

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

RESOLUTION NO. 12-044

**APPROVE AN AMENDMENT TO THE CONTRACT WITH
W.P. ENGINEERING CONSULTANTS, INC., TO CONTINUE PROVIDING
SERVICES FOR THE HERO PROGRAM.**

WHEREAS, the Mobility Authority entered into a contract with W.P. Engineering Consultants, Inc., effective July 19, 2010, for safety patrol and related services provided under the Highway Emergency Response Operator program ("HERO Program"); and

WHEREAS, the Mobility Authority will receive additional funding to support a continuing and expanded HERO Program, as approved by the Capital Area Metropolitan Planning Organization ("CAMPO") and the Texas Transportation Commission; and

WHEREAS, the Executive Director and W.P. Engineering Consultants, Inc., have agreed to an amendment to the July 19, 2010, contract to implement a continued and expanded HERO Program, a copy of which is attached to this resolution as Attachment A (the "Proposed Amendment"), and the Executive Director recommends approval of the Proposed Amendment.

NOW THEREFORE, BE IT RESOLVED that the Board authorizes the Executive Director to finalize and execute the Proposed Amendment in the form or substantially the same form as Attachment A.

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 25th day of July, 2012.

Submitted and reviewed by:



Andrew Martin
General Counsel for the Central
Texas Regional Mobility Authority

Approved:



Ray A. Winkerson
Chairman, Board of Directors
Resolution Number: 12-044
Date Passed: 7/25/2012

Attachment A
Proposed Amendment
(on the following 6 pages)

**AMENDMENT NO. 3
TO THE
AGREEMENT FOR HIGHWAY EMERGENCY RESPONSE OPERATOR
PATROL SERVICES**

This amendment to the June 19, 2010, Agreement for Highway Emergency Response Operator (“HERO”) Patrol Services (the “HERO Services Agreement”) is dated as of August __, 2012, and is between the CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY (“Authority”) and W.P. ENGINEERING CONSULTANTS, INC. (“Contractor”).

Contractor provides certain patrol and emergency assistance services to Authority under the HERO Services Agreement. Authority has received additional funding to continue and expand services it provides to the public through Contractor. Authority and Contractor wish to amend the HERO Services Agreement to establish the specific length and scope of services to be provided by Contractor to the Authority as a result of the additional funding made for those services made available to the Authority.

Authority and Contractor therefore agree as follows:

1. The first paragraph of Section 1 of the HERO Services Agreement is hereby amended to read in its entirety as follows:

The Authority hereby retains the Contractor and the Contractor agrees to provide, pursuant to the terms and conditions set forth in this Agreement, highway traffic operations expertise to manage and operate HERO patrol services on the IH-35 mainlanes and frontage roads between SH-130, north of Georgetown, and Yarrington Road, south of Kyle, and along the US 183 mainlanes and frontage roads beginning at its intersection with IH-35 to Lakeline Boulevard (the “Services Area”). The services provided by Contractor to Authority shall include providing staff, vehicles, and materials necessary for roadside assistance with vehicle breakdowns, assisting the Austin Police Department, other authorized law enforcement agencies, or other emergency and support response agencies with incident management following accidents, and facilitating roadway clean-up (the “Services”). The Services are more particularly described in (i) the Scope of Services set forth in Attachment “A,” attached hereto and made a part hereof, and (ii) the Q&A set forth in Attachment “B,” attached hereto and made a part hereof.

2. Section 1 of the HERO Services Agreement is hereby amended add a new third paragraph to that section, to read in its entirety as follows:

The Authority will issue two separate Notices to Proceed for services performed under this amendment. The first Notice to Proceed will be issued for only the mobilization cost. The second Notice to Proceed will be issued for patrol services on the IH-35 mainlanes and frontage roads between SH-130, north of Georgetown, and Yarrington Road, south of Kyle, and along the US 183 mainlanes and frontage roads beginning at its intersection with IH-35 to Lakeline Boulevard.

