



ENGINEERING to assist the **Program** by providing the Services;

**WHEREAS, Program** has selected the **ENGINEER/CONSTRUCTION MANAGER** to provide the Services within Hidalgo County, in accordance with contract C-21-04-09-21-AS “On-Call ENGINEER/CONSTRUCTION MANAGER Services for Pct. 4.”

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

**ARTICLE 1. Employment of ENGINEER/CONSTRUCTION MANAGER.** The **Program** agrees to employ the **ENGINEER/CONSTRUCTION MANAGER** and the **ENGINEER/CONSTRUCTION MANAGER** agrees to perform professional ENGINEERING / CONSTRUCTION MANAGEMENT services in connection with the **Project** as stated in the articles to follow and for having rendered such services, the **Program** agrees to pay the **ENGINEER/CONSTRUCTION MANAGER** 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 **Program** will furnish items and provide those services for the development of the **Project** and fulfillment of this Agreement, as identified in **EXHIBIT “A” *Scope of Services to be provided by the Program.*** The **ENGINEER/CONSTRUCTION MANAGER** will furnish items and provide those services for the development of the **Project** and fulfillment of this Agreement, as identified in **EXHIBIT “B” *Scope of Services to be provided by the ENGINEER/CONSTRUCTION MANAGER.***

**2.2 Classification of Services.** For this Agreement, the professional services to be provided by the **ENGINEER/CONSTRUCTION MANAGER**, as more particularly identified

in **EXHIBIT “B”**, attached hereto.

**2.3 Schedule of Work.** The **ENGINEER/CONSTRUCTION MANAGER** shall submit all deliverables identified in **Exhibit “B”** within 30 calendar days after execution of this agreement and after **Program** submits requested deliverables to **ENGINEER/CONSTRUCTION MANAGER**, identified in **Exhibit “B”**.

**2.4 Non-Exclusive Services of ENGINEER/CONSTRUCTION MANAGER**  
Program reserves the right to request these services from other sources other than the **ENGINEER/CONSTRUCTION MANAGER** 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/CONSTRUCTION MANAGER** shall proceed with the work outlined under Article 2 hereof upon receipt of “Notice to Proceed”.

**3.1 Termination Date.** This Agreement shall **expire upon completion, Commencing, DATE, Expiring upon completion;** (hereinafter referred to as the (“**Termination Date**”), unless extended by written supplemental agreement, as provided in Article 8 hereof, duly executed by the **ENGINEER/CONSTRUCTION MANAGER** and the **Program** prior to the **Termination Date**, or otherwise terminated as provided in Article 3.4 herein and below.. The **Program** assumes no liability or obligation for payment to the **ENGINEER/CONSTRUCTION MANAGER** for work performed or costs incurred by the **ENGINEER/CONSTRUCTION MANAGER** prior to the date authorized by the **Program** for the **ENGINEER/CONSTRUCTION MANAGER** to begin work, during periods when work is suspended, or subsequent to the **Termination Date**.

**3.2 Extension of the Termination Date.** The **ENGINEER/CONSTRUCTION**

**MANAGER** shall notify the **Program** 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 **Program** may, at the **Program's** sole discretion, extend the **Termination Date** by written supplemental agreement as provided in Article 8 hereof. The **ENGINEER/CONSTRUCTION MANAGER** shall allow adequate time for review and approval by the **Program Policy Council and Commissioners' Court** of the written notice and request by the **ENGINEER/CONSTRUCTION MANAGER** to extend the **Termination Date**.

**3.3 Suspension of Work.** Should the **Program** desire to suspend the work under this Agreement, but not terminate this Agreement, the **Program** shall provide thirty (30) calendar days verbal notification to the **ENGINEER/CONSTRUCTION MANAGER**, followed by written confirmation from the **Program** to the **ENGINEER/CONSTRUCTION MANAGER** to that effect. The thirty-day notice may be waived as agreed in writing by both the **Program** and the **ENGINEER/CONSTRUCTION MANAGER**. 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 **Program** to the **ENGINEER/CONSTRUCTION MANAGER**. The sixty-day notice may be waived as agreed in writing by both the **Program** and the **ENGINEER/CONSTRUCTION MANAGER**.

If the **Program** 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/CONSTRUCTION MANAGER** and the **Program** 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 **Program** does not appropriate sufficient funds to meet to the obligations of this Agreement, the **Program** may terminate this Agreement upon thirty (30) days written notice to the **ENGINEER/CONSTRUCTION MANAGER**. The **Program** agrees, however, to use reasonable efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of the **Program** 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/CONSTRUCTION MANAGER** and the **Program**.
- (3) By the **Program**, upon failure of the **ENGINEER/CONSTRUCTION MANAGER** to fulfill the **ENGINEER CONSTRUCTION MANAGER'S** obligations set forth herein in a satisfactory manner as determined by the **Program** and in sole opinion of the **Program**, after the **Program** provides written notice to the **ENGINEER/CONSTRUCTION MANAGER** of such failure and the **ENGINEER/CONSTRUCTION MANAGER** has not corrected such failure within (30) days of such written notice by the **ENGINEER/CONSTRUCTION MANAGER**.
- (4) By the **ENGINEER/CONSTRUCTION MANAGER**, upon failure of the **Program** to fulfill the **ENGINEER/CONSTRUCTION MANAGER'S** obligations set forth herein, after the **ENGINEER/CONSTRUCTION MANAGER** provides written notice to the **Program** of such failure and the **Program** has not corrected such failure within thirty (30) days of such written notice by the **ENGINEER/CONSTRUCTION MANAGER**.
- (5) By the **Program** without cause upon thirty (30) days written notice to the **ENGINEER/CONSTRUCTION MANAGER**.
- (6) By satisfactory completion of all services and obligations described herein.

Should the **ENGINEER/CONSTRUCTION MANAGER** 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/CONSTRUCTION MANAGER** notwithstanding anything herein to the contrary. In determining the value of the work performed by the

**ENGINEER/CONSTRUCTION MANAGER** prior to termination, the **Program** 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 **Program** 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/CONSTRUCTION MANAGER** to fulfill the **ENGINEER/CONSTRUCTION MANAGER'S** obligations under this Agreement, the **Program** may take over the Project and prosecute the work to completion. In such case, the **ENGINEER/CONSTRUCTION MANAGER** shall be liable to the **Program** for any additional cost occasioned by the **Program**.

If the **ENGINEER/CONSTRUCTION MANAGER** defaults in the performance of this Agreement or if the **Program** terminates this Agreement for fault on the part of the **ENGINEER/CONSTRUCTION MANAGER**, the **Program** will give consideration to payment of an amount in settlement to include: the actual costs incurred by the **ENGINEER/CONSTRUCTION MANAGER** 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 **Program**, the cost to the **Program** 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 **Program** 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/CONSTRUCTION MANAGER**, 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 **Program** and the **ENGINEER/CONSTRUCTION MANAGER** 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/CONSTRUCTION MANAGER** shall, from time to time during the progress of the work, confer with the **Program** as specified in Exhibit B. The **ENGINEER/CONSTRUCTION MANAGER** shall prepare and present such information as may be pertinent and necessary, or as may be requested by the **Program**, in order to evaluate features of the **ENGINEER/CONSTRUCTION MANAGER'S** services and work.

At the request of the **Program** or the **ENGINEER/CONSTRUCTION MANAGER**, conferences shall be provided at the **ENGINEER/CONSTRUCTION MANAGER'S** office, the office of the **Program**, or at other locations designated by the **Program**. These conferences shall also include evaluation of the **ENGINEER/CONSTRUCTION MANAGER'S** services and work when requested by the **Program**.

