

PROFESSIONAL PROPERTY SERVICES CONSULTING AGREEMENT

THIS AGREEMENT is made and entered into by and between FORT BEND COUNTY TOLL ROAD AUTHORITY, a Texas Local Government Corporation, hereinafter referred to as the "Authority," and INTEGRA REALTY RESOURCES, HOUSTON, hereinafter referred to as "Contractor," authorized to conduct business in the State of Texas.

WITNESSETH

WHEREAS, the Authority desires to retain Contractor to provide property consulting services (hereinafter "Services"); and

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

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

NOW THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

AGREEMENT

SECTION I SCOPE OF AGREEMENT

- 1.01 The Authority may request Contractor perform certain property consulting services including property appraisals, hereinafter referred to as "Services." Each request to Contractor from the Authority shall be made in the form of a work order that specifically references this Agreement and describes in detail the "Scope of Work" and the requested time for performance, hereinafter referred to as the "Project."
- 1.02 Contractor shall use all best efforts to perform all professional services agreed hereunder in a manner satisfactory and acceptable to the Authority, in keeping with the highest professional standard of care provided by contractors in similar projects. Contractor shall use its best efforts to ensure that all Services provided hereunder shall be suitable for their intended use.
- 1.03 Contractor shall use all best efforts and measures to implement its responsibilities under this Agreement to safeguard the Authority against defects and deficiencies in the completed Services provided under this Agreement. However, Contractor shall promptly inform the Authority whenever defects and deficiencies in the completed Service are observed, or when any observed actions or omissions are undertaken which are not in the best interest of the Authority and the Project.
- 1.04 At the request of the Authority, Contractor shall provide appropriate personnel for conferences at its offices, or attend conferences at the various offices of the Authority, or at

the site of the Project, and shall permit inspections of its offices by the Authority, or others when requested by the Authority.

- 1.05 If requested by the Authority, or on its behalf, Contractor shall prepare such exhibits and plans as may be requested for all hearings related to the Project, and, further, it shall prepare for and appear at conferences at the office of the Authority's Attorney, hereinafter referred to as "Authority Project Manager," and shall furnish competent expert witnesses to provide such oral testimony and to introduce such demonstrative evidence as may be needed throughout all trials and hearings with reference to any litigation relating to the Project.
- 1.06 Contractor warrants that the Services shall be performed with that degree of skill and judgment normally exercised by professional property appraisal and consulting service firms performing services of a similar nature. At all times hereto, Contractor will perform will perform its analysis in conformity with The Uniform Standards of Professional Appraisal Practice and all other standards applicable to Professional Appraisers. Contractor's liability for its work product shall be limited to re-performing and correcting, at its own expense, Services which are (i) deficient because of Contractor's failure to perform said Services in accordance with the above standard of skill and judgment, and (ii) reported in writing to contractor within a reasonable time, not to exceed thirty (30) days, from discovery thereof, but in no event later than (1) year from completion of the relevant Services. Contractor shall be afforded a reasonable time to re-perform and correct said work product after written report.

SECTION II CONTRACTOR'S COMPENSATION AND WORK ORDERS

- 2.01 For and in consideration of the Services rendered by Contractor, and subject to the limit of appropriation under Section XVI, the Authority shall pay to Contractor an amount not to exceed \$15,000.00, including all reimbursable expenses. Contractor's hourly rate schedule is attached as *Exhibit A*.
- 2.02 Contractor shall not provide any services under this Agreement until authorized by the Authority in writing.
- 2.03 Contractor shall submit invoices to the Authority as detailed in Section 2.04 below and the Authority shall pay each invoice within sixty (60) days after the Authority's Project Manager's written approval provided however, that the approval or payment of any invoice shall not be considered to be conclusive evidence of performance by Contractor to the point indicated by such invoice or of receipt or acceptance by the Authority of the services covered by such invoice.
- 2.04 Contractor shall submit to the Authority two (2) copies of invoices detailing the amounts due for Services performed during the previous month, set forth separately for work under this Agreement, and accompanied by a progress report indicating the percent complete and describing the tasks performed in a form acceptable to the Authority. The Authority shall reserve the right to withhold any payment pending verification of satisfactory work performed. The Authority shall process all uncontested invoices within sixty (60) calendar days.
- 2.05 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.