3. Subsection (A), Section 2 of the HERO Services Agreement is hereby amended to read in its entirety as follows:

The maximum amount payable under this Agreement is \$4,600,000. In no event may the aggregate amount of compensation paid to Contractor pursuant to this Agreement exceed \$1,800,000; *provided however*, that to the extent Contractor performs services not otherwise included within the Services set forth in this Agreement and such services are performed pursuant to the written instruction or written direction of the Authority, such services will not be subject to the maximum amount payable hereunder.

4. The first paragraph of Subsection (B), Section 2 of the HERO Services Agreement is hereby amended to read in its entirety as follows:

The Authority agrees to pay, and the Contractor agrees to accept as full and sufficient compensation and reimbursement for the performance of all Services as set forth in this Agreement, a one-time mobilization fee of \$185,000, monthly labor costs, and charges for vehicles, equipment, and materials as set forth in the Contractor's Bid Tab dated July 3, 2012, attached hereto and incorporated herein as Attachment "C" The compensation set forth in Attachment "C" will be valid through March 30, 2016."

5. Attachment "C" (the Contractor's Bid Tab dated January 24, 2010) to the HERO Services Agreement is hereby deleted, and the Attachment "C" (dated July 3, 2012) attached to this amendment is hereby substituted in its entirety.

6. The first sentence of the second paragraph of Subsection (C), Section 2 of the HERO Services Agreement is hereby amended to read in its entirety as follows:

To establish the Basic Fuel Index (BF) under this Section 2(C), the Authority will use the "Current" average price for "Diesel" from the *AAA's Daily Fuel Gauge Report* for the Austin-San Marcos region published at:

<http://www.fuelgaugereport.com/TXmetro.asp>

on the date the second Notice to Proceed is issued to Contractor pursuant to Section 1 of this agreement, as amended.

7. Section 3 of the HERO Services Agreement is hereby amended to read in its entirety as follows:

3. Time of Performance.

- A. This Agreement shall terminate on July 18, 2013, unless:

- i. prior to that date, the termination date is extended by mutual written consent of the parties for up to two successive one year renewal periods; or

- ii. before a termination date established under this section, an earlier termination date is provided by Authority in a written notice from the Authority to Contractor that no additional HERO program funding is available under that certain “Non-Construction Advance Funding Agreement for a Surface Transportation Program: Metropolitan Mobility” between the Mobility Authority and the Texas Department of Transportation, effective _____; provided, however, that a termination date established under this subsection (A)(ii) shall be no earlier than 30 days after the date of the written notice to Contractor.

B. The Authority may terminate this Agreement at its sole option, at any time, with or without cause, by providing 30 days written notice to Contractor of its intention to terminate and the termination date established by that notice. Upon such termination, the Authority shall enter into a settlement with the Contractor upon an equitable basis as determined by the Authority, which shall fix the value of the work performed by the Contractor prior to the termination date.

8. Section 9 of the HERO Services Agreement is hereby amended to read in its entirety as follows:

The Contractor shall comply with all federal, state, and local laws, statutes, ordinances, rules, regulations, codes and with the orders and decrees of any courts or the Texas Department of Transportation in any matter affecting the performance of Services under this Agreement, including, without limitation, workers’ compensation laws, antidiscrimination laws, environmental laws, minimum and maximum salary and wage statutes and regulations, health and safety codes, 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 Contractor shall also comply with the Authority’s policies and procedures. When requested, the Contractor shall furnish the Authority with satisfactory proof of compliance with laws, statutes, ordinances, rules, regulations, codes, orders, and decrees.

For all services that are funded under the American Recovery and Reinvestment Act of 2009 (“ARRA”), in addition to complying with all applicable federal and state laws and regulations, the Contractor shall comply with all requirements of ARRA, including, but not limited to: 1) the periodic reporting requirements set forth in Section 1201(c), Section 1512(c), and Section 1609, including the submission of required forms FHWA 1585, FHWA 1586, FHWA 1587, and FHWA 1589; 2) the Disadvantaged Business Enterprise (“DBE”) requirements set forth in Section 1101(b) of Public Law 109-59 and more particularly described in Attachment “D” and in Amendment No. 1 to the Agreement for Highway Emergency Response Operator Patrol Services, and 2) Federal Minimum Wage requirements.

