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# PROFESSIONAL SERVICES AGREEMENT

(Professional Engineering Services)

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## 1. PARTIES

- 1.1 Parties. The Parties to this Professional Services Agreement (“Agreement”) are **Atser, L.P.** (“Engineer”), and **Harris County** (“County”), on behalf of its Harris County Engineering Department (“HCED”). County and Engineer each may also be referred to individually herein as a “Party,” or collectively as the “Parties.”

## 2. PURPOSE

- 2.1 Project Description. County intends to provide drainage improvements to Holderrieth Road, located in Harris County, Precinct 3 ("Project"). This Project is also identified as UPIN 18104MF0R901.
- 2.2 Summary of Scope of Work. In addition to any applicable attachments to this Agreement describing the Scope of Work, County desires that Engineer provide Professional Engineering Services in the construction phase of the Project, as further described in Exhibit A attached
- 2.3 Professional Engineering Services. The professional services to be performed under this Agreement are within the scope of professional engineering, as defined by state law, and will be provided in connection with the professional employment or practice of a person who is licensed or registered as a professional engineer. The professional engineering services shall be performed in accordance with Tex. Occ. Code Ann. §§ 1001.001, et. seq, as amended.
- 2.4 Professional Services Procurement Act. The work to be performed under this Agreement cannot be purchased on the basis of competitive bids since it is encompassed within Texas Government Code §2254.002(2).

## 3. ENGINEER’S REPRESENTATIONS

- 3.1 Applicable Expertise. Engineer and the person executing this Agreement on behalf of Engineer certify and represent that Engineer (including Engineer’s agents, employees, volunteers, and subcontractors, as applicable) possesses the skills, qualifications, expertise, experience, education, knowledge, ability, and financial resources to perform all services and/or deliverables contemplated in this Agreement without significant disruption of those deliverables.
- 3.2 Permits and Licensing. Engineer represents that Engineer (including Engineer’s agents, employees, volunteers, and subcontractors, as applicable) possesses all special certifications, licenses, inspections and permits required by law to carry out the Scope of Work contemplated in this Agreement. Engineer’s agents, employees, volunteers, and subcontractors, as applicable, shall maintain appropriate accreditation and licensing, as required, through the State of Texas or other applicable licensing entities. Prior to the performance of any services under this Agreement, Engineer shall, upon written (including electronic) request, provide proof of valid licensure to HCED (including a listing of all licenses and expiration dates).
- 3.3 Authorized to Conduct Business. Engineer represents that Engineer is authorized to conduct the business and carry out the Scope of Work contemplated in this Agreement. Prior to starting performance under this Agreement, Engineer shall, upon written (including electronic) request, provide proof to HCED of the authority to do business in this state or at the location specified in this Agreement.
- 3.4 Ability to Perform. HCED will award contracts only to the most highly qualified available responsible provider/contractor possessing the ability to perform successfully under the terms, conditions, and budget of a proposed procurement. Consideration will be given to such matters as provider integrity, compliance with public policy, record of past performance, and financial and technical resources. Engineer represents that Engineer has the administrative, managerial, and financial capability to ensure proper planning,

management and completion of the Scope of Work described in this Agreement and further has the administrative capacity and capabilities to carry out all duties and responsibilities under this Agreement.

- 3.5 Conflict of Interest Certification. Pursuant to Chapter 176 of the Texas Local Government Code, Engineer certifies that Engineer has completed any required conflict of interest disclosures or questionnaires (see [www.ethics.state.tx.us](http://www.ethics.state.tx.us)). If this certification is materially incomplete or inaccurate, Engineer acknowledges that County shall have the right to terminate this Agreement without prior notice.
- 3.6 Certificate of Interested Parties Form 1295. Engineer certifies that it has accurately completed and submitted a notarized Certificate of Interested Parties Form 1295 ("Form 1295") in accordance with Texas Government Code §2252.908 and the rules adopted thereunder. Engineer acknowledges that it is responsible for making any and all necessary updates and/or corrections to the applicable Form 1295 during the term of this Agreement. Engineer must either (1) mail the completed Form 1295 to the Harris County Engineering Department at 1111 Fannin Street, 11th Floor, Houston, TX 77002, Attn: Administrative Services or (2) submit the form by email to [HCEDAdminSvcs@hcpid.org](mailto:HCEDAdminSvcs@hcpid.org).
- 3.7 Disbursements to Persons with Outstanding Debt Prohibited. Engineer certifies, by execution of this Agreement, that neither Engineer nor any of Engineer's principals owe any debts as defined in Local Government Code Section 154.045 (including delinquent property taxes). Engineer understands that certain disbursements are prohibited and that County may apply any funds due to Engineer under this Agreement to any outstanding balance of certain debts pursuant to Section 154.045. If this certification is inaccurate, County may also terminate this Agreement. In addition, Engineer hereby assigns any payments under this Agreement to the Harris County Tax Assessor-Collector for the payment of any current or future delinquent taxes.
- 3.8 Internet Access. Engineer shall maintain appropriate internet access, which will enable Engineer to access any secure online invoicing, reporting, or other web-based system designed for more efficient communication with HCED. As requested, Engineer shall submit required reports, invoices and related documents through an applicable secure internet site in a manner required to protect any confidential information submitted. Engineer shall review all instruction materials and/or attend all HCED provided training that is necessary for Engineer to properly utilize applicable web-based information systems.

#### **4. SPECIFIC SCOPE OF WORK/SERVICES AND/OR DELIVERABLES**

- 4.1 Specific work, products, services, licenses and/or deliverables. Engineer shall provide the work, products, services, licenses and/or deliverables required to be provided by Engineer and as set out in this Agreement and in Attachment A and all other referenced attachments incorporated in this Agreement (altogether referred to as the Scope of Work). The provisions in this Agreement labeled 'Scope of Services' or 'Scope of Work' shall take precedence over anything conflicting in any attached Engineer proposal or correspondence. Engineer shall submit any and all project-related documents and invoices through the cloud-based project management software utilized by HCED for planning and management of all projects using real-time project data.
- 4.2 Written Authorization. From time to time during the course of this Agreement, HCED may deliver to Engineer written (including electronic) authorization (sometimes referred to as a notice-to-proceed, task-order, work-order or job-order) for providing certain work, products, services, licenses and/or deliverables contemplated in this Agreement, which Engineer shall then perform in accordance with this Agreement. Engineer shall not begin or proceed to the next design phase of the Scope of Work until Engineer receives from HCED a written (including electronic) authorization to proceed. County shall have no obligation to pay for and Engineer shall have no obligation to provide any work, services, products, or deliverables not rendered in accordance with a prior written authorization as described by this Section. Engineer shall complete the services called for by the calendar days and by the deadlines specified in this Agreement, including exhibits and written authorizations.

