

THE STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

PROFESSIONAL SERVICES AGREEMENT
C-21-0435-09-21

THIS AGREEMENT (“Agreement”) is made and entered on this 21st day of September 2021, by and between **HIDALGO COUNTY, TEXAS (“County”)**, and **SAMES, Inc.**, (“**Engineer**”).

W I T N E S S E T H:

WHEREAS, the County is in need of **Professional Engineering Services** (the “**Services**”) for the “**Roadway & Bridge Inventory Assessment Study & Report(s)**”;

WHEREAS, the County has determined that the services of a professional engineering company are necessary to carry out the required **Services**;

WHEREAS, pursuant to Texas Government Code Chapter 2254 (the “Texas Professional Services Procurement Act”), the County requested Statements of Qualifications from professional engineering firms to assist the County by providing the **Services**;

WHEREAS, the County solicited Requests for Qualifications (“**RFQ**”) for the development and establishment of a yearly pool for “**Professional Engineering Services**”;

WHEREAS, the Engineer was pre-qualified from the County’s pool of Professional Engineers and has been selected from the pool to provide Professional Engineering Services for the “**Roadway & Bridge Inventory Assessment Study & Report(s)**” in Hidalgo County (“**County**”), in accordance with the terms and provisions of **Exhibit “A”**, i.e., Requirements/County’s Request for Qualifications, attached hereto and incorporated by reference herein;

WHEREAS, the County shall provide a “**Scope of Services to be provided by Owner**” detailed in **Exhibit “B”**, attached hereto and incorporated by reference herein, and the selected Engineer shall submit a “**Project Specific Scope of Services to be provided by Engineer**” detailed in **Exhibit “C”**, attached hereto and incorporated by reference herein;

WHEREAS, in continuation of the procurement process and in response to the County’s request to negotiate for a fair and reasonable price pursuant to Chapter 2254 Texas Government Code, the Engineer has provided a fee schedule in **Exhibit “D”**, i.e., Contract Rates, attached hereto and incorporated by reference herein as; and

WHEREAS, the County has determined that the services of a Professional Engineer are required.

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

1. County and Engineer hereby agree that this Agreement is entered into in order to provide the Services for Hidalgo County. This contract does not extend to any third parties any duties or benefits conferred in any manner hereunder or otherwise.

2. Scope of services to be provided by the Owner are detailed in the attached Exhibit “B”. The County will furnish Specifications to Engineer for the development of the project(s) and fulfillment of this Agreement. Engineer agrees to review the project as presented by the County and submit to the County within fourteen (14) days of receipt of the Specifications, a proposal and a work authorization. The proposal shall include, but not be limited to, the following: (1) fee structure for the project; (2) services included in the basic fee; (3) amount of, or basis for, compensation for additional services (including additional services that may arise during the course of the project and cost of Engineer’s consultants); and (4) cost for reimbursable expenses (collectively the “Engineering Services Proposal”);

3. The County may enter into negotiations with the Engineer regarding the Engineering Services for the “**Roadway & Bridge Inventory Assessment Study & Report**”, and should the parties reach an agreement, then the Engineer will submit a “**Work Authorization**”, an example of which is attached hereto and incorporated by reference herein as **Exhibit “E”**, to the County for approval and execution. The Work Authorization will detail the Engineer’s duties and responsibilities with respect to the specific project. Project Specific services to be provided by the engineer are detailed in the attached **Exhibit “C”**. However, if the parties are unsuccessful at coming to terms with the project, then the County may seek the services of other professional engineers.

4. Engineer agrees in performing the Services that it will use proper professional standards, comply with any and all appropriate laws and regulations in providing the Services, and devote such time as is necessary to safely and efficiently provide the Services.

5. **Non-Exclusive Services of Engineer.** Hidalgo County reserves the right to request these services from sources other than the Engineer and shall not be in violation of any terms or conditions of this Agreement.

6. **Term.** This Agreement is for a period of **one (1) year**, effective **September 21, 2021**, and will terminate **September 20, 2022**, or unless sooner terminated as provided herein. The Engineer will not begin to work or incur costs until authorized in writing by the County with Project Specific “**Work Authorization**”.

