



CENTRAL TEXAS REGIONAL  
**MOBILITY AUTHORITY**

## February 23, 2022 AGENDA ITEM# 8

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Discuss and consider approving contracts with Surveying And Mapping, LLC and The Rios Group, Inc. for subsurface utility engineering and utility locating services

Strategic Plan Relevance:	Regional Mobility
Department:	Engineering
Contact:	Mike Sexton, P.E., Acting Director of Engineering
Associated Costs:	Not to exceed \$300,000 per contract
Funding Source:	Operating Budget and Projects
Action Requested:	Consider and act on draft resolution

**Project Description/Background:** The Mobility Authority has historically relied on GEC subcontract mechanisms to provide on-call subsurface utility engineering (SUE) and Mobility Authority-owned utility locating services. To ensure efficiency in managing these services the Mobility Authority is pursuing the option to directly contract with two SUE/utility locating firms.

**Previous Actions & Brief History of the Program/Project:** On October 20, 2021, a Request for Qualifications (RFQ) for on-call SUE and Mobility Authority-owned utility locating services was posted utilizing the CivCast public procurement website. The RFQ documents were downloaded from CivCast by 25 engineering firms in addition to several “plan room” firms.

By the due date on November 15, 2021, the Mobility Authority received seven Statements of Qualification (SOQ), all of which were found to be in compliance with the terms of the RFQ. The three-person evaluation team met on December 8, 2021, to discuss the merits and tabulate scores for each SOQ. Based upon these actions, the evaluation committee recommended selection and contract negotiation with two firms:

- Surveying And Mapping, LLC, and
- The Rios Group, Inc.

**Financing:** N/A

**Action requested/Staff Recommendation:** Staff recommends entering into a 3-year contract with Surveying And Mapping, LLC and a 3-year contract with The Rios Group, Inc. providing subsurface utility engineering and on-call utility locating services. Under this proposed agreement, Surveying And Mapping, LLC and The Rios Group, Inc. will perform such services on CTRMA-operated roadways for an amount not to exceed \$300,000 each. Staff further recommends Board approval for the Executive Director to negotiate and execute work authorizations for these services.

**Backup provided:** Draft resolution  
Draft contracts

**GENERAL MEETING OF THE BOARD OF DIRECTORS  
OF THE  
CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY**

**RESOLUTION NO. 22-0XX**

**AWARDING CONTRACTS TO SURVEYING AND MAPPING, LLC  
AND THE RIOS GROUP INC FOR SUBSURFACE UTILITY ENGINEERING  
AND UTILITY LOCATING SERVICES**

WHEREAS, the Central Texas Regional Mobility Authority (Mobility Authority) has a need for subsurface utility engineering and utility locating services; and

WHEREAS, in order to obtain the necessary services, the Executive Director issued a Request for Qualifications (RFQ) seeking firms interested in providing these services to the Mobility Authority on October 20, 2021; and

WHEREAS, the Mobility Authority received responses to the RFQ from seven firms by the November 15, 2021 deadline; and

WHEREAS, the responses were reviewed by an evaluation committee who determined Surveying And Mapping, LLC, and The Rios Group, Inc. are the most highly qualified firms based on the evaluation and selection criteria set forth in the RFQ; and

WHEREAS, after reviewing the evaluation committee's findings, the Executive Director negotiated contracts for subsurface utility engineering and utility locating services with Surveying And Mapping, LLC and The Rios Group, Inc. which are attached hereto as Exhibit A and Exhibit B, respectively; and

WHEREAS, the Executive Director recommends that the Board approve the proposed contracts with Surveying And Mapping, LLC, and The Rios Group, Inc., each in an amount not to exceed \$300,000, and in the form or substantially the same form attached hereto as Exhibit A and Exhibit B.

NOW THEREFORE, BE IT RESOLVED that the Board of Directors hereby approves the selection of Surveying And Mapping, LLC, and The Rios Group, Inc. to provide subsurface utility engineering and utility locating services to the Mobility Authority; and

BE IT FURTHER RESOLVED that the Board approves the proposed contracts with Surveying And Mapping, LLC, and The Rios Group, Inc., each in an amount not to exceed \$300,000, and authorizes the Executive Director to finalize and execute the contracts on behalf of the Mobility Authority and in the form or substantially the same form as attached hereto as Exhibit A and Exhibit B.

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 23<sup>rd</sup> day of February 2022.

Submitted and reviewed by:

Approved:

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James M. Bass  
Executive Director

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Robert W. Jenkins, Jr.  
Chairman, Board of Directors

**Exhibit A**

*Surveying And Mapping, LLC*

# CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY

## CONTRACT FOR

### PROFESSIONAL ENGINEERING SERVICES

**THIS CONTRACT FOR PROFESSIONAL ENGINEERING SERVICES** (the “Contract”) is made by and between the Central Texas Regional Mobility Authority, 3300 N. I-35, Suite 300, Austin, Texas 78705, (the “Authority”) and Surveying And Mapping, LLC having its principal business address at 4801 Southwest Parkway, Building 2, Suite 100, Austin, Texas 78735 (the “Engineer”).

#### WITNESSETH

**WHEREAS**, the Authority desires to contract for services generally described as professional engineering services, and more specifically described in Article 1; and,

**WHEREAS**, pursuant to a qualifications-based selection conducted in accordance with the Professional Services Procurement Act (Tex. Gov’t Code Sec. 2254.001, et. seq.), and the Authority’s Policy Code regarding the procurement of professional services, the Authority has selected the Engineer to provide the needed Services; and

**WHEREAS**, the Engineer has agreed to provide the Services subject to the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, the Authority and the Engineer, in consideration of the mutual covenants and agreements herein contained, do hereby mutually agree as follows.

#### AGREEMENT

##### ARTICLE 1

##### SCOPE OF SERVICES

The Engineer will perform the Services and provide the items necessary for fulfillment of the Contract as identified in Attachment A, Services (the “Services”) to be provided by the Engineer. All Services provided by the Engineer shall comply with the terms and conditions of this Contract and any Work Authorizations issued pursuant hereto. All Services provided by the Engineer will conform to standard engineering practices and applicable rules and regulations of the Texas Engineering Practices Act and the rules of the Texas Board of Professional Engineers.

This Contract does not obligate the Authority or the Executive Director to proceed with the Services or authorize the performance of work through a Work Authorization.

**ARTICLE 2  
CONTRACT PERIOD**

This Contract becomes effective when fully executed by all parties hereto (the “Effective Date”) and it shall terminate on June 30, 2025. A Work Authorization issued prior to expiration of this Contract may remain in effect until such time as the Services authorized under that Work Authorization are complete and accepted by the Mobility Authority. No new Services may be added to a Work Authorization after the termination date of June 30, 2025.

**ARTICLE 3  
COMPENSATION**

Compensation for the performance of the Services shall be provided as follows:

**A. Maximum Amount Payable.** The total amount payable under the Contract without modification is an amount not to exceed \$300,000.

**B. Methods for Compensation.** The method for compensating Engineer for Services performed shall be specified in the Work Authorization issued pursuant to Article 5 and shall be one of the following types:

(1) Cost-Plus

Subject to the terms of a Work Authorization issued pursuant to Article 5 below (including any maximum amount to be paid as stated therein), the Authority will agree to pay, and the Engineer will agree to accept as full and sufficient compensation and reimbursement for the performance of all Services as set forth in this Contract and the Work Authorization, hourly rates for the staff working on the assignment computed as follows:

$\text{Direct Labor Cost} \times (1.0 + \text{Overhead Rate}) \times (1.0 + \text{Profit } \%, \text{ in decimal form})$

where Direct Labor Cost equals employee’s actual annual salary divided by 2080 hours per year (subject to any applicable cap); Overhead Rate equals the Engineer’s most recent auditable overhead rate under 48 C.F.R. Part 31, Federal Acquisition Regulations (FAR) or otherwise approved overhead rate pursuant to this subarticle; and Profit % reflects a ten percent (10%) profit. No increase shall be made to the specified profit percentage.

The Direct Labor Cost caps for the classifications of employees working for the Authority as of the Effective Date are reflected in Attachment B. Revisions to Direct Labor Cost caps for employee classifications and the auditable overhead rate may be proposed no more frequently than once per calendar year, and no sooner than 12 months after the Effective Date, and are subject to the written approval of the Executive Director.

Members of the Engineer’s team who perform key roles in providing the Services are identified in Attachment C, Key Team Members (the “Key Team Members”). The actual annual salaries for all Key Team Members will be set as of the Effective Date. Revisions to actual annual salaries billed to the Authority may be proposed

no more frequently than once per calendar year, and no sooner than 12 months after the Effective Date, are limited to no more than a 4% increase per year.

The Authority shall have the right to review and/or audit the Engineer's Direct Labor Costs, auditable overhead rates, and annual salaries of Key Team Members. Once approved, the range of Direct Labor Costs and auditable overhead rate will be used going forward until the next annual adjustment is requested and approved. Changes to the auditable overhead rate will not be applied retroactively to Direct Labor Costs incurred in the previous year. If the Engineer or a subconsultant of the Engineer does not have a FAR Part 31 overhead rate, the Engineer may submit alternate documentation supporting an appropriate auditable overhead rate for approval by the Executive Director. If an auditable overhead rate is not approved, fixed hourly rates must be submitted per subarticle 3.B.4 below. Prior to requesting any adjustment to its auditable overhead rate, the Engineer shall provide a copy of the report establishing a new FAR Part 31 rate for the Engineer to the Executive Director.

The payment of the hourly rates and allowed costs shall constitute full payment for all Services, liaisons, products, materials, and equipment required to deliver the Services.

#### (2) Unit Cost

Subject to the terms of a Work Authorization issued pursuant to Article 5 below (including any maximum amount to be paid as stated therein), the Authority will agree to pay the Engineer, and the Engineer will agree to accept as full and sufficient compensation and reimbursement for the performance of all Services as set forth in this Contract and the Work Authorization, an agreed upon unit price multiplied by the number of units completed for each billing. This method of payment is generally reserved for work which has a definable work product but the quantity is uncertain and the Engineer assumes the risks for all costs. Each invoice submitted shall identify the specific Contract task(s) and completed work product/deliverable for the agreed upon price outlined in the Work Authorization.

#### (3) Lump Sum

Subject to the terms of a Work Authorization issued pursuant to Article 5 below (including any maximum amount to be paid as stated therein), the Authority will agree to pay Engineer, and the Engineer will agree to accept as full and sufficient compensation and reimbursement for the performance of all Services as set forth in this Contract and the Work Authorization, a Lump Sum amount for the specified category of services.

The Lump Sum will include compensation for Engineer's services and services of subconsultants, if any. Appropriate amounts will be incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses.

The portion of the Lump Sum amount billed for Engineer's Services will be based upon Engineer's estimate, as approved by the Authority's Director of Engineering, of the proportion of the total Services completed during the billing period to the Lump Sum amount.

(4) Specified Rate

Subject to the terms of a Work Authorization issued pursuant to Article 5 below (including any maximum amount to be paid as stated therein), and for the specified category of services, the Authority will agree to pay the Engineer, and the Engineer will agree to accept as full and sufficient compensation and reimbursement for the performance of all Services as set forth in this Contract and the Work Authorization, an amount equal to the cumulative hours charged to the specific Project by each class of Engineer's employees multiplied by the Standard Hourly Rates for each applicable billing class for all Services performed on the specific Project, plus Reimbursable Expenses and sub consultant's charges, if any.

Standard Hourly Rates include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-Project operating costs, and operating margin or profit.

Engineer's Reimbursable Expenses Schedule and Standard Hourly Rates are included in Attachment B.

The total estimated compensation for the specified category of services shall be stated in the Work Authorization. This total estimated compensation will incorporate all labor at Standard Hourly Rates, Reimbursable Expenses, and sub consultants' charges, if any.

The amounts billed will be based on the cumulative hours charged to the specified category of services during the billing period by each class of Engineer's employees multiplied by the Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Engineer's sub consultant's charges, if any.

Revisions to the Standard Hourly Rates may be proposed no more frequently than once per calendar year, and no sooner than 12 months after the Effective Date, and are subject to written approval of the Executive Director.

**C. Limitations on Rates Utilized.** The Engineer represents that it shall not use an auditable overhead rate that exceeds the rate determined in accordance with FAR Part 31 (or successor regulations); the rate used shall be based on actual salary amounts for the individuals



performing the Services; and the Direct Labor Costs shall not exceed the caps in Attachment B and shall be based on actual salary amounts for the individuals performing the Services.

**D. Reimbursable Expenses.** Notwithstanding the foregoing, and subject to the limitations herein, the Engineer shall be entitled to reimbursement for the following categories of expenses: travel costs, printing costs for specified deliverables, automobile expenses, and other expenses directly approved the Executive Director (collectively, “Reimbursable Expenses”). Without prior approval by the Executive Director, the Authority shall not reimburse the Engineer for expenses associated with relocating personnel to complete the services described by this Contract. Roadway tolls incurred by the Engineer or any of its subconsultants in connection with performance of the Services will not be reimbursable under this Contract. Reimbursement shall be limited to the terms of any financial assistance or Project agreements with TxDOT or other third parties. Travel expenses will be limited to the rates published by the Texas Comptroller of Public Accounts.

Engineer acknowledges that all expenses and costs paid or reimbursed by the Authority using federal or state funds shall be paid or reimbursed in accordance with, and subject to, applicable policies of the Authority and other applicable state and federal laws, including the applicable requirements of OMB Circular A-87, which may reduce the amount of expenses and costs reimbursed to less than what was incurred.

The Engineer shall acquire all goods and services subject to the reimbursement by the Authority under this Contract on a tax-free basis pursuant to the Authority’s tax-exempt status described in subarticle 2.H. This provision applies to the extent the Authority’s tax-exempt status can reasonably be extended to purchases made directly by the Engineer.

**E. Subconsultants.** For the purposes of this Contract, a “subconsultant” is an individual or entity contracted by the Engineer to perform part of the Services. The Authority will reimburse the Engineer for the subconsultant’s fees and expenses for those Services if the Engineer provides a written description of the proposed services and the proposed price (using rates approved in Attachment B), to the Authority’s Director of Engineering before the Services are provided, and the Authority’s Director of Engineering has provided to the Engineer a written approval for the Services and the proposed price. Each invoice submitted by the subconsultant shall be in a form provided by the Authority. The Engineer may not charge a mark-up or commission on a subconsultant’s invoice, and the Authority will not reimburse the Engineer in an amount that exceeds the price proposal from the subconsultant that was approved by the Authority’s Director of Engineering.

**F. Non-compensable Time.** Time spent by the Engineer’s personnel or subconsultants in an administrative or supervisory capacity not related to the performance of the Services is not compensable and shall not be billed to the Authority. Time spent on work in excess of what would reasonably be considered appropriate under industry standards for the performance of such Services is not compensable, unless that additional time spent resulted from the Authority’s delay in providing information, materials, feedback, or other necessary

cooperation to the Engineer. The Authority will not pay any hourly compensation to the Engineer for Services or deliverables required due to an error, omission, or fault of the Engineer.

**G. Consistency of Classification/Duties and Hourly Rates.** Time spent by the Engineer's employees or subconsultants to perform services or functions capable of being carried out by other, subordinate personnel with a lower hourly rate shall be billed at a rate equivalent to that of the applicable qualified subordinate personnel.

**H. Taxes.** All payments to be made by the Authority to the Engineer pursuant to this Contract are inclusive of federal, state, or other taxes, if any, however designated, levied, or based. The Authority acknowledges and represents that it is a tax-exempt entity under Sections 151.309, et seq., of the Texas Tax Code. A "Texas Sales and Use Tax Exemption Certificate" is available from the Authority for use toward Project-related expenses upon request. Title to any consumable items purchased by the Engineer in performing this Contract shall be deemed to have passed to the Authority at the time the Engineer takes possession or earlier, and such consumable items shall immediately be marked, labeled, or physically identified as the property of the Authority, to the extent practicable.

#### **ARTICLE 4 INVOICE REQUIREMENTS**

The Engineer shall submit its monthly invoices certifying the fees charged and any Reimbursable Expenses for Services provided during the previous month and shall also present a reconciliation of monthly invoices (and related estimates) to which the work relates. Each invoice shall be in such detail as is required by the Authority and, if the work is eligible for payment through an agreement with TxDOT, in such detail as TxDOT may require, including a breakdown of Services provided on a Project-by-Project basis, together with other Services requested by the Authority. Upon request of the Authority, the Engineer shall also submit certified time and expense records directly related to Services provided to the Authority, and copies of all records that support invoiced fees and Reimbursable Expenses. All invoices must be consistent with the rates established by this Contract and the compensation method specified in the Work Authorization. Unless waived in writing by the Executive Director, or his designee no invoice may contain, and the Authority will not be required to pay, any charge for billable hours which is more than (90) days old at the time of invoicing.

**A. Form of Invoices.** The invoice shall show: (1) the Work Authorization number for each Work Authorization included in the billing; (2) the total amount earned thru the billing period; and (3) the amount due and payable as of the date of the current billing statement for each Work Authorization. The invoice shall indicate if the work has been completed or if the invoice is for partial completion of the work. The invoice shall be in the format provided by the Authority.

**B. Disadvantaged Business Enterprise (DBE)/Historically Underutilized Business (HUB) Forms.** The Engineer will be responsible for completing and including with each invoice all required DBE/HUB reporting forms included in the Work Authorization(s).

**C. Time and Place of Payment.** Upon receipt of an invoice that complies with all invoice requirements set forth in this Contract, the Authority shall make a good faith effort to

pay the undisputed amount, which is due and payable within thirty (30) days, provided that if all or a portion of the Services reflected in the invoice are to be reimbursed by TxDOT through an agreement between TxDOT and the Authority, the Authority shall make a good faith effort to pay such amounts within thirty (30) days of receipt of such payments from TxDOT. **If the Authority disputes a request for payment by the Engineer, the Authority agrees to pay any undisputed portion of the invoice when due. The basis for any such dispute must be stated in writing within thirty (30) days after the Authority's receipt of the monthly invoice.**

**D. Withholding Payments.** The Authority reserves the right to withhold payment of all or portion of the Engineer's invoice in the event of any of the following: (1) a dispute over all or part of the work performed or costs thereof is not resolved within a thirty (30) day period following receipt of the invoice; (2) verification of satisfactory work performed has not been completed; or (3) if required reports (including third-party verifications, if any) are not received.

**E. Invoice and Progress Report Submittal Process.** The protocol for invoice and progress report submittal, review, and approval will be as follows:

- (1) The invoice submittal shall include:
  - Progress report
  - Forecast for completion of the scope
  - Invoice (in the required format provided by the Authority)
  - Supporting documents as requested
- (2) A progress report shall be submitted to the Authority at least once each calendar month;
- (3) An update to the Project schedule (using critical path method analysis) indicating the Project's overall status versus the baseline schedule (originally submitted with the Project Management Plan) shall be submitted to Authority at least once each calendar month;
- (4) In the event that invoices are not submitted on a monthly basis, a monthly submittal of the progress report and Project schedule information will be required nevertheless;
- (5) The invoice submittal shall not be later than the 10<sup>th</sup> day of the month following service unless otherwise directed; if submitted after the 10<sup>th</sup> day, it will be processed the following month;
- (6) As it relates to the Authority's end of fiscal year closeout efforts, the Engineer shall submit the invoice including their services through June 30<sup>th</sup> for a given year no later than July 7<sup>th</sup> of that same year;
- (7) The Authority's Director of Engineering and/or the Authority's General Engineering Consultant (GEC) (as defined in Article 19) will review the invoices to confirm that supporting documentation is included, and for

compliance with the Contract and consistency with the submitted progress report; and

- (8) The invoice will either be recommended for approval by the Authority's Director of Engineering and/or GEC, or the Authority's Director of Engineering and/or GEC will return it to the Engineer for required correction.

**F. Effect of Payments.** No payment by the Authority shall relieve the Engineer of its obligation to perform on a timely basis the Services required under this Contract. If, prior to acceptance of any Service, product or other deliverable, the Executive Director determines that said Service, product or deliverable does not satisfy the requirements of this Contract, the Executive Director may reject same and require the Engineer to correct or cure same within a reasonable period of time and at no additional cost to the Authority.

