

THE STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

AGREEMENT FOR PROFESSIONAL SERVICES
C-20-184-01-12

THIS AGREEMENT is made, by and between **HIDALGO COUNTY**, acting herein by and through the **Commissioner’s Court**, hereinafter called the “**Owner**”, and **B2Z Engineering, LLC**, Professional Engineering Services for Construction Material and Geotechnical Testing of **Mission, Texas**, hereinafter called the “**Engineer**”.

WITNESSETH:

WHEREAS, the **OWNER** desires to contract with the **ENGINEER** to provide Professional Engineering Services for Construction Material and Geotechnical Testing Services for Hidalgo County Health Department Testing/Bio-Safety Laboratory located within Hidalgo County, hereinafter referred to as the (“**Services**”).

WHEREAS the Owner has determined that the services of a professional engineering firm for Construction Material and Geotechnical Testing is necessary to carry out the required **Services**;

WHEREAS, pursuant to Texas Government Code Chapter 2254 (the “Texas Professional Services Procurement Act”), the **OWNER** requested Statements of Qualifications from professional engineering firms to assist the **OWNER** by providing Construction Material and Geotechnical Testing **Services**;

WHEREAS, the **OWNER** solicited Requests for Qualifications (RFQ) for the development and establishment of a yearly pool for “Professional Engineer’s for Construction Material and Geotechnical Testing **Services** firms” **Services**”; and

WHEREAS, the **ENGINEER** was pre-qualified from the County’s pool of Engineer firms and has been selected from the pool to provide Construction Material and Geotechnical Testing **Services**, in accordance with the terms and provisions of *Exhibit “A” of the Requirements/Request for Qualifications*, attached hereto and incorporated by reference herein; and

WHEREAS, in continuation of the procurement process and in response to the County's request to negotiate for a fair and reasonable price pursuant to Chapter 2254 Texas Government Code, the **ENGINEER** has provided a fee schedule for Construction Material and Geotechnical Testing Services ("Contract Rates"), which is attached hereto and made part of this Agreement as **Exhibit "D"**;

WHEREAS, from which "Professional Engineering Services for Construction Material and Geotechnical Testing Services" **Engineer** has been selected from the "Pool of pre-qualified engineering firms from the responses to such Request for Qualification (RFQ); and

WHEREAS, the **OWNER** has selected the Engineer to provide the Services within Hidalgo County, in accordance to Exhibit "A" Request for Qualifications Procurement Packet.

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

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

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

2.1 Scope of Work. The **Owner** will furnish items and provide those services for the development of the **Services** and fulfillment of this Agreement, as identified in **EXHIBIT "B" Services to be provided by the Owner**, 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 for Construction Material and Geotechnical Testing Services**, are more particularly identified in **EXHIBIT "C"**, attached hereto.

2.3 Schedule of Work. The **Engineer for Construction Material and Geotechnical Testing Services** shall prepare a schedule of work

(hereinafter referred to as "**Work Schedule**") in accordance with the terms identified in **EXHIBIT "D-1"** - **Work Schedule**, attached hereto and made a part of this Agreement.

2.4 Non-Exclusive Services of Engineer for Construction Material and Geotechnical Testing Services. Hidalgo County reserves the right to request these services from other sources other than the engineer and shall not be in violation of any terms or conditions of this agreement.

ARTICLE 3. Period of Service. Upon execution of this Agreement, the **Engineer for Construction Material and Geotechnical Testing Services** shall proceed with the work outlined under Article 2 hereof.

3.1 Termination Date. This Agreement shall be for a period of one (1) year commencing on January 12, 2021, expiring on January 11, 2022, (hereinafter referred to as the "**Termination Date**"), unless extended by written supplemental agreement, as provided in Article 8 hereof, duly executed by the **Engineer for Construction Material and Geotechnical Testing Services** and the **Owner** prior to the **Termination Date**, or otherwise terminated as provided in Article 3.4 herein and below. The **Owner** assumes no liability or obligation for payment to the **Engineer for Construction Material and Geotechnical Testing Services** for work performed or costs incurred by the **Engineer for Construction Material and Geotechnical Testing Services** prior to the date authorized by the **Owner** for the **Engineer for Construction Material and Geotechnical Testing Services** to begin work, during periods when work is suspended, or subsequent to the **Termination Date**.

3.2 Extension of the Termination Date. The **Engineer for Construction Material and Geotechnical Testing Services** 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 for Construction Material and Geotechnical Testing Services** shall allow adequate time for review and approval by the **Owner** of the written notice and request by the **Engineer for Construction Material and Geotechnical Testing Services** 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 for Construction Material and Geotechnical Testing Services**, followed by written confirmation from the **Owner** to the **Engineer for Construction Material and Geotechnical Testing Services** 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 for Construction Material and Geotechnical Testing Services**. The sixty-day notice may be waived as agreed in writing by both the **Owner** and the **Engineer**.

