

STATE OF TEXAS           §  
    §  
 COUNTY OF FORT BEND    §

### **AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES**

THIS AGREEMENT is made and entered into by and between Fort Bend County, (hereinafter "County"), a body corporate and politic under the laws of the State of Texas, and Othon, Inc., (hereinafter "Contractor"), a company authorized to conduct business in the State of Texas.

### WITNESSETH

WHEREAS, County desires that Contractor provide professional engineering services for the paving and drainage improvements to Madden Road from north of West Bellfort Avenue to Clodine Road for the Madden Road Project, Number 17416, under the 2017 Mobility Bond Program (hereinafter "Services") pursuant to SOQ 14-025; and

WHEREAS, County has determined Contractor is the most highly qualified provider of the desired Services on the basis of demonstrated competence and qualifications, and County and Contractor have negotiated to reach a fair and reasonable amount of compensation for the provision of such Services, as required under Chapter 2254 of the Texas Government Code; and

WHEREAS, Contractor represents that it is qualified and desires to perform such services.

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

### AGREEMENT

#### **Section 1. Scope of Services**

Contractor shall render the professional engineering services, including the surveying, right-of-way mapping, geotechnical investigations, roadway design, drainage design, traffic control design and utility coordination for the project as described Scope of Services and Deliverable Documents attached hereto as Exhibit A, and incorporated herein for all purposes.

#### **Section 2. Personnel**

2.1 Contractor represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the Scope of Services required under this Agreement and that Contractor shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of County, to perform the Scope of Services when and as required and without delays.

2.2 All employees of Contractor shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Contractor who, in the opinion of County, is incompetent or by his conduct becomes detrimental to the project shall, upon request of County, immediately be removed from association with the project.

### **Section 3. Compensation and Payment**

3.1 Contractor's fees shall be calculated at the rates set forth in the attached Exhibit A. The Maximum Compensation for the performance of Services within the Scope of Services described in Exhibit A is four hundred twenty-three thousand one hundred forty-three dollars and 33/100 (\$423,143.33) as set forth in Exhibit A. In no case shall the amount paid by County under this Agreement exceed the Maximum Compensation without a written agreement executed by the parties.

3.2 All performance of the Scope of Services by Contractor including any changes in the Scope of Services and revision of work satisfactorily performed will be performed only when approved in advance and authorized by County.

3.3 County will pay Contractor based on the following procedures: Upon completion of the tasks identified in the Scope of Services, Contractor shall submit to County staff person designated by the County Engineer, one (1) electronic (pdf) copy of the invoice showing the amounts due for services performed in a form acceptable to County. County shall review such invoices and approve them within 30 calendar days with such modifications as are consistent with this Agreement and forward same to the Auditor for processing. County shall pay each such approved invoice within thirty (30) calendar days. County reserves the right to withhold payment pending verification of satisfactory work performed.

### **Section 4. Limit of Appropriation**

4.1 Contractor clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of four hundred twenty-three thousand one hundred forty-three dollars and 33/100 (\$423,143.33) specifically allocated to fully discharge any and all liabilities County may incur.

4.2 Contractor does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Contractor may become entitled to and the total maximum sum that County may become liable to pay to Contractor shall not under any conditions, circumstances, or interpretations thereof exceed four hundred twenty-three thousand one hundred forty-three dollars and 33/100 (\$423,143.33).

### **Section 5. Time of Performance**

Time for performance of the Scope of Services under this Agreement shall begin with receipt of the Notice to Proceed and end no later than December 31, 2022. Contractor shall

complete the tasks described in the Scope of Services, within this time or within such additional time as may be extended by the County.

#### **Section 6. Modifications and Waivers**

6.1 The parties may not amend or waive this Agreement, except by a written agreement executed by both parties.

6.2 No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition.

6.3 The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.

#### **Section 7. Termination**

7.1 Termination for Convenience – County may terminate this Agreement at any time upon forty-eight (48) hours written notice.

##### **7.2 Termination for Default**

7.2.1 County may terminate the whole or any part of this Agreement for cause in the following circumstances:

7.2.1.1 If Contractor fails to perform services within the time specified in the Scope of Services or any extension thereof granted by the County in writing;

7.2.1.2 If Contractor materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in any of these circumstances does not cure such breach or failure to County's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from County specifying such breach or failure.

7.2.2 If, after termination, it is determined for any reason whatsoever that Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the County in accordance with Section 7.1 above.

7.3 Upon termination of this Agreement, County shall compensate Contractor in accordance with Section 3, above, for those services which were provided under this Agreement prior to its termination and which have not been previously invoiced to County. Contractor's final invoice for said services will be presented to and paid by County in the same manner set forth in Section 3 above.

7.4 If County terminates this Agreement as provided in this Section, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to Contractor.

#### **Section 8. Ownership and Reuse of Documents**

All documents, data, reports, research, graphic presentation materials, etc., developed by Contractor as a part of its work under this Agreement, shall become the property of County upon completion of this Agreement, or in the event of termination or cancellation thereof, at the time of payment under Section 3 for work performed. Contractor shall promptly furnish all such data and material to County on request.

#### **Section 9. Inspection of Books and Records**

Contractor will permit County, or any duly authorized agent of County, to inspect and examine the books and records of Contractor for the purpose of verifying the amount of work performed under the Scope of Services. County's right to inspect survives the termination of this Agreement for a period of four years.

#### **Section 10. Insurance**

10.1 Prior to commencement of the Services, Contractor shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. Contractor shall provide certified copies of insurance endorsements and/or policies if requested by County. Contractor shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. Contractor shall obtain such insurance written on an Occurrence form (or a Claims Made form for Professional Liability insurance) from such companies having Best's rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

10.1.1 Workers' Compensation insurance. Substitutes to genuine Workers' Compensation Insurance will not be allowed. Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.

10.1.2 Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.

10.1.3 Business Automobile Liability insurance with a combined Bodily Injury/Property Damage limit of not less than \$1,000,000 each accident. The policy shall cover liability arising from the operation of licensed vehicles by policyholder.



10.1.4 Professional Liability insurance may be made on a Claims Made form with limits not less than \$1,000,000.

10.2 County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation and Professional Liability. All Liability policies including Workers' Compensation written on behalf of Contractor shall contain a waiver of subrogation in favor of County and members of Commissioners Court.

10.3 If required coverage is written on a claims-made basis, Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time that work under the Agreement is completed.

#### **Section 11. Indemnity**

**CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS COUNTY AGAINST LOSSES, LIABILITIES, CLAIMS, AND CAUSES OF ACTION, INCLUDING THE REIMBURSEMENT OF COUNTY'S REASONABLE ATTORNEYS FEES IN PROPORTION TO CONTRACTOR'S LIABILITY, ARISING FROM ACTIVITIES OF CONTRACTOR, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, INTENTIONAL TORT, ERROR, OR OMISSION OF CONTRACTOR OR ANY OF CONTRACTOR'S AGENTS, SERVANTS OR EMPLOYEES.**

#### **Section 12. Confidential and Proprietary Information**

12.1 Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to County. Any and all information of any form obtained by Contractor or its employees or agents from County in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Contractor) publicly known or is contained in a publicly available document; (b) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of Contractor who can be shown to have had no access to the Confidential Information.

12.2 Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to County hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use its best efforts

to assist County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Contractor shall advise County immediately in the event Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Contractor will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or Contractor against any such person. Contractor agrees that, except as directed by County, Contractor will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at County's request, Contractor will promptly turn over to County all documents, papers, and other matter in Contractor's possession which embody Confidential Information.

12.3 Contractor acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to County that is inadequately compensable in damages. Accordingly, County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of County and are reasonable in scope and content.

12.4 Contractor in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.

12.5 Contractor expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by Consultant shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed.

### **Section 13. Independent Contractor**

13.1 In the performance of work or services hereunder, Contractor shall be deemed an independent contractor, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of contractor or, where permitted, of its subcontractors.

13.2 Contractor and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.

#### **Section 14. Notices**

14.1 Each party giving any notice or making any request, demand, or other communication (each, a "Notice") pursuant to this Agreement shall do so in writing and shall use one of the following methods of delivery, each of which, for purposes of this Agreement, is a writing: personal delivery, registered or certified mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid).

14.2 Each party giving a Notice shall address the Notice to the receiving party at the address listed below or to another address designated by a party in a Notice pursuant to this Section:

County:	Fort Bend County Engineering Department Attn: County Engineer 301 Jackson Street Richmond, Texas 77469
With a copy to:	Fort Bend County Attn: County Judge 401 Jackson Street, 1 <sup>st</sup> Floor Richmond, Texas 77469
Contractor:	Othon, Inc. Attn: Charles A. Othon, President 11111 Wilcrest Green Drive, Suite 128 Houston, Texas 77042

14.3 A Notice is effective only if the party giving or making the Notice has complied with subsections 14.1 and 14.2 and if the addressee has received the Notice. A Notice is deemed received as follows:

14.3.1 If the Notice is delivered in person, or sent by registered or certified mail or a nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.

14.3.2 If the addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.

#### **Section 15. Compliance with Laws**

Contractor shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by County, Contractor shall furnish County with

certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

**Section 16. Standard of Care**

Contractor represents shall perform the Services to be provided under this Agreement with the professional skill and care ordinarily provided by competent engineers practicing under the same or similar circumstances and professional license. Further, Contractor shall perform the Services as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer.

