



DeWight Dopslauf, C.P.M., CPPO
Harris County Purchasing Agent

September 02, 2021

Commissioners Court
Harris County, Texas

RE: Sole Source Exemption - Local Government Code § 262.204 (a)(7)

Members of Commissioners Court:

Please approve a sole source exemption from the competitive bid requirements and the attached Order authorizing the County Judge to execute the attached Agreement for the following:

Description: Capital Improvement Project Management and Tracking Software System (CAPTRAC) Software as a Service (SaaS) Manage-IT Module for the Harris County Toll Road Authority

Vendor(s): Atser Systems, Inc.

Term: September 14, 2021 - September 13, 2026

Amount: \$7,802,500

Reviewed By: • Harris County Purchasing • Toll Road Authority

The Office of the Harris County Purchasing Agent has confirmed the sole source exemption. Purchase order(s) will be issued upon Commissioners Court approval.

Sincerely,

DeWight Dopslauf
Purchasing Agent

JP
Attachment(s)
cc: Vendor(s)

FOR INCLUSION ON COMMISSIONERS COURT AGENDA SEPTEMBER 14, 2021

AGREEMENT BETWEEN HARRIS COUNTY AND
ATSER SYSTEMS, INC.

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

THIS SOFTWARE AS A SERVICE (SaaS) AGREEMENT is made, entered into and executed by and between HARRIS COUNTY, a body corporate and politic under the laws of the State of Texas, hereinafter called "County", acting herein by and for the HARRIS COUNTY TOLL ROAD AUTHORITY (HCTRA), and ATSER SYSTEMS, INC., hereinafter called "ATSER".

WITNESSETH:

WHEREAS, ATSER has provided HCTRA with software support, customized software services, and off-site hosting services for the Construct-IT™ (v5), Track-IT™(v3), and Assure-IT™ (v6) modules of the Capital Improvement Project Management and Tracking Software scheduled to expire January 8, 2021, and HCTRA wishes to enter a new agreement with ATSER for those services under a SaaS (Software as a Service) Agreement to provide it with the most current licensed version of the software and in accordance with the terms herein stated;

WHEREAS, ATSER has represented to the County that it is qualified and prepared to perform all of the services described in this Agreement; and

WHEREAS, ATSER has been designated as a sole source pursuant to Tex. Loc. Gov. Code, Chapter 262 and this Agreement is exempt from the competitive bidding laws.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

1. Scope of Services

- a. ATSER shall provide HCTRA with user licenses for the number of Named Users set forth in Table 1 and defined below, for ATSER's suite of new license software products known as Manage-IT™ 2020 which includes functionality for project record keeping, electronic drawings, planning, design and construction management, workmanship progress, workmanship inspection, construction materials management and compliance, including, but not limited to, the Draw-IT™, Construct-IT™, Track-IT™, and Assure-IT™ modules (collectively, the "Software"), customized to meet the needs of HCTRA, in order to provide a computerized program for managing and tracking HCTRA capital improvement projects acceptable to HCTRA. ATSER will provide HCTRA with Software version updates and/or upgrades as they are released as part of this SaaS agreement. Named Users are defined as HCTRA employees, consultants, contractors, and subcontractors that have registered with ATSER and have been issued a license

to use the Software in accordance with the limits set forth in Table 1. The Software shall be accessible via a web interface. The Software shall have a minimum 99% availability to users, with supporting documentation subject to verification by HCTRA. Any faults in the Software impacting accessibility by Users shall be identified and remedied within 4 hours.