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

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

(1) **Commitment of Current Revenues.** In the event that, during any term hereof, the **Owner** does not appropriate sufficient funds to meet the obligations of this Agreement, the **Owner** may terminate this Agreement upon thirty (30) days written notice to the **Engineer for Construction Material and Geotechnical Testing Services**. The **Owner** agrees, however, to use reasonable efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of the **County**. Agreements for the acquisition, including the lease of real or personal property under Tex.Loc.Govt.Code §271.903. In the event that during any term hereof the Commissioners' Court does not appropriate sufficient funds to meet the obligations of County under this agreement, County may terminate the Agreement upon thirty (30) days

written notice to **Engineer for Construction Material and Geotechnical Testing Services**. County agrees, however, to use a best efforts attempt to obtain and appropriate funds for payment of the Agreement. The parties intend this provision, if applicable, to be a continuing right to terminate this Agreement at the expiration of each budget period of County in accordance with Tex. Loc. Govt. Code Ann. §271.903 (Vernon Supp. 1995).

(2) By mutual agreement and consent, in writing, of both the **Engineer for Construction Material and Geotechnical Testing Services** and the **Owner**.

(3) By the **Owner**, upon failure of the **Engineer for Construction Material and Geotechnical Testing Services** to fulfill the **Engineer's** obligations set forth herein in a satisfactory manner as determined by the **Owner** and in the sole opinion of the **Owner**, after the **Owner** provides written notice to the **Engineer for Construction Material and Geotechnical Testing Services** of such failure and the **Engineer for Construction Material and Geotechnical Testing Services** has not corrected such failure within (30) days of such written notice by the **Owner**.

(4) By the **Engineer for Construction Material and Geotechnical Testing Services**, 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 for Construction Material and Geotechnical Testing Services**.

(5) By the **Owner** without cause upon thirty (30) days written notice to the **Engineer for Construction Material and Geotechnical Testing Services**.

(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 for Construction Material and Geotechnical Testing Services** notwithstanding anything herein to the contrary. In determining the value of the work performed by the **Engineer** prior to termination, the **Owner** shall be the sole judge of the value of such work performed. Compensation for work at termination will be based on a percentage of the work completed

at that time. Should the **Owner** terminate this Agreement under (5) of the paragraph above, the amount charged during the thirty (30) day notice period shall not exceed the amount charged during the preceding ninety (90) days.

If the termination of this Agreement is due to the failure of the **Engineer for Construction Material and Geotechnical Testing Services** to fulfill the **Engineer's** obligations under this Agreement, the **Owner** may take over the Project and prosecute the work to completion. In such a 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 for Construction Material and Geotechnical Testing Services**, the **Owner** will give consideration to payment of an amount in settlement to include: the actual costs incurred by the **Engineer** in performing the work to the date of default, the amount of work required which was satisfactorily completed to the 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 for Construction Material and Geotechnical Testing Services**, but all remedies existing at law and in equity may be availed of by either party and shall be cumulative.

The termination of the Agreement and payment of an amount in settlement as prescribed above shall extinguish all rights, duties, and obligations of the **Owner** and the **Engineer for Construction Material and Geotechnical Testing Services** 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 for Construction Material and Geotechnical Testing Services** shall, from time to time during the progress of the work, confer with the **Owner**. The **Engineer for Construction Material and Geotechnical Testing Services** 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. The parties acknowledge that the **Engineer for Construction Material and Geotechnical Testing Services** is not the contractor performing the construction services for the Project and that the **Engineer for Construction Material and Geotechnical Testing Services** will be reporting to the Owner on work performed by the contractor and the schedule for such work and that references to the schedule should cover both the schedule for the Engineer's services hereunder and the contractor's work under the Owner's agreement with the contractor once it is executed.

At the request of the **Owner** or the **Engineer for Construction Material and Geotechnical Testing Services**, 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 an 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 for Construction Material and Geotechnical Testing Services'** 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 for Construction Material and Geotechnical Testing 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 "D-1"**, attached hereto, the **Owner** shall review the approved **Work Schedule** with the **Engineer for Construction Material and Geotechnical Testing Services** to determine the corrective action needed by either the **Owner** or the **Engineer**.

The **Engineer for Construction Material and Geotechnical Testing Services** 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 periods; this disclosure will be accompanied by a statement by the **Engineer for Construction Material and Geotechnical Testing Services** of recommended or immediate action to be 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** rendered by the **Engineer for Construction Material and Geotechnical Testing Services**, as identified in Article 2 and more particularly identified in **EXHIBIT “D”**, 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 Construction Material and Geotechnical Testing 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 be provided by the **Engineer for Construction Material and Geotechnical Testing Services** as **Special Services** are set forth below and more particularly described in Exhibit “C”, attached hereto. For and in consideration of these **Special Services** rendered as required of the **Engineer for Construction Material and Geotechnical Testing Services** by the Owner, the **Owner** shall pay the **Engineer for Construction Material and Geotechnical Testing Services** 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 CONSTRUCTION MANAGER, INSPECTOR** Actual performance of services of project site Construction Manager, resident Construction Manager, and/or inspector, if required by **Owner**.
2. **DOCUMENT COPIES.** Actual performance and/or providing additional copies (over 10) of the report.
3. **EXTRA TRAVEL** Extra travel required of **Engineer for Construction Material and Geotechnical Testing Services** and authorized by **Owner** to points outside of Hidalgo County.
4. **EXPERT WITNESS** Assistance to the **Owner** as an 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 Construction Material and Geotechnical Testing Services** 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 for Construction Material and Geotechnical Testing Services** 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 for Construction Material and Geotechnical Testing Services** during the billing period and to the date of the **Request for Payment**. On or before noon of the first Monday of each month during the performance of the services, the **Engineer** shall submit to the **Owner** for approval a **Request for Payment**. Payment of the lump sum fee 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 exceptions as the