**Section 17. Assignment**

17.1 Neither party may assign any of its rights under this Agreement, except with the prior written consent of the other party. That party shall not unreasonably withhold its consent. All assignments of rights are prohibited under this subsection, whether they are voluntarily or involuntarily, by merger, consolidation, dissolution, operation of law, or any other manner.

17.2 Neither party may delegate any performance under this Agreement.

17.3 Any purported assignment of rights or delegation of performance in violation of this Section is void.

**Section 18. Applicable Law**

The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity.

**Section 19. Successors and Assigns**

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

**Section 20. Third Party Beneficiaries**

This Agreement does not confer any enforceable rights or remedies upon any person other than the parties.

**Section 21. Severability**

If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

**Section 22. Publicity**

Contact with citizens of Fort Bend County, media outlets, or governmental agencies shall be the sole responsibility of County. Under no circumstances whatsoever, shall Contractor release any material or information developed or received in the performance of the Services hereunder without the express written permission of County, except where required to do so by law.

**Section 23. Captions**

The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.

**Section 24. Conflict**

In the event there is a conflict between this Agreement and the attached exhibits, this Agreement controls.

**Section 25. Certain State Law Requirements for Contracts**

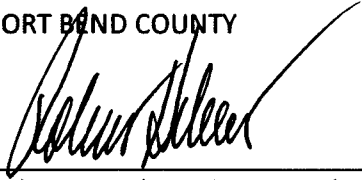
25.1 Agreement to Not Boycott Israel Chapter 2270 Texas Government Code: By signature below, Contractor verifies Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement.

25.2 Texas Government Code Section 2251.152 Acknowledgment: By signature below, Contractor represents pursuant to Section 2252.152 of the Texas Government Code, that Contractor is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153.

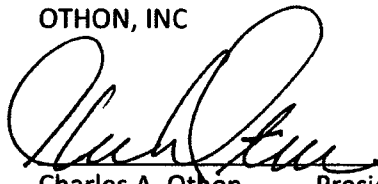
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IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the date signed by the last party hereto.

FORT BEND COUNTY

  
Robert E. Hebert, County Judge

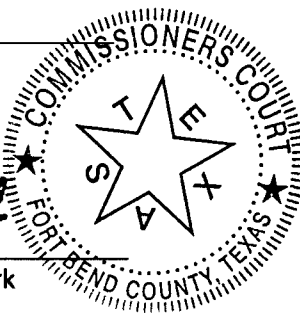
OTHON, INC

  
Charles A. Othon, President

7-10-2018  
Date

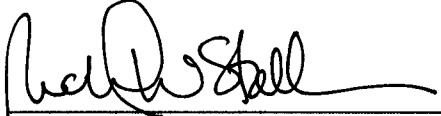
ATTEST:

  
Laura Richard, County Clerk



27 June 2018  
Date

APPROVED:


  
Richard W. Stolleis, P.E., County Engineer

APPROVED AS TO LEGAL FORM:

  
Marcus D. Spencer, First Assistant County Attorney

#### AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$423,143.<sup>33</sup> to accomplish and pay the obligation of Fort Bend County under this contract.

  
Robert Ed Sturdivant, County Auditor

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# EXHIBIT A



OTHON, INC.  
11111 Wilcrest Green Drive, Suite 128  
Houston, TX 77042

CONSULTING ENGINEERS  
Civil, Transportation, Environmental,  
Construction Management

713 975 8555 TEL  
713 975 9068 FAX  
www.othon.com WEBSITE

June 12, 2018

Mr. Robert W. Barnett, P.E.  
Vice President/Transportation  
LJA Engineering  
2929 Briarpark Drive, Suite 600  
Houston, Texas 77042

**RE:     Madden Road  
         Fort Bend County Precinct 4  
         Project No. 4-16**

Dear Mr. Barnett,

Othon is pleased to submit this proposal to perform engineering services for Madden Road from north of West Bellfort Avenue to Clodine Road in Fort Bend County Precinct 4. Below is an index of our proposal:

Exhibit A:     Scope of Services to be provided by the Engineer  
Exhibit B:     Project Schedule  
Exhibit C:     Compensation for Engineering Services  
Exhibit D:     Subconsultant Proposals

**Total Basic Services fee is:                     \$423,143.33**

We hope that our proposal meets with your approval and our team looks forward to a successful project.

Sincerely yours,

Daniel A. Davila, P.E.  
Senior Project Manager  
OTHON, Inc. Consulting Engineers

Enclosure:     Exhibits A, B, C, D



## **EXHIBIT A**

### **SERVICES TO BE PROVIDED BY THE ENGINEER**

#### **Project Limits:**

Madden Road from north of West Bellfort Avenue to Clodine Road. Scope is as follows:

1. 2-lane asphalt mill, overlay, and widening of existing roadway with improved drainage along Madden Road from approximately 2,400 feet north of West Bellfort Ave.
2. 2-lane asphalt mill and overlay of existing roadway along Madden Road from approximately 2,800 feet west of FM 1464.
3. 2-lane concrete roadway with storm sewer from east of FM 1464 to Clodine Road.

#### **I. Preliminary Design**

1. Control Survey
  - a. Temporary benchmarks and baseline control will be set, both with 1,000-foot maximum spacing between points. Existing Fort Bend County monuments provided will be recovered/verified and or re-established by observing with GPS instrument. A survey control map sheets will be provided in PDF documents. Detailed sketches with 3-swing tie diagrams will be provided on separate sheets to provide details of the survey control points in PDF documents.  
*\*See Exhibit D CivilCorp proposal dated May 16, 2018 for additional details.*
2. Topographic Survey
  - a. The topographic survey shall be along the existing alignment of Madden Road from West Bellfort to Clodine Rd. The topographic survey will be taken within the existing and proposed right-of-way and extend 20 feet beyond the proposed right-of-way on each side except where prohibited by fences. Structures in clear view and within 100 feet of the existing right-of-way should be surveyed. The topographic survey is to include edge of pavements, driveways, signs, mailboxes, traffic signals, sidewalks, pavement markings, etc. Pavement material types will be indicated as determined on the surface. Crossing drainage channels will be profiled and cross sectioned up and down stream. Existing underground utilities will be collected as marked by other as well as visible surface features. Overhead utilities will be indicated. Gravity sanitary and storm sewers will be located as to top of manholes and inlets, flow line elevations, type, size, and direction of pipes. Water lines will be located by tops of valves, fire hydrants (flush valves) and visible surface features. Cross section of the existing roadway will be obtained at 100-foot intervals. A project base line will be established in concert with the design engineer. An existing condition 2-D planimetric topographic survey base map will be provided in MicroStation V8i (DGN) with text, line types, and feature blocks scaled to be plotted at agreed upon scales. Underground utilities will be located on the base map from resolution of field data and record information provided to the surveyor by others. An illustration of general location of the survey limits is provided the attached EXHIBIT A—Limits of Survey.  
*\*See Exhibit D CivilCorp proposal dated May 16, 2018 for additional details.*

### 3. Abstracting and Mapping

- a. Abstracting will be performed without the use of a title company to gain a preliminary determination of property ownership and existing right-of-way widths. During topographic survey, found property corners should be documented so that the approximate location of the right-of-way can be determined. An abstract map MicroStation dgn file with the overall project map showing existing and proposed right-of-way, parcel takes, ownership information, parcel numbers and preliminary roadway layout will be provided. A KMZ file showing the same will also be provided.

*\*See Exhibit D CivilCorp proposal dated May 16, 2018 for additional details.*

### 4. Geotechnical Investigation

- a. Field Exploration
  - i. Eleven (11) borings west of FM 1464 at 10 ft depth
  - ii. Five (5) borings east of FM 1464 at 20 ft depth
- b. Laboratory Testing
- c. Engineering and Project Delivery with final geotechnical report consisting of:
  - i. Boring logs with field and laboratory data
  - ii. Stratification based on visual soil classification
  - iii. Groundwater levels observed during and after completion of drilling.
  - iv. Site and boring location plans
  - v. Subsurface exploration procedures
  - vi. Description of subsurface conditions
  - vii. Subgrade preparation/earthwork recommendations
  - viii. Pavement design guidelines

*\*See Exhibit D Terracon Consultants proposal dated May 29, 2018 for additional details.*

### 5. Utility Coordination

- a. One-Call/811 will be activated for the project limits. All public utility, private utility and pipeline providers will be contacted via the current utility coordination process and all on-site utility markings and other information provided by these utility and pipeline providers will be collected by standard survey methods and incorporated into the topographic survey base map.

*\*See Exhibit D CivilCorp proposal dated May 16, 2018 for additional details.*

### 6. General

- a. Typical Sections
- b. Determine drainage system needs (Drainage report)
- c. Determine right-of-way acquisition needs
- d. Determine Potential conflicts with existing facilities
- e. Identify critical path items
- f. Identify problem areas and potential resolution
- g. Determine permit and regulatory requirements
- h. Prepare reasonable construction cost estimate
- i. Prepare Preliminary Engineering Report (PER)
- j. Prepare plan and profile schematic (30%)

**II. Final Design**

1. General
  - a. Title Sheet
  - b. Index of Drawings
  - c. Project Layout
  - d. General Notes
  - e. Survey Control Map
2. Roadway
  - a. Typical Sections (Existing & Proposed)
  - b. Horizontal and Vertical geometric design
  - c. Design cross sections spaced at 100 ft intervals
  - d. Prepare plan and profile sheets, details, and standards
3. Drainage
  - a. Drainage area map
  - b. Drainage design
  - c. Drainage will be detailed in Roadway P&P sheets.
  - d. Prepare details and standards
4. Traffic Control
  - a. TCP design
  - b. Prepare plan sheets, details, and standards
5. Signing and Pavement Marking
  - a. Signing and pavement marking design
  - b. Prepare plan sheets, details, and standards
6. Storm Water Pollution Prevention Plan (SW3P)
  - a. SW3P design
  - b. Prepare plan sheets, details, and standards
7. Standard Construction Details
8. Quantities
9. Specifications
10. Project manual

The Engineer will prepare PDF drawing submittals as follows:

Drawings for Review (11"x17"): 1"=40'

Drawings for Bid (22"x34"): 1"=20'

**III. Bid and Construction Phase Services**

All bid and construction phase services will be paid on a time-and-materials basis.

