

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

**RESOLUTION NO. 20-020**

**APPROVING AMENDMENT NO. 1 TO THE CONTRACT WITH RS&H, INC.  
FOR CONSTRUCTION INSPECTION SERVICES FOR  
THE 183 SOUTH (BERGSTROM EXPRESSWAY) PROJECT**

WHEREAS, by Resolution No. 15-060, dated September 30, 2015, the Board of Directors awarded a professional services contract to RS&H Inc. for construction inspection services for the 183 South (Bergstrom Expressway) Project in an amount not to exceed \$18,000,000; and

WHEREAS, the original contract with RS&H, Inc. contemplated construction inspection services to be provided through November 30, 2019; and

WHEREAS, the Mobility Authority requires construction inspection services through the completion of the 183 South (Bergstrom Expressway) Project which is currently expected to be substantially completed in late 2020; and


WHEREAS, the Executive Director and RS&H Inc. have negotiated Amendment No. 1 to increase the contract value by \$3,600,000 for a total amount not to exceed of \$21,600,000 to extend the construction inspection services for the 183 South (Bergstrom Expressway) Project through December 31, 2020; and

WHEREAS, the Executive Director recommends approving Amendment No. 1 to the contract with RS&H Inc. for construction inspection services for the 183 South (Bergstrom Expressway) Project in the form or substantially the same form attached hereto as Exhibit A.

NOW THEREFORE, BE IT RESOLVED that the Board of Directors hereby approves Amendment No. 1 to the contract with RS&H Inc. for construction inspection services for the 183 South (Bergstrom Expressway) Project to increase the contract value by \$3,600,000 for a total amount not to exceed of \$21,600,000, and authorizes the Executive Director to finalize and execute proposed Amendment No. 1 in the form or substantially the same form as Exhibit A.

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 25<sup>th</sup> day of March 2020.

Submitted and reviewed by:

  
\_\_\_\_\_  
Geoffrey Petrov, General Counsel

Approved:

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

**Exhibit A**

**First Amendment To  
Agreement for Construction Inspection Services  
Between  
Central Texas Regional Mobility Authority  
and  
RS&H, Inc.**

This First Amendment to the Agreement between Central Texas Regional Mobility Authority (“Mobility Authority”) and RS&H, Inc., (“Engineer”) effective December 15, 2015 is made effective March 25, 2020 and is for the purpose of amending Article 2, Subsection A of the Agreement.

The Mobility Authority and Engineer hereby agree that Article 2, Subsection A of the Agreement is amended to read in its entirety as follows:

**ARTICLE 2  
COMPENSATION**

Compensation for the Engineer’s Services and other aspects of the mutual obligations concerning the Engineer’s Services and payment therefore are as follows:

**A. Maximum Compensation.** The maximum payment by the Mobility Authority for the Services provided under this Contract and associated Work Authorizations (including compensation to the Engineer and reimbursable expenses) may not exceed \$21,600,000.

By their signatures below, the parties to this First Amendment to the Agreement evidence their agreement to the amendments set forth above.

CENTRAL TEXAS REGIONAL  
MOBILITY AUTHORITY

RS&H, INC.

By: \_\_\_\_\_  
Mike Heiligenstein  
Executive Director

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**RS&H, Inc.**  
Construction Inspection Services  
CTRMA - 183 South  
Backup to Amendment No. 1

**Current Contract Value \$ 18,000,000.00**  
**Proposed Amendment No. 1 \$ 3,600,000.00**

Previous Work Authorizations:

\$ 1,138,086.00	WA1
\$ 14,861,860.00	WA2
<u>\$ 2,000,015.49</u>	SWA(WA2)
\$ 17,999,961.49	

Proposed Work Authorization:

\$ 3,599,432.21

**Amendment #1 Value \$ 21,599,393.70**

CTRMA: 183 S Construction Inspection Services  
 Prime Consultant: RS&H, Inc.  
 Range of Labor Rates

**RANGE OF LABOR RATES**

	2015			Average Rates					
	Low	High	Avg	2016	2017	2018	2019	2020	2021
<b>Project Officer</b>	\$ 77.62	\$ 111.83	\$ 94.73	\$ 97.57	\$ 100.49	\$ 103.51	\$ 106.61	\$ 109.81	\$ 113.11
<b>Project Manager</b>	\$ 69.75	\$ 84.56	\$ 77.16	\$ 79.47	\$ 81.85	\$ 84.31	\$ 86.84	\$ 89.44	\$ 92.13
<b>Record Keeper/ Auditor</b>	\$ 38.00	\$ 39.52	\$ 38.76	\$ 39.92	\$ 41.12	\$ 42.35	\$ 43.62	\$ 44.93	\$ 46.28
<b>Administrative Assistant II</b>	\$ 14.58	\$ 19.50	\$ 17.04	\$ 17.55	\$ 18.08	\$ 18.62	\$ 19.18	\$ 19.75	\$ 20.35
<b>Chief Inspector</b>	\$ 42.00	\$ 43.50	\$ 42.75	\$ 44.03	\$ 45.35	\$ 46.71	\$ 48.12	\$ 49.56	\$ 51.05
<b>Senior Inspector</b>	\$ 33.50	\$ 41.50	\$ 37.50	\$ 38.63	\$ 39.78	\$ 40.98	\$ 42.21	\$ 43.47	\$ 44.78
<b>Inspector</b>	\$ 25.00	\$ 33.50	\$ 29.25	\$ 30.13	\$ 31.03	\$ 31.96	\$ 32.92	\$ 33.91	\$ 34.93

Notes:

- 1.) An average rate was USED for each position in development of the fee schedule
- 2.) A 3% annual rate increase was assessed for each positon.