**G. Audit.** The Authority shall have the right to examine the books and records of the Engineer. The Engineer shall maintain all books, documents, papers, accounting records and other evidence pertaining to cost incurred and shall make such materials available at its office during the Contract period and for four (4) years from the date of final payment under this Contract or until any pending litigation has been completely and fully resolved, and the Executive Director approves of the destruction of records, whichever occurs last. The Authority or any of its duly authorized representatives, TxDOT, Texas State Auditor, the Federal Highway Administration ("FHWA"), the United States Department of Transportation Office of Inspector General and the Comptroller General shall have access to any and all books, documents, papers and records of the Engineer which are directly pertinent to this Contract for the purpose of making audits, examinations, excerpts and transcriptions.

## **ARTICLE 5 WORK AUTHORIZATIONS**

**A. Use.** The Engineer shall not begin any work until the Executive Director and the Engineer have signed a Work Authorization and received a Notice to Proceed as defined in the Work Authorization. Costs incurred by the Engineer before a Work Authorization is fully executed or after the completion date specified in the Work Authorization are not eligible for reimbursement. Services performed shall be in strict accordance with the scope, schedule, and budget set forth in each Work Authorization issued pursuant to this Contract, and no Services shall be performed which are not the subject of a validly issued Work Authorization. The Executive Director will issue Work Authorizations to authorize all work under this Contract. No work shall begin on the activity until the Work Authorization is approved and fully executed. All work must be completed on or before the completion date specified in the Work Authorization.

**B. Contents.** Each Work Authorization shall include: (1) scope of Services including types of Services to be performed and a full description of the work required to perform those Services (2) a full description of general administration tasks exclusive to that Work Authorization (3) a work schedule (including beginning and ending dates) with milestones; (4) the basis of payment whether cost-plus, unit cost, lump sum, or specified rate; (5) a Work Authorization

budget as described in subarticle 5.C.; and (6) DBE/HUB Requirements. The Engineer shall not include additional contract terms and conditions in the Work Authorization.

**C. Work Authorization Budget.** A Work Authorization budget shall be prepared by the Engineer and shall set forth in detail the following: (1) the computation of the estimated cost of the work as described in the scope of Services to be provided by the Engineer; (2) the estimated time (hours/days) required to complete the work using the fees set forth in Attachment B; (3) a work plan that includes a list of the work to be performed; and (4) a maximum cost (not-to-exceed) amount or unit or lump sum cost and the total cost or price of the work as defined in the scope of Services.

**D. No Guaranteed Work.** Work Authorizations will be issued at the sole discretion of the Executive Director. While it is the Executive Director's intent to issue Work Authorizations hereunder, the Engineer shall have no cause of action conditioned upon the lack of, or number of Work Authorizations issued.

**E. Incorporation into Contract.** Each Work Authorization shall be signed by both parties and become a part of the Contract. No Work Authorization will waive the Authority's or the Engineer's responsibilities and obligations established in this Contract.

**F. Supplemental Work Authorizations.** Before additional work may be performed or additional costs incurred beyond those authorized in a Work Authorization, a change in a Work Authorization shall be enacted by a written Supplemental Work Authorization to be approved by the Executive Director. Supplemental Work Authorizations, if required, must be executed by both parties. The Executive Director shall take such time as it deems necessary, in his sole discretion, to review the Supplemental Work Authorization.

**(1) Notice.** If the Engineer is of the opinion that any assigned work is beyond the scope of a Work Authorization and constitutes additional work beyond the Services to be provided under the Work Authorization, it shall promptly notify the Executive Director and submit written justification presenting the facts of the work and demonstrating how the work constitutes supplementary work.

**(2) Changes in Scope.** Changes that would modify the scope of the work authorized in a Work Authorization must be enacted by a written Supplemental Work Authorization. If the change in scope affects the amount payable under the Work Authorization, the Engineer shall prepare a revised Work Authorization budget for the Executive Director's approval. The Executive Director shall analyze the proposed justification, work hour estimate and cost. Upon approval of the need, the Executive Director shall negotiate the Supplemental Work Authorization scope with the Engineer, and then process the final Supplemental Work Authorization, subject to final written approval by the Executive Director.

**(3) Limitation of Liability.** The Authority shall not be responsible for actions by the Engineer or any costs incurred by the Engineer relating to additional work not directly associated with (or incurred prior to) the execution of a Supplemental Work Authorization.

**G. Completion.** Upon satisfactory completion of the Work Authorization, the Engineer shall submit a letter of completion along with the final deliverables for approval of the Executive Director.

## **ARTICLE 6 PROGRESS**

**A. Progress meetings.** As required and detailed in the Work Authorizations or as otherwise directed by the Executive Director, the Engineer shall from time to time during the progress of the work confer with the Executive Director. The Engineer shall prepare and present such information as may be pertinent and necessary or as may be requested by the Executive Director in order to evaluate features of the work.

**B. Conferences.** At the request of the Executive Director and as required and detailed in the Work Authorizations, conferences shall be held at the Engineer's office, the office of the Authority, or at other locations designated by the Executive Director. These conferences may also include evaluation of the Engineer's Services and work when requested by the Executive Director.

**C. Reports.** The Engineer shall promptly advise the Executive Director in writing of events that have a significant impact upon the progress of a Work Authorization, including:

(1) problems, delays, adverse conditions that will materially affect the ability to meet the time schedules and goals, or preclude the attainment of Project work units by established time periods; this disclosure will be accompanied by a statement of the action taken or contemplated, and any Authority or state/federal assistance needed to resolve the situation; and

(2) favorable developments or events that enable meeting the work schedule goals sooner than anticipated.

**D. Corrective Action.** Should the Executive Director determine that the progress of work does not satisfy the milestone schedule (or other deadlines) set forth in a Work Authorization, the Executive Director shall review the work schedule with the Engineer to determine the nature of corrective action needed. The Executive Director's participation in reviewing the work schedule and determining corrective actions needed will not, in any way, excuse the Engineer from any responsibility or costs associated with the failure to timely perform the Services.

**E. More Time Needed.** If the Engineer determines or reasonably anticipates that the work authorized in a Work Authorization cannot be completed within the work schedule contained therein, the Engineer shall promptly notify the Executive Director and shall follow the procedure set forth in the Work Authorization. The Executive Director may, at his sole discretion, modify the work schedule to incorporate an extension of time with the execution of a Supplemental Work Authorization.

## **ARTICLE 7 SUSPENSION OF WORK AUTHORIZATION**

**A. Notice.** Should the Executive Director desire to suspend a Work Authorization (or a portion of the work authorized thereunder) but not terminate the Contract, the Executive

Director may provide written notification to the Engineer, giving ten (10) business days prior notice. Both parties may waive the ten (10) business day notice requirement in writing.

**B. Reinstatement.** All or part of a Work Authorization may be reinstated and resumed in full force and effect within thirty (30) days of receipt of written notice from the Executive Director to resume the work. Both parties may waive the thirty (30) day notice requirement in writing.

**C. Limitation of Liability.** The Authority shall have no liability for work performed or costs incurred prior to the date authorized by the Executive Director to begin work, during periods when work is suspended, or after the completion of the Contract or Work Authorization.

## **ARTICLE 8 CHANGES IN WORK**

**A. Work Previously Submitted as Satisfactory.** If the Engineer has submitted work in accordance with the terms of this Contract and Work Authorization(s) but the Executive Director requests changes to the completed work or parts thereof which involve changes to the original scope of Services or character of work under the Contract and Work Authorization(s), the Engineer shall make such revisions as requested and as directed by the Executive Director, provided the work is reflected in a Supplemental Work Authorization.

**B. Work Does Not Comply with Contract.** If the Engineer submits work that does not comply with the terms of this Contract or Work Authorization(s), the Executive Director shall instruct the Engineer to make such revision as is necessary to bring the work into compliance with the Contract or Work Authorization(s). No additional compensation shall be paid for these revisions or re-work.

## **ARTICLE 9 OWNERSHIP OF DATA**

**A. Work for Hire.** All services provided under this Contract are considered work for hire and, as such, all data, basic sketches, charts, calculations, plans, specifications, electronic files, and other documents created or collected under the terms of this Contract are the property of the Authority.

**B. Ownership of Plans.** Notwithstanding any provision in this Contract or in common law or statute to the contrary all of the plans, tracings, estimates, specifications, computer records, discs, tapes, proposals, sketches, diagrams, charts, calculations, correspondence, memoranda, survey notes, and other data and materials, and any part thereof, created, compiled or to be compiled by or on behalf of the Engineer, including all information prepared for or posted on the Authority's website and together with all materials and data furnished to it by the Authority, are and at all times shall be and remain the property of the Authority and shall not be subject to any restriction or limitation on their further use by or on behalf of the Authority. Engineer hereby assigns any and all rights and interests it may have in the foregoing to the Authority, and Engineer hereby agrees to provide reasonable cooperation as may be requested by the Authority in connection with the Authority's efforts to perfect or protect rights and interests in the foregoing; and if at any time demand be made by the Authority for any of the

above materials, records, and documents, whether after termination of this Contract or otherwise, such shall be turned over to the Authority without delay. The Authority hereby grants the Engineer a revocable license to retain and utilize the foregoing materials for the limited purpose of fulfilling Engineer's obligations under this Contract, said license to terminate and expire upon the earlier to occur of (a) the completion of Services described in this Contract or (b) the termination of this Contract, at which time the Engineer shall deliver to the Authority all such materials and documents. If the Engineer or a subconsultant desires later to use any of the data generated or obtained by it in connection with any Project or any other portion of the work product resulting from the Services, it shall secure the prior written approval of the Executive Director. The Engineer shall retain its copyright and ownership rights in its own back-office databases and computer software that are not developed for the Authority or for purposes of this Contract. Intellectual property developed, utilized, or modified in the performance of Services for which the Engineer is compensated under the terms of this Contract shall remain the property of the Authority, Engineer hereby agrees to provide reasonable cooperation as may be requested by the Authority in connection with the Authority's efforts to perfect or protect such intellectual property. The Authority retains an unrestricted license for software packages developed in whole or in part with Authority funds.

**C. Separate Assignment.** If for any reason the agreement of the Authority and the Engineer set forth in subarticle 9.B. regarding the ownership of work product and other materials is determined to be unenforceable, either in whole or in part, the Engineer hereby assigns and agrees to assign to the Authority all right, title, and interest that Engineer may have or at any time acquire in said work product and other materials, without royalty, fee or additional consideration of any sort, and without regard to whether this Contract has terminated or remains in force. The Authority hereby acknowledges, however, that all documents and other work product provided by the Engineer to the Authority and resulting from the Services performed under this Contract are intended by the Engineer solely for the use for which they were originally prepared. Notwithstanding anything contained herein to the contrary, the Engineer shall have no liability for the use by the Authority of any work product generated by the Engineer under this Contract on any Project other than for the specific purpose and Project for which the work product was prepared.

**D. Disposition of Documents.** All documents and electronic files prepared by the Engineer and all documents furnished to the Engineer by the Authority shall be delivered to the Authority upon request. The Engineer, at its own expense, may retain copies of such documents or any other data which it has furnished the Authority under this Contract, but further use of the data is subject to express written permission by the Executive Director.

**E. Release of Design Plan.** The Engineer: (1) will not release any design plan created or collected under this Contract except to its subconsultants as necessary to complete the Contract; (2) shall include a provision in all subcontracts which acknowledges the Authority's ownership of the design plan and prohibits its use for any use other than the Project identified in this Contract; and (3) is responsible for any improper use of the design plan by its employees, officers, or subconsultants, including costs, damages, or other liability resulting from improper use. Neither the Engineer nor any subconsultants may charge a fee for any portion of the design plan created by the Authority.



**ARTICLE 10  
PUBLIC INFORMATION AND CONFIDENTIALITY**

**A. Public Information.** The Authority will comply with Government Code, Chapter 552, the Texas Public Information Act in the release of information produced under this Contract.

**B. Confidentiality.** The Engineer shall not disclose information obtained from the Authority under this Contract without the express written consent of the Executive Director. All employees of the Engineer and its subconsultants working on the Project may be required to sign a non-disclosure and confidentiality agreement.

**C. Access to Information.** The Engineer is required to make any information created or exchanged with the Authority pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act as determined by the Authority, available in a format that is accessible by the public at no additional charge to the Authority.

**ARTICLE 11  
PERSONNEL, EQUIPMENT AND MATERIAL**

**A. Engineer Resources.** The Engineer shall furnish and maintain an office for the performance of all Services, in addition to providing adequate and sufficient personnel and equipment to perform the Services required under the Contract. The Engineer certifies that it presently has adequate qualified personnel in its employment for performance of the Services required under this Contract, or it will be able to obtain such personnel from sources other than the Authority.

**B. Removal of Employee.** All employees of the Engineer assigned to this Contract shall have such knowledge and experience as will enable them to perform the duties assigned to them. The Executive Director may instruct the Engineer to remove any employee from association with work authorized in this Contract if, in the sole opinion of the Executive Director, the work of that employee does not comply with the terms of this Contract; the conduct of that employee becomes detrimental to the work; or for any other reason identified by the Executive Director.

**C. Authority Approval of Replacement Personnel.** The Engineer may not replace any Key Team Member, as designated in the applicable Work Authorization, without prior written approval of the Director of Engineering. If any Key Team Member cease to work on this Contract, the Engineer must notify the Director of Engineering in writing as soon as possible, but in any event within (3) three business days. The notification must give the reason for removal. The Engineer must receive written approval from the Director of Engineering of proposed replacement Key Team Member. The Director of Engineering's approval will be based upon the proposed replacement Key Team Member qualifications to provide the required Services. Approval will not be unreasonably withheld.

**D. Liquidated Damages.** The selection of Engineer to provide the Services under this Contract was based, in part, on the Key Team Member identified in Engineer's proposal. Because of the importance and unique nature of the Services to be provided by Key Team Member identified in Attachment C it is impractical to calculate the actual losses that would be suffered

by the Authority by the loss of Key Team Member from the Contract. Therefore, the Engineer agrees to compensate the Authority for its losses by paying liquidated damages in the amount of \$2,500 per day per Key Team Member position in Attachment C if any Key Team Member is removed by the Engineer by reassignment without prior written approval from the Director of Engineering. Liquidated damages will accrue from the date the Engineer removes the Key Team Member in Attachment C from the Contract if the parties do not agree on a replacement within (14) calendar days after the Key Team Member are removed from the Contract. If a replacement is agreed upon within that fourteen (14) calendar day period the liquidated damages will be waived. Liquidated damages shall cease when the parties agree on a substitute or when the Contract is terminated.

**E. Ownership of Acquired Property.** Except to the extent that a specific provision of this Contract states to the contrary, and as provided in subarticle 9.B., the Authority shall own all intellectual and other property acquired or developed under this Contract and all equipment purchased by the Engineer or its subconsultants under this Contract. All intellectual property and equipment owned by the Authority shall be delivered to the Director of Engineering when the Contract or applicable Work Authorization terminates, or when it is no longer needed for work performed under this Contract, whichever occurs first. In the event that a capital item is purchased for the sole use of the Authority, title shall pass or transfer to the Authority upon acquisition and prior to any use of the item by the Engineer.

## **ARTICLE 12 SUBCONTRACTING**

**A. Prior Approval.** The Engineer shall not assign, subcontract, or transfer any portion of Services related to the work under this Contract unless specified in an executed Work Authorization or otherwise without first obtaining the prior written approval from the Executive Director. Request for approval should include a written description of the proposed services, and, using rates established in Attachment B, a proposed price.

**B. DBE/HUB Compliance.** The Engineer's subcontracting program shall comply with the DBE/HUB requirements described in the Work Authorization(s).

**C. Required Provisions.** All subcontracts shall include the provisions included in this Contract and any provisions required by law.

**D. Engineer Responsibilities.** No subcontract shall relieve the Engineer of any of its responsibilities under this Contract and of any liability for work performed under this Contract, even if performed by a subconsultant or other third party performing work for or on behalf of the Engineer.

**E. Invoice Approval and Processing.** All subconsultants shall prepare and submit their invoices on the same billing cycle and format as the Engineer (so as to be included in invoices submitted by the Engineer).

**ARTICLE 13  
INSPECTION OF WORK**

**A. Review Rights.** Under this Contract, the Authority, TxDOT, and the U.S. Department of Transportation, and any authorized representative of the Authority, TxDOT, or the U.S. Department of Transportation, shall have the right at all reasonable times to inspect, review or otherwise evaluate the work performed hereunder and the premises in which it is being performed.

**B. Reasonable Access.** If any inspection, review or evaluation is made on the premises of the Engineer or a subconsultant under this Article, the Engineer shall provide and require its subconsultants to provide all reasonable facilities and assistance for the safety and convenience of the persons performing the review in the performance of their duties.

**ARTICLE 14  
SUBMISSION OF REPORTS**

All applicable study reports shall be submitted in preliminary form for approval by the Director of Engineering before a final report is issued. The Director of Engineering's comments on the Engineer's preliminary report must be addressed in the final report. Draft reports shall be considered confidential unless otherwise indicated by the Director of Engineering.

**ARTICLE 15  
VIOLATION OF CONTRACT TERMS**

**A. Increased Costs.** Violation of Contract terms, breach of contract, or default by the Engineer shall be grounds for termination of the Contract pursuant to Article 16, and any increased or additional cost incurred by the Authority arising from the Engineer's default, breach of contract or violation of contract terms shall be paid by the Engineer.

**B. Remedies.** This Contract shall not be considered as specifying the exclusive remedy for any default, and all remedies existing at law and in equity shall be available to the parties and shall be cumulative.

**C. Excusable Delays.** Except with respect to defaults of subconsultants, the Engineer shall not be in default by reason of any failure in performance of this Contract in accordance with its terms (including any failure to progress in the performance of the work) if such failure arises out of causes beyond the control and without the default or negligence of the Engineer. Such causes may include, but are not restricted to, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

**ARTICLE 16  
TERMINATION**

**A. Termination.** The Contract may be terminated before the stated completion date by any of the following conditions:

- (1) by mutual agreement and consent, in writing from both parties;

(2) by the Executive Director by notice in writing to the Engineer as a consequence of failure by the Engineer to perform the Services set forth herein in a satisfactory manner or if the Engineer violates the provisions of Article 23, Gratuities, or DBE/HUB Requirements;

(3) by either party, upon the failure of the other party to fulfill its obligations as set forth herein, following thirty (30) days written notice and opportunity to cure;

(4) by the Executive Director for his convenience and in his sole discretion, not subject to the consent of the Engineer, by giving thirty (30) days written notice of termination to the Engineer; or

(5) by satisfactory completion of all Services and obligations described herein.

**B. Measurement.** Should the Executive Director terminate this Contract as herein provided, no fees other than fees due and payable at the time of termination shall thereafter be paid to the Engineer. In determining the value of the work performed by the Engineer prior to termination, the Executive Director shall be the sole judge. Compensation for work at termination will be based on a percentage of the work completed at that time. Should the Executive Director terminate this Contract under subarticles 16.A.3 & 4, the Engineer shall not incur costs during the thirty-day notice period in excess of the amount incurred during the preceding thirty (30) days.

**C. Value of Completed Work.** If the Engineer defaults in the performance of this Contract or if the Executive Director terminates this Contract for fault on the part of the Engineer, the Executive Director will give consideration to the following when calculating the value of the completed work: (1) the actual costs incurred (not to exceed the rates set forth in the applicable Work Authorization) by the Engineer in performing the work to the date of default; (2) the amount of work required which was satisfactorily completed to date of default; (3) the value of the work which is usable to the Authority; (4) the cost to the Authority of employing another firm to complete the required work; (5) the time required to employ another firm to complete the work; (6) delays in opening a revenue generating Project and costs (including lost revenues) resulting therefrom; and (7) other factors which affect the value to the Authority of the work performed.

