

**AMENDMENT NO. 2 TO AGREEMENT FOR PROFESSIONAL SERVICES
(Engineering Consulting Services)**

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

THIS AMENDMENT NO. 2 TO AGREEMENT is made, entered into, and executed by and between the **Harris County Flood Control District**, a body corporate and politic under the laws of the State of Texas, hereinafter called "District," and **Atkins North America, Inc.**, a Florida corporation, hereinafter called "Engineer."

WITNESSETH, THAT

WHEREAS, on or about February 26, 2019, the District and the Engineer entered into an Agreement for Professional Services to provide engineering services to augment the District's staff for the 2018 bond program scheduling and systems integration for project controls (the "Agreement"); and

WHEREAS, the District and the Engineer previously amended the Agreement, on September 10, 2019, to provide for additional engineering services to be performed by Engineer and additional compensation to be paid to Engineer; and

WHEREAS, the District requires additional engineering services as provided under Section I, Character and Extent of Services, and under Appendix A of the Agreement; and

WHEREAS, the Engineer is willing to provide the necessary additional engineering services for further consideration; and

WHEREAS, the District and the Engineer now desire to increase the Limit of Appropriation by \$990,000.00, to \$5,189,010.00.

NOW, THEREFORE, the District and the Engineer, in consideration of the mutual covenants and agreements herein contained, do mutually agree as follows:

SECTION II of the Agreement, entitled, "Term and Renewals," as amended and now reading:

The term of this Agreement shall be for a period beginning upon execution of this Agreement by the parties and remain in full force and effect for five years, unless earlier terminated in accordance with the terms of this Agreement.

Either party may terminate this Agreement in its entirety or any portion of the services set forth herein with sixty (60) calendar days' prior written notice to the other party. Upon receipt of such notice, the Engineer must discontinue all services no longer desired and proceed to promptly cancel all existing order and contracts chargeable to this Agreement for the terminated services. As soon as practicable after receipt or delivery of notice of termination, the Engineer must submit a statement to the District showing in detail the services performed to the date of termination. The Engineer will be paid for services performed from the date of notice of termination to the date of termination. The Engineer will be paid for services performed up to the date of termination.

is hereby amended to read:

The term of this Agreement shall be for a period beginning upon execution of this Agreement by the parties and remain in full force and effect for six years, unless earlier terminated in accordance with the terms of this Agreement.

Either party may terminate this Agreement in its entirety or any portion of the services set forth herein with sixty (60) calendar days' prior written notice to the other party. Upon receipt of such notice, the Engineer must discontinue all services no longer desired and proceed to promptly cancel all existing order and contracts chargeable to this Agreement for the terminated services. As soon as practicable after receipt or delivery of notice of termination, the Engineer must submit a statement to the District showing in detail the services performed to the date of termination. The Engineer will be paid for services performed from the date of notice of termination to the date of termination. The Engineer will be paid for services performed up to the date of termination.

SECTION III of the Agreement, entitled, "Limit of Appropriation," as amended and now reading:

The District shall have available a total maximum sum of \$4,199,010.00 to pay its obligations under this Agreement as certified as available by the County Auditor as evidenced by the issuance of purchase orders from the Harris County Purchasing Agent. The Engineer understands the \$4,199,010.00 is not guaranteed and is subject to the District encumbering funds through purchase order and a written authorization as specified under Section IV of this Agreement. The yearly amount owed to the Engineer for payment of all services performed by the Engineer may be subject to up to a 3 percent annual increase in hourly wages at the discretion of the District. The District will appropriate funds for use by the Engineer through the issuance of purchase orders by the Harris County Purchasing Agent. The total amount of funds that can be certified without amendment to this Agreement shall not exceed \$4,199,010.00.