All applicable study reports shall be submitted in preliminary form for approval by the **Program** before the final report is issued. The **Program's** comments regarding the **ENGINEER/CONSTRUCTION MANAGER'S** preliminary report will be addressed by the **ENGINEER/CONSTRUCTION MANAGER** 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/CONSTRUCTION MANAGER'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/CONSTRUCTION MANAGER'S** services and work does not satisfy the requirements of the approved **Work Schedule** as provided within **Exhibit "B"**, attached hereto, the **Program** shall review the approved **Work Schedule** with the **ENGINEER/CONSTRUCTION MANAGER** to determine the corrective action needed by either the **Program** or the **ENGINEER/CONSTRUCTION MANAGER**.

The **ENGINEER/CONSTRUCTION MANAGER** shall promptly advise the **Program** in writing of events which have a significant impact upon the progress of the **ENGINEER/CONSTRUCTION MANAGER'S** services and work and the approved **Work Schedule**, including:

- (1) problems, delays, adverse conditions which will materially affect the ability to attain agreement objectives, prevent the meeting of time schedules and goals, or preclude the timely completion and submittal of **Project** deliverables by the **ENGINEER/CONSTRUCTION MANAGER** within established time periods; this disclosure will be accompanied by a statement by the **ENGINEER/CONSTRUCTION MANAGER** of recommended or immediate action taken, or contemplated, and any **Program** 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/CONSTRUCTION MANAGER**, the **Program** shall compensate the **ENGINEER/CONSTRUCTION MANAGER** as follows:

**5.1 Services.** For and in consideration of the *Services* to be rendered by the **ENGINEER/CONSTRUCTION MANAGER**, as identified in Article 2 and more particularly identified in **EXHIBIT "B"**, attached hereto, the maximum amount payable by the **Program** to the **ENGINEER/CONSTRUCTION MANAGER** for *Services*, subject to adjustment in accordance with Article 6.1 herein, will be provided in the Scope of Services to be provided by

the ENGINEER/CONSTRUCTION MANAGER (**Exhibit “B”**). An outline and breakdown of the **Services Fee** is more particularly identified within **EXHIBIT “B**. Payments to the **ENGINEER/CONSTRUCTION MANAGER** for *Services* shall be made by the **Program**, upon presentation by the **ENGINEER/CONSTRUCTION MANAGER** of the monthly **Request for Payment**, in accordance with the terms and provisions of Article 6 herein.

#### **ARTICLE 6. Method of Payment.**

**6.1 Request for Payment.** Payments to the **ENGINEER/CONSTRUCTION MANAGER** for services rendered will be made while work is in progress as executed through a lump sum fee assigned to each **Scope of Services provided by the ENGINEER/CONSTRUCTION MANAGER** (hereinafter referred to as “**Scope of Services provided by the ENGINEER/CONSTRUCTION MANAGER**”) in accordance with Article 7 herein. For the **Scope of Services provided by the ENGINEER/CONSTRUCTION MANAGER**, the **ENGINEER/CONSTRUCTION MANAGER** shall prepare and submit to the **Program** 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/CONSTRUCTION MANAGER** 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/CONSTRUCTION MANAGER** shall submit to the **Program** for approval a **Request for Payment**. Payment of the lump sum fee for the **Scope of Services provided by the ENGINEER/CONSTRUCTION MANAGER** identified in the **Request for Payment** will be in proportion to the percent completion of the work tasks identified in such **Scope of Services Exhibit B provided by the**

**ENGINEER/CONSTRUCTION MANAGER** together with a detailed breakdown of the amount and the sum of all prior payments. The **Program** shall review each such **Request for Payment** and may make such exceptions as the **Program** reasonably deems necessary or appropriate under the circumstances then existing. All payments are processed through the Program until approval from the Policy Council and Commissioners' Court About ten (10) working days after the Commissioners' Court of the **Program** meets approving such payment, the **Program** shall make payment to the **ENGINEER/CONSTRUCTION MANAGER** 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/CONSTRUCTION MANAGER** by the **Program** for the **Project** or such portions of the project shall be only the amounts paid the **ENGINEER/CONSTRUCTION MANAGER** for actual work performed in accordance with the **Scope of Services provided by the ENGINEER/CONSTRUCTION MANAGER** (s) approved by the **Program**.

**6.2 Final Payment.** After final completion of the work and acceptance thereof by the **Program**, the **ENGINEER/CONSTRUCTION MANAGER** shall submit a final request for payment ("**Final Request for Payment**") which shall set forth all amounts due and remaining unpaid to the **ENGINEER/CONSTRUCTION MANAGER** and upon approval thereof by the **Program**, the **Program** shall pay to the **ENGINEER/CONSTRUCTION MANAGER** 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/CONSTRUCTION MANAGER** delivers to the **Program** an affidavit that so far as the **ENGINEER/CONSTRUCTION MANAGER** has knowledge or information any and all

amounts due for materials and services over which the **ENGINEER/CONSTRUCTION MANAGER** has control have been paid.

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

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

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

**6.5** The **ENGINEER/CONSTRUCTION MANAGER** shall promptly pay all bills

for labor and material performed and furnished by others in connection with the performance of the **ENGINEER/CONSTRUCTION MANAGER'S** services.

**6.6 Waiver.** The making of the **Final Payment** shall constitute a waiver of all claims by the **Program** except those arising from (1) faulty or defective services of the **ENGINEER/CONSTRUCTION MANAGER** appearing after completion of the **Project**. (2) failure of the **ENGINEER/CONSTRUCTION MANAGER'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/CONSTRUCTION MANAGER** except those previously made in writing and identified by the **ENGINEER/CONSTRUCTION MANAGER** as unsettled at the time of the **Final Request for Payment**.

**ARTICLE 7. Scope of Services provided by the ENGINEER/CONSTRUCTION MANAGER.** After execution of this Agreement, the **ENGINEER/CONSTRUCTION MANAGER** shall proceed with the work outlined under Article 2 hereof. The **ENGINEER/CONSTRUCTION MANAGER** will identify, as approved by the **Program**, the needed services for the **Project**, as required through the course of the development to the **Project**. The **Program** shall authorize the **ENGINEER/CONSTRUCTION MANAGER** to perform one or more of the agreed tasks identified in **EXHIBIT "B"**, attached hereto, in the form of **Scope of Services provided by the ENGINEER/CONSTRUCTION MANAGER**. Upon authorization from the **Program**, the **ENGINEER/CONSTRUCTION MANAGER** will prepare a **Scope of Services provided by the ENGINEER/CONSTRUCTION MANAGER** 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 **Program** and the **ENGINEER/CONSTRUCTION MANAGER**. The estimated cost proposal shall set forth in detail the computation of the cost of each work task and identified in **EXHIBIT “B”**, attached hereto. The **Scope of Services provided by the ENGINEER/CONSTRUCTION MANAGER** shall not waive the **Program’s** and the **ENGINEER/CONSTRUCTION MANAGER’S** responsibilities and obligations established in this Agreement.

The estimated cost proposal for each **Scope of Services provided by the ENGINEER/CONSTRUCTION MANAGER**, developed by the **ENGINEER/CONSTRUCTION MANAGER** and approved by the **Program** shall be used by the **Program** to appropriate a purchase order for the **Scope of Services provided by the ENGINEER/CONSTRUCTION MANAGER**. Each executed **Scope of Services provided by the ENGINEER/CONSTRUCTION MANAGER** shall become a part of this Agreement. Upon satisfactory completion of the **Scope of Services provided by the ENGINEER/CONSTRUCTION MANAGER**, the **ENGINEER/CONSTRUCTION MANAGER** shall submit the **Project’s** deliverables as specified in the executed **Scope of Services provided by the ENGINEER/CONSTRUCTION MANAGER** to the **Program** for review and acceptance.