**D. Surviving Requirements.** The termination of this Contract and payment of an amount in settlement as prescribed above shall extinguish the rights, duties, and obligations of the Authority and the Engineer under this Contract, except for those provisions that establish responsibilities that extend beyond the Contract period, including without limitation the provisions of Article 18.

**E. Payment of Additional Costs.** If termination of this Contract is due to the failure of the Engineer to fulfill its Contract obligations, the Authority may take over the Project and

prosecute the work to completion, and the Engineer shall be liable to the Authority for any additional cost to the Authority.

**ARTICLE 17**  
**COMPLIANCE WITH LAWS AND AUTHORITY POLICIES**

The Engineer shall comply with all applicable federal, state and local laws, statutes, codes, ordinances, rules and regulations, and the orders and decrees of any court, or administrative bodies or tribunals in any manner affecting the performance of this Contract, including, without limitation, worker's compensation laws, minimum and maximum salary and wage statutes and regulations, nondiscrimination, licensing laws and regulations, the Authority's enabling legislation (Chapter 370 of the Texas Transportation Code), and all amendments and modifications to any of the foregoing, if any. The Engineer shall comply with all applicable Authority policies and procedures as outlined in the Mobility Authority Policy Code handbook available on the Authority's website (<https://www.mobilityauthority.com/about/policy-disclaimers/code>). When required, the Engineer shall furnish the Authority with satisfactory proof of its compliance therewith.

**ARTICLE 18**  
**INDEMNIFICATION**

**THE ENGINEER SHALL INDEMNIFY AND HOLD HARMLESS THE AUTHORITY AND ITS OFFICERS, DIRECTORS, EMPLOYEES, ENGINEERS, AGENTS AND CONSULTANTS WHICH, FOR THE PURPOSES OF THIS CONTRACT, SHALL INCLUDE THE AUTHORITY'S GEC, GENERAL COUNSEL, BOND COUNSEL, FINANCIAL ADVISORS, TRAFFIC AND REVENUE ENGINEERS, TOLL OPERATIONS/COLLECTIONS FIRMS, AND UNDERWRITERS (COLLECTIVELY THE "INDEMNIFIED PARTIES") FROM ANY CLAIMS, COSTS, OR LIABILITIES OF ANY TYPE OR NATURE AND BY OR TO ANY PERSONS WHOMSOEVER, TO THE EXTENT CAUSED BY THE NEGLIGENT ACTS, ERRORS, OR OMISSIONS OF THE ENGINEER OR ITS OFFICERS, DIRECTORS, EMPLOYEES, SUBCONSULTANTS AND AGENTS WITH RESPECT TO THE ENGINEER'S PERFORMANCE OF THE WORK TO BE ACCOMPLISHED UNDER THIS CONTRACT OR ACTIONS RESULTING IN CLAIMS AGAINST THE INDEMNIFIED PARTIES. IN SUCH EVENT, THE ENGINEER SHALL ALSO INDEMNIFY AND HOLD HARMLESS THE AUTHORITY AND THE INDEMNIFIED PARTIES FROM ANY AND ALL REASONABLE AND NECESSARY EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES, INCURRED BY THE AUTHORITY OR ANY OF THE INDEMNIFIED PARTIES IN LITIGATING OR OTHERWISE RESISTING SAID CLAIMS, COSTS OR LIABILITIES. IN THE EVENT THE AUTHORITY AND/OR ANY OF THE INDEMNIFIED PARTIES, IS/ARE FOUND TO BE PARTIALLY AT FAULT, THE ENGINEER SHALL, NEVERTHELESS, INDEMNIFY THE AUTHORITY FROM AND AGAINST THE PERCENTAGE OF FAULT ATTRIBUTABLE TO THE ENGINEER OR ITS OFFICERS, DIRECTORS, EMPLOYEES, SUBCONSULTANTS AND AGENTS OR TO THEIR CONDUCT.**

**ARTICLE 19**  
**ROLE OF GENERAL ENGINEERING CONSULTANT (GEC)**

The Authority will utilize a GEC to assist in its management of this Contract. The GEC is an independent contractor and is authorized by the Authority to provide the management and technical direction for this Contract on behalf of the Authority, provided that the GEC is not an

agent of the Authority. All the technical and administrative provisions of the Contract shall be managed by the GEC, and the Engineer shall comply with all of the GEC's directives that are within the purview of the Contract. Decisions concerning Contract amendments and adjustments, such as time extensions and Supplemental Work Authorizations, shall be made by the Executive Director, unless otherwise specified; however, requests for such amendments or adjustments shall be made through the GEC, who shall forward such requests to the Executive Director with its comments and recommendations.

Should any dispute arise between the GEC and the Engineer, concerning the conduct of this Contract, either party may request a resolution of said dispute by the Executive Director, whose decision shall be final.

## **ARTICLE 20 ENGINEER'S RESPONSIBILITY**

**A. Accuracy.** The Engineer shall have total responsibility for the accuracy and completeness of all work prepared and completed under this Contract and shall check all such material accordingly. The Engineer shall promptly make necessary revisions or corrections resulting from its errors, omissions, or negligent acts without additional compensation.

**B. Errors and Omissions.** The Authority and Engineer will address errors and omissions as follows:

(1) The Engineer's responsibility for all questions and/or clarification of any ambiguities arising from errors and omissions will be determined by the Executive Director.

(2) A problem resulting from an error and omission may be identified during the development of the PS&E, as well as before, during, or after construction. The Engineer will be responsible for errors and omissions before, during, and after construction of a Project, as well as before and after Contract termination.

(3) The phrase error and omission is used throughout to mean an error, an omission, or a combination of error and omission.

(4) When an apparent error and omission is identified in work provided by the Engineer, the Executive Director will notify the Engineer of the problem and involve the Engineer in efforts to resolve it and determine the most effective solution, provided that the Executive Director shall ultimately determine the solution that is chosen.

(5) Errors and omissions identified during PS&E development/prior to Project construction will be corrected at the Engineer's expense with no additional cost to the Authority.

(6) During and after construction, errors and omissions can potentially result in significant additional costs to the Authority that they would not have incurred if the construction plans had been correct. The resulting additional costs are considered damages that the Authority will collect from the Engineer, including through offset to amounts owed to the Engineer.

(7) After a Project is constructed and is in use, there is a possibility of a contractor claim that may involve a previous error and omission by the Engineer identified during construction; it is also possible the Engineer could be responsible for some or all of the cost of the contractor claim. If there is a possibility of Engineer responsibility, upon notice of the contractor claim, the Executive Director must notify the Engineer of the situation and provide the Engineer the opportunity to contribute any information to the Executive Director that may be useful in addressing the contractor claim. The Engineer will not be involved in any discussions or negotiations with the contractor during the claims process. Upon settlement of all previous claims with the contractor, if additional costs are identified, the Executive Director should consider the same factors as during construction in determining the Engineer's level of responsibility.

(8) The additional costs which are considered damages to the Authority and are to be recovered should represent actual cost to the Authority.

(9) The Executive Director will not accept in-kind services from the Engineer as payment for additional costs owed.

(10) The Engineer is responsible for promptly correcting errors and omissions without compensation. In the situation of a dispute concerning whether or not the work is compensable, the Engineer shall not delay the work.

(11) A letter will be transmitted by the Executive Director formally notifying the Engineer of payment required for the error and omission and will indicate the Engineer's apparent liability for the identified additional costs. The letter will include an outline of the errors and omissions, along with the additional costs, and references to any previous points of coordination and preliminary agreements. Within 30 calendar days of the date of the letter, a response is required from the Engineer with: (a) payment, (b) a request for a meeting, or (c) a request for the Executive Director to reconsider whether the Executive Director should pursue reimbursement for the identified error and omission. If a response or payment is not received from the Engineer, the Authority may pursue legal action against the Engineer, in addition to offset of payments to the Engineer, claims against insurance and other remedies available under the Contract.

(12) It is the Executive Director's responsibility to identify errors and omissions and fairly evaluate the responsibility for additional cost when applicable. It is the responsibility of the Authority staff to ensure that the Authority's business practices are professional, fair, equitable, and reasonable.

**C. Professionalism.** The Engineer shall perform the services it provides under the Contract: (1) with the professional skill and care ordinarily provided by competent engineers practicing under the same or similar circumstances and professional license and (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer.

**D. Seal.** The responsible Engineer shall sign, seal and date all appropriate engineering submissions to the Authority in accordance with the Texas Engineering Practice Act and the rules of the Texas Board of Professional Engineers.

**E. Resealing of Documents.** Once the work has been sealed and accepted by the Director of Engineering, the Authority, as the owner, will notify the Engineer, in writing, of the possibility that an Authority engineer, as a second engineer, may find it necessary to alter, complete, correct, revise or add to the work. If necessary, the second engineer will affix his seal to any work altered, completed, corrected, revised or added. The second engineer will then become responsible for any alterations, additions or deletions to the original design including any effect or impacts of those changes on the original engineer's design.

## **ARTICLE 21 NONCOLLUSION**

**A. Warranty.** The Engineer warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Engineer, to solicit or secure this Contract and that it has not paid or agreed to pay any company or Engineer any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Contract.

**B. Liability.** For breach or violation of this warranty, the Authority shall have the right to annul this Contract without liability or, in its discretion, to deduct from the Contract compensation, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

## **ARTICLE 22 INSURANCE**

The Engineer shall furnish the Authority a properly completed Certificate of Insurance approved by the Executive Director prior to beginning work under the Contract and shall maintain such insurance through the Contract period. The Engineer shall provide proof of insurance (and the Professional Liability Insurance discussed herein) in a form reasonably acceptable by the Executive Director. The Engineer certifies that it has and will maintain insurance coverages as follows:

**A. Workers Compensation Insurance.** In accordance with the laws of the State of Texas and employer's liability coverage with a limit of not less than \$1,000,000. This policy shall be endorsed to include a waiver of subrogation in favor of the Authority.

**B. Comprehensive General Liability Insurance.** With limits not less than \$1,000,000 for bodily injury, including those resulting in death, and \$1,000,000 for property damage on account of any one occurrence, with an aggregate limit of \$1,000,000.

**C. Comprehensive Automobile Liability Insurance.** Applying to owned, non-owned, and hired automobiles in an amount not less than \$1,000,000 for bodily injury, including death, to any one person, and \$1,000,000 on account on any one occurrence, and \$1,000,000 for property damage on account of any one occurrence. This policy shall not contain any limitation with respect to a radius of operation for any vehicle covered and shall not exclude from the



coverage of the policy any vehicle to be used in connection with the performance of the Engineer's obligations under this Contract.

**D. Excess Liability Insurance.** In an amount of \$5,000,000 per occurrence and aggregate.

**E. Valuable Papers Insurance.** In an amount sufficient to assure the full restoration of any plans, drawings, field notes, logs, test reports, diaries, or other similar data or materials relating to the Services provided under this Contract in the event of their loss or destruction, until such time as the work has been delivered to the Authority.

**F. Architects and/or Engineers Professional Liability insurance.** Engineer shall provide and maintain professional liability coverage, with limits not less than \$5,000,000 per claim and \$5,000,000 aggregate. The professional liability coverage shall protect against any negligent act, error or omission arising out of design or engineering activities, including environmental related activities, with respect to the Project, including coverage for negligent acts, errors or omissions by any member of the Engineer and its subconsultants (including, but not limited to design subconsultants and subconsultants) of any tier. The policy must provide that coverage extends a minimum of three (3) years beyond the Engineer's completion of the Services. This policy shall be endorsed to include a waiver of subrogation in favor of the Authority.

**G. General for All Insurance.** The Engineer shall promptly, upon execution of this Contract, furnish certificates of insurance to the Executive Director indicating compliance with the above requirements. Certificates shall indicate the name of the insured, the name of the insurance company, the name of the agency/agent, the policy number, the term of coverage, and the limits of coverage.

All policies are to be written through companies (a) authorized to transact that class of insurance in the State of Texas; (b) rated (i), with respect to the companies providing the insurance under subarticles 22.A. through D., above, by A. M. Best Company as "A-X" or better (or the equivalent rating by another nationally recognized rating service) and (ii) with respect to the company providing the insurance under subarticle 22.E., a rating by A. M. Best Company or similar rating service satisfactory to the Authority and/or its insurance consultant; and (c) otherwise acceptable to the Executive Director.

All policies are to be written through companies authorized to transact that class of insurance in the State of Texas. Such insurance shall be maintained in full force and effect during the life of this Contract or for a longer term as may be otherwise provided for hereunder. Insurance furnished under subarticles 22.B., C., and D., above, shall name the Authority as additional insured and shall protect the Authority, its officers, employees, and directors, agents, and representatives from claims for damages for bodily injury and death and for damages to property arising in any manner from the negligent or willful acts or failures to act by the Engineer, its officers, employees, directors, agents, and representatives in the performance of the Services rendered under this Contract. Certificates shall also indicate that the contractual liability assumed in Article 18, above, is included.

The insurance carrier shall include in each of the insurance policies required under subarticles 22.A. through F., the following statement: "This policy will not be canceled or

materially changed during the period of coverage without at least thirty (30) days prior written notice addressed to the Central Texas Regional Mobility Authority, 3300 N. IH-35, Suite 300, Austin, Texas 78705, Attn: Executive Director”

**H. Subconsultant.** The Engineer shall be liable for work performed by the subconsultant and Engineer’s insurance shall cover the work, actions, errors and omissions of the subconsultant.

### **ARTICLE 23 GRATUITIES**

**A. Employees Not to Benefit.** Authority policy mandates that the director, employee or agent of the Authority shall not accept any gift, favor, or service that might reasonably tend to influence the director, employee or agent in making of procurement decisions. The only exceptions allowed are ordinary business lunches and items that have received the advance written approval of the Executive Director of the Authority.

**B. Liability.** Any person doing business with or who reasonably speaking may do business with the Authority under this Contract may not make any offer of benefits, gifts or favors to Authority employees, except as mentioned above. Failure on the part of the Engineer to adhere to this policy may result in the termination of this Contract.

### **ARTICLE 24 DISADVANTAGED BUSINESS ENTERPRISE/HISTORICALLY UNDERUTILIZED BUSINESS REQUIREMENTS**

The Engineer agrees to comply with the DBE/HUB requirements and reporting guidelines set forth in the Work Authorization(s). The DBE/HUB Goal established for this Project is as set forth in the Work Authorization. The Engineer also agrees to comply with the DBE/HUB subcontracting plan that was included in the response that the Engineer submitted to the Authority’s Request for Qualifications.

### **ARTICLE 25 CERTIFICATE OF INTERESTED PARTIES (FORM 1295)**

The Engineer must comply with the Certificate of Interested Parties (Form 1295) adopted by the Texas Legislature as House Bill 1295, which added section 2252.908 of the Government Code, available for review at the Texas Ethics Commission website:

<https://www.ethics.state.tx.us/tec/1295-Info.htm>

The Engineer, after award, is required to complete and submit Form 1295 if the Engineer has either of the following contracts with a governmental entity or state agency starting as of January 1, 2016:

- (1) Requires an action or vote by the governing body of the entity or agency before the contract may be signed; or
- (2) Has a value of at least \$1 million.

**ARTICLE 26**  
**MAINTENANCE, RETENTION AND AUDIT OF RECORDS**

**A. Retention Period.** The Engineer shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and Services provided (hereinafter called the Records). The Engineer shall make the Records available at its office during the Contract period and for four (4) years from the date of final payment under this Contract, until completion of all audits, or until pending litigation has been completely and fully resolved, whichever occurs last.

**B. Availability.** The Authority shall have the exclusive right to examine the books and records of the Engineer for the purpose of checking the amount of work performed by the Engineer. The Engineer shall maintain all books, documents, papers, accounting records and other evidence pertaining to cost incurred and shall make such materials available at its office during the contract period and for four (4) years from the date of final payment under this Contract or until pending litigation has been completely and fully resolved, whichever occurs last. The Authority or any of its duly authorized representatives, TxDOT, FHWA, the United States Department of Transportation Office of Inspector General, and the Comptroller General shall have access to any and all books, documents, papers and records of the Engineer which are directly pertinent to this Contract for the purpose of making audits, examinations, excerpts and transcriptions.

**ARTICLE 27**  
**CIVIL RIGHTS COMPLIANCE**

**A. Compliance with Regulations.** The Engineer shall comply with the Acts and Regulations relative to nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (USDOT), FHWA, as they may be amended from time to time, which are herein incorporated by reference and made part of this Contract.

**B. Nondiscrimination.** The Engineer, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of subconsultants, including procurement of materials and leases of equipment. The Engineer shall not participate directly or indirectly in the discrimination prohibited by the Acts and Regulations, including employment practices when the Contract covers any activity, Project, or program set forth in Appendix B of 49 CFR Part 21.

**C. Solicitations for Subcontracts, Including Procurement of Materials and Equipment.** In all solicitations either by competitive bidding or negotiation made by the Engineer for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subconsultant or supplier shall be notified by the Engineer of the Engineer's obligations under this Contract and the Acts and Regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin.

**D. Information and Reports.** The Engineer shall provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and facilities as may be determined by the Authority or the FHWA to be pertinent to ascertain compliance with such Acts,

Regulations or directives. Where any information required of the Engineer is in the exclusive possession of another who fails or refuses to furnish this information, the Engineer shall so certify to the Authority or the FHWA, as appropriate, and shall set forth what efforts it has made to obtain the information.

**E. Sanctions for Noncompliance.** In the event of the Engineer's noncompliance with the Nondiscrimination provisions of this Contract, the Authority shall impose such Contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

- (1) withholding of payments to the Engineer under the Contract until the Engineer complies and/or
- (2) cancelling, terminating, or suspending of the Contract, in whole or in part.

## **ARTICLE 28 PATENT RIGHTS**

The Authority and the U. S. Department of Transportation shall have the royalty free, nonexclusive and irrevocable right to use and to authorize others to use any patents developed by the Engineer under this Contract.

## **ARTICLE 29 DISPUTES**

**A. Disputes Not Related to Contract Services.** The Engineer shall be responsible for the settlement of all contractual and administrative issues arising out of any procurement made by the Engineer in support of the Services authorized herein.

**B. Disputes Concerning Work or Cost.** The Executive Director of the Authority shall decide all questions, difficulties and disputes of any nature whatsoever that may arise under or by reason of this Contract, and his decision upon all claims, questions and disputes shall be final. The Engineer shall comply with the decision of the Executive Director with regard to the resolution of any such disputes.

## **ARTICLE 30 SUCCESSORS AND ASSIGNS**

The Engineer and the Authority do each hereby bind themselves, their successors, executors, administrators and assigns to each other party of this Contract and to the successors, executors, administrators and assigns of such other party in respect to all covenants of this Contract. The Engineer shall not assign, subcontract, or transfer its interest in this Contract or any portion thereof without the prior written consent of the Executive Director.

## **ARTICLE 31 SEVERABILITY**

In the event any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or

unenforceability shall not affect any other provision thereof and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

**ARTICLE 32  
PRIOR CONTRACTS SUPERSEDED**

This Contract, including all attachments, constitutes the sole agreement of the parties hereto for the Services authorized herein and supersedes any prior understandings or written or oral contracts between the parties respecting the subject matter defined herein.

**ARTICLE 33  
CONFLICT OF INTEREST**

**A. Representation by Engineer.** The undersigned Engineer represents that it has no conflict of interest that would in any way interfere with its or its employees' performance of Services for the Authority or which in any way conflicts with the interests of the Authority and certifies that it is in full compliance with the Authority's Policy Code related to Conflicts of Interest. The Engineer shall prevent any actions or conditions that could result in a conflict with the Authority's interests.

**B. Certification Status.** The Engineer certifies that it is not:

- (1) a person required to register as a lobbyist under Chapter 305, Government Code
- (2) a public relations firm
- (3) a government consultant

**C. Environmental Disclosure.** If the Engineer will prepare an environmental impact statement or an environmental assessment under this Contract, the Engineer certifies by executing this Contract that it has no financial or other interest in the outcome of the Project on which the environmental impact statement or environmental assessment is prepared.

