

www

KNOW ALL MEN BY THESE PRESENTS:

THIS AGREEMENT is made and entered into by and between Fort Bend County, a body corporate and politic under the laws of the State of Texas, acting herein by and through its Commissioners Court, hereinafter "County," and Percheron Field Services, LLC, hereinafter referred to as "Contractor," authorized to conduct business in the State of Texas.

WHEREAS, County desires that Contractor provide professional property acquisition services as identified in Exhibit A for property located in Fort Bend County, Texas, hereinafter referred to as the "Project;" and

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

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

1.01 Contractor shall provide the services described in Exhibit A, attached hereto and incorporated by reference as if set forth herein verbatim for all purposes.

1.02 Contractor agrees to complete the services called for in Section 1.01 within eighteen (18) months from the date of this Agreement.

- 2.01 For and in consideration of the services rendered by Contractor, and subject to the limit of appropriation under Section VI, County shall pay to Contractor an amount not to exceed \$158,500.00, including all reimbursable expenses, if any.
- 2.02 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 the Contractor to the point indicated by such invoice or of receipt or acceptance by the County of the services covered by such invoice.
- 2.03 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 III TERMINATION

- 3.01 County may terminate this Agreement at any time by providing ten (10) days written notice to the Contractor.
- 3.02 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.
- 3.03 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.
- 3.04 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.
- 3.05 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 IV LIABILITY INSURANCE

Contractor shall, prior to performing billable services and for the duration of term of this Agreement, keep in full force and effect a policy of general liability insurance of not less than \$1,000,000.00 for each claim aggregate, which shall be approved by the Fort Bend County Risk Management Department prior to purchase. The policy shall contain a clause that the insurer will not cancel or change the insurance without first giving County ten (10) days prior written notice. The insurance shall be in a company acceptable to the Fort Bend County Risk Management Department and a copy of the policy or certification of insurance shall be delivered to the Fort Bend County Risk Management Department as soon as available.

### SECTION V NOTICE

- 5.01 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.
- 5.02 If mailed, any notice or communication shall be deemed to be received three days after the date of deposit in the United States Mail.
- 5.03 Unless otherwise provided in this Agreement, all notices shall be delivered to the following addresses:
  - A. If to the Contractor:

Percheron Field Services, LLC  
16000 Barkers Point Lane  
Suite 250  
Houston, Texas 77079

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

Richard W. Stolleis, P.E.  
County Engineer  
1124-52 Blume Road  
Rosenberg, Texas 77471

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

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

#### SECTION VI LIMIT OF APPROPRIATION

- 6.01 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 \$158,500.00, specifically allocated to fully discharge any and all liabilities which may be incurred by County.
- 6.02 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 \$158,500.00.

#### SECTION VII SUCCESSORS AND ASSIGNS

- 7.01 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.
- 7.02 Neither County nor Contractor shall assign, sublet or transfer its or his interest in this Agreement without the prior written consent of the other.
- 7.03 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 VIII PUBLIC CONTACT

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

SECTION IX  
COMPLIANCE AND STANDARDS

Contractor shall render the services hereunder in accordance with generally accepted standards of Contractors practicing in Fort Bend County, Texas applicable thereto and shall use that customary 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 X  
OWNERSHIP OF DOCUMENTS

- 10.01 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 (deliverables).
- 10.02 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.
- 10.03 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.
- 10.04 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.
- 10.05 The documents referenced in this Section are not intended or presented by the Contractor to be suitable for reuse by County or others on extensions of this Project or on other unrelated projects.
- 10.06 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 XI  
INDEMNIFICATION

- 11.01 **CONTRACTOR SHALL SAVE HARMLESS COUNTY FROM AND AGAINST ALL CLAIMS, LIABILITY, AND EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ACTIVITIES OF THE CONTRACTOR, ITS AGENTS, CONTRACTORS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF THE CONTRACTOR OR ANY OF CONTRACTOR'S AGENTS, SERVANTS OR EMPLOYEES.**
- 11.02 **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 ACTIVITIES BY THE CONTRACTOR, ITS AGENTS, CONTRACTORS OR EMPLOYEES.**

SECTION XII

## 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 XIII MISCELLANEOUS

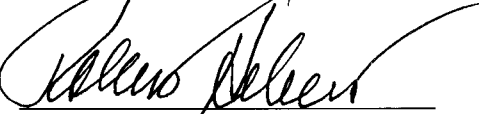
- 13.01 By entering into this Agreement, the parties do not intend to create any obligations, express or implied, other than those specifically set out in this Agreement.
- 13.02 Nothing in this Agreement shall create any rights or obligations in any party who is not a signatory to this Agreement.
- 13.03 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.
- 13.04 If there is a conflict between this Agreement and Exhibit A, the provisions of this Agreement shall prevail.

