



THE STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

**AGREEMENT FOR PROFESSIONAL SERVICES
C-19-231-01-28**

THIS AGREEMENT is made, by and between **HIDALGO COUNTY**, acting herein by and through the **Commissioners Court**, hereinafter called the "**Owner**", and **SAMES, Inc.**, Professional **Engineers** of McAllen, Texas, hereinafter called the "**Engineer**".

WITNESSETH:

WHEREAS, the **Owner** desires to contract with the **Engineer** to provide **Professional Engineering Services for Inspection, Material Testing, and Construction Management for the Mile 6W Road Project (From Mile 9 to Mile 11) in Hidalgo County Precinct No. 1** project hereinafter referred to as the "**Project**".

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

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

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

2.1 Scope of Work. The **Owner** will furnish items and provide those services for the development of the **Project** and fulfillment of this Agreement, as identified in **EXHIBIT "A" – Services to be provided by the Owner**. The **Engineer** will provide the services deemed necessary for the development of the **Project**, attached hereto and made a part of this agreement in **EXHIBIT "B" – Services to be provided by the Engineer**.

2.2 Classification of Services. For this Agreement, the professional services to be provided by the Engineer.

2.3 Schedule of Work. The **Engineer** shall prepare a schedule of work (hereinafter referred to as "Work Schedule") in accordance with the terms identified in **EXHIBIT "C" - Work Schedule**, attached hereto and made a part of this Agreement. **Engineer**, as more particularly identified in **EXHIBIT "B"**, attached hereto.

ARTICLE 3. Period of Service. Upon execution of this Agreement, the **Engineer** shall proceed with the work outlined under Article 2 hereof.

3.1 Termination Date. This Agreement shall terminate on January 27, 2023 or upon completion of projects (hereinafter referred to as the "Termination Date"), unless extended by written supplemental agreement, as provided in Article 8 hereof, duly executed by the **Engineer** and the **Owner** prior to the Termination Date, or otherwise terminated as provided in Article 3.4 herein and below. The **Owner** assumes no liability or obligation for payment to the **Engineer** for work performed or costs incurred by the **Engineer** prior to the date authorized by the **Owner** for the **Engineer** to begin work, during periods when work is suspended, or subsequent to the Termination Date.

3.2 Extension of the Termination Date. The **Engineer** shall notify the **Owner** in writing as soon as possible if it is determined, or reasonably anticipated, that the work under this Agreement cannot be completed before the Termination Date, and the **Owner** may, at the **Owner's** sole discretion, extend the Termination Date by written supplemental agreement as provided in Article 8 hereof. The **Engineer** shall allow adequate time for review and approval by the **Owner** of the written notice and request by the **Engineer** to extend the Termination Date.

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

Owner and the **Engineer**. The work under this Agreement may be reinstated and resumed in full force and effect within sixty (60) days of receipt of written notice from the **Owner** to the **Engineer**. The sixty-day notice may be waived as agreed in writing by both the **Owner** and the **Engineer**.

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

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

- (1) Commitment of Current Revenues Only. In the event that, during any term hereof, the Commissioners Court does not appropriate sufficient funds to meet the obligations of County under this Agreement, County may terminate this Agreement upon thirty (30) days written notice to Architect. County agrees, however, to use reasonable efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of County. Agreements for the acquisition, including the lease of real or personal property under Tex.Loc.Govt.Code §271.903: In the event that during any term hereof the Commissioner's Court does not appropriate sufficient funds to meet the obligations of County under this agreement, County may terminate the Agreement upon thirty (30) days written notice to Architect. County agrees, however, to use a best efforts attempt to obtain and appropriate funds for payment of the Agreement. The parties intend this provision, if applicable, to be a continuing right to terminate this Agreement at the expiration of each budget period of County in accordance with Tex. Loc. Govt. Code §271.903 (Vernon Supp. 1966).
- (2) By mutual agreement and consent, in writing, of both the **Engineer** and the **Owner**.
- (3) By the **Owner**, upon failure of the **Engineer** to fulfill the **Engineer's** obligations set forth herein in a satisfactory manner as determined by the **Owner** and in sole opinion of the **Owner**, after the **Owner** provides written notice to the **Engineer** of such failure and the **Engineer** has not corrected such failure within (30) days of such written notice by the **Owner**.
- (4) By the **Engineer**, upon failure of the **Owner** to fulfill the **Owner's** obligations set forth herein, after the **Engineer** provides written notice to the **Owner** of such failure and the **Owner** has not corrected such failure within thirty (30) days of such written notice by the **Engineer**.
- (5) By the **Owner** without cause upon thirty (30) days written notice to the **Engineer**.
- (6) By satisfactory completion of all services and obligations described herein.

Should the **Owner** terminate this Agreement as herein provided, no fees other than fees due and payable at the time of termination shall thereafter be paid to the **Engineer**

notwithstanding anything herein to the contrary. In determining the value of the work performed by the **Engineer** prior to termination, the **Owner** shall be the sole judge of the value of such work performed. Compensation for work at termination will be based on a percentage of the work completed at that time. Should the **Owner** terminate this Agreement under (5) of the paragraph above, the amount charged during the thirty (30) day notice period shall not exceed the amount charged during the preceding ninety (90) days.

If the termination of this Agreement is due to the failure of the **Engineer** to fulfill the **Engineer's** obligations under this Agreement, the **Owner** may take over the Project and prosecute the work to completion. In such case, the **Engineer** shall be liable to the **Owner** for any additional cost occasioned by the **Owner**.

If the **Engineer** defaults in the performance of this Agreement or if the **Owner** terminates this Agreement for fault on the part of the **Engineer**, the **Owner** will give consideration to payment of an amount in settlement to include: the actual costs incurred by the **Engineer** in performing the work to the date of default, the amount of work required which was satisfactorily completed to date of default, the value of the work which is usable to the **Owner**, the cost to the **Owner** of employing another consultant and/or firm to complete the work required and the time required to do so, and other factors which affect the value to the **Owner** of the work performed at the time of default. This Agreement shall not be considered as specifying the exclusive remedy for any default by the **Engineer**, but all remedies existing at law and in equity may be availed of by either party and shall be cumulative.

The termination of the Agreement and payment of an amount in settlement as prescribed above shall extinguish all rights, duties, and obligations of the **Owner** and the **Engineer** under this Agreement, except the obligations set forth in Articles 11.2, 12, 13, 15, 16, 17, 18.3, 19, 22 and 26 hereto.

ARTICLE 4. Progress and Coordination. The **Engineer** shall, from time to time during the progress of the work, confer with the **Owner**. The **Engineer** shall prepare and present such

information as may be pertinent and necessary, or as may be requested by the **Owner**, in order to evaluate features of the **Engineer's** services and work.

At the request of the **Owner** or the **Engineer**, conferences shall be provided at the **Engineer's** office, the office of the **Owner**, or at other locations designated by the **Owner**. These conferences shall also include evaluation of the **Engineer's** services and work when requested by the **Owner**.

All applicable study reports shall be submitted in preliminary form for approval by the **Owner** before the final report is issued. The **Owner's** comments regarding the **Engineer's** preliminary report will be addressed by the **Engineer** in the final report.

If funds by other agencies or entities are to be used for the development of the project under this Agreement, the **Engineer's** services and work will be subject to periodic review and approval by other agencies or entities, including those of the city, county, state and/or federal agencies.

Should it be determined that the progress in the production of the **Engineer's** services and work does not satisfy the requirements of the approved Work Schedule as provided by Exhibit "C", attached hereto, the **Owner** shall review the approved Work Schedule with the **Engineer** to determine the corrective action needed by either the **Owner** or the **Engineer**.

The **Engineer** shall promptly advise the **Owner** in writing of events which have a significant impact upon the progress of the **Engineer's** services and work and the approved Work Schedule, including:

- (1) Problems, delays, adverse conditions which will materially affect the ability to attain contract objectives, prevent the meeting of time schedules and goals, or preclude the timely completion and submittal of Project deliverables by the **Engineer** within established time periods; this disclosure will be accompanied by a statement by the **Engineer** of recommended or immediate action taken, or contemplated, and any **Owner** or other agency or entity assistance needed to resolve the situation: and
- (2) Favorable developments or events which enable meeting the Work Schedule goals sooner than anticipated.

ARTICLE 5. Compensation and Fees. For and in consideration of the services to be rendered by the **Engineer**, the **Owner** shall compensate the **Engineer** as follows:

5.1 Basic Services. For and in consideration of the Services to be rendered by the **Engineer**, as identified in Article 2 and more particularly identified in EXHIBIT "B", attached hereto, the maximum amount payable by the **Owner** to the **Engineer** for Services, subject to adjustment in accordance with Article 6.1 herein, will be provided in each work authorization issued. Payments to the **Engineer** for Services shall be made by the **Owner**, upon presentation by the **Engineer** of the monthly Request for Payment, in accordance with the terms and provisions of Article 6 herein.

