
ACCEPTANCE SHEET

DEPARTMENT NAME: HIDALGO COUNTY HEALTH DEPARTMENT

BID OPENING DATE: SEPTEMBER 15, 2010 | OPENING TIME: 9:30 A.M.

DESCRIPTION OF BID: PURCHASE OF NEW HIGH DENSITY POWER STATION TRAILER

BID NO: 2010-284-09-15-MEG

	NAME OF COMPANY	ACKNOWLEDGEMENT RECEIPT	ADDENDUM #1
1.	Texas Association of Local Health Officials Austin, TX 78753	✓	✓
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

Hidalgo County Purchasing Department

Bid Opening Sign In

Date: September 15, 2010

Please Print Name	Company Name
1. Priscilla Torres	Co. Clerk's
2. Yolanda Velasquez	Purchasing Dept.
3. Anna De Leon	
4.	
5.	
6.	
7.	
8.	
9.	
10.	
11.	
12.	
13.	
14.	

Bid #	Description
1. RFB 10-284-09-15-MEG	Purchase of New High Density Power Station Trailer
2.	
3.	
4.	
5.	

OP ID: S4

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 09/15/10

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Brown & Brown of Austin 11149 Research Blvd. Suite 260 Austin, TX 78759 Brown & Brown Commercial House 512-343-0000 512-346-1736	CONTACT NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS: PRODUCER CUSTOMER ID #: TXASS-1
INSURED Texas Association Local Health 2600 McHale Suite 100 Austin, TX 78758	INSURER(S) AFFORDING COVERAGE — NAIC # INSURER A : American Cas Co of Reading Pa — 20427 INSURER B : Transportation Ins Co — 20494 INSURER C : Progressive County Mutual Ins — 29203 INSURER D : Continental Casualty Company — 20443 INSURER E : INSURER F :

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY PRO-JECT LOC			2077217026	06/06/10	06/06/11	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,000 $ 300,000 $ 10,000 $ 1,000,000 $ 2,000,000 $ 2,000,000
C	AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS X SCHEDULED AUTOS X HIRED AUTOS X NON-OWNED AUTOS X AUTO			2077217026 05948323-2	06/06/10 09/02/10	06/06/11 09/02/11	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1,000,000 $ $ $
D	UMBRELLA LIAB X OCCUR EXCESS LIAB CLAIMS-MADE DEDUCTIBLE X RETENTION $ 10,000			2095569375	06/06/10	06/06/11	EACH OCCURRENCE AGGREGATE	$ 1,000,000 $ 1,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		2077217060	06/06/10	06/06/11	WC STATU-TORY LIMITS / OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ 1,000,000 $ 1,000,000 $ 1,000,000
A	Property Section			2077217026	06/06/10	06/06/11	BPP	78,795

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

Professional and Trade Associations - Offices Only

CERTIFICATE HOLDER

Hidalgo County
2802 S. Business Hwy 281
Edinburg, TX 78539

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
Brown & Brown Commercial House

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Recorded On-2009-Sep-10, As-2033540

Hidalgo County
Arturo Guajardo Jr.
County Clerk
Edinburg,TX 78540

70 2009 02033540

Instrument Number: 2009-2033540
As
Recorded On: September 10, 2009 Recording

Parties:
To

Billable Pages: 1
Number of Pages: 2

Comment: CONFLICT OF INTEREST

** Examined and Charged as Follows: **

Recording	16.00
Total Recording:	16.00

********** THIS PAGE IS PART OF THE INSTRUMENT **********
Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

File Information:
Document Number: 2009-2033540
Receipt Number: 1067780
Recorded Date/Time: September 10, 2009 04:06P
User / Station: I Hidalgo - Cash Station 04

Record and Return To:
CLAIRE ASHTON
TALHO
715 DISCOVEY BOULEVARD #308
CEDAR PARK TX 78613

STATE OF TEXAS
COUNTY OF HIDALGO

I hereby certify that this instrument was FILED in the File Number sequence on the date/time printed hereon, and was duly RECORDED in the Official Records of Hidalgo County, Texas

Arturo Guajardo Jr.
County Clerk
Hidalgo County, TX

2033540

EXHIBIT "D"

CONFLICT OF INTEREST QUESTIONNAIRE — FORM CIQ

For vendor or other person doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.

A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of person who has a business relationship with local governmental entity.

Lee Lane / Texas Association of Local Health Officials

2 ☐ Check this box if you are filing an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

3 Name of local government officer with whom filer has employment or business relationship.

Eduardo Olivarez / Hidalgo County Health Department

Name of Officer

This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?

☐ Yes ☒ No

B Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

☐ Yes ☒ No

C Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

☐ Yes ☒ No

D. Describe each employment or business relationship with the local government officer named in this section.

4

Signature of person doing business with the governmental entity — Date: 8/13/09

Lee Lane

Adopted 06/29/2007

MEMORANDUM

TO: Eddie Olivarez, Chief Administrative Officer
Hidalgo County Health Department

ATTN: **Josie Escalante**
Hidalgo County Health Department

FROM: Elena Gomez, Buyer
Hidalgo County Purchasing Department

DATE: September 15, 2010

RECEIVED
SEP 16 2010
BY 3:31pm

RE: Request Recommendation for RFB 2010-284-09-15-MEG
PURCHASE OF NEW HIGH DENSITY POWER STATION TRAILER

Enclosed you will find a copy of the sole Bid received, Tabulation Sheet, and a Bid packet for the above mentioned project, for your review and recommendation.

Please indicate below if you **DO or DO NOT** recommend accepting the sole response. If you have any concerns or recommendations, please indicate this in the space provided below.

Return your response to the Purchasing Department via fax to (956) 292-7612 **by Wednesday 15, 2010.**

If you have any questions or require additional information please do not hesitate to contact me. Thank you.

☒ **DO** recommend accepting of response ☐ **DO NOT** recommend accepting of response

BUDGET ACCOUNT # O-1293-441-00.340-047-1-748

Recommendations/Concerns: Sole Bidder
Texas Association of Local Health officials

Eduardo Olivarez Health + Human Serv. 9/16/10
Authorized Signature/ Printed Name Department Date

TABULATION SHEET
HIDALGO COUNTY HEALTH DEPARTMENT
"PURCHASE NEW HIGH DENSITY POWER STATION TRAILER"
RFB NO.: 2010-284-09-15-MEG

COMPANY'S NAME:	Texas Association Of Local Health Officials **(TALHO)**
Description	PRICE
TRAILER	$ 73,000.00
MAINTENANCE	90 DAYS/ NO COST
WARRANTY	90 DAYS/ NO COST
FRIEGHT	N/A NO COST
TOTAL	***$ 73.000.00***

AI-23051 **18.E.1.**

Approval of the B101-2007 / AIA 201-2007-Dannenbaum Engineering Co-(WIC Offices at Pct 4 in Edinburg, Texas)

CC REGULAR

Date:	09/21/2010
Submitted By:	Letty Saenz, PURCHASING DEPT.
Submitted For:	Marty Salazar
Department:	PURCHASING DEPT.
Agenda Category:	Purchasing Department **Sub-category:** WIC

Information

CAPTION

Requesting approval of a B101-2007 and AIA 201-2007 "Professional Architectural Services agreement with DANNENBAUM ENGINEERING COMPANY for the purposes of ("Building Repairs and/or Additions and Renovations to the W.I.C. Offices located in Edinburg, Texas on the North Side of Richardson Road and East of Doolittle Road within Hidalgo County Precinct No. 4") in connection to contract #C-10-101-03-16 an "On-Call" for County Owned Buildings/Structures with necessary/needed repairs/renovations/remodeling and/or additions on a per project basis through AIA forms of Agreements and as selected for negotiations through County's protocol "POOL" of Architects.

BACKGROUND

Fiscal Impact

FISCAL YEAR: 2010 **ACCT. #:** 0-1292-441-00-350-011-0-720

FUNDS AVAILABLE Y/N?: Y **MATCHING FUNDS Y/N?:**

BUDGETARY IMPACT:

Req #182175 for Dannenbaum Engineering Corp.-Amount available as of 9-17-10 $42,775.00 in relation to architectual services for the WIC Edinburg offices.

Attachments

Link: Draft AIA B101-2007

Link: Draft AIA 201-2007

Link: Addt'l Supp Conditions to AIA B101-2007

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
1	Purchasing Department	Marty Salazar	09/17/2010 04:15 PM	APRV
2	Budget & Management	Sylvia Solis	09/17/2010 04:17 PM	APRV
3	Ivan Cantu	Ivan Cantu	09/17/2010 04:32 PM	APRV
4	Auditor's Office		09/17/2010 04:52 PM	NEW

Form Started By: Letty Saenz Started On: 09/17/2010 11:50 AM

AIA® Document B101™ – 2007

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the «» day of «» in the year «»
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

«»

and the Architect:
(Name, legal status, address and other information)

«»

for the following Project:
(Name, location and detailed description)

«»

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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User Notes: (1701393010)

TABLE OF ARTICLES

1 INITIAL INFORMATION

2 ARCHITECT'S RESPONSIBILITIES

3 SCOPE OF ARCHITECT'S BASIC SERVICES

4 ADDITIONAL SERVICES

5 OWNER'S RESPONSIBILITIES

6 COST OF THE WORK

7 COPYRIGHTS AND LICENSES

8 CLAIMS AND DISPUTES

9 TERMINATION OR SUSPENSION

10 MISCELLANEOUS PROVISIONS

11 COMPENSATION

12 SPECIAL TERMS AND CONDITIONS

13 SCOPE OF THE AGREEMENT

EXHIBIT A INITIAL INFORMATION

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1 and in optional Exhibit A, Initial Information:

(Complete Exhibit A, Initial Information, and incorporate it into the Agreement at Section 13.2, or state below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

.1 Commencement of construction date:

.2 Substantial Completion date:

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation negotiate adjustments in schedule, compensation and Changes is Work in accordance with Section 3.6.5 and 4.

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AIA Document B101™ – 2007 (formerly B151™ – 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This draft was produced by AIA software at 15:28:20 on 06/26/2009 under Order No.1000390431_1 which expires on 11/26/2010, and is not for resale.
User Notes: (1701393010)

§ 1.4 This is a non-exclusive Contract. Owner is not precluded from retaining the service of other architects for projects within Precinct No.4. The purpose of the Architect's services shall include, but not be limited to, projects involving remodeling, alterations and repairs.

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ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

~~§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.~~

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§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project. "The Architect's Designated Representative is: **[illegible]**"

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§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.4.1 The Architect shall be a representative of the Owner with respect to this Project, and shall not engage in any activity or course of conduct which is detrimental to the Owner's best interests. The Architect shall take all reasonable steps necessary to comply with the terms and conditions set forth in Section 3.6.2. Evaluation of the Work.

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§ 2.4.2 The Architect shall maintain the confidential by the Owner, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the Architect from establishing a claim or defense in an adjudicatory proceeding. The Architect shall require of the Architect's consultants similar agreements to maintain the confidentiality of information specifically designated as confidential by the Owner.

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§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:
(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

.1 General Liability

« $1,000,000 (See the attached Insurance Certificate) »

.2 Automobile Liability

« $1,000,000 (See the attached Insurance Certificate.) »

.3 Workers' Compensation

« $1,000,000 (See the attached Insurance Certificate.) »

.4 Professional Liability

« $2,000,00 / $4,000,000 (See the attached Insurance Certificate) »

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§ 2.6 ADDITIONAL BASIC SERVICES PROVIDED BY ARCHITECT

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§ 2.6.1 To the extent any existing facilities are present at the location of the Project, the Architect shall provide a review of such existing facilities, and shall make recommendations to Owner regarding the modification of such

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facilities which are necessary to complete the Project and to bring the existing facilities into compliance with applicable laws, codes, regulations and ordinances.

§ 2.6.2 The Architect shall be responsible for coordination and review of all Owner supplied data, and the dissemination of such data to Owner's and Architect's consultants and to any contractors, subcontractors and other parties as may need such data to perform their duties or responsibilities with respect to the Project.
§ 2.6.3 The Architect shall assist the Owner in preparing any Project schedules or timelines and in monitoring the progress of Owner, Architect, and any consultants, contractors, subcontractors or other parties which may be responsible for completing the tasks designated in such schedules or timelines. Architect shall make recommendations to Owner regarding changes and updates in schedules or timelines, as well as any action required by Owner as result of any failure or any person to comply with schedules or timelines.

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ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary as the Project proceeds until the commencement of construction.

§ 3.1.4 ~~The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.~~ The Architect shall be a representative of the Owner with respect to this Project, and shall not engage in any activity or course of conduct which is detrimental to the Owner's best interests. The Architect shall take all reasonable steps necessary to comply with the terms and conditions set forth in Section 3.6.2 Evaluations of the Work."

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§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.1.7 In addition to the responsibilities and basic services indentified in Articles 2 and 3 respectively, the following services shall be the responsibility of the Architect without additional compensation:

§ 3.1.7.1	Schedule Development and Monitoring;
§ 3.1.7.2	Programming (in coordination with Owner);
§ 3.1.7.3	Civil Design;
§ 3.1.7.4	Landscape Design;
§ 3.1.7.5	On-Site Project Representation;
§ 3.1.7.6	Record Drawings (in coordination with Contractor)
§ 3.1.7.7	Structural Design;

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§ 3.1.7.8 MEP Design;
§ 3.1.7.9 Architect (in coordination with Owner).

§ 3.2 SCHEMATIC DESIGN PHASE SERVICES

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, and comply with codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner approved by the Owner in writing regarding the requirements of the Project.

§ 3.2.4 Based on the Project's requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations. At the Architect's option, the Schematic Design Documents ~~and~~ may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general detail their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work.

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§ 3.3.3 The Architect shall submit the Design Development documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project and shall assist the Owner with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work indicated by changes in requirements or general market conditions.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

§ 3.4.6 At the award of construction contract, the Architect shall incorporate all addenda, bid clarifications, changes accepted, alternatives and open alternatives into a "For Construction" set of drawings at the Owner's request.

§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

§ 3.5.1 GENERAL

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner, if requested in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

§ 3.5.2 COMPETITIVE BIDDING

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by

.1 procuring the reproduction of Bidding Documents for distribution to prospective bidders;

.2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;

.3 organizing and conducting a pre-bid conference for prospective bidders;

.4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and

.5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders upon Owner's written approval thereof.

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§ 3.5.3 NEGOTIATED PROPOSALS

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by

.1 procuring the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;

.2 organizing and participating in selection interviews with prospective contractors; and

.3 If requested by the Owner participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.6 CONSTRUCTION PHASE SERVICES

§ 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™ 2007, General Conditions of the Contract for Construction as modified by Owner and current as of the date of this Agreement. Modifications made to the General Conditions, when adopted as part of the Contract Documents, shall be enforceable under this Agreement only to the extent that they are consistent with this Agreement or approved in writing by the Architect. ~~If the Owner and Contractor modify~~ AIA Document A201–2007, ~~those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.~~

§ 3.6.1.2 ~~The Architect shall advise and consult with the Owner during the Construction Phase Services.~~ The Architect shall be a representative of and shall advise the Owner during the construction until final payment to the contractor is paid, and at the Owner's direction, during the period of correction of the Work described in the Contract for Construction. The Architect shall furnish architectural services and consultations necessary to correct minor construction defects encountered during such correction period. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates ~~on the date the Architect issues the final Certificate~~ for Payment at the expiration of the period of correction for the Work as described in the Contract for Construction.

§ 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect as representative of the Owner, shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. However, the Architect shall not have control over or charge of the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of acts or omissions of the Contractor, Subcontractor, or their agents or employees, or of any other person or entities performing portions of the Work.

§ 3.6.2.1.1 The Architect will attend, as the Owner's representative, all concrete pours that are contributory to the structural integrity of the building (including all concrete footings, grading beams, floor slabs, and concrete

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superstructure components if applicable) and to take all reasonable care to determine general conformance with the Contract Documents and to notify both the Owner and contractor of any observed deficiencies. Furthermore, job site meetings shall be held weekly or at the Owner's discretion. Attendees will include the Owner, the General Contractor's Project Manager, the General Contractor's Project Superintendent and the Architect. Said meetings will begin at the time of Construction commencement and shall cease after substantial completion of the Work

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. The Architect shall be required to promptly notify the Owner of any nonconforming Work and shall reject such nonconforming work unless the Owner objects to the rejection in writing with 24 hours of such notification. Performance of any additional inspection or testing which would result in additional costs to the Owner shall require advance notice to and the written approval of the Owner. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Construction Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.4.1 The Architect shall be responsible for providing services, at no additional cost to the Owner, which are made necessary by major defects or deficiencies in the contractor's work which the Architect should have discovered through reasonable care.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201 2007 as modified by Owner and attached hereto as Exhibit " ", the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.2.6 The Architect shall be responsible for providing services, at no additional cost to the Owner, which are made necessary by major defects or deficiencies in the contractor's work which the Architect should have discovered through reasonable care.

§ 3.6.2.7 The Architect and the Owner and the Owner shall at all times have access to the Work whenever it is in preparation or progress.

§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from

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~~Subcontractors and material suppliers~~ and ~~other data requested by the Owner to substantiate the Contractor's right~~ to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of ~~the Contract Sum~~. The issuance of a Certificate of Payment shall not be a representation that the Architect has ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum, as defined in Section 9.1 of the AIA A201-@007 attached hereto as Exhibit " " and incorporated herein for all purposes.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 SUBMITTALS

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal ~~schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.~~ The Architect's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review shop drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 ~~Subject to the provisions of Section 4.3, t~~The Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Architect may authorize minor changes ~~in the Work~~ that are consistent with the intent of the Contract ~~Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the~~ Owner's approval and execution in accordance with the Contract Documents. The Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents. The Architect may authorize minor changes in the Work not involving an adjustment in Contract Sum or an extension of the Contract Time which are consistent with the intent of the Contract Documents. If necessary, the Architect shall prepare, reproduce and distribute Drawings and Specifications to describe the Work to be added,

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deleted or modified in accordance with Article 4. Preparation of Change Orders which do not substantially affect the Project shall be included in the compensation computed in Article 11 and at no additional cost to the Owner.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.5.3 The Architect shall review properly prepared, timely requests by the Owner or Contractor for changes in the Work, including adjustments to the Contract Sum or Contract Time. A properly prepared request for a change in the Work shall be accompanied by sufficient supporting data and information to permit the Architect to make a reasonable determination without extensive investigation or preparation of additional drawings or specifications. If the Architect determines that requested changes in the Work are not materially different from the requirements of the Contract Documents, the Architect may issue an order for a minor change in the Work or recommend to the Owner that the Requested change be denied.

