

MASTER SERVICE AGREEMENT

This Master Service Agreement (this "Agreement") is entered into on March 23, 2016 (the "Effective Date") by and between Fort Bend County Toll Road Authority, a local government corporation (the "Authority"), and Applied Research Associates, Inc. (the "Contractor").

RECITALS

WHEREAS, the Authority has determined it is in the Authority's best interest to engage a professional service provider for the services described herein; and

WHEREAS, Authority and Contractor (collectively, the "Parties") have read and understood the terms and provisions set forth in this Agreement and have been afforded a reasonable opportunity to review this Agreement with their respective legal counsel;

NOW, THEREFORE, in consideration of the premises, mutual promises, covenants, obligations and benefits herein contained, the Authority and Contractor agree as follows:

I.

SERVICES

Section 1.01. Services. Contractor shall perform pavement analysis (the "Services") for the Authority from time to time as approved in writing by the Board of Directors (the "Board"), and Contractor shall be compensated for such services as approved by the Board. Approval of Services shall be evidenced by a separate written proposal or service order ("Job Order"), counter signed by the Authority or its designee, which shall include the service to be performed, the location and the fees. All fees described in the Job Order shall include charges for labor, materials, insurance, equipment and any other items required to perform the work in the Services. Contractor may not deviate from approved Services without the prior written consent of the Board.

Section 1.02. Approval of Certain Job Orders. Notwithstanding the foregoing section, the Board delegates authority to approve a Job Order to the Authority's manager to the extent the work or services contemplated under the Job Order is under \$10,000. Any Job Orders approved by the Authority's manager shall be submitted to the Authority for review.

II.

COMPENSATION

Section 2.01. Payment for Services. Contractor shall submit a detailed monthly invoice (together with any back-up documentation requested by the Authority) for work performed pursuant to any Job Order to the entity approving the Job Order. If a Job Order is approved by the Authority, such invoices shall be sent to the Authority's bookkeeper and Authority's manager:

Authority's Bookkeeper
Ms. Pamela Logsdon
AVANTA Services
5635 NW Central Drive, Suite 104E
Houston, Texas 77092
Phone 713-934-9107
pmlogsdon@avantaserv.com

Authority's Manager
Mr. Michael Stone
Mike Stone & Associates
19875 Southwest Freeway, Suite 270
Sugar Land, Texas 77479
Phone 713-568-7252
mikestone@mikestoneassociates.com

Payment shall be made within forty-five (45) days of the approval of Contractor's invoice by the Authority. Interest shall not be paid on service invoices.

III.
GENERAL CONDITIONS

Section 3.01. Contractor's Duties. The Consultant shall perform its services consistent with the professional skill and care ordinarily provided by firms practicing in the same or similar locality under the same or similar circumstances. Contractor agrees to exercise reasonable diligence in performing the Services, using the degree of care and skill that a prudent person in the same or similar profession would use.

Section 3.02. Relationship of Authority and Contractor. Contractor has been retained by the Authority for the sole purpose and to the extent set forth in this Agreement. It is understood and agreed that all work so done by Contractor shall meet with the specifications contained in the Statement of Work, but that the detailed manner and method of performing the Services shall be under the control of Contractor. Contractor's relationship to the Authority during the term of this Agreement is that of an independent contractor. The relationship between the Authority and Contractor is not exclusive.

Section 3.03. Insurance and Indemnification. Before commencing any work hereunder, Contractor shall furnish certificates of its insurance and copies of any required endorsements to the Authority evidencing the following insurance coverage, which coverage shall be maintained throughout the term of this Agreement. Certified copies of each policy shall be furnished to the Authority upon the Authority's request. Contractor shall not violate or knowingly permit to be violated any condition of the insurance policies required by this Agreement. Nothing contained in this Section shall limit or waive Contractor's legal or contractual responsibilities to the Authority or others. Cancellation or expiration of any of said insurance policies shall not preclude the Authority from recovery thereunder for any liability arising under this Agreement.