5.2 Special Services. Those services that may be required to provide by the **Engineer** as Special Services are set forth below and more particularly described in EXHIBIT "B", attached hereto. For and in consideration of these Special Services rendered as required by the **Engineer**, the **Owner** shall pay the **Engineer** a negotiated lump sum fee (hereafter referred to as "Special Services Fee") at the hourly labor rates and non-labor rates (hereinafter referred to as "Contract Rates") specified in EXHIBIT "D" - **Contract Rates**, attached hereto and made a part of this Agreement, and as follows:

- (1) **Senior Construction Engineer/Manager ~ Construction Manager (PE/PMP) ~ Environmental Specialist ~ Design Engineer ~ Construction Superintendent ~ Construction Record Keeper ~ Laboratory Field Technician ~ Engineering Technician ~ CADD Operator ~ Admin/Clerical:** Actual performance of services of project site **Engineer**, resident **Engineer** and/or inspector, if required by **Owner**.
- (2) **DOCUMENT COPIES.** Actual performance and/or providing of additional copies (over 10) of report; additional copies (over 10) of plans (contract drawings), specifications and estimates (PS&E); additional copies (over 10) of bidding documents; additional copies (over 10) of as-built drawings.
- (3) **EXTRA TRAVEL.** Extra travel required of **Engineer** and authorized by **Owner** to points outside of Hidalgo County.
- (4) **EXPERT WITNESS.** Assistance to the **Owner** as expert witness in any litigation with third parties, arising from the development or construction of the Project.
- (5) **MISCELLANEOUS.** Investigations involving detailed consideration of operation, maintenance and overhead expenses and (unless otherwise agreed) the

preparation of rate schedules, earning and expense statements; preparation of feasibility studies; environmental document preparation; appraisals, valuations, and material audits; or inventories required for certification of force account construction performed by the **Owner**; preparation of change orders for extra work done by the Contractor.

ARTICLE 6. Method of Payment.

6.1 Request for Payment. Payments to the **Engineer** for services rendered will be made while work is in progress as executed through a lump sum fee assigned to each work authorization (hereinafter referred to as "Work Authorization") in accordance with Article 7 herein. For each Work Authorization, the **Engineer** shall prepare and submit to the **Owner** monthly progress reports in sufficient detail to support the progress of the work and in support of a request for payment (hereinafter referred to as "Request for Payment"). The progress report shall indicate the percent completion of the work accomplished by the **Engineer** during the billing period and to the date of the Request for Payment. On or before noon of the first Monday of each month during the performance of the services, the **Engineer** shall submit to the **Owner** for approval a Request for Payment. Payment of the lump sum fee for each Work Authorization identified in the Request for Payment will be in proportion to the percent completion of the work tasks identified in such Work Authorizations together with a detailed breakdown of the amount and the sum of all prior payments. The **Owner** shall review each such Request for Payment and may make such exceptions as the **Owner** reasonably deems necessary or appropriate under the circumstances then existing. After the Commissioners Court of the **Owner** meets approving such payment, the **Owner** shall make payment to the **Engineer** in the amount approved as aforesaid subject to Article 6.4 herein and below in accordance with the Texas Prompt Payment Act.

If the Project, or any portion(s) thereof, are deleted or otherwise not constructed, compensation to the **Engineer** by the **Owner** for the Project or such portions of the project shall be only the amounts paid the **Engineer** for actual work performed in accordance with the Work Authorization(s) approved by the **Owner**.

6.2 Final Payment. After final completion of the work and acceptance thereof by the **Owner**, the **Engineer** shall submit a final request for payment ("Final Request for Payment") which shall set forth all amounts due and remaining unpaid to the **Engineer** and upon approval thereof by the **Owner**, the **Owner** shall pay to the **Engineer** the amount due ("Final Payment") under such Final Request for Payment in accordance with the provisions of Article 6.1 hereof. The Final Payment shall not be made until the **Engineer** delivers to the **Owner** an affidavit that so far as the **Engineer** has knowledge or information any and all amounts due for materials and services over which the **Engineer** has control have been paid.

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

- (1) The **Engineer** is in default of any of its obligations hereunder or otherwise is in default under this Agreement or under any contract documents related to this Agreement;
- (2) Any part of such payment is attributable to the **Engineer's** services which are not performed in accordance with this Agreement; provided, however, such payment shall be made as to the part thereof attributable to the **Engineer's** services which were performed in accordance with this Agreement.
- (3) The **Engineer** has failed to make payments promptly to consultants or other third parties used in connection with the Project for which the **Owner** has made payment to the **Engineer**;
- (4) If the **Owner**, in good faith judgement, determines that the portion of the compensation then remaining unpaid will not be sufficient to complete the **Engineer's** services in accordance with this Agreement, no additional payments will be due the **Engineer** hereunder unless and until the **Engineer**, at its sole cost, performs a sufficient portion of the **Engineer's** services so that such portion of the compensation then remaining unpaid is determined by the **Owner** to be sufficient to so complete the **Engineer's** services.

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

6.5 The **Engineer** shall promptly pay all bills for labor and material performed and

furnished by others in connection with the performance of the **Engineer's** services.

6.6 Waiver. The making of the Final Payment shall constitute a waiver of all claims by the **Owner** except those arising from (1) faulty or defective services of the **Engineer** appearing after completion of the Project. (2) failure of the **Engineer's** services to comply with the requirements of this Agreement or any contracts or Agreements related to the Project, or (3) terms of any special warranties required by this Agreement or provided at law or in equity. The acceptance of Final Payment shall constitute a waiver of all claims by the **Engineer** except those previously made in writing and identified by the **Engineer** as unsettled at the time of the Final Request for Payment.

ARTICLE 7. Work Authorization. After execution of this Agreement, the **Engineer** shall proceed with the work outlined under Article 2 hereof, only as authorized by the **Owner** through an agreed Work Authorization document in the form identified in EXHIBIT "E"- Work Authorization Form, attached hereto and made a part of this Agreement. The **Engineer** will identify, as approved by the **Owner**, the needed services for the Project, as required through the course of the development to the Project. The **Owner** shall authorize the **Engineer** to perform one or more of the agreed tasks identified in EXHIBIT "B", attached hereto, in the form of individual work authorizations. Upon authorization from the **Owner**, the **Engineer** will prepare a Work Authorization document, which will include a description of the work to be performed, including a description of the tasks and milestones, a work schedule, and an estimated cost proposal agreed upon by the **Owner** and the **Engineer**. The estimated cost proposal shall set forth in detail the computation of the cost of each work task, at the hourly rates established and identified in EXHIBIT "D", attached hereto. The Work Authorizations shall not waive the **Owner's** and the **Engineer's** responsibilities and obligations established in this Agreement.

The estimated cost proposal for each Work Authorization, developed by the **Engineer** and approved by the **Owner** shall be used by the **Owner** to appropriate a purchase order for the Work Authorization. Each executed Work Authorization shall become a part of this Agreement. Upon

satisfactory completion of the Work Authorization, the **Engineer** shall submit the Project's deliverables as specified in the executed Work Authorization to the **Owner** for review and acceptance.

Work included in a Work Authorization shall not begin until the **Owner** and the **Engineer** have signed the Work Authorization. All work must be completed on or before the completion date specified in the Work Authorization, unless extended by written agreement by the **Engineer** and the **Owner**. The **Engineer** shall promptly notify the **Owner** of any event that will affect completion of the Work Authorization. All Work Authorizations must be executed and completed by both the **Engineer** and the **Owner** within the period established for this Agreement as specified in Article 3 hereof.

The final acceptance by the **Owner** of each Work Authorization for the Project shall serve as evidence of completion, on the part of the **Engineer**, of all services under this Agreement insofar as they pertain to that portion of work on the Project identified in the applicable work authorization.

ARTICLE 8. Supplemental Agreements. The terms of this Agreement may be amended by supplemental agreement if the **Owner** determines that (1) there is a need to extend the Termination Date identified in Article 3.1 hereof, (2) there has been a significant change in the scope, complexity or character of the services to be performed by the **Engineer**, and/or (3) for any other reason agreeable to the **Owner** and the **Engineer**. All supplemental agreements will be developed in the form identified in **EXHIBIT "F" - Supplemental Agreement Form**, attached hereto and made a part of this Agreement, and incorporated herein by reference as "Supplemental Agreement".

If determined appropriate by the **Owner**, additional compensation to the **Engineer** for (1), (2) and/or (3) above shall be paid as a negotiated lump sum fee at the Contract Rates specified in **EXHIBIT "D"**, attached hereto. The negotiated lump sum fee shall be incorporated into the Supplemental Agreement.

Any **Supplemental Agreement** must be executed by both the **Engineer** and the **Owner** prior to the Termination Date specified in Article 3 hereof. It is distinctly understood and agreed that no claim by the **Engineer** for additional work, as identified in Article 9 hereof, or changes or revisions in work, as identified in Article 10 hereof, shall be made by the **Engineer** until full execution of the Supplemental Agreement and authorization to proceed is granted by the **Owner**. The **Owner** reserves the right to withhold payment to the **Engineer** pending verification of satisfactory work performed by the **Engineer**.