Work included in a **Scope of Services provided by the ENGINEER/CONSTRUCTION MANAGER** shall not begin until the **Program** and the **ENGINEER/CONSTRUCTION MANAGER** have signed the **Scope of Services provided by the ENGINEER/CONSTRUCTION MANAGER**. All work must be completed on or before the completion date specified in the **Scope of Services provided by the ENGINEER/CONSTRUCTION MANAGER**, unless extended by written agreement by the

**ENGINEER/CONSTRUCTION MANAGER** and the **Program**. The **ENGINEER/CONSTRUCTION MANAGER** shall promptly notify the **Program** of any event that will affect completion of the **Scope of Services provided by the ENGINEER/CONSTRUCTION MANAGER**. All **Scope of Services provided by the ENGINEER/CONSTRUCTION MANAGER** must be executed and completed by both the **ENGINEER/CONSTRUCTION MANAGER** and the **Program** within the period established for this Agreement as specified in Article 3 hereof.

The final acceptance by the **Program** of each **Scope of Services provided by the ENGINEER/CONSTRUCTION MANAGER** for the **Project** shall serve as evidence of completion, on the part of the **ENGINEER/CONSTRUCTION MANAGER**, of all services under this Agreement insofar as they pertain to that portion of work on the **Project** identified in the applicable **Scope of Services provided by the ENGINEER/CONSTRUCTION MANAGER**.

**ARTICLE 8. Supplemental Agreements.** The terms of this Agreement may be amended by supplemental agreement if the **Program** 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/CONSTRUCTION MANAGER**, and/or (3) for any other reason agreeable to the **Program** and the **ENGINEER/CONSTRUCTION MANAGER**.

If determined appropriate by the **Program**, additional compensation to the **ENGINEER/CONSTRUCTION MANAGER** for (1), (2) and/or (3) above shall be paid as a negotiated lump sum fee. The negotiated lump sum fee shall be incorporated into the **Supplemental Agreement**.

Any **Supplemental Agreement** must be executed by both the **ENGINEER/CONSTRUCTION MANAGER** and the **Program** prior to the **Termination Date** specified in Article 3 hereof. The Hidalgo County Head Start Program Policy Council, and the Hidalgo County Commissioners' Court approves such supplemental Agreement.

It is distinctly understood and agreed that no claim by the **ENGINEER/CONSTRUCTION MANAGER** 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/CONSTRUCTION MANAGER** until full execution of the **Supplemental Agreement** and authorization to proceed is granted by the **Program**. The **Program** reserves the right to withhold payment to the **ENGINEER/CONSTRUCTION MANAGER** pending verification of satisfactory work performed by the **ENGINEER/CONSTRUCTION MANAGER**.

**ARTICLE 9. Additional Work.** If the **ENGINEER/CONSTRUCTION MANAGER** 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/CONSTRUCTION MANAGER** shall promptly notify the **Program** in writing. In the event the **Program** finds that such work does constitute extra work, the **Program** shall so advise the **ENGINEER/CONSTRUCTION MANAGER** and a written supplemental agreement will be executed between the **Program** and the **ENGINEER/CONSTRUCTION MANAGER** as provided herein. The **ENGINEER/CONSTRUCTION MANAGER** shall not perform any proposed additional work or incur any additional cost prior to the execution by both the **ENGINEER/CONSTRUCTION MANAGER** and the **Program** of a supplemental agreement. Additional compensation from the **Program** to the **ENGINEER/CONSTRUCTION MANAGER** shall be paid as a negotiated

lump sum. The negotiated lump sum fee shall be incorporated into the supplemental agreement as specified in Article 8 hereof. The **Program** shall not be liable or under any obligation to compensate the **ENGINEER/CONSTRUCTION MANAGER** for work performed or costs incurred by the **ENGINEER/CONSTRUCTION MANAGER** 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 **Program** finds it necessary to request changes to the work, and the changes are within the applications of sound ENGINEERING principles, the **ENGINEER/CONSTRUCTION MANAGER** shall make such revisions if requested and directed by the **Program**.

**10.1 Preliminary Work.** The **ENGINEER/CONSTRUCTION MANAGER** will make, without expense to the **Program**, such revisions of any preliminary reports or drawings as may be required to meet the needs of the **Program** and the applications of sound ENGINEERING principles.

**10.2 Previously Approved or Satisfactorily Completed Work.** If the **Program** finds it necessary to request the **ENGINEER/CONSTRUCTION MANAGER** to make changes to work previously approved by the **Program** or work satisfactorily completed for which the **Program** approves or, after a definite plan has been approved by the **Program**, if a decision is subsequently made by the **Program**, 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 **Program** to the **ENGINEER/CONSTRUCTION MANAGER** will be in accordance with Article 9 hereof.

**10.3 Project Delays.** If the **ENGINEER/CONSTRUCTION MANAGER** is

required to perform additional work due to delays by the imposition of causes not within the **ENGINEER/CONSTRUCTION MANAGER'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/CONSTRUCTION MANAGER** shall be compensated by the **Program** 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 **Program** 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/CONSTRUCTION MANAGER**, the **ENGINEER/CONSTRUCTION MANAGER** will be required to make such revisions or changes. These changes will only be considered additional work by the **ENGINEER/CONSTRUCTION MANAGER**, if the **ENGINEER/CONSTRUCTION MANAGER** previously provided these same changes as options to the **Program** 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 **Program** to be incorporated into the final plan of the **Project**. Payment for this additional work will then be made to the **ENGINEER/CONSTRUCTION MANAGER** in accordance with Article 9 hereof. If the **ENGINEER/CONSTRUCTION MANAGER** failed to provide these changes as an option or options to the **Program** 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/CONSTRUCTION MANAGER**.

## **ARTICLE 11. Ownership and Release of Documents.**

**11.1 Ownership of Documents.** Original drawings and specifications are the property of

the **ENGINEER/CONSTRUCTION MANAGER** however the **Project** is the property of the **Program**, and the **ENGINEER/CONSTRUCTION MANAGER** may not use the drawings and specifications thereof for any purpose not relating to the **Project** with the **Program's** consent. The **Program** shall be furnished with such reproductions of drawings and specifications as the **Program** may reasonably require. Upon completion of the work or any earlier termination of this Agreement under Article 3.4 hereof, the **ENGINEER/CONSTRUCTION MANAGER** will revise drawings to reflect changes made during construction and will promptly furnish the **Program** with one complete set of reproducible record prints. Prints shall be furnished by the **ENGINEER/CONSTRUCTION MANAGER**, as an additional service, at any other time requested by **Program**. All such reproductions shall be the property of the **Program** who may use them without the **ENGINEER/CONSTRUCTION MANAGER'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 **Program** to a drawing signed, sealed, and dated by a registered professional **ENGINEER/CONSTRUCTION MANAGER** shall be made in accordance with the Texas Engineering practice Act and the Rules of the State Board of Registration for Professional Engineers.

All documents furnished to the **ENGINEER/CONSTRUCTION MANAGER** by the **Program** shall be delivered to the **Program** upon completion or termination of this Agreement. The **ENGINEER/CONSTRUCTION MANAGER**, at the **ENGINEER/CONSTRUCTION MANAGER'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 accordance with the Texas Public Information Act and reported to the Program prior to release of information

**ARTICLE 12. Discounts, Rebates, Refunds.** In connection with procurement

services rendered by the **ENGINEER/CONSTRUCTION MANAGER**, if procurement services are required of the **ENGINEER/CONSTRUCTION MANAGER** hereunder, all discounts, rebates and refunds shall accrue to the **Program**. For some purchases, the **ENGINEER/CONSTRUCTION MANAGER** 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/CONSTRUCTION MANAGER** shall promptly notify the **Program** so that a course of action may be mutually agreed upon by the **Program** and the **ENGINEER/CONSTRUCTION MANAGER**.

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

**ARTICLE 14. Subcontracting and Assignment.** The **ENGINEER/CONSTRUCTION MANAGER** shall not assign, subcontract or transfer the **ENGINEER/CONSTRUCTION MANAGER'S** interest in this Agreement without the prior written consent of the **Program**. The **ENGINEER/CONSTRUCTION MANAGER** 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/CONSTRUCTION MANAGER** of any responsibilities under this Agreement.

