

STATE OF TEXAS                                   §  
  §           KNOW ALL MEN BY THESE PRESENTS:  
COUNTY OF FORT BEND                       §

**AGREEMENT FOR PROFESSIONAL MATERIALS TESTING SERVICES**  
**MOBILITY BOND PROJECT NO. 719 – BURNEY ROAD**

THIS AGREEMENT for Professional Materials Testing Services is made and entered into by and between the Fort Bend County, a body corporate and politic under the laws of the State of Texas, acting by and through the Fort Bend County Commissioners Court, hereinafter referred to as "County," and Associated Testing Laboratories, Inc., hereinafter referred to as "Contractor" authorized to conduct business in the State of Texas.

WITNESSETH:

WHEREAS, County desires that Contractor provide professional materials testing services for the expansion of Burney Road, from Old Richmond Road to Voss Road, Mobility Bond Project No. 719 located in Fort Bend County, Texas, hereinafter called the "Project;" and,

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

WHEREAS, County has determined that this Agreement is for personal or professional services and therefore exempt from competitive bidding under Chapter 262, LOCAL GOVERNMENT CODE.

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

SECTION I  
SCOPE OF AGREEMENT

Contractor agrees to perform professional materials testing engineering services in connection with the Project as stated herein and for having rendered such services, County agrees to pay to Contractor compensation as stated herein.

SECTION II  
CHARACTER AND EXTENT OF SERVICES

- 2.01 Contractor agrees to provide the services described Contractor's Proposal dated March 27, 2012, as included in Exhibit A, attached hereto and incorporated by reference as if set forth herein verbatim for all purposes.
- 2.02 Contractor agrees to complete the services called for in Exhibit A on or before September 30, 2012.

SECTION III  
CONTRACTOR'S COMPENSATION

- 3.01 For and in consideration of the services rendered by Contractor, and subject to the limit of appropriation under Section VII, County shall pay to Contractor an amount not-to-exceed \$155,558.00, including reimbursable expenses, if any.

- 3.02 Contractor shall submit invoices to County and County shall pay each invoice within thirty (30) days after the County Project Manager's written approval provided however, that the approval or payment of any invoice shall not be considered to be conclusive evidence of performance by Contractor to the point indicated by such invoice or of receipt or acceptance by the County of the services covered by such invoice.
- 3.03 Reimbursable expenses, if any, shall be reimbursed to Contractor at-cost upon submission of properly submitted expense records to County. Service charges are not applicable and not subject to reimbursement.
- 3.04 Contractor's fees shall be calculated at rates not to exceed the amounts included on Exhibit A, incorporated by reference herein as if set-forth verbatim.

#### SECTION IV TERMINATION

- 4.01 County may terminate this Agreement at any time by providing ten (10) days written notice to the Contractor.
- 4.02 Upon receipt of such notice, the Contractor shall discontinue all services in connection with the performance of this Agreement and shall proceed to cancel promptly all existing orders and contracts insofar as such orders or contracts are chargeable to this Agreement.
- 4.03 Within thirty (30) days after receipt of notice of termination, the Contractor shall submit a statement, showing in detail the services performed under this Agreement to the date of termination.
- 4.04 County shall then pay the Contractor that proportion of the prescribed charges which the services actually performed under this Agreement bear to the total services called for under this Agreement, less such payments on account of charges as have been previously made.
- 4.05 Copies of all completed or partially completed designs, drawings, electronic data files and specifications prepared under this Agreement shall be delivered to the County when and if this Agreement is terminated in the manner and for the purposes provided in this Agreement.

#### SECTION V INSURANCE

- 5.01 Prior to commencement of this Agreement, Contractor shall furnish County with evidence of all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. Contractor shall maintain such insurance coverage from commencement of this Agreement until the Agreement is terminated. Contractor shall obtain such insurance written on an Occurrence form from such companies having Bests rating of A/VII or better, licensed or approved to transact business in the State of Texas.
  - A. Contractor shall obtain such insurance of the following types and minimum limits:
    - i. Workers' Compensation insurance in accordance with the laws of the State of Texas. Substitutes to genuine Workers' Compensation Insurance will not be allowed.
    - ii. Personal injury or injury to one person with limits of not less than \$1,000,000 per occurrence.