## 5. ADDITIONAL AND SPECIAL REQUIREMENTS

- 5.1 Cooperation with Other Service Providers. County may engage the services of other service providers for work related to the work, products, services, licenses and/or deliverables in this Agreement. Engineer shall reasonably cooperate with such other service providers and will not commit or permit any act that may interfere with the performance of work by any other service provider.
- 5.2 Non-Assignability. Unless otherwise authorized in this Agreement, neither party shall assign, in whole or in part, any duty or obligation of performance under this Agreement without the express written permission of the other party, except that the express written permission of HCED shall be considered the permission of County. Such written permission will not be unreasonably withheld, unreasonably conditioned, or unreasonably delayed. However, with notice to HCED, Engineer may assign this Agreement to any affiliate of Engineer that controls, is controlled by, has resulted from a merger with, or is under common control with, Engineer if the assignee is at least as capable and qualified to provide the deliverables contemplated in this Agreement. This provision is not intended to restrict any assignment that is required by Section 9.406 of the Texas Business and Commerce Code.
- 5.3 Independent Contractor/Parties. County expects Engineer to meet the high standards set forth in this Agreement and looks to Engineer for results only. Unless otherwise required by law or regulation, County shall not direct the methods used to obtain those results, and Engineer shall perform the services as an independent contractor under the sole supervision, management, direction, and control of Engineer. As an independent contractor, Engineer will accept directions pertaining to the goals to be attained and the results to be achieved, as applicable, pursuant to this Agreement, but Engineer shall be solely responsible for the manner in which Engineer will perform the services under this Agreement. Any methods that might be discussed in any training sessions given by HCED are not mandatory unless specifically required in writing in this Agreement or by law. Engineer is not obligated to maintain any set, regular hours, nor to perform any set number of hours of service in fulfilling the obligations under this Agreement, unless otherwise specifically set out in this Agreement. This Agreement is not intended to create a joint enterprise, joint venture, business partnership, agency, franchise, or employment relationship, under Texas law. The personnel and staff of Engineer are independent contractors or employees of Engineer and shall not for any purposes be considered employees or agents of County. Engineer assumes full responsibility for the actions of any employees and agents while performing any services incident to this Agreement, and Engineer shall remain solely responsible for the supervision, daily direction, control and payment, if any, of salaries (including withholding of income and social security taxes), workers' compensation or disability benefits and like requirements and obligations.
- 5.4 Employee Retention. Engineer agrees to maintain the organizational and administrative capacity and capabilities to carry out all duties and responsibilities under this Agreement. The personnel Engineer assigns to perform the duties and responsibilities under this Agreement will be properly trained and qualified for the functions they are to perform. If specific qualifications are set forth in job descriptions required by the funding entity and/or in this Agreement, unless a written waiver is granted, Engineer shall only assign personnel with the required qualifications to fulfill those functions. Notwithstanding transfer or turnover of personnel, Engineer remains obligated to perform all duties and responsibilities under this Agreement without degradation and in accordance with the terms of this Agreement.
- 5.5 Significant Organizational Change Notification. Engineer shall notify County immediately and in advance of any significant organizational change that could affect Engineer's ability to carry out all duties and responsibilities under this Agreement, including any change of Engineer's name or identity, ownership or control, or payee identification number. Engineer shall also provide written notice to County within 10 working days of the change. Engineer shall provide ownership information to County immediately upon any such change.
- 5.6 Adverse Actions Reporting. Engineer shall inform HCED, in writing, of any concluded investigation of Engineer (including Engineer's agents, employees, volunteers, and subcontractors, as applicable, providing work, products, services, licenses and/or deliverables under this Agreement) that is conducted by or on behalf of a government entity or other licensing or accreditation entity (including any state board of

examiners) and whose outcome included public censure or other public sanction (or any pending investigations, administrative actions, or lawsuits, that relate to the work under this Agreement or that could adversely affect any performance or obligation in this Agreement). If at any time a license of Engineer's agents, employees, volunteers, and subcontractors, as applicable, providing work, products, services, licenses and/or deliverables under this Agreement required to be maintained to fulfill the Commitments in this Agreement is suspended, revoked or is determined to be out of compliance in Texas or any other state, this Agreement may be terminated immediately without prior notice, at the option of HCED, effective the date of the suspension, revocation or non-compliance. Engineer is not entitled to receive payment for services that were performed by Engineer while the required license was suspended or revoked. Engineer agrees to immediately inform HCED, in writing, of any adverse professional review action that is taken by a professional association or society and that is based on the professional competence or professional conduct of Engineer's agents, employees, volunteers, and subcontractors, as applicable, providing work, products, services, licenses and/or deliverables under this Agreement. County may, at its sole option, terminate this Agreement, upon notice of such adverse professional review action.

- 5.7 Subcontracts. Unless otherwise explicitly set out in this Agreement, Engineer shall not enter into any subcontract for the work, products, services, licenses and/or deliverables under this Agreement unless, prior to any written authorization to proceed with work done in part by the subcontractor, Engineer has provided to HCED the qualifications of the subcontractor to perform and meet the standards of this Agreement. Engineer shall comply with all Texas Administrative Code and Texas professional licensing agency requirements for choosing any professionally-licensed subcontractor.
- 5.8 Professional Standards. Where specifically-applicable standards are not explicitly set forth in this Agreement, as someone with expertise in the field, Engineer must provide the work, products, services, licenses and/or deliverables in accordance with generally-accepted standards applicable to Engineer's profession or industry. Engineer and County agree and acknowledge that County is entering into this Agreement in reliance on the Engineer's competence and qualifications, as those were presented to County by Engineer with respect to professional services. Engineer shall at all times utilize the skill and attention to fully, timely, and properly render professional services for the development of The Project to final completion as set out in, or reasonably inferred from, the Scope of Work/Services. This shall be done in a manner utilizing the degree of care ordinarily used by licensed professionals performing similar services on projects of a similar nature and scope within the State of Texas. A professional engineer assigned by Engineer to manage the Scope of Work who is licensed to practice in the State of Texas shall be present and represent Engineer at meetings of any official nature concerning The Project, including, but not limited to, scope meetings, status meetings, pre-bid meetings, any pre-construction meetings and any construction meetings (for construction-related projects) with County staff and/or contractors, unless otherwise set forth in the Scope of Work or approved in writing by HCED.
- 5.9 County Procedures. To effectively perform the services stated above, Engineer must become familiar with various procedures, policies, data collection systems, and other information of County. Engineer shall adhere to all applicable County engineering guidelines, standards, and design criteria (see <http://www.eng.hctx.net>). HCED will assist Engineer in obtaining the information. Unless otherwise required by law, Engineer agrees to keep any sensitive information confidential and not disclose it to outside parties without first obtaining County's written authorization.
- 5.10 Ownership of Work Product. For the purposes of assigning ownership of Engineer work product, the work performed will be deemed, to the extent authorized by law, to have been done on a works-made-for-hire basis, as that term is understood in copyright law. In the event and to the extent that such works are determined not to constitute works-made-for-hire, Engineer hereby irrevocably assigns and transfers to County all right, title, and interest in such works, including, but not limited to, copyrights. County shall be the absolute and unqualified owner of all completed or partially-completed Engineer work product prepared pursuant to this Professional Services Agreement and shall have the same force and effect as if prepared by County, including mylar reproductions, drawings, preliminary layouts, electronic documents and drawings, record drawings, sketches, plans, cost estimates, inventions, designs, computer input/output information, computer applications, software, firmware, computations, and other documents (including the original electronic file format). Engineer may retain one set of reproducible copies for Engineer's sole use in

preparation of studies or reports for County only. Engineer is expressly prohibited from selling, licensing or donating such documents, or using such documents in the preparation of other work for any other client, without the prior express written permission of HCED. Engineer warrants that Engineer's work product will not in any way constitute an infringement or other violation of any copyright, trade secret, trademark, patent, invention, proprietary information, non-disclosure, or any other right of any third party, and Engineer will defend any claim, suit, or proceeding brought against County on the issue of infringement of any copyright by virtue of anything supplied by Engineer to HCED under this Agreement.

- 5.11 Trade Secrets. In connection with the work, products, services, licenses, Scope of Work, and/or deliverables provided under this Agreement, HCED may disclose to Engineer certain documents, data, and/or other information that is proprietary, confidential, or a trade secret (Trade Secrets). Engineer must not divulge or otherwise make unauthorized use of Trade Secrets or other protected information, procedures, or policies of HCED, any former employee, contractor, client, customer, or consultant, in the exercise of duties under this Agreement. Except to the extent authorized by a third party, neither Party shall copy, recreate, or use any proprietary information of a third party in the performance of services under this Agreement.
- 5.12 Nondisclosure and Confidentiality of Information. To the extent permitted by law, Engineer must keep confidential the contents of all discussions with local, state, and federal officials, as well as the contents of all local, state, and federal records and all other information obtained during performance under this Agreement. To fulfill Engineer's obligations under this Agreement, Engineer may be provided access to information, systems, operations, or procedures that are security sensitive or have been identified as confidential. This confidential information may include information from one of the government entity funding sources, such as a Texas or federal agency. Engineer and the person executing this Agreement on behalf of Engineer acknowledge that (a) access to this information (whether electronic, written or oral, formal or informal) is provided solely to Engineer for the purpose of discharging the duties in this Agreement, (b) premature or unauthorized disclosure of this information can irreparably harm the interests of County and may constitute a violation of state and/or federal law, and (c) the information may represent confidential or proprietary information, the release of which may be restricted or prohibited by law. Therefore, Engineer must (1) not access any information without express written authorization of HCED; (2) not copy, recreate, or use any information or document obtained in connection with this Agreement other than for the performance of this Agreement; (3) to the extent permitted by law, keep confidential the contents of all discussions with county, state, and federal officials, as well as the contents of all county, state, and federal records and all other information obtained during performance under this Agreement, unless authorized in writing by appropriate HCED officials; (4) not, except to the extent required by law, or necessary for the performance of this Agreement, release, disclose, reveal, communicate, impart or divulge any information or any summary or synopsis of the information in any manner or any form whatsoever to outside parties without the express written consent of HCED; (5) take all steps necessary to protect confidential information from disclosure to third parties and have a system in effect that must include a method to ensure the confidentiality of records and other information relating to any person according to applicable federal and state law, rules and regulations; (6) not reproduce, copy, or disseminate such confidential information, except to those who need to know such information and are obligated to maintain its confidentiality, including Engineer's partners, principals, representatives or employees as necessary to fulfill obligations under this Agreement; (7) notify HCED immediately of all requests for confidential information; and (8) immediately report to HCED all unauthorized disclosures or uses of confidential information.
- 5.13 Public Comment and Public Information Act. To the extent permitted by law, all contact with the news media, citizens of County, the State of Texas or other governmental agencies concerning The Project will be the responsibility of HCED. In the event Engineer is subject to the Texas Public Information Act, upon receipt of a written request for any information by Engineer developed in the performance of services under this Agreement, Engineer shall provide written notice to HCED of the request along with a copy of the request, and give HCED the opportunity to respond to the request prior to any release by Engineer. Unless required by law, under no circumstances shall Engineer release any material or information developed in the performance of services under this Agreement without the express prior written permission of HCED.