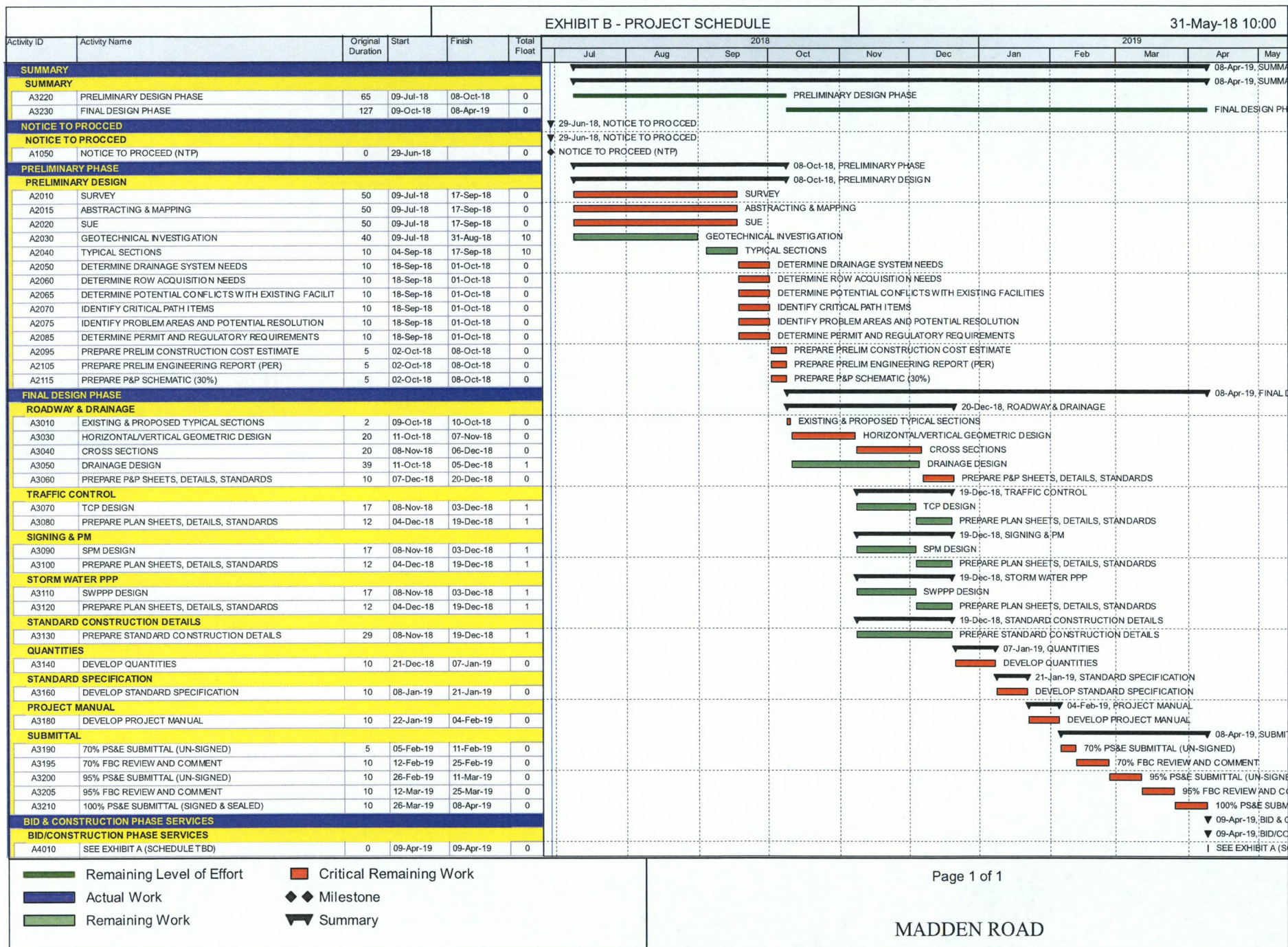
1. Prepare complete project manual with administrative documents
2. Prepare 27 compact discs with project manual and drawings
3. Attend pre-bid meeting
4. Respond to bidder questions, as well as any other required changes, will be included in an addendum, prepared by the Engineer if necessary
5. Attend pre-construction meeting and provide requested drawing and project manual sets.
6. Review contractor submittals and respond to requests for information
7. Participate in substantial completion walkthrough.
8. Following project completion, Engineer will prepare record drawings based on contractor as-built markups.

**Deliverables**

1. 30% Preliminary Design Plan and Profile
2. Preliminary Engineering Report
3. Geotechnical Report
4. 70% PS&E Plan Submittal (un-signed)
5. 95% PS&E Plan Submittal (un-signed)
6. 100% PS&E Plan Submittal (signed & sealed)

**Exclusions**

1. Ditch design and calculations for 2-lane asphalt mill and overlay section of existing roadway along Madden Road from approximately 2,800 feet west of FM 1464.
2. Preliminary wetlands investigations and project notification to the Texas Historical Commission.
3. Signal warrant study
4. Signal design
5. Subsurface utility Engineering and locating
6. Extra work that is not included within Exhibit A





**Exhibit C**  
**Compensation for Engineering Services**

Project Name: Madden Road

Project Limits: Madden Road from north of West Bellfort Avenue to Clodine Road

Project Number: 4-16

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**I. Preliminary Design Phase**

1 Control Survey*	\$	10,422.82
2 Topographic Survey*	\$	36,348.53
3 Abstracting and Mapping*	\$	13,963.98
4 Geotechnical Investigation*	\$	20,223.00
5 General	\$	56,689.00
<b>Subtotal</b>	<b>\$</b>	<b>137,647.33</b>

**II. Final Design Phase**

1 See Exhibit A	\$	260,506.00
<b>Subtotal</b>	<b>\$</b>	<b>260,506.00</b>

**III. Bid and Construction Phase Services**

1 See Exhibit A	\$24,990.00
<b>Subtotal</b>	<b>\$ 24,990.00</b>

<b>Total Basic Services (I-III)</b>	<b>\$ 423,143.33</b>
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\* See Exhibit D for subconsultant level-of-effort fee proposal

**Prime Provider: Othon, Inc.**  
**Project: Madden Road**

### Exhibit C.1 - Othon Level of Effort

TASK DESCRIPTION	SR. PROJECT MANAGER	PROJECT ENGINEER	ROADWAY EIT	DRAINAGE ENGINEER	DRAINAGE EIT	CADD TECH	TOTAL LABOR HRS. & COSTS
CONTRACT RATE PER HOUR	\$ 225.00	\$ 130.00	\$ 98.00	\$ 151.00	\$ 90.00	\$ 80.00	
I. PRELIMINARY DESIGN							
1 CONTROL SURVEY	1	8					9
2 TOPOGRAPHIC SURVEY	1	8					9
3 ABSTRACTING AND MAPPING	1	8					9
4 GEOTECHNICAL INVESTIGATION	1	8					9
5 UTILITY COORDINATION	1	8					9
6 GENERAL							0
TYPICAL SECTIONS	2	4	8			40	54
DETERMINE DRAINAGE SYSTEM NEEDS (Drainage Report/Prelim design)	2	4		16	32		54
DETERMINE ROW ACQUISITION NEEDS	2	4					6
DETERMINE POTENTIAL CONFLICTS WITH EXISTING FACILITIES	2	4		8			14
IDENTIFY CRITICAL PATH ITEMS	2	4		8			14
IDENTIFY PROBLEM AREAS AND POTENTIAL RESOLUTION	2	4		8			14
DETERMINE PERMIT AND REGULATORY REQUIREMENTS	2	4		16			22
PREPARE REASONABLE CONSTRUCTION COST ESTIMATE	2	4	24	8	24		62
PREPARE PRELIMINARY ENGINEERING REPORT (PER)	2	16		16			34
PREPARE P&P SCHEMATIC (30%)	2	8	40	8	40	80	178
TOTAL HOURS	25	96	72	88	96	120	497
TOTAL LABOR COSTS	\$5,625.00	\$12,480.00	\$7,056.00	\$13,288.00	\$8,640.00	\$9,600.00	\$56,689.00
II. FINAL DESIGN							
1 GENERAL							0
TITLE SHEET	2	4	8				14
INDEX OF DRAWINGS	2	4	8				14
PROJECT LAYOUT	2	4	8				14
GENERAL NOTES	2	4	8				14
SURVEY CONTROL MAP	2	2	8				12
2 ROADWAY							0
TYPICAL SECTIONS (EXIST & PROP)	2	8	24			40	74
HORIZONTAL AND VERTICAL GEOMETRIC DESIGN	2	60	90				152
CROSS SECTIONS	2	80	120			120	322
PLAN & PROFILE (Roadway & Drainage Combined)	2	80	120	80	160	120	562
3 DRAINAGE							0
DRAINAGE AREA MAP	2			40	112		154
DRAINAGE DESIGN	2			60	112		174
4 TRAFFIC CONTROL							0
TCP DESIGN	2	20	40			40	102
PLAN, DETAIL, AND STANDARD PREPARATION	2	20	40			40	102
5 SIGNING & PAVEMENT MARKING							0
SPM DESIGN	2	20	40			40	102
PLAN AND DETAIL	2	20	40			40	102
6 STORM WATER POLLUTION PREVENTION PLAN (SWPPP)							0
SWPPP DESIGN	2			20	40	40	102
PLAN AND DETAIL	2			20	40	40	102
7 STANDARD CONSTRUCTION DETAILS	2	20	40	20	40		122
8 QUANTITIES	2	24	40	24	40		130
9 SPECIFICATIONS	2	40					42
10 PROJECT MANUAL (BID FORM, SPEC T.O.C., SPECIAL SPECS)	2	40					42
TOTAL HOURS	42	450	634	264	544	520	2454
TOTAL LABOR COSTS	\$9,450.00	\$58,500.00	\$62,132.00	\$39,864.00	\$48,960.00	\$41,600.00	\$260,506.00
III. BID AND CONSTRUCTION PHASE SERVICES (TIME & MATERIAL)							
1 BID & CONSTRUCTION PHASE SERVICES (SEE EXHIBIT A)	40	120					160
*B&C FEE IS NOT-TO-EXCEED							0
TOTAL HOURS	40	123	0	0	0	0	160
TOTAL LABOR COSTS	\$9,000.00	\$15,990.00	\$0.00	\$0.00	\$0.00	\$0.00	\$24,990.00
GRAND TOTAL HOURS	107	669	706	352	640	640	3111
GRAND TOTAL LABOR COSTS	\$24,075.00	\$86,970.00	\$69,188.00	\$53,152.00	\$57,600.00	\$51,200.00	\$342,185.00
% DISTRIBUTION OF STAFFING	3.44%	21.50%	22.69%	11.31%	20.57%	20.57%	
TOTAL							\$342,185.00