- iii. 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.
  - iv. 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.
  - v. 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.
- B. County and the members of Commissioners Court shall be named as additional insured to all required coverage. All Liability policies written on behalf of Consultant shall contain a waiver of subrogation in favor of County and members of Commissioners Court.
- C. If required coverage is written on a claims-made basis, Consultant 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 VI NOTICE

- 6.01 Any notice required to be given under the provisions of this Agreement shall be in writing and shall be duly served when it shall have been deposited, enclosed in a wrapper with the proper postage prepaid thereon, and duly registered or certified, return receipt requested, in a United States Post Office, addressed to the County or the Contractor at the addresses set forth below.
- 6.02 If mailed, any notice or communication shall be deemed to be received three days after the date of deposit in the United States Mail.
- 6.03 Unless otherwise provided in this Agreement, all notices shall be delivered to the following addresses:
- A. If to the Contractor:

Associated Testing Laboratories, Inc.  
Attn: Jasbir Singh, P.E.  
3143 Yellowstone Blvd.  
Houston, Texas 77054  
713-748-3748 - fax

B. If to County notice must be sent to both the Fort Bend County Purchasing Agent and County Project Manager:

Fort Bend County Purchasing Department  
Gilbert D. Jalomo, Jr., CPPB  
301 Jackson  
Richmond, Texas 77469

D. Jesse Hegemier  
County Engineer  
1124-52 Blume Road  
Rosenberg, Texas 77471

6.04 Either party may designate a different address by giving the other party ten (10) days written notice.

#### SECTION VII LIMIT OF APPROPRIATION

- 7.01 Prior to the execution of this Agreement, Contractor has been advised by County, and Contractor clearly understands and agrees, such understanding and agreement being of the absolute essence to this contract, that County shall have available the total maximum sum of \$155,558.00, including reimbursable expenses, if any, specifically allocated to fully discharge any and all liabilities which may be incurred by County.
- 7.02 Contractor does further understand and agree, said understanding and agreement also being of the absolute essence of this contract, that the total maximum compensation that Contractor may become entitled to hereunder and the total maximum sum that County shall become liable to pay to Contractor hereunder shall not under any conditions, circumstances or interpretations thereof exceed the sum of \$155,558.00 for described scope of work in Exhibit A.

#### SECTION VIII SUCCESSORS AND ASSIGNS

- 8.01 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 such other party, in respect to all covenants of this Agreement.
- 8.02 Neither County nor Contractor shall assign, sublet or transfer its or his interest in this Agreement without the prior written consent of the other.
- 8.03 Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public and/or governmental body that may be a party hereto.

#### SECTION IX PUBLIC CONTACT

- 9.01 Contact with any media outlet, citizens of Fort Bend County or governmental agencies shall be the sole responsibility of County.

- 9.02 Under no circumstances, whatsoever, shall Contractor release any material or information developed in the performance of its services hereunder without the express written permission of County, except where required to do so by law.

## SECTION X COMPLIANCE AND STANDARDS

Contractor shall render the services hereunder in accordance with accepted standards of engineers practicing in the Greater Houston Metro Area, applicable thereto and shall use that degree of care and skill commensurate with the profession similar to the Project to comply with all applicable state, federal, and local laws, ordinances, rules and regulations relating to the services to be rendered hereunder, and Contractor's performance.

## SECTION XI OWNERSHIP OF DOCUMENTS

- 11.01 County shall be the absolute and unqualified owner of all drawings, preliminary layouts, record drawings, sketches and other documents prepared pursuant to this Agreement by the Contractor and his contractors or subcontractors (deliverables).
- 11.02 No reuse fees or royalty payments will be paid to the Contractor in connection with future reuse or adaptation of designs derived under this contract.
- 11.03 Copies of all complete or partially completed mylar reproducible, preliminary layouts, record drawings, digital files, sketches and other documents prepared pursuant to this Agreement shall be delivered to County when and if this Agreement is terminated or upon completion of this Agreement, whichever occurs first, as provided in this Agreement.
- 11.04 Contractor is expressly prohibited from selling, licensing or otherwise marketing or donating such documents, or using such documents in the preparation of other work for any other client, or from duplicating the appearance of the Project depicted in the deliverables for any without the prior express written permission of County.
- 11.05 The documents referenced in this Section are not intended or presented by Contractor to be suitable for reuse by County or others on extensions of this Project or on other unrelated projects.
- 11.06 Any adaptation or use by County of such documents on extension of this Project or other unrelated projects shall be at County's sole risk.