The **ENGINEER/CONSTRUCTION MANAGER**, and the **Program**, do hereby bind themselves, their successors, executors, administrators and assigns to each other party of this Agreement and to the successors, executors, administrators, and assigns of such other party in respect to all covenants of this agreement.

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

**ARTICLE 16. Confidential Information, Inventions and Other Restrictions.**

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

**16.2 Inventions.** The **ENGINEER/CONSTRUCTION MANAGER** shall communicate to the **Program** at once, and require the **ENGINEER/CONSTRUCTION MANAGER'S** employees assigned to this **Project** to communicate to the **Program** all inventions and improvements which any of the **ENGINEER/CONSTRUCTION MANAGER'S** employees, either alone or in conjunction with any of the **Program'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 **Program** that relates to the processes, products, compositions, machinery or plants of the **Program**, or relating in any way to any of the operations in which the **Program** may be obligated to pay to the **ENGINEER/CONSTRUCTION MANAGER** as compensation for services rendered by the **ENGINEER/CONSTRUCTION MANAGER** under agreement with the **Program**. The **ENGINEER/CONSTRUCTION MANAGER** shall require its employees to execute patent applications and assignments thereof to the **Program** or its nominees, and powers of attorney relating thereto for any country the **Program** may designate, and shall take all other actions as the **Program** may request to maintain and protect such inventions and improvements. The **Program** shall pay all costs or charges incurred in protecting such inventions and improvements if the **Program** desires to protect them. Before assigning any of the **ENGINEER/CONSTRUCTION MANAGER'S** employees to work under any agreement with the **Program** concerning this **Project**, the **ENGINEER/CONSTRUCTION MANAGER** shall obtain from them agreements satisfactory to **Program** 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/CONSTRUCTION MANAGER'S Seal, Responsibility and Warranties.**

**17.1 ENGINEER/CONSTRUCTION MANAGER'S Seal. The**

**ENGINEER/CONSTRUCTION MANAGER** 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 **Program** in accordance with the Texas Engineering Practice Act and the Rules of the State Board of Registration for Professional Engineers.

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

The **ENGINEER/CONSTRUCTION MANAGER'S** responsibility for all questions arising from design errors and/or omissions will be determined by the **Program** or a designee appointed by the **Program**. The **ENGINEER/CONSTRUCTION MANAGER** will not be relieved of the responsibility for subsequent correction of any such errors or omissions or for clarification of any ambiguities until after the construction phase of the **Project** has been completed.

**17.3 Warranties.**

(a) The **ENGINEER/CONSTRUCTION MANAGER** warrants that **ENGINEERING** design work performed by the **ENGINEER/CONSTRUCTION MANAGER** 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 **Program** and the **ENGINEER/CONSTRUCTION MANAGER** agree and acknowledge that the **Program** is entering into this Agreement in reliance on the **ENGINEER/CONSTRUCTION MANAGER'S**

experience and abilities with respect to performing the **ENGINEER/CONSTRUCTION MANAGER'S** services hereunder. The **ENGINEER/CONSTRUCTION MANAGER** accepts the relationship of trust and confidence established between it and the **Program** by this Agreement. The **ENGINEER/CONSTRUCTION MANAGER** covenants with the **Program** to use the **ENGINEER/CONSTRUCTION MANAGER'S** best efforts, skill, judgment and abilities to design the **Project** and to further the interests of the **Program** in accordance with the **Program's** requirements and procedures, in accordance with all professional standards, and in compliance with all applicable national, federal, state, Program and municipal laws, regulations, codes, ordinances, 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 services to be provided by the **ENGINEER/CONSTRUCTION MANAGER** for the **Project**, prior to the commencement of construction, the **ENGINEER/CONSTRUCTION MANAGER** shall certify in writing to the **Program** that the **PS&E** for the **Project**, and the improvements when built in accordance therewith, conform to all applicable governmental regulations, statutes and ordinances then in effect. The **ENGINEER/CONSTRUCTION MANAGER** represents covenants and agrees that there are no obligations, commitments or impediments of any kind that will limit or prevent performance of the **ENGINEER/CONSTRUCTION MANAGER'S** services.

(c) The **ENGINEER/CONSTRUCTION MANAGER** represents, covenants and agrees that all of **ENGINEER/CONSTRUCTION MANAGER'S** services to be furnished by the **ENGINEER/CONSTRUCTION MANAGER** 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/CONSTRUCTION MANAGERS** of similar experience, knowledge, skill and ability engaged in **ENGINEERING** practice throughout Texas under the same or similar circumstances involving the design and construction of **Project**.

(d) The **ENGINEER/CONSTRUCTION MANAGER** represents, covenants and agrees that the **ENGINEER/CONSTRUCTION MANAGER'S** special talent, training and experience cause the **ENGINEER/CONSTRUCTION MANAGER** to be the prime professional on the **Project**; that because of such talent and training, the **ENGINEER/CONSTRUCTION MANAGER** envisions the construction of the **Project** in its entirety and possesses the special skills which enable the **ENGINEER/CONSTRUCTION MANAGER** to recognize dangerous conditions that a reasonable, prudent **ENGINEER/CONSTRUCTION MANAGER** having such special skills could anticipate may arise from the proper use of the **Project** after acceptance by **Program**; and that the **ENGINEER/CONSTRUCTION MANAGER** recognizes that any commissioners, elected officials, employees and agents of the **Program**, plus residents and owners of property within the area affected by the **Project** are within a class of foreseeable persons who will be relying on the project being designed in a professional and safe manner.

(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/CONSTRUCTION MANAGER** for the **Project**, the **ENGINEER/CONSTRUCTION MANAGER** represents, covenants and agrees that the **PS&E** of the **Project** will be accurate and free from any material errors. The **ENGINEER/CONSTRUCTION MANAGER** 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/CONSTRUCTION MANAGER** for the **Project**; that the result of such **PS&E**, if built in accordance therewith, 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/CONSTRUCTION MANAGER'S** responsibilities as set forth herein shall at no time be in any way diminished by reason of any approval by the **Program** of any **PS&E** developed

by the **ENGINEER/CONSTRUCTION MANAGER** for the **Project**, nor shall the **ENGINEER/CONSTRUCTION MANAGER** be released from any liability by reason of such approval by the **Program**, it being understood that the **Program** at all times is ultimately relying upon the **ENGINEER/CONSTRUCTION MANAGER'S** skill and knowledge in preparing such **PS&E**.

(f) In connection with the **ENGINEER/CONSTRUCTION MANAGER'S** performance of procurement services hereunder, if any, the **ENGINEER/CONSTRUCTION MANAGER** use its best efforts to obtain from all vendors of equipment and materials, fullest possible warranties against defective materials and workmanship for the benefit of the **Program**.

**ARTICLE 18. ENGINEER/CONSTRUCTION MANAGER'S Resources.** The **ENGINEER/CONSTRUCTION MANAGER** shall furnish and maintain, at the **ENGINEER/CONSTRUCTION MANAGER'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 CONSTRUCTION MANAGER.** The **ENGINEER/CONSTRUCTION MANAGER** shall provide a manager ( **CONSTRUCTION MANAGER**) for the **Project** that is a registered professional **ENGINEER/CONSTRUCTION MANAGER** in the State of Texas. The **Construction Manager** shall have such knowledge and experience as will enable that **Construction Manager** during the course of the **Project** without prior consent of the **Program**. If, due to situations beyond the control of the **ENGINEER/CONSTRUCTION MANAGER**, the **ENGINEER/CONSTRUCTION MANAGER** must change the **Construction Manager** prior to the completion and acceptance of the **Project**, the **ENGINEER/CONSTRUCTION MANAGER** will submit a request to change the **Construction Manager** to the **Program** for approval.