**D. Engineering Services for the Construction Contractor.** Specific to the Project for which the Services are being provided under this Contract, the Engineer shall not provide services directly to the contractor responsible for constructing the Project unless approved by the Executive Director.

**ARTICLE 34  
ENTIRETY OF AGREEMENT**

**This writing, including attachments and addenda, if any, embodies the entire agreement and understanding between the parties hereto, and there are no agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby. No alteration, change or modification of the terms of the Contract shall be valid unless made in writing signed by both parties hereto.**

**ARTICLE 35  
SIGNATORY WARRANTY**

**The undersigned signatory for the Engineer hereby represents and warrants that he or she is an officer of the organization for which he or she has executed this Contract and that he or she has full and complete authority to enter into this Contract on behalf of the firm. These representations and warranties are made for the purpose of inducing the Authority to enter into this Contract.**

**ARTICLE 36  
NOTICES**

A notice, demand, request, report, and other communication required or permitted under this Contract, or which any party may desire to give, shall be in writing and shall be deemed to have been given on the sooner to occur of (i) receipt by the party to whom the notice is hand-delivered, with a written receipt of notice provided by the receiving party, or (ii) two days after deposit in a regularly maintained express mail receptacle of the United States Postal Service, postage prepaid, or registered or certified mail, return receipt requested, express mail delivery, addressed to such party at their address set forth below, or to such other address as a party may from time to time designate under this article, or (iii) receipt of an electronic mail transmission (attaching scanned documents in a format such as .pdf or .tif) for which confirmation of receipt by the other party has been obtained by the sending party:

In the case of the Engineer:

Patrick A. Smith, Principal/Executive VP  
Surveying And Mapping, LLC  
4801 Southwest Parkway  
Bldg. Two, Suite 100  
Austin, TX 78735  
Email: psmith@sam.biz

with a copy to:

Cookie F. Munson, General Counsel  
Surveying And Mapping, LLC  
4801 Southwest Parkway  
Bldg. Two, Suite 100  
Austin, TX 78735  
Email: cmunson@sam.biz

In the case of the Authority:

James M. Bass, Executive Director  
Central Texas Regional Mobility Authority  
3300 North IH 35, Suite 300  
Austin, TX 78705  
Email: jrbass@ctrma.org

with a copy to:

Mike Sexton, Acting Director of Engineering  
Central Texas Regional Mobility Authority  
3300 North IH 35, Suite 300  
Austin, TX 78705  
Email: msexton@ctrma.org

A party may change the information provided in this article for notification purposes by providing notice to the other party of the new information and the effective date of the change.

### **ARTICLE 37 BUSINESS DAYS AND DAYS**

For purposes of this Contract, “business days” shall mean any day the Authority is open for business and “days” shall mean calendar days.

### **ARTICLE 38 INCORPORATION OF PROVISIONS**

**Attachments A through C are attached hereto and incorporated into this Contract as if fully set forth herein.**

### **ARTICLE 39 PRIORITY OF DOCUMENTS/ORDER OF PRECEDENCE**

This Contract, and each of the Attachments (together, the “Contract Documents”), are an essential part of the agreement between the Authority and the Engineer, and a requirement occurring in one is as binding as though occurring in all. The Contract Documents are intended to be complementary and to describe and provide for a complete Contract. In the event of any conflict among the Contract Documents or between the Contract Documents and other documents, the order of precedence shall be as set forth below:

- A. Supplemental Work Authorizations;
- B. Work Authorizations;
- C. Contract Amendments;
- D. This Contract;
- E. The Request for Qualifications;
- F. The Engineer’s Response to the Request for Qualifications.

Additional details and more stringent requirements contained in a lower priority document will control unless the requirements of the lower priority document present an actual conflict with the requirements of the higher-level document. Notwithstanding the order of precedence among Contract Documents set forth in this Article 39, in the event of a conflict within a Contract Document or set of Contract Documents with the same order of priority (including within documents referenced therein), the Executive Director shall have the right to determine, in his sole discretion, which provision applies.

**ARTICLE 40  
CONTRACTOR CERTIFICATIONS**

**A. Entities that Boycott Israel.** The Contractor represents and warrants that (1) it does not, and shall not for the duration of this Agreement, boycott Israel or (2) the verification required by Section 2271.002 of the Texas Government Code does not apply to this Agreement. If circumstances relevant to this provision change during the course of the contract, the Contractor shall promptly notify the Authority.

**B. Entities that Boycott Energy Companies.** The Contractor represents and warrants that: (1) it does not, and will not for the duration of this Agreement, boycott energy companies or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to this Agreement. If circumstances relevant to this provision change during the course of this Agreement, the Contractor shall promptly notify the Authority.

**C. Entities that Discriminate Against Firearm Entities or Trade Associations.** The Contractor verifies that: (1) it does not, and will not for the duration of this Agreement, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to this Agreement. If circumstances relevant to this provision change during the course of this Agreement, the Engineer shall promptly notify the Authority.

**ARTICLE 41  
ABBREVIATIONS AND DEFINITIONS**

Acts and Regulations	Federal, state, and local acts and regulations which are applicable to the Contract
Agreement	This contract
Authority	Central Texas Regional Mobility Authority
CFR	Code of Federal Regulations
Contract	This contract document and its attachments
DBE	Disadvantaged Business Enterprise
Engineer	The service provider performing the services under this Contract
Executive Director	The Executive Director of the Authority, or anyone to whom he has delegated the authority to act on his behalf
FAR	Federal Acquisition Regulations
FHWA	Federal Highway Administration
GEC	General Engineering Consultant
HUB	Historically Underutilized Business
OMB	Office of Management and Budget



Project	Any capital improvement, rehabilitation, repair, maintenance, or other work in conjunction with the Authority's or a partner's facilities.
PS&E	Plans, specifications, and estimate
Services	Any work assigned under this contract
TxDOT	Texas Department of Transportation
USDOT	United States Department of Transportation
Work Authorization	Any work authorization arising from this contract
Year	When not otherwise clarified, "year" refers to a 12-month period

**IN WITNESS WHEREOF**, the **Authority** and the **Engineer** have executed this Contract in duplicate.

**THE ENGINEER**

**CENTRAL TEXAS REGIONAL MOBILITY  
AUTHORITY**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

James M. Bass  
\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title)

Executive Director  
\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Date)

**Attachments to Contract for Professional Engineering Services**

<b>Attachments</b>	<b>Title</b>
A	Services to be Provided by the Engineer
B	Rate Schedule
C	Key Team Members

**ATTACHMENT A**  
**SERVICES TO BE PROVIDED BY THE ENGINEER**

Professional services (the Services) to be provided by the SUE consultant team (Engineer) include:

- Establishing the location of existing underground and overhead utilities within the limits of various Mobility Authority projects and determining how these utilities may be impacted by proposed projects using industry-accepted SUE methods.
- Identifying and physically marking the location of existing underground utilities within the limits of various Mobility Authority projects.

The Engineer shall provide qualified technical and professional personnel that adhere to professional standards consistent with those typically met by nationally known and highly regarded subsurface utility engineering firms. Unless otherwise instructed by the Mobility Authority, the Engineer shall minimize the need for the Mobility Authority to apply its own resources to assignments.

**Scope of Work – General SUE Services**

**1. Subsurface Utility Engineering**

1.1. As requested, the Engineer will perform subsurface and above-ground utility engineering services for the project in general accordance with ACSE/CI Standard 38-02 “Standard Guidelines for the Collection and Depiction of Existing Subsurface Utility Data” (<http://www.fhwa.dot.gov/programadmin/asce.cfm>). This standard provides four levels to describe and depict the quality of subsurface utility information. Generally, those four levels are:

- Quality Level D (QLD) – Information obtained from existing utility records and other sources (Texas811, Railroad Commission of Texas, verbal recollection, as-built plans, etc.).
- Quality Level C (QLC) – Surveyed data depicting visible above-ground features supplemented with QLD information. Professional judgement is used to correlate surveyed locations with QLD data in determining utility locations.
- Quality Level B (QLB) – Two-dimensional horizontal information obtained through the application and interpretation of non-destructive surface geophysical methods. Also known as “designating,” this level incorporates QLC information and provides horizontal positioning of subsurface utilities to within approximately 1.0 foot. The Engineer will include resolution of discrepancies between utility owner records and designating data.
- Quality Level A (QLA) – Three-dimensional horizontal and vertical information obtained through non-destructive vacuum excavation equipment to expose utilities at critical points. Also known as “locating,” this level incorporates QLB information and provides horizontal and vertical positioning of subsurface utilities to within approximately 0.05 feet. The

**ATTACHMENT A**  
**SERVICES TO BE PROVIDED BY THE ENGINEER**

Engineer will assist in the development of test hole locations, work plans, and provide a comprehensive utility plan signed and sealed by the responsible Engineer.

1.2. As requested, the Engineer shall conduct a Utility Engineering Investigation to determine the location of Mobility Authority owned utilities including irrigation lines, power and communication conduit and duct bank runs within the project area, using Quality Level B standards wherever possible.

- a. The Engineer shall compile "As-Built" information from plans, plats and other location data as provided by the Mobility Authority using Quality Level C and D standards. A color-coded composite Existing Utility Layout with quality levels and line sizes will be prepared and delivered to the Authority. It is understood by both the Engineer and the Mobility Authority that the line sizes of utility facilities detailed on the deliverable are from the best available records. All utilities that were discovered from quality levels C and D investigation but cannot be depicted in quality level B standards shall be clearly identified. These utilities must have a unique line style and symbology in the Existing Utility Layout deliverable. All above ground appurtenance locations must be included in the deliverable to the Mobility Authority. This information will be provided in the latest version of an ESRI ArcGIS geodatabase using the data dictionary provided by the Mobility Authority with attributes as requested by the Mobility Authority. The electronic file will be delivered by file transfer method as requested by the Mobility Authority.

1.3. Designate (Quality Level B)

Designate means to indicate the horizontal location of underground utilities by the application and interpretation of appropriate non-destructive surface geophysical techniques and reference to established survey control. Designate (Quality Level B) Service are inclusive of Quality levels C and D.

The Engineer shall:

- a. As requested by the Mobility Authority compile "As Built" information from plans, plats and other location data as provided by the utility owners.
- b. Coordinate with utility owner when utility owner's policy is to designate their own facilities at no cost for preliminary survey purposes. The Engineer shall examine utility owner's work to ensure accuracy and completeness.
- c. Designate, record, and mark the horizontal location of the existing utility facilities and their service laterals to existing buildings using non-destructive surface geophysical techniques. No storm sewer facilities are to be designated unless authorized by the Mobility Authority. A non-water base

**ATTACHMENT A**  
**SERVICES TO BE PROVIDED BY THE ENGINEER**

paint, utilizing the APWA color code scheme, must be used on all surface markings of underground utilities.

- d. Correlate utility owner records with designating data and resolve discrepancies using professional judgment. A color-coded composite utility facility plan with utility owner names, quality levels, line sizes and subsurface utility locate (test hole) locations, shall be prepared and delivered to the Mobility Authority. It is understood by both the Engineer and the Mobility Authority that the line sizes of designated utility facilities detailed on the deliverable are from the best available records and that an actual line size is normally determined from a test hole vacuum excavation. A note must be placed on the designate deliverable only that states "lines sizes are from best available records". All above ground appurtenance locations must be included in the deliverable to the Mobility Authority. This information shall be provided in the latest version of Micro Station or Geopak used by the Mobility Authority. The electronic file will be delivered electronically, as required by the Mobility Authority. When requested, a hard copy is required and must be signed, sealed, and dated by the Engineer. When requested by the Mobility Authority, the designated utility information must be over laid on the Mobility Authority's design plans.
- e. Determine and inform the Mobility Authority of the approximate utility depths at critical locations as determined by the Mobility Authority. This depth indication is understood by both the Engineer and the Mobility Authority to be approximate only and is not intended to be used preparing the right of way and construction plans.
- f. Provide a monthly summary of work completed and in process with adequate detail to verify compliance with agreed work schedule.
- g. Close-out permits as required.
- h. Clearly identify all utilities that were discovered from quality levels C and D investigation but cannot be depicted in quality level B standards. These utilities must have a unique line style and symbology in the designate (Quality Level B) deliverable.
- i. Comply with all applicable policies and procedural manuals.

**1.4. Subsurface Utility Locate (test hole) Service (Quality Level A)**

Locate means to obtain precise horizontal and vertical position, material type, condition, size and other data that may be obtainable about the utility facility and its surrounding environment through exposure by non-destructive excavation techniques that ensures the integrity of the utility facility. Subsurface Utility Locate (Test Hole) Services (Quality Level A) are inclusive of Quality Levels B, C, and D.

**ATTACHMENT A**  
**SERVICES TO BE PROVIDED BY THE ENGINEER**

The Engineer shall:

- a. Review requested test hole locations and advise the Mobility Authority in the development of an appropriate locate (test hole) work plan relative to the existing utility infrastructure and proposed highway design elements.
- b. Coordinate with utility owner inspectors as may be required by law or utility owner policy.
- c. Neatly cut and remove existing pavement material, such that the cut not to exceed 0.10 square meters (1.076 square feet) unless unusual circumstances exist.
- d. Measure and record the following data on an appropriately formatted test hole data sheet that has been sealed and dated by the Engineer:
  - Elevation of top and/or bottom of utility tied to the datum of the furnished plan.
  - Identify a minimum of two benchmarks utilized. Elevations shall be within an accuracy of 15mm (.591 inches) of utilized benchmarks.
  - Elevation of existing grade over utility at test hole location.
  - Horizontal location referenced to project coordinate datum.
  - Outside diameter of pipe or width of duct banks and configuration of non-encased multi-conduit systems.
  - Utility facility material(s).
  - Utility facility condition.
  - Pavement thickness and type.
  - Coating/Wrapping information and condition.
  - Unusual circumstances or field conditions.
- e. Excavate test holes in such a manner as to prevent any damage to wrappings, coatings, cathodic protection or other protective coverings and features. Water excavation can only be utilized with written approval from the appropriate State District Office.
- f. Be responsible for any damage to the utility during the locating process. In the event of damage, the Engineer shall stop work, notify the appropriate utility facility owner, the Mobility Authority and appropriate regulatory agencies. The regulatory agencies include but are not limited to the Railroad Commission of Texas and the Texas Commission on Environmental Quality. The Engineer shall not resume work until the utility facility owner has determined the corrective action to be taken. The Engineer shall be liable for

**ATTACHMENT A**  
**SERVICES TO BE PROVIDED BY THE ENGINEER**

all costs involved in the repair or replacement of the utility facility.

- g. Back fill all excavations with appropriate material, compact backfill by mechanical means, and restore pavement and surface material. The Engineer shall be responsible for the integrity of the backfill and surface restoration for a period of three years. Install a marker ribbon throughout the backfill.
- h. Furnish and install a permanent above ground marker (as specified by the Mobility Authority, directly above center line of the utility facility).
- i. Provide complete restoration of work site and landscape to equal or better condition than before excavation. If a work site and landscape is not appropriately restored, the Engineer shall return to correct the condition at no extra charge to the Mobility Authority.
- j. Plot utility location position information to scale and provide a comprehensive utility plan sign and sealed by the responsible Engineer. This information shall be provided in the latest version of Micro Station or Geopak format used by the Mobility Authority and delivered electronically. When requested by the Mobility Authority, the Locate information must be overlaid on the State's design plans.
- k. Return plans, profiles, and test hole data sheets to the Mobility Authority. If requested, conduct a review of the findings with the Mobility Authority.
- l. Close-out permits as required.

**2. On-Call Locating and Marking of Mobility Authority owned utilities**

- 2.1. As requested, the Engineer will provide on-call utility locating and marking services. On-call utility locating and marking means to respond to notifications to locate and mark utilities in the field typically within two weeks, occasionally within 48 hours of being notified by the Mobility Authority. A request for on-call locating and marking will include a description of the area to be marked based on available records.
- 2.2. Any corrections or updates noted during marking shall be communicated to the Mobility Authority to determine if modification to the records is warranted.
- 2.3. All markings shall be made with a tolerance zone including the width of the utility plus 18 inches as measured horizontally from each side of the utility. Markings shall be made with paint, chalk, flags, stakes, brushes, or offsets as required by the surface and environmental conditions that exist in the field using the American Public Works Association (APWA) Uniform Color Code as described in Appendix B Uniform Color Code and Marking Guide of the CGA Best Practices Guide.

**ATTACHMENT A  
SERVICES TO BE PROVIDED BY THE ENGINEER**

2.4. All locates shall be performed using electromagnetic means where possible unless otherwise directed by the Mobility Authority.

2.5. On-call locating and marking shall be documented with a report to the Mobility Authority promptly after completion of the work including but not limited to a description of the area marked, designation person(s) who performed the work, any problems encountered during the work, any corrections or updates that may be needed to the records, and digital photographs of the area showing the markings.

**3. Data Management**

The Engineer shall be responsible for processing the surveyed utility information acquired during the 'designating' and 'locating' phases of service and submitting this information in a format acceptable to the Mobility Authority for use in an appropriate CADD system or onto project drawings.

**4. Project Coordination Activities**

The Engineer shall coordinate all activities with the Mobility Authority or GEC, to facilitate the orderly progress and timely completion of the project. The following services shall be provided:

4.1. Initial Project Meeting

Attend an initial meeting and an on-site inspection (when appropriate) to ensure familiarity with existing conditions and to establish project requirements.

4.2. Work Plan

Develop a work plan that includes a list of the tasks to be performed and schedule of the work effort.

4.3. Progress Meetings

Meet with the Mobility Authority or GEC as required to coordinate the work effort and resolve issues. Prepare a written report of such meetings. These meetings provide the opportunity to review:

- a. Activities completed since the last meeting
- b. Problems encountered
- c. Late activities
- d. Activities required by the next progress meeting
- e. Solutions for unresolved and/or anticipated problems
- f. Information or items required from other agencies/consultants

4.4. External Communications

Coordinate all activities with the Mobility Authority or GEC. Provide copies of diaries,



**ATTACHMENT A**  
**SERVICES TO BE PROVIDED BY THE ENGINEER**

correspondence and other documentation of work-related communications between Engineer, utility owners, the Mobility Authority, GEC, and other outside entities.

**5. Miscellaneous Activities**

The SUE consultant shall also be responsible for the following:

5.1. Traffic Control

Provide all traffic control, labor, and equipment. Comply with the regulations of the most recent edition of the Manual on Uniform Traffic Control Devices (MUTCD) of the State of Texas. Obtain approval from the Mobility Authority or GEC concerning the proposed method of handling traffic prior to commencing work.