ARTICLE 9. Additional Work. If the **Engineer** is of the opinion that any work it has been directed to perform is beyond the scope of this Agreement and constitutes extra work, the **Engineer** shall promptly notify the **Owner** in writing. In the event the **Owner** finds that such work does constitute extra work, the **Owner** shall so advise the **Engineer** and a written supplemental agreement will be executed between the **Owner** and the **Engineer** as provided herein. The **Engineer** shall not perform any proposed additional work or incur any additional cost prior to the execution by both the **Engineer** and the **Owner** of a supplemental agreement. Additional compensation from the **Owner** to the **Engineer** shall be paid as a negotiated lump sum fee at the Contract Rates specified in EXHIBIT "D" attached hereto. The negotiated lump sum fee shall be incorporated into the supplemental agreement as specified in Article 8 hereof. The **Owner** shall not be liable or under any obligation to compensate the **Engineer** for work performed or costs incurred by the **Engineer** relating to additional work not directly associated with the performance of the work authorized in this Agreement or as amended through supplemental agreement.

ARTICLE 10. Changes or Revisions in Work. If the **Owner** finds it necessary to request changes to the work, and the changes are within the applications of sound **Engineering** principles, the **Engineer** shall make such revisions if requested and directed by the **Owner**.

10.1 Preliminary Work. The **Engineer** will make, without expense to the **Owner**, such revisions of any preliminary reports or drawings as may be required to meet the needs of the **Owner** and the applications of sound **Engineering** principles.

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

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

10.4 Reduction of Project Cost. Notwithstanding any provision herein to the contrary, in the event it is necessary for the **Owner** to require changes in the final plan of the Project to enable it to reduce the construction cost of the Project to an amount within the sum estimated by the **Engineer**, the **Engineer** will be required to make such revisions or changes. These changes will only be considered additional work by the **Engineer**, if the **Engineer** previously provided these same changes as options to the **Owner** at the stage of preliminary work or prior to the approval of the final plan for the Project, and the option or options were not selected or approved by the **Owner** to be incorporated into the final plan of the Project. Payment for this additional work will then be made to the **Engineer** in accordance with Article 9 hereof. If the **Engineer** failed to provide these changes as an option or options to the **Owner** at the stage of preliminary work or prior to the approval of the final plan of the Project, these changes will not be considered additional work and no additional compensation will be made to the **Engineer**.

ARTICLE 11. Ownership and Release of Documents.

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

All documents furnished to the **Engineer** by the **Owner** shall be delivered to the **Owner** upon completion or termination of this Agreement. The **Engineer**, at the **Engineer's** own expense, may retain copies of such documents or any other data under this Agreement.

11.2 Release of Documents or Information. Release of information to the public or others regarding the Project will be accordance with the Texas Public Information Act.

ARTICLE 12. Discounts, Rebates, Refunds. In connection with procurement services rendered by the **Engineer**, if procurement services are required of the **Engineer** hereunder, all discounts, rebates and refunds shall accrue to the **Owner**. For some purchases, the **Engineer** may deem that payment within the discount period is not safe; and/or inspection, guarantees, or other considerations may dictate delay. In such cases, the **Engineer** shall promptly notify the

Owner so that a course of action may be mutually agreed upon by the **Owner** and the **Engineer**.

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

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

The **Engineer**, and the **Owner**, do hereby bind themselves, their successors, executors, administrators and assigns to each other party of this Agreement and to the successors, executors, administrators, and assigns of such other party in respect to all covenants of this contract.

ARTICLE 15. Patents. The **Engineer** shall indemnify and save the **Owner** harmless from all liability for alleged or actual infringement of any patent resulting from the use of apparatus or equipment furnished or designed by the **Engineer** or from the use of any process designed by the **Engineer** or effected by said apparatus or equipment, and the **Engineer** shall indemnify and save the **Owner** harmless from and against all costs, legal fees, expenses and liabilities incurred in or about any claim of or action for such infringement: provided, however, that the **Owner** shall promptly transmit to the **Engineer** all papers served on the **Owner** in any suit involving such claim

of infringement, and provided further, that the **Owner** permits the **Engineer** to have entire charge and control of the defense of any such suit. If because of actual infringement the use of such apparatus, equipment, or process is enjoined, the **Engineer** shall refund the purchase price thereof in proportion to the length of service uncompleted, the life of such apparatus or equipment being assumed as five years. The **Engineer** hereby grants to the **Owner** a non-exclusive, royalty-free license under patents now or hereafter owned by the **Engineer** covering any machines, apparatus, processes, articles, or products included in the **Engineer's** work hereunder.

ARTICLE 16. Confidential Information, Inventions and Other Restrictions.

16.1 Confidential Information. The **Engineer** shall not use in any way, commercial or otherwise, except to the extent required by the proper performance of this Agreement; and shall hold in confidence and not disclose to any person, for any reason or at any time, any information relating to the secret processes, products, compositions, machinery, apparatus or trade secrets of the **Owner**, or any other confidential information given to the **Engineer** by any of the **Owner's** commissioners, elected officials, employees, or representatives or acquired by the **Engineer** during the term of or as a result of this Agreement. Any information not generally available to the public shall be considered secret and confidential for the foregoing purposes; provided, however, that any technical information which was lawfully in the **Engineer's** possession prior to such disclosure to the **Engineer** by the **Owner** or which is or shall lawfully be published or become part of general knowledge from sources other than the **Engineer** or which otherwise shall lawfully become available to the **Engineer** from a source other than the **Owner**, shall not be subject to these provisions. All the foregoing stipulations shall apply to such information and work hereunder as well as to any information and ideas originated or developed by the **Engineer** in performing such work. Such information may, of course, be disclosed to the proper officials or employees of the **Owner** if necessary to perform the work hereunder. The **Engineer** shall, however, inform each of its employees who receive such information of these restrictions and the **Engineer** shall take all reasonable precautions and exert all reasonable efforts to assure conformance with such

restrictions by all of its officers, employees, and agents, obtaining from them if necessary, agreements satisfactory to the **Owner**, effectuating the purposes of this Article.

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

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

ARTICLE 17. Engineer's Seal, Responsibility and Warranties.

17.1 Engineer's Seal. The **Engineer** shall assign a responsible **Engineer** or **Engineers** licensed to practice in the State of Texas, who shall sign, seal and date all appropriate **Engineering** submissions to the **Owner** in accordance with the Texas **Engineering** Practice Act and the Rules of the State Board of Registration for Professional **Engineers**.

17.2 Engineer's Responsibility. The **Engineer** shall be responsible for the accuracy

of the work for the Project and shall promptly make necessary revisions or corrections resulting from errors, omissions, or negligent acts by the **Engineer**. No additional compensation will be made to the **Engineer** for any necessary revisions or corrections resulting from errors, omissions, or negligent acts by the **Engineer**.

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

17.3 Warranties.

(a) The **Engineer** warrants that **Engineering** design work performed by the **Engineer** hereunder shall be in accordance with sound **Engineering** design practices and in conformance with applicable code and standards established for such work.

(b) Notwithstanding anything to the contrary contained in this Agreement, the **Owner** and the **Engineer** agree and acknowledge that the **Owner** is entering into this Agreement in reliance on the **Engineer's** experience and abilities with respect to performing the **Engineer's** services hereunder. The **Engineer** accepts the relationship of trust and confidence established between it and the **Owner** by this Agreement. The **Engineer** covenants with the **Owner** to use the **Engineer's** best efforts, skill, judgement and abilities to design the Project and to further the interests of the **Owner** in accordance with the **Owner's** requirements and procedures, in accordance with all professional standards, and in compliance with all applicable national, federal, state, county and municipal laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction. If the development of plans, specifications and estimates (hereinafter referred to as "PS&E") are identified in this Agreement under Article 2 hereof or EXHIBIT "B", attached hereto, as part of the services to be provided by the **Engineer** for the Project, prior to the commencement of construction, the **Engineer** shall certify in writing to the

Owner that the PS&E for the Project, and the improvements when built in accordance therewith, conform to all applicable governmental regulations, statutes and ordinances then in effect. The **Engineer** represents covenants and agrees that there are no obligations, commitments or impediments of any kind that will limit or prevent performance of the **Engineer's** services. The **Engineer** represents, covenants and agrees that all of **Engineer's** services to be furnished by the **Engineer** under or pursuant to this Agreement from the inception of the Agreement until the Project has been fully completed, shall be of the standard and quality which prevail among **Engineers** of similar experience, knowledge, skill and ability engaged in **Engineering** practice throughout Texas under the same or similar circumstances involving the design and construction of Project.