Contractor shall obtain the following insurance from companies having a Best's rating of B+/VII or better and licensed to transact business in the State of Texas:

- A. Workers' Compensation Insurance covering liability arising out of Contractor's employment of workers and anyone for whom the employer may be liable for workers' compensation claims at limits as imposed by statute. Workers' compensation insurance is required, and no alternative forms of insurance shall be permitted.
- B. Employer's Liability Insurance Limitations with limits of not less than \$500,000.
- C. Commercial General Liability Insurance with limits not less than:
 - a. Each occurrence - \$1,000,000
 - b. General aggregate - \$2,000,000
 - c. Products-Completed Operations Aggregate - \$2,000,000
 - d. Personal & Advertising Injury - \$1,000,000
- D. Comprehensive Automobile Liability Insurance with limits not less than \$1,000,000 (combined)
- E. Excess Liability: \$2,000,000/\$2,000,000.

Contractor's insurance shall include the following endorsements:

- A. The Authority and the Authority's agents and employees shall be added as additional insureds to all coverage required under this Agreement for all liability arising out of Contractor's work under this Agreement, except for workers' compensation insurance, as to the full limits of liability provided by each insurance policy (including limits greater than the minimum limits required herein).
- B. All required insurance shall be endorsed to provide that coverages afforded under the policy will not be canceled or modified without at least seven days prior written notice to the Authority. Renewal certificates shall be provided at least 30 days prior to the termination date of the current certificates of insurance during the term of this Agreement.
- C. Inasmuch as Authority and Contractor intend that all of Contractor's insured loss and liabilities fall upon Contractor's insurers, without recourse against Authority, Contractor agrees to cause all of its policies of insurance maintained in force or procured by Contractor to provide, if necessary by endorsement, that each such insurer fully waives subrogation against the Authority and its agents and employees.
- D. All of the aforesaid policies shall be endorsed to provide that the coverage provided to the Authority as an additional insured will be on a primary basis, and not in excess of other insurance coverage available to the Authority, and that neither Contractor nor its insurer will seek contribution or recovery from the Authority or such other insurance available to the Authority.
- E. Contractor shall cause its subcontractors, including all persons hired by Contractor who are not Contractor's employees, who perform any part of the work hereunder, to carry insurance at the same levels as specified herein.

TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR, FOR ITSELF AND ITS SUCCESSORS AND ASSIGNS, AGREES TO INDEMNIFY AND HOLD HARMLESS THE AUTHORITY AND ITS OFFICERS, DIRECTORS, REPRESENTATIVES, AND AGENTS, FROM EVERY LOSS, DAMAGE, INJURY, COST, EXPENSE, CLAIM, JUDGMENT, OR LIABILITY OF EVERY KIND OR CHARACTER (INCLUDING SPECIFICALLY ATTORNEYS' FEES, COURT COSTS AND OTHER EXPENSES INCURRED IN ENFORCING THIS INDEMNITY PROVISION), WHETHER IN CONTRACT, TORT, OR OTHERWISE, TO THE EXTENT THE FOREGOING ARISES DIRECTLY FROM THE CONTRACTOR'S WILLFUL, INTENTIONAL, RECKLESS OR NEGLIGENT (WHETHER ACTIVE, PASSIVE, OR GROSS) ACTS OR OMISSIONS RELATED TO OR ARISING FROM THIS AGREEMENT. THIS INDEMNITY AND HOLD HARMLESS PROVISION WILL APPLY WHETHER SUCH ACTS OR OMISSIONS ARE CONDUCTED BY THE CONTRACTOR OR ANY SUBCONTRACTOR OR AGENT OF THE CONTRACTOR.