ATTACHMENT B  
RATE SCHEDULE

2022 Billing Rates				
	Unit	Raw Rate (Not to Exceed)	Loaded Rate (Not to Exceed)	Unit Cost (Not to Exceed)
<b>Subsurface Utility Engineering (SUE) Services</b>				
Project Manager	hr.	\$ 75.00	\$ 243.56	
Utility Engineer	hr.	\$ 47.00	\$ 152.63	
Senior Utility Engineer	hr.	\$ 58.00	\$ 188.36	
Sr. Project Manager	hr.	\$ 67.00	\$ 217.58	
Graduate Engineer	hr.	\$ 42.00	\$ 136.40	
Senior Office Technician	hr.	\$ 40.00	\$ 129.90	
Office Technician	hr.	\$ 30.00	\$ 97.43	
Administrative Assistant	hr.	\$ 27.00	\$ 87.68	
Senior Utility Coordinator	hr.	\$ 58.00	\$ 188.36	
Utility Coordinator	hr.	\$ 41.00	\$ 133.15	
Junior Utility Coordinator	hr.	\$ 35.00	\$ 113.66	
SUE Field Manager	hr.	\$ 58.00	\$ 188.36	
Field Supervisor	hr.	\$ 39.00	\$ 126.65	
One (1) Designating Person	hr.			\$ 130.00
Two (2) Person Designating Crew	hr.			\$ 230.00
Two (2) Person Locating Crew with Vacuum Vehicle	hr.			\$ 285.00
<b>Other Direct Costs:</b>				
Ground Penetrating Radar	day			\$ 650.00
Flashing Arrow Board, warning signs w/ stands and traffic cones	day			\$ 600.00
GPS Receiver	hr.			\$ 20.00
EM-61	hr.			\$ 65.00
ATV or Utility Vehicle	day			\$ 110.00
Specialty Equipment (Sonde, Radio Beacon, Duct Rodder)	hour			\$ 9.00
Specialized Traffic Control	day			\$ 3,500.00
Specialized Traffic Control Plans (2 phases)	ea.			\$ 4,000.00
Excavation/Designating Permit Fees	ea.			\$ 800.00
Environmental Supplies (Paint, Flags, Lath)	day			\$ 25.00
CORING	ea.			\$ 500.00
Asphalt Cold Patch	ea.			\$ 105.00
Utilibond Concrete Patch	ea.			\$ 95.00
<b>SUE Utility Designating Services Unit Pricing:</b>				
Quality Level C and D	per L.F.			\$ 0.80
Quality Level B (Designating)	per L.F.			\$ 1.90
<b>SUE Utility Locate (Test Hole) Services:</b>				
Level A: (0-3 Feet)	per Test Hole			\$ 1,100.00
Level A: (3-6 Feet)	per Test Hole			\$ 1,600.00
Level A: (6.01-9 Feet)	per Test Hole			\$ 2,100.00
Level A: (9.01-12 Feet)	per Test Hole			\$ 2,700.00
Level A: (12 Feet or greater)	per Test Hole			\$ 3,800.00
<b>SUE Mobilization/Demobilization</b>				
Mobilization/Demobilization	per mile			\$ 0.58
Vac Truck Mobilization/Demobilization	per mile			\$ 6.25

**Home Office Overhead Rate:** 195.23%  
**Field Overhead Rate:** 148.78%  
**Profit:** 10.0%

**ATTACHMENT C  
KEY TEAM MEMBERS**

<b>Position</b>	<b>Name</b>	<b>Firm</b>
Project Manager	David Whiddon	Surveying And Mapping, LLC
Utility Engineer	Heath Hilbig, PE	Surveying And Mapping, LLC
Utility Coordinator	Christina Kim, PE	Surveying And Mapping, LLC

**Exhibit B**

*The Rios Group, Inc.*

# CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY

## CONTRACT FOR

### PROFESSIONAL ENGINEERING SERVICES

**THIS CONTRACT FOR PROFESSIONAL ENGINEERING SERVICES** (the “Contract”) is made by and between the Central Texas Regional Mobility Authority, 3300 N. I-35, Suite 300, Austin, Texas 78705, (the “Authority”) and The Rios Group, Inc. having its principal business address at 7400 Sand Street, Fort Worth, Texas 76118 (the “Engineer”).

#### WITNESSETH

**WHEREAS**, the Authority desires to contract for services generally described as professional engineering services, and more specifically described in Article 1; and,

**WHEREAS**, pursuant to a qualifications-based selection conducted in accordance with the Professional Services Procurement Act (Tex. Gov’t Code Sec. 2254.001, et. seq.), and the Authority’s Policy Code regarding the procurement of professional services, the Authority has selected the Engineer to provide the needed Services; and

**WHEREAS**, the Engineer has agreed to provide the Services subject to the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, the Authority and the Engineer, in consideration of the mutual covenants and agreements herein contained, do hereby mutually agree as follows.

#### AGREEMENT

##### ARTICLE 1

##### SCOPE OF SERVICES

The Engineer will perform the Services and provide the items necessary for fulfillment of the Contract as identified in Attachment A, Services (the “Services”) to be provided by the Engineer. All Services provided by the Engineer shall comply with the terms and conditions of this Contract and any Work Authorizations issued pursuant hereto. All Services provided by the Engineer will conform to standard engineering practices and applicable rules and regulations of the Texas Engineering Practices Act and the rules of the Texas Board of Professional Engineers.

This Contract does not obligate the Authority or the Executive Director to proceed with the Services or authorize the performance of work through a Work Authorization.

**ARTICLE 2  
CONTRACT PERIOD**

This Contract becomes effective when fully executed by all parties hereto (the “Effective Date”) and it shall terminate on June 30, 2025. A Work Authorization issued prior to expiration of this Contract may remain in effect until such time as the Services authorized under that Work Authorization are complete and accepted by the Mobility Authority. No new Services may be added to a Work Authorization after the termination date of June 30, 2025.

**ARTICLE 3  
COMPENSATION**

Compensation for the performance of the Services shall be provided as follows:

**A. Maximum Amount Payable.** The total amount payable under the Contract without modification is an amount not to exceed \$300,000.

**B. Methods for Compensation.** The method for compensating Engineer for Services performed shall be specified in the Work Authorization issued pursuant to Article 5 and shall be one of the following types:

(1) Cost-Plus

Subject to the terms of a Work Authorization issued pursuant to Article 5 below (including any maximum amount to be paid as stated therein), the Authority will agree to pay, and the Engineer will agree to accept as full and sufficient compensation and reimbursement for the performance of all Services as set forth in this Contract and the Work Authorization, hourly rates for the staff working on the assignment computed as follows:

$\text{Direct Labor Cost} \times (1.0 + \text{Overhead Rate}) \times (1.0 + \text{Profit } \%, \text{ in decimal form})$

where Direct Labor Cost equals employee’s actual annual salary divided by 2080 hours per year (subject to any applicable cap); Overhead Rate equals the Engineer’s most recent auditable overhead rate under 48 C.F.R. Part 31, Federal Acquisition Regulations (FAR) or otherwise approved overhead rate pursuant to this subarticle; and Profit % reflects a ten percent (10%) profit. No increase shall be made to the specified profit percentage.

The Direct Labor Cost caps for the classifications of employees working for the Authority as of the Effective Date are reflected in Attachment B. Revisions to Direct Labor Cost caps for employee classifications and the auditable overhead rate may be proposed no more frequently than once per calendar year, and no sooner than 12 months after the Effective Date, and are subject to the written approval of the Executive Director.

Members of the Engineer’s team who perform key roles in providing the Services are identified in Attachment C, Key Team Members (the “Key Team Members”). The actual annual salaries for all Key Team Members will be set as of the Effective Date. Revisions to actual annual salaries billed to the Authority may be proposed

no more frequently than once per calendar year, and no sooner than 12 months after the Effective Date, are limited to no more than a 4% increase per year.

The Authority shall have the right to review and/or audit the Engineer's Direct Labor Costs, auditable overhead rates, and annual salaries of Key Team Members. Once approved, the range of Direct Labor Costs and auditable overhead rate will be used going forward until the next annual adjustment is requested and approved. Changes to the auditable overhead rate will not be applied retroactively to Direct Labor Costs incurred in the previous year. If the Engineer or a subconsultant of the Engineer does not have a FAR Part 31 overhead rate, the Engineer may submit alternate documentation supporting an appropriate auditable overhead rate for approval by the Executive Director. If an auditable overhead rate is not approved, fixed hourly rates must be submitted per subarticle 3.B.4 below. Prior to requesting any adjustment to its auditable overhead rate, the Engineer shall provide a copy of the report establishing a new FAR Part 31 rate for the Engineer to the Executive Director.

The payment of the hourly rates and allowed costs shall constitute full payment for all Services, liaisons, products, materials, and equipment required to deliver the Services.

#### (2) Unit Cost

Subject to the terms of a Work Authorization issued pursuant to Article 5 below (including any maximum amount to be paid as stated therein), the Authority will agree to pay the Engineer, and the Engineer will agree to accept as full and sufficient compensation and reimbursement for the performance of all Services as set forth in this Contract and the Work Authorization, an agreed upon unit price multiplied by the number of units completed for each billing. This method of payment is generally reserved for work which has a definable work product but the quantity is uncertain and the Engineer assumes the risks for all costs. Each invoice submitted shall identify the specific Contract task(s) and completed work product/deliverable for the agreed upon price outlined in the Work Authorization.

#### (3) Lump Sum

Subject to the terms of a Work Authorization issued pursuant to Article 5 below (including any maximum amount to be paid as stated therein), the Authority will agree to pay Engineer, and the Engineer will agree to accept as full and sufficient compensation and reimbursement for the performance of all Services as set forth in this Contract and the Work Authorization, a Lump Sum amount for the specified category of services.

The Lump Sum will include compensation for Engineer's services and services of subconsultants, if any. Appropriate amounts will be incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses.

The portion of the Lump Sum amount billed for Engineer's Services will be based upon Engineer's estimate, as approved by the Authority's Director of Engineering, of the proportion of the total Services completed during the billing period to the Lump Sum amount.

(4) Specified Rate

Subject to the terms of a Work Authorization issued pursuant to Article 5 below (including any maximum amount to be paid as stated therein), and for the specified category of services, the Authority will agree to pay the Engineer, and the Engineer will agree to accept as full and sufficient compensation and reimbursement for the performance of all Services as set forth in this Contract and the Work Authorization, an amount equal to the cumulative hours charged to the specific Project by each class of Engineer's employees multiplied by the Standard Hourly Rates for each applicable billing class for all Services performed on the specific Project, plus Reimbursable Expenses and sub consultant's charges, if any.

Standard Hourly Rates include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-Project operating costs, and operating margin or profit.

Engineer's Reimbursable Expenses Schedule and Standard Hourly Rates are included in Attachment B.

The total estimated compensation for the specified category of services shall be stated in the Work Authorization. This total estimated compensation will incorporate all labor at Standard Hourly Rates, Reimbursable Expenses, and sub consultants' charges, if any.

The amounts billed will be based on the cumulative hours charged to the specified category of services during the billing period by each class of Engineer's employees multiplied by the Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Engineer's sub consultant's charges, if any.

Revisions to the Standard Hourly Rates may be proposed no more frequently than once per calendar year, and no sooner than 12 months after the Effective Date, and are subject to written approval of the Executive Director.

**C. Limitations on Rates Utilized.** The Engineer represents that it shall not use an auditable overhead rate that exceeds the rate determined in accordance with FAR Part 31 (or successor regulations); the rate used shall be based on actual salary amounts for the individuals



performing the Services; and the Direct Labor Costs shall not exceed the caps in Attachment B and shall be based on actual salary amounts for the individuals performing the Services.

**D. Reimbursable Expenses.** Notwithstanding the foregoing, and subject to the limitations herein, the Engineer shall be entitled to reimbursement for the following categories of expenses: travel costs, printing costs for specified deliverables, automobile expenses, and other expenses directly approved the Executive Director (collectively, “Reimbursable Expenses”). Without prior approval by the Executive Director, the Authority shall not reimburse the Engineer for expenses associated with relocating personnel to complete the services described by this Contract. Roadway tolls incurred by the Engineer or any of its subconsultants in connection with performance of the Services will not be reimbursable under this Contract. Reimbursement shall be limited to the terms of any financial assistance or Project agreements with TxDOT or other third parties. Travel expenses will be limited to the rates published by the Texas Comptroller of Public Accounts.

Engineer acknowledges that all expenses and costs paid or reimbursed by the Authority using federal or state funds shall be paid or reimbursed in accordance with, and subject to, applicable policies of the Authority and other applicable state and federal laws, including the applicable requirements of OMB Circular A-87, which may reduce the amount of expenses and costs reimbursed to less than what was incurred.

The Engineer shall acquire all goods and services subject to the reimbursement by the Authority under this Contract on a tax-free basis pursuant to the Authority’s tax-exempt status described in subarticle 2.H. This provision applies to the extent the Authority’s tax-exempt status can reasonably be extended to purchases made directly by the Engineer.

**E. Subconsultants.** For the purposes of this Contract, a “subconsultant” is an individual or entity contracted by the Engineer to perform part of the Services. The Authority will reimburse the Engineer for the subconsultant’s fees and expenses for those Services if the Engineer provides a written description of the proposed services and the proposed price (using rates approved in Attachment B), to the Authority’s Director of Engineering before the Services are provided, and the Authority’s Director of Engineering has provided to the Engineer a written approval for the Services and the proposed price. Each invoice submitted by the subconsultant shall be in a form provided by the Authority. The Engineer may not charge a mark-up or commission on a subconsultant’s invoice, and the Authority will not reimburse the Engineer in an amount that exceeds the price proposal from the subconsultant that was approved by the Authority’s Director of Engineering.

**F. Non-compensable Time.** Time spent by the Engineer’s personnel or subconsultants in an administrative or supervisory capacity not related to the performance of the Services is not compensable and shall not be billed to the Authority. Time spent on work in excess of what would reasonably be considered appropriate under industry standards for the performance of such Services is not compensable, unless that additional time spent resulted from the Authority’s delay in providing information, materials, feedback, or other necessary

cooperation to the Engineer. The Authority will not pay any hourly compensation to the Engineer for Services or deliverables required due to an error, omission, or fault of the Engineer.

**G. Consistency of Classification/Duties and Hourly Rates.** Time spent by the Engineer's employees or subconsultants to perform services or functions capable of being carried out by other, subordinate personnel with a lower hourly rate shall be billed at a rate equivalent to that of the applicable qualified subordinate personnel.

**H. Taxes.** All payments to be made by the Authority to the Engineer pursuant to this Contract are inclusive of federal, state, or other taxes, if any, however designated, levied, or based. The Authority acknowledges and represents that it is a tax-exempt entity under Sections 151.309, et seq., of the Texas Tax Code. A "Texas Sales and Use Tax Exemption Certificate" is available from the Authority for use toward Project-related expenses upon request. Title to any consumable items purchased by the Engineer in performing this Contract shall be deemed to have passed to the Authority at the time the Engineer takes possession or earlier, and such consumable items shall immediately be marked, labeled, or physically identified as the property of the Authority, to the extent practicable.

#### **ARTICLE 4 INVOICE REQUIREMENTS**

The Engineer shall submit its monthly invoices certifying the fees charged and any Reimbursable Expenses for Services provided during the previous month and shall also present a reconciliation of monthly invoices (and related estimates) to which the work relates. Each invoice shall be in such detail as is required by the Authority and, if the work is eligible for payment through an agreement with TxDOT, in such detail as TxDOT may require, including a breakdown of Services provided on a Project-by-Project basis, together with other Services requested by the Authority. Upon request of the Authority, the Engineer shall also submit certified time and expense records directly related to Services provided to the Authority, and copies of all records that support invoiced fees and Reimbursable Expenses. All invoices must be consistent with the rates established by this Contract and the compensation method specified in the Work Authorization. Unless waived in writing by the Executive Director, or his designee no invoice may contain, and the Authority will not be required to pay, any charge for billable hours which is more than (90) days old at the time of invoicing.

**A. Form of Invoices.** The invoice shall show: (1) the Work Authorization number for each Work Authorization included in the billing; (2) the total amount earned thru the billing period; and (3) the amount due and payable as of the date of the current billing statement for each Work Authorization. The invoice shall indicate if the work has been completed or if the invoice is for partial completion of the work. The invoice shall be in the format provided by the Authority.

**B. Disadvantaged Business Enterprise (DBE)/Historically Underutilized Business (HUB) Forms.** The Engineer will be responsible for completing and including with each invoice all required DBE/HUB reporting forms included in the Work Authorization(s).

**C. Time and Place of Payment.** Upon receipt of an invoice that complies with all invoice requirements set forth in this Contract, the Authority shall make a good faith effort to

pay the undisputed amount, which is due and payable within thirty (30) days, provided that if all or a portion of the Services reflected in the invoice are to be reimbursed by TxDOT through an agreement between TxDOT and the Authority, the Authority shall make a good faith effort to pay such amounts within thirty (30) days of receipt of such payments from TxDOT. **If the Authority disputes a request for payment by the Engineer, the Authority agrees to pay any undisputed portion of the invoice when due. The basis for any such dispute must be stated in writing within thirty (30) days after the Authority's receipt of the monthly invoice.**

**D. Withholding Payments.** The Authority reserves the right to withhold payment of all or portion of the Engineer's invoice in the event of any of the following: (1) a dispute over all or part of the work performed or costs thereof is not resolved within a thirty (30) day period following receipt of the invoice; (2) verification of satisfactory work performed has not been completed; or (3) if required reports (including third-party verifications, if any) are not received.

**E. Invoice and Progress Report Submittal Process.** The protocol for invoice and progress report submittal, review, and approval will be as follows:

- (1) The invoice submittal shall include:
  - Progress report
  - Forecast for completion of the scope
  - Invoice (in the required format provided by the Authority)
  - Supporting documents as requested
- (2) A progress report shall be submitted to the Authority at least once each calendar month;
- (3) An update to the Project schedule (using critical path method analysis) indicating the Project's overall status versus the baseline schedule (originally submitted with the Project Management Plan) shall be submitted to Authority at least once each calendar month;
- (4) In the event that invoices are not submitted on a monthly basis, a monthly submittal of the progress report and Project schedule information will be required nevertheless;
- (5) The invoice submittal shall not be later than the 10<sup>th</sup> day of the month following service unless otherwise directed; if submitted after the 10<sup>th</sup> day, it will be processed the following month;
- (6) As it relates to the Authority's end of fiscal year closeout efforts, the Engineer shall submit the invoice including their services through June 30<sup>th</sup> for a given year no later than July 7<sup>th</sup> of that same year;
- (7) The Authority's Director of Engineering and/or the Authority's General Engineering Consultant (GEC) (as defined in Article 19) will review the invoices to confirm that supporting documentation is included, and for

compliance with the Contract and consistency with the submitted progress report; and

- (8) The invoice will either be recommended for approval by the Authority's Director of Engineering and/or GEC, or the Authority's Director of Engineering and/or GEC will return it to the Engineer for required correction.

**F. Effect of Payments.** No payment by the Authority shall relieve the Engineer of its obligation to perform on a timely basis the Services required under this Contract. If, prior to acceptance of any Service, product or other deliverable, the Executive Director determines that said Service, product or deliverable does not satisfy the requirements of this Contract, the Executive Director may reject same and require the Engineer to correct or cure same within a reasonable period of time and at no additional cost to the Authority.

**G. Audit.** The Authority shall have the right to examine the books and records of the Engineer. The Engineer shall maintain all books, documents, papers, accounting records and other evidence pertaining to cost incurred and shall make such materials available at its office during the Contract period and for four (4) years from the date of final payment under this Contract or until any pending litigation has been completely and fully resolved, and the Executive Director approves of the destruction of records, whichever occurs last. The Authority or any of its duly authorized representatives, TxDOT, Texas State Auditor, the Federal Highway Administration ("FHWA"), the United States Department of Transportation Office of Inspector General and the Comptroller General shall have access to any and all books, documents, papers and records of the Engineer which are directly pertinent to this Contract for the purpose of making audits, examinations, excerpts and transcriptions.

## **ARTICLE 5 WORK AUTHORIZATIONS**

**A. Use.** The Engineer shall not begin any work until the Executive Director and the Engineer have signed a Work Authorization and received a Notice to Proceed as defined in the Work Authorization. Costs incurred by the Engineer before a Work Authorization is fully executed or after the completion date specified in the Work Authorization are not eligible for reimbursement. Services performed shall be in strict accordance with the scope, schedule, and budget set forth in each Work Authorization issued pursuant to this Contract, and no Services shall be performed which are not the subject of a validly issued Work Authorization. The Executive Director will issue Work Authorizations to authorize all work under this Contract. No work shall begin on the activity until the Work Authorization is approved and fully executed. All work must be completed on or before the completion date specified in the Work Authorization.

**B. Contents.** Each Work Authorization shall include: (1) scope of Services including types of Services to be performed and a full description of the work required to perform those Services (2) a full description of general administration tasks exclusive to that Work Authorization (3) a work schedule (including beginning and ending dates) with milestones; (4) the basis of payment whether cost-plus, unit cost, lump sum, or specified rate; (5) a Work Authorization

budget as described in subarticle 5.C.; and (6) DBE/HUB Requirements. The Engineer shall not include additional contract terms and conditions in the Work Authorization.

