

### THIRD ADDENDUM TO RIGHT OF WAY SERVICES AGREEMENT

The County of Fort Bend, Texas ("COUNTY") and Fox & Bubela, Inc. ("CONTRACTOR") entered into a Right of Way Services Agreement (hereinafter "AGREEMENT" and incorporated as if fully set forth, Exhibit "A") effective September 12, 2006.

COUNTY desires to utilize CONTRACTOR to continue providing right of way and related technical services ("SERVICES") as outlined in the original agreement.

COUNTY and CONTRACTOR do hereby mutually agree as follow:

- 1) The maximum amount payable under this Third Addendum to Right of Way Services Agreement will be increased by \$100,000, from the present maximum amount of \$300,000 for a total of \$400,000. Attached hereto and incorporated herein as Exhibits to the Third Addendum are the Original Enumerated Property Appraisal Services Agreement dated September 6, 2006, Exhibit "A"; the Addendum to Right of Way Services Agreement dated March 19, 2007, Exhibit "B"; and Addendum to Right of Way Services Agreement dated May 20, 2008, Exhibit "C".
- 2) SERVICES performed under this addendum will be related to acquisition and appraisal cost on FM 1464, FM 359, Ransom Road, Harlem Road and any other projects assigned by the Fort Bend County Engineer.

This ADDENDUM shall become part of the original AGREEMENT and said AGREEMENT remains in full force and effect. The revisions listed above replace only items in conflict.

In Witness Whereof, the Parties hereto have executed this ADDENDUM effective as of the day and year last executed below.

**FORT BEND COUNTY**

By: Grady Prestage

Grady Prestage, Commissioner Precinct 2  
Presiding Officer, Commissioners Court, March 23, 2010  
Date: 3-23-2010

ATTEST:

Dianne Wilson

Dianne Wilson, County Clerk

**CONTRACTOR**

By: John E. Fox

John E. Fox, President

Date: 3/17/10

#### AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$100,000 to pay the additional obligation of Fort Bend County under and within the foregoing Addendum.

Robert Ed Sturdivant

Robert Ed Sturdivant, Auditor

## **ENUMERATED PROPERTY APPRAISAL SERVICES AGREEMENT**

This Services Agreement ("Agreement") is entered into by and between the County of Fort Bend, Texas ("COUNTY"), and Fox and Bubela, Inc. ("Contractor"). The County and Contractor are hereinafter sometimes referred to individually as a "Party" and collectively as the "Parties".

### **WITNESSETH**

In consideration of their mutual covenants hereunder, the Parties agree as follows:

1. **Contract Period and Scope of Services.** The County may from time to time, either during or after the Initial Services are rendered, request that Contractor perform Professional Appraisal and related technical services (the "Services"). Each request shall be made in the form of a written "authorization letter" or "job order" that refers specifically to this Agreement and describes with particularity the Services being requested and the time for performance. The Services to be provided may include, among others, those set forth in "Services to be Provided" attached hereto as Exhibit A. Authorizations or job orders will be issued for a period not to exceed two (2) years after the effective date of this Agreement and may subsequently be renewed upon mutual written agreement of the Parties.

2. **Performance of Services.** After accepting a request for Services, Contractor will perform the Services as an independent contractor. County agrees to provide Contractor with such information, data and criteria as may be required from time to time by Contractor to perform the Services efficiently and in accordance with this Agreement.

3. **Compensation and Charges for Services.** The maximum amount payable under this Agreement, including the amount specified in Section 1, **Initial Services**, unless otherwise modified, is *One Hundred Thousand Dollars (\$100,000)*. Charges for services will be made in accordance with the Schedule of Rates and Expense Reimbursements attached hereto as Exhibit B. Contractor shall invoice monthly for Services performed and payment shall be made by County within thirty (30) days of receipt of invoice. Any additional work that may be required over and above \$100,000 must receive prior approval by Fort Bend County Commissioners Court. Contractor shall maintain such books and records as may be reasonably required to substantiate charges invoiced under this Agreement.

4. **Confidential Information.** All confidential data and information acquired by Contractor from the County during the performance of Services shall be kept confidential and shall not be disclosed by Contractor to third parties without the written consent of County, unless Contractor is required by law or court order to make disclosure. Data and information obtained by Contractor in the ordinary course of its business, or which is in the public domain through no wrongful act of Contractor shall not be considered confidential.