- b. ATSER shall provide all 3rd party programs (including licenses) necessary to support the Software. ATSER shall update, patch, and upgrade the 3rd party programs as necessary in order to ensure the Software operates as intended. There shall be no additional payment made for the purchasing, updating, patching, and upgrading of any necessary 3rd party programs.
- c. ATSER shall provide and maintain the IT Infrastructure including all necessary 3rd party programs necessary for HCTRA to access and use the Software to enable it to manage and track its capital improvement projects. No additional charges shall be allowed for modifications to the Software required to ensure the Software performs as expected with a new hardware configuration. ATSER shall provide any replacement parts needed due to any type of hardware malfunction. ATSER shall provide hardware updates and upgrades as necessary to maintain the performance of the Software during peak usage. There shall be no additional payment made for the purchasing, updating, upgrading, or repairing of the IT infrastructure.
- d. ATSER is responsible for the hosting services for the IT infrastructure as part of the SaaS agreement. ATSER shall provide hosting services for the IT infrastructure. The IT infrastructure shall be installed and made operational at an ANSI/TIA-942-rated Tier 4 data center. There shall be no additional payment made for providing hosting services or increases in the cost of hosting services over the life of the contract.
- e. ATSER shall also provide technical and maintenance support services, 24-hour email support services, telephone support services during normal business hours (8am – 5pm), site visits as necessary, error correction, all updates and upgrades to the Software, compatibility checks with all updates and upgrades to related software, patches, technical support, Help Desk support, upgrades to the Operating System and existing CIP modules, and correction of “bugs” or anomalies that may occur.
- f. ATSER shall provide data migration services for existing HCTRA project data so that the data may be accessed as proposed and approved by HCTRA. Project data shall be migrated on a per-project basis based on direction from HCTRA. Project data to be migrated shall include (but not be limited to), Daily Reports (including pictures and uploaded documents), Requests for Information, Submittals, Change Orders, Pay Estimates, Contract Information, Schedules, Proposals, Changes in Contract, and Bid Items. ATSER shall be paid on a per-project basis for project data migrated after confirmation that the data are accessible and usable as

approved by HCTRA. Projects that are created within the Software under this Agreement shall have their data migrated to future versions of the Software at no additional cost to HCTRA. Only projects created prior to the execution of this Agreement shall be subject to compensation for data migration.

ATSER shall also provide customized software services for HCTRA workflow and other features at the rates outlined in Table 5.

Rates identified within Table 5 will be increased X% (Not to exceed 4%) starting on the 1st day of the month after each anniversary date of the County Judge's execution of this contract. X% will be the average of the prior 12+ month period using the last six recorded adjustments in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for the Houston-The Woodlands-Sugar Land, TX area as given by the United States Department of Labor, Bureau of Labor Statistics. This index is calculated every other month and is not seasonally adjusted. The average X% will be rounded to the first digit to the right of the decimal. Example 3.25% will be 3.3% and 3.24% will be 3.2%. Rates added or changed by amendment after initial approval of the contract will fall under the original annual adjustment criteria above for consistency.

Customization work shall be conducted only when requested in writing by HCTRA's designee. Work performed without written authorization shall be at the expense of ATSER. ATSER shall proceed diligently to complete all requested services. ATSER shall submit to HCTRA a statement for services rendered in a form acceptable to the Harris County Auditor and shall include such detail of the services and expenses as may be requested by the County Auditor for verification purposes. The statement shall at a minimum include a description of the services, the day or days and the time or times during the day or days that ATSER performed the services, and the total amount billed for services and expenses.

Developer retains all ownership rights to SaaS development, work for hire, adaptations and/or software customizations to accommodate HCTRA. In exchange for the Developer retaining all ownership rights to software, modifications, customizations and any changes to code, ATSER agrees to a compensate HCTRA with Royalty Fee which will be satisfied by a sixty-five (\$65.00) discounted hourly rate (from \$240.00 to \$175.00 for Senior Developer and \$175.00 to \$105.00 for Developer) for each hour of Developer time incurred to perform requested customization up to the not-to-exceed customization budget limit of \$225,000.00 less the discount. Extended, this ONE TIME DISCOUNT is ATSER's only Royalty Fee and is equivalent to \$60,937.50. Royalty Fee shall be applied to each customization paid by HCTRA.

- g. ATSER shall provide Software User training, training material and online User Manual and shall update the material and manuals as necessary. The User training will be conducted via on premise and/or off premise webinars or as directed by HCTRA.

2. Term

This Agreement shall be effective beginning September 14, 2021, and shall terminate on September 13, 2026 (initial term).