Owner reasonably deems necessary or appropriate under the circumstances then existing. After Commissioners' Court of the **Owner** meets approving such payment, the **Owner** shall make payment to the **Engineer for Construction Material and Geotechnical Testing Services** in the amount approved as aforesaid subject to Article 6.4 herein and below in accordance with the Texas Prompt Payment Act.

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 to the **Engineer for Construction Material and Geotechnical Testing Services** 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 for Construction Material and Geotechnical Testing Services** shall submit a final request for payment ("**Final Request for Payment**") which shall set forth all amounts due and remaining unpaid to the **Engineer for Construction Material and Geotechnical Testing Services** 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 for Construction Material and Geotechnical Testing Services** has control have been paid. For the avoidance of doubt, the parties acknowledge that the Engineer's services hereunder will not be complete until the contractor has completed the Project, paid any subcontractors and vendors, and delivered proof thereof to Owner, which has been reviewed and approved by the architect.

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 payment under Article 6.1 hereof or **Final Payment**) to the **Engineer** hereunder if any one or more of the following conditions precedent exist:

- (1) The **Engineer for Construction Material and Geotechnical Testing Services** 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 for Construction Material and Geotechnical Testing 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 for Construction Material and Geotechnical Testing Services** 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 for Construction Material and Geotechnical Testing Services** in accordance with this Agreement, no additional payments will be due to the **Engineer for Construction Material and Geotechnical Testing Services** 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 for Construction Material and Geotechnical Testing Services**.

6.4 No partial payment made hereunder shall be or construed to be final acceptance or approval of that part of the **Engineer for Construction Material and Geotechnical Testing Services** to which such partial payment-related or relieves the **Engineer for Construction Material and Geotechnical Testing Services** of any of its obligations hereunder with respect hereto.

6.5 The **Engineer for Construction Material and Geotechnical Testing Services** shall promptly pay all bills for labor and material performed and furnished by others in connection with the performance of the **Construction Material and Geotechnical Testing** services. The Engineer is not, however, expected to have any consultants or subcontractors.

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 for Construction Material and Geotechnical Testing Services** appearing after completion of the **Project**. (2) failure of the **Engineer for Construction Material and Geotechnical Testing Services** to comply with the requirements of this Agreement or any contracts or Agreements related to the **Project**, (3) terms of any special warranties required by this Agreement or

provided at law or in equity or (4) any services hereunder agreed by the parties to be performed subsequent to such **Final Payment**. The Owner anticipates a one-year warranty period being included in the contractor's contract, and in the event, there is such period, the **Engineer for Construction Material and Geotechnical Testing Services** supervisory and review services during that warranty period is included in Basic Services and not released by the Owner having made the Final Payment. The acceptance of **Final Payment** shall constitute a waiver of all claims by the **Engineer for Construction Material and Geotechnical Testing Services** 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 for Construction Material and Geotechnical Testing Services** 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 Form**, attached hereto and made a part of this Agreement. The **Engineer for Construction Material and Geotechnical Testing Services** 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 for Construction Material and Geotechnical Testing Services** to perform one or more of the agreed tasks identified in **EXHIBIT "C"**, attached hereto, in the form of individual work authorizations. Upon authorization from the **Owner**, the **Engineer for Construction Material and Geotechnical Testing Services** 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 for Construction Material and Geotechnical Testing Services**. 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 Authorization** shall not waive the **Owner's** and the **Engineer's** responsibilities and obligations established in this Agreement. Notwithstanding the foregoing and anything else to the contrary contained herein, the parties acknowledge that all of the services on Exhibit "C" are included

in the first Work Authorization, which is expected to be the only Work Authorization under this Agreement.

Each executed **Work Authorization** shall become a part of this **Agreement**. Upon satisfactory completion of the **Work Authorization**, the **Engineer for Construction Material and Geotechnical Testing Services** 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 **Owner** and the **Engineer**. The **Engineer** shall promptly notify the **Owner** of any event that will affect the completion of the **Work Authorization**. All **Work Authorizations** must be executed and completed by both the **Engineer for Construction Material and Geotechnical Testing Services** and the **Owner** within the period established for this Agreement as specified in Article 3 hereof.