Madden Road  
Fort Bend County Precinct 4  
Project No. 4-16

## **EXHIBIT D**

### **SUBCONSULTANT PROPOSALS**



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May 16, 2018

OTHON, INC  
11111 Wilcrest Green Drive Suite 128  
Houston, TX 77042  
Attn: Danny Davila, PE

**Re: Fee Proposal for Surveying Services – Madden Road**  
**Limits: From West Bellfort to Clodine Rd**  
**Project: Fort Bend County Mobility Project No. 4-16**

Dear Mr. Davila:

CivilCorp, LLC is pleased to submit this fee proposal for surveying services for the above referenced project. We propose the following scope of work, deliverables, schedule, fee and exclusions for our services.

**I. SCOPE OF WORK - ROADWAY SURVEY**

CONTROL SURVEY

Temporary benchmarks and baseline control will be set, both with 1,000-foot maximum spacing between points. Existing Fort Bend County monuments provided will be recovered/verified and or re-established by observing with GPS instrument. A survey control map sheets will be provided in PDF documents. Detailed sketches with 3-swing tie diagrams will be provided on separate sheets to provide details of the survey control points in PDF documents.

**Control Survey Fee Subtotal: \$ 10,422.82**

ROADWAY DESIGN SURVEY

TOPOGRAPHIC SURVEY-

The topographic survey shall be along the existing alignment of Madden Road from West Bellfort to Clodine Rd. The topographic survey will be taken within the existing and proposed right-of-way and extend 20 feet beyond the proposed right-of-way on each side except where prohibited by fences. Structures in clear view and within 100 feet of the existing right-of-way should be surveyed. The topographic survey is to include edge of pavements, driveways, signs, mailboxes, traffic signals, sidewalks, pavement markings, etc. Pavement material types will be indicated as determined on the surface. Crossing drainage channels will be profiled and cross sectioned up and down stream. Existing underground utilities will be collected as marked by other as well as visible surface features. Overhead utilities will be indicated. Gravity sanitary and storm sewers will be located as to top of manholes and inlets, flow line elevations, type, size, and direction of pipes. Water lines will be located by tops of valves, fire hydrants (flush valves) and visible surface features. Cross section of the existing roadway will be obtained at 100-foot intervals. A project base line will be established in concert with the design engineer. An existing condition 2-D planimetric topographic survey base map will be provided in MicroStation V8i (DGN) with text, line types, and feature blocks scaled to be plotted at agreed upon scales. Underground utilities will be located on the base map from resolution of field data and record

information provided to the surveyor by others. An illustration of general location of the survey limits is provided the attached EXHIBIT A—Limits of Survey.

UTILITY COORDINATION-

One-Call/811 will be activated for the project limits. All public utility, private utility and pipeline providers will be contacted via the current utility coordination process and all on-site utility markings and other information provided to CivilCorp by these utility and pipeline providers will be collected by standard survey methods and incorporated into the topographic survey base map.

RIGHT OF ENTRY AGREEMENTS-

CivilCorp shall prepare Right of Entry Agreements to allow the Surveyor access to all private property.

DIGITAL TERRAIN MODEL (DTM)-

A three-dimensional surface model or DTM will be created from a TIN which will be based on conventionally collected three-dimensional survey point data including cross sections and other relevant surface elevation points. The TIN and DTM will be provided in MicroStation V8i and Geopak format. Note can be exported in XML for Civil 3D.

**Roadway Design Survey Fee Subtotal: \$ 36,348.53**

ABSTRACTING & MAPPING

Abstracting will be performed without the use of a title company to gain a preliminary determination of property ownership and existing right-of-way widths. During topographic survey, found property corners should be documented so that the approximate location of the right-of-way can be determined. An abstract map MicroStation dgn file with the overall project map showing existing and proposed right-of-way, parcel takes, ownership information, parcel numbers and preliminary roadway layout will be provided. A KMZ file showing the same will also be provided.

**Abstracting and Mapping Fee Subtotal: \$ 13,963.98**

[REDACTED]

[REDACTED]

**II. FEE**

The estimated fee for the above-mentioned Scope of Work for Lump Sum payment tasks is **\$60,735.33** [REDACTED] as shown above and in the attached EXHIBIT B – Fee Schedule

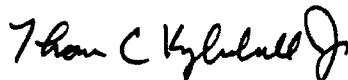
**EXCLUSIONS:**

Base profile drawing; Subsurface utility engineering and locating; Extra work that is not included in our Scope of Work.

If you have any questions or require additional information, please don't hesitate to call me. We are looking forward to working with you on this project.

Very truly yours,

CivilCorp, LLC



Thomas C. Kuykendall, Jr., PE  
Vice President

**OTHON, Inc. Consulting Engineers**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

EXHIBIT A – Limits of Survey  
EXHIBIT B – Fee Schedule



# MADDEN ROAD

EXHIBIT "A"

Legend

## MADDEN ROAD

(2-LANE ASPHALT ROAD) WEST FM 1494  
(2-LANE CONCRETE ROAD) EAST FM 1494  
LENGTH: 8,100 FEET

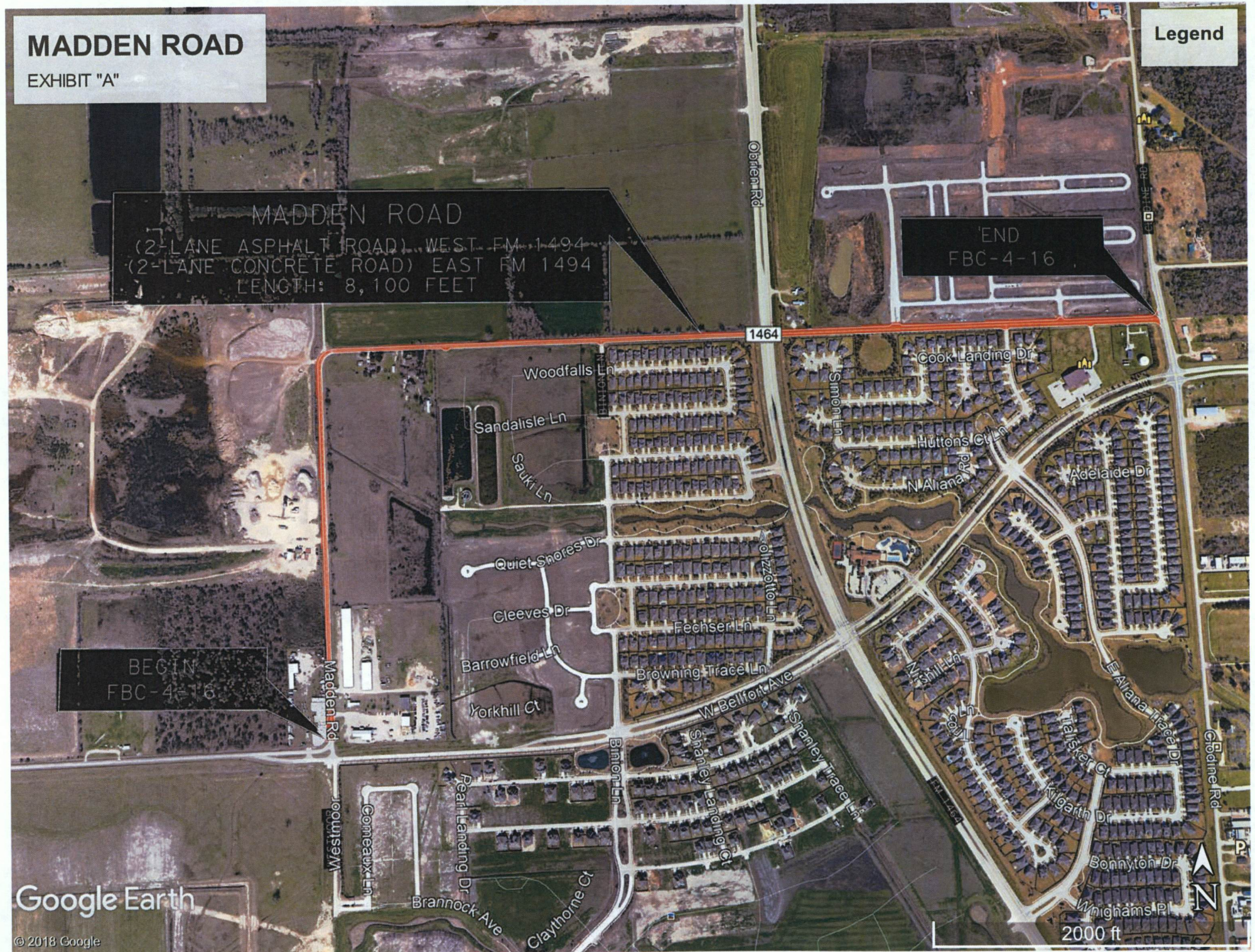
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FBC-4-16