- 2.06 The Authority will issue Work Orders to authorize all work provided by Contractor under this agreement. Contractor must sign and return a Work Order to the Authority within seven (7) working days after receipt. Refusal of Contractor to accept a Work Order shall be grounds for termination of this Agreement by the Authority.
- 2.07 This Agreement authorizes the Authority Project Manager to execute and approve all Work Orders on behalf of the Authority.
- 2.08 Contractor shall not begin any work until the Authority Project Manager and Contractor have executed a Work Order. Costs incurred by Contractor before a Work Order is fully executed or after the completion date specified in the Work Order shall not be subject to payment or reimbursement.
- 2.09 All services provided by Contractor must be completed on or before the completion date specified in the Work Order, and no Work Order completion date shall extend beyond the contract period set forth in Section III of this Agreement.
- 2.10 Contractor shall not include additional terms and conditions in the Work Order. In the event of any conflicting terms and conditions between the Work Order and this Agreement, the terms and conditions of this Agreement shall prevail and govern the work and costs incurred.
- 2.11 The Authority will not pay any items of cost that are not included in an executed Work Order.
- 2.12 Work Orders are issued at the discretion of the Authority. While it is the Authority's intent to issue Work Orders hereunder, Contractor shall have no cause of action conditioned upon the lack or number of Work Orders issued.
- 2.13 Each Work Order shall be signed by all parties and shall become a part of this Agreement. No Work Orders will waive the Authority or Contractor's responsibilities and obligations established in this Agreement. Contractor shall promptly notify the Authority of any event that will affect completion of the Work Order.
- 2.14 The Authority shall not be responsible for actions by Contractor or any costs incurred by Contractor relating to additional work not directly associated with the performance or prior to the execution of the Work Order. Under no circumstances shall a Work Order be allowed to extend beyond this Agreement's expiration date as detailed in Section III, nor will the total amount of funds exceed the not-to-exceed amount set forth in Section II of this Agreement.
- 2.15 In the event Contractor determines or reasonably anticipates that the work authorized in a Work Order cannot be completed before the specified completion date, Contractor shall promptly notify the Authority and the Authority may, at its sole discretion, extend the Work Order period.

- 2.16 Any changes that may modify the scope of services authorized in a Work Order must be enacted by a written Supplemental Work Order. Contractor shall allow adequate time for the Authority to review and approve any request for a time extension prior to expiration of the Work Order. If the change in scope affects the amount payable under the Work Order, Contractor shall prepare a revised Work Order budget for Authority's consideration.
- 2.17 In the event Contractor does not complete the services authorized in a Work Order before the specified completion date and has not requested a Supplemental Work Order, the Work Order shall terminate on the completion date. At the sole discretion of the Authority, the Authority may issue a new Work Order to Contractor for the incomplete work using the unexpended balance of the preceding Work Order for the project. If approved by the Authority, Contractor may calculate any additional cost for the incomplete work using the rates set forth *Exhibit A*.
- 2.18 The Authority, at its sole discretion, may accept Contractor's signature on a faxed copy of the Work Order as satisfying the requirements for executing the Work Order, provided that the signed original is received by the Authority within five business days from the date on the faxed copy. Any payments owed to Contractor by the Authority shall not be processed until the requirements of this Section have been fulfilled by Contractor.
- 2.19 Upon satisfactory completion of the Work Order as determined by the Authority, Contractor shall submit the deliverables as specified in the executed Work Order to the Authority for review and acceptance.

SECTION III TERM OF PERFORMANCE

- 3.01 This Agreement shall become effective upon execution of the last party.
- 3.02 Services described under written work order shall be completed in accordance with the schedules provided in said work order or within such additional time as may be extended in writing by the Authority.
- 3.03 Any services provided by Contractor or any costs incurred by Contractor before issuance of a work order or after the expiration of a work order shall be ineligible for payment or reimbursement.

SECTION IV TERMINATION

- 4.01 The Authority may terminate this Agreement at any time by providing thirty (30) days written notice to Contractor.
- 4.02 Upon receipt of such termination 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.

- 4.03 Within thirty (30) days after receipt of notice of termination, Contractor shall submit a statement, describing in detail the services performed under this Agreement to the date of termination.
- 4.04 The Authority shall then pay Contractor that proportion of the services actually performed under this, less such payments as a result of charges as have been previously made.
- 4.05 Copies of all completed or partially completed designs, drawings, documents, electronic data files and specifications and reports and/or documents of any kind prepared under this Agreement shall be delivered to The Authority when and if this Agreement is terminated in the manner and for the purposes provided in this Agreement.