For all services that are funded through Surface Transportation Program – Metropolitan Mobility (STP-MM), in addition to complying with all applicable federal and state laws and regulations, the Contractor shall comply with all requirements of STP-MM, including, but not limited to: 1) the Disadvantaged

Business Enterprise (“DBE”) requirements set forth in Section 1101(b) of Public Law 109-59 and more particularly described in Attachment “D” and Amendment No. 1 to the Agreement for Highway Emergency Response Operator Patrol Services, and 2) Federal Minimum Wage requirements.

9. Section 1.0 GENERAL DESCRIPTION OF SERVICES of Attachment “A” (Scope of Services) to the HERO Services Agreement is hereby amended to read in its entirety as follows:

1.0 GENERAL DESCRIPTION OF SERVICES

The Contractor shall furnish all personnel, supervision, expertise, vehicles, equipment, materials, parts, licenses, supplies, and incidentals necessary to provide Highway Emergency Response Operator Patrol (HERO Patrol) Services to the Services Area, to minimize traffic congestion and improve highway safety by clearing damaged or disabled vehicles from the roadway lanes or shoulders and providing traffic control and scene protection at any incident. The corridors shall include the parallel frontage roads and limited distances east and west of the corridor along major arterial routes although priority for response during peak periods and multiple incident occurrences shall be along the mainlanes, provided that the referenced distance east and west of the corridor shall include only such area established as a temporary detour by authorized law enforcement.

The services to be provided by the Contractor shall include, but not be limited to, patrolling the Services Area to: (a) render motorist assistance (i.e., clearing disabled vehicles from travel lanes, changing flat tires, jump-starting batteries); (2) mitigate and remove minor non-hazardous spills (not to exceed five (5) gallons) and debris from the highway; (3) assist the Austin Police Department (APD), other authorized law enforcement agencies, and other emergency and support response agencies during incidents; and (4) having a basic knowledge and recognition of hazardous materials and immediately reporting spills of hazardous materials to the appropriate authority. The Contractor shall additionally designate one of its patrol operators to participate in the Austin-area Incident Management for Highways (AIMHigh) Team meetings that occur every other month to encourage coordination and cooperation with other area incident responders.

The Contractor shall provide vehicles and personnel to patrol four zones along the IH-35 corridor and one zone along US 183 from 5:30 AM to 8:30 PM, Monday through Friday, with patrols occurring between 6:00 AM to 8:00 PM, Monday through Friday, except for Authority approved holidays, unless otherwise requested by the Authority under additional services.

1.1 Patrol Zones

On IH-35, the service limits (mainlanes and frontage roads) extend from between SH-130, north of Georgetown, and Yarrington Road, south of Kyle, along with coverage of US 183, the service limits (mainlanes and frontage roads) between its intersections with IH-35 and Lakeline Boulevard. Five potential patrol zones (depicted in attached

exhibit “HERO PATROL ZONES”), and the anticipated number of HERO Patrol vehicles necessary to meet response time requirements, are identified as follows:

Route	Zone Limits (north to south)		Approximate Centerline Mileage	Number of HERO Patrol Vehicles
IH-35	Zone 1	SH 130 to FM 3406	11	1
	Zone 2	FM 3406 to IH 35/ US 183	14	1
	Zone 3	IH 35/US 183 to Hwy 71	9	2
	Zone 4	Hwy 71 to Yarrington Rd (Co Rd 159)	20	1
US 183	Zone 5	IH-35 to Lakeline Blvd	12	1
Total			66 miles	6 vehicles

The Contractor may suggest alternate patrol zones and/or vehicle requirements as long as response time requirements are able to be met. The Contractor shall also retain a fully-equipped “backup” vehicle identical to the regular patrol vehicles to replace any of the patrol vehicles that are unavailable for any reason. As such, the Contractor shall provide a total of seven HERO Patrol vehicles.”