5. **Ownership of Work Product.** All reports, records, and other electronic files, sketches, working drawings and other tangible evidence of Contractor's work product prepared hereunder for County shall be the property of County. Contractor may retain a record copy of its work product. The County does not agree to indemnify and hold harmless Contractor from liability arising from use by County of Contractor's work product on projects, which were not the subject of a request for Services under this Agreement.

EXHIBIT

A

6. **Indemnification** . Contractor shall indemnify and hold harmless County and its affiliates, and the directors, officers, shareholders, employees and agents thereof, from and against liability loss, damage or expense, including reasonable attorney's fees and costs, to the extent such liability loss, damage or expense is directly attributable to the negligence of Contractor in performing the Services. The indemnified party shall promptly advise the other in writing of any claims, which could give rise to a right of indemnification under this Paragraph 6. The indemnified Party shall have the right, at its expense, to participate in the defense of such claim.

7. **Excluded Services** . The Parties acknowledge and agree that Contractor shall not supervise, direct or control County's other contractors or subcontractors at any tier ("County's Contractors"), nor shall Contractor have authority over or responsibility for: (a) the means, methods, techniques or sequences of work process or other work performed; (b) jobsite safety or enforcement of federal, state, local or other safety requirements in connection with the work performed; (c) any failure to comply with applicable laws, rules, regulations, ordinances, codes, permits or orders; or (d) any actions or omissions, including their failure to perform in accordance with their contractual responsibilities, by the County's Contractors.

8. **Force Majeure** . Except for the payment of money when due, should either Party be unable, in whole or in part, to perform its obligations under this Agreement by reason of force majeure, such Party shall be excused from performance to the extent it is affected by such force majeure. The Party affected by force majeure shall endeavor to remedy the impediment to its performance with all reasonable dispatch. The term "force majeure" shall mean any cause beyond the control of the Party claiming force majeure and which, despite the exercise of due diligence, such Party is unable to prevent or overcome.

9. **Insurance** . Contractor shall carry, at its expense; the insurance coverages set forth in "Insurance Coverage" attached hereto as Exhibit C.

10. **Termination and Suspension**. (a) Either Party shall have the right to terminate this Agreement if the other Party materially defaults in the performance of its obligations hereunder and fails to commence steps to remedy such default within fifteen (15) days after written notice thereof. County shall also have the right to terminate this Agreement for its own convenience upon thirty (30) days written notice to Contractor. In the event of termination, Contractor shall be paid for all (i) Services rendered up to the termination date and (ii) in cases where the termination is not due to the default of Contractor, costs incurred by Contractor for an orderly discontinuance of Services. All partially completed work product shall be delivered to County after termination and payment therefore. This Agreement shall terminate two (2) years after the effective date of the Agreement.

(b) County may suspend performance of the Services provided that it issues to Contractor a written suspension notice, which includes an undertaking by the County to adjust the price and/or the performance schedule for the impact of the suspension.

11. **Adjustments**. In the event of: (a) changes or additions to the scope of Services requested; or (b) delays in the performance of Services by reason of force majeure, charges and/or performance schedules shall, if appropriate, be adjusted. Upon the occurrence of any change, addition or delay, Contractor shall, as soon as practicable, propose to the County for consideration and mutual agreement, an adjustment to charges and/or performance schedules.

12. **Warranty.** Contractor warrants that the Services shall be performed with that degree of skill and judgment normally exercised by professional property appraisal firms performing services of a similar nature. At all times hereto, Contractor 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 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 one (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.

13. **Notices.** Any notices or communications required or permitted to be given hereunder shall be given in writing by delivery in person or by first class mail addressed to the Party, postage prepaid, or by facsimile at the following addresses or such other address(es) as a Party may from time to time designate in writing:

**If to County:**

Robert E. Hebert  
Fort Bend County Judge  
309 South Fourth St., Suite 719  
Richmond, Texas 77469  
Telephone: 281-341-8608  
Facsimile: 281-341-8609

**If to Contractor:**

Fox & Bubela, Inc.  
7600 W. Tidwell, Suite 810  
Houston, Texas 77040  
Telephone: 713-460-9709  
Facsimile: 713-460-1362  
Attention: John Fox

**with copy to:** Fort Bend County Engineering  
1124-52 Blume Rd.  
Rosenberg, TX 77471-1149  
Telephone: (281) 633-7507  
Facsimile: (281) 342-7366  
Attention: D. Jesse Hegemier, P.E.