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

**18.3 Documents/Information Exchange** The purpose of this Article is to define the required automated resources, format for graphics files, and information exchange pertaining to the **Project**. Taking into consideration that the **Program** has a significant investment in the development of the **Project**, there is a need for the **ENGINEER/CONSTRUCTION MANAGER** 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/CONSTRUCTION MANAGER** shall provide the **Program** 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/CONSTRUCTION MANAGER** and its agents, partners, subcontractors, and consultants (collectively "**Indemnitors**") shall and do agree to indemnify, and hold harmless the **Program**, the **Program'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/CONSTRUCTION MANAGER'S** services through

activities of the **ENGINEER/CONSTRUCTION MANAGER**, 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/CONSTRUCTION MANAGER** or of any person employed or contracted by the **ENGINEER/CONSTRUCTION MANAGER** provided that any such **Liabilities** (1) are attributable to bodily injury, personal injury, sickness, disease or death of any person, or to the injury to or destruction of tangible personal property including the loss of use and consequential damages resulting therefrom and (2) are caused in whole or in part by any negligent act or omission of the **ENGINEER/CONSTRUCTION MANAGER**, anyone directly or indirectly employed by the **ENGINEER/CONSTRUCTION MANAGER** or anyone for whose acts the **ENGINEER/CONSTRUCTION MANAGER** may be legally liable. The **ENGINEER/CONSTRUCTION MANAGER** shall also save harmless the **Program** from any and all expense, including but not limited to, attorney fees which may be incurred by the **Program** in litigation or otherwise resisting said claim or liabilities which may be imposed on the **Program** as a result of such activities by the **ENGINEER/CONSTRUCTION MANAGER**, its agents partners, subcontractors and/or consultants. In this connection, it is agreed and understood that the **ENGINEER/CONSTRUCTION MANAGER** shall not be responsible for any portion of the liability proximately caused by the **Program'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 **Program** or any of the **Indemnitees** has by law.

**ARTICLE 21. Insurance. The ENGINEER/CONSTRUCTION MANAGER**

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

The **ENGINEER/CONSTRUCTION MANAGER** covenants and agrees to maintain an insurance policy in the minimum limits of liability for each of the types of insurance coverage identified above. The **ENGINEER/CONSTRUCTION MANAGER** shall furnish the **Program** with a 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 Program Certificate of Insurance shall be attached hereto and identified as **EXHIBIT “C”-Certificate of Insurance**. The **ENGINEER/CONSTRUCTION MANAGER** will be considered in breach of contract should the **ENGINEER/CONSTRUCTION MANAGER** 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/CONSTRUCTION MANAGER** 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 **Program**.

**ARTICLE 22. Compliance with Laws.** The **ENGINEER/CONSTRUCTION MANAGER** 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, workers compensation laws, minimum and maximum salary and wage statutes and regulations and licensing laws and regulations. When required the **ENGINEER/CONSTRUCTION MANAGER** shall furnish the **Program** with satisfactory proof of its compliance therewith.

**ARTICLE 23. Non-Collusion.** The **ENGINEER/CONSTRUCTION MANAGER** warrants that the **ENGINEER/CONSTRUCTION MANAGER** has not employed or retained any company or persons, other than a bona fide employee working solely for the **ENGINEER/CONSTRUCTION MANAGER**, to solicit or secure this Agreement, and that the **ENGINEER/CONSTRUCTION MANAGER** has not paid or agreed to pay any company, **ENGINEER/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 **Program** shall have the right to annul this Agreement without liability or, in the **Program'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 **Program** mandates that employees of the **Program** shall not accept any benefits, gifts or favors from any person doing business or who reasonably

speaking may do business with the **Program** 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 **Program** under this Agreement may not make any offer of benefits, gifts or favors to **Program** employees, except as mentioned herein above. Failure on the part of the **ENGINEER/CONSTRUCTION MANAGER** to adhere to this provision may result in the termination of this Agreement.

**ARTICLE 25. Payment of Franchise Tax.** The **ENGINEER/CONSTRUCTION MANAGER** hereby certifies that the **ENGINEER/CONSTRUCTION MANAGER** is not delinquent in Texas franchise tax payments, or that the **ENGINEER/CONSTRUCTION MANAGER** is exempt from, or not subject to, such as tax. A false statement concerning franchise tax status shall constitute grounds for termination of the Agreement at the sole option of the **Program**.

**ARTICLE 26. Disputes.** The **ENGINEER/CONSTRUCTION MANAGER** shall be responsible for the settlement of all contractual and administrative issues arising out of any procurement made by the **ENGINEER/CONSTRUCTION MANAGER** in support of the services under this Agreement.

**ARTICLE 27. Severability.** In the event any one or more of the provisions contained in this Agreement shall for any reason, be held to be invalid, illegal, or unenforceable in any respect such invalidity, illegality or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

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

addresses:

**If to County:**           **Hidalgo County**  
**Attn: Richard Cortez, County Judge**  
**100 E. Cano, 2<sup>nd</sup> Floor**  
**Edinburg, Texas 78539**

**Copy To:**               **Hidalgo County Head Start Program**  
**Attn: Teresa Flores, Executive Program Director**  
**1901 W. State Hwy. 107**  
**McAllen, TX 78504**

**If to ENGINEER:**   **B2Z Engineering, LLC**  
**Attn: Aisha Gonzalez, President**  
**900 S. Stewart Suite 2**  
**Mission, TX 78572**

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/CONSTRUCTION MANAGER** and the **Program** 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 **Program** or the **ENGINEER/CONSTRUCTION MANAGER** 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 **Program** unless in writing and executed by an officer or employee of the **Program** specifically authorized to do so.

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

(d) No modification, waiver, termination, discharge or cancellation of this Agreement or of any terms thereof shall impair the **Program's** right with respect to any liabilities whether or not liquidated of the **ENGINEER/CONSTRUCTION MANAGER** to the **Program** theretofore accrued.

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

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

(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 **Program** and the **ENGINEER/CONSTRUCTION MANAGER** as provided by Article 8 herein.

**ARTICLE 30. Signatory Warranty** The undersigned signatory or signatories for the **ENGINEER/CONSTRUCTION MANAGER** 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/CONSTRUCTION MANAGER**. The above-stated representations and warranties are made for the purpose of inducing the **Program** to enter into this Agreement.

**ARTICLE 31. Commitment of Current Revenues Only.** In the event that, during any

term hereof, the Hidalgo County Head Start Program does not appropriate sufficient funds to meet the obligations of Program under this Agreement, Program may terminate this Agreement upon thirty (30) days written notice to ENGINEER/CONSTRUCTION MANAGER. Program agrees, however, to use reasonable efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of Program. **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 Program does not appropriate sufficient funds to meet the obligations of the Program under this agreement, Program may terminate the Agreement upon thirty (30) days written notice to ENGINEER/CONSTRUCTION MANAGER. Program 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 Program in accordance with Tex. Loc. Govt. Code §271.903 (Vernon Supp. 1966).

**ARTICLE 32. Entire Agreement.** This Agreement contains the entire agreement between the parties hereto, and each party acknowledges that neither has made (either directly or through any agent or representative) any representation or agreement in connection with this Agreement not specifically set forth herein. This Agreement may be modified or amended only by an agreement in writing executed by the parties hereto Hidalgo County Head Start Program and Commissioners' Court, and not otherwise.

**ARTICLE 33. Immunities.** Nothing in this Agreement is intended to and Program does not hereby waive, release or relinquish any right to assert any of the defenses Program enjoys by virtue of the state or federal constitution, laws, rules or regulations, and any

sovereign, official or qualified immunity available to Program as to any claim or action of any person, entity, or individual against Program.

**ARTICLE 34. Nondiscrimination:** Company, 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 Agreement/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 35. 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 36. 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, Program 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 37. 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.

**SIGNATURE PAGE TO FOLLOW**

REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK

WITNESS WHEREOF, the **CONSTRUCTION MANAGER** and the **COUNTY COMMISSIONERS' COURT** have caused this **Agreement for Professional Services** for **eight months** thereafter with effective date to be determined and a **Notice to Proceed** to be sent to **B2Z Engineering**.