SECTION V INSPECTIONS OF CONTRACTOR'S BOOKS AND RECORDS

Contractor shall permit the Authority, or any duly authorized agent of the Authority, to inspect and examine all books and records of Contractor for the purpose of verifying the amount of work performed on the Project by Contractor. The Authority's right to inspect survives the termination of this Agreement for a period of four (4) years.

SECTION VI OWNERSHIP AND REUSE OF DOCUMENTS

- 6.01 All documents, including original drawings, electronic files, correspondence, estimates, specifications, field notes, and data created, produced, developed or prepared by Contractor or its approved outside advisory or support consultants (collectively, the "Documents") shall be the property of the Authority.
- 6.02 The Authority shall not be entitled to any Documents not deemed "final" by Contractor until termination of this Agreement.
- 6.03 Contractor shall deliver all Documents to the Authority within thirty (30) days of the termination of this Agreement and may retain a set of reproducible record copies of the documents, provided that Contractor has received full compensation due pursuant to the terms of this Agreement. The Authority shall use the Documents solely in connection with the Project and for no other purposes, except with the express written consent of Contractor, which consent will not be unreasonably withheld. Any use of the Documents without the express written consent of Contractor will be at the Authority's sole risk and without liability or legal exposure to Contractor.
- 6.04 The Authority shall also be the owner of all intellectual property rights of the services rendered hereunder, including all rights of copyright therein. The Authority and Contractor agree that the services provided are a "work for hire" as the term is used in the federal Copyright Act. Moreover, Contractor's worldwide right, title and interest in and to such work product and all rights of copyright therein.
- 6.05 Any trademarks, trade names, service marks, logos, or copyrighted materials of the Authority are permitted only for use in connection with the services and shall not be used without Authority's consent and shall remain in the sole and exclusive properties of the Authority.

SECTION VII
PERSONNEL, EQUIPMENT, AND MATERIAL

- 7.01 Contractor represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the professional services required under this Agreement. Contractor shall furnish and maintain, at its own expense, adequate and sufficient personnel and equipment to perform the professional services when and as required and without delays.
- 7.02 The Authority will approve assignment and release of all key Contractor personnel and Contractor shall submit written notification of all key Contractor personnel changes for the Authority's approval prior to the implementation of such changes.
- 7.03 All employees of Contractor shall have such knowledge and experience as will enable them to perform the duties assigned to them to the standard stated in this Agreement. Any employee of the Contractor who, in the opinion of the Authority, is incompetent or by his/her conduct becomes detrimental to the Project shall, upon request of the Authority, immediately be removed from association with the Project.
- 7.04 Except as otherwise specified herein, Contractor shall furnish all equipment, transportation, supplies, and materials required to provide all services subject to this Agreement.

SECTION VIII
CONTRACTOR'S INSURANCE REQUIREMENTS

- 8.01 Contractor shall obtain and maintain, throughout the term of the Agreement, insurance of the types and in the minimum amounts set forth below.
- 8.02 Contractor shall furnish certificates of insurance to the Authority evidencing compliance with the insurance requirements hereof. Certificates shall indicate name of Contractor, name of insurance company, policy number, term of coverage and limits of coverage. Contractor shall cause its insurance companies to provide the Authority with at least 30 days prior written notice of any reduction in the limit of liability by endorsement of the policy, cancellation or non-renewal of the insurance coverage required under this Agreement. Contractor shall obtain such insurance from such companies having Bests rating of A- 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:
- A. Workers' Compensation insurance in accordance with the laws of the State of Texas, or state or hire/location of Services, and Employers' Liability coverage with a limit of not less than \$500,000 each employee for Occupational Disease, \$500,000 policy limit for Occupational Disease; and Employer's Liability of \$500,000 each accident.
 - B. Commercial General Liability insurance including coverage for Products/Completed Operations, Blanket Contractual, Contractors' Protective Liability Broad Form Property Damage, Personal Injury/Advertising Liability, and Bodily Injury and Property Damage with limits of not less than:

\$1,000,000	general aggregate limit
\$325,000	each occurrence, combined single limit
\$325,000	aggregate Products, combined single limit
\$325,000	aggregate Personal Injury/Advertising Liability
\$50,000	Fire Legal Liability
\$5,000	Premises Medical

C. Business Automobile Liability coverage applying to owned, non-owned and hired automobiles with limits not less than \$300,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.

D. Excess/Umbrella Liability insurance with limits not less than \$1,000,000 each claim/annual aggregate.

8.03 The Authority shall be named as an additional insured on all coverage required above with the exception of Workers Compensation Insurance, Employers Liability Insurance and Professional Liability Insurance. The Workers Compensation Insurance written on behalf of Contractor shall contain a waiver of subrogation in favor of the Authority.

