

STATE OF TEXAS

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KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF FORT BEND

**AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES**

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 Purchasing Agent, according to V.T.C.A. Local Government Code 262.011(d), hereinafter "County," and Half Associates, Inc., hereinafter referred to as "Contractor," authorized to conduct business in the State of Texas.

WITNESSETH:

WHEREAS, County desires that Contractor provide professional engineering services for the proposed creation of an assistance district in Fort Bend County, pursuant to Chapter 387 of the TEXAS LOCAL GOVERNMENT CODE, hereinafter referred to as 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; and,

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

- 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 sixty (60) calendar days from the date of this Agreement.

SECTION II  
CONTRACTOR'S COMPENSATION

- 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 \$24,000.00.
- 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.

### 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, 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 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. Should the policy be cancelled before the expiration date, notice will be delivered in accordance with policy provisions and per the standard ISO Accord Insurance Form. 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 Contractor:

Halff Associates, Inc.  
14800 St. Mary's Lane, Suite 160  
Houston, Texas 77057  
Raul E. Wong, P.E., Vice President  
713-588-2440  
281-310-5259 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  
4520 Reading Road, Suite A  
Rosenberg, Texas 77471

- 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 \$24,000.00, 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 \$24,000.00.

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 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 CLAIMS, LIABILITY, AND EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM NEGLIGENT PERFORMANCE 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

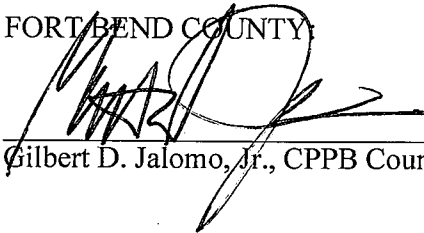
- 13.01 By entering into this Agreement, the parties do not intend to create any obligations, express or implied, other than those specifically set out in this Agreement.
- 13.02 Nothing in this Agreement shall create any rights or obligations in any party who is not a signatory to this Agreement.
- 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 not become effective until executed by County.


FORT BEND COUNTY

  
\_\_\_\_\_  
Gilbert D. Jalomo, Jr., CPPB County Purchasing Agent

8-14-13

\_\_\_\_\_  
Date

CONTRACTOR: HALFF ASSOCIATES, INC.

  
\_\_\_\_\_  
Signature

August 13, 2013

\_\_\_\_\_  
Date

Printed Name & Title: Jibrael Ahmad, RPLS, CFM

**AUDITOR'S CERTIFICATE**

I hereby certify that funds are available in the amount of \$24,000.00 to accomplish and pay the obligation of the Fort Bend County under this contract.

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

Exhibit A: Scope of Services provided by Contractor

Exhibit A



August 9, 2013

The Honorable Grady Prestage  
Fort Bend County Commissioners Court  
The William B. Travis Building  
301 Jackson Street  
Richmond, Texas 77469

RE: Surveying services for the new Fort Bend County Assistance District in the Mission Bend Area.

Dear Mr. Prestage,

We appreciate the opportunity to propose land surveying services in conjunction with the above referenced project. It is our understanding that you are requesting Halff Associates prepare a bounds description of the new Assistance District. The bounds description will be based on the existing right-of-way line and adjoining properties or subdivision plats.

We propose a lump sum fee of \$24,000 to perform these services and provide up to two (2) deliveries and ten (10) prints. My fax number is 281-310-5259; my email address is jahmad@halff.com and please copy my assistant Ryan McElroy at rmcElroy@halff.com with all correspondence. This quote will be honored for up to 30 days from the date of this proposal.

Any deed research, subdivision plats, or other reimbursable expenses that needs to be purchased to complete the project will be billed at direct cost, in addition to the Lump Sum fee.

Payments are due to Halff Associates within thirty (30) days after receipt of the statement. In addition, Halff Associates may, after giving a seven 7-day written notice, suspend services under this agreement until all amounts due have been paid in full. Furthermore, Halff Associates may withhold drawings, documents, reports, or any other tangible items produced under the terms of this agreement until all outstanding invoices are paid.

HALFF ASSOCIATES, INC.

4800 ST. MARY'S LANE, SUITE 160  
HOUSTON, TX 77079-1943

TEL (713) 588-2450  
FAX (713) 588-2488

WWW.HALFF.COM



We trust this proposal is satisfactory. We appreciate the opportunity to be of service to Fort Bend County Commissioners Court. If this proposal meets with your approval, please sign and date in the spaces provided below and return one copy as your order to proceed and approval of the budget. Please call me if you have any questions.