§ 3.6.5.4 If the Architect determines that implementation of the requested changes would result in a material change to the contract that may cause an adjustment in the Contract Time or Contract Sum, the Architect shall make a recommendation to the Owner, who may authorize further investigation of such change. Upon such authorization, and based upon information furnished by the Contractor, if any, the Architect shall estimate the additional cost and time that might result from such change, including any additional costs attributable to a Change in Services of the Architect. With the Owner's approval, the Architect shall incorporate those estimates into a Change Order or other appropriate documentation for the Owner's execution or negotiation with the Contractor.

§ 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance and to make appropriate recommendations to the Owner.

§ 3.6.6.6 The Architect shall be responsible for a complete reevaluation of the Project during the eleventh (11th) month after Substantial Completion. Such services shall be furnished without additional charge except for travel and subsistence costs. Furthermore, the Architect shall report all deficiencies uncovered during said evaluation and shall be responsible for monitoring the correction of said deficiencies.

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§ 3.6.6.7 **Warranty Phase**- The Architect shall be responsible for reporting all known building deficiencies to the Contractor for a period of one (1) year from the date of Substantial Completion. Additionally, the Architect shall monitor the progress of the reported corrections and furnish the Owner with written notification of complete corrections. The one-year period shall be extended to portions of the Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. The obligation under this paragraph 3.6.6.7 shall survive the acceptance of the Work under the Construction Contract.

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ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2.
(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

Additional Services		Responsibility *(Architect, Owner or Not Provided)*	Location of Service Description *(Section 4.2 below or in an exhibit attached to this document and identified below)*
§ 4.1.1	Programming		
§ 4.1.2	Multiple preliminary designs		
§ 4.1.3	Measured drawings		
§ 4.1.4	Existing facilities surveys		
§ 4.1.5	Site Evaluation and Planning (B203™–2007)		
§ 4.1.6	Building information modeling		
§ 4.1.7	Civil engineering		
§ 4.1.8	Landscape design		
§ 4.1.9	Architectural Interior Design (B252™–2007)		
§ 4.1.10	Value Analysis (B204™–2007)		
§ 4.1.11	Detailed cost estimating		
§ 4.1.12	On-site project representation		
§ 4.1.13	Conformed construction documents		
§ 4.1.14	As-Designed Record drawings		
§ 4.1.15	As-Constructed Record drawings		
§ 4.1.16	Post occupancy evaluation		
§ 4.1.17	Facility Support Services (B210™–2007)		
§ 4.1.18	Tenant-related services		
§ 4.1.19	Coordination of Owner's consultants		
§ 4.1.20	Telecommunications/data design		
§ 4.1.21	Security Evaluation and Planning (B206™–2007)		
§ 4.1.22	Commissioning (B211™–2007)		
§ 4.1.23	Extensive environmentally responsible design		
§ 4.1.24	LEED® Certification (B214™ 2007)		
§ 4.1.25	Fast-track design services		
§ 4.1.26	Historic Preservation (B205™–2007)		
§ 4.1.27	Furniture, Furnishings, and Equipment Design (B253™ 2007)		

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect's ~~responsibility, if not~~ further described in an exhibit attached to this document.

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization:

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.1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;

.2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;

.3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;

~~.4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;~~

.54 Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;

.56 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;

~~.7 Preparation for, and attendance at, a public presentation, meeting or hearing;~~

.68 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;

.7 Preparation for, and attendance t a public hearing, a dispute resolution proceeding or a legal proceeding, except: (1) where the Architect is aprty thereto and (2) or special meetings of the Commissioners Court in which the subject Project is a topic or discussion.

.9 Evaluation of the qualifications of bidders or persons providing proposals;

.810 Consultation concerning replacement of Work resulting from fire or other cause during construction; or

~~.11 Assistance to the Initial Decision Maker, if other than the Architect.~~

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~~§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:~~

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~~.1 Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;~~

~~.2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;~~

~~.3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;~~

~~.4 Evaluating an extensive number of Claims as the Initial Decision Maker;~~

~~.5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or~~

~~.6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.~~

~~§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:~~

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~~.1 « » (« ») reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor~~

~~.2 « » (« ») visits to the site by the Architect over the duration of the Project during construction~~

~~.3 « » (« ») inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents~~

~~.4 « » (« ») inspections for any portion of the Work to determine final completion~~

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§ 4.3.4 If the services covered by this Agreement have not been completed within ~~xxx~~ (~~xxx~~) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. . Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 5.7 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.8 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.9 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service provided however, that failure of the Owner to provide such notice shall in no way affect the Architect's obligations hereunder, nor shall such failure relieve the Architect from any liability for failure to discover and correct any such fault, defect, error, omission or inconsistency.

§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

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~~§ 5.11 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement.~~ The Owner ~~shall provide the Architect~~ a copy ~~of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.~~

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§ 5.12 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. ~~If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under~~ Article 4. If an increase in the Contract Sum occurring after execution of the Contract between the Owner and the Contractor causes the budget for the Cost of the Work to be exceeded, that budget shall be increased accordingly or at Owner's election, the Architect shall assist Owner at no expense to Owner, in revising the Project to meet Owner's budget requirements.

~~§ 6.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.~~

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§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall at no additional fee to Owner make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

.1 give written approval of an increase in the budget for the Cost of the Work;
.2 authorize rebidding or renegotiating of the Project within a reasonable time;
.3 terminate in accordance with Section 9.5;
.4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
.5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The

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Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 Drawings, specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service for use solely with respect of this Project. The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Original drawings and specifications are the property of the Architect; however, the Project is the property of the Owner, and the Architect may not use the drawings and specifications therefore for any purpose not related to the Project without Owner's consent. Owner shall be furnished with such reproductions of drawings and specifications as Owner may reasonably require. Upon completion of the Work or any earlier termination of this Agreement, Architect will revise drawings to reflect changes made during construction and he will promptly furnish the Owner with one complete set of reproducible record prints. All such reproductions shall be property of the Owner who may use them without Architect's permission for any proper purpose related to the Project, including, but not limited to additions to or completion of the Project. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate. If and upon the date the Architect is adjudged in default of this Agreement, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the Owner to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service for purposes of completing, using and maintaining the Project.

~~§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.~~

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~~§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.~~

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ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 GENERAL

~~§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the~~

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~~method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.~~

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201–2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waives consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This ~~mutual~~ waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7Article 9.

§ 8.2 MEDIATION

§ 8.2.1 ~~Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding~~ dispute resolution. ~~.~~Any claim, dispute or other matter in question arising out of or related to this Agreement may, if agreed to by all parties after the claim or dispute has arisen, be submitted to mediation prior to the institution of legal or equitable proceedings by either party. ~~If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.~~

§ 8.2.2 ~~The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American~~ Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect ~~on~~ the date of ~~the Agreement~~ The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. ~~The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event,~~ mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending ~~mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the~~ parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless ~~proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~However, nothing in this Agreement shall be construed as requiring mandatory mediation of claims, disputes or other matters in questions between the parties.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 ~~If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:~~

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~~*(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)*~~

~~[ ] Arbitration pursuant to Section 8.3 of this Agreement~~

~~[ ] Litigation in a court of competent jurisdiction~~

~~[ ] Other (Specify)~~

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~~§ 8.3 ARBITRATION~~

~~§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.~~

§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

§ 8.3.2 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

~~§ 8.3.4 CONSOLIDATION OR JOINDER~~

~~§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, for more than thirty (30) consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 ~~cumulative~~ consecutive days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

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§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as ~~defined in Section 9.7.~~

~~§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.~~

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, ~~except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern~~ Section 8.3 of the.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2007, General Conditions of the Contract for Construction as modified by Owner.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

~~§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.~~

~~§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.~~

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

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ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

« To be determined at a later date and identified in each respective fully executed Work Authorization prior to commencement of work. »

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

« To be determined at a later date and identified in each respective fully executed Work Authorization prior to commencement of work. »

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

« To be determined at a later date and identified in each respective fully executed Work Authorization prior to commencement of work. »

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus « » (« »), or as otherwise stated below:

« To be determined at a later date and identified in each respective fully executed Work Authorization prior to commencement of work. »

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Schematic Design Phase	« Fifteen	percent (	« 15	%)
Design Development Phase	« Twenty	percent (	« 20	%)
Construction Documents Phase	« Forty	percent (	« 40	%)
Bidding or Negotiation Phase	« Five	percent (	« 5	%)
Construction Phase Contract Admin.	« Eighteen	percent (	« 18	%)
« Project Close-Out/Warranty Phase	Two	percent (	« 2	%)
Total Basic Compensation	one hundred	percent (	100	%)

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

« See Exhibit "D" »

Employee or Category	Rate

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§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are in addition to compensation for ~~Basic and Additional~~ the Architect's Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

.1 Transportation and authorized out-of-town travel and subsistence;
.2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets with prior written approval from Owner;
.3 Fees paid for securing approval of authorities having jurisdiction over the Project excluding five (5) copies of all Instruments of Service to be furnished to Owner;
.4 Printing, reproductions, plots, standard form documents;
.5 Postage, handling and delivery of Instruments of Service;
.6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
.7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
.8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
.9 All taxes levied on professional services and on reimbursable expenses;
~~.10 Site office expenses; and~~
.11 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus « » (« ») of the expenses incurred. (See Exhibit "D")

~~§ 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE~~

~~If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Soution 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:~~

~~« »~~

§ 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.1 An initial payment of ~~zero~~ « » ($ ~~« 0 »~~) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice to the Commissioners' Court of the Owner. Amounts unpaid ~~thirty~~ « » (~~« 30 »~~) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of monthly or annual interest agreed upon.)

~~« 1.5% per month »~~

~~**§ 11.10.3** The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.~~

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

« »

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ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

.1 AIA Document B101™–2007, Standard Form Agreement ~~Between~~ between Owner and Architect

.2 AIA Document E201A201™–2007, General Conditions of the Contract for Construction ~~Digital Data Protocol Exhibit, if completed, or the following:~~

~~«»~~

.3 Other documents:
(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)

~~«Exhibit A - Article 134 and 145, Additional Supplemental Conditions to the AIA Document B 101-207~~
~~Exhibit B - 201 Terms and Conditions~~
~~Exhibit C - Insurance Certificate~~
~~Exhibit D - Rate Schedules~~
~~»~~

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This Agreement entered into as of the day and year first written above.

OWNER	DANNENBAUM ENGINEERING COMPANY – MCALLEN, LLCARCHITECT
(Signature)	*(Signature)*
~~Rene A. Ramirez/Ian D. Salinas III, County Judge~~	~~«Louis H. Jones, P.E., etc.»~~
~~»~~	
(Printed name and title)	*(Printed name and title)*
APPROVED AS TO FORM:	ATTEST:
Atlas & Hall, LLP	
(Signature)	*(Signature)*
~~Stephen L. Crain~~	~~Arturo Guajardo Jr., County Clerk~~
(Printed name and title)	*(Printed name and title)*

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AIA® Document A201™ – 2007

General Conditions of the Contract for Construction

for the following PROJECT:
(Name and location or address)

[redacted]

THE OWNER:
(Name, legal status and address)

[redacted]

THE ARCHITECT:
(Name, legal status and address)

[redacted]

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ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the ~~Architect. Unless specifically enumerated in the Agreement,~~ Architect pursuant to Paragraph 7.4. At the Owner's option, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

§ 1.1.1.1 Contractor acknowledges and warrants that it has closely examined all the Contract Documents and is unaware of any instance where the documents are not suitable or are insufficient, to enable the Contractor to complete the Work in a timely manner for the Contract sum, and that they include all Work, whether or not shown or described, which reasonably may be inferred or useful for the completion of the Work in full compliance with all applicable codes, laws, ordinances, and regulations.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a ~~Sub-subcontractor,~~ Sub-subcontractor except as provided in Paragraph 5.3 and 5.4 hereof, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations of the Contractor under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.3.1 The Work shall include the obligation of the Contractor to visit the site of the project before submitting a proposal. Such site visit shall be for the purpose of familiarizing Contractor with the conditions as they exist and the character of the operations to be carried on under the Contract Document, including all existing site conditions, access to the site, physical characteristics of the site and surrounding areas. It also includes all supplies, skill, supervision, transportation services and other facilities and things necessary, proper or incidental to the carrying out and completion of the terms of the Contract and all other items of cost or value needed to produce, construct and fully complete the public work identified by the Contract Documents identified.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and ~~diagrams.~~ diagrams wherever located and whenever issued.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

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§ 1.1.7 INSTRUMENTS OF SERVICE
Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 INITIAL DECISION MAKER
The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS
§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. Any differences between the requirements of the Drawings and the Specifications or any differences noted within the Drawings themselves or within the Specifications themselves have been referred to Owner and Architect by Contractor prior to the submission of bids and have been clarified by a Addendum issued to all bidders.

If such differences or conflicts were not called to Owner's and Architect's attentions prior to submission of bids, Architect shall decide which of the conflicting requirements will govern based upon the following: the most stringent of the requirements will take precedence over the less stringent; the most expensive item will take precedence over the less expensive, and subject to the approval of Owner, Contractor shall perform the Work at no additional cost and/or time to Owner in accordance with the Architect's decision. Work not covered in the Contract Documents will not be required unless it is consistent therewith and is reasonably inferable as being necessary to produce the intended results.

§ 1.2.1.1 In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities:

.1 The Agreement;
.2 Addenda, with those of later date having precedence over those of earlier date;
.3 Supplemental Conditions;
.4 The General Conditions of the Contract for Construction;
.5 Specifications
.6 Drawings, in the case of inconsistency between the Drawings and Specifications or within either document, not clarified by Addendum, the better quality or greater quantity of Work shall be included in the Contract Documents. Clarifications of the inconsistency will be accomplished with the Contractor and, if necessary, an appropriate reduction in the contract will be accomplished with the Contractor and, if necessary, an appropriate reduction in the contract will be accomplished by Change Order. Figures given on drawings govern scale measurements. Large scale drawings take precedence over small sale drawings. Written words take precedence over numbers. Handwritten documents take precedence over typewritten documents. Existing conditions take precedence over drawings and specifications for dimensions and shall be verified by the Contractor. The Contractor proceeds at his own risk if conflicts or discrepancies are not resolved prior to the execution of the Work.

§ 1.2.1.2 If Work is required in a manner to make it impossible to produce Work of the quality required by or reasonably inferred from the Contract Documents, or should discrepancies appear among the Contract Documents, Contractor shall request in writing an interpretation from Architect before proceeding with the Work. If Contractor fails to make such request, no excuse will thereafter be entertained for failure to carryout Work in the required manner or provide required guarantees, warranties, or bonds, and Contractor shall not be entitled to any change in the Contract Sum or the Contract Time on account of such failure.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

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§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and Instruments of Service, including the Drawings, Specifications, and other similar or related documents and copies thereof are furnished to Contractor for the purpose of performing the Work and are, and shall remain, the property of Owner and Owner will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' Owner or Owners' consultants reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative Commissioners Court of Owner, by majority vote, is the only representative of Owner, having the power to enter into a Contract, to execute a change order requiring an increase in the Contract Sum, or agree to an extension of the contractual completion date. The Commissioners Court shall designate, as appropriate, an authorized representative(s) to act on its behalf during the course of construction. In the event that an emergency changes the scope of the Work before the next regular meeting or in order to facilitate and expedite the timely completion of the Work, the Commissioners Court's authorized representative(s) may approve construction changes that do not exceed $10,000.00 in increased costs. Any such changes shall be confirmed in writing between the Contractor and the Commissioner Court's authorized representative(s) and notice of such approved changes shall be given to the Commissioners Court at its next regular meeting. The Commissioners Court will act as soon as reasonably possible to avoid undue delays in the construction completion date.

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein. DELETE.

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§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical ~~characteristics,~~ characteristics and utility locations, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. In connection with the foregoing, Contractor shall be solely responsible for locating (and shall locate prior to performing any Work) all utilities lines, telephone company lines and cable, sewer lines, water pipes, gas lines, electrical lines, including without limitation, all buried pipelines and buried telephone cables an shall perform the Work in such a manner so as to avoid damaging any such lines, cables, pipes and pipelines. Under this provision the Architect and Engineer are in no way relieved of their responsibilities outlined in the Contract or other attached contracts for identification of existing conditions.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section ~~1.5.2~~ 1.5.2 for use on this Project. All costs of reproduction are the responsibility of Contractor.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract ~~Documents, the~~ Documents or fails to remove and discharge (within ten (10) days) any lien filed upon Owner's or Landlord's property by anyone claiming by, through, or under Contractor; or disregards the instructions of Architect or Owner when based on the requirements of the Contract Documents. The Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section ~~6.1.3~~ 6.1.3 , and any delay resulting from such Work stoppage shall not extend any Milestone Date identified in the Contract for Construction or the required dates of Substantial or Final Completion.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

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§ 2.4.1 The rights stated in Article 2 shall be in addition and not in limitation of any other rights of Owner granted in the Contract Documents or at law or in equity.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect and Owner in writing any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for design information in such form as the Architect may require. It is ~~recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.~~

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect and Owner in writing any nonconformity discovered by or made known to the Contractor as a request for design information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public ~~authorities~~ authorities unless the Contractor recognized or reasonably should have recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Architect and Owner.

§ 3.2.5 The Contractor shall not be entitled to additional compensation for the "rework portion" of any additional work caused by his failure to carefully study and compare the Contract Documents prior to execution of the Work.

§ 3.2.6 The Contractor shall make reasonable attempt to interpret the Contract Documents before asking the Architect for assistance in interpretation. The Contractor shall not ask the Architect for observation of work prior to the Contractor's field superintendent's personal inspection of the work and his determination that the work complies with the Contract Documents.

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§ 3.2.7 If, in the opinion of the Architect, the Contractor does not make a reasonable effort to comply with the above requirements of the Contract Documents and this causes the Architect or his consultants to expend an unreasonable amount of the time in the discharge of the duties imposed on him by the Contract Documents, then the Contractor shall bear the cost of compensation for the Architect's additional services made necessary by such failure. The Architect will give the Contractor prior notice of intent to bill for additional services related to 3.2.6, 3.2.7, and 3.12 before additional services are performed.

§ 3.2.8 If the Contractor has knowledge that any of the products or systems specified will perform in a manner that will limit the Contractor's ability to satisfactorily perform the work or to honor his Warranty, Contractor shall promptly notify the architect in writing, providing substantiation for the position. Any necessary changes, including substitutions of materials, shall be accomplished by appropriate Modification.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. ~~If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely~~ responsible ~~for any loss or damage arising solely from those Owner required~~ means, methods, techniques, sequences ~~or procedures.~~

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.4 Contractor shall be responsible to Owner for acts and omissions of Contractor's employees, Subcontractors, and their agents and employees, and other persons performing portions of the Work under contract Documents or other arrangements with Contractor.