(c) The **Engineer** represents, covenants and agrees that the **Engineer's** special talent, training and experience cause the **Engineer** to be the prime professional on the Project; that because of such talent and training, the **Engineer** envisions the construction of the Project in its entirety and possesses the special skills which enable the **Engineer** to recognize dangerous conditions that a reasonable, prudent **Engineer** having such special skills could anticipate may arise from the proper use of the Project after acceptance by **Owner**; and that the **Engineer** recognizes that any commissioners, elected officials, employees and agents of the **Owner**, plus residents and **Owners** of property within the area affected by the Project are within a class of foreseeable persons who will be relying on the project being designed in a professional and safe manner. If the development of PS&E is identified in this Agreement under Article 2 hereof or EXHIBIT "B", attached hereto, as part of the services to be provided by the **Engineer** for the Project, the **Engineer** represents, covenants and agrees that the PS&E of the Project will be accurate and free from any material errors. The **Engineer** additionally represents, covenants and agrees to the following: that the design of the Project will conform to its foreseeable use as a Project with all the amenities as set forth in any PS&E developed by the **Engineer** for the Project; that the result of such PS&E, if built in accordance therewith, will be suitable for purposes for

which the Project is designed; and the Project will be inspected in a workmanlike, professional manner and will be suitable for the Project's intended purpose. The **Engineer's** responsibilities as set forth herein shall at no time be in any way diminished by reason of any approval by the **Owner** of any PS&E developed by the **Engineer** for the Project, nor shall the **Engineer** be released from any liability by reason of such approval by the **Owner**, it being understood that the **Owner** at all times is ultimately relying upon the **Engineer's** skill and knowledge in preparing such PS&E.

(d) In connection with the **Engineer's** performance of procurement services hereunder, if any, the **Engineer** use its best efforts to obtain from all vendors of equipment and materials, fullest possible warranties against defective materials and workmanship for the benefit of the **Owner**.

ARTICLE 18. Engineer's Resources. The **Engineer** shall furnish and maintain, at the **Engineer's** own expense, office space for the performance of all services, skilled and sufficient personnel, as well as adequate and sufficient equipment to perform the services as required under this Agreement.

18.1 Project Manager. The **Engineer** shall provide a manager (Project Manager) for the Project that is a registered professional **Engineer** in the State of Texas. The Project manager shall have such knowledge and experience as will enable that Project Manager during the course of the Project without prior consent of the **Owner**. If, due to situations beyond the control of the **Engineer**, the **Engineer** must change the Project Manager prior to the completion and acceptance of the Project, the **Engineer** will submit a request to change the Project Manager to the **Owner** for approval.

18.2 Employees of the Engineer. All employees of the **Engineer** shall have such knowledge and experience as will enable them to perform the duties assigned to them and required for the services under this Agreement. Any employee of the **Engineer** who, in the opinion of the **Owner**, is incompetent, or whose conduct becomes detrimental to the work required under

this Agreement, shall immediately be removed from association with the Project when so instructed by the **Owner**. The **Engineer** certifies that the **Engineer** presently has employed sufficient and qualified personnel, and will maintain sufficient and qualified personnel for performance of the services under this Agreement.

18.3 Documents/Information Exchange. The purpose of this Article is to define the required automated resources, format for graphics files, and information exchange pertaining to the Project. Taking into consideration that the **Owner** has a significant investment in the development of the Project, there is a need for the **Engineer** to provide consistency in document development for information exchange. Consistency in document development for information exchange and production will help facilitate an economically efficient Project. Therefore, the **Engineer** shall provide the **Owner** with documents and information in accordance with the special requirement outlined in EXHIBIT "B" attached hereto.

ARTICLE 19. Indemnification. To the fullest extent permitted by applicable law, the **Engineer** and its agents, partners, subcontractors, and consultants (collectively "Indemnitors") shall and do agree to indemnify, and hold harmless the **Owner**, the **Owner's** respective directors, elected officials, employees and agents (collectively "Indemnitees") from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses, including attorney fees, of any nature, kind or description (collectively "Liabilities") of any person or entity whomsoever arising out of, caused by or resulting from the negligent performance of the **Engineer's** services through activities of the **Engineer**, its agents, partners, subcontractors and/or consultants performed under this Agreement, and which are caused by or result from error, omission, or negligent act of the **Engineer** or of any person employed or contracted by the **Engineer** provided that any such **Liabilities** (1) are attributable to bodily injury, personal injury, sickness, disease or death of any person, or to the injury to or destruction of tangible personal property including the loss of use and consequential damages resulting there from and (2) are caused in whole

or in part by any negligent act or omission of the Engineer, anyone directly or indirectly employed by the Engineer or anyone for whose acts the Engineer may be legally liable. The Engineer shall also save harmless the Owner from any and all expense, including but not limited to, attorney fees which may be incurred by the Owner in litigation or otherwise resisting said claim or liabilities which may be imposed on the Owner as a result of such activities by the Engineer, its agents partners, subcontractors and/or consultants. In this connection, it is agreed and understood that the Engineer shall not be responsible for any portion of the liability proximately caused by the Owner's negligence.

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

ARTICLE 21. Insurance. The **Engineer** shall obtain and maintain insurance in the limits of liability for each of the types of insurance coverage identified as follows.

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

- each occurrence for bodily injury, and one hundred thousand dollars (\$100,000) each occurrence for property damage.
- (4) Professional Liability in limits of \$1,000,000 each claim and aggregate.

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

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

ARTICLE 23. Non-collusion. The **Engineer** warrants that the **Engineer** has not employed or retained any company or persons, other than a bona fide employee working solely for the **Engineer**, to solicit or secure this Agreement, and that the **Engineer** has not paid or agreed to pay any company, **Engineer** or any other person or entity any fee, commission, percentage,

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

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

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

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

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

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

OWNER
Hidalgo County
100 E. Cano, 1st Floor
Edinburg, Texas 78539

ENGINEER
SAMES, Inc.
200 S. 10th Street, Suite 1500
McAllen, Texas 78501

The Address may be changed by either party by written notice and notice so mailed shall be effective upon mailing.

ARTICLE 29. Miscellaneous Provisions.

- (a) This Agreement constitutes the entire Agreement between the **Engineer** and the **Owner** relating to the work herein described and supersedes any prior understanding or written or oral contracts between the parties respecting the subject matter defined herein. These are no previous or contemporary representations or warranties of the **Owner** or the **Engineer** not set forth herein.
- (b) Except as specifically provided herein no modification, waiver, termination, rescission, discharge or cancellation of this Agreement or of any terms thereof shall be binding on the **Owner** unless in writing and executed by an officer or employee of the **Owner** specifically authorized to do so.
- (c) No waiver of any provision of or a default under this Agreement shall affect the right of the **Owner** thereafter to enforce said provision or to exercise any right or remedy in the event of any other default whether or not similar.
- (d) No modification, waiver, termination, discharge or cancellation of this Agreement or of any terms thereof shall impair the **Owner's** right with respect to any liabilities whether or not liquidated of the **Engineer** to the **Owner** theretofore accrued.
- (e) All rights and remedies of the **Owner** specified in this Agreement are in addition to the **Owner's** other rights and remedies.
- (f) The **Engineer** shall remain an independent contractor and shall have no power nor shall the **Engineer** represent that the **Engineer** has any power to bind the **Owner** or to assume or to create any obligation express or implied on behalf of the **Owner** except as specifically authorized in advance by the **Owner**.
- (g) The Agreement shall be construed under the laws of the State of Texas and is performable in Hidalgo County, Texas.
- (h) This Agreement may only be amended by a written document executed by the **Owner** and the **Engineer** as provided by Article 8 herein.

ARTICLE 30. Signatory Warranty. The undersigned signatory or signatories for the **Engineer** hereby represent and warrant that the signatory is an officer of the organization for which he or she has executed this Agreement and that he or she has full and complete authority to enter into this Agreement on behalf of the **Engineer**. The above-stated representations and warranties are made for the purpose of inducing the **Owner** to enter into this Agreement.

ARTICLE 31. Texas Law to Apply. This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Hidalgo County, Texas. The parties hereby consent to personal jurisdiction in Hidalgo County, Texas.

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

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

ARTICLE 34. Additional Documents. The parties hereto covenant and agree that they will execute each such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this Agreement.