Sincerely,  
**HALFF ASSOCIATES, INC.**

A handwritten signature in black ink, appearing to read "J. Ahmad", written over a horizontal line.

Jibrael K. Ahmad, RPLS, CFM  
Houston Survey Manager

**APPROVED:**

It is understood and agreed that by signing this proposal you agree with the attached "General Terms and Conditions of Surveying" and access to the property referenced in this proposal is granted for the purpose of conducting field survey work.

**Fort Bend County Commissioners Court:**

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

cc: File

Attachments: Halff General Terms and Conditions for Surveying

## HALFF ASSOCIATES, INC. - General Terms and Conditions for Surveying

### I. SCOPE

Halff Associates, Inc. (hereinafter "Surveyor") agrees to perform the services described in the attached Scope of Services which incorporates these terms and conditions. Unless modified in writing by the parties hereto, the duties of Halff shall not be construed to exceed those services specifically set forth in the Scope of Services. The Scope of Services and these General Terms and Conditions, when executed by Fort Bend County Commissioners Court (hereinafter "Client"), shall constitute a binding Agreement on both parties.

**II. COMPENSATION** - Client agrees to pay monthly invoices in accordance with applicable Texas law, including the Texas Prompt Payment Act (PPA).

Time-related charges will be billed as specified in this Agreement. Unless stated otherwise in this Agreement, direct expenses, subcontracted services and direct costs will be billed at actual cost plus a service charge of 10 percent. Mileage will be billed at current IRS rates.

### III. RESPONSIBILITY

Surveyor is employed to render a professional service only, and any payments made by Client are compensation solely for such services rendered and recommendations made in carrying out the work. Surveyor will perform, as an independent contractor, all services under this contract to the prevailing professional standards consistent with the level of care and skill ordinarily exercised by members of the profession, both public and private, currently practicing in the same locality, under similar conditions.

In performing professional services, Surveyor shall act as agent of Client. Surveyor's review or supervision of work prepared or performed by other individuals or firms employed by Client shall not relieve those individuals or firms of complete responsibility for the adequacy of their work. It is understood that any inspection services provided by Surveyor are for the purpose of determining compliance with the technical provisions of the project specifications and do not constitute any form of guarantee or insurance with respect to the performance of a contractor. Surveyor does not assume responsibility for methods or appliances used by a contractor, for safety of construction work, or for compliance by contractors with laws and regulations.

Surveyor shall not be required to provide any certification, assignment, warrant or other documentation related to its work but, upon request and for a separate fee and at Surveyor's sole discretion, Surveyor may agree to provide certain written statements regarding its services. Such statements shall be in a form acceptable to Surveyor and shall be requested with sufficient advance notice to allow Surveyor to review the documents and prepare a suitable statement.

### IV. SCOPE OF CLIENT SERVICES

Client agrees to provide site access, and to provide those services described in the Scope of Services.

### V. INDEMNIFICATION

Surveyor agrees to indemnify and hold Client harmless from any actual damage, liability or costs, including reasonable attorney's fees and expenses, to the extent caused directly by a negligent act or omission or willful misconduct of Surveyor, Surveyor's subconsultants or those for whom Surveyor is legally liable, in the performance of the professional services which are the subject of this Agreement.

In the event that Client is found to be concurrently negligent, Surveyor shall not indemnify for the proportionate negligence of Client, but shall indemnify for the portion of negligence solely attributable to Surveyor, its agents, servants, employees, and subcontractors of any tier, their agents, servants and employees.

Neither party shall be liable to the other for incidental or consequential damages, whether or not the possibility of such damages has been disclosed or could have been reasonably foreseen.

### VI. INSURANCE

Surveyor shall maintain during the life of the Agreement the following minimum insurance:

- A. Commercial general liability insurance, including personal injury liability, blanket contractual liability, and broad form property damage liability. The limit shall be not less than \$1,000,000.
- B. Automobile bodily injury and property damage liability insurance with a limit of not less than \$1,000,000.
- C. Statutory workers' compensation and employers' liability insurance as required by state law.
- D. Professional liability insurance.

### VII. SUBCONTRACTS

Surveyor shall be entitled, to the extent determined appropriate by Surveyor, to subcontract any portion of the work described in the Scope of Services.

### VIII. ASSIGNMENT

This Agreement is binding on the heirs, successors, and assigns of the parties hereto. Neither this Agreement, nor any claims, rights, obligations or duties associated hereto, shall be assigned or assignable by either Client or Surveyor without the prior written consent of the other party.