Google Earth

© 2018 Google

2000 ft





## EXHIBIT B FEE SCHEDULE

**MADDEN RD**  
**Fort Bend County**  
**PRIME PROVIDER NAME: OTHON**

TASK DESCRIPTION		PROJECT MANAGER	RPLS TASK LEADER	SENIOR SURVEY TECH	SURVEY TECH	2-MAN SURVEY CREW	TOTAL\$
CONTRACT RATE PER HOUR		\$ 138.73	\$ 120.24	\$ 89.86	\$ 79.28	\$ 140.00	
LUMP SUM PAYMENT TASKS							
1	One Call for utilities to be marked.				8		\$634.24
2	Establish and Set Control @ 1000' intervals TOTAL 9 RODS And provide Control sheets	2	16	8	24	40	\$10,422.82
3	Topographic Survey 20' feet outside ROW LENGTH 8,400' and 3D DTM	3	28	50	55	150	\$33,835.81
4	Apparent ROW Abstracting and calculating for rod search.	1	15	45	30	40	\$13,963.98
5	Set Base line.				1	10	\$1,479.28
6	parcels @ \$2,200.00 per-easement parcel						
	HOURS SUB-TOTALS	6	59	103	110	240	518
		\$832.38	\$7,094.16	\$9,254.55	\$8,720.80	\$33,600.00	\$60,136.13
SUBTOTAL LABOR EXPENSES							\$60,136.13
DIRECT EXPENSES		QUANTITY	UNIT	RATE			TOTAL
	MILEAGE	1,120	MI	\$0.54			\$599.20
SUBTOTAL DIRECT EXPENSES							\$599.20
SUBTOTAL LABOR							\$60,136.13
TOTAL							\$60,735.33

[illegible]

May 29, 2018



Othon, Inc.  
11111 Wilcrest Green Drive, Suite 128  
Houston, Texas 77042

Attn: Mr. Danny Davila, P.E.  
P: (713) 975 8555  
E: ddavila@othon.com

Re: Cost Estimate for Geotechnical Engineering Services  
Madden Road  
West Belfort Avenue and Clodine Road  
Fort Bend County, Texas  
Terracon Document No. P92185231.Revision1

Dear Mr. Davila:

We understand we have been selected based on our qualifications to provide Geotechnical Engineering services for the above referenced project. The following are exhibits to the attached Agreement for Services.

Exhibit A	Project Understanding
Exhibit B	Scope of Services
Exhibit C	Compensation and Project Schedule
Exhibit D	Site Location
Exhibit E	Anticipated Exploration Plan

Our base fee to perform the scope of services described in this proposal is **\$20,223**. See **Exhibit C** for more details of our fees and consideration of additional services.

**Cost Estimate for Geotechnical Engineering Services**  
Madden Road ■ Fort Bend County, Texas  
May 29, 2018 ■ Terracon Document No. P92185231.Revision1

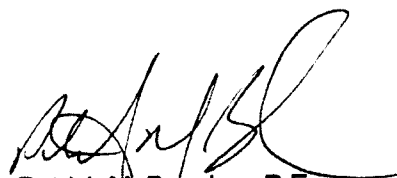
**Terracon**

Your authorization for Terracon to proceed in accordance with this proposal can be issued by signing and returning a copy of the attached Agreement for Services to our office. If you have any questions, please do not hesitate to contact us.

Sincerely,  
**Terracon Consultants, Inc.**  
(Texas Firm Registration No. F3272)



Fernando L. Aponte-Rivera, E.I.T.  
Senior Staff Geotechnical Engineer



Patrick M. Beecher, P.E.  
Geotechnical Services Manager

## AGREEMENT FOR SERVICES

This **AGREEMENT** is between Othon Inc ("Client") and Terracon Consultants, Inc. ("Consultant") for Services to be provided by Consultant for Client on the Madden Road project ("Project"), as described in Consultant's Proposal dated 05/02/2018 ("Proposal"), including but not limited to the Project Information section, unless the Project is otherwise described in Exhibit A to this Agreement (which section or Exhibit is incorporated into this Agreement).

1. **Scope of Services.** The scope of Consultant's services is described in the Proposal, including but not limited to the Scope of Services section ("Services"), unless Services are otherwise described in Exhibit B to this Agreement (which section or exhibit is incorporated into this Agreement). Portions of the Services may be subcontracted. When Consultant subcontracts to other individuals or companies, then consultant will collect from Client on the Subcontractors' behalf. Consultant's Services do not include the investigation or detection of, nor do recommendations in Consultant's reports address the presence or prevention of biological pollutants (e.g., mold, fungi, bacteria, viruses, or their byproducts) or occupant safety issues, such as vulnerability to natural disasters, terrorism, or violence. If Services include purchase of software, Client will execute a separate software license agreement. Consultant's findings, opinions, and recommendations are based solely upon data and information obtained by and furnished to Consultant at the time of the Services.
2. **Acceptance/ Termination.** Client agrees that execution of this Agreement is a material element of the consideration Consultant requires to execute the Services, and If Services are initiated by Consultant prior to execution of this Agreement as an accommodation for Client at Client's request, both parties shall consider that commencement of Services constitutes formal acceptance of all terms and conditions of this Agreement. Additional terms and conditions may be added or changed only by written amendment to this Agreement signed by both parties. In the event Client uses a purchase order or other form to administer this Agreement, the use of such form shall be for convenience purposes only and any additional or conflicting terms it contains are stricken. This Agreement shall not be assigned by either party without prior written consent of the other party. Either party may terminate this Agreement or the Services upon written notice to the other. In such case, Consultant shall be paid costs incurred and fees earned to the date of termination plus reasonable costs of closing the Project.
3. **Change Orders.** Client may request changes to the scope of Services by altering or adding to the Services to be performed. If Client so requests, Consultant will return to Client a statement (or supplemental proposal) of the change setting forth an adjustment to the Services and fees for the requested changes. Following Client's review, Client shall provide written acceptance. If Client does not follow these procedures, but instead directs, authorizes, or permits Consultant to perform changed or additional work, the Services are changed accordingly and Consultant will be paid for this work according to the fees stated or its current fee schedule. If project conditions change materially from those observed at the site or described to Consultant at the time of proposal, Consultant is entitled to a change order equitably adjusting its Services and fee.
4. **Compensation and Terms of Payment.** Client shall pay compensation for the Services performed at the fees stated in the Proposal, including but not limited to the Compensation section, unless fees are otherwise stated in Exhibit C to this Agreement (which section or Exhibit is incorporated into this Agreement). If not stated in either, fees will be according to Consultant's current fee schedule. Fee schedules are valid for the calendar year in which they are issued. Fees do not include sales tax. Client will pay applicable sales tax as required by law. Consultant may invoice Client at least monthly and payment is due upon receipt of invoice. Client shall notify Consultant in writing, at the address below, within 15 days of the date of the invoice if Client objects to any portion of the charges on the invoice, and shall promptly pay the undisputed portion. Client shall pay a finance fee of 1.5% per month, but not exceeding the maximum rate allowed by law, for all unpaid amounts 30 days or older. Client agrees to pay all collection-related costs that Consultant incurs, including attorney fees. Consultant may suspend Services for lack of timely payment. It is the responsibility of Client to determine whether federal, state, or local prevailing wage requirements apply and to notify Consultant if prevailing wages apply. If it is later determined that prevailing wages apply, and Consultant was not previously notified by Client, Client agrees to pay the prevailing wage from that point forward, as well as a retroactive payment adjustment to bring previously paid amounts in line with prevailing wages. Client also agrees to defend, indemnify, and hold harmless Consultant from any alleged violations made by any governmental agency regulating prevailing wage activity for failing to pay prevailing wages, including the payment of any fines or penalties.
5. **Third Party Reliance.** This Agreement and the Services provided are for Consultant and Client's sole benefit and exclusive use with no third party beneficiaries intended. Reliance upon the Services and any work product is limited to Client, and is not intended for third parties other than those who have executed Consultant's reliance agreement, subject to the prior approval of Consultant and Client.
6. **LIMITATION OF LIABILITY.** CLIENT AND CONSULTANT HAVE EVALUATED THE RISKS AND REWARDS ASSOCIATED WITH THIS PROJECT, INCLUDING CONSULTANT'S FEE RELATIVE TO THE RISKS ASSUMED, AND AGREE TO ALLOCATE CERTAIN OF THE ASSOCIATED RISKS. TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL AGGREGATE LIABILITY OF CONSULTANT (AND ITS RELATED CORPORATIONS AND EMPLOYEES) TO CLIENT AND THIRD PARTIES GRANTED RELIANCE IS LIMITED TO THE GREATER OF \$50,000 OR CONSULTANT'S FEE, FOR ANY AND ALL INJURIES, DAMAGES, CLAIMS, LOSSES, OR EXPENSES (INCLUDING ATTORNEY AND EXPERT FEES) ARISING OUT OF CONSULTANT'S SERVICES OR THIS AGREEMENT. PRIOR TO ACCEPTANCE OF THIS AGREEMENT AND UPON WRITTEN REQUEST FROM CLIENT, CONSULTANT MAY NEGOTIATE A HIGHER LIMITATION FOR ADDITIONAL CONSIDERATION IN THE FORM OF A SURCHARGE TO BE ADDED TO THE AMOUNT STATED IN THE COMPENSATION SECTION OF THE PROPOSAL. THIS LIMITATION SHALL APPLY REGARDLESS OF AVAILABLE PROFESSIONAL LIABILITY INSURANCE COVERAGE, CAUSE(S), OR THE THEORY OF LIABILITY, INCLUDING NEGLIGENCE, INDEMNITY, OR OTHER RECOVERY. THIS LIMITATION SHALL NOT APPLY TO THE EXTENT THE DAMAGE IS PAID UNDER CONSULTANT'S COMMERCIAL GENERAL LIABILITY POLICY.
7. **Indemnity/Statute of Limitations.** Consultant and Client shall indemnify and hold harmless the other and their respective employees from and against legal liability for claims, losses, damages, and expenses to the extent such claims, losses, damages, or expenses are legally determined to be caused by their negligent acts, errors, or omissions. In the event such claims, losses, damages, or expenses are legally determined to be caused by the joint or concurrent negligence of Consultant and Client, they shall be borne by each party in proportion to its own negligence under comparative fault principles. Neither party shall have a duty to defend the other party, and no duty to defend is hereby created by this indemnity provision and such duty is explicitly waived under this Agreement. Causes of action arising out of Consultant's Services or this Agreement regardless of cause(s) or the theory of liability, including negligence, indemnity or other recovery shall be deemed to have accrued and the applicable statute of limitations shall commence to run not later than the date of Consultant's substantial completion of Services on the project.
8. **Warranty.** Consultant will perform the Services in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions in the same locale. EXCEPT FOR THE STANDARD OF CARE PREVIOUSLY STATED, CONSULTANT MAKES NO WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, RELATING TO CONSULTANT'S SERVICES AND CONSULTANT DISCLAIMS ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
9. **Insurance.** Consultant represents that it now carries, and will continue to carry: (i) workers' compensation insurance in accordance with the laws of the states having jurisdiction over Consultant's employees who are engaged in the Services, and employer's liability insurance (\$1,000,000); (ii)