- 5.14 Applicable Laws. Engineer shall comply (and assure compliance by Engineer's agents, employees, volunteers, and subcontractors, as applicable, providing work, products, services, licenses and/or deliverables under this Agreement) with all applicable state, federal, and local laws, ordinances, regulations, executive orders, rules, directives, standards, guidelines, and instructions relating to the work to be performed. Engineer shall immediately bring to County's attention any conflicts between any applicable state, federal, and local laws, ordinances, regulations, executive orders, rules, directives, standards, guidelines, and instructions relating to the work to be performed. If laws or regulations change and affect any provision of this Agreement, this Agreement shall be deemed amended to conform to those changes in the laws or regulations on the date such laws or regulations become effective. If any such changes (that occur after the effective date of this Agreement and that Engineer should not reasonably have anticipated) require significant changes or additions to the Scope of Work that were not contemplated by the Parties, the Parties shall negotiate in good faith for the purpose of creating reasonable and equitable written modifications to this Agreement.
- 5.15 Records Retention and Management. Engineer shall maintain complete, accurate, and readily accessible records that are necessary to document and support the fulfillment of the obligations in this Agreement, including performance, design, underlying calculations, and financial records, as well as a copy of this Agreement. Engineer shall maintain and make available for inspection the Records for a minimum of four (4) years following either the end of the federal fiscal year in which any obligations were performed under this Agreement or the termination date of this Agreement, whichever is longer (or longer if necessary to resolve any litigation, claims, financial management review, or audit findings).
- 5.16 Authority of Harris County Engineer. The Harris County Engineer ("County Engineer") shall decide any and all questions that may arise as to the interpretation of this Agreement and all questions as to the acceptable fulfillment of this Agreement by Engineer. It is mutually agreed by both Parties that the County Engineer shall act as referee between the Parties in all questions arising under the terms of this Agreement and that the decisions of the County Engineer shall be final and binding alike on all Parties. If agreed to in writing by Engineer and the County Engineer (or designee), Engineer and the County Engineer may make adjustments to the Scope of Work that do not destroy the purposes of this Agreement. In making the aforementioned adjustments to the Scope of Work, Engineer and the County Engineer may adjust any corresponding firm fixed or maximum prices that neither increase the maximum amount of funds that Commissioners Court has authorized to be encumbered nor destroy the purposes of this Agreement. Any of the aforementioned adjustments to the Scope of Work and/or corresponding adjustments to any firm fixed or maximum prices (collectively, "Adjustments") may be reflected by a written Special Amendment to the Scope of Work in this Agreement ("Special Amendment"). Nothing contained in this section shall be construed to authorize the County Engineer to alter, vary, or amend any of the terms or provisions of this Agreement, other than the aforementioned Adjustments. The County Engineer is authorized on behalf of the County to make Adjustments (as defined herein) and execute a corresponding Special Amendment without further action by Commissioners Court. The Harris County Auditor ("County Auditor") is authorized, without further action by Commissioners Court, to certify additional funding for any Adjustments upon execution of a Special Amendment by the County Engineer.
- 5.17. Foreign Terrorists Organizations. 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.
- 5.18 Anti-Boycott. In accordance with Tex. Gov't Code Ann. § 2270.002, Engineer warrants and represents that it does not boycott Israel and agrees that it will not boycott Israel during the term of this contract.

## 6. INSURANCE

- 6.1 Coverage and Limits. During the Term of this Agreement and any extensions thereto, Engineer at its sole cost and expense shall provide insurance of such type and with such terms and limits as may be reasonably associated with this Agreement. As a minimum, Engineer shall provide and maintain the following coverage and limits:

- (a) Workers Compensation, as required by the laws of Texas, and Employers' Liability, as well as All States, United States Longshore & Harbor Workers Compensation Act and other endorsements, if applicable to the Project, and in accordance with state law.

Employers' Liability

|       |                         |             |
|-------|-------------------------|-------------|
| (i)   | Each Accident           | \$1,000,000 |
| (ii)  | Disease – Each Employee | \$1,000,000 |
| (iii) | Policy Limit            | \$1,000,000 |

- (b) Commercial General Liability, including but not limited to, the coverage indicated below. This policy will provide coverage for personal and bodily injury, including death, and for property damage, and include an endorsement for contractual liability. Coverage shall not exclude or limit the Products/Completed Operations, Contractual Liability, or Cross Liability. Where exposure exists, County may require coverage for watercraft, blasting, collapse, explosions, blowout, cratering, underground damage, pollution, and other coverage. *County shall be named Additional Insured on primary/non-contributory basis.*

|       |                                 |             |
|-------|---------------------------------|-------------|
| (i)   | Each Occurrence                 | \$1,000,000 |
| (ii)  | Personal and Advertising Injury | \$1,000,000 |
| (iii) | Products/Completed Operations   | \$1,000,000 |
| (iv)  | General Aggregate (per project) | \$1,000,000 |

- (c) Professional Liability/Errors and Omissions, in an amount not less than One Million Dollars (\$1,000,000) per claim and in the aggregate.
- (d) Umbrella/Excess Liability in an amount not less than One Million Dollars (\$1,000,000) per occurrence and in the aggregate. *County shall be named Additional Insured on primary/non-contributory basis.*
- (e) Automobile Liability insurance to include Engineer's liability for death, bodily injury, and property damage resulting from Engineer's activities covering use of owned, hired, and non-owned vehicles, with combined single limit of not less than One Million Dollars (\$1,000,000) for each accident. *County shall be named Additional Insured on primary/non-contributory basis.*
- (f) Any other coverage required of Engineer pursuant to statute.

6.2 Delivery of Policies. Immediately upon execution of this Agreement and before any Services are commenced by Engineer, Engineer shall provide County evidence of all of the above coverage on forms and with insurers acceptable to County. Engineer must maintain a valid Certificate of Insurance as described herein on file with County at all times during the term of this Agreement. Engineer must either (1) mail the Certificate of Insurance to the Harris County Engineering Department at 1111 Fannin Street, 11th Floor, Houston, TX 77002, Attn: Administrative Services or (2) submit it by email to HCEAdminSvc@hcpid.org.

6.2.1 Issuers of Policies. Coverage shall be issued by company(s) licensed by the Texas Department of Insurance to do business in Texas, unless said coverage is not available or economically feasible except through an excess or surplus lines company, in which case the company(s) should be registered to do business in Texas. Companies shall have an A.M. Best rating of at least A-VII.

6.2.2 Certificates of Insurance. Engineer shall provide unaltered Certificates of Insurance which evidence the required coverage and endorsements and satisfy the following requirements:

- (a) Be less than 12 months old;
- (b) Include all pertinent identification information for the Insurer, including the company name and address, policy number, NAIC number or AMB number, and an authorized signature;

- (c) Include the Project name and reference numbers and indicates the name and address of the Project Manager in the Certificate Holder Box; and
- (d) Be appropriately marked to accurately identify:
  - (i) All coverage and limits of the policy;
  - (ii) Effective and expiration dates;
  - (iii) Waivers of subrogation, endorsement of primary insurance and additional insured language, as described herein.