The final acceptance by the **Owner** of each **Work Authorization** for the **Project** shall serve as evidence of completion, on the part of the **Engineer for Construction Material and Geotechnical Testing Services**, of all services under this Agreement insofar as they pertain to that 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 if the Owner determines that (1) there is a need to extend the **Termination Date** identified in Article 3.1 hereof, (2) there has been a significant change in the scope, complexity, or character of the services to be performed by the **Engineer for Construction Material and Geotechnical Testing Services**, and/or (3) for any other reason agreeable to the **Owner** and the **Engineer for Construction Material and Geotechnical Testing Services**. All supplemental agreements will be developed in the form identified in **EXHIBIT "F" - Supplemental Agreement Form**, attached hereto and made a part of this Agreement, and incorporated herein by reference as

“Supplemental Agreement”. The parties may however use any other mutually agreed form of amendment. Regardless of form, Engineer acknowledges and agrees that the Commissioners Court of Owner, by majority vote, is the only representative of Owner, having the power to enter into a contract, Work Authorization, Supplemental Agreement, or other amendment, or agree to an extension of the contractual completion date.

If determined appropriate by the **Owner**, additional compensation to the **Engineer for Construction Material and Geotechnical Testing Services** 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 for Construction Material and Geotechnical Testing Services** 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 Construction Material and Geotechnical Testing Services** for additional work, as identified in Article 9 hereof, or changes or revisions in work, as identified in Article 10 hereof, shall be made by the **Engineer for Construction Material and Geotechnical Testing Services** until full execution of the **Supplemental Agreement** and authorization to proceed is granted by the **Owner**. The **Owner** reserves the right to withhold payment to the **Engineer for Construction Material and Geotechnical Testing Services** pending verification of satisfactory work performed by the **Engineer**.

ARTICLE 9. Additional Work. If the **Engineer for Construction Material and Geotechnical Testing Services** is of the opinion that any work it has been directed to perform is beyond the scope of this Agreement and constitutes extra work, the **Engineer** shall promptly notify the **Owner** in writing. In the event the **Owner** finds that such work does constitute extra work, the **Owner** shall so advise the **Engineer for Construction Material and Geotechnical Testing Services** and a written supplemental agreement will be executed between the **Owner** and the **Engineer for Construction Material and Geotechnical Testing Services** as provided herein. The **Engineer for Construction Material and**

Geotechnical Testing Services shall not perform any proposed 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 for Construction Material and Geotechnical Testing Services** 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 Construction Material and Geotechnical Testing Services** for work performed or costs incurred by the **Engineer for Construction Material and Geotechnical Testing Services** relating to additional work not directly associated with the performance of the work authorized in this Agreement or as amended through supplemental agreement.

ARTICLE 10. Changes or Revisions in Work. If the **Owner** finds it necessary to request changes to the work, and the changes are within the applications of sound Engineering principles, the **Engineer for Construction Material and Geotechnical Testing Services** 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 engineer principles.

10.2 Previously Approved or Satisfactorily Completed Work. If the **Owner** finds it necessary to request the **Engineer for Construction Material and Geotechnical Testing Services** to make changes to work previously approved by the **Owner** or work satisfactorily completed for which the **Owner** approves or after a definite plan has been approved by the **Owner**, if a decision is subsequently made by the **Owner**, which for proper execution involves extra services and expenses for changes in or additions to the drawings specifications or other documents, this will be considered as additional work, and compensation from the **Owner** to the **Engineer for Construction Material and Geotechnical Testing Services** will be in accordance with Article 9 hereof.

10.3 Project Delays. If the **Engineer for Construction Material and Geotechnical Testing Services** is required to perform additional work due to delays by the imposition of causes not within the **Engineer's** control, such as by the re-advertisement of bids or by the delinquency or insolvency of contractors, such additional work associated with these delays shall be considered additional work, and the **Engineer** shall be compensated by the **Owner** for such extra services and expense in accordance with Article 9 hereof.

10.4 Reduction of Project Cost. Notwithstanding any provision herein to the contrary, in the event it is necessary for the **Owner** to require changes in the final plan of the **Project** to enable it to reduce the construction cost of the **Project** to an amount within the sum estimated by the **Engineer for Construction Material and Geotechnical Testing Services**, the **Engineer**, if requested in writing by the **Owner**, will be required to make such revisions or changes. These changes will only be considered additional work by the **Engineer for Construction Material and Geotechnical Testing Services**, if the **Engineer** previously provided these same changes as options to the **Owner** at the stage of preliminary work or prior to the approval of the final plan 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 for Construction Material and Geotechnical Testing Services** fails to provide these changes as an option or options to the **Owner** at the stage of preliminary work or prior to the approval of the final plan of the **Project**, these changes will not be considered additional work and no additional compensation will be made to the **Engineer**.

ARTICLE 11. Ownership and Release of Documents.