## SECTION XII INDEMNIFICATION

- 12.01 **CONTRACTOR SHALL SAVE HARMLESS COUNTY FROM AND AGAINST ALL CLAIMS, LIABILITY, AND EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ACTIVITIES OF CONTRACTOR, ITS AGENTS, CONTRACTORS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF CONTRACTOR ANY OF CONTRACTOR'S AGENTS, SERVANTS OR EMPLOYEES.**
- 12.02 **CONTRACTOR SHALL ALSO SAVE HARMLESS COUNTY FROM AND AGAINST ANY AND ALL EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES WHICH MIGHT BE INCURRED BY COUNTY, IN LITIGATION OR OTHERWISE RESISTING SAID CLAIMS OR LIABILITIES**

**THAT MIGHT BE IMPOSED ON COUNTY AS THE RESULT OF SUCH  
NEGLIGENT ACTS, ERRORS OR OMISSIONS BY CONTRACTOR, ITS  
AGENTS, SUBCONTRACTORS OR EMPLOYEES.**

SECTION XIII  
MODIFICATIONS

This instrument contains the entire Agreement between the parties relating to the rights herein granted and obligations herein assumed. Any oral or written representations or modifications concerning this instrument shall be of no force and effect excepting a subsequent written modification signed by both parties hereto.

SECTION XIV  
MISCELLANEOUS

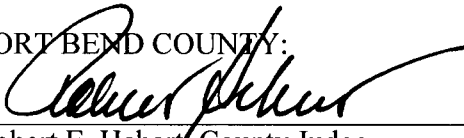
- 14.01 By entering into this Agreement, the parties do not intend to create any obligations, express or implied, other than those specifically set out in this Agreement.
- 14.02 Nothing in this Agreement shall create any rights or obligations in any party who is not a signatory to this Agreement.
- 14.03 Contractor agrees and understands that: by law, the Fort Bend County Attorney's Office may only advise or approve contracts or legal documents on behalf of its clients; the Fort Bend County Attorney's Office may not advise or approve a contract or other legal document on behalf of any other party not its client; the Fort Bend County Attorney's Office has reviewed this document solely from the legal perspective of its client; the approval of this document by the Fort Bend County Attorneys Office was offered solely to benefit its client; Contractor and other parties should not rely on this approval and should seek review and approval by their own respective legal counsel.
- 14.04 If there is a conflict between this Agreement and Exhibit A, the provisions of this Agreement shall prevail.

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SECTION XV  
EXECUTION

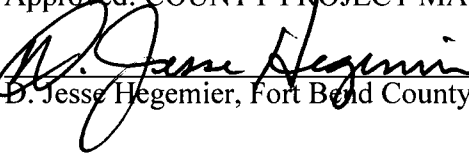
This Agreement shall become effective upon execution by County.

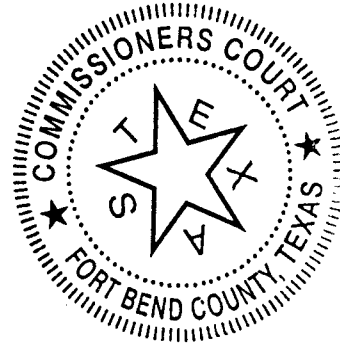
FORT BEND COUNTY:

  
\_\_\_\_\_  
Robert E. Hebert, County Judge

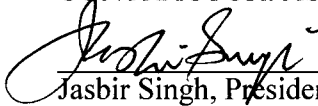
4-24-2012  
Date

Attest:   
\_\_\_\_\_  
Dianne Wilson, County Clerk

Approved: COUNTY PROJECT MANAGER  
  
\_\_\_\_\_  
D. Jesse Hegemier, Fort Bend County Engineer



CONTRACTOR: ASSOCIATED TESTING LABORATORIES, INC.

  
\_\_\_\_\_  
Jasbir Singh, President

4-19-12  
Date

MER:ATL.Materials Testing.Burney Road.3791-719

**AUDITOR'S CERTIFICATE**

I hereby certify that funds are available in the amount of \$155,558.00 to accomplish and pay the obligation of the Fort Bend County under this contract.