§ 3.3.5 Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on the Work, including those with respect to the safety of persons and property and their protection from damages, injury, or loss. Contractor shall promptly remedy damage and loss to property at the site caused in whole or in part by Contractor, its Subcontractor, or anyone directly or indirectly employed by any of them or by anyone for whose acts they may be liable, except for damage or loss attributable solely to acts or omissions of Owner or Architect or by anyone for whose acts either of them may be liable and not attributable to the fault or negligence of Contractor, its Subcontractor, or anyone directly or indirectly employed by them. The foregoing obligations of Contractor are in addition to Contractor's obligations under other provisions hereunder.

§ 3.3.6 Contractor shall be responsible for inspection of portion of Work already performed under the Contract for Construction to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.7 Contractor has the responsibility to ensure that all material suppliers and Subcontractors, their agents, and employees adhere to the Contract Documents, and that they order materials on time, taking into account the current market and delivery conditions, and that they provide materials on time. Contractor shall coordinate its Work with that of all others on the Project, including of construction utilities.

§ 3.3.8 Contractor shall establish and maintain bench marks and all other grades, lines, and levels necessary for the Work; report errors or inconsistencies to Owner and Architect before commencing Work; and, if applicable, review the placement of the buildings and permanent facilities on the site with Owner and Architect after all lines are staked

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out and before foundation Work is started. Contractor shall provide access to the Work for Owner, Architect, other persons designated by Owner, and governmental inspectors. Any encroachments made by Contractor or its Subcontractors on adjacent properties caused by construction as revealed by an improvements survey, except for encroachments arising from errors or omissions not reasonably discoverable by Contractor in the Contract Documents, shall be the sole responsibility of Contractor, and Contractor shall correct such encroachments within thirty (30) days of the improvement survey (or as soon thereafter as reasonably possible), at Contractor's sole cost and expense, either by the removal of the encroachment (and subsequent reconstruction on the Project site) or agreement with the adjacent property Owner (s) (in form and substance satisfactory to Owner in its sole discretion) allowing the encroachments to remain.

§ 3.3.9 Contractor shall verify at the Work site the measurements indicated on the Drawings and Specifications and shall establish correctly the lines, levels, and positions for the Work and be responsible for their accuracy and proper correlation with control lines, monuments, and data, as established by surveys furnished by Owner. Work shall be erected square, plumb, level, true to line and grade, in the exact plane and to the correct elevation and/or sloped to drain as indicated. To ensure the proper execution of its subsequent Work, Contractor shall measure all Work already in place (including but not limited to utilities and grades installed or prepared by others) and shall at once report to Architect and Owner any discrepancy between said Work and the Drawings and Specifications for the Work.

§ 3.3.10 Any discrepancy or omission in the dimensions or elections shown on the Drawings and Specifications or found in previous Work which may prevent accurate layout or construction of the Work, shall immediately be reported by Contractor to Owner and Architect. If Contractor performs, permits, or causes performance of any Work when Contractor knows or reasonably should have known that such discrepancy or omission exists, without first obtaining further instruction from Architect or Owner, Contractor shall bear any and all costs arising therefrom including, without limitation, the costs of correction thereof without increase or adjustment in the Contract Sum. Omissions from the Drawings or Specifications, or the misdescription of details of Work which are reasonably inferable in order to carry out the intent of the Drawings and Specifications, or which are customarily performed, shall not relieve contractor from performing such omitted or mis-described details of the Work, and they shall be performed as if fully and correctly set forth and described in the Drawings and Specifications, at no additional cost to Owner.

§ 3.3.11 Contractor shall engage workers who are skilled in performing the Work, and all Work shall be performed with care and skill and in a good workmanlike manner under the full-time supervision of an approved engineer or foreman. Contractor shall be liable for all property damage, including repairs and replacements of the Work and economic losses, which proximately result from the breach of this duty. Contractor shall advise Architect:

1. if a specified product deviates from good construction practices;
2. if following the Specifications will affect any warranties; or
3. any objections which Contractor may have the Specifications.

Nothing contained in Subparagraph 1.1.3 shall alter the responsibilities established in this Subparagraph.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. Directive by making requests for substitutions based on Subparagraph 3.4.2, Contractor:

.1 represents that Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;
2. represents that Contractor will provide the same warranty for the substitution that Contractor would for that specified;

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3. certifies that the cost data presented is complete and includes all related costs under this Contract except Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and
4 will coordinate the installation for the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Contractor shall also be responsible for labor peace on the Project and shall at all times make its best efforts and judgments as an experienced Contractor to adopt and implement policies and practices designed to avoid Work stoppages, slowdowns, disputes, or strikes where reasonably possible and practical under the circumstances and shall at all times maintain Project-wide labor harmony. Except as specifically provided in Subparagraph 8.3 hereof, Contractor shall be liable to Owner for all damages suffered by Owner.

§ 3.4.4 Materials shall conform to manufacturer's standards in effect at the date of execution of the Agreement and shall be installed in strict accordance with manufacturer's directions. Contractor shall, if required by Owner or Architect, furnish satisfactory evidence as to the kind and quality of any materials. All packaged materials shall be shipped to the site in the original containers clearly labeled, and delivery slips shall be submitted with bulk materials identifying thereon the source, and warranting quality and compliance with Contract Documents.

§ 3.4.5 When the Contract Documents require the Work, or any part of same, to be above the standards required by applicable laws, ordinances, rules and regulations, and other statutory provisions pertaining to the Work, such Work shall be performed and completed by Contractor in accordance with the Contract Documents.

§ 3.4.6 When the manufacturer's name, patent numbers, underwriter's labels, model numbers or similar identifying marks are required, such markings shall be located as inconspicuously as possible.

§ 3.5 WARRANTY

§ 3.5.1

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of ~~good~~ the best quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from ~~defects, except for those inherent in the quality of the Work the Contract Documents require or permit.~~ defects. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's ~~warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the~~ Architect. If required by the Architect or Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 ALL WARRANTIES SHALL INCLUDE LABOR AND MATERIALS AND THE MANUFACTURER'S WARRANTY SHALL BE SIGNED BY SUBCONTRACTOR AND COUNTERSIGNED BY CONTRACTOR. ALL WARRANTIES SHALL BE ADDRESSED TO OWNER AND DELIVERED TO ARCHITECT UPON COMPLETION OF THE WORK AND BEFORE OR WITH THE SUBMISSION OF REQUEST FOR FINAL PAYMENT.

§ 3.5.3 Contractor shall issue in writing to Owner as a condition precedent to final payment a "general warranty" reflecting the terms and conditions of this Paragraph 3.5 for all Work under the Contract.

§ 3.5.4 The warranties provided in Paragraph 3.5 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents, and such warranty or remedy required by law or by the Contract Documents, and such warranty shall be interpreted to require Contractor to replace defective materials and equipment and re-execute defective Work which is disclosed to the Contractor by the Owner within a period of one (1) year after final completion of the entire Work unless a longer time is specifically called for in the specifications. The Contractor shall assign all components, equipment and fixture warranties to the Owner and will deliver all manuals to the Owner at the completion of construction.

§3.5.5 Except when a longer warranty time is specifically called for in the Specification Sections or is otherwise

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provided by law, the General Warranty shall be for twelve (12) months and shall be in form and content otherwise satisfactory to Owner.

§3.5.6 Warranties shall become effective on a date established by Owner and Architect in accordance with the Contract Documents. This date shall be the Date of Substantial Completion of the entire Work, unless otherwise provided in any Certificate of Partial Substantial Completion approved by the parties.

§3.5.7 If Architect considers it impractical, because of unsuitable test conditions or some other factors, to execute simultaneous final acceptance of all equipment, portions of the installation may be certified by Architect for final acceptance, subject to Owner's approval, when that portion of the system is complete and ready for operation as called for under Subparagraph 9.8.1.

§3.5.8 Contractor shall warrant for a period of twelve (12) months that the building(s) shall be watertight and leak proof at every point and in every area, except where leaks can be attributed to damage to the building(s) by external forces beyond Contractor's control. Contractor shall, immediately upon notification by Owner of water penetration, determine the source of water penetration and, at its own expense, do any Work necessary to make the building(s) watertight. Contractor shall also, at its own expense, repair or replace any other damaged material, finishes, and furnishings, damaged as a result of this water penetration, to return the building(s) to its (their) original condition.

§3.5.9 In addition to the foregoing stipulations, Contractor shall comply with all other warranties referred to in any portions of the Contract Documents or otherwise provided by law or in equity, and where warranties overlap, the more stringent requirement shall govern.

§3.5.10 If for any reason Contractor cannot warrant any part of the Work using material or construction methods that have been specified, or shown, it shall notify Owner and Architect in writing before the Contract is signed, giving reasons, together with the name of product and data on a substitution it can warrant.

§ 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall make application, secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract including, without limitation, street openings, sidewalk, and other obstructions, access over public ways and storage necessary for proper execution of the Contract and which are, legally required at the time bids are received or negotiations concluded.

§3.7.1.1 The Contractor shall also obtain all permits and approvals, and pay all fees and expenses, if any, associated with National Pollutant Discharge Elimination System (NPDES) regulations administered by the Environmental Protection Agency and state and local authorities, that require completion of documentation and/or acquisition of all permits for the Project. Contractor's obligations under this paragraph do not require it to perform engineering services during the pre-construction phase to prepare proper drainage for the construction sites. However, any drainage alterations made by Contractor during construction phase which modifies the original site drainage plan and requires the issuance of a permit shall be at Contractor's sole cost.

a. The Owner shall pay directly to the governing authority the cost of all permanent property utility assessments and similar utility connection charges.

b. The Contractor shall be responsible for obtaining and paying for all City and County Building Permits, Inspection Fees and Plan Checking Fees; temporary utility charges, tap charges and water meter charges and any other similar fees assessed by jurisdictional authorities having control over the Project.

c. The Owner shall pay fees payable to the Texas Department of Licensing and Regulations (TDLR) for document review relative to the Elimination of Architectural Barriers Act and the Architect will submit the

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documents to the HDLR for review and approval.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders and all other requirements of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work ~~knowing it to be~~ (including, without limitation, the installation of any materials or equipment) that it knows or reasonably should have known would be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend to the Owner in writing, an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15. No adjustment in the Contract Time or Contract Sum shall be permitted in connection with a concealed or unknown condition that does not differ materially from those conditions disclosed or based on data provided to Contractor and by the Contractor's prior inspections, tests, reviews, and pre-construction services for the Project; or by the Contractors inspections, tests, reviews and pre-construction services that Contractor had the opportunity and obligation to make in connection with the Project but did not do so.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Architect in writing. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

.1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

.2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and

.3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

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§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness. If a decision is needed to avoid a delay, Contractor shall notify Architect, Construction manager and Owner in writing sufficiently in advance of needed date to allow reasonable time for selections to be made.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing ~~to the Owner~~ through the Architect the name and qualifications of a proposed superintendent. The ~~Architect may reply within 14~~ days to the Contractor in ~~writing stating~~ (1) whether the ~~Owner or the~~ Architect has ~~reasonable~~ objection to the ~~proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.~~ Superintendent shall be satisfactory to the Owner and shall not be changed except with the consent of the Architect, unless the Superintendent leaves the employment of the Contractor. No increase in Contract Time or Contract Sum shall be allowed in the even the Owner or Architects object to any nominated superintendent. Such approval by the Owner shall not be unreasonably withheld.

§ 3.9.3 ~~The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.~~ **DELETED.**

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's ~~information~~ review and approval a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised as required herein and at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The schedule shall indicate the proposed starting and completion dates for the various subdivisions of the Work as well as the totality of the Work. The schedule shall be updated every thirty (30) days and submitted to Architect with Contractor's Applications for Payment. Each schedule shall contain a comparison of actual progress with the estimated progress for such point in time stated in the original schedule. If any schedule submitted sets such a date for Substantial Completion for the Work or any phase of the Work beyond the date(s) of Substantial Completion established in the Contract (as the same may be extended as provided in the Contract Documents), then Contractor shall submit to Architect and Owner for their review and approval a narrative description of the means and methods that Contractor intends to employ to expedite the progress of the Work to ensure timely completion of the various phases of the Work as well as the totality of the Work. To ensure such timely completion, Contractor shall take all necessary action including, without limitation, increasing the number of personnel and labor on the Project and implementing overtime and double shifts. In that event, Contractor shall not be entitled to an adjustment in the Contract Sum or the schedule.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's and Owner's approval. The Architect's and Owner's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.10.4 The process of approving Contractor's schedules and updates to Contractor's schedule shall not constitute a warranty by the Owner that any non-Contractor milestones or activities will occur as set out on Contractor's schedule. Approval of a Contractor's schedule does not constitute a commitment by the Owner to furnish any Owner-furnished information or material any earlier than Owner would otherwise be obligated to furnish that information or material under the Contract Documents. Failure of the Work to proceed in the sequence scheduled

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by Contractor shall not alone serve as the basis for a Claim for additional compensation or time. In the event there is interference with the Work, which is beyond its control, Contractor shall attempt to reschedule the Work in a manner that will hold resulting additional time and cost to a minimum. The construction schedule shall be in a detailed format satisfactory to the Owner and the Architect and shall also:

.1 Provide a graphic representation of all activities and events that will occur during performance of the Work;
.2 identify each phase of construction and occupancy; and
.3 set forth dates that are critical in ensuing the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents hereinafter referred to as Milestone Dates.

§ 3.10.5 The Owner shall have the right to reschedule the time of day for the performance of any part of the Work that may interfere with the operation of the Owner's premises or any tenants or invitees thereof. The Contractor shall, upon the Owner's request, reschedule any portion of the Work affecting operation of the premises during hours when the premises are not in operation. Any rescheduling of performance of the Work under this Subparagraph 3.10.5 may be grounds for an extension of the Contract Time, if permitted under Subparagraph 8.3.1 and an equitable adjustments in the Contract Sum, if: (1) the performance of the Work was properly scheduled by the Contractor in compliance with the requirements of the Contract Documents, (2) such rescheduling is required for the convenience of the Owner and is not attributable to any act of omission of Contractor, and (3) if Owner agrees to the Contract Sum adjustment prior to any rescheduling.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections (all changes and selections to be approved by Owner and Architect in advance) made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.11.1 At the Date of Substantial Completion and as a condition precedent to final payment, Contractor shall furnish the following documents to Architect for submittal to Owner: Record Drawings showing the field changes and selections (all changes and selections to be approved by Owner and Architect in advance) affecting the general construction, mechanical, electrical, plumbing, and all other Work, and indicating the Work as actually installed. These shall consist of carefully drawn markings on a set of reproducible prints of Architect's Drawings obtained and paid for by Contractor. Contractor shall maintain at the job site one (1) set of Architect's Drawings and indicate thereon each field change as it occurs. The Contractor shall post all Addenda on Construction Documents prior to commencing work on the site.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in

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accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. If, in the opinion of the Architect, the Shop Drawings, Product Data, Samples and similar submittals are incomplete, indicate an inadequate understanding of the work covered by the submittals, or indicate a lack of study and review by the Contractor prior to submittal to the Architect, the submittals will be returned, unchecked, to the Contractor for correction of these three deficiencies and subsequent re-submittal. Additional service charges as outlined in 3.2.7 may be charged by the Architect in this event.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design ~~professional.~~ professional and who shall comply with requirements of Owner regarding qualifications and insurance and, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.12.11 The Contractor shall submit Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents to the Architect at least 30 days prior to the date the Contractor needs the reviewed submittals returned. Where colors are to be selected by the Architect, the Contractor shall submit all Samples in adequate time to allow the Architect to prepare a complete selection schedule. In general, all submittals requiring color selection shall be submitted to the Architect within four weeks of the date of the Contract for construction.

§ 3.12.12 The Contractor shall submit the number of copies of Shop Drawings, Product Data, Samples and similar

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submittals which the Contractor and his Subcontractors need for their use plus two additional sets for the Architect and one additional set for each of the Architect's consultants involved with the particular section of work. Where shop drawings are involved, the Contractor shall submit one high quality reproducible transparency and one opaque print of the shop drawing for the Architect plus one additional opaque print for each of the Architect's consultants involved with the particular section of work. The reproducible transparency will be marked by the Architect and/or his consultants and returned to the Contractor for his use, distribution, correction or re-submittal as required. The Architect and his consultants will retain the marked up prints. After final review and correction of the submittal, the Contractor shall send two corrected sets to the Architect, and one to each of the Architect's consultants involved with the particular section of work.

§ 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§3.13.1 Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage and all other adversity is solely the responsibility of the Contractor.

§3.13.2 The Contractor and any entity for whom the Contractor is responsible shall not erect any sign on the Project site without written consent of the Owner.

§3.13.3 Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials and equipment likely to cause hazardous conditions. Without limitation of any other provision on the Contract Documents, Contractor shall use its best efforts to minimize any interference with the occupancy or beneficial use of: (1) any area and buildings adjacent to the site or the Work or (2) the Building in the event of partial occupancy.