THIS INDEMNITY AGREEMENT IS INTENDED TO MEET THE TEXAS "EXPRESS NEGLIGENCE RULE" BECAUSE CONTRACTOR AGREES THAT IT APPLIES AND IS ENFORCEABLE EVEN AS TO LOSSES, DAMAGES, INJURIES, EXPENSES, CLAIMS, CAUSES OF ACTION, JUDGMENTS OR LIABILITIES JOINTLY OR CONCURRENTLY CAUSED BY THE NEGLIGENCE OR OTHER FAULT OF THE AUTHORITY. THE TERM "FAULT" IN THE PREVIOUS SENTENCE INCLUDES THE VIOLATION OR BREACH BY THE AUTHORITY OF ANY COMMON LAW DUTY, ANY TERM OF THIS CONTRACT, OR ANY STATUTE OR REGULATION.

THIS INDEMNIFICATION OBLIGATION IS IN ADDITION TO ALL OTHER LEGAL, EQUITABLE, OR INDEMNIFICATION REMEDIES AVAILABLE TO THE AUTHORITY. THIS INDEMNIFICATION OBLIGATION SURVIVES THE TERMINATION OR EXPIRATION OF THIS CONTRACT.

CONTRACTOR DOES HEREBY WAIVE, RELEASE AND FOREVER RELINQUISH AND DISCHARGE THE AUTHORITY FROM ALL OF CONTRACTOR'S CAUSES OF ACTION ARISING FROM BODILY INJURY OR DEATH OR DAMAGE TO ANY PROPERTY ARISING OUT OF THE WORK, REGARDLESS OF WHETHER THE INJURY OR DAMAGE IS CAUSED IN FULL OR IN PART BY THE NEGLIGENCE OR OTHER FAULT OF THE AUTHORITY.

Section 3.04. Term and Termination. Either party may terminate this Agreement at any time, without cause, upon thirty (30) days written notice to the other party. Contractor shall not be entitled to any payment or further payment other than for work performed or material, equipment, or supplies furnished prior to such termination. The Authority does not waive any other remedy allowed under Texas law.

Section 3.05. Agreement Controls. To the extent that there is any inconsistency between the provisions of this Agreement and any Job Order, the terms of this Agreement shall control.

Section 3.06. Regulatory Requirements. All work will be done in strict compliance with all applicable city, county, state and federal rules, regulations and laws and any codes which may apply to the Services being provided. Contractor will obtain all permits and licenses required to perform the Services and will be responsible for securing inspections and approvals of its work from any authority having jurisdiction over Contractor's Services.

Section 3.07. Safety and Health Standards. Contractor shall observe and comply with all applicable federal, state and local health and safety laws and regulations.

Section 3.08. Inspection. The Authority and its duly authorized representatives shall have the right to inspect all Services being performed hereunder at any time.

Section 3.09. Assignability. Contractor shall not assign its rights or obligations or any sum that may accrue to it hereunder without the written consent of the Authority, which shall be granted or denied in the Authority's sole discretion.

Section 3.10. Modifications. This Agreement shall be subject to amendment, change or modification only with the prior mutual written consent of the Authority and Contractor.

Section 3.11. Force Majeure. In the event either party to this Agreement is rendered unable, wholly or in part, by force majeure including an act of God; strikes; lockouts, or other industrial disturbances; acts of the public enemy; orders of any kind of government of the United States or the State of Texas or any civil or military authority (other than a party to this Agreement); insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; storms; floods; droughts; arrests; civil disturbances; explosions; or other inability similar to those enumerated; to carry out its obligations under this Agreement, it is agreed that party shall give written notice of such act to the other party as soon as possible after the occurrence of the cause relied on and shall, thereafter, be relieved of its obligations, so far as they are affected by such act, during the continuance of any inability so caused, but for no longer.

Section 3.12. Agreement Subject to Applicable Law. This Agreement and the obligations of the parties hereunder are subject to all rules, regulations and laws which may be applicable by the United States, the State of Texas or any other regulatory agency having jurisdiction.

Section 3.13. Governing Law. This Agreement is governed in accordance with the laws of the State of Texas and shall be enforceable in the county in which the Authority is located.