11.1 Ownership of Documents. Original drawings, specifications, and any documents related to the **Project** (the "**Project Documents**") are the property of the **Owner**. The **Project** is the property of the **Owner**. The **Engineer for Construction Material and Geotechnical Testing Services** may not use the **Project Documents** for any purpose not relating to the **Project** without the **Owner's** consent. The **Owner** shall be furnished with such reproductions of **Project Documents** as the **Owner** may reasonably require. 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**. All documents furnished to the **Engineer for Construction Material and Geotechnical Testing Services** by the **Owner** shall be delivered to the **Owner** upon completion or termination of this Agreement. The **Engineer for Construction Material and Geotechnical Testing Services**, at the **Engineer's** own expense, may retain copies of such documents or any other data under this Agreement.

11.2 Release of Documents or Information. Release of information to the public or others regarding the **Project** will be in accordance with the Texas Public Information Act. **Engineer** shall refer all such requests to the **Owner**.

ARTICLE 12. Discounts, Rebates, Refunds. In connection with procurement services rendered by the **Engineer for Construction Material and Geotechnical Testing Services** if procurement services are required of the **Engineer** hereunder (which is not currently anticipated), all discounts, rebates, and refunds shall accrue to the **Owner**. For some purchases, the **Engineer** may deem that payment within the discount period is not safe; and/or inspection, guarantees, or other considerations may dictate delay. In such cases, the **Engineer for Construction Material and Geotechnical Testing Services** shall promptly notify the **Owner** so that a course of action may be mutually agreed upon by the **Owner** and the **Engineer**.

ARTICLE 13. Records, Accounting, Inspection. The **Engineer for Construction Material and Geotechnical Testing Services** shall keep full and detailed records and accounts in a manner approved by the **Owner**. The **Engineer** shall afford the **Owner's** authorized personnel and independent auditors, if any, full access to the work performed by the **Engineer** regarding the **Project** and to all of the **Engineer's** books, records, correspondence, instructions, drawings, receipts, vouchers and other documents relating to such work under this Agreement and the **Engineer** shall preserve all such records for three (3) years after final payment. The **Engineer** shall deliver to the **Owner** upon completion of such work, a statement of the cost of such work detailed according to the accounting procedure and requirements of the **Owner**.

ARTICLE 14. Subcontracting and Assignment. The **Engineer for Construction Material and Geotechnical Testing Services** shall not assign, subcontract, or transfer the **Engineer's** interest in this Agreement without the prior written consent of the **Owner**. The **Engineer** shall bind every sub-consultant by written subcontract to observe all the terms of this Agreement to the extent that they may be applicable to each sub-consultant. No subcontract relieves the **Engineer for Construction Material and Geotechnical Testing Services** of any responsibilities under this Agreement.

The **Engineer for Construction Material and Geotechnical Testing Services**, and the **Owner**, do hereby bind themselves, their successors, executors, administrators and assigns to each other party of this Agreement and the successors, executors, administrators, and assigns 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 for Construction Material and Geotechnical Testing Services** or from the use of any process designed by the **Engineer for Construction Material and Geotechnical Testing Services** or effected by said apparatus or equipment, and the **Engineer** shall indemnify and save the **Owner** harmless from and against all costs, legal fees, expenses and liabilities incurred in or about any claim of or action for such infringement: provided, however, that the **Owner** shall promptly transmit to the **Engineer for Construction Material and Geotechnical Testing Services** all papers served on the **Owner** in any suit involving such claim of infringement, and provided further, that the **Owner** permits the **Engineer** to have entire charge and control of the defense of any such suit. If because of actual infringement the use of such apparatus, equipment, or process is enjoined, the **Engineer for Construction Material and Geotechnical Testing Services** 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 for Construction Material and Geotechnical Testing Services** 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 for Construction Material and Geotechnical Testing Services** shall not use in any way, commercial or otherwise, except to the extent required by the proper performance of this Agreement; and shall hold in confidence and not disclose to any person, for any reason or at any time, any information relating to the secret processes, products, compositions, machinery, apparatus or trade secrets of the **Owner**, or any other confidential information given to the **Engineer** by any of the **Owner's** commissioners, elected officials, employees, or representatives or acquired by the **Engineer** during the term of, or as a result of, this Agreement. Any information not generally available to the public shall be considered secret and confidential for the foregoing purposes; provided, however, that any technical information which was lawfully in the **Engineer's** possession prior to such disclosure to the **Engineer for Construction Material and Geotechnical Testing Services** 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 for Construction Material and Geotechnical Testing Services** from a source other than the **Owner**, shall not be subject to these provisions. All the foregoing stipulations shall apply to such information and work hereunder as well as to any information and ideas originated or developed by the **Engineer for Construction Material and Geotechnical Testing Services** in performing such work. Such information may, of course, be disclosed to the proper officials or employees of the **Owner** if necessary to perform the work hereunder. The **Engineer** shall, however, inform each of its employees who receive such information of these restrictions and the **Engineer** shall take all reasonable precautions and exert all reasonable efforts to assure conformance with such restrictions by all of its officers, employees, and agents, obtaining from them if necessary, agreements satisfactory to the **Owner**, effectuating the purposes of this Article.