SECTION IX INDEMNIFICATION

9.01 CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD THE AUTHORITY HARMLESS FROM EACH AND EVERY CLAIM, DEMAND, SUIT, ACTION, PROCEEDING, LIEN OR JUDGMENT CAUSED BY OR ARISING OUT OF, DIRECTLY OR INDIRECTLY, OR IN CONNECTION WITH THE NEGLIGENT ACTS AND OMISSIONS OF CONTRACTOR PURSUANT TO THIS AGREEMENT.

9.02 Contractor shall timely report all such matters to the Authority and shall, upon the receipt of any such claim, demand, suit, action, proceeding, lien or judgment, not later than the fifteenth day of each month, provide the Authority with a written report on each such matter covered by this paragraph and by Section 9.03 below, setting forth the status of each matter, the schedule or planned proceedings with respect to each matter and the cooperation or assistance, if any, of the Authority required by Contractor in the defense of each matter.

9.03 The Authority shall timely forward to Contractor copies of any and all claims, demands, suits, actions, proceedings or judgments which it may receive and which it may contend is covered by this section. Thereafter, the Authority shall fully cooperate with Contractor in its defense of each such matter.

9.04 CONTRACTOR'S DUTY TO DEFEND INDEMNIFY AND HOLD THE AUTHORITY HARMLESS SHALL BE ABSOLUTE. IT SHALL NOT ABATE OR END BY REASON OF THE EXPIRATION OR TERMINATION OF THIS AGREEMENT UNLESS OTHERWISE AGREED BY THE AUTHORITY IN WRITING. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE TERMINATION OF THE AGREEMENT AND SHALL REMAIN IN FULL FORCE AND EFFECT WITH RESPECT TO ALL SUCH MATTERS NO MATTER WHEN THEY ARISE.

- 9.05 In the event of any dispute between the parties as to whether a claim, demand, suit, action, proceeding, lien or judgment appears to have been caused by or appears to have arisen out of or in connection with acts or omissions of Contractor, Contractor shall nevertheless fully defend such claim, demand, suit, action, proceeding, lien or judgment until and unless there is a determination by a court of competent jurisdiction that the acts and omissions of Contractor are not at issue in the matter. In such event, the Authority shall promptly reimburse Contractor for its costs of defense.
- 9.06 In the event that any such matter being so defended by Contractor also involves any claim of negligence or wrongful action by the Authority, the Authority shall have the obligation to participate in the defense of the matter through separate counsel.
- 9.07 Contractor shall have full authority to resolve all matters being defended by it providing such settlement(s) shall not involve any findings adverse to the Authority and shall not involve or require any payments or contributions by the Authority.
- 9.08 In the event of any final judicial determination or award of any matter covered by this section, the Authority shall be responsible to third parties, pro rata, for any negligence determined to have been caused by the Authority.
- 9.09 Contractor's indemnification shall cover, and Contractor shall indemnify the Authority, in the manner provided for and to the extent described above, in the event the Authority is found to have been negligent for having selected Contractor to perform the work described in this Agreement.
- 9.10 The provision by Contractor of insurance shall not limit the liability of Contractor under this Agreement.
- 9.11 The Authority shall be exempt from and in no way liable for any sums of money which may represent a deductible in any insurance policy. The payment of deductibles shall be the sole responsibility of Contractor providing such insurance.

SECTION X DISPUTE RESOLUTION

- 10.01 In the event of a dispute related to the breach of this Agreement that cannot be settled through negotiation, the Authority and Contractor agree to submit the dispute to mediation.
- 10.02 In the event the Authority or Contractor mediate any dispute, that party shall notify the other party in writing of the dispute desired to be mediated. If the parties are unable to resolve their differences within 10 days of the receipt of such notice, such dispute shall be submitted for mediation.
- 10.03 All expenses associated with mediation shall be shared 50 percent (50%) by each party.
- 10.04 The requirement to seek mediation shall be a condition required before filing an action at law or in equity.

SECTION XI NOTICE

- 11.01 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 Authority or Contractor at the addresses set forth below.
- 11.02 If mailed, any notice or communication shall be deemed to be received three days after the date of deposit in the United States Mail.
- 11.03 Unless otherwise provided in this Agreement, all notices shall be delivered to the following addresses:
- A. If to Contractor:
- Integra Realty Resources - Houston
David R. Dominy, Managing Director
5 Riverway, Suite 200
Houston, Texas 77056
- B. If to the Authority notice must be sent to the Authority Project Manager:
- The Muller Law Group
Attn: Richard Muller, Jr.
16555 Southwest Freeway, Suite 200
Sugar Land, Texas 77479
- 11.04 Either party may designate a different address by giving the other party ten (10) days written notice.