Prior to execution of the Agreement by the Authority, the Contractor will be required to submit a Texas Ethic Commission Form 1295. Please see https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm for details related to this disclosure.

Section 3.14. Waiver. No waiver or waivers of any breach or default by a party hereto of any term, covenant or condition or liability hereunder of performance by the other party of any duty or obligation hereunder will be deemed a waiver thereof in the future, nor will any such waiver or waivers be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, character or description, under any circumstances.

Section 3.15. Intended Beneficiaries. This Agreement is for the sole and exclusive benefit of the Authority and Contractor and will not be construed to confer any benefit upon any other party.

Section 3.16. Severability. The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application thereof to any person or circumstance is ever held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement to other persons or circumstances will not be affected hereby.

Section 3.17. Notice. Any notice, demand, request, or other instrument authorized or required to be given under this Agreement shall be deemed to have been given only upon receipt. Notices to the Authority may be given by first class mail, postage prepaid, or by overnight delivery service to the address set forth below:

Fort Bend County Toll Road Authority
c/o The Muller Law Group, PLLC
16555 Southwest Freeway, Suite 200
Sugar Land, Texas 77479
Attn: Richard L. Muller, Jr.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiple copies, each of equal dignity, as of the date set forth on the first page hereof.

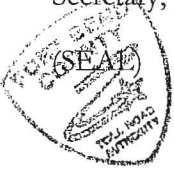
[EXECUTION PAGE FOLLOWS]

FORT BEND COUNTY TOLL ROAD
AUTHORITY

Chairman, Board of Directors

ATTEST:

Secretary, Board of Directors



APPLIED RESEARCH ASSOCIATES, INC.

By:

Print Name: Katherine D. Daniels
Title: Vice President, Contracts

EFFECTIVE DATE

THIS AGREEMENT IS EFFECTIVE ON THE DATE IT IS APPROVED BY THE FORT BEND COUNTY COMMISSIONERS COURT, AND IF NOT SO APPROVED SHALL BE NULL AND VOID.

DATE OF COMMISSIONERS COURT APPROVAL: _____

AGENDA ITEM NO.: _____

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

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

**OFFICE USE ONLY
 CERTIFICATION OF FILING**

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.
 Applied Research Associates, Inc.
 Albuquerque, NM United States

Certificate Number:
 2016-26297
 Date Filed:
 03/15/2016
 Date Acknowledged:
3/28/16

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.
 Fort Bend County Toll Road Authority

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the goods or services to be provided under the contract.
 4844-1581-3422
 Contractor shall perform pavement analysis (the "Services") for the Authority from time to time as approved in writing by the Board of Directors (the "Board")

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO Interested Party.

6 AFFIDAVIT I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.



Jennifer DiGregorio
 Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said Jennifer DiGregorio, this the 23rd day of March, 2016, to certify which, witness my hand and seal of office.

Theresa Rhodes Theresa Rhodes Notary Public
 Signature of officer-administering oath Printed name of officer administering oath Title of officer administering oath
 Notary Notary Notary

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

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

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 Fort Bend County Toll Road Authority

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4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO Interested Party.

6 AFFIDAVIT I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.

 Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said _____, this the _____ day of _____, 20_____, to certify which, witness my hand and seal of office.

 Signature of officer administering oath Printed name of officer administering oath Title of officer administering oath

STATE OF TEXAS
COUNTY OF FORT BEND

JOB ORDER/WORK AUTHORIZATION


DATE: March 23, 2016
OWNER: Fort Bend County Toll Road Authority (the "Authority")
CONTRACTOR: Applied Research Associates, Inc.
PROJECT: Analysis and Prediction of Pavement Performance
JOB AMOUNT: \$12,000.00
MASTER SERVICE AGREEMENT DATE: March 23, 2016 (the "Master Service Agreement")

The Contractor agrees to perform the services described on **Exhibit A** attached to this Job Order. The Authority agrees to pay the Contractor the amount (or in accordance with the fee schedule) shown on the attached **Exhibit A**. All services and payments shall be in accordance with the terms of the Master Service Agreement.