10. Figure 1. Highway Emergency Response Operator (HERO) Patrol Zones on page A-3 of Attachment “A” (Scope of Services) to the HERO Services Agreement is hereby deleted, and the “Figure 1. Highway Emergency Response Operator (HERO) Patrol Zones” attached to this amendment is hereby substituted in its entirety.
11. Section 1.2 Hours of Operation of Attachment “A” (Scope of Services) to the HERO Services Agreement is hereby amended to read in its entirety as follows:

1.1 Hours of Operation

The Contractor shall provide vehicles and personnel to patrol sections of the IH-35 corridor and a section of US 183 from IH-35 from 6:00 AM to 8:00 PM (14 hours a day), Monday through Friday (five days a week), excluding Authority approved holidays. The HERO Patrol shall operate regardless of weather conditions. Weekend and overtime work to accommodate significant special events or other may be required and must be authorized by the Authority or its designate. It being understood that the cost of any such approved weekend or overtime work will be borne by the Authority and such costs will not be included in the maximum amount payable under this Agreement.

At the beginning of each patrol shift, the Contractor shall dispatch one vehicle to each of Zones 1, 2, 4 and 5 and two vehicles to Zone 3. The operators of such vehicles shall not congregate in the zones unless multiple units are required to respond to a single or secondary incident in the same location.

12. The first paragraph of Section 5.1 VEHICLE REQUIREMENTS of Attachment "A" (Scope of Services) to the HERO Services Agreement is hereby amended to read in its entirety as follows:

5.1 Vehicle Specifications

All vehicles in the Contractor's HERO Patrol vehicle fleet for this Agreement shall meet the specific vehicle requirements listed in this Agreement. This Agreement requires seven pickup truck vehicles—a full size, three-quarter (3/4) ton, long-bed pickup capable of carrying the equipment specified in this Agreement (extended cab, four-door trucks are optional). Each vehicle must have seat belts for passengers on both the front and, if a four-door, on rear cab benches. Sample vehicles are depicted in Figure 2. The Contractor may suggest alternative vehicles for use as long as the required HERO Patrol service functions are able to be demonstrated.

13. The eighth, ninth, and tenth paragraphs (beginning at the bottom of page A-21) of Section 5.1 VEHICLE REQUIREMENTS of Attachment "A" (Scope of Services) to the HERO Services Agreement are hereby amended to read in their entirety as follows:

All the vehicles in the Contractor's fleet, except as noted below, shall be diesel and not be older than one year old from their original manufactured date and have less than 5,000 miles on an individual vehicle's odometer on the second Notice To Proceed under this amendment, or be vehicles that are already being used as part of the Authority's existing HERO Program. The Contractor's fleet may include a maximum of two "used" pick-up trucks to meet the minimum required number of vehicles for this Agreement. The two "used" pick-up trucks may be:

- diesel powered, be no more than two years old, and have no more than 100,000 miles (whichever comes first).

All used vehicles shall have verifiable maintenance records available for each vehicle that show the vehicle was consistently maintained according to manufacturer's service/interval recommendations. All body panels and parts on the used vehicles shall meet the same appearance standards as new vehicles.

During the term of this Agreement, diesel powered vehicles shall be replaced with a new vehicle when their mileage reaches 300,000 or the age reaches four years, whichever comes first."

14. Except as specifically provided in this amendment, all other terms and conditions of the HERO Services Agreement are acknowledged and reaffirmed by the parties hereto. In the event a provision of this amendment conflicts with a provision of the HERO Services Agreement, the provision of this amendment shall control.

This Amendment is executed by the parties effective as of August ____, 2012, for all purposes.

“Contractor”

W.P. Engineering Consultants, Inc.

By: _____
Wayne Freise, President

Date: _____

“Authority”

Central Texas Regional Mobility Authority

By: _____
Mike Heiligenstein, Executive Director

Date: _____