**C. Work Authorization Budget.** A Work Authorization budget shall be prepared by the Engineer and shall set forth in detail the following: (1) the computation of the estimated cost of the work as described in the scope of Services to be provided by the Engineer; (2) the estimated time (hours/days) required to complete the work using the fees set forth in Attachment B; (3) a work plan that includes a list of the work to be performed; and (4) a maximum cost (not-to-exceed) amount or unit or lump sum cost and the total cost or price of the work as defined in the scope of Services.

**D. No Guaranteed Work.** Work Authorizations will be issued at the sole discretion of the Executive Director. While it is the Executive Director's intent to issue Work Authorizations hereunder, the Engineer shall have no cause of action conditioned upon the lack of, or number of Work Authorizations issued.

**E. Incorporation into Contract.** Each Work Authorization shall be signed by both parties and become a part of the Contract. No Work Authorization will waive the Authority's or the Engineer's responsibilities and obligations established in this Contract.

**F. Supplemental Work Authorizations.** Before additional work may be performed or additional costs incurred beyond those authorized in a Work Authorization, a change in a Work Authorization shall be enacted by a written Supplemental Work Authorization to be approved by the Executive Director. Supplemental Work Authorizations, if required, must be executed by both parties. The Executive Director shall take such time as it deems necessary, in his sole discretion, to review the Supplemental Work Authorization.

**(1) Notice.** If the Engineer is of the opinion that any assigned work is beyond the scope of a Work Authorization and constitutes additional work beyond the Services to be provided under the Work Authorization, it shall promptly notify the Executive Director and submit written justification presenting the facts of the work and demonstrating how the work constitutes supplementary work.

**(2) Changes in Scope.** Changes that would modify the scope of the work authorized in a Work Authorization must be enacted by a written Supplemental Work Authorization. If the change in scope affects the amount payable under the Work Authorization, the Engineer shall prepare a revised Work Authorization budget for the Executive Director's approval. The Executive Director shall analyze the proposed justification, work hour estimate and cost. Upon approval of the need, the Executive Director shall negotiate the Supplemental Work Authorization scope with the Engineer, and then process the final Supplemental Work Authorization, subject to final written approval by the Executive Director.

**(3) Limitation of Liability.** The Authority shall not be responsible for actions by the Engineer or any costs incurred by the Engineer relating to additional work not directly associated with (or incurred prior to) the execution of a Supplemental Work Authorization.

**G. Completion.** Upon satisfactory completion of the Work Authorization, the Engineer shall submit a letter of completion along with the final deliverables for approval of the Executive Director.

## **ARTICLE 6 PROGRESS**

**A. Progress meetings.** As required and detailed in the Work Authorizations or as otherwise directed by the Executive Director, the Engineer shall from time to time during the progress of the work confer with the Executive Director. The Engineer shall prepare and present such information as may be pertinent and necessary or as may be requested by the Executive Director in order to evaluate features of the work.

**B. Conferences.** At the request of the Executive Director and as required and detailed in the Work Authorizations, conferences shall be held at the Engineer's office, the office of the Authority, or at other locations designated by the Executive Director. These conferences may also include evaluation of the Engineer's Services and work when requested by the Executive Director.

**C. Reports.** The Engineer shall promptly advise the Executive Director in writing of events that have a significant impact upon the progress of a Work Authorization, including:

(1) problems, delays, adverse conditions that will materially affect the ability to meet the time schedules and goals, or preclude the attainment of Project work units by established time periods; this disclosure will be accompanied by a statement of the action taken or contemplated, and any Authority or state/federal assistance needed to resolve the situation; and

(2) favorable developments or events that enable meeting the work schedule goals sooner than anticipated.

**D. Corrective Action.** Should the Executive Director determine that the progress of work does not satisfy the milestone schedule (or other deadlines) set forth in a Work Authorization, the Executive Director shall review the work schedule with the Engineer to determine the nature of corrective action needed. The Executive Director's participation in reviewing the work schedule and determining corrective actions needed will not, in any way, excuse the Engineer from any responsibility or costs associated with the failure to timely perform the Services.

**E. More Time Needed.** If the Engineer determines or reasonably anticipates that the work authorized in a Work Authorization cannot be completed within the work schedule contained therein, the Engineer shall promptly notify the Executive Director and shall follow the procedure set forth in the Work Authorization. The Executive Director may, at his sole discretion, modify the work schedule to incorporate an extension of time with the execution of a Supplemental Work Authorization.

## **ARTICLE 7 SUSPENSION OF WORK AUTHORIZATION**

**A. Notice.** Should the Executive Director desire to suspend a Work Authorization (or a portion of the work authorized thereunder) but not terminate the Contract, the Executive

Director may provide written notification to the Engineer, giving ten (10) business days prior notice. Both parties may waive the ten (10) business day notice requirement in writing.

**B. Reinstatement.** All or part of a Work Authorization may be reinstated and resumed in full force and effect within thirty (30) days of receipt of written notice from the Executive Director to resume the work. Both parties may waive the thirty (30) day notice requirement in writing.

**C. Limitation of Liability.** The Authority shall have no liability for work performed or costs incurred prior to the date authorized by the Executive Director to begin work, during periods when work is suspended, or after the completion of the Contract or Work Authorization.

## **ARTICLE 8 CHANGES IN WORK**

**A. Work Previously Submitted as Satisfactory.** If the Engineer has submitted work in accordance with the terms of this Contract and Work Authorization(s) but the Executive Director requests changes to the completed work or parts thereof which involve changes to the original scope of Services or character of work under the Contract and Work Authorization(s), the Engineer shall make such revisions as requested and as directed by the Executive Director, provided the work is reflected in a Supplemental Work Authorization.

**B. Work Does Not Comply with Contract.** If the Engineer submits work that does not comply with the terms of this Contract or Work Authorization(s), the Executive Director shall instruct the Engineer to make such revision as is necessary to bring the work into compliance with the Contract or Work Authorization(s). No additional compensation shall be paid for these revisions or re-work.

## **ARTICLE 9 OWNERSHIP OF DATA**

**A. Work for Hire.** All services provided under this Contract are considered work for hire and, as such, all data, basic sketches, charts, calculations, plans, specifications, electronic files, and other documents created or collected under the terms of this Contract are the property of the Authority.

**B. Ownership of Plans.** Notwithstanding any provision in this Contract or in common law or statute to the contrary all of the plans, tracings, estimates, specifications, computer records, discs, tapes, proposals, sketches, diagrams, charts, calculations, correspondence, memoranda, survey notes, and other data and materials, and any part thereof, created, compiled or to be compiled by or on behalf of the Engineer, including all information prepared for or posted on the Authority's website and together with all materials and data furnished to it by the Authority, are and at all times shall be and remain the property of the Authority and shall not be subject to any restriction or limitation on their further use by or on behalf of the Authority. Engineer hereby assigns any and all rights and interests it may have in the foregoing to the Authority, and Engineer hereby agrees to provide reasonable cooperation as may be requested by the Authority in connection with the Authority's efforts to perfect or protect rights and interests in the foregoing; and if at any time demand be made by the Authority for any of the

above materials, records, and documents, whether after termination of this Contract or otherwise, such shall be turned over to the Authority without delay. The Authority hereby grants the Engineer a revocable license to retain and utilize the foregoing materials for the limited purpose of fulfilling Engineer's obligations under this Contract, said license to terminate and expire upon the earlier to occur of (a) the completion of Services described in this Contract or (b) the termination of this Contract, at which time the Engineer shall deliver to the Authority all such materials and documents. If the Engineer or a subconsultant desires later to use any of the data generated or obtained by it in connection with any Project or any other portion of the work product resulting from the Services, it shall secure the prior written approval of the Executive Director. The Engineer shall retain its copyright and ownership rights in its own back-office databases and computer software that are not developed for the Authority or for purposes of this Contract. Intellectual property developed, utilized, or modified in the performance of Services for which the Engineer is compensated under the terms of this Contract shall remain the property of the Authority, Engineer hereby agrees to provide reasonable cooperation as may be requested by the Authority in connection with the Authority's efforts to perfect or protect such intellectual property. The Authority retains an unrestricted license for software packages developed in whole or in part with Authority funds.

**C. Separate Assignment.** If for any reason the agreement of the Authority and the Engineer set forth in subarticle 9.B. regarding the ownership of work product and other materials is determined to be unenforceable, either in whole or in part, the Engineer hereby assigns and agrees to assign to the Authority all right, title, and interest that Engineer may have or at any time acquire in said work product and other materials, without royalty, fee or additional consideration of any sort, and without regard to whether this Contract has terminated or remains in force. The Authority hereby acknowledges, however, that all documents and other work product provided by the Engineer to the Authority and resulting from the Services performed under this Contract are intended by the Engineer solely for the use for which they were originally prepared. Notwithstanding anything contained herein to the contrary, the Engineer shall have no liability for the use by the Authority of any work product generated by the Engineer under this Contract on any Project other than for the specific purpose and Project for which the work product was prepared.

**D. Disposition of Documents.** All documents and electronic files prepared by the Engineer and all documents furnished to the Engineer by the Authority shall be delivered to the Authority upon request. The Engineer, at its own expense, may retain copies of such documents or any other data which it has furnished the Authority under this Contract, but further use of the data is subject to express written permission by the Executive Director.

**E. Release of Design Plan.** The Engineer: (1) will not release any design plan created or collected under this Contract except to its subconsultants as necessary to complete the Contract; (2) shall include a provision in all subcontracts which acknowledges the Authority's ownership of the design plan and prohibits its use for any use other than the Project identified in this Contract; and (3) is responsible for any improper use of the design plan by its employees, officers, or subconsultants, including costs, damages, or other liability resulting from improper use. Neither the Engineer nor any subconsultants may charge a fee for any portion of the design plan created by the Authority.



**ARTICLE 10  
PUBLIC INFORMATION AND CONFIDENTIALITY**

**A. Public Information.** The Authority will comply with Government Code, Chapter 552, the Texas Public Information Act in the release of information produced under this Contract.

**B. Confidentiality.** The Engineer shall not disclose information obtained from the Authority under this Contract without the express written consent of the Executive Director. All employees of the Engineer and its subconsultants working on the Project may be required to sign a non-disclosure and confidentiality agreement.

**C. Access to Information.** The Engineer is required to make any information created or exchanged with the Authority pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act as determined by the Authority, available in a format that is accessible by the public at no additional charge to the Authority.

**ARTICLE 11  
PERSONNEL, EQUIPMENT AND MATERIAL**

**A. Engineer Resources.** The Engineer shall furnish and maintain an office for the performance of all Services, in addition to providing adequate and sufficient personnel and equipment to perform the Services required under the Contract. The Engineer certifies that it presently has adequate qualified personnel in its employment for performance of the Services required under this Contract, or it will be able to obtain such personnel from sources other than the Authority.

**B. Removal of Employee.** All employees of the Engineer assigned to this Contract shall have such knowledge and experience as will enable them to perform the duties assigned to them. The Executive Director may instruct the Engineer to remove any employee from association with work authorized in this Contract if, in the sole opinion of the Executive Director, the work of that employee does not comply with the terms of this Contract; the conduct of that employee becomes detrimental to the work; or for any other reason identified by the Executive Director.

**C. Authority Approval of Replacement Personnel.** The Engineer may not replace any Key Team Member, as designated in the applicable Work Authorization, without prior written approval of the Director of Engineering. If any Key Team Member cease to work on this Contract, the Engineer must notify the Director of Engineering in writing as soon as possible, but in any event within (3) three business days. The notification must give the reason for removal. The Engineer must receive written approval from the Director of Engineering of proposed replacement Key Team Member. The Director of Engineering's approval will be based upon the proposed replacement Key Team Member qualifications to provide the required Services. Approval will not be unreasonably withheld.

**D. Liquidated Damages.** The selection of Engineer to provide the Services under this Contract was based, in part, on the Key Team Member identified in Engineer's proposal. Because of the importance and unique nature of the Services to be provided by Key Team Member identified in Attachment C it is impractical to calculate the actual losses that would be suffered

by the Authority by the loss of Key Team Member from the Contract. Therefore, the Engineer agrees to compensate the Authority for its losses by paying liquidated damages in the amount of \$2,500 per day per Key Team Member position in Attachment C if any Key Team Member is removed by the Engineer by reassignment without prior written approval from the Director of Engineering. Liquidated damages will accrue from the date the Engineer removes the Key Team Member in Attachment C from the Contract if the parties do not agree on a replacement within (14) calendar days after the Key Team Member are removed from the Contract. If a replacement is agreed upon within that fourteen (14) calendar day period the liquidated damages will be waived. Liquidated damages shall cease when the parties agree on a substitute or when the Contract is terminated.

**E. Ownership of Acquired Property.** Except to the extent that a specific provision of this Contract states to the contrary, and as provided in subarticle 9.B., the Authority shall own all intellectual and other property acquired or developed under this Contract and all equipment purchased by the Engineer or its subconsultants under this Contract. All intellectual property and equipment owned by the Authority shall be delivered to the Director of Engineering when the Contract or applicable Work Authorization terminates, or when it is no longer needed for work performed under this Contract, whichever occurs first. In the event that a capital item is purchased for the sole use of the Authority, title shall pass or transfer to the Authority upon acquisition and prior to any use of the item by the Engineer.

## **ARTICLE 12 SUBCONTRACTING**

**A. Prior Approval.** The Engineer shall not assign, subcontract, or transfer any portion of Services related to the work under this Contract unless specified in an executed Work Authorization or otherwise without first obtaining the prior written approval from the Executive Director. Request for approval should include a written description of the proposed services, and, using rates established in Attachment B, a proposed price.

**B. DBE/HUB Compliance.** The Engineer's subcontracting program shall comply with the DBE/HUB requirements described in the Work Authorization(s).

**C. Required Provisions.** All subcontracts shall include the provisions included in this Contract and any provisions required by law.

**D. Engineer Responsibilities.** No subcontract shall relieve the Engineer of any of its responsibilities under this Contract and of any liability for work performed under this Contract, even if performed by a subconsultant or other third party performing work for or on behalf of the Engineer.

**E. Invoice Approval and Processing.** All subconsultants shall prepare and submit their invoices on the same billing cycle and format as the Engineer (so as to be included in invoices submitted by the Engineer).

**ARTICLE 13  
INSPECTION OF WORK**

**A. Review Rights.** Under this Contract, the Authority, TxDOT, and the U.S. Department of Transportation, and any authorized representative of the Authority, TxDOT, or the U.S. Department of Transportation, shall have the right at all reasonable times to inspect, review or otherwise evaluate the work performed hereunder and the premises in which it is being performed.

**B. Reasonable Access.** If any inspection, review or evaluation is made on the premises of the Engineer or a subconsultant under this Article, the Engineer shall provide and require its subconsultants to provide all reasonable facilities and assistance for the safety and convenience of the persons performing the review in the performance of their duties.

**ARTICLE 14  
SUBMISSION OF REPORTS**

All applicable study reports shall be submitted in preliminary form for approval by the Director of Engineering before a final report is issued. The Director of Engineering's comments on the Engineer's preliminary report must be addressed in the final report. Draft reports shall be considered confidential unless otherwise indicated by the Director of Engineering.

**ARTICLE 15  
VIOLATION OF CONTRACT TERMS**

**A. Increased Costs.** Violation of Contract terms, breach of contract, or default by the Engineer shall be grounds for termination of the Contract pursuant to Article 16, and any increased or additional cost incurred by the Authority arising from the Engineer's default, breach of contract or violation of contract terms shall be paid by the Engineer.

**B. Remedies.** This Contract shall not be considered as specifying the exclusive remedy for any default, and all remedies existing at law and in equity shall be available to the parties and shall be cumulative.

**C. Excusable Delays.** Except with respect to defaults of subconsultants, the Engineer shall not be in default by reason of any failure in performance of this Contract in accordance with its terms (including any failure to progress in the performance of the work) if such failure arises out of causes beyond the control and without the default or negligence of the Engineer. Such causes may include, but are not restricted to, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

**ARTICLE 16  
TERMINATION**

**A. Termination.** The Contract may be terminated before the stated completion date by any of the following conditions:

- (1) by mutual agreement and consent, in writing from both parties;

(2) by the Executive Director by notice in writing to the Engineer as a consequence of failure by the Engineer to perform the Services set forth herein in a satisfactory manner or if the Engineer violates the provisions of Article 23, Gratuities, or DBE/HUB Requirements;

(3) by either party, upon the failure of the other party to fulfill its obligations as set forth herein, following thirty (30) days written notice and opportunity to cure;

(4) by the Executive Director for his convenience and in his sole discretion, not subject to the consent of the Engineer, by giving thirty (30) days written notice of termination to the Engineer; or

(5) by satisfactory completion of all Services and obligations described herein.

**B. Measurement.** Should the Executive Director terminate this Contract as herein provided, no fees other than fees due and payable at the time of termination shall thereafter be paid to the Engineer. In determining the value of the work performed by the Engineer prior to termination, the Executive Director shall be the sole judge. Compensation for work at termination will be based on a percentage of the work completed at that time. Should the Executive Director terminate this Contract under subarticles 16.A.3 & 4, the Engineer shall not incur costs during the thirty-day notice period in excess of the amount incurred during the preceding thirty (30) days.

**C. Value of Completed Work.** If the Engineer defaults in the performance of this Contract or if the Executive Director terminates this Contract for fault on the part of the Engineer, the Executive Director will give consideration to the following when calculating the value of the completed work: (1) the actual costs incurred (not to exceed the rates set forth in the applicable Work Authorization) by the Engineer in performing the work to the date of default; (2) the amount of work required which was satisfactorily completed to date of default; (3) the value of the work which is usable to the Authority; (4) the cost to the Authority of employing another firm to complete the required work; (5) the time required to employ another firm to complete the work; (6) delays in opening a revenue generating Project and costs (including lost revenues) resulting therefrom; and (7) other factors which affect the value to the Authority of the work performed.

**D. Surviving Requirements.** The termination of this Contract and payment of an amount in settlement as prescribed above shall extinguish the rights, duties, and obligations of the Authority and the Engineer under this Contract, except for those provisions that establish responsibilities that extend beyond the Contract period, including without limitation the provisions of Article 18.

**E. Payment of Additional Costs.** If termination of this Contract is due to the failure of the Engineer to fulfill its Contract obligations, the Authority may take over the Project and

prosecute the work to completion, and the Engineer shall be liable to the Authority for any additional cost to the Authority.

**ARTICLE 17  
COMPLIANCE WITH LAWS AND AUTHORITY POLICIES**

The Engineer shall comply with all applicable federal, state and local laws, statutes, codes, ordinances, rules and regulations, and the orders and decrees of any court, or administrative bodies or tribunals in any manner affecting the performance of this Contract, including, without limitation, worker's compensation laws, minimum and maximum salary and wage statutes and regulations, nondiscrimination, licensing laws and regulations, the Authority's enabling legislation (Chapter 370 of the Texas Transportation Code), and all amendments and modifications to any of the foregoing, if any. The Engineer shall comply with all applicable Authority policies and procedures as outlined in the Mobility Authority Policy Code handbook available on the Authority's website (<https://www.mobilityauthority.com/about/policy-disclaimers/code>). When required, the Engineer shall furnish the Authority with satisfactory proof of its compliance therewith.