§3.13.4 Without prior approval of the Owner, the Contractor shall not permit any workers to use any existing facilities at the Project site, including without limitation, lavatories, toilets, entrance and parking areas other than those designated by Owner. Without limitation of any other provisions of the Contract Documents, the Contractor shall use its best efforts to comply with all rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project site and the Building, as amended from time to time.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

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§ 3.15.3 Prior to the Architect's inspection for Submittal Completion the Contractor shall clean exterior and interior surfaces exposed to view; remove temporary labels, stains, and foreign substances; polish transparent and glossy surfaces; clean equipment and fixtures to a sanitary condition; replace air filters in mechanical equipment; clean roof, gutters and downspouts; remove obstructions and flush debris from drainage systems; clean site; sweep paved areas and rake clean other surfaces; remove trash and surplus materials from the site.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by ~~law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages,~~ losses and expenses, including but not ~~limited to attorneys' fees,~~ arising out of or resulting ~~from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the~~ negligent acts or omissions of the Contractor, a Subcontractor, anyone directly ~~or indirectly employed by~~ them or ~~anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party~~ indemnified hereunder. Such obligation ~~shall not be~~ construed to negate, abridge, or ~~reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18~~ law, Contractor shall indemnify, defend, and hold harmless Owner, the Commissioners Court of Owner, all elected officials, employees and agents of Owner of any of the above mentioned parties (the "INDEMNIFIED PARTIES") from and against any and all loss, cost, expense, damage, injury, liability, claim, demand, penalty, or cause of action (including attorneys' fees), directly or indirectly arising out of, resulting from, or related to (in whole or in part), (1) the Work performed hereunder, (2) the Contract, or (3) the act or omission of Contractor, a Subcontractor, or an individual, partnership, joint venture, or corporation (a) directly or indirectly employed by Contractor or a Subcontractor, or (b) for whose acts or omissions Contractor or a Subcontractor may be liable (excluding property damage to the Work itself, covered by Owner's all-risk builder's risk insurance, subject to Contractor's liability for any deductible amounts thereunder). The obligations of Contractor under this indemnification shall apply to all matters except those arising solely from the wanton and willful negligence or the malicious acts or omissions of Owner. Further, the obligations of Contractor under this indemnification shall not extend to the liability of Architect, its agents, or employees, arising our of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs, or Specifications, (2) the giving of or failure to give directions or instructions by Architect, its agents, or employees, provided such giving or failure to give is the primary cause of the injury or damage, or (3) any matter prohibited by Section 130.002, Texas Civil Practice and Remedies Code. Contractor shall promptly advise Owner in writing of any action, administrative or legal proceeding , or investigation as to which this indemnification may apply, and Contractor, at Contractor's expense, shall assume on behalf of Owner and conduct with due diligence and in good faith the defense thereof (with counsel satisfactory to Owner; provided, Owner shall have the right to be represented therein by advisory counsel of its own selection and at its own expense; and provided further, that if the defendants in any such action include both Contractor and Owner and Owner shall have reasonably concluded that they may be legal defenses available to it that are different from, or additional to, or inconsistent with, those available to it that are different from, or additional to, or inconsistent with, those available to Contractor. Owner shall have the right to select separate counsel to participate in the defense of such action on its own behalf at Contractor's expense. In the event of failure by Contractor to fully perform in accordance with this indemnification paragraph, Owner, at its option, and without relieving Contractor of its obligations hereunder, may so perform, but all costs and expenses so incurred by Owner in that event shall be reimbursed by Contractor to Owner, together with interest on the same from the date any such

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expense was paid by Owner until reimbursed by Contractor, at the rate of interest provided to be paid on judgments, by the law of the jurisdiction to which the interpretation of the Contract is subject. The obligations of Contractor under this Section shall survive the expiration of the Contract and specifically shall survive the limitations contained in Subparagraph 15.1 hereof.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.19 SUBSTITUTIONS OF PRODUCTS AND SYSTEMS, "OR EQUAL" BRANDS

§ 3.19.1 The materials, products and the systems covered by these specifications have been selected as a standard because of quality, particular suitability, or record of satisfactory performance. It is not intended to preclude the use of equivalent or better materials, products or systems provided that it meet the requirements of the particular project and have been approved in an addendum as a substitution prior to the submission of bids. If prior written approval in an addendum has not been obtained, it will be assumed that the Bid is based upon the materials, products, and systems described in the Bidding Documents and no substitutions will be permitted, except as provided hereinafter.

§3.19.2 If, after award of contract, the Contractor or one of his Subcontractors or Suppliers determines that any of the products or systems specified will perform in a manner that will limit the Contractor's ability to satisfactorily perform the work or to honor the Warranty, the Contractor shall promptly notify the Architect, in writing, providing detailed substantiation for his position. Any changes deemed necessary by the Owner and Architect, including substitution of materials and change in Contract Sum, either upward or downward, if any, shall be accompanied by appropriate modification.

§3.20 RECORD DRAWINGS

§3.20.1 At the completion of the project, the Contractor shall submit one complete set of blue lines showing all changes and routing of utilities made during construction, excluding Architect made CAD changes, to the Architect. Drafting shall be legible to the Architect's satisfaction. The Contractor shall pay for the cost of the required recording/drafting. The record set shall be kept up to date on a daily basis and the Architect shall review its status at the project meetings. The Architect shall furnish the Contractor with a blueline set at contract award which shall have all Addenda incorporated. The Owner will pay for the printing of the blueline set. The Architect will incorporate any record information into the construction (CAD) documents and provide the Owner with an electronic copy of the record information on the Construction documents that have all bid and construction changes incorporated. The cost for incorporating the record information into the CD will be paid for by the Owner. The Architect will transmit the electronic CD to the Owner with a copy of the transmittal to the Contractor's construction manager.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect ~~as to whom~~ the Contractor has no ~~reasonable objection and~~ whose status under the Contract Documents shall be that of the former Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate For Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

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§ 4.2.2 The Architect as a representative of the Owner, will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The Architect will be required to make on-site inspections as necessary to kept the Owner informed of the progress of the Work and as necessary to guard the Owner against defects and deficiencies in the Work. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The ~~Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will~~ Architect shall not have control over or charge of and ~~will not be responsible for acts or omissions of the Contractor, Subcontractors, or their~~ agents or ~~employees~~, or any other persons or entities ~~performing portions of~~ the Work. shall not be responsible for safety precautions and programs in connection with the Work. Architect shall be responsible for promptly notifying Contractor of the failure of Contractor, Subcontractors or any other persons performing any of the Work, in failing to use proper construction means, methods, techniques, sequences, procedures, safety precautions and programs, but only to the extent Architect becomes aware of, or should, exercising due professional diligence, be aware of, same. Architect shall also promptly notify Owner in writing of the failure of any of the foregoing parties to carry out the Work in accordance with the Contract Documents.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority and responsibility to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and ~~approve,~~ approve or reject, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, ~~but only for the limited purpose of~~ checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, ~~in the~~ absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not ~~show partiality to either~~ and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 ~~The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.~~
DELETED.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the ~~site.~~ site or to otherwise furnish labor, material, or other services with respect to a portion of the Work. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the ~~site.~~ site or to otherwise furnish labor, material, or other services with respect to a portion of the Work. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, but no later than 10 days prior to the submittal date for the Contractor's first Application for Payment, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14 day period shall constitute notice of no reasonable objection. Failure of the Contractor to submit the subject names in a timely manner may delay processing of the Contractor's Application for Payment.

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§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. ~~If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.~~

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, ~~written where legally required for validity,~~ written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.1 All subcontracts shall be in written form and shall specifically provide that Owner is an intended third-party beneficiary of the subcontract.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

.1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and

.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. ~~If the Owner assigns the subcontract to a successor contractor or other entity,~~ the Owner shall ~~nevertheless remain~~ legally responsible for all of the successor contractor's obligations under the ~~subcontract.~~

§ 5.5 Contractor shall promptly notify Owner and Architect of any material defaults by any Sub-contractor. Notwithstanding any provision contained in Article 5 to the contrary, it is hereby acknowledged and agreed that Owner has in no way agreed, expressly or implicitly, nor will Owner agree, to allow any Sub-contractor or other

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materialman or workman employed by Contractor the right to obtain a personal judgment or to create a lien against Owner for the amount due from the Contractor.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall ~~reimburse the Owner for costs the Owner incurs that~~ are payable to a separate contractor ~~because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.~~ **DELETED.**

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor ~~wrongfully~~ causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

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ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be only based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect ~~alone~~ and is subject to the approval of Owner.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work. Except as permitted in Paragraph 7.3 and 9.7, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work and no claim that Owner has been unjustly enriched by any alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

.1 The change in the Work;
.2 The amount of the adjustment, if any, in the Contract Sum; and
.3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited, to all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the construction schedule.

§7.2.3 Contractor shall keep and periodically submit to Owner copies of a log for all Change Orders.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly. Contractor shall keep and periodically submit to Owner copies of a log for all Construction Change Directives and a log for all requests for information.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
.2 Unit prices stated in the Contract Documents or subsequently agreed upon;
.3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
.4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

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§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment ~~in the Contract Sum~~, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit ~~as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount.~~ not to exceed a total maximum of **fifteen** percent **(15%)** for all Work, and further limited to as follows, not to exceed five percent (5%) for Work done by Contractor's employees and **ten** percent **(10%)** of such Work's actual cost to be apportioned between any and all Subcontractors and Sub-subcontractor. "*Actual cost*" does not include any item that could be deemed to be a general conditions cost or overhead, such as, but not limited to, the cost of Contractor and Subcontractor supervisory personnel assigned to the Work, and field office and related expenses. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

.1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;

.2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

.4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and

.5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority after having obtained Owner's approval to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

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§ 8.1.1.1 The Work shall be fully completed within the time limit and/or date stated in the Contract between Owner and Contractor.

§ 8.1.1.2 **Liquidated Damages**: If the Contractor should fail to fully complete the Work within the stated time (subject however to extension of time duly granted in the manner and for the causes specified in the General Conditions), Contractor shall be charged by and shall pay to Owner, as liquidated damages, the sum specified in Article 3.1 of the Modified AIA document A101 - 2007 Edition per calendar day that the Work remains incomplete beyond the time fixed for completion. Contractor hereby agrees that from the nature of the project it would be impracticable and extremely difficult to fix the actual damage that would or will be sufferred in the event that Contractor should fail to fully complete the Work by the time limit or date stated and the amount of the liquidated damages are fair and reasonable. The parties agree that the liquidated damages are a reasonable forecast of just compensation for the harm done to Owner that would be caused by Contractor's failure to timely complete the Work. Contractor agrees that the amount of liquidated damages due Owner may be deducted by Owner from any monies that might otherwise be or become payable to Contractor.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; mediation, provided, however, that such extension of Contract time shall be net of any delays caused by or due to the fault or negligence of Contractor or that are otherwise the responsibility of Contractor and shall also be net of any contingency or "float" time allowance included in Contractor's construction schedule. Contractor shall, in the event of any occurrence likely to cause a delay, cooperate in good faith with Architect and Owner to minimize and mitigate the impact of any such occurrence and do all things reasonable under the circumstances to achieve this goal; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents. Contactor shall not be entitled to damages of any type for delays caused by Owner, his servant, agents, employees, or separate Contractors hired or retained by Owner. Contractor may receive an extension or extensions for additional time in which to complete the Contract but shall not receive any damages of any type for such delays. Changes in the Work, regardless of the extent or number of such Changes or Owner's exercise of any of its remedies of suspension of the Work or requirement of correction or re-execution of any defective Work, shall not under any circumstances be construed as intentional interference with Contractor's performance of the Work.

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ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.1 **Commitment of Current Revenues Only.** As reflected in paragraph 4.5 of the modified AIA document A 101 – 2007 Edition by and between Owner and Contractor dated of even date herewith, in the event that, during any term hereof, the governing body of any party does not appropriate sufficient funds to meet the obligations of such party under this Contract, then any party may terminate this Contract upon ninety (90) days written notice to the other party. Each of the parties hereto agrees, however, to use its best 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 each party hereto pursuant to the provisions of Tex. Loc. Govt. Code Ann. §271.903.

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Owner and to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work ~~and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require~~, which in the aggregate equals the total Contract Sum, divided so as to facilitate payments to Subcontractors, supported by such evidence of correctness as Architect may direct or as required by Owner. This schedule, when approved by Architect and Owner, shall be used to monitor the progress of the Work and as a basis for Certificates for Payment. All items with entered values will be transferred by Contractor to the "Application and Certificate for Payment," and shall include the latest approved Change Orders and Construction Change Directives. Change Order values and Construction Change Directives values shall be broken down to show the various subcontracts. The Application for Payment shall be on a form as provided by Architect and approved by Owner. Each item shall show its total scheduled value, value of previous applications, value of the application, percentage completed, value completed, and value yet to be completed. All blanks and columns must be filled in, including every percentage complete figure. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, ~~if required under Section 9.2,~~ for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents. Any allowances included in the Application for Payment shall be separately itemized with supporting data attached. The Application for Payment shall be accompanied by a certification by an officer of Contractor to the effect that:

> There are no known mechanics', materialman's or laborers' liens or claims, or any other liens or claims, legal or equitable, contractual, statutory, or constitutional, outstanding or known to exist at the date of this Application; all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current Application and there is no known basis for the filing of any mechanics', materialman's or laborers' lien or claim, or any other lien or claim, legal or equitable, contractual, statutory, or constitutional, on the Work; and waivers and releases from all Subcontractors, laborers, and material men for Work done and materials furnished have been obtained in such form as to constitute an effective waiver and release of all such liens and claims under the laws of the state within which the Project is located and shall be delivered to Architect together with Contractor's waiver and release of liens and claims at the time of submission of the Application for Payment.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

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§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in ~~writing~~ writing by the Owner and Surety. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. Under no circumstances will the Owner reimburse the Contractor for down payments, deposits, or other advance payments for materials or equipment.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. The vesting of such title shall not impose any obligations on Owner or relieve Contractor of any of its obligations under the Contract, that Contractor shall remain responsible for damage to or loss of the Work, whether completed or under construction, until responsibility for the Work has been accepted by Owner in the manner set forth in the Contract Documents.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and on all other information available to Architect including, without limitation, the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in ~~the amount certified.~~ the amount certified and that the aggregate amount theretofore paid to Contractor plus any applicable retention does not exceed the value of the completed portion of the Work. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, ~~(3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the~~ Contractor's right to payment, or (4) or (3) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

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.1 defective Work not remedied;

.2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;

.3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;

.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

.5 damage to the Owner or a separate contractor;

.6 reasonable evidence that the Work will not be completed within the Contract Time, ~~and~~ or that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or

.7 ~~repeated~~ failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.5.4 Notwithstanding any provision contained within this Article, if the Work has not attained Substantial Completion with the contract time, subject to extensions of time allowed under these Conditions, Architect may withhold any further payment to Contractor to the extent necessary to preserve sufficient funds to complete the construction of the Project and to cover liquidated damages assessed against Contractor up to the time of the Application for Payment and to the time it is reasonably anticipated that Substantial Completion will be achieved.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. Owner may refuse to make payment on any Certificate for Payment for any default of the Contract, including, but not limited to, those defaults set forth in Clauses 9.5.1.1 through 9.5.1.7. Owner shall not be deemed in default by reason of withholding payment while any of such defaults remain uncured.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a ~~Subcontractor, except as may otherwise be required by law.~~ Subcontractor.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

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§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision. DELETED.

§ 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not, for reasons other than a default of the Contract, including, but not limited to, those defaults set forth in Clauses 9.5.1.1 through 9.5.1.7 pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution., then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.7.1 If Owner is entitled to reimbursement or payment from Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if Contractor fails to promptly make any payment due Owner, or if Owner incurs any costs and expenses to cure any default of Contractor or to correct defective Work, Owner shall have an absolute right to offset such amount against the Contract Sum and may, in Owner sole discretion, elect either to (i) deduct an amount equal to that which Owner is entitled from any payment then or thereafter due Contractor from Owner, or (ii) issue a written notice to Contractor reducing the Contract Sum by an amount equal to that which Owner is entitled.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof (which Owner agrees to accept separately) is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion issuance of the certificate of final payment by Architect unless otherwise provided in the Certificate of Substantial Completion. The Work will not be considered suitable for Substantial Completion review until all Project systems included in the Work are operational as designed and scheduled, all designated or required governmental inspections and certifications have been made and posted, designated instruction of Owner's personnel in the operation of systems has been completed, and all final finishes within the Contract are in place. In general, the only remaining Work shall be minor in nature, so that Owner and/or Owner's employees and if applicable, the public, could occupy the building on that date and the completing of the Work by Contractor would

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not materially interfere or hamper Owner's or Owner's employees and if applicable, the public, (or those claiming by, through, or under Owner) from normal County operations. As a further condition of Substantial Completion acceptance, Contractor shall certify that all remaining Work will be completed within thirty (30) consecutive calendar days or as agreed upon following the Date of Substantial Completion. If Contractor requests a Substantial Completion review, and Architect, after performing the Substantial Completion review, finds that the Project was not ready for the Substantial Completion review, then Contractor shall pay the Architect's fees for any additional Substantial Completion reviews.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§9.8.6 In order for the project or a major portion thereof to be considered substantially complete, the following conditions must be met: (1) All inspections by governmental authorities have jurisdiction over the project must have been finalized, any remedial work required by those authorities must have been completed, and Certificates of Occupancy and similar governmental approval forms must have been issued and copies delivered to the Owner and Architect. (2) All work, both interior and exterior, shall have been completed and cleaned except minor items which if completed after occupancy, will not, in the Owner's opinion, cause interference to the Owner's use of the building or any portion thereof. A significantly large number of items to be completed or corrected will preclude the Architect from issuing a Certificate of Substantial Completion. The Owner and Architect will be the sole judge of what constitutes a significantly large number of items.

§9.8.7 After the date of Substantial Completion of the Project is evidenced by the Certificate of Substantial Completion, the Contractor will be allowed a period of thirty (30) days, unless extended by mutual agreement or provision of the Contract, within which to correct all deficiencies attached to the Certificate of Substantial Completion. Failure of the Contractor to complete such corrections within the stipulated time will be reported to the Contractor's surety. In this report, the Contactor and surety will be informed that, should correction remain incomplete for fifteen (15) days, the Owner may initiate action to complete corrective work out of the remaining Contract funds in accordance with Article 14.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the

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Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

.1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;

.2 failure of the Work to comply with the requirements of the Contract Documents; or

.3 terms of special warranties required by the Contract ~~Documents~~ Documents; or

.4 faulty or defective Work appearing after Substantial Completion.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

.1 employees on the Work and other persons who may be affected thereby;

.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and

.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

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§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying ~~owners~~ Owners and users of adjacent sites and utilities. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 ~~To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against~~

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~~claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from~~ performance of the Work in the affected area if ~~in fact~~ the material or substance presents the risk of bodily injury or ~~death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or~~ expense is attributable to bodily injury, sickness, disease or death, ~~or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.~~ **DELETED.**

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. ~~The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.~~

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 ~~If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.~~ **DELETED.**

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor and Owner from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

.1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;

.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;

.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;

.4 Claims for damages insured by usual personal injury liability coverage;

.5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

.6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, Ownership, maintenance or use of a motor vehicle;

.7 Claims for bodily injury or property damage arising out of completed operations; and

.8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

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§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.1.5 SCHEDULE OF INSURANCE COVERAGES

§ 11.1.5.1 Contractor shall carry and keep in full force for the duration of the project the following Coverage.

Coverage	**Minimum Amounts and Limits**
Worker's Compensation	Statutory Limits
Employer's Liability:	
Bodily Injury by Accident	$500,000.00/each accident
Bodily Injury by Disease	$500,000.00/each employee
Bodily Injury by Disease	$500,000.00/Policy Limit
Commercial General Liability	
Bodily Injury/Property Damage	$1,000,000.00 per occurrence $2,000,000.00 aggregate

(Premises Operations, Independent Contractors, Product/Completed Operations, Personal Injury, Contractual Liability, Explosion, Collapse, Underground and Broad Form Property Damage).

