

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 TERRA Associates, Inc. (hereinafter "Contractor"), a company authorized to conduct business in the State of Texas.

WITNESSETH

WHEREAS, County desires that Contractor provide certain professional engineering construction phase services for the construction of paving, drainage and water line supply for Sansbury Boulevard from Grand Estates Drive to Canyon Lake Drive, under the Fort Bend County 2013 Mobility Bond Program – Sansbury Boulevard – Grand Estates Drive to Canyon Lake Drive – Project No. 13111 (hereinafter "Services") pursuant to SOQ 14-025; 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 Services to County as defined in the Scope of Services (attached hereto as Exhibit A).

**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 seventeen thousand five hundred dollars and 00/100 (\$17,500.00). In no case shall the amount paid by County under this Agreement exceed the Maximum Compensation without an approved change order.

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 and two (2) original hard copies of invoices 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 seventeen thousand five hundred dollars and 00/100 (\$17,500.00), 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 seventeen thousand five hundred dollars and 00/100 (\$17,500.00)

### **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 twelve (12) months thereafter.

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

7.1.1 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, excluding Professional Liability, 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 DEFEND COUNTY AGAINST ALL LOSSES, LIABILITIES, CLAIMS, CAUSES OF ACTION, AND OTHER EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ACTIVITIES OF CONTRACTOR, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, 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: TERRA Associates, Inc.  
Attn: Lyle Henkel, President  
1445 North Loop West, Suite 450  
Houston, Texas 77008

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. Performance Warranty**

16.1 Contractor warrants to County that Contractor has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession practicing in the greater Houston metropolitan area and Contractor will apply that skill and knowledge with care and diligence to ensure that the Services provided hereunder will be performed and delivered in accordance with the highest professional standards.

16.2 Contractor warrants to County that the Services will be free from material errors and will materially conform to all requirements and specifications contained in the attached Exhibit A.

**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**

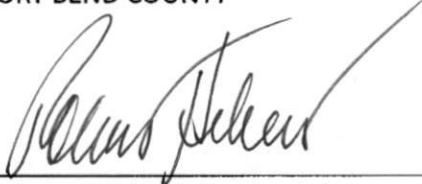
The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.

**Section 24. Conflict**

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

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 5 day of May, 2015.

FORT BEND COUNTY

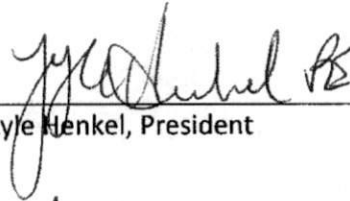


Robert E. Hebert, County Judge

5-5-2015

Date

TERRA ASSOCIATES, INC.



Lyle Henkel, President

April 29, 2015

Date

ATTEST:



Laura Richard, County Clerk



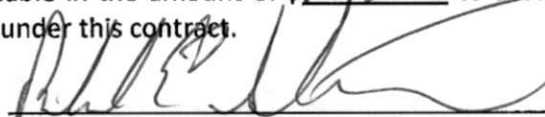
APPROVED:



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

**AUDITOR'S CERTIFICATE**

I hereby certify that funds are available in the amount of \$ 17,500.00 to accomplish and pay the obligation of Fort Bend County under this contract.



Robert Edward Sturdivant, County Auditor

MDS

# EXHIBIT A



April 27, 2015

Mr. J. Stacy Slawinski, P.E.  
Assistant County Engineer – Projects  
Fort Bend County Engineering  
301 Jackson St., Richmond, TX 77469

office 281.633.7508

**Email:** [stacy.slawinski@fortbendcountytexas.gov](mailto:stacy.slawinski@fortbendcountytexas.gov)

**Re: Sansbury Boulevard  
Richmond, Texas  
TAI Registration No.: F-003832  
TAI Job No.: 0125-1301**

Dear Mr. Slawinski:

In accordance with your request, we are pleased to submit this proposal for construction phase services which are required in conjunction with the above referenced development. The proposed scope of basic services is as follows:

#### **Construction Phase Services**

1. We will review samples, catalog data, schedules, shop drawings, laboratory, shop and mill tests of material and equipment and other data which the contractor is required to submit for conformance with the design concept of the Project and compliance with the information given by the Contract Documents. Will be responsible for reviewing contractor submittals and responding to Requests for Information.
2. Field visits and progress meetings **will not** be required unless requested by the County.
3. We will participate in a substantial completion walkthrough inspection of the Project for conformance with the design concept of the Project and compliance with the Contract documents.
4. After project completion, we will revise contract drawings, based on contractor redline markups. The record drawings will be a single PDF file including all design drawings.

#### **Traffic Control Plan**

We will prepare and issue a revised traffic control plan based on the alternate construction method at the intersection of Sansbury Blvd. and Canyon Lake Dr.