SECTION XII REPORTS OF ACCIDENTS

- 12.01 Within 24 hours after the occurrence of any accident or other event which results in, or might result in, injury to the person or property of any third person (other than an employee of Contractor), Contractor shall send a written report of such accident or other event or the Authority, setting forth a full and concise statement of the facts pertaining thereto.
- 12.02 Contractor shall also immediately send the Authority a copy of any summons, subpoena, notice, and other documents served upon Contractor, its agents, employees, or representatives, or received by it or them, in connection with any matter before any court arising in any manner from Contractor's performance of work under this Agreement.

SECTION XIII LIMITATIONS

Notwithstanding anything herein to the contrary, all covenants and obligations of the Authority under this Agreement shall be deemed to be valid covenants and obligations only to extent authorized by the act creating the Authority and permitted by the laws and the Constitution of the

State of Texas. This Agreement shall be governed by the laws of the State of Texas, and no officer, director, or employee of the Authority shall have any personal obligation hereunder.

SECTION XIV LIMIT OF APPROPRIATION

- 14.01 Prior to the execution of this Agreement, Contractor has been advised by the Authority, and Contractor clearly understands and agrees, such understanding and agreement being of the absolute essence to this Agreement, that the Authority shall have available the total maximum sum of \$15,000.00, including reimbursable expenses, if any, specifically allocated to fully discharge any and all liabilities which may be incurred by the Authority under this Agreement for multiple projects.
- 14.02 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 hereunder and the total maximum sum that the Authority shall become liable to pay to Contractor hereunder shall not under any conditions, circumstances or interpretations thereof exceed the sum of \$15,000.00 for described scope of services in all executed work orders.

SECTION XV SUCCESSORS AND ASSIGNS

- 15.01 The Authority 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.
- 15.02 Neither the Authority nor Contractor shall assign, sublet or transfer its interest in this Agreement without the prior written consent of the other.

SECTION XVI PUBLIC CONTACT

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

SECTION XVII 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.

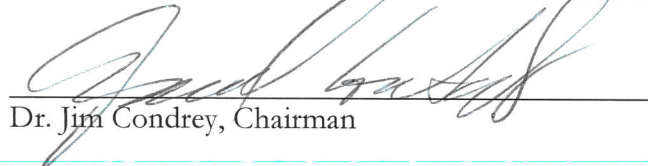
SECTION XVIII
MISCELLANEOUS

- 18.01 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.
- 18.02 Nothing contained in this Agreement shall create any rights or obligations in any party who is not a signatory to this Agreement.
- 18.03 Contractor agrees and understands that by law, the Muller Law Group, PLLC, the Authority's attorney, may only advise or approve contracts or legal documents on behalf of its clients; the Muller Law Group, PLLC may not advise or approve a contract or other legal document on behalf of any other party not its client; the Muller Law Group, PLLC has reviewed this document solely from the legal perspective of its client; the approval of this document by the Muller Law Group, PLLC 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.
- 18.04 The captions of subtitle of the several sections and divisions of this Agreement constitute no part of the content hereof, but are only labels to assist in locating and reading the provisions hereof.
- 18.05 This Agreement shall be governed and construed in accordance with the laws of the State of Texas. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all disputes arising hereunder and waive the right to sue or be sued elsewhere.
- 18.06 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, Contractor shall furnish the Authority with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

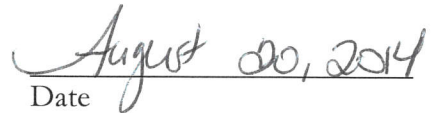
SECTION XIX
EXECUTION

This Agreement shall become effective upon execution by the Authority.

FORT BEND COUNTY TOLL ROAD AUTHORITY:




Dr. Jim Condrey, Chairman



Date

CONTRACTOR: INTEGRA REALTY RESOURCES – HOUSTON



David R. Dominy, Principal

9/3/14

Date

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$15,000.00 to accomplish and pay the obligation of the Authority under this contract.



Robert Sturdivant, County Auditor

EXHIBIT A

Report on economic impact of an overpass at the Fort Bend Parkway/State Highway 6 intersection on existing businesses located at that intersection as compare to economic impact of an underpass on those businesses.

4826-2911-0044, v. 1