Comprehensive Automobile Liability	$1,000,000.00 Combined Single Limit per Occurrence

Auto liability insurance shall be on a standard form written to cover all owned, hired, and non-owned automobiles. The policy shall be endorsed to include the Indemnified Parties (paragraph 3.18) as additional insured, contain cross-liability and severability of interest endorsements, and state that this insurance is primary insurance as regards to any other insurance carried by the Indemnified Parties (see paragraph 3.18).

§11.1.5.2 All policies shall contain special endorsements to include:

.1 The Owner as an additional insured (except for Worker's Compensation) and all other parties identified in 3.18 (Indemnified Parties);

.2 Wavier of Subrogation in favor of Owner under the Worker's Compensation and Employer's Liability policies.

.3. A statement that a notice shall be given to Owner by certified mail thirty (30) days prior to cancellation or upon any material changes in coverage.

4. Contain cross-liability and severability of interest endorsements;

5. state that this insurance is primary insurance in regard to any other insurance carried by the an Indemnified Party (see 3.18);

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.6 the following coverage:

a. Premises/Operations;
b. Independent Contractors;
c. Completed Operations for a period of two years following the acceptance of Contractor's Work;
d. Comprehensive General Liability Endorsement to include Blanket Contractual Liability (specifically covering, but not limited to, the contractual obligations assumed by Contractor, Broad Form Property Damage, and Personal Injury Liability with employee and contractual exclusions removed;
e. Deletion of exclusions relative to Collapse, Explosion, and Underground Property Damage Hazards;
f. Personal Injury Liability with the contractual exclusions removed;
g. Cross Liability Endorsement.

§11.1.5.6 Umbrella Excess Liability Insurance

Bodily Injury and	$2,000,000.00 per occurrence
Property Damage	$2,000,000.00 aggregate

This policy shall be written on an umbrella excess basis above, the coverage described in this Article 11. The policy shall be endorsed to include the Indemnified Parties (3.18) as additional insureds. The policy shall contain cross-liability and severability of interest endorsements and shall state, as regard the Indemnified Parties that the insurance is primary insurance as to any other insurance carried by any Indemnified Party. The policy shall be endorsed to provide the defense coverage obligation.

§11.1.6 Further, Contractor shall require all Subcontractors to carry similar insurance coverage and limits of liability as required under this Article 11, adjusted to the nature of Subcontractor's operations and submit same to Owner for approval before any Work commences.

§11.1.7 In the event Contractor fails to obtain the required certificates of insurance from the Subcontractor and a claim is made or suffered, Contractor shall indemnify, defend, and hold harmless the indemnified parties from any and all claims for which the required insurance would have provided coverage.

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.2.1 By signing the Contract or providing or causing to be provided a Certificate of Coverage, the Contractor is representing to the Owner that all employees of the Contractor who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project, that coverage will be based on proper reporting or classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

§11.2.2 Optionally, the Owner may require the Contractor to purchase and maintain Project Management Protective Liability insurance from the Contractor's usual sources as primary coverage for the Owner's, Contractor's and Architect's vicarious liability for construction operations under the contract. Unless otherwise required by the Contract Documents, the Owner shall reimburse the Contractor by increasing the Contract Sum to pay the cost of purchasing and maintaining such optional insurance coverage and the Contractor shall not be responsible for purchasing any other liability insurance on behalf of the Owner. The minimum limits of liability purchased with such coverage shall be equal to the aggregate of the limits required for Contractor's Liability Insurance under Article 11.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 ~~Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully~~ authorized to do business ~~in the jurisdiction in which~~ the Project is located, property insurance ~~written on~~ Contractor shall obtain a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, Sum (or, if applicable Guaranteed Maximum Price), plus value of subsequent Contract ~~Modifications~~ modifications and cost of

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materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.The policy must also name its subcontractors and the Owner as additional insured, as their respective interests may appear. Coverage shall include material stored on-site and in transit. Such insurance will be with a company or companies lawfully authorized to do business in Texas. The policy must have the following endorsement: "This insurance shall be specific as to coverage and not considered as contributing insurance with any permanent insurance maintained on the present premises.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.1.1 For any claim made against Contractor's Builder's Risk Insurance, the deductible shall not exceed $2,500.00 for a Contract Sum of less than $4 million. For a Contract Sum of $4 million or more, the deductible shall not exceed $5,000.00.

§11.3.1.1.2 The Contractor waives all rights against (1) Owner, the Subcontractors, Sub-subcontractors, agents, and employees, and (2) the Architect, Architect's consultants, separate contractors, if any, and any of their Subcontractors, Sub-subcontractors, agents, and employees, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this paragraph or other property insurance applicable to the Work, except such rights as Contractor has to proceeds of such insurance held by the Contractor as a fiduciary. The Contractor, as appropriate, shall require of any separate contractors, Subcontractors, Sub-subcontractors, agents, and employees of any of them by appropriate written agreements, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had a insurable interest in the property damaged.

§11.3.1.1.3 The Contractor as fiduciary shall have power to adjust and settle a loss with insurers. The Contractor shall pay all Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements shall require Subcontractors to make payment to their Sub-subcontractors in similar manner. If required in writing by a party in interest, the Contractor as fiduciary shall, upon occurrence of insured loss, give bond for proper performance of the Contractor's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Contractor shall deposit in a separate account proceeds so received, which the Contractor shall distribute in accordance with such agreement as the parties in interest may reach. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor under the insurance proceeds.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.**DELETED.**

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.**DELETED.**

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

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§ 11.3.1.5 Partial occupancy or use ~~in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or~~ otherwise. The Owner ~~and the Contractor~~ shall take reasonable steps to obtain consent of the insurance company or ~~companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of~~ shall not affect the validity or coverage of property insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase ~~and maintain boiler and machinery~~ insurance required by the Contract Documents or by law, which shall specifically cover ~~such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work,~~ and the Owner ~~and Contractor shall be~~ named insureds. **DELETED**

§ 11.3.3 LOSS OF USE INSURANCE

~~The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.~~ **DELETED.**

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 ~~If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent~~ to the site by ~~property insurance under~~ policies separate from those insuring ~~the~~ Project, ~~or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.~~ **DELETED**

§ 11.3.6 ~~Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable~~ conditions, definitions, ~~exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.~~ **DELETED.**

§ 11.3.7 WAIVERS OF SUBROGATION

~~The Owner and Contractor waive all~~ rights against (1) each other and any of their subcontractors, ~~sub-subcontractors, agents and employees, each of the other,~~ Contractor waives all rights against (1) Owner, the Subcontractors, Sub-subcontractors, agents, and employees, and (2) the Architect, Architect's consultants, separate contractors ~~described in Article 6,~~ contractors, if any, and any of their subcontractors, sub-subcontractors, agents Subcontractors, Sub-subcontractors, agents, and employees, for damages caused by fire or other ~~causes of loss~~ perils to the extent covered by property insurance obtained pursuant to ~~this Section~~ 11.3 Article 11 or other property insurance applicable to the Work, except such rights as ~~they have~~ Contractor has to proceeds of such ~~insurance held~~ by the ~~Owner as fiduciary. The Owner or~~ Contractor as a fiduciary. The Contractor, as appropriate, shall require of the Architect, Architect's consultants, ~~separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity,~~ any separate contractors, Subcontractors, Sub-subcontractors, agents, and employees of any of them by appropriate written agreements, similar waivers each in favor of other parties enumerated herein. The ~~policies~~ shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an a insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of

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insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.DELETED.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators. insurers.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering Contractor shall furnish a Performance Bond in an amount equal to one hundred percent (100%) of the Contract Sum, as security for the faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract. also a one hundred percent (100%) Payment Bond, as security for the payment of all persons performing labor on the Project under this Contract and furnishing materials in connection with the Contract. The Performance Bond and the Payment Bond may be in one or in separate instruments in accordance with local law. Surety companies must be authorized to write surety bonds in Texas and any such surety bond must comply with the requirements of Subchapter A of Chapter 3503 of the Texas Insurance Code

§11.4.1.1 The Contractor shall deliver the required Bonds to the Owner not later than the date of the preconstruction meeting. All Bonds will be reviewed by the Architect for compliance with the Contract Documents prior to the execution of the Contract. In the event that Architect has any questions concerning the sufficiency of the bonds, Architect shall refer the bonds to Owner or Owner's representative for decision.

§11.4.1.2 All bonds shall be originals. The Contractor shall require the attorney-in-fact who executes the required Bonds on behalf of the Surety to affix thereto a certified and current copy of the power-of-attorney. The name, address, and telephone number of a contact person for the Bonding Company shall be provided.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.4.3 The Bonds shall be provided to comply with the terms and provisions of Chapter 2253 of the Texas Government Code. Bonds shall be signed by an agent resident in the State of Texas and date of bond shall be on or after the date of execution of the Contract but prior to the date of the notice to proceed. If at any time during the continuance of the Contract, the surety of the Contractor's bonds becomes insufficient, the Owner shall have the right to require additional and sufficient sureties which the Contractor shall furnish to the satisfaction of the Owner within ten (10) days after notice to do so. In default thereof, the Contractor may be suspended; and all payment or money due to the Contractor withheld until sufficient bonds are provided by Contractor.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time. Time or Contract Sum.

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§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect as incomplete, defective, or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the ~~Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1~~, entire Work (unless otherwise provided in any Certificate of Partial Substantial Completion approved by the parties), or within such longer period of time as may be prescribed by law or in equity, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be defective or otherwise not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. ~~The Owner shall give such notice promptly after discovery of the~~ condition. ~~During the one-year period for correction of Work~~, if the Owner fails to notify the Contractor and give the ~~Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty.~~ This corrective period shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. Corrective Work shall be warranted to be free from defects for a period equal to the longer of six (6) months after the completion of the corrective Work or one (1) year after the Date of Substantial Completion (subject to extension as previously described) or such longer period of time as may be prescribed by law or in equity, or expiration of the term of any applicable special warranty, if applicable, required by the Contract Documents. Any defect in such Work shall be corrected again by Contractor promptly upon notice of the defect from Owner. This obligation under this Subparagraph 12.2.2.1 shall survive acceptance of the Work under the Contract and termination of the Contract by the Owner. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§12.2.2.4 Just before the termination of the various guarantee periods, Contractor shall accompany Owner's agent and Architect on an inspection tour of the building and shall note any defects and shall start remedying these defects within ten (10) days of the inspection tour and shall prosecute the Work without interruption until accepted by Owner and Architect, even though such prosecution should extend beyond the limit of the guarantee period.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused in whole or in part by the Contractor's correction or removal of Work that is defective or otherwise not in accordance with the requirements of the Contract Documents.

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§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year Documents or under law or in equity. Establishment of the period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is defective or otherwise not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4. located.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice. notice or if delivered by facsimile to the offices of the person or corporation for which it was intended. Facsimiles received after 5:00 p.m. on a business day, or on a weekend or legal holiday on which the recipient's offices are closed, notice shall be deemed to have been duly served on the next business day.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by ~~law~~ law or in equity or by any other agreement, and any such rights and remedies shall survive the acceptance of the Work and/or any termination of the Contract Documents.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or

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~~applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.~~ Architect, Owner and Contractor shall be afforded a reasonable opportunity to attend, observe, and witness all inspections and tests of the Work. Architect or Owner may at any time request and receive from Contractor satisfactory evidence that materials, supplies, or equipment are in conformance with the Contract Documents. The conduct of any inspection or test and the receipt of any approval shall not operate to relieve Contractor from its obligations under the Contract Documents unless specifically so stated by Owner in writing.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. ~~Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.~~

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, ~~all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.~~ or reveal faulty or otherwise defective Work, or if the necessity of any such testing, inspection, or approval procedures arises out of the fault, neglect, or omission of Contractor, Contractor shall bear all costs of such testing, inspection, and approval procedures and all other costs made necessary by Contractor's failures, including, without limitation, those costs of repeated and additional procedures and compensation for Architect's services and expenses of Owner's personnel and consultant fees and expenses. Such costs shall be paid by Contractor within ten (10) days of receipt of invoice from Owner with supporting data attached.

§ 13.5.4 Required certificates of testing, inspection or approval shall, ~~unless otherwise required by the Contract Documents,~~ be secured by the Contractor and ~~promptly delivered to the Architect,~~ delivered to Owner, unless such testing or inspection services are arranged by Owner.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 INTEREST

~~Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~ An overdue payment bears interest at the rate of one percent (1%) each month, or at the legal rate established by the Texas Government Code, currently in Section 2251.025. Any such payment shall be deemed overdue on the thirty-first (31st) day after Owner receives an invoice from Contractor.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract ~~in accordance with the requirements of the final dispute resolution method selected in the Agreement~~ within the time period specified by applicable ~~law, but in~~ any case not more than 10 years after the date of Substantial Completion ~~of the Work~~. The Owner and ~~Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7~~ law.

§ 13.8 EQUAL OPPORTUNITY

§ 13.8.1 The Contractor shall maintain policies of employment as follows: "The Contractor and the Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex, or national origin. Such action shall include, but not be limited to, the following: employment, promotion, demotion, or transfer; recruitment, or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants, notices setting forth the nondiscrimination policies."

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§13.8.1.1 The Contractor and the Contractor's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf; state that all qualified applicants will receive consideration for employment with regard to race, religion, color, sex, or national origin.

§13.9 CERTIFICATION OF ASBESTOS-FREE PROJECT

§13.9.1 Contractor shall submit to the Architect a letter addressed to the Owner certifying that all materials used in the construction of this Project contain less than 0.10 by weight of asbestos and for which it can be demonstrated that, under reasonably foreseeable job site conditions, will not release asbestos fibers in excess of 0.1 fibers per cubic centimeter. Certification letters shall be dated, shall reference this specific Project, and shall be signed by not less than two (2) officers of the construction company.

§13.9.2 Certification shall further state that should asbestos fibers be found at this Project in concentrations greater than 0.1 fibers per cubic centimeter, that Contractor shall be responsible for determining which materials contain asbestos fibers and shall take corrective action to remove those materials from the Project at no additional cost to the Owner.

§13.9.3 Final payment shall not be made until this letter of certification has been received.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

.1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

.2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;

~~.3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or~~

.4 The Owner has failed to ~~furnish to the Contractor promptly, upon the Contractor's request, reasonable~~ evidence as required by ~~Section~~ 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, ~~including reasonable~~ overhead and profit, costs incurred by reason of ~~such termination~~, and damages properly executed in accordance with the Contract Documents.

§ 14.1.4 ~~If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor~~ because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract ~~Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.~~ Owner shall not be responsible for damages for loss of anticipated profits on Work not performed on account of any termination described in Subparagraphs 14.1.1 and 14.1.2.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

.1 ~~repeatedly~~ refuses or fails to supply enough properly skilled workers or proper ~~materials;~~ materials and equipment;

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.2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;

.3 ~~repeatedly~~ disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; ~~or~~

~~.4 otherwise is guilty of substantial breach of a provision of~~

.4 disregards the instructions of Architect or Owner (when such instructions are based on the requirements of the Contract Documents);

.5 is adjudged bankrupt or insolvent, or makes a general assignment for the benefit of Contractor's creditors, or a trustee or receiver is appointed for Contractor or for any of its property, or files a petition to take advantage of any debtor's act, or to reorganize under bankruptcy or similar law; or

.6 otherwise does not fully comply with the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, ~~upon certification by the Initial Decision Maker that sufficient cause exists~~ to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

.1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

.2 Accept assignment of subcontracts pursuant to Section 5.4; and

.3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 ~~If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application,~~ To the extent the costs of completing Work, including compensation for additional professional services and expenses, exceed those costs that would have been payable to Contractor to complete the Work except for Contractor's default, Contractor will pay the difference to Owner, and this obligation for payment shall survive termination of the Contract. Such costs incurred by Owner will be determined by Owner and confirmed by Architect.

§14.2.5 In addition to Owner's right to remove Contractor from any part of Work pursuant to the Contract Documents, Owner may, at any time, at will and without cause, terminate any part of Work or any subcontract or all remaining Work for any reason whatsoever by giving seven (7) days' prior written notice to Contractor specifying the part of Work or subcontract to be terminated and the effective date of termination. Contractor shall continue to prosecute the part of Work not terminated. If any part of Work or subcontract is so terminated, Contractor shall be entitled to payment for Work properly executed in accordance with the Contract Documents (the basis for such payment shall be as provided in the Contract) and for costs directly related to Work thereafter performed by Contractor in terminating such Work or subcontract including reasonable demobilization and cancellation charges provided said Work is authorized in advance by Architect and Owner. No payment shall be made by Owner, however, to the extent that such Work or subcontract is, was, or could have been terminated under the Contract Documents or an equitable adjustment is made or denied under another provision of the Contract. In case of such termination, Owner will issue a Construction Change Directive or authorize a Change Order making any required adjustment to the Date of Substantial Completion and/or the Contract Sum. For the remainder of the Work, the Contract Documents shall remain in full force and effect.

§14.2.6 Owner shall not be responsible for damages for loss of anticipated profits on Work not performed on account of any termination described in Subparagraph 14.2.5.

§14.2.7 Upon a determination by a court of competent jurisdiction that termination of Contractor pursuant to Subparagraph 14.2.1 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to Subparagraph 14.2.5 and Contractor's remedy for wrongful termination shall be limited to the recovery of the payments permitted for termination for convenience as set forth in Subparagraph 14.2.5

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§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

.1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or

.2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

.1 cease operations as directed by the Owner in the notice;

.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of ~~right, payment of money, right~~ adjustment or interpretation of the Contract Terms, payment of money, extension of time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. Claims must be by written notice.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Said written notice of claims shall state specifically the reason for the claim, the date or dates of the cause or causes of the claim, and if any extension of time is requested, the number of days of extension requested.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Said notice shall itemize all claims and shall contain sufficient detail and substantiating data to permit evaluation of same by Owner and Architect. No such claim shall be value unless so made. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

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§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction. Extensions of time may be requested for any month of construction for days lost due to adverse weather in excess of the normally expected lost time; provided, however, if Architect determines that the seasonal average of adverse weather days during construction is less than would be normally expected, no Change Order shall be issued and the request for extension of time shall be denied.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

~~The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes~~

~~.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and~~

~~.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.~~ Contractor shall not be entitled to claims for additional time and/or increase in Contract Price due to a problem or non-performance of a subcontractor.