7. **Compensation and Work Authorizations.** The maximum amount payable under this Agreement shall not exceed the amount for each “**Work Authorization**”, unless an amendment is executed as provided hereinafter. The Engineer shall submit periodic requests for payment within (30) thirty days after completion of each **Work Authorization**. The request for payment shall be made using forms acceptable to the County and shall show the total amount earned to the date of submission and the amount due and payable as of the date of the current billing. Upon receipt of said request for payment, County shall submit a requisition for payment for said Services in the customary manner provided for payments utilized by Hidalgo County, Texas. Engineer agrees to separately account for the receipt and/or expenditure of funds received pursuant to this Agreement and to keep accurate books and records of all such receipts and/or expenditures. All payments to the Engineer shall be mailed to the address shown in Paragraph No. 28, titled “**Notices**” herein.

8. **Inspection of Work.** The County has the right at all reasonable times to inspect or otherwise evaluate the work performed hereunder and the premises in which it is being performed. If any inspection or evaluation is made on the premises of the Engineer, or of a subcontractor, the Engineer shall provide and require its subcontractor to provide all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay their work.

9. **Amendments.** If it becomes necessary at any time during this Agreement to change the scope of services, the Agreement period, the maximum amount payable, the complexity, or the

character of this Agreement, then an amendment shall be executed within the agreement period by use of a “**Supplemental Agreement Form**”, more particularly described in **Exhibit “F”**, attached hereto and incorporated by reference herein. The County retains the right to reject any such amendment proposed by the Engineer. Any such amendments shall be made in writing, agreed to by all parties hereto, and duly executed before the end of the Agreement as specified. If the County finds it necessary to require changes in completed work because of errors made by the Engineer, the County shall require the Engineer to correct the work at no cost to the County and without amendment to the Agreement. If the changes are made at the request of the County and are not due to errors of the Engineer, the County will reimburse the Engineer for the additional work at the same rate of pay established in **Exhibit “D”**, i.e., “Contract Rates”. If payment for the additional work will cause the maximum amount payable under this Agreement to be exhausted, an amendment shall be proposed in accordance with all state procurement laws.

10. Reporting. The Engineer shall promptly advise the County in writing of events which have a significant impact upon the Agreement, including:

a. Problems, delays, or adverse conditions which will materially affect the ability to meet time schedules and goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken or contemplated if any by the County or if Federal Funds are involved, Federal assistance is needed to resolve the situation.

b. Favorable developments or events which enable meeting time schedules and goals to be met sooner than anticipated or which are producing more work units than originally projected.

11. Ownership of Documents. Upon completion or termination of this Agreement, all documents prepared by the Engineer or furnished to the Engineer by the County shall be delivered to and become the property of the County. All sketches, photographs, calculations, and other data prepared under this Agreement shall be made available, upon request, to the County without restriction or limitation on their further use. The Engineer shall not be liable for the reuse or modification of its work product. The Engineer may, at its own expense, have copies made of the documents or any other data furnished to the County under this Agreement.

12. Suspension of Work. Should the County desire to suspend the work under this Agreement, but not terminate this Agreement, the County shall provide thirty (30) calendar days

verbal notification to Engineer, followed by written confirmation from the County to Engineer to that effect. The thirty-day notice may be waived as agreed in writing by both the County and Engineer to that effect. 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 County to the Engineer. The sixty-day notice may be waived if agreed in writing by both the County and Engineer. If the County suspends the work, the Termination Date as identified above is not affected and this Agreement will terminate on the date specified.

13. Progress and Coordination. The Engineer shall, from time to time during the progress of the work, confer with the County. The Engineer shall prepare and present such information as may be pertinent and necessary, or as may be requested by the County, in order to evaluate features of the Engineer's services and work.

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

All applicable study reports shall be submitted in preliminary form for approval by the County before the final report is issued. The County'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 any project awarded 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 Authorization**, as provided by **Exhibit "E"**, the County shall review the approved **Work Authorization** with the Engineer to determine the corrective action needed by either the County or the Engineer.

The Engineer shall promptly advise the County 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:

a. problems, delays, adverse conditions which will materially affect the ability to attain Agreement objectives, prevent the meeting of time schedules and goals, or preclude the timely completion and submittal of Project deliverables by the Engineer 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

b. Favorable developments or events which enable meeting the **Work Schedule** goals sooner than anticipated.

14. Independent Contractor. Engineer must comply with all applicable Hidalgo County policies and with any applicable federal, state, or local laws, regulations, orders, or ordinances applicable to the Services provided by Engineer under this Agreement. Notwithstanding the foregoing sentence, Engineer represents and maintains that it is an Independent Contractor and is not an employee of Hidalgo County, Texas or any agency thereof, and represents and warrants that it does not desire or request any fringe benefits provided to employees of Hidalgo County, Texas, and/or any agency thereof, including, but not limited to benefits associated with Hidalgo County's civil service program. Engineer agrees to be responsible for any federal income tax, withholding, or social security tax liability that might arise from payments received hereunder.