16.2 Inventions. The **Engineer** shall communicate to the **Owner** at once, and require the **Engineer's** employees assigned to this **Project** to communicate to the **Owner** all inventions and improvements which any of the **Engineer's** employees, either alone or in conjunction with any of the **Owner's** employees may conceive, make or discover during the course of or as a result of work on this **Project** under this or any ensuing agreement with the **Owner** that relates to the processes, products, compositions, machinery or plants of the **Owner**, or relating in any way to any of the operations in which the **Owner** may be obligated to pay to the **Engineer for Construction Material and Geotechnical Testing Services** as compensation for services rendered by the **Engineer** under contract with the **Owner**. The **Engineer for Construction Material and Geotechnical Testing Services** shall require its employees to execute patent applications and assignments thereof to the **Owner** or its nominees, and powers of attorney relating thereto for any country the **Owner** may designate and shall take all other actions as the **Owner** may request to maintain and protect such inventions and improvements. The **Owner** shall pay all costs or charges incurred in protecting such inventions and improvements if the **Owner** desires to protect them. Before assigning any of the **Engineer for Construction Material and Geotechnical Testing Services** employees to work under any contract with the **Owner** concerning this **Project**, the **Engineer for Construction Material and Geotechnical Testing Services** shall obtain from them agreements satisfactory to **Owner** complying in all respects with the terms and provisions of this Article.

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

ARTICLE 17. Engineer for Construction Material and Geotechnical Testing Services Responsibility and Warranties.

17.1 Engineer for Construction Material and Geotechnical Testing Services' Responsibility. The **Engineer for Construction Material and Geotechnical Testing Services** shall be responsible for the accuracy of the services for the **Project** and shall promptly make necessary revisions or corrections resulting from errors, omissions, or negligent acts by the **Engineer for Construction Material and**

Geotechnical Testing Services. 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 for Construction Material and Geotechnical Testing Services.**

17.2 Warranties.

(a) Notwithstanding anything to the contrary contained in this Agreement, the **Owner** and the **Engineer for Construction Material and Geotechnical Testing Services** 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 for Construction Material and Geotechnical Testing Services** hereunder. The **Engineer** accepts the relationship of trust and confidence established between it and the **Owner** by this Agreement. The **Engineer for Construction Material and Geotechnical Testing Services** covenants with the **Owner** to use the **Engineer's** best efforts, skill, judgment, and abilities to further the interests of the **Owner** in accordance with the **Owner's** requirements and procedures, in accordance with all professional standards, and compliance with all applicable national, federal, state, county and municipal laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction. The **Engineer for Construction Material and Geotechnical Testing Services** represents covenants and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of the **Engineer for Construction Material and Geotechnical Testing Services.**

(b) The **Engineer** represents, covenants, and agrees that all of **Construction Material and Geotechnical Testing Services** to be furnished by the **Engineer** under or pursuant to this Agreement from the inception of the Agreement until the **Project** has been fully completed, shall be of the standard and quality which prevail among **Engineer for Construction Material and Geotechnical Testing Services** of similar experience, knowledge, skill, and ability engaged in construction material and geotechnical testing services practice throughout Texas under the same or similar circumstances involving the design and construction of **Project.**

ARTICLE 18. Construction Material and Geotechnical Testing Service Resources. The **Engineer for Construction Material and Geotechnical Testing Services** 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 for Construction Material and Geotechnical Testing Services** shall provide a manager (**Project Manager**) for the **Project**. The **Project Manager** shall have such knowledge and experience as will enable that **Project Manager** during the course of the **Project** to supervise the services provided to **Owner** hereunder. If due to situations beyond the control of the **Engineer for Construction Material and Geotechnical Testing Services**, the **Engineer** must change the **Project Manager** prior to the completion and acceptance of the **Project**, the **Engineer for Construction Material and Geotechnical Testing Services** will submit a request to change the **Project Manager** to the **Owner** for approval. Notwithstanding anything to the contrary in this Agreement, including Exhibit C and any Work Authorization, neither the Project Manager nor any other individual or entity shall act as a representative of the Owner, as only Commissioners' Court has such authority.

18.2 Employees of the Engineer for Construction Material and Geotechnical Testing Services. All employees of the **Engineer for Construction Material and Geotechnical Testing Services** 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 for Construction Material and Geotechnical Testing Services** 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 the performance of the services under this Agreement.

18.2 Documents/Information Exchange. The purpose of this Article is to define the required automated resources, format for graphics files, and information exchange pertaining to the **Project**. Taking into consideration that the **Owner** has a significant investment in the development of the **Project**, there is a need for the **Engineer for Construction Material and Geotechnical Testing**

Services 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 for Construction Material and Geotechnical Testing Services** will facilitate such information exchange as part of the services provided hereunder.