§ 15.1.7 In the event the Contractor fails to achieve substantial completion by the date indicated in the Contract, and extended by approved Change Order, the Owner shall be entitled to liquidated damages in the amount as stated in Subparagraph 3.1.1 of the modified AIA document A 101 – 2007 Edition by and between Owner and Contractor dated of even date herewith per day until the Work is substantially completed. It is expressly understood that the said sum per day is agreed upon as a fair estimate of the pecuniary damages, which will be sustained by Owner in the event that the Work is not completed within the agreed time, or within the legally extended time, if any. Said sum shall be considered as liquidated damages only, the exact ascertainment of which is difficult and in no sense be considered a penalty.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the ~~Claim~~ Claim in whole or in part, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

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§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to ~~binding dispute resolution.~~ litigation.

§ 15.2.6 ~~Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.~~ **DELETED.**

§ 15.2.6.1 ~~Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.~~ **DELETED.**

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 ~~If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.~~ **DELETED.**

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract ~~except those~~ waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to ~~binding dispute resolution.~~ litigation.

§ 15.3.2 The parties shall endeavor to resolve their Claims by ~~mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement.~~ mediation. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request ~~may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~

§ 15.3.3 The parties shall share the mediator's ~~fee and any filing fees equally.~~ fee. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 ARBITRATION

The parties expressly agree that disputes or claims arising under the Contract Documents shall not be subject to arbitration unless mutually agreed by the parties in writing.

§ 15.4.1 ~~If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually~~ agree otherwise, ~~shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The~~

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party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded. **DELETED.**

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim. **DELETED.**

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. **DELETED.**

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof. **DELETED.**

§ 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s). **DELETED.**

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent. **DELETED.**

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement. **DELETED.**

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HIDALGO COUNTY
ADDITIONAL SUPPLEMENTAL CONDITIONS TO THE
AIA DOCUMENT B 101 – 2007

Standard Form of Agreement between Owner and Architect

ARTICLE 14

14.1 Requests for Payment. On of before noon of the first Monday of each month during the performance of the services, Architect shall submit to Owner for its approval a request for payment ("Request for Payment") in form and substance satisfactory to Owner. Each Request for Payment shall set forth the amount due for Services rendered, a detailed breakdown of the amount and the sum of all prior payments. Owner shall review each such Request for Payment and may make such exceptions as Owner reasonably deems necessary or appropriate under the circumstances then existing. About five (5) working days after the Owner's governing body meets approving such payment, the Owner shall make payment to Architect in the amount approved as aforesaid subject to Section 3.3, below.

14.2 Final Payment. After final completion of the work and acceptance thereof by Owner, Architect shall submit a final request ("Final Request") which shall set forth all amounts due and remaining unpaid to Architect and upon approval thereof by Owner, Owner shall pay to Architect the amount due ("Final Payment") under such Final Request in accordance with the provisions of 3.1.

The Final Request for Payment shall not be made until Architect delivers to Owner an affidavit that so far as Architect has knowledge or information all materials and services over which Architect has control have been paid.

14.3 Qualifications on Obligations to Pay. Any provision hereof to the contrary notwithstanding, Owner shall not be obligated to make any payment (whether a payment under Article 14 hereof or Final Payment) to Architect hereunder if any one or more of the following conditions precedent exist:

(1) Architect is in default of any of its obligations hereunder or otherwise is in default under this Agreement or any of the Contract documents;

(2) Any part of such payment is attributable to Services which are not performed in accordance with this Agreement; provided, however, such payment shall be made as to the part thereof attributable to Services which were performed in accordance with this Agreement;

(3) Architect has failed to make payments promptly to consultants or other third parties used in connection with the Services for which Owner has made payment to Architect;

(4) If Owner, in its good faith judgment, determines that the portion of the compensation then remaining unpaid will not be sufficient to complete the Services in accordance with this Agreement, no additional payments will be due Architect hereunder unless and until Architect, at its sole cost, performs a sufficient portion of the Services so that such portion of the compensation then remaining unpaid is determined by Owner to be sufficient to so complete the Services.

14.4 No partial payment made hereunder shall be or construed to be final acceptance or approval of that part of the Services to which such partial payment relates or relieves Architect of any of its obligations hereunder with respect thereto.

14.5 Architect shall promptly pay all bills for labor and material performed and furnished by others in connection with the performance of the Services.

14.6 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 appearing after completion of the Work, (2) failure of the Services to comply with the requirements of this Agreement or the Contract documents 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 Architect except those previously made in writing and identified by the Architect as unsettled at the time of the Final Request for Payment.

14.7 In the event of a conflict between the provisions of this Article 14, and other provisions in the AIA B 101 -2007 as modified, the provisions of Article 14 shall control.

ARTICLE 15 – OTHER CONDITIONS OR SERVICES

15.1 Notwithstanding anything to the contrary contained in this Agreement, Owner and Architect agree and acknowledge that Owner is entering into this Agreement in reliance on Architect's experience and abilities with respect to performing the Services. The Architect accepts the relationship of trust and confidence established between it and the Owner by this Agreement. Architect covenants with Owner to use its **best** efforts, skill, judgment and abilities to design the Project and to further the interests of Owner in accordance with the Owner's requirements and procedures, in accordance with the American Institute of Architects' professional standards, and in compliance with all applicable national, federal, state and municipal laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction. Prior to the commencement of construction, Architect shall certify in writing to Owner that the Drawings and Specifications and all drawings and the improvements when built in accordance therewith conform to all applicable governmental regulations, statutes and ordinances then in effect. Architect represents covenants and agrees that there are no obligations, commitments or impediments of any kind that will limit or prevent performance of the Services.

15.2 The Architect represents, covenants and agrees that all of the Services to be

furnished by the Architect under or pursuant to this Agreement, from the inception of the Agreement until the Project has been fully completed, shall be of the standard and quality which prevail among architects of similar experience, knowledge, skill and ability engaged in architectural practice throughout Texas under the same or similar circumstances involving the design and construction of a project such as the Project with all the amenities as set forth in the Drawings and Specifications.

15.3 The Architect represents, covenants and agrees that its special talent, training and experience cause it to be the prime professional on the Project and that because of such talent and training, Architect envisions the construction of the Project in its entirety and possesses the special skills which enable it to recognize dangerous conditions that a reasonable, prudent Architect having such special skills could anticipate may arise from the proper use of the Project after accepted by the Owner; as the design professional, it has knowledge which will enable it to recognize specific dangers that may arise from the proper use of the Project after accepted by the Owner; and, it recognizes that any management, employees, and agents of the Owner, plus guests and visitors are within a class of foreseeable persons who will be relying on the Project being designed in a professional and safe manner.

15.4 Architect represents, covenants and agrees that its Project Drawings and Specifications will be accurate and free from any material errors and the shop drawings that it must approve will be accurate and free from any material errors relating to design intent. Architect additionally represents, covenants and agrees to the following: the design of the Project will conform to its foreseeable use as a project with all the amenities as set forth in the Drawings and Specifications; the result of the Drawings and Specifications, if built in accordance therewith, will be suitable for purposes for which the Project is designed; the result of Architect's inspection of the Project will be suitable for purposes for which the Project is designed; and, the Project will be designed and the construction will be inspected in a workmanlike, professional manner and will be suitable for human occupancy and use. The Architect'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 Drawings and Specifications nor shall the Architect 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 Architect's skill and knowledge in preparing the Drawings and Specifications. Notwithstanding the immediately preceding sentence, Architect may rely on any documents or information forwarded by Owner pursuant to Article 2 hereof.

15.5 The Architect represents, covenants and agrees that the person directly in charge of the professional architectural work is duly registered under Tex. Rev. Civ. Stat. Ann., art. 249(a), as amended.

15.6 Indemnification. To the fullest extent permitted by applicable law, the Architect and its agents, partners, and consultants (collectively "Indemnitors") shall and do agree to indemnify, protect, defend and hold harmless the Owner, Owner's respective Commissioners Court, 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 Services or any part thereof provided that any such Liabilities (1) are attributable to bodily injury, personal injury, sickness, disease or death of any person, or to the injury to or destruction of tangible personal property including the loss of use and consequential damages resulting therefrom, and (2) are caused in whole or in part by any negligent act or omission of the Architect, anyone directly or indirectly employed by it or anyone for whose acts it may be legally liable. In this connection, it is agreed and understood that Architect shall not be responsible for any portion of the liability proximately caused by Owner's negligence.

15.7 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 4.6 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 Owner or any of the Indemnitees has by law.

15.8 Notwithstanding any provisions herein to the contrary, it is agreed that if the Architect's final written estimate of construction cost is less than the low bona fide bid for construction and such low bid is not accepted by the Owner, the Architect, at his expense, will make all necessary revisions to the plans and specifications to lower the construction to an amount acceptable to Owner.

15.9 The Owner agrees to give the Architect the latitude to make the required changes to plans and specifications to achieve the required reduction in construction cost; however, the Architect shall consult with the Owner on all necessary changes.

15.10 Architect covenants with Owner to obtain separate bids and/or contracts for the following phases of the construction of the Project:

.1 General Construction;
.2
.3
.4

15.11 The final written estimate of construction cost will be reviewed and approved by the governing body of Owner prior to authorizing the Architect to issue plans and specifications for bidding.

15.12 Architect agrees to maintain a General and Professional Liability Insurance Policy to cover the liability of Architect connected with the performance of the services or any service covered by this Agreement in an amount equal to or exceeding the value of the Project, unless specifically agreed to by the Owner in a separate written agreement. Any

such policy must either be for any occurrence as a result of that performance or, if limited to claims made, include at least a five (5) year extended reporting period. Architect agrees to furnish Owner Certificates of Insurance showing the said Policy to be fully paid, in full force and effect, and not subject to modification or change for the period specified in this Agreement.

15.13 In the event of a conflict between the provisions of this Article 15, and other provisions in the AIA B 101 -2007 as modified, the provisions of Article 15 shall control.

AI-22951 **18.F.1.**

BCAP Application for Payment No.4 Retainage Release, & Certificate of Construction Completion Chapa North & South Subdivisions Precinct No.1

CC REGULAR

Date:	09/21/2010
Submitted By:	Marcie Jackson, COLONIA ACCESS PROGRAM
Submitted For:	Agapito Vargas
Department:	COLONIA ACCESS PROGRAM
Agenda Category:	Purchasing Department **Sub-category:** CAP Pct.1

Information

CAPTION

Acceptance and approval of the following for Chapa North & South Subdivisions (Pct No. 1) with Asago Construction as submitted through project engineer ,TEDSI Infrastructure Group, Inc. Engineering Corporation (C-CAP-09-416-11-24):

a. Application for Payment No. 4 Retainage Release in the amount of $17,198.91;
b. “Certificate of Construction Completion” reflecting the date of May 05, 2010.

BACKGROUND

Fiscal Impact

FISCAL YEAR: 2010 **ACCT. #:** 0-1312-206-00-000-008-0-000

FUNDS AVAILABLE Y/N?: Y **MATCHING FUNDS Y/N?:**

BUDGETARY IMPACT:

P.O.# 636796 for Asago, LLC DBA Asago Construction has been paid in full as of 9-17-10

Available balance in retainage payable acct is $21,229.07 as of 9-17-10.

FISCAL YEAR: 2010 **ACCT. #:** 0-1200-206-00-121-004-0-000

FUNDS AVAILABLE Y/N?: Y **MATCHING FUNDS Y/N?:**

BUDGETARY IMPACT:

P.O.# 636796 for Asago LLC, dba Asago Construction has been paid in full as of 9-17-10.

Available balance in retainage payable acct is $54.24 as of 9-17-10.

Attachments

Link: Application for Payment No.4 Retainge Release Chapa North and South Subdivisions

Link: Certificate of Construction Completion Chapa North and South Subdivisions

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
1	Yvette Islas	Yvette Islas	09/14/2010 10:53 AM	APRV
2	Purchasing Department	Marty Salazar	09/15/2010 03:45 PM	APRV
3	Budget & Management	Sylvia Solis	09/15/2010 04:48 PM	APRV
4	Ivan Cantu	Ivan Cantu	09/17/2010 09:36 AM	APRV
5	Auditor's Office		09/17/2010 04:52 PM	NEW

Form Started By: Marcie Jackson Started On: 09/13/2010 04:50 PM

Final Approval Date: 09/17/2010

AI-22951 9/28/10

APPLICATION FOR PAYMENT NO. 4 and Retainage

To: HIDALGO COUNTY (OWNER)
From: ASAGO LLC, dba ASAGO CONSTRUCTION (CONTRACTOR)
Contract: C-CAP-09-416-11-24
Project: ROAD AND DRAINAGE CONSTRUCTION FOR CHAPA NORTH AND SOUTH SUBDIVISIONS
Owner's Contract No. C-CAP-09-416-11-24 Engineer's Project No. _____
For Work accomplished through the date of: July 23, 2010

1. Original Contract Price:		$171,989.05
2. Net change by Change Order and Written Agreements(+or-):		$0.00
3. Current Contract Price (1 plus 2):		$171,989.05
4. Total completed and stored to date:		$171,989.05
5. Retainage (per Agreement):		
10% of completed Work:	$0.00	
_____ of stored material	_____	
Total Retainage:		$0.00
6. Total completed and stored to date less retainage (4 minus 5)		$171,989.05
7. Less previous Application for Payments:		$154,790.14
8. AMOUNT DUE THIS APPLICATION (6 MINUS 7)		$17,198.91

Accompanying Documentation:

APPLICATION FOR PAYMENT
ESTIMATE AND QUANTITY
SCHEDULE OF VALUES
LIST OF SUPPLIERS AND SUB CONTRACTORS
TXDOT CONCURRENCE LETTER
PUNCH LIST
CERTIFICATE OF CONSTRUCITON COMPLETION
CONTRACTOR'S AFFIDAVIT OF RELEASE OF LIENS
CONTRACTOR'S AFFIDAVIT OF PAYMENT OF DEBTS & CLAIMS

REQ# 171685 P.O.# 636796
0-1312-206-00-000-008-0-000→$17,144.67
0-1200-206-00-121-004-0-000→$54.24

CONTRACTOR'S Certification:

The undersigned CONTRACTOR certifies that (1) all previous progress payments received from OWNER on account of Work done under the Contract referred to above have been applied on account to discharge CONTRACTOR'S legitimate obligations incurred in connection with Work covered by prior Applications for Payment numbered 1 through 4 inclusive: (2) title of all Work, materials and equipment incorporated in said Work or otherwise listed in or covered by this Application for Payment will pass to OWNER at time of payment free and clear of all Liens, security interests and encumbrances (except such as are covered by a Bond acceptable to OWNER indemnifying OWNER against any such Lien, security interest or encumbrance); and (3) all Work covered by this Application for Payments is in accordance with the Contract Documents and not defective.

Date: 9/1/10

ASAGO LLC, dba ASAGO CONSTRUCTION
CONTRACTOR

By: _____
Raul Iglesias

State of Texas
County of Hidalgo
Subscribed and sworn to before me this 1st day
day of September, 2010

Alma Torres
Notary Public
My Commission expires: 8/7/12

NOTARY PUBLIC STATE OF TEXAS
ALMA TORRES
My Commission Expires
August 7, 2012

Payment of the above AMOUNT DUE THIS APPLICATION is recommended.

Date: 09/07/2010

INVOICE RECEIVED BY: Marcie Jackson ON 9/8/10
GOODS/SERVICES RECEIVED BY: Marcie Jackson ON 9/8/10

TEDSI Infrastructure Group Inc
ENGINEER

By: _____
Jose A .Sanchez, P.E.

Asago LLC, dba Asago Construction	Contractor Name
February 8, 2010	Starting Date
July 23, 2010	Project Ending Date
10%	Retainage Percent

Application No:	**4-Retainage Release**
Application Date:	**September 7, 2010**
Period To:	**July 23, 2010**
Engineer Firm:	**TEDSI infrastructure Group Inc.**

Summary

CSJ#	PROJECT NAME	Original Schedule Value	Revised Schedule Value	Payment Application No 1	Payment Application No 2	Payment Application No 3	Total To Date	Balance To Finish	Retainage	Net	Payment To Date	Payment Due
3C1080148	Chap North	$ 90,075.90	$ -	$ 45,498.50	$ 43,437.40	$ 1,140.00	$ 90,075.90	$ -	$ 9,007.59	$ 81,068.31	$ 81,068.31	$ 9,007.59
3C1080149	Chapa South	$ 81,913.15	$ -	$ 44,309.25	$ 36,735.90	$ 868.00	$ 81,913.15	$ -	$ 8,191.32	$ 73,721.83	$ 73,721.83	$ 8,191.32
		$ 171,989.05	$ -	$ 89,807.75	$ 80,173.30	$ 2,008.00	$ 171,989.05	$ -	$ 17,198.91	$ 154,790.14	$ 154,790.14	$ 17,198.91

Estimate Quantity Update Worksheet

Date: September 7, 2010

Colonia: Chapa North Subdivision /Chapa South Subdivision
Roadway: North Rd / South Rd
Control: 3C1080148 / 3C1080149
Project No: C-CAP-09-416-11-24
County: Hidalgo
Est. No: 4-Retainage

Work Type: Paving & Drainage
Limits: 1299' / 1304'
From: Mile 12.5N Rd
To: 1299' N of Mile 12.5N Rd / 1304' S of Mile 12.5N Rd

Contractor: Asago LLC, dba Asago Construction
Contract Price: $171,989.05
Work Done this Mo.: $0.00
Work Done to Date: $171,989.05
% Complete: 100.0%

Date Began: February 8, 2010
Contract Time (calendar days): 150
Time Charged: 135
% Time Used: 90.0%