3. County's Option to Terminate

The County has the right to terminate this Agreement at its sole option at any time, with or without cause, by providing written notice of such intention to terminate and by stating in said notice the "Termination Date." Upon being provided written notice of intention to terminate, ATSER shall provide HCTRA the most recent back-up of HCTRA's data. HCTRA will instruct ATSER, by written certification, as to the format and method acceptable for the return of HCTRA data. No termination of this Agreement shall have the effect of terminating ATSER's obligations under Sections 5 (Compliance & Standards) or 8 (Indemnity).

4. Compensation and Payment. Tables 1, 2, 3, and 4 provide compensation and payment details.

- a. County agrees to pay and ATSER agrees to accept as full and sufficient compensation \$7,802,500.00 for the initial five (5) year SaaS Agreement that includes Software, 3rd party programs (including licenses), hosting services, and maintenance services as outlined in Section 1. Scope of Services, a., b., d., and e. above for the duration of the term as outlined in Section 2. Term above. County shall pay ATSER subscription fees on a monthly basis in arrears of services rendered. .
- b. The County agrees to pay and ATSER agrees to accept as full sufficient compensation up to \$300,000.00 for User training, training materials and on-line User's manuals as outlined in Section 1. Scope of Services, h. Training shall be invoiced at the rates as outlined in Table 5.
- c. County agrees to pay and ATSER agrees to accept as full and sufficient compensation for data migration services as outlined in Section 1. Scope of Services, f according to Table 2.
- d. County agrees to pay and ATSER agrees to accept as full and sufficient compensation up to \$225,000.00 for software customization services as outlined in Section 1. Scope of Services, g. ATSER shall submit an invoice for payment upon the completion of the software customization services requested by HCTRA by rates as outlined in Table 3.

5. Compliance and Standards

ATSER agrees to perform the services hereunder in accordance with generally accepted standards applicable thereto and shall comply with all applicable state, federal, and local laws, ordinances, rules and regulations relating to the services performed hereunder. ATSER shall not access any information which it is not authorized to receive, and under no circumstances shall ATSER at any time, during the term of this Agreement or thereafter, release or divulge any confidential material, information or documents received during the performance of the services hereunder without the express written consent of the County, nor shall ATSER copy, recreate or use any such confidential information or documents other than for the performance of this Agreement. ATSER shall not divulge or otherwise make use of the trade secrets or other confidential information, procedures, or policies of any former employer, contractor, client, customer or consultant in the exercise of duties under this Agreement. ATSER shall not copy, recreate, or use any proprietary information of any third party in the performance of services under this Agreement except to the extent authorized by such third parties.

6. Ownership of Data

Any data, documents, information, plans, reports, computations, and other records furnished by or on behalf of HCTRA (including all County employees, consultants, contractors, subcontractors, etc.) to ATSER via the Software or otherwise pursuant to this Agreement and any results of processing HCTRA's data or derived in any way from HCTRA's data shall at all times remain the property of HCTRA.

7. Limit of Appropriation

- a. ATSER clearly understand and agrees, such understanding and agreement being of the absolute essence to this Agreement, that County shall have available the total maximum sum of \$7,802,500.00 specifically allocated to fully discharge any and all liabilities incurred by County pursuant to the terms of this Agreement, and that the total maximum compensation ATSER may become entitled to hereunder and the total maximum sum County shall become liable to pay to ATSER hereunder, shall not under any conditions, circumstances, or interpretations hereof exceed the said total maximum sum provided for in this Section and certified as available therefor by the County Auditor as evidenced by the issuance of a purchase order from the Harris County Purchasing Agent.
- b. ATSER understands and agrees that it shall not proceed with any services until it receives written authorization from HCTRA to begin. If at any time during the course of the Agreement, ATSER knows that the funds available will not cover the cost of the services, ATSER shall notify HCTRA immediately.
- c. County shall pay each undisputed invoice in accordance with Texas state law, subject at all times to the County's right to withhold payment of any questionable charges. In addition, the County reserves the right, at its sole discretion, at any time to proceed as provided in Paragraph 3, above, to cancel this Agreement and

in the event of such cancellation, ATSER shall not be entitled to any payment that is not earned, nor have any claim for compensation or damages resulting from such cancellation..