FORT BEND COUNTY TOLL ROAD
AUTHORITY

By: 
Chairman, Board of Directors

APPLIED RESEARCH ASSOCIATES, INC.

By: 
Printed Name: Katherine D. Daniels
Title: Vice President, Contracts

EFFECTIVE DATE

THIS AGREEMENT IS EFFECTIVE ON THE DATE IT IS APPROVED BY THE FORT BEND COUNTY COMMISSIONERS COURT, AND IF NOT SO APPROVED SHALL BE NULL AND VOID.

DATE OF COMMISSIONERS COURT APPROVAL: _____

AGENDA ITEM NO.: _____



February 12, 2016

Mike Stone
Mike Stone Associates, Inc.
19875 Southwest Freeway, Suite 270
Sugar Land, Texas 77479
(P) 281-343-0712
mikestone@mikestoneassociates.com

Subject: **Proposal for Analysis of 2011 Pavement Performance Data and Toll Gantry Pavements
Fort Bend County Toll Road Authority (FBCTRA) – Fort Bend County, Texas**

Dear Mr. Stone:

Applied Research Associates (ARA), Inc., appreciates the opportunity to submit this letter proposal to Mike Stone Associates for analysis and prediction of pavement performance for routes maintained by the Fort Bend County Toll Road Authority (FBCTRA).

If you have any questions or need additional information, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael J. Harrell".

Michael J. Harrell, PE
Senior Engineer

A handwritten signature in black ink, appearing to read "William R. Vavrik".

William R. Vavrik, PhD, PE
Vice President

Contracts

PROJECT UNDERSTANDING

The Fort Bend County Toll Road Authority (FBCTRA) operates three routes in Fort Bend County, Texas:

- Grand Parkway (from US 59 to IH-10, approx. 52 lane-miles)
- Westpark Tollway (in Fort Bend County, approx. 24 lane-miles)
- Fort Bend Parkway (in Fort Bend County, approx. 24 lane-miles)

Mike Stone Associates requested a proposal from ARA to perform the following services for the FBCTRA:

- Review pavement performance data from 2011 and forecast pavement condition, optimal rehabilitation treatments and timings, and develop project costs for those treatments.
- Review pavement conditions at Harlem and Westpark toll gantries on the Grand Parkway to determine possible causes for pavement deterioration and best repair strategies.

For the pavement performance data analysis and forecasting, ARA will utilize the pavement management condition data supplied to the FBCTRA in 2011 in conjunction with AASHTOware's Pavement-ME Design software to predict the long-term performance of each roadway. ARA will work with the output from Pavement-ME Design in life-cycle cost tools to develop optimal treatments and timings in terms of cost-benefit ratios. Finally, ARA will develop project cost estimates for pavement rehabilitation and/or reconstruction projects on each route.

For the toll gantry pavement failures, ARA will review photographs from the sites as well as any design drawings to describe the planned construction of the expansion joints exhibiting distress. ARA will review industry design recommendations for these types of installations and provide commentary regarding possible causes of deterioration as well as some suggestions for repairs.

PROJECT PRICE

ARA's firm fixed price for these efforts is \$12,000. ARA will invoice monthly on a percent complete basis, for payment to be made within 45 days of receipt of invoice.

REQUIRED SUPPORT

ARA requires the following support to successfully complete this project in an efficient and effective manner:

- ⊕ Contact information for project representative for coordination
- ⊕ Full access to project site

We appreciate the opportunity to provide you these services and look forward to working with you on this project. If you have any questions or comments, please do not hesitate to contact us.

ACCEPTANCE OF PROPOSAL

To accept this proposal as an agreement to provide professional services in accord with the scope, price, schedule, and required support, please sign this proposal in the space below. This acceptance will act as a notice to proceed.

ACCEPTANCE AND AUTHORIZATION	
Name (print)	
Title	
Signature:	
Date:	