ITEM NO	DESCRIPTION	UNIT	PROJECT QTY	Unit Price	Project Amount	4-RETAINAGE RELEASE		
						MONTHLY QUANTITY	QTY to Date	Item Cost (Monthly)
	(901)ADMINISTRATIVE							
	(902) PRELIMINARY ENGINEERING							
	(903) CONSTRUCTION ENGINEERING							
	(904) RIGHT-OF-WAY							
	CHAPA NORTH SUBDIVISION (905) ROADWAY							
0100	PREPARING ROW	STA	12.99	$300.00	$3,897.00		12.99	$0.00
0164	CELL FBR MLCH SEED (PERM)(URBAN)(CLAY)	SY	5692	$0.70	$3,984.40		5692	$0.00
0168	VEGETATIVE WATERING	MG	285	$4.00	$1,140.00		285	$0.00
0247	FL BS (CMP IN PLC)(TY E GR 4)(FNAL POS)	SY	3486	$4.25	$14,815.50		3486	$0.00
0251	REWORK BS MTL (TY D)(4")(DENS CONT)	SY	3486	$2.00	$6,972.00		3486	$0.00
0310	PRIME COAT (MC-30)	GAL	581	$7.00	$4,067.00		581	$0.00
0340	D-GR HMA(METH) TY-D SAC-B PG76-22	SY	2904	$6.50	$18,876.00		2904	$0.00
0500	MOBILIZATION	LS	1	$1,000.00	$1,000.00		1	$0.00
0502	BARRICADES, SIGNS AND TRAFFIC HANDLING	MO	2	$1,000.00	$2,000.00		2	$0.00
0666	REFL PAV MRK TY I (W) 4" (SLD)(100MIL)	LF	2560	$1.00	$2,560.00		2560	$0.00
0666	REFL PAV MRK TY I (W) 24"(SLD)(100MIL)	LF	15	$5.00	$75.00		15	$0.00
0666	REFL PAV MRK TY I (Y) 4" (BRK)(100MIL)	LF	300	$2.00	$600.00		300	$0.00
0666	REFL PAV MRK TY I (Y) 4" (SLD)(100MIL)	LF	160	$2.00	$320.00		160	$0.00
2500	EN-1 ROADBOND (0.0075 GAL/SY)	GAL	27	$120.00	$3,240.00		27	$0.00
2500	EN-1 TRT (MIX EXST MATL& NEW BASE)(DC)(8")	SY	3486	$1.00	$3,486.00		3486	$0.00
							SUBTOTAL	**$0.00**
	CHAPA NORTH SUBDIVISION (906) DRAINAGE							
0464	RC PIPE (CL III)(18 IN)	LF	48	$25.00	$1,200.00		48	$0.00
0506	TEMPORARY SEDIMENT CONTROL FENCE	LF	60	$6.00	$360.00		60	$0.00
0506	TEMPORARY SEDIMENT CONTROL FENCE (REMOVE)	LF	60	$3.00	$180.00		60	$0.00
0530	DRIVEWAY (CONC)	SY	120	$25.00	$3,000.00		120	$0.00
0530	DRIVEWAY (ACP)	SY	585	$15.00	$8,775.00		585	$0.00
0556	15" ADS CORRUGATED PIPE	LF	410	$17.00	$6,970.00		410	$0.00
0760	CLEANING AND RESHAPING DITCHES	LF	2558	$1.00	$2,558.00		2558	$0.00
							SUBTOTAL	**$0.00**
	CHAPA SOUTH SUBDIVISION (905) ROADWAY							
0100	PREPARING ROW	STA	13.04	$300.00	$3,912.00		13.04	$0.00
0164	CELL FBR MLCH SEED(PERM)(URBAN)(CLAY)	SY	4332	$0.70	$3,032.40		4332	$0.00
0168	VEGETATIVE WATERING	MG	217	$4.00	$868.00		217	$0.00
0247	FL BS (CMP IN PLC)(TY E GR 4)(FNAL POS)	SY	3501	$4.25	$14,879.25		3501	$0.00
0251	REWORK BS MTL (TY D)(4")(DENS CONT)	SY	3501	$2.00	$7,002.00		3501	$0.00
0310	PRIME COAT (MC-30)	GAL	584	$7.00	$4,088.00		584	$0.00
0340	D-GR HMA(METH) TY-D SAC-B PG76-22	SY	2917	$6.50	$18,960.50		2917	$0.00
0500	MOBILIZATION	LS	1	$1,000.00	$1,000.00		1	$0.00
0502	BARRICADES, SIGNS AND TRAFFIC HANDLING	MO	2	$1,000.00	$2,000.00		2	$0.00
0666	REFL PAV MRK TY I (W) 4" (SLD)(100MIL)	LF	2570	$1.00	$2,570.00		2570	$0.00
0666	REFL PAV MRK TY I (W) 24"(SLD)(100MIL)	LF	15	$5.00	$75.00		15	$0.00
0666	REFL PAV MRK TY I (Y) 4" (BRK)(100MIL)	LF	300	$2.00	$600.00		300	$0.00
0666	REFL PAV MRK TY I (Y) 4" (SLD)(100MIL)	LF	160	$2.00	$320.00		160	$0.00
2500	EN-1 ROADBOND (0.0075 GAL/SY)	GAL	27	$120.00	$3,240.00		27	$0.00
2500	EN-1 TRT (MIX EXST MATL& NEW BASE)(DC)(8")	SY	3501	$1.00	$3,501.00		3501	$0.00
							SUBTOTAL	**$0.00**
	CHAPA SOUTH SUBDIVISION (906) DRAINAGE							
0464	RC PIPE (CL III)(18 IN)	LF	40	$25.00	$1,000.00		40	$0.00
0506	TEMPORARY SEDIMENT CONTROL FENCE	LF	80	$6.00	$480.00		80	$0.00
0506	TEMPORARY SEDIMENT CONTROL FENCE (REMOVE)	LF	80	$3.00	$240.00		80	$0.00
0530	DRIVEWAY (ACP)	SY	390	$15.00	$5,850.00		390	$0.00
0556	15" ADS CORRUGATED PIPE	LF	335	$17.00	$5,695.00		335	$0.00
0760	CLEANING AND RESHAPING DITCHES	LF	2600	$1.00	$2,600.00		2600	$0.00
							SUBTOTAL	**$0.00**

Monthly Totals:	**$0.00**

Adminstrative (901)	
Preliminary Engineering (902)	
Construction Engineering (903)	
Right of Way (904)	
Roadway (905)	**$0.00**
Drainage (906)	**$0.00**

Total to Date
Roadway (905) $0.00
Drainage (906) $0.00
Total $0.00

Prepared and Checked By:
Signature: _____
Printed Name: Jose A. Sanchez
TEDSI Infrastructure Group

Date: September 7, 2010

CERTIFICATE OF CONSTRUCTION COMPETION

THIS IS TO CERTIFY THAT ON 5 DAY OF May 2010 A FINAL INSPECTION was made of the project herein described.

CONTRACT

CONTRACT DATE: 11-24-2009
OWNER: HIDALGO COUNTY
CONSTRUCTION CONTRACTOR: ASAGO LLC, dba ASAGO CONSTRUCTION
OF THE CITY OF MISSION STATE OF TEXAS

PROJECT DESCRIPTION

CONSTRUCTION OF ROAD AND DRAINAGE CONSTRUCTION FOR CHAPA NORTH AND SOUTH SUBDIVISION

CONTRACT NO: C-CAP-09-416-11-24
Located in or near the City/Precinct Of Hidalgo County Pct 1

THIS IS TO CERTIFY"

1. That the work has been completed in accordance with the plans and specifications and all addenda, change orders, supplemental agreements thereto, and with the following exceptions: NONE

2. That the sum of $0.00, deducted from the final payment of the Contractor is a fair and equitable settlement for the foregoing except work.

3. That the contractor has presented a "Certificate of Release" starting under oath, that all claims arising out of the performance of work have been fulfilled, and the Owner is released from all claims arising under or by virtue of said contract.

4. That the CONTRACTOR has presented in behalf of itself and its sureties, satisfactory evidence that it is bound to repair, replace, and make good any faulty workmanship and/or materials discovered in the work within a period of one year from this date, as provided in said contract.

5.

Amount of Original Contract	$171,989.05
Present Amount of Contract	$171,989.05
Total Amount of earned to Date	$171,989.05
Less: previous payments	$154,790.14
Balance	$ 17,198.91
Authorized deductions	$ 0.00
AMOUNTY OF FINAL PAYMENT	$ 17,198.91

6. That the final payment in the amount of: $17,198.91 is now due and payable.

Jose A. Sanchez, P.E.
Engineer's Signature

CONCURRED BY:

ASAGO LLC, dba ASAGO CONSTRUCTION
Contractor's Name

By: RAUL IGLESIAS

Title: MANAGER

CONCURRED BY:

Hidalgo County Judge

AI-22936 **18.G.1.**

BCAP - Pct 2- Round III - Road & Drainage Construction for Mesquite Acres Subdivision Award Recommendation

CC REGULAR

Date:	09/21/2010
Submitted By:	Yvette Islas, PURCHASING DEPT.
Submitted For:	Agapito Vargas
Department:	PURCHASING DEPT.
Agenda Category:	Purchasing Department **Sub-category:** CAP Pct.2

Information

CAPTION

Applicable action on a recommendation by project engineer, DOS Logistics, Inc. to award to the lowest bidder meeting all specifications: OG Construction Company, LLC in the amount of $194,154.00 for Bid No. CAP-10-309-09-08-YSI “Road & Drainage Construction for Mesquite Acres Subdivision.

BACKGROUND

Fiscal Impact

FISCAL YEAR: 2010 **ACCT. #:** 0-1312-431-00-122-460-1-XXX

FUNDS AVAILABLE Y/N?: Y **MATCHING FUNDS Y/N?:**

BUDGETARY IMPACT:

available balance in object 733 - $ 90,318.00
object 841 - $110,911.06

Attachments

Link: cbrdwn m acres 22936

Link: txdot conc m acres 22936

Link: eng recomnd m acres 22936

Link: b tab sheet m acres 22396

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
1	Purchasing Department	Marty Salazar	09/15/2010 03:43 PM	APRV
2	Budget & Management	Sylvia Solis	09/15/2010 04:47 PM	APRV
3	Roland Garcia	Rolando Garcia	09/17/2010 10:25 AM	APRV
4	Auditor's Office		09/17/2010 04:52 PM	NEW

Form Started By: Yvette Islas Started On: 09/13/2010 09:50 AM

Final Approval Date: 09/17/2010

Mesquite Acres Subdivision
CSJ: 3C1080460
Cost Breakdown
Precinct 2

Item No.	Bid Item No.	Item Description	Quantity	Unit	Unit Price	Amount Bid
		ROADWAY				
1	110	Excavation (Roadway)	2704	CY	$4.00	$10,816.00
2	164	Hydro Mulch Seeding (Watering Included)	4103	SY	$1.00	$4,103.00
3	247	(New) Flex Base (TY "E" GR4) (Comp in Place)(lime Stab.3%)	382	CY	$30.00	$11,460.00
4	247	(Salvaged) Flexbase (Ty E GR4)(Comp in Place)(Lime Stab. 3%)	807	CY	$14.00	$11,298.00
5	260	Lime Treatment (Mix Exist Mtrl & New base)	5352	SY	$2.00	$10,704.00
6	260	Lime (Ty A or B)	61	TON	$185.00	$11,285.00
7	314	Emulsified Asphalt (Prime Coat)	905	GAL	$5.00	$4,525.00
8	340	Hot Mix Ty D (HMAC)	387	TON	$89.00	$34,443.00
9	502	Barricades, Signs and Traffic Handling	2	MO	$400.00	$800.00
10	506	Construction Exits (Ty II) (Install)	84	SY	$5.00	$420.00
11	506	Construction Exits (Ty II) (Remove)	84	SY	$10.00	$840.00
12	506	Temp Sedmt Cont Fence (Install)	184	LF	$3.00	$552.00
13	531	Concrete Sidewalk	5	SY	$50.00	$250.00
14	550	Chainlink Fence (Install) w/Salvage Gate Included	95	LF	$18.00	$1,710.00
15	644	Smal RDSD SGN ASSM (TY "A")	1	EA	$230.00	$230.00
16	644	Smal l Signs (Removed and Relocate)	8	EA	$50.00	$400.00
		SubTotal Base ~~Bid~~ →				**$103,836.00**
		DRAINAGE				
	402	Trench Excavation Protection	969	LF	2	$1,938.00
	432	Concrete Riprap (Cl C)	6	SY	142	$852.00
	464	RCP (CL III) (18")	64	LF	$29.00	$1,856.00
	464	RCP (CL III) (24")	356	LF	$31.00	$11,036.00
	464	RCP (CL III) (30")	696	LF	$37.00	$25,752.00
	465	Inlet (Type "A") (COMPL)	3	EA	$2,020.00	$6,060.00
	465	Inlet (Type "A-1") (COMPL)	1	EA	$2,400.00	$2,400.00
	465	Inlet Extension (5')	4	EA	$1,450.00	$5,800.00
	465	Manhole (COMPL) (TY A)	1	EA	$1,200.00	$1,200.00
	529	2' Concrete Curb & Gutter (Ty "A") (Barrier)	2834	LF	$7.00	$19,838.00
	529	6" Concrete Valley Gutter	86	LF	$28.00	$2,408.00
	530	Driveways (Asphalt, Concrete, Pavement)	603	SY	$9.00	$5,427.00
	530	Driveways (Concrete)	213	SY	$27.00	$5,751.00
		SubTotal Drainage →				**$90,318.00**
		GrandTotal Roadwork Base Bid and Drainage →				**$194,154.00**

Mesquite Acres Subdivision
CSJ: 3C1080460
Cost Breakdown
Precinct 2

Project Length: (LF)		1360
Cost Per Linear Feet @ $500K/mile:	$	94.70
Tot. Proj. Allowable (Cost per LF @$500K/mi X Proj. Lngth):		**$ 128,792.00**
Roadwork Allocation (Eng, Road Const and Contingency):		**$ 125,724.71**
Allowed Increase:	**$**	**3,067.29**

Amt Inc. **$ 31,431.18**

Road Construction Allocation:	$ 110,911.06	Drainage Allocation:	$ 89,845.00
Possible 25% Transfer In Other Projects:	$ -	**Transfer In: Citriana Drainage**	$ 473.00
Contingency Transfer In:	$ -	Total Allocation and Transfer	$90,318.00
Total Allocation, 25% Transfer and Contingency Transfer	$ 110,911.06	Drainage Cost:	$90,318.00
Low Base Bid Roadwork	$103,836.00	Overrun/Underrun	$0.00
Overrun/Underrun	$7,075.06		

Texas Department of Transportation
PO BOX 1717 • PHARR TEXAS 78577-1717 • (956) 702-6100

September 13, 2010

Mr. Agapito Vargas, Director
Hidalgo County Colonia Access Program
301 E. State Street
Pharr, TX 78577

Dear Mr. Vargas:

TxDOT concurs with Hidalgo County's decision to award a construction contract for its 3rd-call Border Colonia Access Program project in Mesquite Acres (3C1080460) to the low bidder, OG Construction, LLC, for a total bid of $194,154.00.

My records indicate that the bid amounts for this competitive project are within amounts remaining, as shown below.

Project	Amount Remaining 09/13/10			Bid Amount		
	Drainage	Roadway	Total	Drainage	Roadway	Total
Mesquite Acres	$98,445.00	$123,854.13	$222,299.13	$90,318.00	$103,836.00	$194,154.00

Please let me know if you have questions.

Sincerely,

Sharon Slagle

Sharon Slagle
Pharr District Colonia Program Manager

DL, INC.
DOS LOGISTICS, INC.

September 13, 2010

Ms. Yvette Islas
Hidalgo County Purchasing Department
2812 S. Hwy 281
Edinburg, Texas 78539

Re: ***Hidalgo County Precinct # 2***
Bid No. CAP -10-309-09-08-YSI
"Road & Drainage Construction for Mesquite Acres Subdivision"

Dear Mr. Vargas:

We have tabulated the bids (copy is attached) received from Saenz Utilities, OG Construction Co. and Alvarez Construction, on the referenced project. We are recommending that the precinct place an item to award this contract to OG Construction Co., in the base bid amount of $194,154.00 for the Hidalgo County – "Road & Drainage Construction of Mesquite Acres Subdivision" on the next possible Commissioners' Court Agenda.

If you should have any questions please call.

Respectfully,

Luis J. Nava P.E. 9/13/10
Project Engineer

cc: Commissioner Hector "Tito" Palacios – Hidalgo County, Precinct #2

HIDALGO COUNTY PURCHASING DEPARTMENT
BID TABULATION SHEET

DEPARTMENT NAME: HIDALGO COUNTY PRECINCT NO. 4 - BORDER COLONIA ACCESS PROGRAM

BID OPENING DATE: September 08, 2010 | **BID OPENING TIME: 9:30 A.M.**

DESCRIPTION OF BID: "ROAD & DRAINAGE CONSTRUCTION FOR MESQUITE ACRES SUBDIVISION"

BID NO: CAP-10-309-09-08-YSI

RFB NO.	NAME OF COMPANY	TOTAL BID AMOUNT FOR CONSTRUCTION	Bid Bond/ Cashier's Check
1.	Saenz Utility Contractors	$264,173.30	Bid Bond Included
2.	Alvarez Construction	$217,493.30	Bid Bond Included
3.	O. G. Construction Co., LLC	$194,154.00	Bid Bond Included
4.			
5.			
6.			
7.			
8.			
9.			
10.			

AI-22959 **18.H.1.**

Correction to Work Authorization #1 to C-CAP-08-025-09-02

CC REGULAR

Date:	09/21/2010
Submitted By:	Yvette Islas, PURCHASING DEPT.
Submitted For:	Marty Salazar
Department:	PURCHASING DEPT.
Agenda Category:	Purchasing Department **Sub-category:** CAP Pct.4

Information

CAPTION

Correction to Work Authorization #1 to C-CAP-08-025-09-02 (approved by CC-3-31-2009 AI#14687) to reflect “Colonia Esperanza #2” instead of Colonia Esperanza #1 as it currently appears on “Work Authorization #1 document for Contract # C-CAP-08-025-09-02.

BACKGROUND

Fiscal Impact

FISCAL YEAR: 2010 **ACCT. #:** 0-1312-431-00-124-XXX-0-339

FUNDS AVAILABLE Y/N?: **MATCHING FUNDS Y/N?:**

BUDGETARY IMPACT:

No Budgetary impact

Attachments

Link: changes to wa 1 c.cap08.025-09.02 22959

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
1	Purchasing Department	Marty Salazar	09/16/2010 10:09 AM	APRV
2	Budget & Management	Sylvia Solis	09/16/2010 11:24 AM	APRV
3	Manuel Chapa	Manuel Chapa	09/17/2010 08:20 AM	APRV
4	Auditor's Office		09/17/2010 04:52 PM	NEW

Form Started By: Yvette Islas Started On: 09/14/2010 01:30 PM

Final Approval Date: 09/17/2010

HIDALGO COUNTY

Professional Engineering Services
Contract # C-CAP-08-025-09-02
Work Authorization Form

WORK AUTHORIZATION NO. 1

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, **Millennium Engineers Group, Inc.**, professional engineers of Edinburg , Texas, hereinafter called "**Engineer**".