*EXECUTION PAGE TO FOLLOW*

SECTION XIV  
EXECUTION

This Agreement shall become effective upon executed by County.

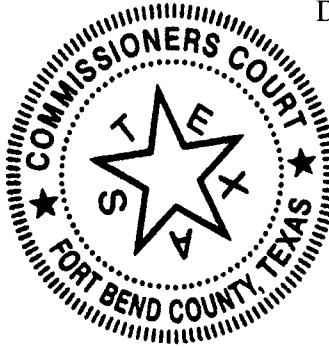
FORT BEND COUNTY:

By:   
Robert E. Hebert, County Judge

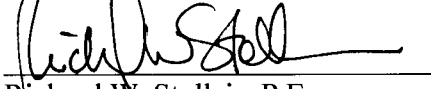
2-26-2013  
Date

ATTEST:

  
Dianne Wilson, County Clerk

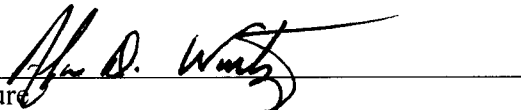


APPROVED:

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

2/26/13  
Date

CONTRACTOR: PERCHERON FIELD SERVICES, LLC

Signature: 

2/18/13  
Date

Printed Name: Alan D. Wurtz

Title: President

MDS:Percheron.FM 1093 Phase I.2013

**AUDITOR'S CERTIFICATE**

I hereby certify that funds are available in the amount of \$158,500.00 to accomplish and pay the obligation of the Fort Bend County under this contract.

  
Ed Sturdivant, Fort Bend County Auditor

Exhibit A: Proposal by Contractor dated February 15, 2013



PROPOSAL FOR SERVICES  
TO  
FORT BEND COUNTY  
FM1093 WESTPARK EXTENSION  
V 1.0 – 2.15.13

Percheron Acquisitions, LLC (Percheron) is pleased to present this proposal for consideration by Fort Bend County to provide Right of Way Acquisition services.

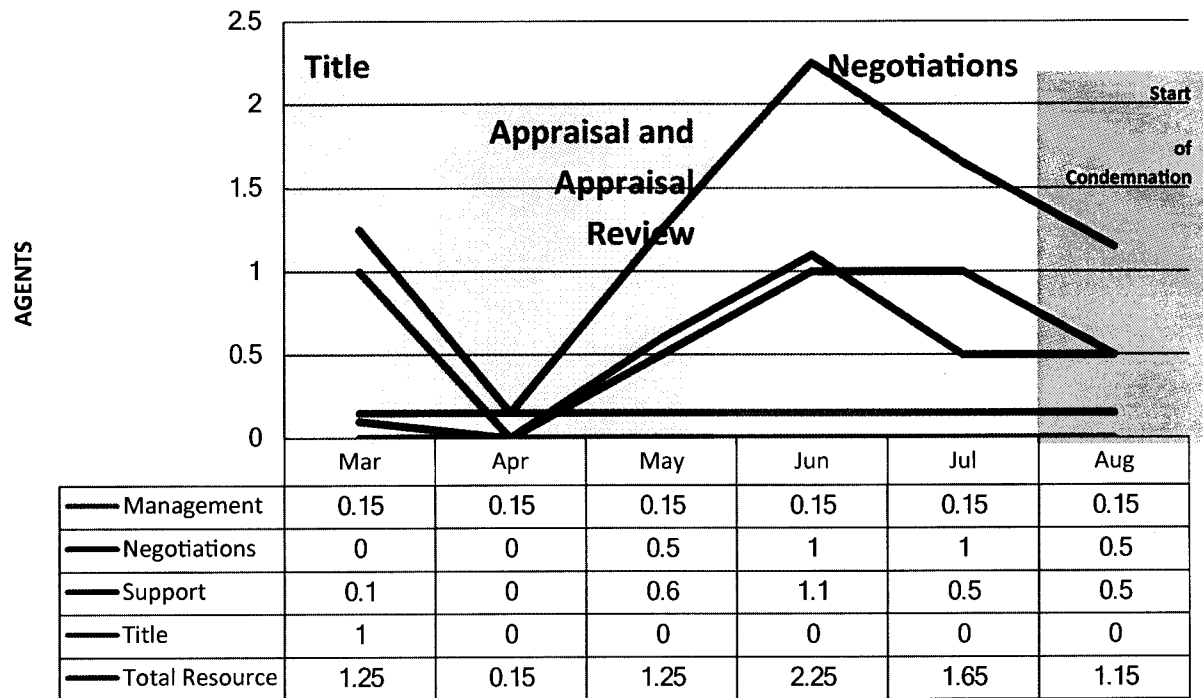
**Assumptions:**

Percheron has produced this estimate based on the following assumptions.