commercial general liability insurance (\$1,000,000 occ / \$2,000,000 agg); (iii) automobile liability insurance (\$1,000,000 B.I. and P.D. combined single limit); and (iv) professional liability insurance (\$1,000,000 claim / agg). Certificates of insurance will be provided upon request. Client and Consultant shall waive subrogation against the other party on all general liability and property coverage.

- 10. CONSEQUENTIAL DAMAGES.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR LOSS OF PROFITS OR REVENUE; LOSS OF USE OR OPPORTUNITY; LOSS OF GOOD WILL; COST OF SUBSTITUTE FACILITIES, GOODS, OR SERVICES; COST OF CAPITAL; OR FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, OR EXEMPLARY DAMAGES.
- 11. Dispute Resolution.** Client shall not be entitled to assert a Claim against Consultant based on any theory of professional negligence unless and until Client has obtained the written opinion from a registered, independent, and reputable engineer, architect, or geologist that Consultant has violated the standard of care applicable to Consultant's performance of the Services. Client shall provide this opinion to Consultant and the parties shall endeavor to resolve the dispute within 30 days, after which Client may pursue its remedies at law. This Agreement shall be governed by and construed according to Kansas law.
- 12. Subsurface Explorations.** Subsurface conditions throughout the site may vary from those depicted on logs of discrete borings, test pits, or other exploratory services. Client understands Consultant's layout of boring and test locations is approximate and that Consultant may deviate a reasonable distance from those locations. Consultant will take reasonable precautions to reduce damage to the site when performing Services; however, Client accepts that invasive services such as drilling or sampling may damage or alter the site. Site restoration is not provided unless specifically included in the Services.
- 13. Testing and Observations.** Client understands that testing and observation are discrete sampling procedures, and that such procedures indicate conditions only at the depths, locations, and times the procedures were performed. Consultant will provide test results and opinions based on tests and field observations only for the work tested. Client understands that testing and observation are not continuous or exhaustive, and are conducted to reduce - not eliminate - project risk. Client shall cause all tests and inspections of the site, materials, and Services performed by Consultant to be timely and properly scheduled in order for the Services to be performed in accordance with the plans, specifications, contract documents, and Consultant's recommendations. No claims for loss or damage or injury shall be brought against Consultant by Client or any third party unless all tests and inspections have been so performed and Consultant's recommendations have been followed. Unless otherwise stated in the Proposal, Client assumes sole responsibility for determining whether the quantity and the nature of Services ordered by Client is adequate and sufficient for Client's intended purpose. Client is responsible (even if delegated to contractor) for requesting services, and notifying and scheduling Consultant so Consultant can perform these Services. Consultant is not responsible for damages caused by Services not performed due to a failure to request or schedule Consultant's Services. Consultant shall not be responsible for the quality and completeness of Client's contractor's work or their adherence to the project documents, and Consultant's performance of testing and observation services shall not relieve Client's contractor in any way from its responsibility for defects discovered in its work, or create a warranty or guarantee. Consultant will not supervise or direct the work performed by Client's contractor or its subcontractors and is not responsible for their means and methods. The extension of unit prices with quantities to establish a total estimated cost does not guarantee a maximum cost to complete the Services. The quantities, when given, are estimates based on contract documents and schedules made available at the time of the Proposal. Since schedule, performance, production, and charges are directed and/or controlled by others, any quantity extensions must be considered as estimated and not a guarantee of maximum cost.
- 14. Sample Disposition, Affected Materials, and Indemnity.** Samples are consumed in testing or disposed of upon completion of the testing procedures (unless stated otherwise in the Services). Client shall furnish or cause to be furnished to Consultant all documents and information known or available to Client that relate to the identity, location, quantity, nature, or characteristic of any hazardous waste, toxic, radioactive, or contaminated materials ("Affected Materials") at or near the site, and shall immediately transmit new, updated, or revised information as it becomes available. Client agrees that Consultant is not responsible for the disposition of Affected Materials unless specifically provided in the Services, and that Client is responsible for directing such disposition. In no event shall Consultant be required to sign a hazardous waste manifest or take title to any Affected Materials. Client shall have the obligation to make all spill or release notifications to appropriate governmental agencies. The Client agrees that Consultant neither created nor contributed to the creation or existence of any Affected Materials conditions at the site and Consultant shall not be responsible for any claims, losses, or damages allegedly arising out of Consultant's performance of Services hereunder, or for any claims against Consultant as a generator, disposer, or arranger of Affected Materials under federal, state, or local law or ordinance.
- 15. Ownership of Documents.** Work product, such as reports, logs, data, notes, or calculations, prepared by Consultant shall remain Consultant's property. Proprietary concepts, systems, and ideas developed during performance of the Services shall remain the sole property of Consultant. Files shall be maintained in general accordance with Consultant's document retention policies and practices.
- 16. Utilities.** Client shall provide the location and/or arrange for the marking of private utilities and subterranean structures. Consultant shall take reasonable precautions to avoid damage or injury to subterranean structures or utilities. Consultant shall not be responsible for damage to subterranean structures or utilities that are not called to Consultant's attention, are not correctly marked, including by a utility locate service, or are incorrectly shown on the plans furnished to Consultant.
- 17. Site Access and Safety.** Client shall secure all necessary site related approvals, permits, licenses, and consents necessary to commence and complete the Services and will execute any necessary site access agreement. Consultant will be responsible for supervision and site safety measures for its own employees, but shall not be responsible for the supervision or health and safety precautions for any other parties, including Client, Client's contractors, subcontractors, or other parties present at the site.

Consultant: **Terracon Consultants, Inc.**  
 By:  Date: **5/29/2018**  
 Name/Title: **Patrick M. Beecher, P.E. / Senior Principal / Geotechnical Services Manager**  
 Address: **11555 Clay Rd Ste 100**  
**Houston, TX 77043-1239**  
 Phone: **(713) 690-8989** Fax: **(713) 690-8787**  
 Email: **Patrick.Beecher@terracon.com**

Client: **Othon Inc**  
 By: \_\_\_\_\_ Date: \_\_\_\_\_  
 Name/Title: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
 Email: \_\_\_\_\_

## EXHIBIT A - PROJECT UNDERSTANDING

Our scope of services is based on our understanding of the project as described by Othon and the expected subsurface conditions as described below. We have not visited the project site to confirm the information provided. Aspects of the project, undefined or assumed, are highlighted as shown below. We request the design team verify this information prior to our initiation of field exploration activities.