The Engineer understands and agrees, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that the Engineer may become entitled to hereunder, and the total maximum sum that the District shall become liable to pay to the Engineer hereunder, shall not under any conditions, circumstances, or interpretations thereof exceed the sum approved for payment in each purchase order. Notwithstanding anything to the contrary, or that may be construed to the contrary, the District's liability under the terms and provisions of this Agreement is limited to this sum; and that when all the funds so certified are expended, the Engineer's sole and exclusive remedy shall be to terminate this Agreement.

is hereby amended to read:

The District shall have available a total maximum sum of \$5,189,010.00 to pay its obligations under this Agreement as certified as available by the County Auditor as evidenced by the issuance of purchase orders from the Harris County Purchasing Agent. The Engineer understands the \$5,189,010.00 is not guaranteed and is subject to the District encumbering funds through purchase order and a written authorization as specified under Section IV of this Agreement. The yearly amount owed to the Engineer for payment of all services performed by the Engineer may be subject to up to a 3 percent annual increase in hourly wages at the discretion of the District. The District will appropriate funds for use by the Engineer through the issuance of purchase orders by the Harris County Purchasing Agent. The total amount of funds that can be certified without amendment to this Agreement shall not exceed \$5,189,010.00.

The Engineer understands and agrees, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that the Engineer may become entitled to hereunder, and the total maximum sum that the District shall become liable to pay to the Engineer hereunder, shall not under any conditions, circumstances, or interpretations thereof exceed the sum approved for payment in each purchase order. Notwithstanding anything to the contrary, or that may be construed to the contrary, the District's liability under the terms and provisions of this Agreement is limited to this sum; and that when all the funds so certified are expended, the Engineer's sole and exclusive remedy shall be to terminate this Agreement.

SECTION VIII of the Agreement, entitled, "Personnel," as amended and now reading:

The Engineer shall be solely responsible for all employment and personnel performing services for the District under this Agreement (including wrongful termination, discrimination, etc.) and all claims arising out of personal injuries or property damage occurring on the job caused by or to its employees or personnel or to professional equipment or personal property, except to the extent any such injuries were caused by the gross negligence of the District, its officer, employees or agents.

Employees of the Engineer working at District offices shall abide by all District personnel policies, including the dress code and use of District's computers, as found in the Harris County and Harris County Flood Control District Personnel Policies and Procedures latest version, which can be found at https://hrrm.harriscountytexas.gov/Documents/Harris%20County%20Personnel%20Policies%20%20Procedures_062619.pdf.

The Engineer understands and agrees that its employees are not entitled to any District personnel benefits.

The Engineer agrees to provide and warrants that all the Engineer personnel assigned to District facilities shall meet the position skills and requirements for the general duties required to carry out the Engineer's obligation under this Agreement. Upon notification by the District, the Engineer shall immediately remove from assignment to this Agreement any employee subsequently found, in the District's sole discretion, to be in violation of said requirements.

The District has the absolute and continuing right, with or without cause, to reject the assignment of any member of the Engineer's management or staff or any agent or representative of the Engineer under this Agreement.

The Engineer shall immediately give written notice to the District of any complaints regarding the conduct of the Engineer's employees on District premises or any employees subsequently removed from assignment to the District.

The Engineer shall obtain a criminal history record on all the Engineer personnel who provide services at a District facility. The Engineer warrants and represents that it will not assign any person who fails or refuses to provide information necessary to obtain a criminal background history or whose criminal record information reveals a conviction or deferred adjudication that renders the person unqualified or unsuitable for assignment to the District. The parties agree that the District, in its sole discretion, may determine it is not in the District's best interest to allow one or more of the Engineer's personnel to continue to work at a District location under this Agreement.

The District may also conduct its own criminal activity background checks of the Engineer's employees at the District's own expense. Upon request, the Engineer will obtain the consent of such employees authorizing the District or an authorized vendor to conduct such criminal activity background checks. Employees who do not consent shall not perform services under this Agreement.

Overtime for the Engineer's staff must be approved by the Director prior to the overtime being worked.

All vacation/paid time off/planned sick leave/other types of time off work must be approved a minimum of two weeks in advance of the time off by the Director. The Engineer shall provide replacement personnel approved by the District as required.

The Engineer's staff shall call in any unplanned sick leave to the department the Engineer's staff is working with before the start of the work shift.

The Engineer's staff will be required to take a lunch break of at least ½ hour if working an 8-hour day or longer. Exceptions must be approved in advance by the Director. This time will not be charged to the District.

Each of the Engineer's staff shall turn into the District a weekly timesheet each Monday morning. Timesheets will be compared with the invoice time charged to the District. In the event that the Engineer's staff is not at work on a Monday morning, it must be turned in on the first day back to work.