ARTICLE 35. Required Contract Provision for Contracts Subject to Federal Award (if applicable). The following are incorporated into this agreement for all purposes. Pursuant to 2 CFR 200.326, a non-federal entity's contracts must contain the applicable provisions described in appendix II to 2 CFR 200-Contract Provisions for non-Federal Entity Contracts under Federal Awards. Additionally, County contracts under Federal award which are subject to assistance from the Federal Emergency Management Agency (FEMA) are also required to contain additional contract clauses. Additionally, section 23 CFR 172.9(c)(1) provides for the incorporation of certain contract provisions either physically or by reference into the language of each contract or subcontract for professional service providers of federal road projects subject to federal award, as applicable:

- (i) The County shall consider administrative, contractual and legal remedies and sanctions in accordance with Federal and State laws and regulations where consultants violate or breach contract terms and conditions. Applicable provisions are found herein including, but not limited to, ARTICLE 3 and the corresponding procurement packet.
- (ii) The County provides notice of requirements and regulations pertaining to reporting herein and in the corresponding procurement packet.
- (iii) The County provides notice of requirements and regulations pertaining to copyrights and rights in data in the corresponding procurement packet and in this agreement, including, but not limited to ARTICLE 11.
- (iv) In addition to the provisions of this agreement, including but not limited to ARTICLE 13, the recipient, the subrecipient, FHWA, the U.S. Department of Transportation's Inspector General, the Comptroller General of the United States, or any of their duly authorized representatives have access to any books, documents, papers, and records of the consultant which are directly pertinent to this specific contract for the purpose of making audit, examination, excerpts, and transcriptions;

- (v) In addition to the provisions of this agreement, including but not limited to ARTICLE 13, all required records are to be retained for not less than three (3) years after the County makes final payment and all other pending matters are closed;
- (vi) Standard DOT Title VI Assurances (DOT Order 1050.2) and applicable nondiscrimination statements and provisions of Title VI of the Civil Rights Act of 1964 are referenced and/or incorporated in ARTICLE 31 and No. 15 of the legal notice of the corresponding procurement packet. Engineer, and its successors and assigns agree to abide by these provisions;
- (vii) Disadvantaged Business Enterprise (DBE) assurance, as specified in 49 CFR 26.13(b) are incorporated by reference. DBE is addressed on the DBE Form included in the corresponding procurement packet. Applicable DBE assurance specified in 49 CFR 26.13(b), provides:
 - (b) Each contract you sign with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT–assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

 - (1) Withholding monthly progress payments;
 - (2) Assessing sanctions;
 - (3) Liquidated damages; and/or
 - (4) Disqualifying the contractor from future bidding as non-responsible.

- (viii) Prompt pay requirements, as specified in 49 CFR 26.29 are incorporated by reference. ARTICLE 6 of the agreement addresses payment provisions. In accordance with 49 CFR 26.29: Engineers, as a prime contractor, are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the County makes to the Engineer.
- (ix) Determination of allowable costs in accordance with the Federal cost principles. Pursuant to 23 CFR 172.3, Federal cost principles means the cost principles contained in 48 CFR part 31 of the Federal Acquisition Regulation for determination of allowable costs of commercial, for-profit entities and are hereby incorporated by reference.
- (x) The County's requirements pertaining to consultant errors and omissions may be found in this agreement, including but not limited to ARTICLES 17 & 19, herein.
- (xi) In addition to any conflict of interest provisions found in this agreement or the corresponding procurement packet, the County incorporates by reference the requirements pertaining to conflicts of interest, as specified in 23 CFR 1.33.
- (xii) A provision for termination for cause and termination for convenience by the County including the manner by which it will be effected and the basis for settlement. Applicable provisions are found herein including, but not limited to, ARTICLE 3 and the corresponding procurement packet.

Lastly, Pursuant to 23 CFR 172.9(c)(2), all contracts and subcontracts exceeding \$100,000 shall contain, either by reference or by physical incorporation into the language of each contract, a provision for lobbying certification and disclosure, as specified in 49 CFR part 20. As such, 49 CFR 20.100 – 20.605, Appendix A & B to Part 20 and corresponding procurement packet provisions are incorporated by reference.

EXHIBIT “A”
Services to be provided by the OWNER

The following provides an outline of the services to be provided by the Owner in the development of the Project (as defined and more particularly identified in Exhibit “A” attached to this Agreement).

General

The Owner will provide to the Engineer the following:

- (1) Provide the authorization to the Engineer to begin work.
- (2) Payment for work performed by the Engineer and accepted by the Owner in accordance with Article 3 of this agreement.
- (3) Assistance to the Engineer, as necessary, to obtain the required data and information from other local, regional, State and Federal agencies that the Engineer cannot easily obtain.
- (4) Provide any available relevant data the Owner may have on file concerning the project.
- (5) Provide timely review and decisions in response to the Engineer’s request for information and/or required submittals and deliverables, in order for the Engineer to maintain the agreed-upon work schedule prepared in accordance with Attachment “C” of this Agreement.
- (6) Attend and participate in progress meetings as required and as coordinated and conducted by the Engineer.

WITNESS WHEREOF, the **Engineer** and the **Owner** have caused this Agreement for Professional Services to be effective as of the 28th day of January 2020.

ENGINEER:
SAMES, INC.

OWNER:
HIDALGO COUNTY

By: [Signature]
Samuel D. Maldonado, P.E., President

By: [Signature]
Richard F. Cortez, County Judge


ATTEST
[Signature]
Arturo Guajardo, Jr., County Clerk

APPROVED BY
COMMISSIONERS' COURT
ON: 1-28-20 M.M.

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

By: [Signature]
Robert Viña III, Assistant District Attorney
Civil Litigation Division

ATTACHMENTS:

LOCATION MAP

- EXHIBIT A - Scope of Services to be provided by the Owner
- EXHIBIT B - Scope of Services to be provided by the Engineer
- EXHIBIT C - Work Schedule
- EXHIBIT D - Contract Rates
- EXHIBIT E - Work Authorization Form
- EXHIBIT F - Supplemental Agreement
- EXHIBIT G - Certificate of Insurance

EXHIBIT "B"
SCOPE OF SERVICES TO BE PROVIDED BY THE ENGINEER

The services designated herein as "Services provided by the ENGINEER" shall include the performance of all engineering services for the following described facility:

COUNTY/CITY: HIDALGO COUNTY

CONTROL: 0921-02-420

PROJECT/DESCRIPTION: Inspection, Material Testing, and Construction Management for the Mile 6 W Road Project

LENGTH: 2 Miles (Approx.)

HIGHWAY: Mile 6 W Road

LIMITS: From Mile 9 to Mile 11

EXISTING FACILITY

PROJECT CLASSIFICATION

(Place an "X" in only one Project Classification)

- Surface Treatment
- Overlay
- Rehabilitation Existing Road (Scarify & Reshape)
- Convert Non-Freeway to Freeway
- Widen Freeway
- Widen Non-Freeway
- New Location Toll Freeway
- New Location Non-Freeway
- Interchange (New or Reconstruct)
- Bridge Widening or Rehabilitation
- Bridge Replacement
- Upgrade to Standards - Freeway
- Upgrade to Standards - Non-Freeway
- Miscellaneous Studies (Use Function Code 110 for All Tasks)
- Pedestrian Facility – Hike & Bike Trail

ENGINEER shall mean SAMES, Inc.

STATE shall mean Texas Department of Transportation (TxDOT).

COUNTY shall mean the Hidalgo County.

EXHIBIT “B”
SCOPE OF SERVICES TO BE PROVIDED BY THE ENGINEER

CONSTRUCTION MANAGEMENT SERVICES:

The ENGINEER will provide Construction Engineering, Geotechnical & Construction Material Testing, and Construction Inspection/Record Keeping services for and during the construction of the Project, or portions of the Project, approved by the COUNTY. Specific services for CONSTRUCTION MANAGEMENT AND SUPPORT by the ENGINEER will include the following:

Construction Contract Administration:

- 1) In general, the ENGINEER will provide the management and engineering support in accordance with TxDOT’s LGPP Manual required for consultation and advisement to the COUNTY, and act as the COUNTY’s representative as provided in the General Condition of the Construction Contract.
- 2) The ENGINEER will coordinate and conduct both a “Pre-Coordination Meeting” and a “Pre-Construction Conference” as required by the LGPP.
- 3) The ENGINEER will work with the County RPIC to develop and issue a Notice to Proceed (NTP) to the contractor.
- 4) The ENGINEER will coordinate with the Design Engineer of Record (DEOR) and will use his best efforts to protect the COUNTY against defects and deficiencies in the work of the Contractor. The ENGINEER will promptly notify the COUNTY of any such defect or deficiency and take all steps possible to require the Contractor to correct the defect or deficiency.
- 5) The ENGINEER will review the contractor’s DBE Program and EEO Plan for compliance throughout the project.
- 6) The ENGINEER will ensure that all eligible expenditures are appropriately allocated with regards to the Federal Monies identified on the AFA and inform the County RPIC of any potential exposure.
- 7) The ENGINEER will work with the County RPIC to develop a Certificate of Substantial Completion at the appropriate time.
- 8) The ENGINEER will develop as built plans identifying any field and change order modifications done during the project. When applicable the ENGINEER will work with the DEOR to prepare the engineering data, including plan sheet drawings, specifications, and estimates, for the preparation of construction contract change orders, which may be required due to actual field conditions encountered or new requirements directed by the COUNTY.
- 9) The ENGINEER will provide the County RPIC a Certification that all work performed on the project met and/or exceeded the project specifications.