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

16. Voluntary Termination. County may terminate this Agreement at any time for any reason or no reason at all upon giving thirty (30) days prior written notice to the Engineer.

17. Insurance. Consistent with its status as an independent contractor and at its sole expense, Engineer agrees that throughout the duration of the work under this contract and any extension thereof, it shall provide and maintain in full force and effect any and all insurances which may be necessary for providing Services or are otherwise required by law, and shall require of all its sub-consultants connected with providing services under this contract to provide insurance in full force and effect as well. Insurance policies shall cover, but are not limited to,

Engineer's activities and all persons, vehicles, equipment, and property connected with providing Services, including but not limited to professional liability insurance covering Engineer's activities in providing the services to the County. Coverage shall be in the amounts specified by the County in the Request for Qualifications ("RFQ") or as prescribed by law, but in no event shall any amount be less than the minimum amounts prescribed by the Texas Tort Claims Act, §100.001, et seq., Texas Civil Practices and Remedies Code. Engineer shall furnish to the County certificate(s) of insurance and all renewals throughout the duration of any assigned Project on an Accord form, issued by the insurer that such insurance is in full force and effect. **See attached Exhibit "G", i.e., Certificates of Insurance**, attached hereto and incorporated by reference herein. For each applicable policy, Engineer shall name the County as an additional insured. Engineer shall notify the County a minimum of thirty (30) days in advance of cancellation of all or part of a policy. Engineer shall make any other insurance documentation available to the County upon request.

18. Licenses. As a condition of this Agreement, Engineer shall hold and maintain throughout the term of this Agreement all licenses and permits required, or which may be required by any authority during the term hereof to provide the required Services. If such license or permit is suspended or revoked, this Agreement shall automatically be terminated and the Engineer shall immediately notify the County.

19. All trucks or vehicles operated by the Engineer to perform the Services shall contain all equipment required by any authority to operate on streets and roads and all persons in the employ of Engineer who operate such trucks or vehicles shall have the required licenses, qualifications, skill and expertise to perform such Services and shall comply with all laws, rules and regulations prescribed by any agency or authority having jurisdiction with regard to the operation of such trucks or vehicles in providing the Services. Engineer shall provide a sufficient number of trucks, vehicles, personnel and equipment available to safely and efficiently provide the Services.

20. 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 tax. A false statement concerning corporation's franchise tax status shall constitute grounds for termination of the Agreement at the sole option of the County.

21. No Assignment. Except as otherwise provided herein, Engineer may not assign the obligations or rights under this Agreement to any person without the prior written consent of County.

22. Conflict. Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law, and whenever there is any conflict between any provision of this Agreement and any present or future law, ordinance or administrative, executive or judicial regulation, order, or decree, or amendment thereof, contrary to which the parties have no legal right to Agreement, the latter shall prevail, but in such event, the affected provision or provisions of this Agreement shall be modified only to the extent necessary to bring them to the legal requirements and only during the time such conflict exists. In case anyone, 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 hereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

23. Termination by County. If Engineer fails to deliver quality Services, fails to achieve the defined goals, outcomes, strategies, and outputs required by County, or if Engineer fails to comply with any conditions in this Agreement, the County shall have the right to terminate this Agreement upon giving ten (10) days prior written notice to Engineer.

24. No Waiver. No waiver by County of any breach of any provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision hereof.

25. Entire Agreement. This Agreement contains the entire agreement between the parties hereto, and each party acknowledges that neither has made (either directly or through an agent or representative) any representations or agreements in connection with this Agreement not specifically set forth herein. This Agreement may be modified or amended only by agreement in writing executed by County and Engineer, and not otherwise.

26. Venue. 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 Engineer hereby consents to personal jurisdiction in Hidalgo County, Texas.

27. INDEMNIFICATION. ENGINEER SHALL INDEMNIFY AND HOLD HARMLESS COUNTY, ITS ELECTED OFFICIALS, EMPLOYEES, AND AGENTS FROM ANY AND ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES INCLUDING REASONABLE ATTORNEY'S FEES FOR THE DEFENSE OF ANY ACTION AGAINST COUNTY TO THE EXTENT ARISING OUT OF, RESULTING FROM, OR CONNECTED WITH THE NEGLIGENT PROVISION OF THE SERVICES BY ENGINEER UNDER THIS CONTRACT. SAID INDEMNITY SHALL COVER ANY INTENTIONAL MISCONDUCT, NEGLIGENT ACT, OR FAILURE TO ACT BY THE ENGINEER, ITS AGENTS, OR EMPLOYEES. THIS INDEMNIFICATION CLAUSE SHALL SURVIVE THIS AGREEMENT AND BE ENFORCEABLE AS A SEPARATE AGREEMENT IN THE EVENT ITS SURVIVAL AND ENFORCEMENT BECOME NECESSARY.