The Engineer's staff will work during typical business office hours Monday through Friday in accordance with direction from the District. Work shifts may be staggered and adjusted to meet day, night and weekend work requirements and minimize overtime as directed by the District. The District will not pay the Engineer's staff for work performed on County holidays.

The Engineer understands and agrees that no current, non-retiring District employee hired by the Engineer during the course of this Agreement, shall work on any District projects for 24 months from the date they terminate their employment with the District.

is hereby amended to read:

The Engineer shall be solely responsible for all employment and personnel performing services for the District under this Agreement (including wrongful termination, discrimination, etc.) and all claims arising out of personal injuries or property damage occurring on the job caused by or to its employees or personnel or to professional equipment or personal property, except to the extent any such injuries were caused by the gross negligence of the District, its officer, employees or agents.

Employees of the Engineer working at District offices or working for the District remotely shall abide by all District personnel policies, including the dress code and use of District's computers, as found in the Harris County and Harris County Flood Control District Personnel Policies and Procedures latest version, which can be found at <https://hrrm.harriscountytexas.gov/Documents/Personnel%20Policies%20and%20Procedures%20Handbook.pdf>.

The Engineer understands and agrees that its employees are not entitled to any District personnel benefits.

The Engineer agrees to provide and warrants that all the Engineer personnel assigned to District facilities shall meet the position skills and requirements for the general duties required to carry out the Engineer's obligation under this Agreement. Upon notification by the District, the Engineer shall immediately remove from assignment to this Agreement any employee subsequently found, in the District's sole discretion, to be in violation of said requirements.

The District has the absolute and continuing right, with or without cause, to reject the assignment of any member of the Engineer's management or staff or any agent or representative of the Engineer under this Agreement.

The Engineer shall immediately give written notice to the District of any complaints regarding the conduct of the Engineer's employees on District premises or any employees subsequently removed from assignment to the District.

The Engineer shall obtain a criminal history record on all the Engineer personnel who provide services at a District facility or are working for the District remotely. The Engineer warrants and represents that it will not assign any person who fails or refuses to provide information necessary to obtain a criminal background history or whose criminal record information reveals a conviction or deferred adjudication that renders the person unqualified or unsuitable for assignment to the District. The parties agree that the District, in its sole discretion, may determine it is not in the District's best interest to allow one or more of the Engineer's personnel to continue to work at a District location under this Agreement.

The District may also conduct its own criminal activity background checks of the Engineer's employees at the District's own expense. Upon request, the Engineer will obtain the consent of such employees authorizing the District or an authorized vendor to conduct such criminal activity background checks. Employees who do not consent shall not perform services under this Agreement.

Overtime for the Engineer's staff must be approved by the Director prior to the overtime being worked.

All vacation/paid time off/planned sick leave/other types of time off work must be approved a minimum of two weeks in advance of the time off by the Director. The Engineer shall provide replacement personnel approved by the District as required.

The Engineer's staff shall call in any unplanned sick leave to the department the Engineer's staff is working with before the start of the work shift.

The Engineer's staff will be required to take a lunch break of at least ½ hour if working an 8-hour day or longer. Exceptions must be approved in advance by the Director. This time will not be charged to the District.

Each of the Engineer's staff shall turn into the District a weekly timesheet each Monday morning. Timesheets will be compared with the invoice time charged to the District. In the event that the Engineer's staff is not at work on a Monday morning, it must be turned in on the first day back to work.

The Engineer's staff will work during typical business office hours Monday through Friday in accordance with direction from the District. Work shifts may be staggered and adjusted to meet day, night and weekend work requirements and minimize overtime as directed by the District. The District will not pay the Engineer's staff for work performed on County holidays.

The Engineer understands and agrees that no current, non-retiring District employee hired by the Engineer during the course of this Agreement, shall work on any District projects for 24 months from the date they terminate their employment with the District.