**Fee.** We propose that our compensation for the above described basic services be based upon a Time & Material basis as shown on attachment "C". Monthly billing will include a breakdown of hours spent by personnel based on the billing rates included in the agreement. Reimbursable expenses, such as scanning and reproduction, will be billed at actual cost (no markup). Payment is due within 30 days of your receipt of invoice.

**Exceptions.** This proposal specifically omits any item that is not descriptively included in the foregoing paragraphs. Our services will be performed according to our normal procedures of practice. Any services required in addition to our normal procedures are to be considered as extra services which will require additional fee authorization. We do not provide environmental services including wetlands delineation.


**Extra Services.** Should you require services in addition to those included herein, we will provide those extra services on a time and materials basis. Our fee for extra services will be based on the rates and terms of Attachments A, and the amount of effort in time and materials required to complete the assignment.

**Acceptance.** If this proposal meets with your approval, please so indicate your acceptance by executing it in the space provided below and returning one signed copy for our files. Your written acceptance of this proposal will consummate the Agreement which can be terminated by either party upon receipt of written notice. Upon termination, all fees currently earned under the terms of this Agreement will be due and promptly paid.

Best regards,



Joel Vitela  
Senior Project Manager



Kevin Polasek, P.E.  
Vice President

**ACCEPTED AND AGREED TO:**

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

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

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

Attachment: A, B and C

## ATTACHMENT A

February 2014

COMPENSATION: Engineering Services by Terra Associates, Inc.

- A. For the **services of the Engineer's staff** the charges will be the "Salary Cost" of each employee so engaged times a multiplier of 2.85. "Salary Cost" is defined as the cost of salaries (total hours worked times the employee's rate of pay on an hourly basis) of the Engineer's employees for time directly chargeable to the Project, plus thirty-three (33) percent for social security contributions, unemployment, excise and payroll taxes, employment compensation insurance, retirement benefits, incentive pay, medical and insurance benefits, sick leave, vacation and holiday pay applicable thereto. For the services of the Engineer's Officers the charge will be at the inputted rate of \$165.00 per hour.
- B. The **overtime premium** (required by the Fair Labor Standards Act for non-exempt classifications) for draftsman, technician and construction administration classifications will be charged for overtime work up to five (5) hours per week, which the Terra Associates technical staff regularly works in excess of forty hours. For any additional overtime requested and authorized by the client, the overtime premium will be charged in addition to the proposed fee amount.
- C. For **field surveying staff service** the charges will be in conformance to Attachment "B".
- D. For all **direct non-labor expense**, including, but not limited to transportation, telegraph and telephone toll charges, special supplies, reproductions, computer plots, computer time charges, etc., and travel and subsistence for the Engineer's officers and staff, all as required for the proper execution of the work, and for all work subcontracted, the charge is the actual invoice cost plus a ten percent service charge. Travel by vehicles owned or leased by the Engineer shall be at seventy (70) cents per mile. These reimbursable expenses are additional to the Proposal amount.
- E. For **outside services**, such as making soil borings and performing laboratory tests on soil samples, environmental services or retaining other special consultants, Owner will contract directly with a third party for such services.
- F. **Payments to Engineer** for authorized services will be due upon presentation of monthly statements by Engineer for such services. If within thirty (30) days of the date of any such statement, Owner should fail to pay Engineer the full sum specified in any such statement, then the Owner shall pay to Engineer, in addition to the sum shown as due by such statement, interest on any unpaid portion thereof at the rate of ten (10) percent per annum from the date of such statement until fully paid, which shall fully liquidate any injury to Engineer arising from such delay in payments.
- G. Neither the Owner nor the Engineer shall assign, sublet, or transfer his interest in this Agreement without the written consent of the other.
- H. Payment of any fees that may be charged by Governmental agencies shall be made by the Owner directly to the Agency. Sales taxes, if applicable, will be invoiced in addition to the basic fee proposed.
- I. The approval duration of governmental agencies is beyond our control. We accept no liability for delays caused by governmental agencies.

**TERRA ASSOCIATES, INC.**

ATTACHEMENT B

Compensation Schedule – January 2015

<b><u>Position</u></b>	<b><u>Hourly Rate</u></b>
Principal	\$165
Project Manager	\$125
Engineer-in-Training	\$100
CAD Technician	\$85
Clerical	\$70

ATTACHMENT "C "

Project:

**Sansbury Boulevard  
Richmond, Texas**

By: JJV Date: April 27, 2015

Project Number: 0125-1301

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TASK		BUDGET \$
<u>Engineering Tasks</u>		
C 05	Traffic Control Plan	\$2,500
D 01	Construction Phase Services (Time-and-material - not to exceed)	\$15,000
Total Fee =		\$17,500