28. Notices. Except as may be otherwise specifically provided in this Agreement, all notices, demands, requests, or communications required or permitted hereunder shall be in writing and shall either be (i) personally delivered against a written receipt, or (ii) sent by a registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth below, or at such other addresses as may have been specified by written notice delivered in accordance herewith:

If to County: County of Hidalgo
Attention: County Judge
100 E. Cano, 2nd Floor
Edinburg, Texas 78539

CC: Executive Office
Attn: Valde Guerra, County Executive Officer
505 S. McColl Rd., 2nd Floor
Edinburg, Texas 78539

CC: Precinct No. 1
Attn: Mayor Suarez, PCT 1 Chief of Staff
1902 Joe Stephens Ave.
#101
Weslaco, Texas 78596

CC: Precinct No. 2
Attn: Armanda Garza, Jr., PCT 2 Chief of Staff
300 W. Hall Acres Rd.
Pharr, Texas 78577

CC: Precinct No. 3
Attn: Martin Garza, PCT 3 Chief of Staff
724 Brefogle Rd.

Mission, Texas 78574

CC: Precinct No. 4
Attn: Velinda Reyes, PCT 4 Chief of Staff
1024 N. M Rd.
Edinburg, Texas 78542

CC: Purchasing Dept.
Attn: Martha Salazar
Attn: JD Cortez
2802 S. Business HWY 281
Edinburg, Texas 78542

If to Engineer: SAMES, Inc.
Attn: Samuel D. Maldonado, CEO, P.E.
Attn: Ricardo Leal
200 S. 10th St.
Suite #1500
McAllen, Texas 78501

Each notice, demand, request, or communication which shall be delivered or mailed in the manner described above shall be deemed sufficiently given for all purposes at such time as it is personally delivered to the addresses or if mailed at such time as it is deposited in the United States mail.

29. Additional Documents. The parties hereto covenant and agree that they will execute 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.

30. Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Agreement.

31. Gender. All pronouns used in this Agreement shall include the other gender, whether used in the masculine, feminine or neuter gender and the singular shall include the plural whenever and as often as may be appropriate.

32. Authority. The execution and performance of this Agreement by County and Engineer have been duly authorized by all necessary laws, resolutions, or corporate action, and this Agreement constitutes the valid and enforceable obligation of County and Engineer in accordance with its terms.

33. Professional Seal. All documents and data furnished by the Engineer to the County shall bear the Professional seal of a licensed engineer employed by the Engineer.

34. 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 Surveyor. 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 Surveyor. 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).

35. Immunities. Nothing in this Agreement 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.

36. Nondiscrimination. Engineer, 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. 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.

37. Required Contract Provision for Contracts Subject to Federal Award (if applicable). Pursuant to 2 CFR 200.236, a non-federal entity's contracts must contain the

applicable provisions described in Appendix II to 2 CFR 200-Contract Provisions for non-Federal Entity Contracts under Federal Awards. Additionally, 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. The applicable required contract clauses were provided as part of the initial procurement packet and are incorporated herein and made part of this agreement for all purposes.

[Signature page to follow]

EXECUTED as of the day and year first written above.

APPROVED BY COMMISSIONER'S COURT ON: _____, 2021.

COUNTY OF HIDALGO

By: _____
Hon. Richard F. Cortez, County Judge

ATTEST:

By: _____
Arturo Guajardo, Jr., County Clerk

ENGINEER:
SAMES, Inc.
By: _____
Print Name: _____
Title: _____

APPROVED AS TO FORM
Office of the Criminal District Attorney,
Ricardo Rodriguez, Jr.

By: _____
_____,
Assistant District Attorney

ATTACHMENTS:

- EXHIBIT A** -Requirements/County's Request for Qualifications
- EXHIBIT B** -Scope of Services to be provided by Owner
- EXHIBIT C** -Project Specific Scope of Services to be provided by Engineer
- EXHIBIT D** -Contract Rates
- EXHIBIT E** -Work Authorization Form
- EXHIBIT F** -Supplemental Agreement Form
- EXHIBIT G** -Certificates of Insurance