6.2.3 Certified Copies of Policies and Endorsements. Upon request, Engineer shall furnish certified copies of insurance policies and endorsements to County.

6.2.4 Renewal Certificates. Renewal certificates are due to County at least thirty (30) days prior to the expiration of the current policies.

6.2.5 Subcontractors. If any part of the Agreement is sublet, insurance shall be provided by or on behalf of any subcontractor, and shall be sufficient to cover their portion of the Agreement. Engineer shall furnish evidence of such insurance to County as well.

6.3 Additional Insured. Engineer shall include County and its respective officers, directors, agents, and employees as an Additional Insured on the Commercial General Liability, Automobile Liability, and Umbrella/Excess Liability insurance certificates. Engineer's coverage shall be primary insurance to any similar insurance maintained by County and must contain an endorsement stating such. Coverage to County as an Additional Insured on any of Engineer's insurance coverage shall not be subject to any deductible.

6.4 Deductibles. Engineer shall be responsible for and pay any claims or losses to the extent of any deductible amounts applicable under all such policies and waives any claim it may have for the same against County, its officers, directors, agents, or employees.

6.5 Claims-made Policies. All insurance policies written on a claims-made basis, including Professional Liability/Errors and Omissions, shall be maintained for a minimum of two (2) years following completion of all services under this Agreement ("Extended Reporting Period"). Engineer shall obtain or maintain full prior acts coverage at least to the effective date of this Agreement in the event of a carrier or policy change.

6.6 Waiver of Subrogation. Engineer waives any claim or right of subrogation to recover against County, its officers, directors, agents, and employees ("Waiver of Subrogation"). Each policy required under this Agreement must contain a Waiver of Subrogation endorsement.

6.7 Notice of Cancellation, Non-Renewal, or Material Change. Engineer shall provide County with thirty (30) days' minimum written notification in the event of cancellation, non-renewal, or material change to any or all of the required coverage.

6.8 Remedies for Noncompliance. Failure to comply with any part of this Section is a material breach of this Agreement. Engineer could immediately, and without notice, have all compensation withheld or suspended, be suspended from providing further Services, or be terminated from this Agreement for any lapse in coverage or material change in coverage which causes Engineer to be in noncompliance with the requirements of this Section.

## **7. FUNDING, COMPENSATION AND/OR BASIS FOR PAYMENT, METHOD, AND LIMITATIONS**

7.1. Payments/Compensation. For and in consideration of the work, products, services, licenses or deliverables provided under this Agreement and during the term of this Agreement, subject to the limitations in this Agreement, County shall pay Engineer in accordance with the fee schedule and rates specified in this Agreement, including in the Attachments up to the total maximum amount specifically appropriated, encumbered, and then certified as available by the County Auditor.

7.2. Funding and Appropriations Limit. County shall have no obligation to pay for and Engineer shall have no obligation to provide any work, products, services, licenses and/or deliverables until sufficient funds are



certified by the County Auditor. County intends to initially appropriate, encumber, and certify as available by the County Auditor the total maximum sum of **FIVE HUNDRED EIGHTY-TWO THOUSAND NINE HUNDRED SIXTY AND 50/100 DOLLARS (\$582,960.50)** to pay and discharge any and all liabilities that County may incur arising out of this Agreement. Any other provision notwithstanding, County shall never be liable to pay Engineer any greater amount under this Agreement than is specifically appropriated, encumbered, and then certified as available by the County Auditor.

- 7.3. Auditor's Certification of Funds. The issuance of a purchase order pursuant to this Agreement represents certification by the Harris County Auditor that funds, in the amount of the purchase order total, are available to satisfy all financial obligations of Harris County hereunder.
- 7.4. Funding Out/Non-Appropriation. It is further understood that pursuant to Local Government Code Chapter 111, when and if the work, products, services, licenses and/or deliverables and charges provided for herein are equal to or exceed the amounts certified available, Engineer is authorized to terminate some or all of Engineer's work, products, services, licenses and/or deliverables under this Agreement unless the County Auditor certifies that additional funds are available, in which event Engineer agrees to continue to provide the products, services and/or deliverables to the extent funds are available. When all the funds certified by the County Auditor, together with any additional funds thereafter certified, are expended, County will have no further liability, and the sole and exclusive remedy of Engineer will be to immediately terminate this Agreement unless the County Auditor certifies additional funds.
- 7.5. Billing Statements/Invoices. Unless otherwise indicated in this Agreement, no later than the 10th day after the end of each calendar month within the term of this Agreement, Engineer shall submit to HCED a billing statement or invoice for all unpaid products, services and/or deliverables, along with any applicable rates, including the applicable firm fixed price and any applicable percentage completed for specific tasks/deliverables as specified in this Agreement. The data in the billing statement or invoice must be in a format designated by HCED and the County Auditor, and must include any purchase order number. An authorized agent of Engineer must certify and swear under penalty of perjury that the work was performed, the work was properly authorized in writing by HCED, and all information contained in the statement or invoice is true and correct. All products, services and/or deliverables billed must be rendered during this Agreement term. Engineer shall submit to HCED billing statements or invoices limited to work done and products, services and/or deliverables provided pursuant to this Agreement, and Engineer shall not include in such billing statements or invoices any work, products, services, licenses and/or deliverables provided, required to be performed, or billed under or pursuant to any other agreements with County. HCED will review each statement or invoice and approve it with any modifications HCED deems appropriate after mutual consultation and agreement with Engineer. HCED will then forward the approved statement or invoice to the County Auditor for payment. County will pay Engineer the proper amounts due and owing under this Agreement within thirty (30) calendar days of receipt of the approved statement or invoice to extent allowed by law. Each statement or invoice must include a monthly inventory of work, products, services, licenses and/or deliverables provided during the billing period and any other details HCED reasonably requests for verification purposes, which might include:
- (a) The date(s) work, products, services, licenses and/or deliverables were provided;
  - (b) Meetings and lists of attendees, if applicable;
  - (c) Detailed description of the work, products, services, licenses and/or deliverables provided;
  - (d) The total amount billed, and any other details of the work, hours, or services as may be requested by the County Auditor;
  - (e) If applicable, the case number for which services were performed;
- 7.6. Overpayments. Within 10 calendar days after request by HCED, Engineer must reimburse to County all funds paid by County to Engineer that any funding entity or auditor determines have been improperly paid to, or expended by, Engineer. County may withhold, suspend, or reduce any and all payments due to Engineer until any overpayments are reimbursed.
- 7.7. Costs of Substitute Services. If Engineer fails to perform any of its obligations under the Agreement and County procures substitute services upon such terms as are appropriate, County shall deduct the reasonable

costs for such services from any payments owed to Engineer under this or other agreements. Engineer must reimburse to County, within thirty (30) calendar days after request by County, any additional costs of such substitute services beyond what has already been deducted by County. County may also withhold, suspend, or reduce payments due to Engineer until the costs of such substitute services are reimbursed to County by Engineer. This provision is not intended to waive or preclude any other remedies the parties may otherwise have in law, equity, or elsewhere in this Agreement and is in addition to and not in lieu of any other remedies.

- 7.8. Billing Audits. County and its designee shall have the right to examine and audit all of Engineer's billings/invoices and all of Engineer's backup and support data for billings/invoices for this Agreement. Upon HCED's request, Engineer agrees to make such data and supporting documentation available to the County Auditor or designee in Harris County, Texas. Engineer shall maintain complete and accurate records necessary to fulfill any obligations in this Agreement, including a copy of this Agreement, including detailed time records identifying each person performing services that were billed on an hourly basis, the corresponding dates of the services, the applicable firm fixed price and the percentage completed for specific tasks as specified in this Agreement, any applicable hourly or cost-plus rates, the total amount billed for each person as applicable, and the total amount billed for all persons as applicable. Engineer shall maintain and make available for inspection (electronically or in Harris County during regular business hours) the Records for a minimum of four (4) years days following either the end of the federal fiscal year in which any obligations were performed under this Agreement or the termination date of this Agreement (or longer if necessary to resolve any litigation, claims, financial management review, or audit findings). All payments made by County are subject to re-evaluation and refund or withholding of future payments conditioned on the results of the audit.
- 7.9. County Auditor to Make Final Decision. The decision of the County Auditor as to the amount owed shall be final if there is any dispute between County and Engineer as to the amount owed to Engineer for any monthly statement or invoice submitted by Engineer. County agrees to notify Engineer of any questionable item and is authorized to withhold payment until all questions are resolved either by final audit or by agreement of the Parties.