- Percheron will need up to one month to complete the 30 year Limited Title Certificates for the 12 -15 parcels
- Percheron will retain Integra Realty Resources to provide initial appraisal services.
- Percheron will turn over the surveys prepared by Weisser Engineering and the title work to Integra Realty Resources for appraisals. Integra will need six to eight weeks to complete the appraisals
- Percheron will retain a review appraisal to review the Integra appraisals. This will take an additional 2 weeks.
- Percheron will be in a position to start making offers based on appraisals on June 1st
- Percheron will negotiate and acquire the right of way for FM 1093 until the end of July.
- Percheron will send final offer letters to all landowners who have not settled by August 1, 2013
- Percheron will provide status reports and documentation of our negotiations with the landowners
- If negotiations are unsuccessful, Percheron will provide condemnation support and will update title and prepare condemnation packages for the County Attorney.
- This schedule assumes that the condemnation process can take up to 90 days to complete.
- The schedule as proposed is based on having the final environmental approval obtained by May 15, 2013. If there are additional delays in the environmental approval process, the schedule will shift accordingly.
- The estimate is based on construction starting in November 2013.

*Once again Percheron appreciates the opportunity to provide Fort Bend County acquisition services and looks forward to the start of a successful project. Please advise if you have need of additional information.*

## Proposed Staffing:



## Right of Way Acquisitions Estimate:

**Management: Peak Staffing .15 \$10,800.00**

*Includes part-time Consultant for the duration of the Project.*

**Negotiations: Peak Staffing 1 \$28,500.00**

*Includes Right of Way Agent during Acquisition and Condemnation Support.*

**Appraisal: Per Parcel Cost \$55,000.00**

*\$3,000 per parcel for appraisal, \$2,000 per parcel for updates on approximately 5 parcels*

**Appraisal Review: Per Parcel Cost \$30,000.00**

*\$1,500 per parcel for appraisal review for 15 parcels and 5 updates*

**Support: Peak Staffing 1 \$22,850.00**

*Includes Document Specialist for Legal Document Generation, Document Review, Condemnation Support, Construction Books and general project support.*

**Title: Peak Staffing 1 \$9,000.00**

*Includes Title Agent and Title Review for 30 Year Limited Title Certificate.*

**Cell Phone & Mileage Estimate \$2,350.00**

*Based on 5 day work, \$7 cell allowance (ROW Agent) per days worked and estimated project related mileage.*

**Total Right of Way and Appraisal Estimate: \$158,500.00**





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/19/2013

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

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

<b>PRODUCER</b> Frank Crystal & Co of TX, Inc. dba Crystal & Company 2000 West Loop S., #1800 Houston TX 77227-7723		<b>CONTACT NAME:</b> Machele McKenzie <b>PHONE (A/C, No, Ext):</b> 713-624-6338 <b>FAX (A/C, No):</b> 713-621-5425 <b>E-MAIL ADDRESS:</b> machele.mckenzie@crystalco.com	
		<b>INSURER(S) AFFORDING COVERAGE</b>	<b>NAIC #</b>
		INSURER A :Hartford Underwriters Insurance Com	30104
		INSURER B :Great American Insurance Company	16691
		INSURER C :Hartford Fire Insurance Company	19682
		INSURER D :	
		INSURER E :	
		INSURER F :	

**INSURED** OGM LANPercheron Field Services, LLC  
Percheron Acquisitions, LLC  
16000 Barkers Pointe Lane  
Suite 250  
Houston TX 77079**COVERAGES****CERTIFICATE NUMBER:** 695189760**REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
C	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC	Y	Y	61UUNPP8516	11/1/2012	11/1/2013
						EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$300,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
C	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	Y	Y	61UUNPP8516	11/1/2012	11/1/2013
						COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$10,000	Y	Y	SBU032534700	9/13/2012	11/1/2013
						EACH OCCURRENCE \$5,000,000 AGGREGATE \$5,000,000 \$
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y	Y	61WEAG5411	11/1/2012	11/1/2013
						<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000

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

Named Insured Schedule:  
Percheron Acquisitions, LLC and Percheron Field Services, LLC  
Percheron Surveying, LLC and Percheron Survey, LLC  
OGM Land Company Ltd. Dba Percheron Energy

The certificate holder is included as Additional Insured for all policies, except Workers' Compensation, as required by written contract. The certificate holder is granted a Waiver of Subrogation for all policies as required by written contract.

**CERTIFICATE HOLDER****CANCELLATION**

Fort Bend County Travis Annex 301 Jackson, Suite 201 Richmond TX 77469	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE <i>Crystal &amp; Company</i>

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