PART 1. SCOPE OF WORK

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

Geotechnical Engineering Services and Construction Materials Testing for the Border Colonia Access Program Round 3 at Foster Subdivision, Hacienda De Los Vegas, Hoen Drive Subdivision, Lakeview Subdivision, Las Brisas, Seminary Village Subdivision, Trenton Terrace, Colonia Esperanza #1, La Flor Estates, La Flor Gardens and Laborsita. Projects are located in Precinct #4.

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 **$67,718.31**
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 3 of the Agreement.

PART 4. FUNDING

This Work Authorization No. 1 shall be funded through funding source:
Account No. 9-1312-431-00-124-XXX-339
Requisition Number 154187 **(MUST BE INCLUDED AFTER CC APPROVAL)**

1312 BORDER COLONIA ACCESS PROGRAM ROUND 3

Proposal Number	Account Number / Description
09-42	9-1312-431-00-124-274-0-339 FOSTER SUBDIVISION-OTHER PROF SERVICES
09-43	9-1312-431-00-124-300-0-339 HACIENDA DE LOS VEGAS-OTHER PROF SERVICE
09-44	9-1312-431-00-124-329-0-339 HOEN DRIVE SUBD-OTHER PROFESSIONAL SRVS
09-45	9-1312-431-00-124-401-0-339 LAKEVIEW SUBDIVISION-OTHER PROF SERVICES
09-46	9-1312-431-00-124-406-0-339 LAS BRISAS-OTHER PROFESSIONAL SERVICES
09-47	9-1312-431-00-124-657-0-339 SEMINARY VILLAGE SUBD-OTHER PROF SRVS
09-48	9-1312-431-00-124-752-0-339 TRENTON TERRACE-OTHER PROF SERVICES
09-49	9-1312-431-00-124-844-0-339 COL ESPERANZA #1-OTHER PROF SERVICES
09-50	9-1312-431-00-124-882-0-339 LA FLOR ESTATES-OTHER PROF SERVICES
09-51	9-1312-431-00-124-883-0-339 LA FLOR GARDENS-OTHER PROF SERVICES
09-52	9-1312-431-00-124-886-0-339 LABORSITA-OTHER PROF SERVICES

1312 BORDER COLONIA ACCESS PROGRAM ROUND 3
9 YEAR

Millennium Engineers Group, Inc.
PO Box 4569
Edinburg, Texas 78540-4569

Proposal

Date	Proposal No.
3/17/2009	09-49

Name / Address
Hidalgo County Precinct 4 Commissioner Oscar Garza 1102 N. Doolittle Rd Edinburg, Texas 785418

		Project	
Description	Qty	Cost	Total
COL ESPERANZA #1			
Atterberg Limits	1	59.00	59.00
Standard Proctor	1	175.00	175.00
Field Density (Soils)	15	20.00	300.00
Asphalt Cores	6	50.00	300.00
Bituminous Mix Theoretical SPG	1	55.00	55.00
Concrete Specimen (Compression)	4	15.00	60.00
Vehicle Trip Charge	5	30.00	150.00
Engr. Technician	10	39.25	392.50
Engr. Technician (Concrete)	5.3841	42.00	226.13
Test Report	15	30.00	450.00
Clerical/Administrative	6	40.00	240.00
Project Management & Coordination	4	65.00	260.00

We thank you for your prompt payment. Please remit to the above address.

Total $2,667.63

AI-22990 **18.I.1.**

Bid award for EN-1 Road Stabilizer Material

CC REGULAR

Date:	09/21/2010
Submitted By:	Gricelda Villarreal, PURCHASING DEPT.
Submitted For:	Marty Salazar
Department:	PURCHASING DEPT.
Agenda Category:	Purchasing Department **Sub-category:** Co. Wide

Information

CAPTION

Recommending bid award to the sole bidder, Roadbond Services Company, meeting all specifications and approval of contract for the request for bids: 2010-109-08-25CGV-EN-1 for Road Stabilizer Material for Hidalgo County.

BACKGROUND

These services are mostly used by Pct. 1; Contract is County-wide on "An As Needed Basis".

Fiscal Impact

FISCAL YEAR: 2010 **ACCT. #:** 0-1200-431-00-121-005-0-673

FUNDS AVAILABLE Y/N?: Y **MATCHING FUNDS Y/N?:**

BUDGETARY IMPACT:

Pct.1- $95,481.43 available balance as of 09/16/10. Purchases are on an as needed basis. rc

FISCAL YEAR: 2010 **ACCT. #:** 0-1200-431-00-122-006-0-673

FUNDS AVAILABLE Y/N?: Y **MATCHING FUNDS Y/N?:**

BUDGETARY IMPACT:

Pct. 2- $35,372.53 available balance as of 09/16/10. Purchases are on an as needed basis. rc

FISCAL YEAR: 2010 **ACCT. #:** 0-1200-431-00-123-005-0-731

FUNDS AVAILABLE Y/N?: Y **MATCHING FUNDS Y/N?:**

BUDGETARY IMPACT:

Pct 3- $132,420.22 available balance as of 09/16/10. Purchases are on an as needed basis. rc

FISCAL YEAR: 2010 **ACCT. #:** 0-1200-431-00-124-007-0-673

FUNDS AVAILABLE Y/N?: Y **MATCHING FUNDS Y/N?:**

BUDGETARY IMPACT:

Pct. 4- $29,548.50 available balance as of 09/16/10. Purchases are on an as needed basis. rc

Attachments

Link: Recommendations-Tab Sheet

Link: Email on Contract Approval

Link: EN-1 Contract

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
1	Purchasing Department	Marty Salazar	09/16/2010 11:00 AM	APRV
2	Budget & Management	Sylvia Solis	09/16/2010 11:19 AM	APRV
3	Rosalinda Cantu	Rosie Cantu	09/16/2010 02:43 PM	APRV
4	Auditor's Office		09/17/2010 04:52 PM	NEW

Form Started By: Gricelda Villarreal — Started On: 09/15/2010 03:26 PM

Final Approval Date: 09/17/2010

Hidalgo County Purchasing Department
2812 S. Business Highway 281
New Administration Building
Edinburg, Texas 78539
(956) 318-2626/ Fax: (956) 318-2629

MEMORANDUM

TO: Mr. Raul Lozano
Hidalgo County Prct. 1

FROM: Cris Villarreal, Buyer III
Hidalgo County Purchasing Department

DATE: August 27, 2010

RE: RFP No.: 2010-2109-08-25CGV-EN-1 Road Stabilizer Material " project

Enclosed, for your review, comments and recommendations, please find a copy of the sole response received for the above referenced project.

We ask that you provide us with your recommendation memo along with your budget information of said project so that we can proceed to award project.

If you have any questions, please call me at 318-2626.

APPROVE ☑ DISAPPROVE ☐

FUNDS AVAILABILITY: X Yes / _____ No / _____ Other (specify) _____

BUDGET ACCOUNT #: 0-1200-431-00-121-005-0-673 DEPT NAME: Precinct 1

Raul Lozano 08/27/2010

AUTHORIZED SIGNATURE PRINTED NAME DATE

SUBMIT THIS FORM TO THE HIDALGO COUNTY PURCHASING DEPARTMENT, VIA FAX TO (956) 318-2629 or 292-7612.

Enclosures

Hidalgo County Purchasing Department
2812 S. Business Highway 281
New Administration Building
Edinburg, Texas 78539
(956) 318-2626/ Fax: (956) 318-2629

MEMORANDUM

TO: Hon. A. C. Cuellar, Commissioner
Hidalgo County Precinct No. 1
ATTN: Raul Lozano, Chief Administrator

TO: Hon. Hector "Tito" Palacios, Commissioner
Hidalgo County Precinct No. 2
ATTN: Mr. Ricardo Cuellar, Field Operations Foreman

FROM: Cris Villarreal, Buyer III
Hidalgo County Purchasing Department

DATE: September 7, 2010

Hon. Joe M. Flores, Commissioner
Hidalgo County Precinct No. 3
ATTN: Mr. Domingo "Mingo" Villarreal, Pct. Coordinator

Hon. Oscar Garza Jr., Commissioner
Hidalgo County Precinct No. 4
ATTN: Mr. Juan Carranza, Chief Administrator

RE: RFB No.: 2010-109-08-25CGV-EN-1 Road Stabilizer Material for Hidalgo County" project

Enclosed, for your review, comments and recommendations, please find a copy of the sole response received for the above referenced project.

We ask that you provide us with your recommendation memo along with your budget information of said project so that we can proceed to award project.

If you have any questions, please call me at 318-2626.

APPROVE ☑ DISAPPROVE ☐

FUNDS AVAILABILITY: ✓ Yes / _____ No / _____ Other (specify) _____

BUDGET ACCOUNT #: 0-1200-431-00-123-005-0-131 DEPT. NAME: Pct #3

R. Cuellar, M. Flores — 9-7-10

AUTHORIZED SIGNATURE PRINTED NAME DATE

SUBMIT THIS FORM TO THE HIDALGO COUNTY PURCHASING DEPARTMENT, VIA FAX TO (956) 318-2629 or 292-7612.
Enclosures

HIDALGO COUNTY PURCHASING DEPARTMENT
BID TABULATION SHEET

DEPARTMENT NAME: Hidalgo County (County- Wide)

BID OPENIG DATE: August 25, 2010 | BID OPENING TIME: 9:30 A.M.

DESCRIPTION OF BID: RFB-EN-1 Road Stabilizer Material-Hidalgo County

BID NO: 2010-109-08-25CGV

RFB#	NAME OF COMPANY	Unit Price
#01	Roadbond Service Company Harlingen, Texas	$375.00 per 5 gallon containers
#02		
#03		
#04		
#05		
#06		
#07		
#08		
#09		
#10		

From: Martha Salazar
To: "Cris Villarreal "
Subject: FW: Approval of Contract for EN-1 Road Stabilizer
Date: Monday, September 13, 2010 3:38:11 PM

From: Steve Crain [mailto:scrain@atlashall.com]
Sent: Monday, September 13, 2010 3:33 PM
To: 'Martha Salazar'
Subject: RE: Approval of Contract for EN-1 Road Stabilizer

This works.

From: Martha Salazar [mailto:martha.salazar@co.hidalgo.tx.us]
Sent: Monday, September 13, 2010 3:01 PM
To: 'Steve Crain'
Cc: 'Cris Villarreal '
Subject: FW: Approval of Contract for EN-1 Road Stabilizer

Here is the final draft.
Marty

From: Cris Villarreal [mailto:cris.villarreal@co.hidalgo.tx.us]
Sent: Monday, September 13, 2010 2:44 PM
To: 'Martha Salazar'
Subject: FW: Approval of Contract for EN-1 Road Stabilizer

Marty,
Just talked to Steve Crain on the telephone regarding the above mentioned subject. Please forward contract (with changes as requested) for final review.

Thank you,
Cris

From: Martha Salazar [mailto:martha.salazar@co.hidalgo.tx.us]
Sent: Monday, September 13, 2010 11:45 AM
To: 'Cris Villarreal '
Subject: FW: Approval of Contract for EN-1 Road Stabilizer

From: Steve Crain [mailto:scrain@atlashall.com]
Sent: Monday, September 13, 2010 7:30 AM
To: 'Martha Salazar'
Subject: RE: Approval of Contract for EN-1 Road Stabilizer

There must be a separate paragraph stating the contract may be terminated without cause by County on thirty days prior written notice.

From: Martha Salazar [mailto:martha.salazar@co.hidalgo.tx.us]
Sent: Saturday, September 11, 2010 12:25 PM
To: 'Steve Crain'
Subject: FW: Approval of Contract for EN-1 Road Stabilizer

Mr. Crain:
Please review and comment as to form.
Thanks,
Marty

From: Cris Villarreal [mailto:cris.villarreal@co.hidalgo.tx.us]
Sent: Friday, September 10, 2010 4:47 PM
To: 'Martha Salazar'
Subject: Approval of Contract for EN-1 Road Stabilizer

Marty,
Can you please forward to legal counsel for review and approval of the attached contract (all backup attached) so as to proceed with getting approval thru CC for 9-21-10.

Thank you,

Cris Villarreal
Gricelda (Cris) Villarreal, Buyer III
Hidalgo County Purchasing Department
Ph: 956-318-2626 or 956-292-7000, ext. 4867
Fax: 956-318-2629
email: cris.villarreal@co.hidalgo.tx.us

REQUIREMENTS AGREEMENT
C-10-109-09-21

THIS AGREEMENT (the "Agreement") is entered into effective as of **September 21, 2010** and between **International Roadbond Service Company Ltd, DBA Roadbond Service Company** (“Seller") and **HIDALGO COUNTY** ("Buyer").

WHEREAS, Buyer has solicited proposals for the supply of its requirements of Hidalgo County **“ EN-1 Road Stabilizer Material** (commodity) **,”** as further described in Exhibit "A" which is attached hereto and incorporated herein by reference for all purposes (the “RFB Packet”) for a period one (1) year; and

WHEREAS, Seller has submitted a proposal to supply Buyer's requirements; and

WHEREAS, Buyer has determined that Seller has submitted the lowest and best bid to meet Buyer's requirements for the Product.

NOW THEREFORE, for and in consideration of the mutual covenants and conditions hereinafter set forth, and other good an valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Buyer agrees to purchase from Seller, and Seller agrees to sell to Buyer, all of the Products that Buyer may require for use by Buyer in **“EN-1 Road Stabilizer Material-Hidalgo County ”** in the areas of **HIDALGO COUNTY** projects for a period of one(1) year on an **“As Needed Basis”** from **September 21, 2010** to **September 20, 2011** with the option to renew for an additional one (1) year under the same rates, terms, and conditions, and /or sixty (60) day grace period extension at the end of the contract for unforeseen delays on subsequent contract, and it is agreed that the Products will meet the specifications set forth in Exhibit "A" hereto.

2. When Buyer determines that it needs a quantity of the Products to be delivered, it will, according to its Purchasing Policies, complete and submit to Seller a Purchase Order describing the type and quantity of the Products required. The Products are to be delivered by Buyer to the location in Hidalgo County specified by Buyer in its Purchase Order.

3. Buyer agrees to pay Seller for each Purchase Order based on the prices set out in Exhibit "B" (the “Vendor’s Bid”). Seller shall render invoices for each Purchase Order, and the invoices shall be paid by Buyer on or before the 30th day following receipt of the invoice.

4. Any contract award to a successful bidder will be in effect until (a) the contract expires, (b) delivery and acceptance of products, and/or performance of services ordered, or (c) terminated by County with thirty (30) day’s written notice prior to cancellation.

5. General Provisions.

a. **Conflict with Applicable Law.** Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law, and whenever there is any conflict between any provision of this Agreement and any present or future law, ordinance or administrative, executive or judicial regulation, order or decree, or amendment thereof, contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event the affected provision or provisions of this Agreement shall be modified only to the extent necessary to bring them within the legal requirements and only during the time such conflict exists.

b. **No Waiver.** No waiver by Buyer of any breach of any provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision hereof.

c. **Entire Agreement.** This Agreement contains the entire contract between the parties hereto, and each party acknowledges that neither has made (either directly or through any agent or representative) any representations or agreements in connection with this Agreement not specifically set forth herein. This Agreement may be modified or amended only by agreement in writing executed by Buyer and Seller, and not otherwise.

d. **Texas Law to Apply.** This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Hidalgo County, Texas. The parties hereby consent to personal jurisdiction in Hidalgo County, Texas.

e. **Notice.** Except as may be otherwise specifically provided in this Agreement, all notices, demands, requests or communications required or permitted hereunder shall be in writing and shall either be (i) personally delivered against a written receipt, or (ii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth below, or at such other addresses as may have been theretofore specified by written notice delivered in accordance herewith:

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

If to Seller: _____
_____
_____

Each notice, demand, request or communication which shall be delivered or mailed in the

manner described above shall be deemed sufficiently given for all purposes at such time as it is personally delivered to the addressee or, if mailed, at such time as it is deposited in the Unites States mail.

f. **Termination.** County may terminate this Agreement at any time for any reason or no reason at all upon giving thirty (30) day written notice.

g. **Additional Documents.** The parties hereto covenant and agree that they will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this Agreement.

h. **Successors.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Agreement.

i. **Assignment.** This Agreement shall not be assignable.

j. **Headings.** The headings and captions contained in this Agreement are solely for convenient reference and shall not be deemed to affect the meaning or interpretation of any provision or paragraph hereof.

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

l. **Authority to Execute.** The execution and performance of this Agreement by Buyer and Seller have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of Buyer and Seller in accordance with its terms.

m. **Commitment of Current Revenues Only**. In the event that, during any term hereof, the Commissioners Court does not appropriate sufficient funds to meet the obligations of Buyer under this Agreement, Buyer may terminate this Agreement upon sixty (60) days written notice to Seller. Buyer 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 Buyer pursuant to the provisions of Tex. Loc. Govt. Code Ann. § 271.903 (Vernon Supp. 1996).

n. **Insurance.** Company shall provide insurance in force on all its vehicles and all persons connected with providing services under this Contract naming County as an additional insured (with coverages and in the amounts described on Exhibit “C” attached hereto and incorporated herein at this point for all purposes), and shall furnish to County certificates of such insurance coverage.

o. **Purchasing Ethics**. Seller represents and warrants it has not, during the process of being awarded this contract violated the following ethical standards of Buyer and, upon and after the execution of this Agreement, agrees to abide by the following ethical standards of Buyer:

(1) It shall be a breach of ethics to offer, give or agree to give any elected official, department head or employee, or former elected official, department head or employee, of Hidalgo County, or for any elected official, department head or employee or former elected official, department head or employee of Hidalgo County, to solicit, demand, accept or agree to accept from another person, entity or organization, a gratuity or an officer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or purchase request, influencing the content of any specification or procurement standard, rendering of advise, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor pending before any department or agency of Hidalgo County.

(2) It shall be a breach of ethics for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor for any contract for Hidalgo County, or any person associated therewith, as an inducement for the award of a subcontract or order.

EXECUTED effective as of the day and year first above written.

APPROVED BY COMMISSIONERS COURT ON, _____.

APPROVED AS TO FORM:
ATLAS & HALL L.L.P.

By:_____

Date:_____

HIDALGO COUNTY

By:_____
Rene A. Ramirez, County Judge

ATTEST:

_____

Arturo Guajardo, Jr., County Clerk

Vendor:_____

By:_____

Printed Name:_____

Title:_____

EXHIBIT “A”

- **RFB PACKET**
- **SPECIFICATIONS**

EXHIBIT “B”
VENDORS BID PAGE

EXHIBIT “C”
INSURANCE REQUIREMENTS