## **8. TERM OF THE AGREEMENT**

- 8.1 Time Period. The time period for performance ("Term") of this Agreement shall begin upon execution of the Parties and end on the later date of (a) Project completion or (b) a year minus a day from execution of all the Parties.

## **9. TERMINATION PROVISIONS**

- 9.1 Determination of Material and Non-Material Breaches. The County Engineer shall determine whether a breach of this Agreement by either Party is material or non-material. The County Engineer's determination shall be final and binding alike on all Parties.
- 9.2 Non-Material Breaches. If either Party refuses or fails to perform any of its non-material obligations in this Agreement, the other Party may give written notice of the failure. If the breaching Party fails or refuses to cure the failure of any non-material obligation in the notice within ten (10) calendar days after notice is given, the other Party may terminate this Agreement immediately. HCED is authorized to give notice for County.
- 9.3 Material Breaches.
- 9.3.1 Suspension. HCED may suspend this Agreement immediately for any material breach by giving a notice of suspension. As soon as the notice of suspension is received, Engineer shall discontinue all services in connection with the performance of this Agreement. HCED is authorized to suspend on behalf of County.

- 9.3.2 Termination. The County may terminate this Agreement for a material breach at any time by notice in writing to the Engineer.
- 9.4 No Waiver of Remedies. The provisions in this Section are not intended to waive or preclude any other remedies the parties may otherwise have in law, equity, or elsewhere in this Agreement. The right to terminate for a material and non-material breach is in addition to and not in lieu of any other remedies.
- 9.5 Termination Statement. As soon as practicable after receiving notice of termination, Engineer must submit a statement or invoice to HCED that complies with the requirements in this Agreement. This statement or invoice must show in detail the unbilled/uninvoiced services performed for County under this Agreement to the date of termination. If the payments were to be made in lump sums and services were rendered after the last lump sum payment, the statement or invoice shall reflect the prorated amount due.
- 9.6 Return of Documents after Termination. If permitted by law and any established ethical requirements applicable to specific professionals, Engineer shall promptly deliver to HCED all completed or partially completed work product, designs, data, information, and documents prepared under this Agreement on behalf of County. Within 2 business days after the effective date of termination, Engineer shall return to HCED all records, files, documents, notes and other items in Engineer's possession, if any, relating to any assignments or work that Engineer has undertaken or been given under this Agreement, if permitted by law and any established ethical requirements applicable to specific professionals. Engineer shall deliver to HCED all completed or partially-completed designs, drawings and specifications prepared under this Agreement, including the original electronic file format. Nothing in this section is intended to require Engineer to surrender Engineer's own records to HCED after termination.
- 9.7 Agreement Transition. In the event the Agreement ends by either expiration or termination, Engineer shall, at the request of the County, assist in the transition until such time that a replacement engineer can be named. Engineer acknowledges its responsibility to cooperate fully with the replacement engineer and the County to ensure a smooth and timely transition to the replacement engineer. Such transitional period shall not extend more than ninety (90) days beyond the expiration/termination date of the Agreement, or any extension thereof. During any transition period, all other terms and conditions of the Agreement shall remain in full force and effect as originally written.

## 10. INDEMNIFICATION

- 10.1 No Waiver of Governmental Immunity. County does not waive any immunity or defense on behalf of itself, its employees or agents as a result of the execution of this Agreement.
- 10.2 General Indemnity. To the extent allowed by law, Engineer agrees to indemnify and hold harmless County, HCED, their officers, employees, and agents from liability, losses, expenses, demands, reasonable attorneys' fees, and claims for bodily injury (including death) and property damage to the extent caused by the negligence, intentional tort, intellectual property infringement of Engineer (including Engineer's agents, employees, volunteers, and subcontractors/consultants under contract, or any other entity over which Engineer exercises control, in the performance of the services defined in this Agreement). Engineer shall also save County harmless from and against any and all expenses, including reasonable attorneys' fees that might be incurred by the County, in litigation or otherwise resisting such claims or liabilities.

## 11. MISCELLANEOUS

- 11.1 Notices. Any notice required to be given under this Agreement ("Notice") may be given by hand delivery or certified United States Mail, postage prepaid, return receipt requested, addressed to the Parties at the following:

ENGINEER: Robert Arizola  
Assitant Vice President  
Atser, L.P.  
1150 Richcrest Drive  
Houston, TX 77060-6209  
Email: Roberta@atser.com

COUNTY: Dr. Milton Rahman, PhD, P.E., PMP, CFM, ENV SP, Executive Director & County  
Engineer  
Harris County Engineering Department  
1111 Fannin Street, 11<sup>th</sup> Floor  
Houston, TX 77002  
Email: AgreementInfo@hcpid.org

All other communications may be sent by electronic means or in the same manner as Notices described herein.

- 11.2 Receipt of Notice. Notice shall be considered given and complete upon successful electronic transmission or upon deposit in the United States Mail.
- 11.3 Change of Address. Each Party shall have the right to change its respective address by giving at least ten (10) days' written notice of such change to the other Party.
- 11.4 Force Majeure. Neither Party will be liable for any failure or delay in performing its obligations under this Agreement if such failure or delay is due to any cause beyond the reasonable control of such Party if such cause is generally recognized under Texas law as constituting impossible conditions. The existence of such causes of delay or failure will extend the period of performance in the exercise of reasonable diligence until after the causes of delay or failure have been removed. Each Party must inform the other in writing with proof of receipt within 10 business days of the existence of such Force Majeure event or otherwise waive this right as a defense.
- 11.5 E-Mail Addresses. Engineer affirmatively consents to the disclosure of e-mail addresses that are provided to County or HCED. This consent is intended to comply with the requirements of the Texas Public Information Act, Texas Government Code § 552.137, and shall survive termination of this Agreement. This consent shall apply to e-mail addresses provided by Engineer and any agents acting on Engineer's behalf and shall apply to any e-mail address provided in any form for any reason, whether related to this Agreement or otherwise.
- 11.6 Entire Agreement (Merger). This Agreement contains the entire agreement and understanding between the parties relating to the rights granted to and the obligations of the parties. All prior negotiations, discussions, correspondence and previous understandings are superseded by this Agreement. Any oral representation or modification concerning this Agreement shall be of no force or effect.
- 11.7 No Oral Modifications. Unless otherwise explicitly stated in this Agreement, this Agreement cannot be changed except by a written subsequent modification authorized by all parties.
- 11.8 Inducements. In making the award of this contract, County relied on Engineer's assurances and representations made in this Agreement. Any false assurances and representations by Engineer shall be immediate grounds for termination of this Agreement without prior notice at the option of County.
- 11.9 Contract Construction. The titles assigned to the various Articles of this Agreement are for convenience. Titles shall not be considered restrictive of the subject matter of any Article or other part of this Agreement. Likewise, the provisions of purpose in this Agreement are intended to be a general introduction and are not intended to expand the scope of the Parties' obligations or alter the plain meaning of the terms and conditions in this Agreement.