*Approved by Commissioner's Court on \_\_\_\_\_.*

**CONSTRUCTION MANAGER**  
**FIRM NAME: B2Z Engineering**

\_\_\_\_\_  
Aisha Gonzalez, President  
B2Z Engineering, LLC

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

**HIDALGO COUNTY**  
**HEAD START PROGRAM**

\_\_\_\_\_  
Richard Cortez, County Judge  
County Judge

\_\_\_\_\_  
Teresa Flores  
Executive Program Director

**ATTEST:**

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

**APPROVED AS TO FORM**  
Office of the Criminal District Attorney-Civil Litigation Division

\_\_\_\_\_  
Victor Garza, Assistant District Attorney

**APPROVED AS TO FORM**  
Ricardo Gonzalez, P.C.  
Dbá Oxford and Gonzalez

\_\_\_\_\_  
Ricardo Gonzalez, Attorney

**ATTACHMENT:**  
**EXHIBIT C** - Certificate of Insurance (*Hidalgo County*)

# **EXHIBIT A**

## **EXHIBIT A**

### -Scope of Services to be provided by the Program

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

The **PROGRAM** will provide to the **ENGINEER/CONSTRUCTION MANAGER** the following:

- (1) Authorization to the **ENGINEER/CONSTRUCTION MANAGER** to begin work in accordance with Section 3 of this Agreement.
- (2) Payment for work performed by the **ENGINEER/CONSTRUCTION MANAGER** and accepted by the **PROGRAM** in accordance with Section 6 of the Agreement.
- (3) Assistance to the **ENGINEER/CONSTRUCTION MANAGER**, as necessary, to obtain the required data and information from other local, regional, State and Federal agencies that the **ENGINEER/CONSTRUCTION MANAGER** cannot easily obtain.
- (4) Provide any available relevant data the **PROGRAM** may have on file concerning the project.
- (5) Provide timely review and decisions in response to the **ENGINEER/CONSTRUCTION MANAGER'S** request for information and/or required submittals and deliverables, in order for the **ENGINEER/CONSTRUCTION MANAGER** to maintain the agreed-upon work schedule prepared.
- (6) Attend and participate in progress meetings as required and as coordinated and conducted by the **ENGINEER/CONSTRUCTION MANAGER**.
- (7) Assist the **ENGINEER/CONSTRUCTION MANAGER** the preparation of the project mailing list; provide representation, for all public meetings; additionally:

*Public Meetings*

- (a) Approve agenda and all exhibits prior to public meeting.
  - (b) Approve date and location of the meeting.
  - (c) Review/approve Public Meeting Report.
- (8) Review and approve change orders as required and prepared by the **ENGINEER/CONSTRUCTION MANAGER**.

Note: Protocol as per Head Start Federal Program Standards, Head Start Standards, Head Start Act and Bylaws requires that all Agreements, construction documents, processes, procedures and actions taken related to this construction project are subject to flow from Head Start Executive Director to the Policy Council and subsequently to the Commissioners' Court for appropriate action.

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**Hidalgo County Head Start Program  
Outdoor Learning Environments and Discovery Classrooms  
Facility Components: Scope of Work**

Facility	Square Footage	Structure Type	Number	Where Located	Other
1. Large Pavilion	7,000 Sq. Ft. Accommodates 200 children with 35 sq ft per child Increase size to accommodate storage and restrooms	Metal-enclosed overhanging doors	1	Entrance of area	<b>Storage Space-</b> for equipment <b>Restrooms</b> Adults- 5 stalls for women and 5 for men <b>Projection Screen</b> <b>Retractable Stage</b>
2. Pavilion/Outdoor Classroom Spaces	770 sq. ft. each to accommodate 22 children in each 30 x 30 Lavatories	Metal roof, Stained natural wood posts, trim West side wall shade Stamped concrete floor-wild life patterns Ceiling/Cooling Fans	7	As Indicated preliminary site map	Electricity Lavatory Drinking water fountain Closet
3. Learning Walls	8' length x 8' width	Wood post bulletin board w/plexi cover Wooden Framed- with stamped/carved/burned nature patterns 12" from ground Benches/railroad ties-seats for children 12" metal roof	7	Between each pavilion/classroom On outside of larger trail	
4. Walking Trails	Width: 6'	Crushed granite Concrete boarder on either side- stamped? Lighted	2	Concentric Center of area	One around custom design play structures; One around pavilion/classrooms

**EXHIBIT A**

<b>Facility</b>	<b>Square Footage</b>	<b>Structure Type</b>	<b>Number</b>	<b>Where Located</b>	<b>Other</b>
5. Instructional Play Area (Alternate)		Custom designed Animal Homes i.e., bird nest, hollow trunk, honey comb, beaver home, snail, home bird house, egg shell, rabbit hole, etc.	10 different structures	Center of area within first trail	Children should be able to climb in; with fall zones to Meet Child Care Licensing Standards
6. Rest Rooms		2 Buildings-air conditioned	Girls: 4 flushing units; 1 adult Boys: 2 urinals and 2 flushing units; 1 adult	One set of 10 on north side entrance; another on south side of facility	Meet Child Care Licensing Standards for at least 200 children-1 flushing unit per 17 children
7. Fencing		Privacy fence Plants – Bougainvilles	2 sides	West and north side	
8. Entrance Gate		Rod iron- "Majestic" gates with scrolls related to wildlife on cantera or stone columns			Small cascade on either side
9. Storage Areas	One unit 70' x 30' with 7 smaller closets/one per Pavilion/Classroom open to a hallway One open unit 20' x 30' with wide garage door and regular door	Climate controlled for smaller units	2 units	Next to or part of large pavilion in addition to the 7,000 sq. ft.	
10. Drinking Water Fountains Lavatories				At each small pavilion/classroom	

**EXHIBIT A**

<b>Facility</b>	<b>Square Footage</b>	<b>Structure Type</b>	<b>Number</b>	<b>Where Located</b>	<b>Other</b>
11. Landscaping to reflect variety of local species; child friendly; to attract birds, butterflies and other small wildlife		Divided in sections 8'x8' to facilitate maintenance Remove brush in specific areas	Throughout facility	Entire area save identified trees/shrubs/plants	Areas with redundant shrubs, plants, trees to be replaced local species Use list from Edinburg/Weslaco parks
12. Irrigation/Sprinkler system		For specified areas, bird baths, drip fountains			
13. Utilities		All covered areas will need electricity, water		All Areas	
14. Water and feeding areas for birds, butterflies and wildlife		Slow drip fountain feeders – custom made or purchased	7	Throughout the facility	
15. Water fall with small pond 2 Small cascades on either side of entrance gate		Stone/Custom made reservoir	1 2	Entrance	
16. Observation areas with protective walls at feeding/watering areas for bird/butterfly/or wildlife watching		Outdoor benches, stools behind a wall with cut out observation window	7	Throughout the facility	

08.17.2021 @ 7:56 am

# **EXHIBIT B**

# EXHIBIT B

## Scope of Services to be provided by the Engineer/Construction Manager

### SECTION I - PROJECT DESCRIPTION

The services designated herein as “Services provided by the ENGINEER/CONSTRUCTION MANAGER” shall include the performance of all services for the following described facility:

COUNTY/CITY: HIDALGO COUNTY

PROJECT/DESCRIPTION: Engineer/Construction Management Services for project specific – To Oversee and Supervise the Development and Construction of the Hidalgo County Head Start Program Outdoor Learning Environments and Discovery Classrooms Project as Approved by Hidalgo County Head Start Policy Council (07/21/2021) and Hidalgo County Commissioners’ Court (07/27/2021)

ENGINEER/CONSTRUCTION MANAGER shall mean B2Z Engineering.

