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ARF-2858

REGULAR SESSION AGENDA

Engineering

Date: 02/08/2011

Professional Appraisal Services Agreement

Submitted By: Amy Svatek, County Attorney

AGENDA ITEM

Department: Engineering

25 A

Type of Item: Consent

Renewal Agreement/ No

Appointment:

Reviewed by County Yes

Attorney's Office:

Multiple Originals n

Y/N?:

Information

SUMMARY OF ITEM

Take all appropriate action to approve the Professional Appraisal Services Agreement between Fort Bend County and Integra Realty Resources - Houston LLC regarding the FM 1093 Project in an amount not to exceed \$75,000.00, Precinct 3. (Fund: Right of Way)

SPECIAL HANDLING

Please return to Amy in County Attorney's Office *orig. ret. 2-15-11*

Attachments

Link: [Appraisal Agreement](#)

STATE OF TEXAS

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§

COUNTY OF FORT BEND

**PROFESSIONAL APPRAISAL SERVICES
AGREEMENT – FM 1093 PROJECT**

THIS AGREEMENT is made and entered into by and between FORT BEND COUNTY, TEXAS, a public body corporate and politic of the State of Texas, acting herein by and through the Fort Bend County Commissioners Court (hereinafter referred to as “County”) and INTEGRA REALTY RESOURCES – HOUSTON LLC, (hereinafter referred to as “Appraiser”) authorized to conduct business in the State of Texas.

WITNESSETH:

WHEREAS, County proposes to expand FM 1093, located in Fort Bend County, Texas, herinafter referred to as the “Initial Services;” and,

WHEREAS, County desires to enter into this Agreement for the performance by Appraiser of professional services related to the “Initial Services”; and,

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

WHEREAS, County has determined that this Agreement serves a public purpose.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth below, 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 *Seventy-five Thousand Dollars (\$75,000)*. 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 \$75,000 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.

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 to 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(ees) as a Party may from time to time designate in writing:

If to County:

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

If to Contractor:

Integra Realty Resources – Houston, LLC
718 Westheimer, Suite 1100
Houston, Texas 77057
Telephone: 713-243-3300
Facsimile: 713-243-3301
Attention: David Dominy

with copy to:

Fort Bend County Engineering
1124-52 Blume Rd.
Rosenberg, TX 77471
Telephone: (281) 633-7500
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.

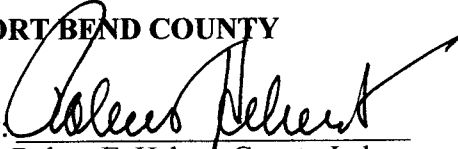
16. **Severability.** In the event any portion of this Agreement is held to be unenforceable or invalid, the validity and enforceability of the remainder of this Agreement shall be unaffected.

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.


REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

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

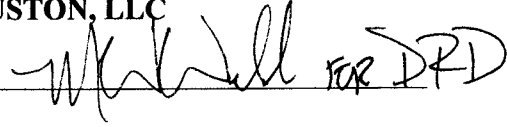
FORT BEND COUNTY

By: 
Robert E. Hebert, County Judge

Date: 2-8-2011

ATTEST: 
Dianne Wilson, County Clerk

INTEGRA REALTY RESOURCES - HOUSTON, LLC

By:  FOR DRD

Title: PARMER

Date: 1-31-2010

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$75,000.00 to pay the obligation of Fort Bend County under and within the foregoing Agreement.


Ed Sturdivant, Auditor

Attachments:

- Exhibit A: Services to be Provided
- Exhibit B: Schedule of Rates and Expense Reimbursements
- Exhibit C: Insurance Coverage

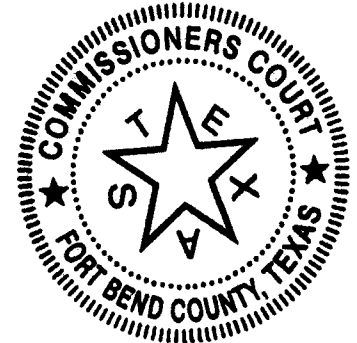


Exhibit A

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



November 16, 2010

Integra Realty Resources - Houston (Consultant) appreciates the opportunity to provide counseling services.