- 11.10 Ambiguities. Ambiguities, if any, shall not be interpreted against the drafter of this Agreement.
- 11.11 No Waiver of Default. Any waiver by either Party of one or more defaults on the part of the other Party in the performance of obligations under this Agreement is not a waiver of any subsequent defaults.
- 11.12 Remedies Cumulative. Unless otherwise specified elsewhere in this Agreement, the rights and remedies of County are not exclusive, but are cumulative of all rights and remedies that exist now or in the future.
- 11.13 No Third Party Beneficiaries. Unless explicitly provided in this Agreement, there is no intent by either Party to create or establish third party beneficiary status or rights in any third party, and no such third party shall have any right to enforce any right or enjoy any benefit created or established under this Agreement.
- 11.14 Non-Exclusivity. Unless explicitly provided in this Agreement, nothing shall prevent either Party from contracting with other parties for the provision of the same or similar services or deliverables that are contemplated by this Agreement.
- 11.15 Limited Personal Liability. Nothing in this Agreement shall be construed as creating any personal liability on the part of any officer, director, employee, or agent of County.
- 11.16 Dispute Resolution Process. The Parties will meet and confer in good faith to work together to resolve problems or disputes that may arise. In the event a dispute arises between the parties involving the provisions or interpretation of any term or condition of the Agreement, and if both parties desire to attempt to resolve the dispute prior to termination or expiration of the Agreement, or withholding payments, then the parties may refer the issue to a mutually-agreeable dispute resolution process.
- 11.17 Survivability Clause. Any provision, section, subsection, paragraph, sentence, clause or phrase of this Agreement that, by its plain meaning, is intended to survive the expiration or earlier termination of this Agreement, including indemnification provisions, shall survive such expiration or earlier termination. If an ambiguity exists as to survival, the provision shall be deemed to survive.
- 11.18 Savings/Severability Clause. If any provision, section, subsection, paragraph, sentence, clause or phrase of this Agreement, or the application of same to any person or set of circumstances, is held to be invalid, void, or unenforceable by a court of competent jurisdiction, that part of this Agreement shall be reformed, if reasonably possible, to comply with the applicable provisions of law. In any event, the remaining provisions the same shall continue in full force and effect, provided that the unenforceable or invalid provision is not material to the overall purpose and operation of this Agreement. If necessary in order to make this Agreement valid and enforceable, the Parties shall meet to confer upon an amendment or modification.
- 11.19 Time is of the Essence. Time is of the essence with respect to Engineer's performance under this Agreement, and Engineer shall perform all services diligently until completed.
- 11.20 Choice of Law. This Agreement shall be construed according to the laws of the State of Texas without giving effect to its conflict of laws provisions. Venue lies only in Harris County as per Texas Civil Practice and Remedies Code Sec. 15.015, and any alternative dispute resolution, suit, action, claim, or proceeding with respect to or arising out of this Agreement must be brought solely in the courts or locations that are situated in the State of Texas, County of Harris. Both parties irrevocably waive any claim that any proceeding brought in Harris County has been brought in an inconvenient forum.
- 11.21 Exhibit List. The following attachments are a part of this Agreement:
- Exhibit A. Scope of Services  
Exhibit B. Engineer Team Acknowledgments

- 11.22 Tax Exemption. Pursuant to Texas Tax Code §151.309, as a political subdivision, County claims exemption from sales and use taxes and will provide exemption certificates upon written request. County shall not be liable to reimburse or pay any personal property taxes, charges, or fees assessed against Engineer.
- 11.23 Electronic or Facsimile Signatures and Duplicate Originals. Pursuant to the requirements of the Uniform Electronic Transactions Act in Chapter 322 of the Texas Business and Commerce Code and the Federal Electronic Signatures in Global and National Commerce Act (beginning at 15 U.S.C. Section 7001), the Parties have agreed that the transactions under this Agreement may be conducted by electronic means. Pursuant to these statutes, this Agreement may not be denied legal effect or enforceability solely because it is in electronic form or because it contains an electronic signature. This Agreement may be executed in duplicate counterparts and with electronic or facsimile signatures with the same effect as if the signatures were on the same document. Each multiple original of this document shall be deemed an original, but all multiple copies together shall constitute one and the same instrument.
- 11.24 Signatory Authorized to Execute Agreement. The person executing this Agreement on behalf of each Party represents that he or she is duly authorized by the policy of the Party's governing body to legally obligate and execute this Agreement on behalf of the Party.

**HARRIS COUNTY**

By: \_\_\_\_\_  
Lina Hidalgo  
Harris County Judge

**ATSER, L.P.**

By: \_\_\_\_\_  
  
Robert Arizola  
Assistant Vice President

APPROVED AS TO FORM:

**CHRISTIAN D. MENEFE**

Harris County Attorney

By: Tiffany Bangs  
Tiffany Bangs  
Assistant County Attorney  
CAO File Number 22GEN4307



## **PROJECT OBJECTIVE**

The project objective is to provide on-site and laboratory materials testing and inspection in addition to field verification of construction activities for conformance with the approved drawings and project specifications.

## **SCOPE OF WORK**

Based upon the project information listed in the plans and specifications, ATSER has prepared a “Scope of Work”. ATSER will immediately inform your designated representative of any field observation or laboratory test that does not meet project specifications. This kind of responsive service allows for immediate corrective actions to begin and decreases the chance of construction delays and additional work.

## **FEES**

This proposal describes our understanding of your project requirements and our ability to meet those requirements. Our estimate of fees is based on given industry standards. We propose to perform this work on a unit price basis utilizing the fee schedule attached. The construction schedule directly impacts the cost of our services. ATSER will only provide services as scheduled by your approved representatives. The estimated quantities below are based on the project schedule and quantities provided by the project documents. If the scope of work changes; ATSER will adjust these quantities accordingly.

| Construction Materials Testing and Inspection                          |          |       |          |                     |
|--|----------|-------|----------|---------------------|
| Description  | Quantity | Units | Rate     | Total               |
| <b>PAVING</b>  |          |       |          |                     |
| <b>Paving Subgrade Prep/Stabilization</b>                              |          |       |          |                     |
| OMD Standard Compaction (ASTM D698)                                    | 17       | each  | \$231.00 | \$3,927.00          |
| Liquid and Plastic Limits (Atterberg Limits) (ASTM D4318)              | 17       | each  | \$71.00  | \$1,207.00          |
| Percent Passing -200 Sieve (D1140)                                     | 17       | each  | \$55.00  | \$935.00            |
| Lime Determination pH Method (D6276)                                   | 7        | each  | \$266.00 | \$1,862.00          |
| OMD Standard Compaction-Treated (ASTM D698)                            | 7        | each  | \$256.00 | \$1,792.00          |
| Technician, NICET II, HMA-1A, Logger or Both TxDOT SB101,102           | 1056     | hour  | \$90.00  | \$95,040.00         |
| Technician, NICET II, HMA-1A, Logger or Both TxDOT SB101,102 OT        | 264      | hour  | \$135.00 | \$35,640.00         |
| Vehicle Charge   | 1056     | hour  | \$12.00  | \$12,672.00         |
| Nuclear Density Gauge Charge   | 1320     | hour  | \$12.00  | \$15,840.00         |
| Administrative Assistant and Clerical Support                          | 99       | hour  | \$70.00  | \$6,930.00          |
| Project Engineer, P.E. / Project Manager                               | 99       | hour  | \$165.00 | \$16,335.00         |
| <b>Paving Subgrade Prep/Stabilization Subtotal</b>                     |          |       |          | <b>\$192,180.00</b> |
| <b>Paving - Hot Mix</b>  |          |       |          |                     |
| Bulk Density - Lab Molded or Cores (Tex-207F)                          | 8        | set   | \$61.00  | \$488.00            |
| Molding Specimens (Tex-206F)   | 4        | set   | \$72.00  | \$288.00            |
| Maximum Theoretical Specific Gravity (TEX-227F)                        | 4        | each  | \$103.00 | \$412.00            |
| HVEEM Stability (D2041 & Tex-201F, Tex-208F)                           | 4        | set   | \$108.00 | \$432.00            |
| Extraction and Gradation (Tex-210F)                                    | 4        | each  | \$230.00 | \$920.00            |
| Sieve Analysis - Course Aggregate (C136)                               | 2        | each  | \$62.00  | \$124.00            |
| Sieve Analysis - Fine Aggregate (C136)                                 | 2        | each  | \$62.00  | \$124.00            |
| L.A Abrasion (Fine and Coarse Aggregate) (C131/535)                    | 2        | each  | \$236.00 | \$472.00            |
| Asphalt Coring Minimum Charge  | 1        | each  | \$600.00 | \$600.00            |
| Technician, ACI Field Grade I, TxDOT Soils SB 101, SB102, or HMA 1B    | 28       | hour  | \$65.00  | \$1,820.00          |
| Technician, ACI Field Grade I, TxDOT Soils SB 101, SB102, or HMA 1B OT | 7        | hour  | \$97.50  | \$682.50            |
| Vehicle Charge   | 28       | hour  | \$12.00  | \$336.00            |
| Nuclear Density Gauge Charge   | 35       | hour  | \$12.00  | \$420.00            |
| Administrative Assistant and Clerical Support                          | 14       | hour  | \$70.00  | \$980.00            |
| Project Engineer, P.E. / Project Manager                               | 14       | hour  | \$165.00 | \$2,310.00          |
| <b>Paving - Hot Mix Subtotal</b>                                       |          |       |          | <b>\$10,408.50</b>  |
| <b>Paving - Concrete</b>   |          |       |          |                     |
| Compressive Str.Cylinder (C39)   | 650      | each  | \$20.00  | \$13,000.00         |
| Technician, ACI Field Grade I, and TxDOT Soil SB-102                   | 436      | hour  | \$78.00  | \$34,008.00         |
| Technician, ACI Field Grade I, and TxDOT Soil SB-102 OT                | 109      | hour  | \$117.00 | \$12,753.00         |
| Vehicle Charge   | 436      | hour  | \$12.00  | \$5,232.00          |
| Concrete Coring (4" Diameter to 6" Thickness)                          | 40       | each  | \$119.00 | \$4,760.00          |
| Measuring Length of Core   | 40       | each  | \$30.00  | \$1,200.00          |
| Administrative Assistant and Clerical Support                          | 82       | hour  | \$70.00  | \$5,740.00          |
| Project Engineer, P.E. / Project Manager                               | 82       | hour  | \$165.00 | \$13,530.00         |
| <b>Paving - Concrete Subtotal</b>                                      |          |       |          | <b>\$90,223.00</b>  |
| <b>Paving Subtotal</b>   |          |       |          | <b>\$292,811.50</b> |