**ARTICLE 18  
INDEMNIFICATION**

**THE ENGINEER SHALL INDEMNIFY AND HOLD HARMLESS THE AUTHORITY AND ITS OFFICERS, DIRECTORS, EMPLOYEES, ENGINEERS, AGENTS AND CONSULTANTS WHICH, FOR THE PURPOSES OF THIS CONTRACT, SHALL INCLUDE THE AUTHORITY'S GEC, GENERAL COUNSEL, BOND COUNSEL, FINANCIAL ADVISORS, TRAFFIC AND REVENUE ENGINEERS, TOLL OPERATIONS/COLLECTIONS FIRMS, AND UNDERWRITERS (COLLECTIVELY THE "INDEMNIFIED PARTIES") FROM ANY CLAIMS, COSTS, OR LIABILITIES OF ANY TYPE OR NATURE AND BY OR TO ANY PERSONS WHOMSOEVER, TO THE EXTENT CAUSED BY THE NEGLIGENT ACTS, ERRORS, OR OMISSIONS OF THE ENGINEER OR ITS OFFICERS, DIRECTORS, EMPLOYEES, SUBCONSULTANTS AND AGENTS WITH RESPECT TO THE ENGINEER'S PERFORMANCE OF THE WORK TO BE ACCOMPLISHED UNDER THIS CONTRACT OR ACTIONS RESULTING IN CLAIMS AGAINST THE INDEMNIFIED PARTIES. IN SUCH EVENT, THE ENGINEER SHALL ALSO INDEMNIFY AND HOLD HARMLESS THE AUTHORITY AND THE INDEMNIFIED PARTIES FROM ANY AND ALL REASONABLE AND NECESSARY EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES, INCURRED BY THE AUTHORITY OR ANY OF THE INDEMNIFIED PARTIES IN LITIGATING OR OTHERWISE RESISTING SAID CLAIMS, COSTS OR LIABILITIES. IN THE EVENT THE AUTHORITY AND/OR ANY OF THE INDEMNIFIED PARTIES, IS/ARE FOUND TO BE PARTIALLY AT FAULT, THE ENGINEER SHALL, NEVERTHELESS, INDEMNIFY THE AUTHORITY FROM AND AGAINST THE PERCENTAGE OF FAULT ATTRIBUTABLE TO THE ENGINEER OR ITS OFFICERS, DIRECTORS, EMPLOYEES, SUBCONSULTANTS AND AGENTS OR TO THEIR CONDUCT.**

**ARTICLE 19  
ROLE OF GENERAL ENGINEERING CONSULTANT (GEC)**

The Authority will utilize a GEC to assist in its management of this Contract. The GEC is an independent contractor and is authorized by the Authority to provide the management and technical direction for this Contract on behalf of the Authority, provided that the GEC is not an

agent of the Authority. All the technical and administrative provisions of the Contract shall be managed by the GEC, and the Engineer shall comply with all of the GEC's directives that are within the purview of the Contract. Decisions concerning Contract amendments and adjustments, such as time extensions and Supplemental Work Authorizations, shall be made by the Executive Director, unless otherwise specified; however, requests for such amendments or adjustments shall be made through the GEC, who shall forward such requests to the Executive Director with its comments and recommendations.

Should any dispute arise between the GEC and the Engineer, concerning the conduct of this Contract, either party may request a resolution of said dispute by the Executive Director, whose decision shall be final.

## **ARTICLE 20 ENGINEER'S RESPONSIBILITY**

**A. Accuracy.** The Engineer shall have total responsibility for the accuracy and completeness of all work prepared and completed under this Contract and shall check all such material accordingly. The Engineer shall promptly make necessary revisions or corrections resulting from its errors, omissions, or negligent acts without additional compensation.

**B. Errors and Omissions.** The Authority and Engineer will address errors and omissions as follows:

(1) The Engineer's responsibility for all questions and/or clarification of any ambiguities arising from errors and omissions will be determined by the Executive Director.

(2) A problem resulting from an error and omission may be identified during the development of the PS&E, as well as before, during, or after construction. The Engineer will be responsible for errors and omissions before, during, and after construction of a Project, as well as before and after Contract termination.

(3) The phrase error and omission is used throughout to mean an error, an omission, or a combination of error and omission.

(4) When an apparent error and omission is identified in work provided by the Engineer, the Executive Director will notify the Engineer of the problem and involve the Engineer in efforts to resolve it and determine the most effective solution, provided that the Executive Director shall ultimately determine the solution that is chosen.

(5) Errors and omissions identified during PS&E development/prior to Project construction will be corrected at the Engineer's expense with no additional cost to the Authority.

(6) During and after construction, errors and omissions can potentially result in significant additional costs to the Authority that they would not have incurred if the construction plans had been correct. The resulting additional costs are considered damages that the Authority will collect from the Engineer, including through offset to amounts owed to the Engineer.

(7) After a Project is constructed and is in use, there is a possibility of a contractor claim that may involve a previous error and omission by the Engineer identified during construction; it is also possible the Engineer could be responsible for some or all of the cost of the contractor claim. If there is a possibility of Engineer responsibility, upon notice of the contractor claim, the Executive Director must notify the Engineer of the situation and provide the Engineer the opportunity to contribute any information to the Executive Director that may be useful in addressing the contractor claim. The Engineer will not be involved in any discussions or negotiations with the contractor during the claims process. Upon settlement of all previous claims with the contractor, if additional costs are identified, the Executive Director should consider the same factors as during construction in determining the Engineer's level of responsibility.

(8) The additional costs which are considered damages to the Authority and are to be recovered should represent actual cost to the Authority.

(9) The Executive Director will not accept in-kind services from the Engineer as payment for additional costs owed.

(10) The Engineer is responsible for promptly correcting errors and omissions without compensation. In the situation of a dispute concerning whether or not the work is compensable, the Engineer shall not delay the work.

(11) A letter will be transmitted by the Executive Director formally notifying the Engineer of payment required for the error and omission and will indicate the Engineer's apparent liability for the identified additional costs. The letter will include an outline of the errors and omissions, along with the additional costs, and references to any previous points of coordination and preliminary agreements. Within 30 calendar days of the date of the letter, a response is required from the Engineer with: (a) payment, (b) a request for a meeting, or (c) a request for the Executive Director to reconsider whether the Executive Director should pursue reimbursement for the identified error and omission. If a response or payment is not received from the Engineer, the Authority may pursue legal action against the Engineer, in addition to offset of payments to the Engineer, claims against insurance and other remedies available under the Contract.

(12) It is the Executive Director's responsibility to identify errors and omissions and fairly evaluate the responsibility for additional cost when applicable. It is the responsibility of the Authority staff to ensure that the Authority's business practices are professional, fair, equitable, and reasonable.

**C. Professionalism.** The Engineer shall perform the services it provides under the Contract: (1) with the professional skill and care ordinarily provided by competent engineers practicing under the same or similar circumstances and professional license and (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer.

**D. Seal.** The responsible Engineer shall sign, seal and date all appropriate engineering submissions to the Authority in accordance with the Texas Engineering Practice Act and the rules of the Texas Board of Professional Engineers.

**E. Resealing of Documents.** Once the work has been sealed and accepted by the Director of Engineering, the Authority, as the owner, will notify the Engineer, in writing, of the possibility that an Authority engineer, as a second engineer, may find it necessary to alter, complete, correct, revise or add to the work. If necessary, the second engineer will affix his seal to any work altered, completed, corrected, revised or added. The second engineer will then become responsible for any alterations, additions or deletions to the original design including any effect or impacts of those changes on the original engineer's design.

## **ARTICLE 21 NONCOLLUSION**

**A. Warranty.** The Engineer warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Engineer, to solicit or secure this Contract and that it has not paid or agreed to pay any company or Engineer any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Contract.

**B. Liability.** For breach or violation of this warranty, the Authority shall have the right to annul this Contract without liability or, in its discretion, to deduct from the Contract compensation, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

## **ARTICLE 22 INSURANCE**

The Engineer shall furnish the Authority a properly completed Certificate of Insurance approved by the Executive Director prior to beginning work under the Contract and shall maintain such insurance through the Contract period. The Engineer shall provide proof of insurance (and the Professional Liability Insurance discussed herein) in a form reasonably acceptable by the Executive Director. The Engineer certifies that it has and will maintain insurance coverages as follows:

**A. Workers Compensation Insurance.** In accordance with the laws of the State of Texas and employer's liability coverage with a limit of not less than \$1,000,000. This policy shall be endorsed to include a waiver of subrogation in favor of the Authority.

**B. Comprehensive General Liability Insurance.** With limits not less than \$1,000,000 for bodily injury, including those resulting in death, and \$1,000,000 for property damage on account of any one occurrence, with an aggregate limit of \$1,000,000.

**C. Comprehensive Automobile Liability Insurance.** Applying to owned, non-owned, and hired automobiles in an amount not less than \$1,000,000 for bodily injury, including death, to any one person, and \$1,000,000 on account on any one occurrence, and \$1,000,000 for property damage on account of any one occurrence. This policy shall not contain any limitation with respect to a radius of operation for any vehicle covered and shall not exclude from the



coverage of the policy any vehicle to be used in connection with the performance of the Engineer's obligations under this Contract.

**D. Excess Liability Insurance.** In an amount of \$5,000,000 per occurrence and aggregate.

**E. Valuable Papers Insurance.** In an amount sufficient to assure the full restoration of any plans, drawings, field notes, logs, test reports, diaries, or other similar data or materials relating to the Services provided under this Contract in the event of their loss or destruction, until such time as the work has been delivered to the Authority.

**F. Architects and/or Engineers Professional Liability insurance.** Engineer shall provide and maintain professional liability coverage, with limits not less than \$5,000,000 per claim and \$5,000,000 aggregate. The professional liability coverage shall protect against any negligent act, error or omission arising out of design or engineering activities, including environmental related activities, with respect to the Project, including coverage for negligent acts, errors or omissions by any member of the Engineer and its subconsultants (including, but not limited to design subconsultants and subconsultants) of any tier. The policy must provide that coverage extends a minimum of three (3) years beyond the Engineer's completion of the Services. This policy shall be endorsed to include a waiver of subrogation in favor of the Authority.

**G. General for All Insurance.** The Engineer shall promptly, upon execution of this Contract, furnish certificates of insurance to the Executive Director indicating compliance with the above requirements. Certificates shall indicate the name of the insured, the name of the insurance company, the name of the agency/agent, the policy number, the term of coverage, and the limits of coverage.

All policies are to be written through companies (a) authorized to transact that class of insurance in the State of Texas; (b) rated (i), with respect to the companies providing the insurance under subarticles 22.A. through D., above, by A. M. Best Company as "A-X" or better (or the equivalent rating by another nationally recognized rating service) and (ii) with respect to the company providing the insurance under subarticle 22.E., a rating by A. M. Best Company or similar rating service satisfactory to the Authority and/or its insurance consultant; and (c) otherwise acceptable to the Executive Director.

All policies are to be written through companies authorized to transact that class of insurance in the State of Texas. Such insurance shall be maintained in full force and effect during the life of this Contract or for a longer term as may be otherwise provided for hereunder. Insurance furnished under subarticles 22.B., C., and D., above, shall name the Authority as additional insured and shall protect the Authority, its officers, employees, and directors, agents, and representatives from claims for damages for bodily injury and death and for damages to property arising in any manner from the negligent or willful acts or failures to act by the Engineer, its officers, employees, directors, agents, and representatives in the performance of the Services rendered under this Contract. Certificates shall also indicate that the contractual liability assumed in Article 18, above, is included.

The insurance carrier shall include in each of the insurance policies required under subarticles 22.A. through F., the following statement: "This policy will not be canceled or

materially changed during the period of coverage without at least thirty (30) days prior written notice addressed to the Central Texas Regional Mobility Authority, 3300 N. IH-35, Suite 300, Austin, Texas 78705, Attn: Executive Director”

**H. Subconsultant.** The Engineer shall be liable for work performed by the subconsultant and Engineer’s insurance shall cover the work, actions, errors and omissions of the subconsultant.

### **ARTICLE 23 GRATUITIES**

**A. Employees Not to Benefit.** Authority policy mandates that the director, employee or agent of the Authority shall not accept any gift, favor, or service that might reasonably tend to influence the director, employee or agent in making of procurement decisions. The only exceptions allowed are ordinary business lunches and items that have received the advance written approval of the Executive Director of the Authority.

**B. Liability.** Any person doing business with or who reasonably speaking may do business with the Authority under this Contract may not make any offer of benefits, gifts or favors to Authority employees, except as mentioned above. Failure on the part of the Engineer to adhere to this policy may result in the termination of this Contract.

### **ARTICLE 24 DISADVANTAGED BUSINESS ENTERPRISE/HISTORICALLY UNDERUTILIZED BUSINESS REQUIREMENTS**

The Engineer agrees to comply with the DBE/HUB requirements and reporting guidelines set forth in the Work Authorization(s). The DBE/HUB Goal established for this Project is as set forth in the Work Authorization. The Engineer also agrees to comply with the DBE/HUB subcontracting plan that was included in the response that the Engineer submitted to the Authority’s Request for Qualifications.

### **ARTICLE 25 CERTIFICATE OF INTERESTED PARTIES (FORM 1295)**

The Engineer must comply with the Certificate of Interested Parties (Form 1295) adopted by the Texas Legislature as House Bill 1295, which added section 2252.908 of the Government Code, available for review at the Texas Ethics Commission website:

<https://www.ethics.state.tx.us/tec/1295-Info.htm>

The Engineer, after award, is required to complete and submit Form 1295 if the Engineer has either of the following contracts with a governmental entity or state agency starting as of January 1, 2016:

- (1) Requires an action or vote by the governing body of the entity or agency before the contract may be signed; or
- (2) Has a value of at least \$1 million.

**ARTICLE 26**  
**MAINTENANCE, RETENTION AND AUDIT OF RECORDS**

**A. Retention Period.** The Engineer shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and Services provided (hereinafter called the Records). The Engineer shall make the Records available at its office during the Contract period and for four (4) years from the date of final payment under this Contract, until completion of all audits, or until pending litigation has been completely and fully resolved, whichever occurs last.

**B. Availability.** The Authority shall have the exclusive right to examine the books and records of the Engineer for the purpose of checking the amount of work performed by the Engineer. The Engineer shall maintain all books, documents, papers, accounting records and other evidence pertaining to cost incurred and shall make such materials available at its office during the contract period and for four (4) years from the date of final payment under this Contract or until pending litigation has been completely and fully resolved, whichever occurs last. The Authority or any of its duly authorized representatives, TxDOT, FHWA, the United States Department of Transportation Office of Inspector General, and the Comptroller General shall have access to any and all books, documents, papers and records of the Engineer which are directly pertinent to this Contract for the purpose of making audits, examinations, excerpts and transcriptions.

**ARTICLE 27**  
**CIVIL RIGHTS COMPLIANCE**

**A. Compliance with Regulations.** The Engineer shall comply with the Acts and Regulations relative to nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (USDOT), FHWA, as they may be amended from time to time, which are herein incorporated by reference and made part of this Contract.

**B. Nondiscrimination.** The Engineer, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of subconsultants, including procurement of materials and leases of equipment. The Engineer shall not participate directly or indirectly in the discrimination prohibited by the Acts and Regulations, including employment practices when the Contract covers any activity, Project, or program set forth in Appendix B of 49 CFR Part 21.

**C. Solicitations for Subcontracts, Including Procurement of Materials and Equipment.** In all solicitations either by competitive bidding or negotiation made by the Engineer for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subconsultant or supplier shall be notified by the Engineer of the Engineer's obligations under this Contract and the Acts and Regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin.

**D. Information and Reports.** The Engineer shall provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and facilities as may be determined by the Authority or the FHWA to be pertinent to ascertain compliance with such Acts,

Regulations or directives. Where any information required of the Engineer is in the exclusive possession of another who fails or refuses to furnish this information, the Engineer shall so certify to the Authority or the FHWA, as appropriate, and shall set forth what efforts it has made to obtain the information.

**E. Sanctions for Noncompliance.** In the event of the Engineer's noncompliance with the Nondiscrimination provisions of this Contract, the Authority shall impose such Contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

- (1) withholding of payments to the Engineer under the Contract until the Engineer complies and/or
- (2) cancelling, terminating, or suspending of the Contract, in whole or in part.

## **ARTICLE 28 PATENT RIGHTS**

The Authority and the U. S. Department of Transportation shall have the royalty free, nonexclusive and irrevocable right to use and to authorize others to use any patents developed by the Engineer under this Contract.

## **ARTICLE 29 DISPUTES**

**A. Disputes Not Related to Contract Services.** The Engineer shall be responsible for the settlement of all contractual and administrative issues arising out of any procurement made by the Engineer in support of the Services authorized herein.

**B. Disputes Concerning Work or Cost.** The Executive Director of the Authority shall decide all questions, difficulties and disputes of any nature whatsoever that may arise under or by reason of this Contract, and his decision upon all claims, questions and disputes shall be final. The Engineer shall comply with the decision of the Executive Director with regard to the resolution of any such disputes.

## **ARTICLE 30 SUCCESSORS AND ASSIGNS**

The Engineer and the Authority do each hereby bind themselves, their successors, executors, administrators and assigns to each other party of this Contract and to the successors, executors, administrators and assigns of such other party in respect to all covenants of this Contract. The Engineer shall not assign, subcontract, or transfer its interest in this Contract or any portion thereof without the prior written consent of the Executive Director.

## **ARTICLE 31 SEVERABILITY**

In the event any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or

unenforceability shall not affect any other provision thereof and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

**ARTICLE 32  
PRIOR CONTRACTS SUPERSEDED**

This Contract, including all attachments, constitutes the sole agreement of the parties hereto for the Services authorized herein and supersedes any prior understandings or written or oral contracts between the parties respecting the subject matter defined herein.

**ARTICLE 33  
CONFLICT OF INTEREST**

**A. Representation by Engineer.** The undersigned Engineer represents that it has no conflict of interest that would in any way interfere with its or its employees' performance of Services for the Authority or which in any way conflicts with the interests of the Authority and certifies that it is in full compliance with the Authority's Policy Code related to Conflicts of Interest. The Engineer shall prevent any actions or conditions that could result in a conflict with the Authority's interests.

**B. Certification Status.** The Engineer certifies that it is not:

- (1) a person required to register as a lobbyist under Chapter 305, Government Code
- (2) a public relations firm
- (3) a government consultant

**C. Environmental Disclosure.** If the Engineer will prepare an environmental impact statement or an environmental assessment under this Contract, the Engineer certifies by executing this Contract that it has no financial or other interest in the outcome of the Project on which the environmental impact statement or environmental assessment is prepared.

**D. Engineering Services for the Construction Contractor.** Specific to the Project for which the Services are being provided under this Contract, the Engineer shall not provide services directly to the contractor responsible for constructing the Project unless approved by the Executive Director.

**ARTICLE 34  
ENTIRETY OF AGREEMENT**

**This writing, including attachments and addenda, if any, embodies the entire agreement and understanding between the parties hereto, and there are no agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby. No alteration, change or modification of the terms of the Contract shall be valid unless made in writing signed by both parties hereto.**

**ARTICLE 35  
SIGNATORY WARRANTY**

**The undersigned signatory for the Engineer hereby represents and warrants that he or she is an officer of the organization for which he or she has executed this Contract and that he or she has full and complete authority to enter into this Contract on behalf of the firm. These representations and warranties are made for the purpose of inducing the Authority to enter into this Contract.**

**ARTICLE 36  
NOTICES**

A notice, demand, request, report, and other communication required or permitted under this Contract, or which any party may desire to give, shall be in writing and shall be deemed to have been given on the sooner to occur of (i) receipt by the party to whom the notice is hand-delivered, with a written receipt of notice provided by the receiving party, or (ii) two days after deposit in a regularly maintained express mail receptacle of the United States Postal Service, postage prepaid, or registered or certified mail, return receipt requested, express mail delivery, addressed to such party at their address set forth below, or to such other address as a party may from time to time designate under this article, or (iii) receipt of an electronic mail transmission (attaching scanned documents in a format such as .pdf or .tif) for which confirmation of receipt by the other party has been obtained by the sending party:

In the case of the Engineer:

Travis Isaacson, P.E.  
The Rios Group, Inc.  
7400 Sand Street  
Fort Worth, TX 76118  
tisaacson@rios-group.com

In the case of the Authority:

James M. Bass, Executive Director  
Central Texas Regional Mobility Authority  
3300 North IH 35, Suite 300  
Austin, TX 78705  
Email: jrbass@ctrma.org

with a copy to:

Mike Sexton, Acting Director of Engineering  
Central Texas Regional Mobility Authority  
3300 North IH 35, Suite 300  
Austin, TX 78705  
Email: ms Sexton@ctrma.org

A party may change the information provided in this article for notification purposes by providing notice to the other party of the new information and the effective date of the change.

**ARTICLE 37  
BUSINESS DAYS AND DAYS**

For purposes of this Contract, “business days” shall mean any day the Authority is open for business and “days” shall mean calendar days.