The following rate schedule will apply to work performed for said services:

Managing Director	\$ 250 per hour
Director	\$ 250 per hour
Associate Director	\$ 225 per hour
Senior Analyst	\$ 150 per hour
Analyst	\$ 100 per hour
Research Assistant	\$ 75 per hour
Clerical	\$ 50 per hour

Due to the difficulty associated with accurately forecasting the number of hours which may be required with the research, hearing and/or trial preparation, deposition time, client/expert conferences, etc., we will maintain contemporaneous time and expense records and will provide you invoices on a 30 day billing cycle. Client agrees to pay Consultant at time invoice is submitted and acknowledges payment to Consultant is not contingent upon any set outcome or hearing or trial result or award or timing of payment of same to Client.

Unless arrangements are made otherwise, a late charge of 15% per annum, commencing thirty (30) days after the receipt of invoice will be charged on any balance not paid; however, in no event shall this delinquency rate of interest exceed the maximum rate permitted by law.

Thank you,

A handwritten signature in black ink, appearing to read "David R. Dominy".

David R. Dominy, MAI, CRE, FRICS
Managing Director

IRR.

5718 Westheimer, Suite 1100 • Houston, TX 77057 • Phone 713-243-3300 • Fax 713 243-3301
www.irr.com

Exhibit C

Insurance Coverage



CERTIFICATE OF LIABILITY INSURANCE

OP ID: RE

DATE (MM/DD/YYYY)

11/17/10

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Schifman, Remley & Assoc., Inc 5201 Johnson Drive, Suite 500 Mission, KS 66205	913-831-1777 913-831-4730	CONTACT NAME _____ PHONE (A/C, No, Ext) _____ FAX (A/C, No) _____ EMAIL ADDRESS _____ PRODUCER CUSTOMER ID # INTEG02
INSURED Integra Realty Resources Houston LLC Dominy, Ford & McPherson, Inc. 5718 Westheimer #1100 Houston, TX 77057	INSURER(S) AFFORDING COVERAGE INSURER A: National Union Fire Insurance INSURER B: _____ INSURER C: _____ INSURER D: _____ INSURER E: _____ INSURER F: _____	NAIC # 19445

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDC SUBR INSR, WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY <input type="checkbox"/> PRO, <input type="checkbox"/> ACT, <input type="checkbox"/> LOC					EACH OCCURRENCE \$ _____ DAMAGE TO RENTED PREMISES (E & OCCUR/OCM) \$ _____ MED EXP (Any one person) \$ _____ PERSONAL & ADV INJURY \$ _____ GENERAL AGGREGATE \$ _____ PRODUCTS - COMP/OP AGG \$ _____
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS					COMBINED SINGLE LIMIT (E & accident) \$ _____ BODILY INJURY (Per person) \$ _____ BODILY INJURY (Per accident) \$ _____ PROPERTY DAMAGE (Per accident) \$ _____ \$ _____ \$ _____
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DEDUCTIBLE \$ _____ RETENTION \$ _____					EACH OCCURRENCE \$ _____ AGGREGATE \$ _____ \$ _____ \$ _____
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PERSONS TO BE EMPLOYED BY THE CERTIFICATE HOLDER (MANDATORY IN NH) (If yes, describe under DESCRIPTION OF OPERATIONS BELOW)	Y/N <input type="checkbox"/> N/A <input type="checkbox"/>				WORKERS COMP/EMP'ORS' LIAB LIMITS: <input type="checkbox"/> STATE <input type="checkbox"/> FED E: EACH ACCIDENT \$ _____ F: DISEASE - EACH EMPLOYEE \$ _____ L: DISEASE - POLICY LIMIT \$ _____
A	Errors & Omission		011057443	09/14/10	12/14/10	Limit 1,000,000 Ded. 10,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

CERTIFICATE HOLDER Fort Bend County 301 Jackson St Richmond, TX 77469	CANCELLATION FTBENDC SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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ACORD 25 (2009/09)

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