



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 *A. Tovar*

REVIEWED BY: Mr. Edmundo Garcia, Assistant Director *E. Garcia*

PROGRAM DIRECTOR'S APPROVAL: Jeresa Flores *Jeresa 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.

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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 give 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 be 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** for 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 Article 3 hereof.

It is distinctly understood and agreed that no claim by the **Engineer** for additional work, as identified in Article 9 hereof, or changes or 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 opinion that any work it has been directed to perform is beyond the scope of this Agreement and constitutes extra work, the **Engineer** shall promptly notify the **Owner** in writing, in the event the **Owner** 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** find 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 of such apparatus, equipment, or process is enjoined, the **Engineer** shall refund the purchase price thereof in proportion to the length of service uncompleted, the life of such apparatus or equipment being assumed as five years. The **Engineer** hereby grants to the **Owner** a non-exclusive, royalty-free license under patents now or hereafter owned by the **Engineer** covering any machines, apparatus, processes, articles, or products included in the **Engineer's** work hereunder.

ARTICLE 16. Confidential Information, Inventions and Other Restrictions.

16.1 Confidential Information. The **Engineer** shall not use in any way, commercial or otherwise, except to the extent required by the proper performance of this Agreement; and shall hold in confidence and not disclose to any person, for any 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 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 State Board of Registration for Professional Engineers.

17.2 Engineer's Responsibility. The **Engineer** shall be responsible for the accuracy of the work for the **Project** and shall promptly make necessary revisions or corrections resulting from errors, omissions, or negligent acts by the **Engineer**. No additional compensation will be made to the **Engineer** for any necessary revisions or corrections resulting from errors, omissions, or negligent acts by the **Engineer**.

The **Engineer's** responsibility for all questions arising from design errors and/or omissions will be determined by the **Owner** or a designee appointed by the **Owner**. The **Engineer** will not be relieved of the responsibility for subsequent correction of any such errors or omissions or for 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 entirety 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 **EXHIBIT '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 defective 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

Hidalgo County Headstart Program / Dannenbaum Engineering Company-McAllen, LLC
"San Juan II and Palmview II Roof Repairs"

EXHIBIT "A"

Page 19 of 45

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 in 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 "**indemnitied**") 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 Article 3.4 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:
Hidalgo County Head Start Program

ATT: Teresa Flores

1901 W. State Highway 107

McAllen, Texas 78504

ENGINEER:
Dannenbaum Engineering Company

Attn: Louis H. Jones, Jr.

1109 Nolana Loop, suite 208

McAllen, Texas 78504

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

ARTICLE 29. Miscellaneous Provisions.

(a) This Agreement constitutes the entire Agreement between the **Engineer** and the **Owner** relating to the work herein described and supersedes any prior understanding or written or oral contracts between the parties respecting the subject matter defined herein. 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

OWNER:
HIDALGO COUNTY HEAD START PROGRAM

BY: _____
Louis H. Jones, Jr. P.E. – President

BY: _____
Teresa Flores, Program Director

ATTEST:

HIDALGO COUNTY

BY: _____
Arturo Guajardo, Jr. County Clerk

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

EXHIBIT E

WORK AUTHORIZATION FORM

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
Dannenbaum Engineering Company-
McAllen, LLC

THE OWNER
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**.

WITNESSETH

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 COMPANY –
MCALLEN, LLC

HIDALGO COUNTY HEAD START PROGRAM

BY: _____
Louis H. Jones, Jr., P.E., President

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



CERTIFICATE OF LIABILITY INSURANCE

OP ID: 1
DANNE-1DATE (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.	
	INSURERS AFFORDING COVERAGE	NAIC #
INSURED Dannenbaum Engineering Corp. see comments for full name ins ETAL P O Box 22292 Houston TX 77027	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. NO WITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED, IT MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. APPLICABLE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L TR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR CONTRACTUAL LEAS INCLUDED GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC	2053853648	06/01/10	06/01/11	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Per occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 700,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADJ INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPROP AGG \$ 2,000,000
	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	C 1015348305	06/01/10	06/01/11	COMBINED SINGLE LIMIT (Per accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AUTO ONLY: AGG \$
A	EXCESS / UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$	2053853049	06/01/10	06/01/11	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$ \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NJ) If yes, describe under SPECIAL PROVISIONS below OTHER	WC 1 22022126	06/01/10	06/01/11	<input checked="" type="checkbox"/> WC STATE TOXY LIMITS <input type="checkbox"/> OTHER EL EACH ACCIDENT \$ 100,000 EL DISEASE - EA EMPLOYEE \$ 100,000 EL DISEASE - POLICY LIMIT \$ 100,000
A	Professional Liab Ded \$200,000	AEH 25 405 50 21	04/01/10	04/01/11	Per Claim \$2,000,000 Aggregate \$4,000,000

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

CERTIFICATE HOLDER 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 <u>10</u> 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
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EXHIBIT "B"

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