8. Indemnification

ATSER shall at its own expense defend all suits or proceedings instituted against the County, its officers, agents, or employees based upon any claim that the Software or designs provided hereunder or any part thereof or process intended to be performed thereby, constitutes an infringement of any patent, copyright, trade secret or other proprietary right, or based upon any claim of whatever nature resulting from an intentional or negligent act of ATSER in the performance of services hereunder. Furthermore, ATSER will pay all awards or damages assessed against the County, its officers, agents or employees in connection with any such claim, suit or proceeding, or pursuant to any compromise thereof approved by ATSER, provided that the County, promptly upon service of process against it, gives to ATSER notice in writing, including facsimile, of such suit or proceeding and permits ATSER, through counsel chosen by it and satisfactory to the Harris County Attorney, to defend the same. The County shall give ATSER all needed information, assistance, and authority to enable Consultant to provide the defense described herein. County shall have the right to be independently represented by counsel of its own choice in connection with any such suit or proceeding. If, in any such suit a restraining order or temporary injunction is granted, ATSER will make every reasonable effort to give a satisfactory bond or otherwise to secure the suspension of any such restraining order or temporary injunction.

9. Delivery of Notices, Etc.

All written notices, demands, and other papers or documents to be delivered to the County under this Agreement shall be delivered to Harris County at the following address:

Harris County Toll Road Authority, 7701 Wilshire Place Drive, Houston, Texas 77040, Attention: Executive Director.

A copy shall be provided to: Harris County Purchasing Agent, 1001 Preston, Suite 670, Houston, Texas 77002, Attention: Juanita Patterson.

All written notices, demands, and other papers or documents to be delivered to the ATSER under this Agreement shall be delivered to the following address, or at such other place or places as ATSER may designate by written notice delivered to the County:

ATSER Systems, Inc., 1150 Richcrest, Houston, Texas 77060, Attention: Dr. Fred Martinez, CEO.

10. Captions Not a Part Hereof

The captions or subtitles of the several sections and divisions of this Agreement constitute no part of the content hereof, but are only labels to assist in locating and reading the provisions hereof.

11. Controlling Law, Venue

This Agreement shall be governed and construed in accordance with the laws of the State of Texas. This agreement shall be performed entirely in Harris County, Texas and the parties hereto acknowledge that venue is proper in Harris County, Texas, for all disputes arising hereunder and waive the right to sue or be sued elsewhere.

12. Successors and Assigns

The County and ATSER bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of the other party, in respect to all covenants of this Agreement.

13. Independent Contractor

Notwithstanding any provision of this Agreement, ATSER shall at all times act as an independent contractor, and not as an employee or agent of the County, and ATSER shall be responsible for the means and methods employed in performing services hereunder.

14. Merger

This represents the entire agreement between ATSER and the County and it supersedes all other oral, written or electronic communications between the parties concerning the subject matter thereof, and shall be binding on and inure to the benefit of the parties and their respective successor and permitted assigns.

15. Warranties

ATSER warrants that the suite of software products made the subject of this Agreement will substantially perform the functions described in ATSER's documentation, and that ATSER has sufficient rights and interest in the suite of software products to grant the rights herein to the County.

16. Publicity

ATSER shall not use the name of the County or the HCTRA, in part or whole, or any of their trademarks or trade names of the other without the County's prior written approval. Notwithstanding the foregoing, County consents to ATSER's use of County's name and a general description of the services to be performed by ATSER under this Agreement in resumes and confidential communications.

17. Additional Representations

Consultant represents and certifies that, at the time of execution of this Agreement, Consultant (including any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same) is not listed by the Texas Comptroller of Public Accounts pursuant to Chapters 2252 or 2270 of the Texas Government Code, nor will Company engage in scrutinized business operations or other business practices that would cause it to be listed during the term of this Agreement.