**ARTICLE 38  
INCORPORATION OF PROVISIONS**

**Attachments A through C are attached hereto and incorporated into this Contract as if fully set forth herein.**

**ARTICLE 39  
PRIORITY OF DOCUMENTS/ORDER OF PRECEDENCE**

This Contract, and each of the Attachments (together, the “Contract Documents”), are an essential part of the agreement between the Authority and the Engineer, and a requirement occurring in one is as binding as though occurring in all. The Contract Documents are intended to be complementary and to describe and provide for a complete Contract. In the event of any conflict among the Contract Documents or between the Contract Documents and other documents, the order of precedence shall be as set forth below:

- A. Supplemental Work Authorizations;
- B. Work Authorizations;
- C. Contract Amendments;
- D. This Contract;
- E. The Request for Qualifications;
- F. The Engineer’s Response to the Request for Qualifications.

Additional details and more stringent requirements contained in a lower priority document will control unless the requirements of the lower priority document present an actual conflict with the requirements of the higher-level document. Notwithstanding the order of precedence among Contract Documents set forth in this Article 39, in the event of a conflict within a Contract Document or set of Contract Documents with the same order of priority (including within documents referenced therein), the Executive Director shall have the right to determine, in his sole discretion, which provision applies.

**ARTICLE 40  
CONTRACTOR CERTIFICATIONS**

**A. Entities that Boycott Israel.** The Contractor represents and warrants that (1) it does not, and shall not for the duration of this Agreement, boycott Israel or (2) the verification required by Section 2271.002 of the Texas Government Code does not apply to this Agreement.

If circumstances relevant to this provision change during the course of the contract, the Contractor shall promptly notify the Authority.

**B. Entities that Boycott Energy Companies.** The Contractor represents and warrants that: (1) it does not, and will not for the duration of this Agreement, boycott energy companies or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to this Agreement. If circumstances relevant to this provision change during the course of this Agreement, the Contractor shall promptly notify the Authority.

**C. Entities that Discriminate Against Firearm Entities or Trade Associations.** The Contractor verifies that: (1) it does not, and will not for the duration of this Agreement, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to this Agreement. If circumstances relevant to this provision change during the course of this Agreement, the Engineer shall promptly notify the Authority.

**ARTICLE 41  
ABBREVIATIONS AND DEFINITIONS**

Acts and Regulations	Federal, state, and local acts and regulations which are applicable to the Contract
Agreement	This contract
Authority	Central Texas Regional Mobility Authority
CFR	Code of Federal Regulations
Contract	This contract document and its attachments
DBE	Disadvantaged Business Enterprise
Engineer	The service provider performing the services under this Contract
Executive Director	The Executive Director of the Authority, or anyone to whom he has delegated the authority to act on his behalf
FAR	Federal Acquisition Regulations
FHWA	Federal Highway Administration
GEC	General Engineering Consultant
HUB	Historically Underutilized Business
OMB	Office of Management and Budget
Project	Any capital improvement, rehabilitation, repair, maintenance, or other work in conjunction with the Authority's or a partner's facilities.
PS&E	Plans, specifications, and estimate
Services	Any work assigned under this contract
TxDOT	Texas Department of Transportation



USDOT	United States Department of Transportation
Work Authorization	Any work authorization arising from this contract
Year	When not otherwise clarified, “year” refers to a 12-month period

**IN WITNESS WHEREOF**, the **Authority** and the **Engineer** have executed this Contract in duplicate.

**THE ENGINEER**

**CENTRAL TEXAS REGIONAL MOBILITY  
AUTHORITY**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

Rosa Navejar  
\_\_\_\_\_  
(Printed Name)

James M. Bass  
\_\_\_\_\_  
(Printed Name)

President  
\_\_\_\_\_  
(Title)

Executive Director  
\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Date)

**Attachments to Contract for Professional Engineering Services**

<b>Attachments</b>	<b>Title</b>
A	Services to be Provided by the Engineer
B	Rate Schedule
C	Key Team Members

**ATTACHMENT A  
SERVICES TO BE PROVIDED BY THE ENGINEER**

Professional services (the Services) to be provided by the SUE consultant team (Engineer) include:

- Establishing the location of existing underground and overhead utilities within the limits of various Mobility Authority projects and determining how these utilities may be impacted by proposed projects using industry-accepted SUE methods.
- Identifying and physically marking the location of existing underground utilities within the limits of various Mobility Authority projects.

The Engineer shall provide qualified technical and professional personnel that adhere to professional standards consistent with those typically met by nationally known and highly regarded subsurface utility engineering firms. Unless otherwise instructed by the Mobility Authority, the Engineer shall minimize the need for the Mobility Authority to apply its own resources to assignments.

**Scope of Work – General SUE Services**

**1. Subsurface Utility Engineering**

1.1. As requested, the Engineer will perform subsurface and above-ground utility engineering services for the project in general accordance with ACSE/CI Standard 38-02 “Standard Guidelines for the Collection and Depiction of Existing Subsurface Utility Data” (<http://www.fhwa.dot.gov/programadmin/asce.cfm>). This standard provides four levels to describe and depict the quality of subsurface utility information. Generally, those four levels are:

- Quality Level D (QLD) – Information obtained from existing utility records and other sources (Texas811, Railroad Commission of Texas, verbal recollection, as-built plans, etc.).
- Quality Level C (QLC) – Surveyed data depicting visible above-ground features supplemented with QLD information. Professional judgement is used to correlate surveyed locations with QLD data in determining utility locations.
- Quality Level B (QLB) – Two-dimensional horizontal information obtained through the application and interpretation of non-destructive surface geophysical methods. Also known as “designating,” this level incorporates QLC information and provides horizontal positioning of subsurface utilities to within approximately 1.0 foot. The Engineer will include resolution of discrepancies between utility owner records and designating data.
- Quality Level A (QLA) – Three-dimensional horizontal and vertical information obtained through non-destructive vacuum excavation equipment to expose utilities at critical points. Also known as “locating,” this level incorporates QLB information and provides horizontal and vertical positioning of subsurface utilities to within approximately 0.05 feet. The

**ATTACHMENT A**  
**SERVICES TO BE PROVIDED BY THE ENGINEER**

Engineer will assist in the development of test hole locations, work plans, and provide a comprehensive utility plan signed and sealed by the responsible Engineer.

1.2. As requested, the Engineer shall conduct a Utility Engineering Investigation to determine the location of Mobility Authority owned utilities including irrigation lines, power and communication conduit and duct bank runs within the project area, using Quality Level B standards wherever possible.

- a. The Engineer shall compile "As-Built" information from plans, plats and other location data as provided by the Mobility Authority using Quality Level C and D standards. A color-coded composite Existing Utility Layout with quality levels and line sizes will be prepared and delivered to the Authority. It is understood by both the Engineer and the Mobility Authority that the line sizes of utility facilities detailed on the deliverable are from the best available records. All utilities that were discovered from quality levels C and D investigation but cannot be depicted in quality level B standards shall be clearly identified. These utilities must have a unique line style and symbology in the Existing Utility Layout deliverable. All above ground appurtenance locations must be included in the deliverable to the Mobility Authority. This information will be provided in the latest version of an ESRI ArcGIS geodatabase using the data dictionary provided by the Mobility Authority with attributes as requested by the Mobility Authority. The electronic file will be delivered by file transfer method as requested by the Mobility Authority.

1.3. Designate (Quality Level B)

Designate means to indicate the horizontal location of underground utilities by the application and interpretation of appropriate non-destructive surface geophysical techniques and reference to established survey control. Designate (Quality Level B) Service are inclusive of Quality levels C and D.

The Engineer shall:

- a. As requested by the Mobility Authority compile "As Built" information from plans, plats and other location data as provided by the utility owners.
- b. Coordinate with utility owner when utility owner's policy is to designate their own facilities at no cost for preliminary survey purposes. The Engineer shall examine utility owner's work to ensure accuracy and completeness.
- c. Designate, record, and mark the horizontal location of the existing utility facilities and their service laterals to existing buildings using non-destructive surface geophysical techniques. No storm sewer facilities are to be designated unless authorized by the Mobility Authority. A non-water base

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paint, utilizing the APWA color code scheme, must be used on all surface markings of underground utilities.

- d. Correlate utility owner records with designating data and resolve discrepancies using professional judgment. A color-coded composite utility facility plan with utility owner names, quality levels, line sizes and subsurface utility locate (test hole) locations, shall be prepared and delivered to the Mobility Authority. It is understood by both the Engineer and the Mobility Authority that the line sizes of designated utility facilities detailed on the deliverable are from the best available records and that an actual line size is normally determined from a test hole vacuum excavation. A note must be placed on the designate deliverable only that states "lines sizes are from best available records". All above ground appurtenance locations must be included in the deliverable to the Mobility Authority. This information shall be provided in the latest version of Micro Station or Geopak used by the Mobility Authority. The electronic file will be delivered electronically, as required by the Mobility Authority. When requested, a hard copy is required and must be signed, sealed, and dated by the Engineer. When requested by the Mobility Authority, the designated utility information must be over laid on the Mobility Authority's design plans.
- e. Determine and inform the Mobility Authority of the approximate utility depths at critical locations as determined by the Mobility Authority. This depth indication is understood by both the Engineer and the Mobility Authority to be approximate only and is not intended to be used preparing the right of way and construction plans.
- f. Provide a monthly summary of work completed and in process with adequate detail to verify compliance with agreed work schedule.
- g. Close-out permits as required.
- h. Clearly identify all utilities that were discovered from quality levels C and D investigation but cannot be depicted in quality level B standards. These utilities must have a unique line style and symbology in the designate (Quality Level B) deliverable.
- i. Comply with all applicable policies and procedural manuals.

**1.4. Subsurface Utility Locate (test hole) Service (Quality Level A)**

Locate means to obtain precise horizontal and vertical position, material type, condition, size and other data that may be obtainable about the utility facility and its surrounding environment through exposure by non-destructive excavation techniques that ensures the integrity of the utility facility. Subsurface Utility Locate (Test Hole) Services (Quality Level A) are inclusive of Quality Levels B, C, and D.

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The Engineer shall:

- a. Review requested test hole locations and advise the Mobility Authority in the development of an appropriate locate (test hole) work plan relative to the existing utility infrastructure and proposed highway design elements.
- b. Coordinate with utility owner inspectors as may be required by law or utility owner policy.
- c. Neatly cut and remove existing pavement material, such that the cut not to exceed 0.10 square meters (1.076 square feet) unless unusual circumstances exist.
- d. Measure and record the following data on an appropriately formatted test hole data sheet that has been sealed and dated by the Engineer:
  - Elevation of top and/or bottom of utility tied to the datum of the furnished plan.
  - Identify a minimum of two benchmarks utilized. Elevations shall be within an accuracy of 15mm (.591 inches) of utilized benchmarks.
  - Elevation of existing grade over utility at test hole location.
  - Horizontal location referenced to project coordinate datum.
  - Outside diameter of pipe or width of duct banks and configuration of non-encased multi-conduit systems.
  - Utility facility material(s).
  - Utility facility condition.
  - Pavement thickness and type.
  - Coating/Wrapping information and condition.
  - Unusual circumstances or field conditions.
- e. Excavate test holes in such a manner as to prevent any damage to wrappings, coatings, cathodic protection or other protective coverings and features. Water excavation can only be utilized with written approval from the appropriate State District Office.
- f. Be responsible for any damage to the utility during the locating process. In the event of damage, the Engineer shall stop work, notify the appropriate utility facility owner, the Mobility Authority and appropriate regulatory agencies. The regulatory agencies include but are not limited to the Railroad Commission of Texas and the Texas Commission on Environmental Quality. The Engineer shall not resume work until the utility facility owner has determined the corrective action to be taken. The Engineer shall be liable for

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all costs involved in the repair or replacement of the utility facility.

- g. Back fill all excavations with appropriate material, compact backfill by mechanical means, and restore pavement and surface material. The Engineer shall be responsible for the integrity of the backfill and surface restoration for a period of three years. Install a marker ribbon throughout the backfill.
- h. Furnish and install a permanent above ground marker (as specified by the Mobility Authority, directly above center line of the utility facility).
- i. Provide complete restoration of work site and landscape to equal or better condition than before excavation. If a work site and landscape is not appropriately restored, the Engineer shall return to correct the condition at no extra charge to the Mobility Authority.
- j. Plot utility location position information to scale and provide a comprehensive utility plan sign and sealed by the responsible Engineer. This information shall be provided in the latest version of Micro Station or Geopak format used by the Mobility Authority and delivered electronically. When requested by the Mobility Authority, the Locate information must be overlaid on the State's design plans.
- k. Return plans, profiles, and test hole data sheets to the Mobility Authority. If requested, conduct a review of the findings with the Mobility Authority.
- l. Close-out permits as required.

**2. On-Call Locating and Marking of Mobility Authority owned utilities**

- 2.1. As requested, the Engineer will provide on-call utility locating and marking services. On-call utility locating and marking means to respond to notifications to locate and mark utilities in the field typically within two weeks, occasionally within 48 hours of being notified by the Mobility Authority. A request for on-call locating and marking will include a description of the area to be marked based on available records.
- 2.2. Any corrections or updates noted during marking shall be communicated to the Mobility Authority to determine if modification to the records is warranted.
- 2.3. All markings shall be made with a tolerance zone including the width of the utility plus 18 inches as measured horizontally from each side of the utility. Markings shall be made with paint, chalk, flags, stakes, brushes, or offsets as required by the surface and environmental conditions that exist in the field using the American Public Works Association (APWA) Uniform Color Code as described in Appendix B Uniform Color Code and Marking Guide of the CGA Best Practices Guide.

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2.4. All locates shall be performed using electromagnetic means where possible unless otherwise directed by the Mobility Authority.

2.5. On-call locating and marking shall be documented with a report to the Mobility Authority promptly after completion of the work including but not limited to a description of the area marked, designation person(s) who performed the work, any problems encountered during the work, any corrections or updates that may be needed to the records, and digital photographs of the area showing the markings.

**3. Data Management**

The Engineer shall be responsible for processing the surveyed utility information acquired during the 'designating' and 'locating' phases of service and submitting this information in a format acceptable to the Mobility Authority for use in an appropriate CADD system or onto project drawings.

**4. Project Coordination Activities**

The Engineer shall coordinate all activities with the Mobility Authority or GEC, to facilitate the orderly progress and timely completion of the project. The following services shall be provided:

4.1. Initial Project Meeting

Attend an initial meeting and an on-site inspection (when appropriate) to ensure familiarity with existing conditions and to establish project requirements.

4.2. Work Plan

Develop a work plan that includes a list of the tasks to be performed and schedule of the work effort.

4.3. Progress Meetings

Meet with the Mobility Authority or GEC as required to coordinate the work effort and resolve issues. Prepare a written report of such meetings. These meetings provide the opportunity to review:

- a. Activities completed since the last meeting
- b. Problems encountered
- c. Late activities
- d. Activities required by the next progress meeting
- e. Solutions for unresolved and/or anticipated problems
- f. Information or items required from other agencies/consultants

4.4. External Communications

Coordinate all activities with the Mobility Authority or GEC. Provide copies of diaries,



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correspondence and other documentation of work-related communications between Engineer, utility owners, the Mobility Authority, GEC, and other outside entities.

**5. Miscellaneous Activities**

The SUE consultant shall also be responsible for the following:

5.1. Traffic Control

Provide all traffic control, labor, and equipment. Comply with the regulations of the most recent edition of the Manual on Uniform Traffic Control Devices (MUTCD) of the State of Texas. Obtain approval from the Mobility Authority or GEC concerning the proposed method of handling traffic prior to commencing work.

ATTACHMENT B  
RATE SCHEDULE

2022 Billing Rates			
	Unit	Raw Rate (Not to Exceed)	Loaded Rate / Unit Cost (Not to Exceed)
<b>The Rios Group, Inc.</b>			
<b>Subsurface Utility Engineering (SUE) Services</b>			
Project Principal	hr.	\$85.00	\$260.65
Project Engineer	hr.	\$62.00	\$190.12
Project Manager	hr.	\$54.00	\$165.59
Utility Engineer	hr.	\$50.00	\$153.32
Engineer-In-Training	hr.	\$37.00	\$113.46
Assistant Project Manager	hr.	\$33.64	\$103.19
Senior CADD Operator	hr.	\$30.00	\$91.99
CADD Operator	hr.	\$26.00	\$79.73
Junior CADD Operator	hr.	\$22.00	\$67.46
SUE Field Manager	hr.	\$36.00	\$110.39
Senior Utility Coordinator	hr.	\$59.00	\$180.92
Utility Coordinator	hr.	\$44.00	\$134.92
Utilities Specialist	hr.	\$24.00	\$73.60
Administrative/Clerical	hr.	\$28.00	\$85.86
One (1) Designating Person	hr.		\$145.00
Two (2) Person Designating Crew	hr.		\$195.00
Two (2) Person Locating Crew with Vacuum Vehicle	hr.		\$210.00
<b>Other Direct Costs:</b>			
Ground Penetrating Radar	day		N/A
Flashing Arrow Board, warning signs w/ stands and traffic cones	day		\$1500.00
GPS Receiver	hr.		N/A
ATV or Utility Vehicle	day		N/A
Specialized Traffic Control	day		\$2400.00
Excavation/Designating Permit Fees	ea.		\$1000.00
Coring and Pavement Repair	ea.		\$300.00
<b>SUE Utility Designating Services Unit Pricing:</b>			
Quality Level C and D	per L.F.		\$0.65
Quality Level B (Designating)	per L.F.		\$1.67
<b>SUE Utility Locate (Test Hole) Services:</b>			
Level A: 0 to 5 ft	per Test Hole		\$1,250.00
Level A: >5 to 8 ft	per Test Hole		\$1,450.00
Level A: >8 to 13 ft	per Test Hole		\$1,850.00
Level A: >13 to 20 ft	per Test Hole		\$2,650.00
Level A: > 20 ft	per Foot		\$225.00
<b>SUE Mobilization/Demobilization</b>			
Mobilization/Demobilization	per mile		\$5.00

**Home Office Overhead Rate:** 178.77%  
**Field Overhead Rate:** N/A  
**Profit:** 10.0%

ATTACHMENT B  
RATE SCHEDULE

2022 Billing Rates			
	Unit	Raw Rate (Not to Exceed)	Loaded Rate / Unit Cost (Not to Exceed)
<b>McGray &amp; McGray Land Surveyors, Inc.</b>			
Principal	hr.	\$66.50	\$192.00
Project Manager	hr.	\$58.25	\$168.00
RPLS	hr.	\$51.00	\$147.00
Field Coordinator	hr.	\$34.00	\$98.00
GPS Processing	hr.	\$37.50	\$108.00
Sr. Survey Technician	hr.	\$35.40	\$102.00
Survey Technician	hr.	\$33.25	\$96.00
LiDAR Technician	hr.	\$35.40	\$102.00
Reseracher (Abstractor)	hr.	\$26.00	\$75.00
Administrative	hr.	\$24.25	\$70.00
Survey Crew - 1 Man Crew	hr.		\$120.00
Survey Crew - 2 Man Crew	hr.		\$165.00
Survey Crew - 3 Man Crew	hr.		\$200.00
GPS/RTK 1 man survey crew	hr.		\$170.00
GPS/RTK 2 man survey crew	hr.		\$215.00
GPS/RTK 3 man survey crew	hr.		\$250.00
<b>Other Direct Costs:</b>			
ATV	day		\$85.00
LiDAR Terrestrial Scanner	hr.		\$100.00
Additional Vehicle	day		\$70.00

**Home Office Overhead Rate:** 162.51%  
**Field Overhead Rate:** N/A  
**Profit:** 10.0%

**ATTACHMENT C  
KEY TEAM MEMBERS**

<b>Position</b>	<b>Name</b>	<b>Firm</b>
Project Manager	Travis Isaacson, P.E.	The Rios Group, Inc.
Utility Engineer	Marc Epperly, P.E.	The Rios Group, Inc.
Utility Coordinator	Chad Muckle	The Rios Group, Inc.