### IX. INTEGRATION

These terms and conditions and the letter agreement (Scope of Services) to which they are attached represent the entire understanding of Client and Surveyor as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered herein. The Agreement may not be modified or altered except in writing signed by both parties.

### X. JURISDICTION AND VENUE

This Agreement shall be administered and interpreted under the laws of the State of Texas. Exclusive jurisdiction of litigation arising from the Agreement shall be in Galveston County, Texas. If any part of the Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said laws, but the remainder of the Agreement shall be in full force and effect.

### XI. SUSPENSION OF SERVICES

A. If work under this Agreement is suspended for more than thirty (30) calendar days in the aggregate, the Surveyor shall be compensated for services performed and charges incurred prior to receipt of notice to suspend and, upon resumption, an equitable adjustment in fees to accommodate the resulting demobilization and mobilization costs. In addition, there shall be an equitable adjustment in the work schedule based on the delay caused by the suspension. If work under this Agreement is suspended for more than ninety (90) calendar days in the aggregate, the Surveyor may, at its option, terminate this Agreement upon giving notice in writing to the Client. Surveyor may request that the work be suspended by

General Terms and Conditions - Surveying

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Revised 18 September 2012

notifying Client, in writing, of circumstances that are interfering with normal progress of the work.

8. If the Client fails to make payments when due or otherwise is in breach of this Agreement, the Surveyor may suspend performance of services upon five (5) calendar days notice to the Client. The Surveyor shall have no liability whatsoever to the Client for any costs or damages as a result of such suspension caused by any breach of this Agreement by the Client.

#### XII. TERMINATION OF WORK

Either the Client or the Surveyor may terminate this Agreement at any time with or without cause upon giving the other party ten (10) calendar days prior written notice. The Client shall within ten (10) calendar days of termination pay the Surveyor for all services rendered and all costs incurred up to the date of termination, in accordance with the compensation provisions of this contract.

#### XIII. TAXES

The fees and costs stated in this Agreement, unless stated otherwise, exclude all sales, consumer, use and other taxes which are promulgated following execution of this Agreement. Client agrees to reimburse Surveyor and its subconsultants for the taxes paid by Surveyor and its subconsultants in accordance with the laws and regulations of the applicable taxing authorities.

#### XIV. ALTERNATIVE DISPUTE RESOLUTION

Any conflicts that arise during the work described by this Agreement or following the

completion thereof shall be submitted to nonbinding mediation unless the parties agree otherwise. The parties further agree to require all independent contractors and consultants retained in connection with this Agreement to include a similar mediation provision in all Agreements with subcontractors, subconsultants, suppliers or fabricators.

#### XV. SEVERABILITY

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be void, invalid, illegal, or unenforceable in any respect, such voiding, invalidity, illegality, or unenforceability shall not affect any other provision hereof and this Agreement shall be considered as if the entirety of such void, invalid, illegal, or unenforceable provision had never been contained in this Agreement.

#### XVI. AGREED REMEDIES

In recognition of the relative risks and benefits of the Project to both the Client and the Surveyor, and acknowledging that the allocation of risks and limitations of remedies are business understandings between the parties and such shall apply to all possible theories of recovery, Client agrees, to the fullest extent permitted by law, and notwithstanding any other provisions of this Agreement or the existence of applicable insurance coverage, that the total liability, in the aggregate, of the Surveyor and the Surveyor's officers, directors, employees, agents, and subconsultants to the Client or to anyone

claiming by, through or under the Client, for any and all claims, losses, costs or damages whatsoever arising out of, resulting from or in any way related to the services under this Agreement from any cause or causes of the Surveyor or the Surveyor's officers, directors, employees, agents, and subconsultants, shall not exceed the Surveyor's fee for the services performed under this Agreement or \$50,000, whichever is greater. Increased limits may be negotiated for additional fee.

Further, it is the intent of the parties to this Agreement that Surveyor's services under this Agreement shall not subject Surveyor's individual employees, officers or directors to any personal legal exposure for claims and risks associated with the services performed or performable under this Agreement.

#### XVII. TIMELINESS OF PERFORMANCE

The Surveyor will perform its services with due and reasonable diligence consistent with sound professional practices.

#### XVIII. WAIVER

Any failure by Surveyor to require strict compliance with any provision of this Agreement shall not be construed as a waiver of such provision, and Surveyor may subsequently require strict compliance at any time, notwithstanding any prior failure to do so.