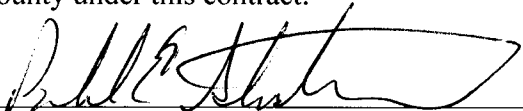
  
\_\_\_\_\_  
Ed Sturdivant, Fort Bend County Auditor

Exhibit A: March 27, 2012 Proposal from Contractor

Exhibit A



March 27, 2012

**Schaumburg & Polk, Inc.**  
11767 Katy Freeway, Ste 900  
Houston, Texas- 77079

*Attn: Mr. Mark C. Dessens, P.E.*

*Reference: Proposal for Testing & Inspection Services*  
*Project: Construction of Burney Road from Old Richmond to Voss Road*

Gentlemen,

As per your request we are pleased to submit our proposal for above referenced project. The proposed total cost was determined by using the quantities and specifications provided in drawings and construction specifications; a detailed estimate work sheet is attached with this letter. Actual charges will be based on the services performed.

**SCOPE OF WORK**

It is our understanding that the construction materials testing and inspection will include the following services:

- Soils Testing & Inspection
- Concrete Testing & Inspection
- Asphalt Testing & Inspection
- Professional Engineer Review

We appreciate the opportunity to present this cost estimate. Should you have any questions, please do not hesitate to contact us.

Sincerely,

  
Jasbir Singh, P.E.  
President

Proposal for CM Testing for Construction of Burney Road From Old Richmond to Voss Road

Page 1 of 2

[WWW.ASSOCIATEDTESTING.COM](http://WWW.ASSOCIATEDTESTING.COM)

3143 Yellowstone Blvd • Houston, Texas 77054  
Phone 713 748 3717 • Fax 713 748 3748

**Associated Testing Laboratories, Inc.**  
 3143 Yellowstone Blvd  
 Houston, Tx-77054

**PERSONNEL**

Project Engineer, P.E. or Project Geologist, P.G.	40.00	\$96.00	Hour	\$3,840.00
Technician NICET III, HMA-II	480.00	\$56.00	Hour	\$26,880.00
Technician NICET III, HMA-II CVT	90.00	\$84.00	Hour	\$7,560.00
Technician NICET II, HMA-IA, NDT II, Logger	1024.00	\$50.00	Hour	\$51,200.00
Technician NICET II, HMA-IA, NDT II, Logger CVT	120.00	\$75.00	Hour	\$9,000.00
Technician (Non-Certified)	76.00	\$37.00	Hour	\$2,812.00
Vehicle Charge	1790.00	\$7.50	Hour	\$13,425.00

**Subtotal:** **\$114,717.00**

**SOILS & TREATED SOILS**

Liquid & Plastic Limits	4.00	\$53.00	Each	\$212.00
Moisture Content (ASTM D -2216)	4.00	\$8.00	Each	\$32.00
Percent passing #200 Sieve	4.00	\$41.00	Each	\$164.00
OMD Standard Compaction	4.00	\$175.00	Each	\$700.00
OMD Standard Compaction-Treated	4.00	\$193.00	Each	\$772.00
Line Series - 4 Point	2.00	\$208.00	Each	\$416.00
Cement Content (ASTM D-806)	15.00	\$269.00	Each	\$4,035.00
Nuclear Density Equipment Rental	980.00	\$9.00	Hour	\$8,820.00
Cement Sand Comp. Strength (ASTM D-1633)	60.00	\$61.00	Each	\$3,660.00
Compressive Strength - Base Material (TPX-120E)	8.00	\$222.00	Each	\$1,776.00

**Subtotal:** **\$20,587.00**

**PORTLAND CEMENT CONCRETE**

Mix Design Review (Statistical Analysis)	2.00	\$115.00	Each	\$230.00
Compressive Strength (Cylinder)	648.00	\$15.00	Each	\$9,720.00
Concrete Coring (4" Dia., upto 6" Thickness)	30.00	\$90.00	Each	\$2,700.00
Measuring Thickness of Concrete Cores	30.00	\$11.00	Each	\$330.00
Additional Thickness (6" to 12")	30.00	\$8.00	Inch	\$240.00

**Subtotal:** **\$13,220.00**

**HMAC**

Mix Design Review	2.00	\$187.00	Each	\$374.00
Extraction/Airadation	12.00	\$174.00	Each	\$2,088.00
HVFEM Stability	12.00	\$82.00	Set	\$984.00
Bulk Density- Lab Molded or Core	22.00	\$46.00	Set	\$1,012.00
Asphalt Coring (4" Dia., up to 6" thickness)	10.00	\$80.00	Each	\$800.00
Asphalt Content	12.00	\$70.00	Each	\$840.00
Max. Theoretical Sp. Gravity	12.00	\$78.00	Each	\$936.00

**Subtotal:** **\$7,834.00**

**GRAND TOTAL:** **\$155,558.00**