ARTICLE 19. Indemnification. To the fullest extent permitted by applicable law, the Engineer for Construction Material and Geotechnical Testing Services and its agents, partners, subcontractors, and consultants (collectively “Indemnitors”) shall and do agree to indemnify, and hold harmless the Owner, the Owner’s respective directors, elected officials, employees and agents (collectively “Indemnitors”) 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 for Construction Material and Geotechnical Testing 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 for Construction Material and Geotechnical Testing Services 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 for Construction Material and Geotechnical Testing Services, anyone directly or indirectly employed by the Engineer for Construction Material and Geotechnical Testing Services or anyone for who acts for the Engineer may be legally liable. The Engineer shall also save harmless the Owner from any and all expense, including but not limited to, attorney fees which may be incurred by the Owner in litigation or otherwise resisting said claim or liabilities which may be imposed on the Owner as a result of such activities by the Engineer for Construction Material and Geotechnical Testing Services, its agents’ partners, subcontractors and/or consultants. In this connection, it

is agreed and understood that the Engineer for Construction Material and Geotechnical Testing Services shall not be responsible for any portion of the liability proximately caused by the Owner's negligence.

ARTICLE 20. Joint and Several Liability. In the event more than one of the **Indemnitors** are connected with an accident or occurrence covered by the indemnification in Article 19 hereof, then each of such **Indemnitors** shall be jointly and severally responsible to the **Indemnitees** for indemnification and the ultimate responsibility among such **Indemnitors** for the loss and expense of any such indemnification shall be settled by separate proceedings and without jeopardy to any **Indemnitee**. The provisions of this Article shall not be construed to eliminate or reduce any other indemnification or right which the **Owner** or any of the **Indemnitees** has by law.

ARTICLE 21. Insurance. Consistent with its status as an independent contractor and at its sole expense, Engineer agrees that throughout the duration of the work under this contract and any extension thereof, it shall provide and maintain in full force and effect any and all insurances which may be necessary for providing Services or are otherwise required by law, and shall require of all its' sub-consultants connected with providing services under this contract to provide insurance in full force and effect as well. Insurance policies shall cover, but are not limited to, Engineer's activities and all persons, vehicles, equipment, and property connected with providing Services, including but not limited to professional liability insurance covering Engineer's activities in providing the services to County. Coverage shall be in the amounts specified by the County in the Request for Qualifications ("RFQ") or as prescribed by law, but in no event shall any amount be less than the minimum amounts prescribed by the Texas Tort Claims Act, §100.001, et seq., Texas Civil Practices and Remedies Code. Engineer shall furnish to County certificate(s) of insurance and all renewals throughout the duration of any assigned Project on an Accord form, issued by the insurer that such insurance is in full force and effect. **See attached Exhibit "G" Insurance Information.**

The **Engineer** covenants and agrees to maintain an insurance policy in the minimum limits of liability for each of the types of insurance coverage identified in the above paragraph. The **Engineer**

for Construction Material and Geotechnical Testing Services shall furnish the **Owner** with a certificate of insurance (**Hidalgo County Certificate of Insurance**) showing the said policy to be in full force and effect during the period of service, identified in Article 3 hereto, for this Agreement. The completed Hidalgo County Certificate of Insurance is attached hereto and identified as **EXHIBIT “G”-Hidalgo County Certificate of Insurance**. The **Engineer for Construction Material and Geotechnical Testing Services** will be considered in breach of contract should the **Engineer** fail to maintain an insurance policy in the minimum limits of liability and requirements identified above while performing services for and under this Agreement, and will be subject to default and termination of the Agreement as outlined in Article 3.4 hereto. Additionally, the **Engineer for Construction Material and Geotechnical Testing Services** covenants and agrees to use its best efforts to maintain an insurance policy in the minimum limits of liability and requirements identified above until one year following the date of the acceptance of the **Project** by **Owner**.

ARTICLE 22. Compliance with Laws. The **Engineer for Construction Material and Geotechnical Testing Services** shall comply with all applicable Federal, State, and local laws, statutes, codes, ordinances, rules, and regulations and the orders and decrees of any court, or administrative bodies or tribunals in any manner affecting the performance of this Agreement including, without limitation, worker’s compensation laws, minimum and maximum salary, and wage statutes and regulations and licensing laws and regulations. When required the **Engineer for Construction Material and Geotechnical Testing Services** shall furnish the **Owner** with satisfactory proof of its compliance therewith.

ARTICLE 23. Non-collusion. The **Engineer for Construction Material and Geotechnical Testing Services** warrants that the **Engineer for Construction Material and Geotechnical Testing Services**

has not employed or retained any company or persons, other than a bona fide employee working solely for the **Engineer**, to solicit or secure this Agreement and that the **Engineer for Construction Material and Geotechnical Testing Services** has not paid or agreed to pay any company, Construction Manager or any other person or entity any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or

execution of this Agreement. For breach or violation of this warranty, the **Owner** shall have the right to annul this Agreement without liability or, in the **Owner's** discretion, to deduct from the *Services Fee*, or otherwise recover, the full amount of each fee, commission, percentage, brokerage fee, gift or contingent fee.