### Site Location

Item	Description
Parcel information	The proposed roadway alignment is located between West Bellfort Avenue and Clodine Road in Fort Bend County, Texas.
Existing improvements	Asphaltic concrete pavement roadway.
Current ground cover	Asphaltic concrete pavement.
Existing topography	Relatively level.
Site access	We anticipate the ability to access the boring locations along the proposed roadway alignment with our truck-mounted drilling equipment.

### Planned Construction

Item	Description
Project description	The project is planned to include the construction of a new roadway, approximately 8,100 feet long along Madden Road, starting from the intersection of Madden Road and West Bellfort Avenue and extending to the intersection of Madden Road and Clodine Road. We also understand that a new storm sewer is planned to be constructed east of the intersection of Madden Road and FM 1464 Road.

Item	Description
<b>Proposed improvements</b>	<b>Roadway</b>
	<ul style="list-style-type: none"> <li>Two-lane asphaltic concrete-surfaced roadway along Madden Road, extending north and east from the intersection of Madden Road and West Belfort Avenue to the intersection of Madden Road and FM 1464 Road. We understand that the new two-lane asphaltic concrete roadway will transition to a two-lane concrete roadway along Madden Road, starting just east of the intersection of Madden Road and FM 1464 Road, extending east to the intersection of Madden Road and Clodine Road.</li> <li>We understand traffic information is not available at this time.</li> </ul>
	<b>Storm Sewer</b>
	<ul style="list-style-type: none"> <li>We understand that a storm sewer is planned to be constructed along Madden Road, east of the intersection of Madden Road and FM 1464 Road with an approximately length of 2,600 feet.</li> <li>We assume a maximum embedment depth of approximately 10 feet below existing grade for the proposed storm sewer structure.</li> </ul>

## EXHIBIT B - SCOPE OF SERVICES

Our proposed scope of services consists of field exploration, laboratory testing, and engineering/project delivery. As requested by Othon, our scope of services will be performed in accordance with Harris County criteria. These services are described in the following sections.

### Field Exploration

The field exploration program consists of the following:

Number of Borings	Planned Boring Depth (feet) <sup>1</sup>	Planned Location
11	10	Madden Road, west of the intersection of Madden Road and FM 1464 Road.
5	20	Madden Road, east of the intersection of Madden Road and FM 1464.

1. Below existing grade

**Boring Layout and Elevations:** We use handheld GPS equipment to locate borings with an estimated horizontal accuracy of +/-25 feet. Field measurements from existing site features may be utilized. The layout of the borings and test locations will be approximate. If available, approximate elevations are obtained by interpolation from a site specific, surveyed topographic map. The boring locations will be marked after the completion of drilling. As required by Harris

County criteria, we request that survey information including Northing, Easting, and surface elevation be provided for the drilled boring locations upon completion of the field program.

**Subsurface Exploration Procedures:** We advance soil borings with a truck-mounted drill rig using continuous flight augers (solid stem and/or hollow stem, as necessary, depending on soil conditions). We auger through the existing asphaltic concrete pavement. Samples are obtained continuously at intervals of 2 feet in the upper 15 feet of each boring and at intervals of 5 feet thereafter in accordance with Harris County Guidelines for Geotechnical Investigations. Soil sampling is typically performed using open tube and/or split-barrel sampling procedures. In the open tube sampling procedure, an open, seamless steel tube with a sharp cutting edge is pushed hydraulically into the soil to obtain a relatively undisturbed sample. In the split barrel sampling procedure, a standard 2-inch outer diameter split barrel sampling spoon is driven into the ground by a 140-pound automatic hammer falling a distance of 30 inches. The number of blows required to advance the sampling spoon the last 12 inches of a normal 18-inch penetration is recorded as the Standard Penetration Test (SPT) resistance value. The SPT resistance values, also referred to as N-values, are indicated on the boring logs at the test depths. The samples are placed in appropriate containers, taken to our soil laboratory for testing, and classified by a geotechnical engineer. In addition, we observe and record groundwater levels during drilling and sampling.

Our exploration team prepares field boring logs as part of standard drilling operations including sampling depths, penetration distances, and other relevant sampling information. Field logs include visual classifications of materials observed during drilling, and our interpretation of subsurface conditions between samples. Final boring logs, prepared from field logs, represent the geotechnical engineer's interpretation, and include modifications based on observations and laboratory tests.

For our field program at the boring locations along the existing roadways, we use traffic control consisting of cones, signs, and a flagger.

**Property Disturbance:** We backfill borings with cement-bentonite grout after completion. Pavements are patched with cold-mix asphalt and/or ready mixed concrete, as appropriate. Our services do not include repair of the site beyond backfilling our boreholes, and patching existing pavements. Excess auger cuttings are dispersed in the general vicinity of the borehole.

## **Laboratory Testing**

The project engineer reviews field data and assigns various laboratory tests to better understand the engineering properties of various soil strata. Procedural standards noted below are for reference to methodology in general. In some cases, method variations are applied based on local practices and professional judgement. Standards noted below include reference to other related standards. Such references are not necessarily applicable to describe the specific test performed.

- ASTM D2216 Standard Test Methods for Laboratory Determination of Water (Moisture) Content of Soil and Rock by Mass
- ASTM D4318 Standard Test Methods for Liquid Limit, Plastic Limit, and Plasticity Index of Soils
- ASTM D1140 Standard Test Methods for Amount of Materials in Soils Finer than the No. 200 Sieve
- ASTM D2166/D2166M Standard Test Method for Unconfined Compressive Strength of Cohesive Soil

Our laboratory testing program includes examination of soil samples by an engineer. Based on the results of our field and laboratory testing programs, we describe and classify soil samples in accordance with the Unified Soil Classification System (USCS).

### **Safety**

Terracon is currently not aware of environmental concerns at this project site that would create health or safety hazards associated with our exploration program; thus, our scope considers standard OSHA Level D Personal Protection Equipment (PPE) appropriate. Our scope of services does not include environmental site assessment services, but identification of unusual or unnatural materials encountered while drilling will be noted on our logs and discussed in our report.

Exploration efforts require borings (and possibly excavations) into the subsurface, therefore Terracon complies with local regulations to request a utility location service, Texas811, to help locate public utilities within the vicinity of the site. We consult with the owner/client regarding potential utilities or other unmarked underground hazards. Based upon the results of this consultation, we consider the need for alternative subsurface exploration methods, as the safety of our field crew is a priority.

All private utilities should be marked by the owner/client prior to commencement of field exploration. Terracon will not be responsible for damage to private utilities that are not made aware to us. If the owner/client is not able to accurately locate private utilities, Terracon can assist the owner/client by coordinating or subcontracting with a private utility locating services. Fees associated with the additional services are not included in our current scope of services. The detection of underground utilities is dependent upon the composition and construction of the utility line; some utilities are comprised of non-electrically conductive materials and may not be readily detected. The use of a private utility locate service would not relieve the owner of their responsibilities in identifying private underground utilities.

**Site Access:** Terracon must be granted access to the site by the property owner. By acceptance of this proposal, without information to the contrary, we consider this as authorization to access the property for conducting field exploration in accordance with the scope of services.

## Engineering and Project Delivery

Results of our field and laboratory programs are evaluated by a professional engineer. The engineer develops a geotechnical site characterization, performs the engineering calculations necessary to evaluate foundation alternatives, and develops appropriate geotechnical engineering design criteria for earth-related phases of the project.

Your project is delivered using our **GeoReport** system. Upon initiation, we provide you and your design team the necessary link and password to access the website (if not previously registered). Each project includes a calendar to track the schedule, an interactive site map, a listing of team members, access to the project documents as they are uploaded to the site, and a collaboration portal. A typical delivery process includes three basic stages:

- Stage 1: Project Planning
- Stage 2: Site Characterization
- Stage 3: Geotechnical Engineering

When utilized, a collaboration portal documents communication, eliminating the need for long email threads. This collaborative effort allows prompt evaluation and discussion of options related to the design and associated benefits and risks of each option. With the ability to inform all parties as the work progresses, decisions and consensus can be reached faster. In some cases, only minimal uploads and collaboration will be required, because options for design and construction are limited or unnecessary. This is typically the case for uncomplicated projects with no anomalies found at the site.

When services are complete, we upload a printable version of our completed final geotechnical engineering report, including the professional engineer's seal and signature, which documents our services. Previous submittals, collaboration, and final report are maintained in our system indefinitely. This allows future reference and integration into subsequent aspects of our services, as the project goes through final design and construction.

The final geotechnical engineering report provides the following:

- Boring logs with field and laboratory data
- Stratification based on visual soil classification
- Groundwater levels observed during and after completion drilling
- Site and Boring location plans
- Subsurface exploration procedures
- Description of subsurface conditions
- Subgrade preparation/earthwork recommendations
- Pavement design guidelines

### **Additional Services**

In addition to basic services noted above, the following services are often associated with geotechnical engineering services. Fees for basic services noted above do not include the following:

**Review of Plans and Specifications:** Our geotechnical report and associated verbal and written communications will be used by others in the design team to develop plans and specifications for construction. Review of the project plans and specifications is a vital part of our geotechnical engineering services. This consists of review of project plans and specifications related to site preparation, foundation, and pavement construction. Our review includes a written statement, which conveys our opinions, related to the plans and specifications' consistency with our geotechnical engineering recommendations.