Construction Management and Inspection:

Construction Management (During Construction)

- 1) The ENGINEER will conduct frequent meetings w/ County RPIC & Contractor throughout the construction duration of the project.
 - 2) The ENGINEER will assist the County RPIC with the implementation of the adopted Quality Assurance Program (QAP)
 - 3) The ENGINEER will conduct team field visits with the County RPIC, Design Engineer, TxDOT, Cities, and FHWA representatives throughout duration of the project (Estimated at 19 months)
-

EXHIBIT “B”
SCOPE OF SERVICES TO BE PROVIDED BY THE ENGINEER

- 4) The ENGINEER will review quantities as submitted by the Contractor and will coordinate with the County RPIC for the preparation of the monthly and final estimates for payment to the Contractor.
- 5) The ENGINEER will coordinate with the DEOR to obtain concurrence on any suggestions or RFI's made by the contractor to modify the plans and/or contract documents.
- 6) The ENGINEER will coordinate with County RPIC, Design Engineer, TxDOT/FHWA Representatives, and City Personnel to participate in all Project Related Stakeholder Meetings, Construction Status Meetings, and Final Inspection
- 7) The ENGINEER will coordinate with the DEOR and TxDOT to obtain approval on any and all Change Orders.
- 8) The ENGINEER will confirm TxDOT/FHWA Participation & Eligibility on Change Orders as well as Time Extensions prior to executing them for the project.

Construction Inspection

- 1) The ENGINEER will provide Project site inspection of the authorized construction contract as follows:
 - a) The ENGINEER will provide visits by a Senior Construction Engineer or a competent representative of the ENGINEER to the site of construction for the purpose of monitoring the Contractor's progress and conformance to the construction contract plans and specifications.
 - b) The ENGINEER will provide a Construction Manager to coordinate with the public and adjacent property owners on construction inconveniences.
 - c) The ENGINEER will furnish the services of a Construction Superintendent and/or Construction Inspector(s) for full-time on-site inspection services.
 - a. The ENGINEER will provide construction oversight to monitor/inspect the Contractor's daily progress and conformance to PS&E specifications.
 - b. The ENGINEER will provide an Environmental Specialist to inspect SW3P BMP's, as well as compliance w/ the requirements of the EPIC sheets.
 - c. The ENGINEER will maintain job safety measures and implement OSHA requirements including day/night inspection of barricades
 - d. The ENGINEER will develop and oversee completion of a "Project Punch List" with the County RPIC & Contractor's Representative.

Construction Management (Post Construction)

- 1) The ENGINEER will prepare a Final Estimate for Project Close-Out & Release Retainage.
- 2) The ENGINEER will provide all Close-Out Documents to County RPIC.
- 3) The ENGINEER will coordinate "Final Acceptance" of the project.

Miscellaneous Technical Activities:

- 1) The ENGINEER will coordinate with the Design Engineer of Record to review and check all shop or working drawings furnished by the Contractor.
 - 2) The ENGINEER will track Utility Relocations and develop as built drawings to depict the location of the utility and the work as actually constructed. The COUNTY will be furnished five (5) set of prints.
 - 3) The ENGINEER will provide Monthly Reports/Presentations to Hidalgo County Commissioners Court and the HCMPO (as requested)
-

EXHIBIT “B”
SCOPE OF SERVICES TO BE PROVIDED BY THE ENGINEER

- 4) The ENGINEER will provide inspection of all materials and equipment furnished/used by the Contractor as follows:
 - a) Review and record all laboratory, shop and mill tests of materials and equipment for compliance with the construction contract specifications.
 - b) Observe and/or perform Project record testing and/or independent assurance testing as outlined in the construction contract specifications.

CONSTRUCTION MATERIAL TESTING:

The ENGINEER will provide the COUNTY with construction material testing services for the Project. The services to be provided include sampling and testing of all construction materials as required by the project plans and specifications. All sampling frequencies and test procedures will be performed in general accordance with the Texas Department of Transportation TEX methods (or ASTM methods as required) as outlined in the Guide Schedule for Sampling and Testing. The construction material testing includes, but is not limited to the following:

- a) Sampling and laboratory testing of soils and base materials proposed for use in the construction of Project (Roads/Bridges/Misc.) to determine compliance of these materials with project plans and specifications.
- b) Field density testing of soils and base materials to ensure proper compaction as required by project plans and specifications.
- c) Field sampling and testing of fresh concrete, and laboratory testing of hardened concrete to determine compliance with project plans and specifications.
- d) Field compaction testing of asphalt to ensure proper compaction during lay down operations.
- e) Field inspection, sampling and laboratory testing of asphalt materials to determine their material properties and their compliance with project plans and specifications.
- f) The ENGINEER will be responsible for concrete batching as well as the asphalt testing at the plants to insure delivery of acceptable material to the job site.
- g) Any additional laboratory testing as required/requested by the COUNTY and the project plans and specifications.
- h) Providing accurate and timely reports to the COUNTY RPIC and all/other recipients as designated by the COUNTY RPIC.
- i) The ENGINEER will verify the concrete and asphalt designs to assure it is in accordance with TxDOT specifications to be developed by the contractor.

Exhibit C
Work Schedule

[Intentionally Left Blank]

SAM Engineering and Surveying



Reg. No. F-10602

Exhibit D- Contract Rates

STAFF CLASIFICACION	HOURLY CONTRACT RATES		
	2020	2021	2022
Senior Construction Engineer	\$ 175.00	\$ 178.00	\$ 182.00
Engineer-in- Training	\$ 85.00	\$ 86.00	\$ 88.00
Construction Manager	\$150.00	\$ 153.00	\$ 156.00
Asst Const Manager	\$140.00	\$ 143.00	\$ 146.00
Construction Superintendent	\$120.00	\$ 122.00	\$ 125.00
Construction Inspector	\$ 80.00	\$ 81.00	\$ 83.00
Construction Record Keeper	\$ 75.00	\$ 76.00	\$ 78.00
Environmental Specialist	\$ 95.00	\$ 97.00	\$ 99.00
CAD Technician	\$ 65.00	\$ 66.00	\$ 67.00
Project/Records Control	\$ 75.00	\$ 76.00	\$ 78.00
<u>Admin/Clerical</u>	<u>\$ 65.00</u>	<u>\$ 66.00</u>	<u>\$ 67.00</u>
Laboratory Field Technician	\$ 75.00	\$ 76.00	\$ 78.00
Senior Engineering Technician	\$134.00	\$ 136.00	\$ 138.00

SAM Engineering & Surveying

200 S. 10th Street, Suite 1500

McAllen, Texas 78501

Tel 956.702.8880; Fax 956.702.8883

EXHIBIT "E"

HIDALGO COUNTY Professional Engineering Services Inspection, Material Testing and Construction Management Agreement # C-19-231-01-28 Work Authorization Form

WORK AUTHORIZATION NO. _____

THIS WORK AUTHORIZATION is made pursuant to the terms and conditions of Article 1 of the Agreement made by and between HIDALGO COUNTY, action herein by and through the **Commissioner's Court**, hereinafter called the "Owner," and, _____, professional engineers of _____, Texas, hereinafter called "Engineer".

PART 1. SCOPE OF WORK

The purpose of this Work Authorization is for the **Engineer** to provide

The scope of services to be provided by the **Owner** is identified in **EXHIBIT "A" – Scope of Services to be Provided by the Owner** attached hereto.

The scope of services to be provided by the **Engineer** is identified in **EXHIBIT "B" – Scope of Services to be Provided by the Engineer** attached hereto.

PART 2. ESTIMATED COST

The estimated cost for services under this Work Authorization is \$ _____. This amount is based upon the costs outlined in the **Estimated Cost Proposal** attached hereto as **EXHIBIT "D"**.

PART 3. PAYMENT

Compensation and payment to the **Engineer** for the services established under this Work Authorization shall be made in accordance with **Article/Part/Section** _____ of the Agreement.

PART 4. FUNDING

This Work Authorization No. _____ shall be funded through funding source:
Account No. _____
Requisition Number _____ (MUST BE INCLUDED AFTER CC APPROVAL)

PART 5. PERIOD OF SERVICE

This Work Authorization shall become effective on the date of final acceptance of the parties hereto, and terminate upon completion of scopes of the work authorization.

PART 6. RESPONSIBILITIES AND OBLIGATIONS

This Authorization does not waive the parties' responsibilities and obligations provided under the **Agreement**.

PART 7. ACKNOWLEDGEMENT AND CONFIRMATION

Acknowledgement and confirmation by Hidalgo County Precinct No. _____, Commissioner _____ as to content and detail of this **Work Authorization No.** ____.

**HIDALGO COUNTY
COMMISSIONER PRECINCT No.** _____

BY: _____

Hon. _____, Commissioner

PART 8. ACCEPTANCE AND APPROVAL

This Work Authorization is hereby accepted, approved by Hidalgo County Commissioners' Court on _____ as indicated below and effective as of _____ day of _____, 20_____.