Notices delivered in person shall be effective upon delivery. Notices sent by mail shall be effective on the third day after being so mailed. Notices sent by facsimile shall be effective on the day following transmission.

14. **Assignments and Subcontracts.** This Agreement shall inure to the benefit of and be binding upon Parties and their successors and permitted assigns. Neither Party shall assign all or any part of this Agreement, except to an affiliate, without the prior written consent of the other Party. Contractor shall obtain the consent of County before subcontracting any component of the Services, such consent not to be unreasonably withheld by County.

15. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Texas, excluding any conflict of law or other provision referencing the laws of another jurisdiction. The County and Contractor each hereby submit to the exclusive jurisdiction of the federal and state courts located in Fort Bend County, Texas and agree that services of process may be effected upon them by delivery in accordance with Paragraph 13. Venue shall be proper only in Fort Bend County for State Causes of Action and The Southern District of Texas, Houston District for Federal Causes of Action.

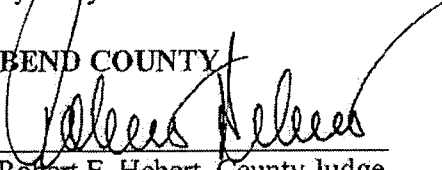
16. **Severability.** In the event any portion of this Agreement is held to be unenforceable or invalid, the validity and enforceability of the remainder of this Agreement shall be unaffected.

17. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof, and supersedes all previous bids, proposals, contracts, understandings and other agreements between the Parties. This Agreement may not be amended except in writing signed by both Parties. In the event of a conflict between this Agreement and any "job order" or "authorization letter" issued in connection herewith, the provisions of this Agreement shall prevail.

In Witness Whereof, the Parties hereto have executed this Agreement effective as of the day and year last executed below.

FORT BEND COUNTY

By:

  
Robert E. Hebert, County Judge

Date:

9-12-06

ATTEST:

  
Dianne Wilson, Ph.D., County Clerk

FOX & BUBELA, INC.

By:

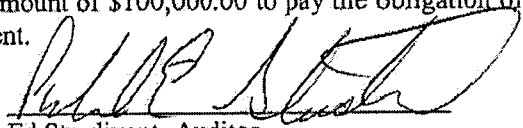
  
Title: President

Date:

9/6/06

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$100,000.00 to pay the obligation of Fort Bend County under and within the foregoing Agreement.

  
Ed Sturdivant, Auditor

## **Exhibit A**

### **Services to be Provided**

The Services to be provided under this Agreement shall be those requested by the County and accepted by Contractor in accordance with Paragraphs 1 and 2 of this Agreement. These Services may include, but are not limited to; Land Appraisal, Summary Reports, Title Abstracting; Survey permission and notification; Land Surveys and Mapping; Land Damage Settlement; Expert Witness Testimony; Bid Package Preparation and Related Consulting Services.

## **Exhibit B**

### **Schedule of Rates and Expense Reimbursements**

The rates and reimbursements set forth in this Exhibit B are subject to annual adjustment by Contractor provided Contractor gives the County a minimum of sixty (60) days written notice of any such adjustment.

The Hourly Rate Schedule is based on a per hour basis respectively. Consultant will be paid at the rates per service or employee shown below. The County will reimburse Consultant for actual, project-related expenses at the rates set forth below.

Consultant will submit monthly invoices for services provided through the last day of each month to the County, accompanied by an explanation of charges, professional fees, services, and expenses. County will pay such invoices according to its normal payment procedures.

Fee Schedules for appraisals regarding right-of-way acquisitions vary as to property type. The typical fees range from \$1,800 to \$3,500 per parcel. This would include assignments ranging from vacant land to improved commercial and industrial sites. Appraisal reviews are typically \$400 to \$600 per parcel.

#### **HOURLY RATE SCHEDULE**

Principals – John Fox and Mike Bubela	\$150.00/hr.*
Staff Appraisers	\$ 75.00/hr.

All hourly rate classifications may not be necessary on every project.

\* This includes preparation for and testimony at hearings/trials as an expert witness.

#### **REIMBURSABLE PROJECT EXPENSES**

#### **MISCELLANEOUS PROJECT RELATED EXPENSES**

- a) Reproduction, duplicating and blueprinting service
- b) Other expenses authorized by the County in the performance of the Scope of Services.