COUNTY shall mean Hidalgo County

PROGRAM shall mean the Hidalgo County Head Start Program

EXECUTIVE DIRECTOR shall mean the Hidalgo County Head Start Program Executive Director

ARCHITECT shall mean The Warren Group (TWG)

CIVIL ENGINEER shall mean Hidalgo County Drainage District No. 1

CONSULTANTS shall mean any other Project Consultants retained by Hidalgo County Head Start Program as approved by the Hidalgo County Head Start Program Policy Council and subsequently by the Hidalgo County Commissioners’ Court

***Note: Protocol as per Head Start Federal Program Standards, Head Start Act and Bylaws, requires that all contracts, construction documents, processes, procedures and actions taken pertinent to this construction project are subject to flow from Head Start Executive Director to the Policy Council and subsequently to the Commissioners’ Court for appropriate action.***

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# EXHIBIT B

## Scope of Services to be provided by the Engineer/Construction Manager

### DESIGN PHASE SERVICES

#### Design Phase Services:

The ENGINEER/CONSTRUCTION MANAGER will provide Construction Management services for the design phase and support the development of scope of construction work to be included in design review and delivery of construction documents by the ARCHITECT. Activities to include:

#### Pre-Construction – Design:

- 1) Oversight of Architect & Design – Meetings (at a minimum monthly, or as needed) and Coordination with Core Design Team – to include ARCHITECT, CIVIL ENGINEER, CONSULTANTS, and EXECUTIVE PROGRAM DIRECTOR. Consultants include but are not limited to Surveyor, MEP Engineer, Structural Engineer, Landscape Architect, etc.
  - 2) Oversight of Architect & Design - Meetings and Coordination with other project consultants, Hidalgo County Purchasing Department, and Drainage District #1. This will include but is not limited to Geotechnical Engineer, Surveyor, Civil Engineer, County Vendor(s), etc.
  - 3) Assist the ARCHITECT with Design Schedule Adherence – The ENGINEER/CONSTRUCTION MANAGER will work with the ARCHITECT to coordinate and meet design milestone deadlines with the CIVIL ENGINEER and CONSULTANTS.
  - 4) Utility Coordination Upon Completion of Subdivision Plat – Provide utility coordination with the City of McAllen, McAllen Public Utility, Hidalgo County, TX DOT and Private Utility Companies during the design phase of the project to include the following:
    - a. Water
    - b. Sanitary Sewer / Septic Service
    - c. Electrical
    - d. Telephone / Data
  - 5) Monthly Progress Reports to Executive Director who will review and prepare for presentation to Head Start Policy Council and Commissioners’ Court respectively- Each month, B2Z will prepare a monthly report outlining the activities of the preceding month. The report will include, but not limited to, the following information as required by Hidalgo County:
    - a. Updated project information
    - b. Updated budget information
    - c. Updated schedule information
-

# **EXHIBIT B**

## **Scope of Services to be provided by the Engineer/Construction Manager**

### **CONSTRUCTION PHASE SERVICES**

#### **Construction Contract Bidding, Administration, and Inspection:**

The ENGINEER/CONSTRUCTION MANAGER will provide support services for and during the construction phase of the Project, or portions of the Project approved by the Policy County and Commissioners' Court and administered by the Executive Director. Specific services for CONSTRUCTION MANAGEMENT AND SUPPORT by the ENGINEER/CONSTRUCTION MANAGER will include the following:

#### **Construction Bidding:**

- 1) The ENGINEER/CONSTRUCTION MANAGER will assist the Executive Director and ARCHITECT with the needed procurement package based on the selected construction delivery method for the various aspects of this project. Executive Director will present packet for review and guidance by the County Purchasing Department for meeting state/federal bidding laws or guidelines before submitting to the Policy Council and Commissioners' Court for approval.
- 2) The ENGINEER/CONSTRUCTION MANAGER will make recommendations to the Executive Director during the design phase, as well as proper action on the final cost proposal received, and review the formal contract documents for the award of the construction contract. Executive Director will present documents to the Policy Council and the Commissioners' Court for action as appropriate.
- 3) The ENGINEER/CONSTRUCTION MANAGER will provide contractor outreach/pre-qualification services to promote a competitive bidding participation from potential qualified contractors. List of qualified contractors will be submitted to the Executive Director for review and guidance from the County Purchasing Department.
- 4) The ENGINEER/CONSTRUCTION MANAGER will attend the Pre-Request for Qualifications/Proposals (RFQ/P) Meeting conducted by the ARCHITECT. This meeting will also include Head Start Administrative Staff.
- 5) The ENGINEER/CONSTRUCTION MANAGER will be the receiver/coordinator of all bidding contractor questions during the bidding phase and consult with the Architect to formalize responses. Formalization of received questions and answers will be organized and provided to the Executive Director and to the Hidalgo County Purchasing Department distribution to all bidders.
- 6) The ENGINEER/CONSTRUCTION MANAGER will review the formal AIA contract documents prepared by the Architect and approved by the Head Start Policy Council and Commissioners' Court.
- 7) The ENGINEER/CONSTRUCTION MANAGER will assist the Hidalgo County Head Start Administrative Staff and Hidalgo County Purchasing Department Staff with the relevant information pertinent to conducting the grading, ranking, interview (optional) and selection of contractor.

#### **During Construction:**

- 1) In general, the ENGINEER/CONSTRUCTION MANAGER will provide the management support/data required for consultation and advisement to the Hidalgo County Head Start Program Administrative Staff and act as the PROGRAM'S representative as it relates to the various aspects of construction as provided in the General Condition of the Construction Agreement.
  - 2) The ENGINEER/CONSTRUCTION MANAGER will participate in the pre-construction conference as scheduled by the Architect.
-

# EXHIBIT B

## Scope of Services to be provided by the Engineer/Construction Manager

- 3) The ENGINEER/CONSTRUCTION MANAGER will coordinate with the Architect to secure any/all permits required for the PROJECT by the respective governing entities.
  - 4) Defects and Deficiencies. The ENGINEER/CONSTRUCTION MANAGER will use his best efforts to protect the Hidalgo County Head Start Project against defects and deficiencies in the work of the ARCHITECT, CIVIL ENGINEER, CONSULTANTS and Contractor. The CONSTRUCTION MANAGER will promptly notify the Executive Director of any such defect or deficiency, and take all steps possible to require the ARCHITECT, CIVIL ENGINEER, CONSULTANTS or Contractor to correct the defect or deficiency. The Engineer/Construction Manager will submit written report(s) of defects/deficiencies in the work of any and all Consultants secured for the Project to the Executive Director. Progress toward resolution of such defects/deficiencies will be tracked and submitted in a timely manner to insure notification of such to the Policy Council and the Commissioners' Court for appropriate action.
  - 5) Project Documentation. The ENGINEER/CONSTRUCTION MANAGER will review and manage the routing of applicable documents during the construction phase of the project between the contractor and the ARCHITECT, CIVIL ENGINEER and CONSULTANTS. Such documents will flow through the Executive Director's office to keep both the Policy Council and the Commissioners' Court informed as may be required. Project documentation will include, but is not limited to, the following:
    - a. Shop Drawings
    - b. Contractor Submittals
    - c. Requests for Information
    - d. CMT Reports
    - e. Construction Materials Samples
  - 6) Contractor Payment. The ENGINEER/CONSTRUCTION MANAGER will review quantities as submitted by the Contractor and will coordinate with the Architect prior to submittal to the Executive Director/Head Start Procurement Director for the preparation of the monthly and final estimates for payment to the Contractor. Any and all payments are subject to approval by the Policy Council and the Commissioners' Court.
  - 7) Change Orders. No change order will be initiated without full engagement of the Executive Director/Head Start Staff and the approval by Policy Council and the Commissioners' Court. If applicable, the ENGINEER/CONSTRUCTION MANAGER will review the architectural/engineering data, including plan sheet drawings, specifications, and estimates, for the preparation of construction agreement change orders, which may be required due to actual field conditions encountered or new requirements directed by the Office of Head Start or non-compliance with county, state or federal requirements for facilities/equipment to be used by Head Start children.
  - 8) The ENGINEER/CONSTRUCTION MANAGER will provide PROJECT site inspection of the authorized construction agreement as follows:
    - a) Project Manager(s). The ENGINEER/CONSTRUCTION MANAGER will provide periodic site visits by the Project Manager or a competent representative of the ENGINEER/CONSTRUCTION MANAGER to the site of construction for the purpose of monitoring the Contractor's progress and conformance to the construction agreement plans and specifications. The Engineer/Construction Manager will consult with the Architect to insure fidelity to the Project Design, Construction Documents, and overall progress to insure timeliness to set schedules.
    - b) Construction Inspector(s). The ENGINEER/CONSTRUCTION MANAGER will furnish the services of a Construction Inspector(s) for on the site inspection construction to monitor/inspect the Contractor's daily progress and conformance to project specifications. Reports to reflect site visits by Engineer/Construction Manager, inspectors, or representatives must be submitted to the Executive Director for action if required.
-