SECTION XIV of the Agreement, entitled, "Compliance and Standards," reading:

The Engineer agrees to perform the work hereunder in accordance with generally accepted standards applicable thereto and shall use that degree of care and skill commensurate with the Engineer's profession to comply with all applicable state, federal, and local laws, ordinances, rules, and regulations relating to the work to be performed hereunder and the Engineer's performance. The Engineer represents that, prior to performing hereunder, he has or shall obtain all necessary licenses, ownership, or permission for use of any and all proprietary information, materials, or trade secrets employed in the performance of work hereunder for the District and agrees that he shall not copy, reproduce, recreate, distribute, or use any such proprietary information, materials, or trade secrets of any third party, except to the extent permitted by such third parties, or as otherwise authorized by law.

In accordance with TEX. GOV'T CODE ANN. § 2270.002, the Engineer warrants and represents that it does not boycott Israel and agrees that it will not boycott Israel during the term of this contract.

The Engineer represents and certifies that, at the time of execution of this Agreement, the Engineer (including, in this provision, 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 the Engineer engage in scrutinized business operations or other business practices that could cause it to be listed during the term of this Agreement.

is hereby amended to read:

The Engineer agrees to perform the work hereunder in accordance with generally accepted standards applicable thereto and shall use that degree of care and skill commensurate with the Engineer's profession to comply with all applicable state, federal, and local laws, ordinances, rules, and regulations relating to the work to be performed hereunder and the Engineer's performance. The Engineer represents that, prior to performing hereunder, he has or shall obtain all necessary licenses, ownership, or permission for use of any and all proprietary information, materials, or trade secrets employed in the performance of work hereunder for the District and agrees that it shall not copy, reproduce, recreate, distribute, or use any such proprietary information, materials, or trade secrets of any third party, except to the extent permitted by such third parties, or as otherwise authorized by law.

In accordance with TEX. GOV'T CODE ANN. § 2271.002, the Engineer warrants and represents that it does not boycott Israel and agrees that it will not boycott Israel during the term of this contract.

The Engineer represents and certifies that, at the time of execution of this Agreement, the Engineer (including, in this provision, 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 the Engineer engage in scrutinized business operations or other business practices that could cause it to be listed during the term of this Agreement.

In accordance with Tex. Gov't Code Ann. Chapter 2252 Subchapter F, Engineer warrants and represents that, at the time of execution of this Agreement and for the duration of the Term of this

Agreement and any Renewal Terms, Engineer does not appear on the Texas State Comptroller's list of companies known to have contracts with or provide supplies or services to a foreign terrorist organization.

The Engineer certifies that it will not enter into a contract with any subcontractor that is listed on the federal government's terrorism watch list as described in Executive Order 13224.

The Engineer warrants and represents, in accordance with Tex. Gov't Code Ann. § 2274.002, that unless the Engineer meets an exemption under subsection (c), then, as required by subsection (b), the Engineer's signature on this Agreement constitutes the Engineer's written verification that it does not boycott energy companies and will not boycott energy companies during the term of the contract.

The Engineer warrants and represents, in accordance with Tex. Gov't Code Ann. § 2274.002, that unless the Engineer meets an exemption under subsection (c) or section 2274.003, then, as required by subsection (b) of section 2274.002, the Engineer's signature on this Agreement constitutes the Engineer's written verification that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of the contract.

The Engineer warrants and represents that neither it, nor any of its principals or other affiliated entities, owe any debts to Harris County (the "County"), including, but not limited to delinquent taxes, court judgments, tickets, tolls, fees, or fines. Taxes are deemed delinquent on the date certain as specified by the Harris County Tax Office. For the purposes of this Agreement, a court judgment is not required for delinquent taxes to be considered a debt.

The Engineer shall immediately report to County through the County's Fraud, Waste, or Abuse Hotline and also notify the County in accordance with all the Notice provisions contained in this Agreement all suspected or known instances and facts concerning fraud, waste, abuse, or criminal activity under this Agreement. The County's Fraud, Waste, or Abuse Hotline can be accessed by phone at 866-556-8181 or online at <https://secure.ethicspoint.com/domain/media/en/gui/68174/index.html>.

SECTION XXIV, entitled "Contract Construction," is added to the Agreement reading:

This Agreement shall not be construed against or in favor of any Party hereto based upon the fact that the Party did or did not author this Agreement.