## Exhibit C

### Insurance Coverage

Contractor shall carry the following minimum insurance coverage:

- (a) Workers' Compensation and Employers' Liability Insurance in accordance with statutory requirements; provided that the minimum limits of employers' liability insurance shall not be less than \$100,000 per accident, \$500,000 for disease and \$100,000 for each employee.
- (b) Commercial General Liability Insurance with limits not less than \$1,000,000 per occurrence for bodily injury and property damage combined.
- (c) Comprehensive Automobile Liability Insurance with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage combined and covering owned hired and non-owned vehicles utilized in connection with Services performed.
- (d) Errors & Omissions Insurance, with limits of not less than \$1,000,000 per each claim under the policy.

**ADDENDUM TO RIGHT OF WAY SERVICES AGREEMENT**

The County of Fort Bend, Texas ("COUNTY") and Fox & Bubela, Inc. ("CONTRACTOR") entered into a Right of Way Services Agreement (hereinafter "AGREEMENT" and incorporated as if fully set forth) effective September 12, 2006.

COUNTY desires to utilize CONTRACTOR to continue providing right of way and related technical services ("SERVICES") as outlined in the original agreement.


COUNTY and CONTRACTOR do hereby mutually agree as follows:

- 1) The maximum amount payable under the AGREEMENT will be increased from \$100,000 to \$175,000.
- 2) SERVICES performed under this addendum will be related to acquisition and appraisal cost on FM 1464, FM 359, Ransom Road, Harlem Road and any other projects assigned by the Fort Bend County Engineer.

This ADDENDUM shall become part of the original AGREEMENT and said AGREEMENT remains in full force and effect. The revisions listed above replace only items in conflict.

In Witness Whereof, the Parties hereto have executed this ADDENDUM effective as of the day and year last executed below.

**FORT BEND COUNTY**

By:   
Robert E. Hebert, County Judge

Date: 3.27.07

**CONTRACTOR**

By:   
John E. Fox, President

Date: 3/19/07

ATTEST:

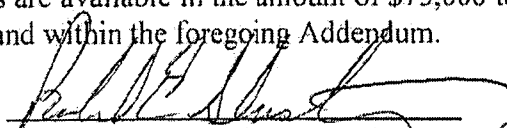


Dianne Wilson, County Clerk

Attachment: Right of Way Services Agreement dated September 12, 2006.

**AUDITOR'S CERTIFICATE**

I hereby certify that funds are available in the amount of \$75,000 to pay the obligation of Fort Bend County under and within the foregoing Addendum.

  
Robert Ed Sturdivant, Auditor

**EXHIBIT**

**B**

### ADDENDUM TO RIGHT OF WAY SERVICES AGREEMENT

The County of Fort Bend, Texas ("COUNTY") and Fox & Bubela, Inc. ("CONTRACTOR") entered into a Right of Way Services Agreement (hereinafter "AGREEMENT" and incorporated as if fully set forth) effective September 12, 2006.

COUNTY desires to utilize CONTRACTOR to continue providing right of way and related technical services ("SERVICES") as outlined in the original agreement.

COUNTY and CONTRACTOR do hereby mutually agree as follows:

- 1) The maximum amount payable under the AGREEMENT will be increased from \$100,000 to \$175,000, with an additional \$125,000 for a total of \$300,000.
- 2) SERVICES performed under this addendum will be related to acquisition and appraisal cost on FM 1464, FM 359, Ransom Road, Harlem Road and any other projects assigned by the Fort Bend County Engineer.

This ADDENDUM shall become part of the original AGREEMENT and said AGREEMENT remains in full force and effect. The revisions listed above replace only items in conflict.

In Witness Whereof, the Parties hereto have executed this ADDENDUM effective as of the day and year last executed below.

**FORT BEND COUNTY**

By:   
Robert E. Hebert, County Judge


Date: May 20 2008

**CONTRACTOR**

By:   
John E. Fox, President

Date: 5/6/08

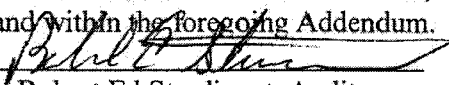
ATTEST:

  
Dianne Wilson, County Clerk

Attachment: Right of Way Services Agreement dated September 12, 2006

### AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$125,000 to pay the obligation of Fort Bend County under and within the foregoing Addendum.

  
Robert Ed Sturdivant, Auditor

EXHIBIT

C