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

ARTICLE 25. Payment of Franchise Tax. The **Engineer for Construction Material and Geotechnical Testing Services** hereby certifies that the **Engineer for Construction Material and Geotechnical Testing Services** is not delinquent in Texas franchise tax payments, or that the **Engineer for Construction Material and Geotechnical Testing Services** is exempt from, or not subject to, such as tax. A false statement concerning a 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 for Construction Material and Geotechnical Testing Services** shall be responsible for the settlement of all contractual and administrative issues arising out of any procurement made by the **Engineer for Construction Material and Geotechnical Testing Services** in support of the services under this Agreement.

ARTICLE 27. Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason, be held to be invalid, illegal, or unenforceable in any respect such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement

shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

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

OWNER
Hidalgo County
100 E. Cano St. 2nd Floor
Edinburg, Texas 78539

CONSTRUCTION MANAGER
B2Z Engineering, LLC
PO Box 2724
McAllen, Texas 78502

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 for Construction Material and Geotechnical Testing Services** 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 for Construction Material and Geotechnical Testing Services** not set forth herein.

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

(c) No waiver of any provision of or default under this Agreement shall affect the right of the **Owner** thereafter to enforce said provision or to exercise any right or remedy in the event of any other default whether or not similar.

(d) No modification, waiver, termination, discharge, or cancellation of this Agreement or any terms thereof shall impair the **Owner's** right with respect to any liabilities whether or not liquidated of the **Engineer for Construction Material and Geotechnical Testing Services** 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 for Construction Material and Geotechnical Testing Services** shall remain an independent contractor and shall have no power, nor shall the **Engineer for Construction Material and Geotechnical Testing Services** represent that the **Engineer for Construction Material and Geotechnical Testing Services** has any power to bind the **Owner** or to assume or to create any obligation expressly or implied on behalf of the **Owner** except as specifically authorized in advance in writing 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 for Construction Material and Geotechnical Testing Services** as provided by Article 8 herein. Without limiting the generality of the foregoing, **Engineer for Construction Material and Geotechnical Testing Services** acknowledges and agrees that the Commissioners Court of Owner, by majority vote, is the only representative of Owner having the power to enter into a contract, Work Authorization, Supplemental Agreement or other amendment, or agree to an extension of the contractual completion date

ARTICLE 30. Signatory Warranty The undersigned signatory or signatories for the **Engineer for Construction Material and Geotechnical Testing Services** 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 for Construction Material and Geotechnical Testing Services**. The above-stated representations and warranties are made for the purpose of inducing the **Owner** to enter into this Agreement.

ARTICLE 31. 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.

ARTICLE 32. Immunities. Nothing in this Agreement intended to and County does not hereby waive, release or relinquish any right to assert any of the defenses County enjoys by virtue of the state or federal constitution, laws, rules or regulations, and any sovereign, official or qualified immunity available to County as to any claim or action of any person, entity, or individual against County.

ARTICLE 33. Nondiscrimination. Engineer, including subcontractors, assignees, and successors in interest, ensures that no person shall on the grounds of race, religion, color, national origin, sex, age, or disability, or any other protected class under law, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination or retaliation in any federally or non-federally funded program or activity when providing any services described herein under this Contract. Applicable nondiscrimination statements and provisions of Title VI of the Civil Rights Act of 1964, as amended, were provided as part of the initial procurement packet and are incorporated herein and made part of this agreement for all purposes.

ARTICLE 34. Additional Documents. The parties hereto covenant and agree that they will execute each 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.

ARTICLE 35. Required Contract Provision for Contracts Subject to Federal Award (if applicable). Pursuant to 2 CFR 200.236, a non-Federal entity's contracts must contain the applicable provisions described in appendix II to 2 CFR 200-Contract Provisions for non-Federal Entity Contracts Under Federal Awards. Additionally, County contracts under Federal award which are subject to assistance from the Federal Emergency Management Agency (FEMA) are also required to contain additional contract clauses. The applicable required contract clauses were provided as part of the initial procurement packet and are incorporated herein and made part of this agreement for all purposes.

ARTICLE 36 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 hereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

Signature page to follow

EXECUTED as of the day and year first written above.

**COUNTY:
COUNTY OF HIDALGO, TEXAS**

By: _____
Richard F. Cortez, County Judge

**ENGINEER:
B2Z ENGINEERING, LLC**

By: _____

Printed Name _____

Title: _____

ATTEST:

Arturo Guajardo Jr., County Clerk

APPROVED AS TO FORM:
Hidalgo County District Attorney's Office

By: _____
David R. Cantu, Assistant District Attorney

ATTACHMENTS:

- EXHIBIT A** -Requirements/County's Request for Qualifications
- EXHIBIT B** -Scope of Services to be provided by Owner
- EXHIBIT C** -Scope of Services to be provided by Engineer
- EXHIBIT D** -Standard Engineer Contract Rates
- EXHIBIT D-1** -Work Schedule
- EXHIBIT E** -Work Authorization Form
- EXHIBIT F** -Supplemental Agreement Form
- EXHIBIT G** -Certificates of Insurance