**RS&H, Inc.**  
Cost Proposal to Provide Construction Inspection Services  
CTRMA - 183 South Amendment No. 1

Work Authorization No. 3 (2020)

**Labor Summary**

RS&H \$	2,380,470
K Friese \$	617,005
Gsylva \$	353,407
<b>TOTAL \$</b>	<b>3,350,882.21</b>

**Direct Expenses**

RS&H \$	177,450
K Friese \$	47,400
Gsylva \$	23,700
<b>TOTAL \$</b>	<b>248,550</b>

**Maximum Not to Exceed** \$ 3,599,432

CTRMA: 183 S Construction Inspection Services  
 Prime Consultant: RS&H, Inc.  
 LABOR ESTIMATE: Amendment #1; WA#3

Oversight Staff		2020										2021			Reg Hours (165 Hrs/MO)	OT Hours (25%)	Total Hours	Avg. Rate	OH	Profit	Multiplier	Burdened Hourly Rate	Total Labor			
		May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar														
<b>TASK 1 -Construction Inspection Services</b>		<b>FIRM</b>																								
<b>Project Management</b>																										
Project Manager	RSH	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	91		91	\$ 86.84	1.74	0.12	3.06	\$ 266.07	\$ 24,146.05	
Administrative Assistant	RSH	0.10	0.10	0.10	0.10	0.10	0.10	0.10	0.10	0.10	0.10	0.10	0.10	0.10	0.10	0.10	182		182	\$ 19.18	1.74	0.12	3.06	\$ 58.76	\$ 10,665.51	
<b>Field Inspection</b>																										
<b>Roadway</b>																										
Roadway Lead	RSH	0.50	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1568	392	1,959	\$ 48.96	1.26	0.12	2.53	\$ 124.10	\$ 243,153.62	
Sr. Inspector	RSH	0.50	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1733	433	2,166	\$ 37.00	1.26	0.12	2.53	\$ 93.78	\$ 203,098.51	
Sr. Inspector	RSH	0.50	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1733	433	2,166	\$ 36.78	1.26	0.12	2.53	\$ 93.23	\$ 201,890.90	
Sr. Inspector	RSH	0.50	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1733	433	2,166	\$ 34.10	1.26	0.12	2.53	\$ 86.43	\$ 187,179.98	
Inspector	RSH	0.50	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	0.25					1444	361	1,805	\$ 19.50	1.26	0.12	2.53	\$ 49.43	\$ 89,198.67	
Inspector	RSH	0.50	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00					1568	392	1,959	\$ 27.00	1.26	0.12	2.53	\$ 68.44	\$ 134,092.07	
Inspector	RSH	0.50	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00						1403	351	1,753	\$ 29.01	1.26	0.12	2.53	\$ 73.53	\$ 128,908.74	
Sr. Inspector	KFA	0.50	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00							1238	309	1,547	\$ 37.22	1.33	0.12	2.60	\$ 96.94	\$ 149,950.28	
Sr. Inspector	KFA	0.50	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00							1238	309	1,547	\$ 39.32	1.33	0.12	2.60	\$ 102.41	\$ 158,410.67	
Sr. Inspector	KFA	0.50	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00							1238	309	1,547	\$ 41.00	1.33	0.12	2.60	\$ 106.78	\$ 165,178.98	
Sr. Inspector	GS	0.50	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00							1238	309	1,547	\$ 40.00	1.45	0.12	2.74	\$ 109.76	\$ 169,785.00	
<b>Structural</b>																										
Structures Lead	RSH	0.50	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00							1403	351	1,753	\$ 48.96	1.26	0.12	2.53	\$ 124.10	\$ 217,558.50	
Sr. Inspector	RSH	0.50	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00					1568	392	1,959	\$ 39.16	1.26	0.12	2.53	\$ 99.26	\$ 194,483.16	
Inspector	RSH	0.50	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00						1403	351	1,753	\$ 38.50	1.26	0.12	2.53	\$ 97.58	\$ 171,078.48	
Inspector	RSH	0.50	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00						1403	351	1,753	\$ 27.00	1.26	0.12	2.53	\$ 68.44	\$ 119,977.11	
Inspector	RSH	0.50	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00							1238	309	1,547	\$ 30.00	1.26	0.12	2.53	\$ 76.04	\$ 117,624.62	
Inspector	RSH	0.50	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00							1238	309	1,547	\$ 30.00	1.26	0.12	2.53	\$ 76.04	\$ 117,624.62	
Sr. Inspector	KFA	0.50	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00							1238	309	1,547	\$ 35.54	1.33	0.12	2.61	\$ 92.75	\$ 143,465.21	
Sr. Inspector	GS	0.50	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00							1238	309	1,547	\$ 43.26	1.45	0.12	2.74	\$ 118.71	\$ 183,622.48	
<b>Traffic Control and Misc.</b>																										
Traffic Control Lead	RSH	0.50	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	0.50					1485	371	1,856	\$ 46.71	1.26	0.12	2.53	\$ 118.40	\$ 219,789.04	
<b>FTE (Full Time Equivalent)</b>			10	20	20	20	20	20	20	20	12	7														TOTAL Labor \$ 3,350,882.21