THE ENGINEER:
Engineer/Firm Name _____

THE OWNER:
HIDALGO COUNTY

By: _____
Name/Title

By: Richard F. Cortez, County Judge

ATTEST:

BY: _____
Arturo Guajardo, Jr., County Clerk

LIST OF ATTACHMENTS

- ATTACHMENT "A" - Service to be provided by the Owner
- ATTACHMENT "B" - Services to be provided by the Engineer
- ATTACHMENT "C" - Work Schedule
- ATTACHMENT "D" - Estimated Cost Proposal

EXHIBIT "F"
Supplemental Agreement Form

THE STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

SUPPLEMENTAL AGREEMENT No. _____
TO AGREEMENT FOR PROFESSIONAL SERVICES

THIS **SUPPLEMENTAL AGREEMENT** is made pursuant to the terms and conditions of Article 8 of the Agreement made by and between **HIDALGO COUNTY**, acting herein by and through the **Commissioner's Court**, hereinafter called the "**Owner**", and _____, Professional Engineers of _____, Texas, hereinafter called the "**Engineer**".

WITNESSETH

WHEREAS, the **Owner** and the **Engineer** executed the **Agreement** on the _____ day of _____ **20**____ concerning engineering _____ Hidalgo County Precinct No. ____ (hereinafter referred to as the "**Project**"); and,

WHEREAS, Article ____ of the **Agreement**, (article title), establishes _____; and,

WHEREAS, it has become necessary to amend the contract to _____

A. AGREEMENT

NOW THEREFORE, premises considered, the **Owner** and the **Engineer** agree that said **Agreement** is amended as follows:

- I. Article 3.1 of the **Agreement**, (Termination Date), is revised to extend the termination date to the close of business on _____, 20____.

All other provisions are unchanged and remain in full force and effect.

IN WITNESS WHEREOF, the Engineer and the Owner have caused this Supplemental Agreement to the Agreement for Professional Services to be executed as of the _____ day of _____, 20__.

**THE ENGINEER:
(ENGINEERING FIRM NAME)**

BY: _____
Name/Title

**THE OWNER:
HIDALGO COUNTY**

BY: _____
Richard F. Cortez, County Judge

LIST OF ATTACHMENTS

(as required)

Exhibit G
Certificates of Insurance



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

10/03/2019

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

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

PRODUCER Baldwin-Cox Agency, LLC 5930 Preston View Blvd Ste 200 Dallas TX 75240		CONTACT NAME: Laura Shone PHONE (A/C, No, Ext): (972) 644-2688 FAX (A/C, No): (972) 644-8035 E-MAIL ADDRESS: laura@baldwinagency.com	
INSURED SAMES, Inc. 200 S. 10th Street Suite 1500 McAllen TX 78501		INSURER(S) AFFORDING COVERAGE INSURER A: Burlington Insurance Company NAIC # 23620 INSURER B: Western World Insurance Company 13196 INSURER C: Maxum Indemnity Company 26743 INSURER D: INSURER E: INSURER F:	

COVERAGES

CERTIFICATE NUMBER: CL1910313259

REVISION NUMBER:

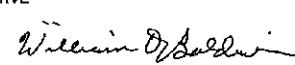
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			674BW54087	10/01/2019	10/01/2020	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Employee Bene Liab Cov \$ Included
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$			GLX1001067-01	10/01/2019	10/01/2020	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
C	Professional Liability			PFP-6033771-02	10/01/2019	10/01/2020	Limit of Liability \$3,000,000 Deductible Per Claim \$10,000

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

The General Liability Policy provides Blanket Additional Insured for Ongoing and Completed Operations as required by written contract. A Waiver of Subrogation is provided for General Liability and Professional Liability as required by written contract.

CERTIFICATE HOLDER**CANCELLATION**

Hidalgo County 2812 S Business Hwy 281 Edinburg TX 78539	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
--	--

© 1988-2015 ACORD CORPORATION. All rights reserved.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMERCIAL AUTOMOBILE BROAD FORM ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

To the extent that the provisions of this endorsement provide broader benefits to the "insured" than other provisions of the Coverage Form, the provisions of this endorsement apply.

1. BROAD FORM INSURED

A. Subsidiaries and Newly Acquired or Formed Organizations

The Named Insured shown in the Declarations is amended to include:

- (1) Any legal business entity other than a partnership or joint venture, formed as a subsidiary in which you have an ownership interest of more than 50% on the effective date of the Coverage Form. However, the Named Insured does not include any subsidiary that is an "insured" under any other automobile policy or would be an "insured" under such a policy but for its termination or the exhaustion of its Limit of Insurance.
- (2) Any organization that is acquired or formed by you and over which you maintain majority ownership. However, the Named Insured does not include any newly formed or acquired organization:
 - (a) That is a partnership or joint venture,
 - (b) That is an "insured" under any other policy,
 - (c) That has exhausted its Limit of Insurance under any other policy, or
 - (d) 180 days or more after its acquisition or formation by you, unless you have given us notice of the acquisition or formation.

Coverage does not apply to "bodily injury" or "property damage" that results from an "accident" that occurred before you formed or acquired the organization.

B. Employees as Insureds

Paragraph A.1. - WHO IS AN INSURED - of SECTION II - LIABILITY COVERAGE is amended to add:

- d. Any "employee" of yours while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

C. Lessors as Insureds

Paragraph A.1. - WHO IS AN INSURED - of Section II - Liability Coverage is amended to add:

- e. The lessor of a covered "auto" while the "auto" is leased to you under a written agreement if:
 - (1) The agreement requires you to provide direct primary insurance for the lessor and
 - (2) The "auto" is leased without a driver.

Such a leased "auto" will be considered a covered "auto" you own and not a covered "auto" you hire.

D. Additional Insured if Required by Contract

(1) Paragraph A.1. - WHO IS AN INSURED - of Section II - Liability Coverage is amended to add:

- f. When you have agreed, in a written contract or written agreement, that a person or organization be added as an additional insured on your business auto policy, such person or organization is an "insured", but only to the extent such person or organization is liable for "bodily injury" or "property damage" caused by the conduct of an "insured" under paragraphs a. or b. of Who Is An Insured with regard to the ownership, maintenance or use of a covered "auto."

The insurance afforded to any such additional insured applies only if the "bodily injury" or "property damage" occurs:

- (1) During the policy period, and
- (2) Subsequent to the execution of such written contract, and
- (3) Prior to the expiration of the period of time that the written contract requires such insurance be provided to the additional insured.

(2) How Limits Apply

If you have agreed in a written contract or written agreement that another person or organization be added as an additional insured on your policy, the most we will pay on behalf of such additional insured is the lesser of:

- (a) The limits of insurance specified in the written contract or written agreement; or
- (b) The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to Limits of Insurance shown in the Declarations and described in this Section.

(3) Additional Insureds Other Insurance

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract or written agreement that this insurance is primary and non-contributory with the additional insured's own insurance.

(4) Duties in The Event Of Accident, Claim, Suit or Loss

If you have agreed in a written contract or written agreement that another person or organization be added as an additional insured on your policy, the additional insured shall be required to comply with the provisions in LOSS CONDITIONS 2. - DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS - OF SECTION IV - BUSINESS AUTO CONDITIONS, in the same manner as the Named Insured.

E. Primary and Non-Contributory if Required by Contract

Only with respect to insurance provided to an additional insured in 1.D. - Additional Insured If Required by Contract, the following provisions apply:

(3) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract or written agreement that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in Other Insurance 5.d.

(4) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract or written agreement that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs (3) and (4) do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, by the method described in Other Insurance 5.d.

2. AUTOS RENTED BY EMPLOYEES

Any "auto" hired or rented by your "employee" on your behalf and at your direction will be considered an "auto" you hire.

The OTHER INSURANCE Condition is amended by adding the following:

If an "employee's" personal insurance also applies on an excess basis to a covered "auto" hired or rented by your "employee" on your behalf and at your direction, this insurance will be primary to the "employee's" personal insurance.

3. AMENDED FELLOW EMPLOYEE EXCLUSION

EXCLUSION 5. - FELLOW EMPLOYEE - of SECTION II - LIABILITY COVERAGE does not apply if you have workers' compensation insurance in-force covering all of your "employees".

Coverage is excess over any other collectible insurance.

4. HIRED AUTO PHYSICAL DAMAGE COVERAGE

If hired "autos" are covered "autos" for Liability Coverage and if Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form for any "auto" you own, then the Physical Damage Coverages provided are extended to "autos" you hire or borrow, subject to the following limit.

The most we will pay for "loss" to any hired "auto" is:

- (1) \$100,000;
- (2) The actual cash value of the damaged or stolen property at the time of the "loss"; or
- (3) The cost of repairing or replacing the damaged or stolen property,

whichever is smallest, minus a deductible. The deductible will be equal to the largest deductible applicable to any owned "auto" for that coverage. No deductible applies to "loss" caused by fire or lightning. Hired Auto Physical Damage coverage is excess over any other collectible insurance. Subject to the above limit, deductible and excess provisions, we will provide coverage equal to the broadest coverage applicable to any covered "auto" you own.