| <b>DRAINAGE</b>   |     |      |           |                     |
|---|-----|------|-----------|---------------------|
| OMD Standard Compaction - Treated (ASTM D698)                   | 4   | each | \$256.00  | \$1,024.00          |
| Cement Sand Compressive Strength                                | 184 | each | \$81.00   | \$14,904.00         |
| Technician, NICET II, HMA-1A, Logger or Both TxDOT SB101,102    | 572 | each | \$90.00   | \$51,480.00         |
| Technician, NICET II, HMA-1A, Logger or Both TxDOT SB101,102 OT | 143 | each | \$135.00  | \$19,305.00         |
| Vehicle Charge  | 572 | hour | \$12.00   | \$6,864.00          |
| Nuclear Density Gauge Charge                                    | 715 | hour | \$12.00   | \$8,580.00          |
| Administrative Assistant and Clerical Support                   | 60  | hour | \$70.00   | \$4,200.00          |
| Project Engineer, P.E. / Project Manager                        | 64  | hour | \$165.00  | \$10,560.00         |
| <b>Drainage Subtotal</b>  |     |      |           | <b>\$116,917.00</b> |
| <b>Bridge</b>   |     |      |           |                     |
| OMD Standard Compaction - Treated (ASTM D698)                   | 4   | each | \$ 256.00 | \$ 1,024.00         |
| Cement Sand Compressive Strength                                | 100 | each | \$ 81.00  | \$ 8,100.00         |
| Compressive Str.Cylinder (C39)                                  | 132 | each | \$ 20.00  | \$ 2,640.00         |
| Technician, NICET II, HMA-1A, Logger or Both TxDOT SB101,102    | 236 | hour | \$ 90.00  | \$ 21,240.00        |
| Technician, NICET II, HMA-1A, Logger or Both TxDOT SB101,102 OT | 59  | hour | \$ 135.00 | \$ 7,965.00         |
| Technician,ACI Field Grade I, and TxDOT Soil SB-102             | 250 | hour | \$ 78.00  | \$ 19,500.00        |
| Technician,ACI Field Grade I, and TxDOT Soil SB-102 OT          | 63  | hour | \$ 117.00 | \$ 7,371.00         |
| Nuclear Density Gauge Charge                                    | 295 | hour | \$ 12.00  | \$ 3,540.00         |
| Vehicle Charge  | 486 | hour | \$ 12.00  | \$ 5,832.00         |
| Administrative Assistant and Clerical Support                   | 61  | hour | \$ 70.00  | \$ 4,270.00         |
| Project Engineer, P.E. / Project Manager                        | 61  | hour | \$ 165.00 | \$ 10,065.00        |
| <b>Bridge Subtotal</b>  |     |      |           | <b>\$ 91,547.00</b> |
| <b>Utility Relocations</b>                                      |     |      |           |                     |
| OMD Standard Compaction - Treated (ASTM D698)                   | 3   | each | \$256.00  | \$768.00            |
| Cement Sand Compressive Strength                                | 76  | each | \$81.00   | \$6,156.00          |
| Technician, NICET II, HMA-1A, Logger or Both TxDOT SB101,102    | 390 | each | \$90.00   | \$35,100.00         |
| Technician, NICET II, HMA-1A, Logger or Both TxDOT SB101,102 OT | 98  | each | \$135.00  | \$13,230.00         |
| Nuclear Density Gauge Charge                                    | 488 | hour | \$12.00   | \$5,856.00          |
| Vehicle Charge  | 390 | hour | \$12.00   | \$4,680.00          |
| Administrative Assistant and Clerical Support                   | 35  | hour | \$70.00   | \$2,450.00          |
| Project Engineer, P.E. / Project Manager                        | 35  | hour | \$165.00  | \$5,775.00          |
| <b>Utility Relocations</b>                                      |     |      |           | <b>\$74,015.00</b>  |
| <b>Traffic Singal and Extra Work Items</b>                      |     |      |           |                     |
| Compressive Str.Cylinder (C39)                                  | 24  | each | \$90.00   | \$2,160.00          |
| Technician,ACI Field Grade I, and TxDOT Soil SB-102             | 50  | hour | \$78.00   | \$3,900.00          |
| Vehicle Charge  | 50  | hour | \$12.00   | \$600.00            |
| Administrative Assistant and Clerical Support                   | 5   | hour | \$70.00   | \$350.00            |
| Project Engineer, P.E. / Project Manager                        | 4   | hour | \$165.00  | \$660.00            |
| <b>Traffic Singal and Extra Work Items Subtotal</b>             |     |      |           | <b>\$7,670.00</b>   |



|  |           |                   |
|--|-----------|-------------------|
| Paving Subtotal                              | \$        | 292,811.50        |
| Drainage Subtotal                            | \$        | 116,917.00        |
| Bridge Subtotal                              | \$        | 91,547.00         |
| Utility Relocations                          | \$        | 74,015.00         |
| Traffic Singal and Extra Work Items Subtotal | \$        | 7,670.00          |
| <b>Project Subtotal</b>                      | <b>\$</b> | <b>582,960.50</b> |

### PROJECT TIMING AND APPROVAL

We appreciate the opportunity to provide this proposal and look forward to teaming up with you on this project. Should additional information be required to complete your evaluation, or if you would like to discuss any items contained within this proposal, please call us at 281-999-9961. This project will be initiated once the authority to proceed has been received.

Approval:

Robert Arizola  
ATSER, L.P.

Corey Ritter  
Harris County Engineering Department

## STANDARD TERMS and CONDITIONS

### ARTICLE 1. SERVICES

ATSER will:

- 1.1 Provide only those services that, in the opinion of ATSER lie within the technical or professional areas of expertise of ATSER and which ATSER is adequately staffed and equipped to perform. Any outside testing required by project specifications, will be performed by an accredited subcontractor of ATSER.
- 1.2 Perform all technical services under the general direction of a licensed engineer and in substantial accordance with the basic requirements of the appropriate Standards of the American Society for Testing and Materials, where applicable, or other Standards designated in writing by CLIENT.
- 1.3 Promptly submit formal reports of all tests, inspections and services performed indicating, where applicable, compliance with THE PROJECT specifications or other contract documents. Such reports shall be completed and factual, citing the tests performed, methods employed, values obtained, and parts of the structure of THE PROJECT are involved. Test results are reported as-tested using pass/fail criteria from the project plans and specifications. No measurement of uncertainty will be provided without expressed written request prior to the projects start date.
- 1.4 Utilize testing equipment, which has been calibrated according to individually applicable standards and upon request, submit to CLIENT, or his authorized representative, documentation of such calibration.
- 1.5 Consider all reports to be the confidential property of CLIENT and distribute reports only to those persons, organizations or agencies specifically designated in writing by CLIENT or his authorized representative. Information about THE PROJECT including, Project Name, Location, Duration and Budget may be used by ATSER for marketing purposes.
- 1.6 Retain all pertinent records relating to the services performed for a period of five years following submission of the report, during which period the records will be made available to CLIENT at all reasonable times.