The headings in this Agreement are for convenience or reference only and shall not control or affect the meaning or construction of this Agreement.

When terms are used in the singular or plural, the meaning shall apply to both.

When either the male or female gender is used, the meaning shall apply to both.

All other terms and provisions of the Agreement and the previous Amendment shall remain in full force and effect as originally written.

EXECUTED on _____.

APPROVED AS TO FORM:

CHRISTIAN D. MENELEE
HARRIS COUNTY ATTORNEY

HARRIS COUNTY FLOOD CONTROL
DISTRICT

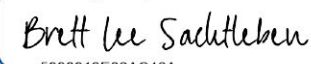
DocuSigned by:

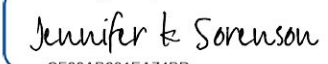
By _____
Emily Kunst
Assistant County Attorney

By _____
Lina Hidalgo
County Judge

ATTEST:

ATKINS NORTH AMERICA, INC.

DocuSigned by:

By _____
Brett Lee Sachtleben
Name
Division Manager
Title

DocuSigned by:

By _____
Jennifer K Sorenson
Name
Vice President
Title

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

The Commissioners Court of Harris County, Texas, convened at a meeting of said Court at the Harris County Administration Building in the City of Houston, Texas, on _____, with the following members present, to-wit:

| | |
|---------------------|------------------------------|
| Lina Hidalgo | County Judge |
| Rodney Ellis | Commissioner, Precinct No. 1 |
| Adrian Garcia | Commissioner, Precinct No. 2 |
| Tom S. Ramsey, P.E. | Commissioner, Precinct No. 3 |
| Lesley Briones | Commissioner, Precinct No. 4 |

and the following members absent, to-wit: _____, constituting a quorum, when among other business, the following was transacted:

**ORDER AUTHORIZING EXECUTION OF AMENDMENT NO. 2 TO
 AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN
 THE HARRIS COUNTY FLOOD CONTROL DISTRICT
 AND ATKINS NORTH AMERICA, INC.**

Commissioner _____ introduced an order and made a motion that the same be adopted. 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 |
|--------------|---------------------------|--------------------------|--------------------------|--------------------------|
| AYES: | Judge Lina Hidalgo | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| NAYS: | Comm. Rodney Ellis | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| ABSTENTIONS: | Comm. Adrian Garcia | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| | Comm. Tom S. Ramsey, P.E. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| | Comm. Lesley Briones | <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 thus adopted follows:

WHEREAS, on or about February 26, 2019, the District and the Engineer entered into an Agreement for Professional Services to provide engineering services to augment the District's staff for the 2018 bond program scheduling and systems integration for project controls (the "Agreement"); and

WHEREAS, the District and the Engineer previously amended the Agreement, on September 10, 2019, to provide for additional engineering services to be performed by Engineer and additional compensation to be paid to Engineer; and

WHEREAS, the District requires additional engineering services as provided under Section I, Character and Extent of Services, and under Appendix A of the Agreement; and

WHEREAS, the Engineer is willing to provide the necessary additional engineering services for further consideration; and

WHEREAS, the District and the Engineer now desire to increase the Limit of Appropriation by \$990,000.00, to \$5,189,010.00.

NOW, THEREFORE, BE IT ORDERED BY THE COMMISSIONERS COURT OF HARRIS COUNTY, TEXAS THAT:

- Section 1: The recitals set forth in this order are true and correct.
- Section 2: Exemption from the County Purchasing Act under Texas Local Government Code § 262.024(a)(4) is hereby granted.
- Section 3: County Judge Lina Hidalgo is hereby authorized to execute for and on behalf of the Harris County Flood Control District, Amendment No. 2 to Agreement for Professional Services by and between the Harris County Flood Control District and Atkins North America, Inc. to provide additional engineering services to augment the District's staff for the 2018 bond program scheduling and systems integration for project controls, for a fee increase of \$990,000.00, raising the maximum fee to be paid by the District to \$5,189,010, said Amendment No. 2 to Agreement being incorporated herein by reference for all purposes as though fully set forth verbatim herein.
- Section 4: All Harris County and Harris County Flood Control District officials and employees are authorized to do any and all things necessary or convenient to accomplish the purpose of this order.