We will also cover loss of use of the hired "auto" if it results from an "accident", you are legally liable and the lessor incurs an actual financial loss, subject to a maximum of \$1000 per "accident".

This extension of coverage does not apply to any "auto" you hire or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company), or members of their households.

5. PHYSICAL DAMAGE - ADDITIONAL TEMPORARY TRANSPORTATION EXPENSE COVERAGE

Paragraph A.4.a. of SECTION III - PHYSICAL DAMAGE COVERAGE is amended to provide a limit of \$50 per day and a maximum limit of \$1,000.

6. LOAN/LEASE GAP COVERAGE

Under SECTION III - PHYSICAL DAMAGE COVERAGE, in the event of a total "loss" to a covered "auto", we will pay your additional legal obligation for any difference between the actual cash value of the "auto" at the time of the "loss" and the "outstanding balance" of the loan/lease.

"Outstanding balance" means the amount you owe on the loan/lease at the time of "loss" less any amounts representing taxes; overdue payments; penalties, interest or charges resulting from overdue payments; additional mileage charges; excess wear and tear charges; lease termination fees; security deposits not returned by the lessor; costs for extended warranties, credit life insurance, health, accident or disability insurance purchased with the loan or lease; and carry-over balances from previous loans or leases.

7. AIRBAG COVERAGE

Under Paragraph B. EXCLUSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

The exclusion relating to mechanical breakdown does not apply to the accidental discharge of an airbag.

8. ELECTRONIC EQUIPMENT - BROADENED COVERAGE

a. The exceptions to Paragraphs B.4 - EXCLUSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE are replaced by the following:

Exclusions 4.c. and 4.d. do not apply to equipment designed to be operated solely by use of the power from the "auto's" electrical system that, at the time of "loss", is:

- (1) Permanently installed in or upon the covered "auto";
- (2) Removable from a housing unit which is permanently installed in or upon the covered "auto";
- (3) An integral part of the same unit housing any electronic equipment described in Paragraphs (1) and (2) above; or

- (4) Necessary for the normal operation of the covered "auto" or the monitoring of the covered "auto's" operating system.

b. Section III – Version CA 00 01 03 10 of the Business Auto Coverage Form, Physical Damage Coverage, Limit of Insurance, Paragraph C.2 and Version CA 00 01 10 01 of the Business Auto Coverage Form, Physical Damage Coverage, Limit of Insurance, Paragraph C are each amended to add the following:

\$1,500 is the most we will pay for "loss" in any one "accident" to all electronic equipment (other than equipment designed solely for the reproduction of sound, and accessories used with such equipment) that reproduces, receives or transmits audio, visual or data signals which, at the time of "loss", is:

- (1) Permanently installed in or upon the covered "auto" in a housing, opening or other location that is not normally used by the "auto" manufacturer for the installation of such equipment;
- (2) Removable from a permanently installed housing unit as described in Paragraph 2.a. above or is an integral part of that equipment; or
- (3) An integral part of such equipment.

c. For each covered "auto", should loss be limited to electronic equipment only, our obligation to pay for, repair, return or replace damaged or stolen electronic equipment will be reduced by the applicable deductible shown in the Declarations, or \$250, whichever deductible is less.

9. EXTRA EXPENSE - BROADENED COVERAGE

Under Paragraph A. - COVERAGE - of SECTION III - PHYSICAL DAMAGE COVERAGE, we will pay for the expense of returning a stolen covered "auto" to you.

10. GLASS REPAIR - WAIVER OF DEDUCTIBLE

Under Paragraph D. - DEDUCTIBLE - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

No deductible applies to glass damage if the glass is repaired rather than replaced.

11. TWO OR MORE DEDUCTIBLES

Under Paragraph D. - DEDUCTIBLE - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

If another Hartford Financial Services Group, Inc. company policy or coverage form that is not an automobile policy or coverage form applies to the same "accident", the following applies:

- (1) If the deductible under this Business Auto Coverage Form is the smaller (or smallest) deductible, it will be waived;
- (2) If the deductible under this Business Auto Coverage Form is not the smaller (or smallest) deductible, it will be reduced by the amount of the smaller (or smallest) deductible.

12. AMENDED DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS

The requirement in LOSS CONDITIONS 2.a. - DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS - of SECTION IV - BUSINESS AUTO CONDITIONS that you must notify us of an "accident" applies only when the "accident" is known to:

- (1) You, if you are an individual;
- (2) A partner, if you are a partnership;
- (3) A member, if you are a limited liability company; or
- (4) An executive officer or insurance manager, if you are a corporation.

13. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

If you unintentionally fail to disclose any hazards existing at the inception date of your policy, we will not deny coverage under this Coverage Form because of such failure.

14. HIRED AUTO - COVERAGE TERRITORY

Paragraph e. of GENERAL CONDITIONS 7. - POLICY PERIOD, COVERAGE TERRITORY - of SECTION IV - BUSINESS AUTO CONDITIONS is replaced by the following:

e. For short-term hired "autos", the coverage territory with respect to Liability Coverage is anywhere in the world provided that if the "insured's" responsibility to pay damages for "bodily injury" or "property damage" is determined in a "suit," the "suit" is brought in the United States of America, the territories and possessions of the United States of America, Puerto Rico or Canada or in a settlement we agree to.

15. WAIVER OF SUBROGATION

TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US - of SECTION IV - BUSINESS AUTO CONDITIONS is amended by adding the following:

We waive any right of recovery we may have against any person or organization with whom you have a written contract that requires such waiver because of payments we make for damages under this Coverage Form.

16. RESULTANT MENTAL ANGUISH COVERAGE

The definition of "bodily injury" in SECTION V-DEFINITIONS is replaced by the following:

"Bodily injury" means bodily injury, sickness or disease sustained by any person, including mental anguish or death resulting from any of these.

17. EXTENDED CANCELLATION CONDITION

Paragraph 2. of the COMMON POLICY CONDITIONS - CANCELLATION - applies except as follows:

If we cancel for any reason other than nonpayment of premium, we will mail or deliver to the first Named Insured written notice of cancellation at least 60 days before the effective date of cancellation.

18. HYBRID, ELECTRIC, OR NATURAL GAS VEHICLE PAYMENT COVERAGE

In the event of a total loss to a "non-hybrid" auto for which Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form, then such Physical Damage Coverages are amended as follows:

- a. If the auto is replaced with a "hybrid" auto or an auto powered solely by electricity or natural gas, we will pay an additional 10%, to a maximum of \$2,500, of the "non-hybrid" auto's actual cash value or replacement cost, whichever is less,
- b. The auto must be replaced and a copy of a bill of sale or new lease agreement received by us within 60 calendar days of the date of "loss,"

- c. Regardless of the number of autos deemed a total loss, the most we will pay under this Hybrid, Electric, or Natural Gas Vehicle Payment Coverage provision for any one "loss" is \$10,000.

For the purposes of the coverage provision,

- a. A "non-hybrid" auto is defined as an auto that uses only an internal combustion engine to move the auto but does not include autos powered solely by electricity or natural gas.
- b. A "hybrid" auto is defined as an auto with an internal combustion engine and one or more electric motors; and that uses the internal combustion engine and one or more electric motors to move the auto, or the internal combustion engine to charge one or more electric motors, which move the auto.

19. VEHICLE WRAP COVERAGE

In the event of a total loss to an "auto" for which Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form, then such Physical Damage Coverages are amended to add the following:

In addition to the actual cash value of the "auto", we will pay up to \$1,000 for vinyl vehicle wraps which are displayed on the covered "auto" at the time of total loss. Regardless of the number of autos deemed a total loss, the most we will pay under this Vehicle Wrap Coverage provision for any one "loss" is \$5,000. For purposes of this coverage provision, signs or other graphics painted or magnetically affixed to the vehicle are not considered vehicle wraps.

TEXAS WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

This endorsement applies only to the insurance provided by the policy because Texas is shown in item 3.A. of the Information Page.

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule, but this waiver applies only with respect to bodily injury arising out of the operations described in the schedule where you are required by a written contract to obtain this waiver from us.

This endorsement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

The premium for this endorsement is shown in the Schedule.

Schedule

1. Specific Waiver

Name of person or organization

Blanket Waiver

Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.

2. Operations: ALL TEXAS OPERATIONS

3. Premium:

The premium charge for this endorsement shall be 2.00 percent of the premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described.

4. Advance Premium: Included, see Information Page

This endorsement changes the policy to which it is attached effective on the inception date of the policy unless a different date is indicated below.
(The following "attaching clause" need be completed only when this endorsement is issued subsequent to preparation of the policy.)

This endorsement, effective on 8/5/19 at 12:01 a.m. standard time, forms a part of:

Policy no. 0001273721 of Texas Mutual Insurance Company effective on 8/5/19

Issued to: SAMES INC

DBA: SAM ENGINEERING & SURVEYING

This is not a bill



Authorized representative

NCCI Carrier Code: 29939

8/2/19