**Perform Environmental Assessments:** Our scope for this project does not include, either specifically or by implication, an environmental assessment of the site intended to identify or quantify potential site contaminants. If the client/owner is concerned about potential for such conditions and/or contamination, an environmental site assessment should be conducted. We can provide a proposal for an environmental assessment, if desired.

## EXHIBIT C - COMPENSATION AND PROJECT SCHEDULE

### Compensation

Based upon our understanding of the site, the project as summarized in **Exhibit A** and our planned scope of services outlined in **Exhibit B**, our fee schedule is shown in the following table:

Cost Estimate Breakdown				
Description	Quantity	Unit	Rate	Amount
<b>Field Exploration</b>				
Drill Rig Mobilization	1	each	\$349.00	\$349.00
Soil Borings	210	ft	\$21.00	\$4,410.00
Backfill Borings with Bentonite Grout	210	ft	\$10.00	\$2,100.00
Field Technician	18	hrs	\$65.00	\$1,170.00
Field Technician – Vehicle Charge	25	hrs	\$10.00	\$250.00
Staff Engineer (Field and Coordination time)	6	hrs	\$110.00	\$660.00
Traffic Control (signs, cones, flagger)	2	day	\$1,500.00	\$3,000.00
<b>Sub-total for Field Exploration</b>				<b>\$11,939.00</b>
<b>Laboratory Testing</b>				
Atterberg Limits	21	each	\$62.00	\$1,302.00
Moisture Content of Soils by Mass	40	each	\$9.00	\$360.00
Unconfined Compressive Strength	12	each	\$45.00	\$540.00
Percent Passing #200 Sieve	16	each	\$48.00	\$768.00
<b>Sub-total for Laboratory Testing</b>				<b>\$2,970.00</b>
<b>Engineering Analysis and Report</b>				
Principal, P.E.	4	hrs	\$206.00	\$824.00
Project Engineer, P.E.	10	hrs	\$150.00	\$1,500.00
Staff Engineer	25	hrs	\$110.00	\$2,750.00
Engineering Assistant	4	hrs	\$60.00	\$240.00
<b>Sub-total for Engineering Analysis and Report</b>				<b>\$5,314.00</b>
<b>Total Estimated Cost Not to Exceed</b>				<b>\$20,223.00</b>

Unless instructed otherwise, we will submit our invoice(s) to the address shown at the beginning of this proposal. If conditions are encountered that require scope of work revisions and/or result in higher fees, we will contact you for approval prior to initiating these services. A supplemental proposal stating the modified scope of services as well as its effect on our fee will be prepared. We will not proceed without your authorization, as evidenced by your signature on the Supplemental Agreement for Services form.



## Project Schedule

We developed a schedule to complete the scope of services based upon our existing availability and understanding of your project schedule. This schedule does not account for any delays in field exploration beyond our control, such as weather conditions, permit delays, or lack of permission to access the boring locations. In the event the schedule provided is inconsistent with your needs, please contact us so we may consider alternatives.

<b>GeoReport Stage</b>	<b>Posting Date from Notice to Proceed <sup>1, 2</sup></b>
Project Planning	3 working days
Site Characterization	20 working days
Geotechnical Engineering	30 working days

1. Upon receipt of your notice to proceed we will activate the schedule component of our **GeoReport** website with specific, anticipated calendar dates for the three delivery points noted above as well as other pertinent events such as field exploration crews on-site, etc.
2. We will maintain a current calendar of activities within our **GeoReport** website. In the event of a need to modify the schedule, the schedule will be updated to maintain a current awareness of our plans for delivery.

## EXHIBIT D – SITE LOCATION

Madden Road ■ Fort Bend County, Texas

May 29, 2018 ■ Terracon Project No. P92185231.Revision1



DIAGRAM IS FOR GENERAL LOCATION ONLY, AND IS NOT  
INTENDED FOR CONSTRUCTION PURPOSES

MAP IMAGE COURTESY OF GOOGLE.



## EXHIBIT E – ANTICIPATED EXPLORATION PLAN

Madden Road ■ Fort Bend County, Texas

May 29, 2018 ■ Terracon Project No. P92185231.Revision1

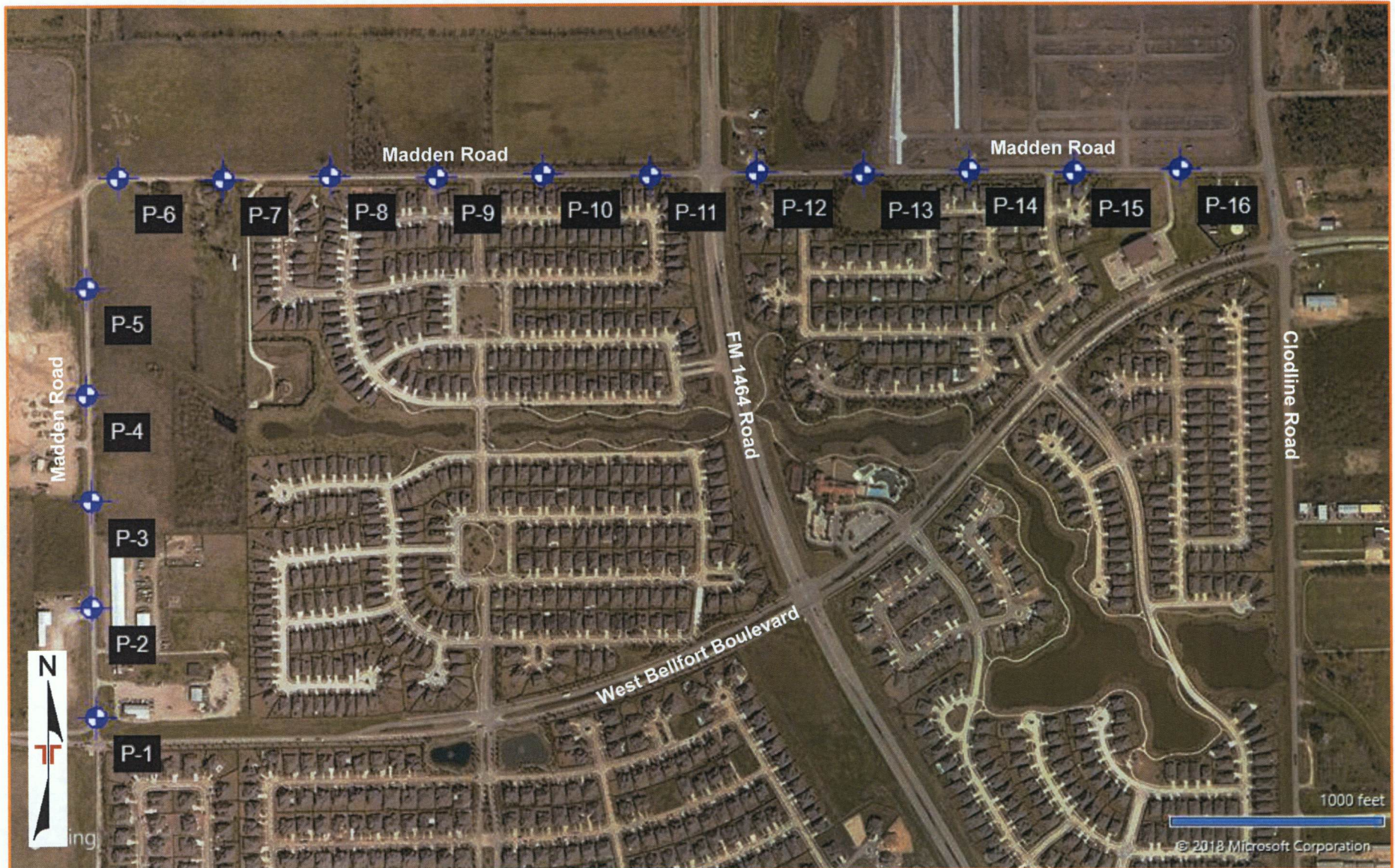


DIAGRAM IS FOR GENERAL LOCATION ONLY, AND IS NOT  
INTENDED FOR CONSTRUCTION PURPOSES

AERIAL PHOTOGRAPHY PROVIDED BY  
MICROSOFT BING MAPS

# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.  
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

## OFFICE USE ONLY CERTIFICATION OF FILING

**1 Name of business entity filing form, and the city, state and country of the business entity's place of business.**

Othon, Inc.  
Houston, TX United States

**Certificate Number:**  
2018-371644

**Date Filed:**  
06/22/2018

**2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.**

Fort Bend County

**Date Acknowledged:**  
07/10/2018

**3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.**

17-416

Engineering Services for Madden Road from North of West Bellfort Avenue to Clodine Road in Fort Bend County Precinct 4

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Othon, Charles	Houston, TX United States	X	
	Kasir, Madhi	Houston, TX United States	X	
	Baker, Robert	Houston, TX United States	X	
	Sangineni, Srinivas	Dallas, TX United States	X	
	Riches, Sofia	Houston, TX United States	X	

**5 Check only if there is NO Interested Party.**

☐

### 6 UNSWORN DECLARATION

My name is \_\_\_\_\_, and my date of birth is \_\_\_\_\_.

My address is \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_.  
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in \_\_\_\_\_ County, State of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
(month) (year)

\_\_\_\_\_  
Signature of authorized agent of contracting business entity  
(Declarant)