[SIGNATURE PAGE FOLLOWS]

ATSER SYSTEMS, INC

By: D. [Signature]
Name: Daniel D. [Signature]
Title: CEO
Date: August 26, 2021

HARRIS COUNTY

By:

LINA HIDALGO
COUNTY JUDGE
APPROVED AS TO FORM:
CHRISTIAN MENEFEE
COUNTY ATTORNEY

By: Marcy Linebarger

Digitally signed by Marcy Linebarger
DN: cn=Marcy Linebarger, o=ou,
email=marcy.linebarger@hctxa.org, c=US
Date: 2021.09.02 10:56:51 -05'00'

Marcy Linebarger
Assistant County Attorney

Table 1. SaaS Manage-IT™ Subscription Fee and Payment Schedule

Product	Description	Period, Years	Monthly Fee Amount	Payment Terms
Manage-IT™ Subscription	Unlimited HCTRA Users and Projects	1-5	\$ 99,000.00	Due for the first month within 30 days after approval of this Agreement by Harris County Commissioner Court. All others due within 30 days after payment approval by Harris County Commissioner Court.

Table 2. Data Migration

Service	Description	Project Size	Fee Amount per Project	Payment Terms
Data Migration	Migration on a Per Project Basis from 2015 Hosting Environment to 2021 Hosting Environment	More than \$20 Million Construction Budget		Invoiced Monthly for migrations completed and due within 30 days after payment approval by Harris County Commissioner Court.
		Less than \$20 Million Construction Budget	\$10,000.00	Invoiced Monthly for migrations completed and due within 30 days after payment approval by Harris County Commissioner Court.
			\$2,500.00	

Table 3. Customization Requests

Service	Description	Period	Fee Amount	Payment Terms
Customization	Customization As-Needed	Approved Budget \$225,000.00	Based on Table 5 Professional Rates	Invoiced Monthly against approved budget until exhausted and due within 30 days after payment approval by Harris County Commissioner Court.

Table 4. User Training

Service	Description	Period	Fee Amount	Payment Terms
User Training	Includes: Training Materials, Preparation of On-line User Material and Onsite and Offsite Training	Approved Budget \$300,000.00	Based on Table 5 Professional Rates	Invoiced Monthly against approved budget until exhausted and due within 30 days after payment approval by Harris County Commissioner Court.

Table 5. Professional Rates

Role	Rate
Principal Engineer	\$250.00
Senior Systems Engineer	\$205.00
Systems Engineer	\$165.00
Senior Developer	\$240.00
Developer	\$175.00
Senior DBA	\$185.00
Document Control Manager	\$164.61
IT Help Desk (Level 4)	\$175.00
IT Help Desk (Level 2)	\$165.00
Network Administrator	\$135.00
Website Content Manager	\$110.00
Administration	\$70.00

ORDER OF COMMISSIONERS COURT
Authorizing an Agreement with the State of Texas and the Grand Parkway
Transportation Corporation

The Commissioners Court of Harris County, Texas, met in regular session at its regular term at the Harris County Administration Building in the City of Houston, Texas, on _____, with all members present except _____.

A quorum was present. Among other business, the following was transacted:

ORDER AUTHORIZING AN AGREEMENT WITH THE ATSER SYSTEMS, INC. FOR
CAPITAL IMPROVEMENT PROJECT MANAGEMENT AND TRACKING SOFTWARE
SYSTEM (CAPTRAC) SOFTWARE as a SERVICE (SaaS) for MANAGE-IT

Commissioner _____ introduced an order and moved that Commissioners Court adopt the order. Commissioner _____ seconded the motion for adoption of the order. The motion, carrying with it the adoption of the order, prevailed by the following vote:

	Yes	No	Abstain
Judge Lina Hidalgo	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Rodney Ellis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Adrian Garcia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Steve Radack	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. R. Jack Cagle	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The County Judge thereupon announced that the motion had duly and lawfully carried and that the order had been duly and lawfully adopted. The order adopted follows:

IT IS ORDERED that:

1. The Harris County Judge is authorized to execute on behalf of Harris County an agreement with the Atser Systems, Inc to provide Capital Improvement Project Management and Tracking Software System (CAPTRAC) Software as a Service (Saas) For Manage-It. The Agreement is incorporated by reference and made a part of this order for all intents and purposes as though set out in full word for word.
2. All Harris County officials and employees are authorized to do any and all things necessary or convenient to accomplish the purposes of this order.