## **EXHIBIT B**

### **Scope of Services to be provided by the Engineer/Construction Manager**

#### **Post Construction:**

- 1) The ENGINEER/CONSTRUCTION MANAGER will provide the Head Start Administrative Staff with a 6 month and 11 month walk through and contractor follow-up to address any project deficiencies that may arise. Both Policy Council members and Commissioners' Court members will be invited to attend

#### **Miscellaneous Technical Activities:**

- 1) The ENGINEER/CONSTRUCTION MANAGER will coordinate various aspects of the project development component as directed by the Head Start Administrative Staff.
  - 2) The ENGINEER/CONSTRUCTION MANAGER will perform other various coordination tasks as directed by the Head Start Administrative Staff on an "On-Call" basis to push the project through various aspects of project development.
-

**Outdoor Learning and Discovery Classrooms Project**  
Hidalgo County Head Start Program

*Hidalgo County Head Start Program  
Outdoor Learning and Discovery Classrooms Project  
Construction Management Services*

		Project Manager	Construction Inspector	Admin/Clerical	Total Hours	Total Line Item Cost
<b>Design Phase Services</b>						
<b>Pre-Construction - Design</b>						
1	Monthly design review meetings (based on 4 months)	8	8	4	20	\$2,699.84
2	Coordinate Design Review with various consultants at 30%, 60%, 90% & Final.	16	16		32	\$4,854.72
3	Utility coordination with Hidalgo County, City of McAllen, TxDOT and any other related entity.	4	16		20	\$2,328.24
4	Consultation & Coordination with County Consultants (Geotech, Survey, CMT, etc.)	4	4		8	\$1,213.68
	<b>Subtotal Labor Hours</b>	<b>32</b>	<b>44</b>	<b>4</b>	<b>80</b>	<b>\$11,096.48</b>
<b>Construction Contract Bidding, Administration and Inspection</b>						
<b>Construction Bidding</b>						
1	Review and assist the architect with the preparation of procurement package/advertisement documents	8	4	4	16	\$2,328.32
2	Contractor outreach/Contractor pre-qualification	4			4	\$842.16
3	Attend the Pre-RFP Meeting	1	1		2	\$303.42
4	Coordinate and prepare responses to Contractor questions	4	4		8	\$1,213.68
5	Review of formal AIA contract documents for Contractor	4	4		8	\$1,213.68
6	Assist in the grading, ranking, interview (optional) and selection of Contractor	2	2		4	\$606.84
	<b>Subtotal Labor Hours</b>	<b>23</b>	<b>15</b>	<b>4</b>	<b>42</b>	<b>\$6,508.10</b>
<b>During Construction</b>						
1	Coordinate and conduct a Pre-Construction Conference (PCC)	6	4	4	14	\$1,907.24
2	Conduct monthly Owner/Architect/Contractor (OAC) Meetings	8	24	12	44	\$4,730.88
3	Permit Coordination		16	8	24	\$2,031.04
4	Daily/project site visits with field reports and photographs (based on 8 months)	16	480		496	\$47,951.04
5	Project documentation review/document control (shop drawings, submittals, CMT reports, samples, etc.)	40	80	40	160	\$18,576.80
6	Change order review, negotiation, and preparation	20	12	5	37	\$5,665.96
7	Review and verify contractor applications for payment	9	18	27	54	\$5,405.94
	<b>Subtotal Labor Hours</b>	<b>99</b>	<b>634</b>	<b>96</b>	<b>829</b>	<b>\$86,268.90</b>
<b>Post Construction</b>						
1	Conduct 6 and 11 month walk through and Contractor follow-up		8	4	12	\$1,015.52
	<b>Subtotal Labor Hours</b>		<b>8</b>	<b>4</b>	<b>12</b>	<b>\$1,015.52</b>
<b>Miscellaneous Technical Activities</b>						
1	Meetings and Coordination	30	30	10	70	\$9,783.80
	<b>Subtotal Labor Hours</b>	<b>30</b>	<b>30</b>	<b>10</b>	<b>70</b>	<b>\$9,783.80</b>
	<b>Total Labor Hours</b>	<b>184</b>	<b>731</b>	<b>118</b>	<b>1033</b>	
	Hourly Base Rates	\$ 68.00	\$ 30.00	\$ 22.00		
	Contract Rate FY2021	\$ 210.54	\$ 92.88	\$ 68.12		
	<b>Total Costs</b>	<b>\$ 38,739.36</b>	<b>\$ 67,895.28</b>	<b>\$ 8,038.16</b>		<b>\$114,672.80</b>
	Direct Expenses			\$ 2,208.00		
	Mileage: \$0.575/mile			\$		
	<b>B2Z Engineering Total Cost</b>					<b>\$116,880.80</b>

# EXHIBIT C



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

7/12/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> The Risk Specialty Group, LLC 675 Bering Dr, Ste. #175 Houston TX 77057	<b>CONTACT NAME:</b> Candi Carpenter <b>PHONE (A/C No. Ext):</b> 713-552-1900 <b>E-MAIL ADDRESS:</b> ccarpenter@riskspecialtygroup.com		<b>FAX (A/C, No):</b> 713-513-5411
	<b>INSURER(S) AFFORDING COVERAGE</b>		
<b>INSURED</b> B2Z Engineering, LLC P.O. Box 2724 McAllen TX 78502	B2ZENGI-01	<b>INSURER A :</b> The Travelers Indemnity of Ame	<b>NAIC #</b> 25666
		<b>INSURER B :</b> Travelers Property Casualty In	25674
		<b>INSURER C :</b> Hudson Insurance Company	25054
		<b>INSURER D :</b> The Phoenix Insurance Company	25623
		<b>INSURER E :</b>	
		<b>INSURER F :</b>	

**COVERAGES**

CERTIFICATE NUMBER: 2036075659

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Incl. Unmanned <input type="checkbox"/> Aircraft Liab. GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:			6807N737635	7/10/2021	7/10/2022	EACH OCCURRENCE	\$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 1,000,000
							MED EXP (Any one person)	\$ 5,000
							PERSONAL & ADV INJURY	\$ 1,000,000
							GENERAL AGGREGATE	\$ 2,000,000
							PRODUCTS - COMP/OP AGG	\$ 2,000,000
								\$
A	<input checked="" type="checkbox"/> <b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			BA9R235112	7/10/2021	7/10/2022	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
B	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			CUP1P237416	7/10/2021	7/10/2022	EACH OCCURRENCE	\$ 2,000,000
							AGGREGATE	\$ 2,000,000
								\$
D	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	UB7N741163	7/10/2021	7/10/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER	
							E.L. EACH ACCIDENT	\$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	\$ 1,000,000
C	Professional Liability including Pollution Liability (claims made)			PRB 06 19 111178	1/17/2021	1/17/2022	Each Claim Aggregate	2,000,000 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

**CERTIFICATE HOLDER****CANCELLATION**

Hidalgo County  
 2812 S Business Hwy 281  
 Edinburg TX 78539

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



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