### ARTICLE 2. CLIENT'S RESPONSIBILITIES:

CLIENT or his authorized representatives will:

- 2.1 Provide ATSER with all plans, specifications, addenda, change order, approve shop drawings and other information for the proper performance of ATSER.
- 2.2 Issue authorization in writing, giving ATSER free access to THE PROJECT site, and to all shops or yards where materials are prepared or stored.
- 2.3 Designate in writing those persons or firm to act as CLIENT's representatives with respect to ATSER services to be performed under this agreement and to be promptly notified by ATSER when it appears that material tested or inspected are in noncompliance. Such persons or firm to have complete authority to transmit instructions, receive information and data, interpret and define CLIENT's policies and decisions with respect to THE PROJECT; to take action to prevent irrevocable entry of those materials in noncompliance until the issue at question can be resolved; and to order, at CLIENT's expense, such technical service as may be requested of ATSER.
- 2.4 Advise ATSER sufficiently in advance of any operations so as to allow for assignment of personnel by ATSER for completion of the required services. Such advanced notice shall be in accordance with that established by mutual agreement by the parties.
- 2.5 Direct THE PROJECT contractor, either by Construction Contract or direct written order to:
  - a) Secure and deliver to ATSER without cost to ATSER, preliminary representative samples of those materials he proposes to use which require testing, together with any relevant data by ATSER TO obtain and handle samples a THE PROJECT and to facilitate the specified inspection and tests.
  - b) Furnish such casual labor and all facilities needed by ATSER to obtain and handle samples at THE PROJECT and to facilitate the specifications and tests.
  - c) Provide and maintain for the use of ATSER adequate space at THE PROJECT for safe storage of equipment and proper curing of the test specimens, which must remain on THE PROJECT site prior to testing.

### ARTICLE 3. GENERAL CONDITIONS

- 3.1 ATSER, by the performance of services covered hereunder, does not in any way assume abridge or abrogate any of those duties, responsibilities or authorities with regard to THE PROJECT which, by customer contract are vested in THE PROJECT architects, design engineers, or any other design agencies or authorities.
- 3.2 ATSER is not authorized to supervise, alter, relax, enlarge or release any requirement of THE PROJECT specifications or other contract documents not to approve or accept any portion of the work, unless specifically authorized in writing by CLIENT or his authorized representative. ATSER shall not have the right of rejection or the right to stop the work, except for such periods as may be required to conduct the sampling, testing, or inspection of operations covered by the Agreement.

### ARTICLE 4. FIELD MONITORING AND TESTING:

CLIENT agrees that ATSER will be expected to make on-site observations appropriate to the construction stage. The CLIENT further agrees that ATSER will not assume responsibility for the contractor's means, methods, techniques, sequences or procedures of constructions, and it is understood that the final services provided by ATSER will not relieve the contractor of his responsibilities for performing the work in accordance with the plans and specifications. The words "inspection" or "control" are used to mean periodic observation of the work and the conduction of tests by ATSER to verify substantial compliance with the plans, specifications and design concepts. Continuous monitoring by our employees does not mean that ATSER is approving placement of materials. Project Management time of 1 project manager hour per 20 technician hours will be implemented into the monthly billing.

### ARTICLE 5. STANDARD OF CARE AND WARRANTY:

Services performed by ATSER will be conducted in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions. No other warranty, either expressed or implied is made or intended by our proposal, contract, or in reports. ATSER will not be responsible for the interpretation or use by others of data developed by ATSER.

### ARTICLE 6. SAFETY:

CLIENT agrees that, in accordance with the generally accepted construction practice, the general contractor will be solely and completely responsible for working conditions on THE PROJECT, including safety of a persons and property during the performance of the work and compliance with all municipal, state, and federal regulations including OSHA. The duty of ATSER in providing services is not, therefore, to include any review of, or responsibility for, the adequacy of the Contractor's safety measures in, on or near THE PROJECT site.

### ARTICLE 7. INSURANCE:

ATSER shall secure and maintain throughout the full period of this agreement sufficient insurance to protect it adequately from claims under applicable Worker's Compensation Acts and from claims for bodily injury, death or property damage as may arise from the performance of services under this agreement. ATSER will, upon request, file certification of insurance coverage with CLIENT or its authorized representative. Within the limit and conditions of such insurance, ATSER agrees to indemnify and save CLIENT harmless from and against any loss, damage, or liability arising from any negligent work by ATSER, its, agents, staff and consultants employed by it. ATSER shall not be responsible and CLIENT shall indemnify ATSER for and defend ATSER from, any claim, loss, damage or liability arising from any negligent acts by CLIENT, its agents, staff, and other consultants employed by it.

### ARTICLE 8. LIMITATIONS OF LIABILITY:

For any damage, cost, expenses, or other liability, direct or indirect, resulting from any error, omission, or professional negligence in the performance of ATSER's devices, the liability of ATSER, its employees, agents, officers, and consultants to all claimants with respect to THE PROJECT will be limited to an aggregate sum not to exceed \$50,000.00 or ATSER's total fee for the services rendered on THE PROJECT, whichever is greater.

### ARTICLE 9. INVOICES AND PAYMENTS:

ATSER will submit progress invoices to CLIENT monthly and a final invoice upon completion of services. Each invoice on presentation is due and payable by CLIENT or his authorized representative. Payment is past due (30) thirty days from invoice date. CLIENT agrees to pay interest of one and one-half percent (1 1/2%) per month, on past due accounts. CLIENT shall pay any attorney's fees or other costs incurred in collecting any delinquent amount. A four (4) hour minimum will apply for call-out work.

### ARTICLE 10. EXTENT OF AGREEMENT:

The agreement, including these terms and conditions, represents the entire agreement between CLIENT and ATSER and supersedes all prior negotiations, representations or agreements, written or oral. Only written instruments signed by CLIENT and ATSER may amend this agreement. Should any conflict occur between these terms and condition and the Agreement, it understood that these terms and conditions should be controlling.

### ARTICLE 11. APPLICABLE LAW:

The laws of the State of Texas shall govern this agreement.



**EXHIBIT B: ENGINEER TEAM ACKNOWLEDGMENTS**

1. The following is the group of providers selected to perform the obligations described in the Agreement.
  
2. If any firm listed below actively holds certification in any of the following categories, that information shall be identified in the table under “Special Designation” Box:
  - MWBE (Minority and Women Owned Business Enterprise)
  - HUB (Historically Underutilized Business)
  - DBE (Disadvantaged Business Enterprise)
  
3. Also, all contract values must be identified in the table under “Contract Value”.

| Responsibility                       | Firm        | Special Designation | Contract Value (M/WBE) | Contract Value (Non M/WBE) |
|--------------------------------------|-------------|---------------------|------------------------|----------------------------|
| <b>Prime</b>                         | Atser, L.P. | <b>N/A</b>          |                        | \$582,960.50               |
| <b>Surveying</b>                     |             |                     |                        |                            |
| <b>Geotechnical</b>                  |             |                     |                        |                            |
| <b>Drainage</b>                      |             |                     |                        |                            |
| <b>Community Engagement Services</b> |             |                     |                        |                            |
| <b>Other</b>                         |             |                     |                        |                            |
| <b>Total</b>                         |             |                     | <b>\$0.00</b>          | <b>\$582,960.50</b>        |

**Total Contract Value in dollars:** **\$582,960.50**

**Percent of contract in dollars allocated to (MWBE, HUB, or DBE) Consultants:** **0%**

- The Engineer understands that it is solely responsible and liable to the County for the completion of all obligations under the Agreement.
  
- A proposed decrease in the contract value for any MWBE, HUB, or DBE listed on this Exhibit must be approved by the Department of Economic Equity and Opportunity (DEEO).

**ORDER OF COMMISSIONERS COURT**

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  
AGREEMENT BETWEEN  
HARRIS COUNTY AND ATSER, L.P.  
FOR PROFESSIONAL ENGINEERING SERVICES**

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. 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 meeting chair announced that the motion had duly and lawfully carried, and this order was duly and lawfully adopted. The order adopted follows:

**IT IS ORDERED** that:

1. The Harris County Judge is authorized to execute the attached Agreement between **Harris County** and **Atser, L.P.** for Professional Engineering Services. The attached Agreement, including any addendums, may be executed with an electronic or facsimile signature. The Harris County Engineering Department is authorized to request the Harris County Purchasing Agent to expend up to **\$582,960.50** in consideration of the work, products, services, licenses and/or deliverables provided under this Agreement.
2. The Harris County Engineering Department and all other Harris County officials and employees are authorized to do any and all things necessary or convenient to accomplish the purpose of this Order.