TOTAL FIELD FTE BY FIRM																
	2020										2021			MO	Max	SUM
	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar					
RSH	7	14	14	14	14	14	14	14	14	12	7	3	11	14	127	
KFA	2	4	4	4	4	4	4	4	4	0	0	0	11	4	30	
GS	1	2	2	2	2	2	2	2	2	0	0	0	11	2	15	

TOTAL LABOR BY FIRM			%	DBE
RSH	\$	2,380,469.61	71%	
KFA	\$	617,005.13	18%	18%
GS	\$	353,407.48	11%	11%
	\$	3,350,882.21		29%

CTRMA: 183 S Construction Inspection Services  
 Prime Consultant: RS&H, Inc.  
 DIRECT EXPENSES: Amendment No. 1

### DIRECT EXPENSES: Work Authorization 3

<b>RS&amp;H</b>	<b>Unit</b>	<b>No.</b>	<b>Unit Cost</b>	<b>Total</b>
Inspector Vehicles	Per Month	127	\$1,400.00	\$ 177,450.00
Subtotal				\$ 177,450.00

<b>K Friese</b>	<b>Unit</b>	<b>No.</b>	<b>Unit Cost</b>	<b>Total</b>
Inspector Vehicles	Per Month	30	\$1,400.00	\$ 42,000.00
Cell Phone	Per Month	30	\$90.00	\$ 2,700.00
Tablet / Laptop Data Package	Per Month	30	\$90.00	\$ 2,700.00
Subtotal				\$ 47,400.00

<b>G SYLVA</b>	<b>Unit</b>	<b>No.</b>	<b>Unit Cost</b>	<b>Total</b>
Inspector Vehicles	Per Month	15	\$1,400.00	\$ 21,000.00
Cell Phone	Per Month	15	\$90.00	\$ 1,350.00
Tablet / Laptop Data Package	Per Month	15	\$90.00	\$ 1,350.00
Subtotal				\$ 23,700.00

**Total Direct Expenses \$ 248,550.00**



Contract

## **CONTRACT FOR CONSTRUCTION INSPECTION SERVICES**

**THIS CONTRACT FOR CONSTRUCTION INSPECTION SERVICES** (the "Contract") is made by and between the Central Texas Regional Mobility Authority, 3300 N. I-35, Suite 300, Austin, Texas 78705, (the "Mobility Authority,") and RS&H, Inc., having its principal business address at 10748 Deerwood Park Blvd. South, Jacksonville, FL 32256 (the "Engineer").

### **WITNESSETH**

**WHEREAS**, the Mobility Authority desires to contract for services generally described as construction inspection services, and more specifically described in Article I (the "Services"); 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 Mobility Authority's Policy Code regarding the procurement of professional services, the Mobility 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 Mobility 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 furnish items and perform those services for fulfillment of the Contract as identified in Exhibit B of the Attachment B - Work Authorization(s) (the "Services"). All Services provided by the Engineer shall comply with the terms and conditions of this Contract and any Work Authorizations issued pursuant hereto.

#### **ARTICLE 2 COMPENSATION**

Compensation for the Engineer's Services and other aspects of the mutual obligations concerning the Engineer's Services and payment therefore are as follows:

**A. Maximum Compensation.** The maximum payment by the Mobility Authority for the Services provided under this Contract and associated Work Authorizations (including compensation to the Engineer and reimbursable expenses) may not exceed \$18,000,000.

**B. Basis for Compensation.** Subject to the terms of a Work Authorization issued pursuant to Article 4 below (including any maximum amount to be paid as stated therein), the Mobility Authority agrees to pay, and the Engineer agrees to accept as full and sufficient compensation and reimbursement for the performance of all Services as set forth in this Agreement, hourly rates for the staff working on the assignment computed as follows:

$$\text{Direct Labor Cost} \times (1.0 + \text{OH Rate}) \times (1.0 + \text{Profit (\%)})$$

where Direct Labor Cost equals salary divided by 2080; OH Rate equals the Engineer's most recent auditable overhead rate under 48 C.F.R. Part 31, Federal Acquisition Regulations (FAR 31) or otherwise approved overhead rate pursuant to this subsection 2.B; and Profit (%) reflects a twelve percent (12%) profit. The range of Direct Labor Costs for the classifications of employees working for the Authority as of the effective date of this Agreement is reflected in Attachment A. Revisions to Direct Labor Cost ranges for employee classifications and the auditable overhead rate may be proposed no more frequently than once per calendar year, and are subject to the written approval of the Executive Director or his designee. No increase shall be made to the specified profit percentage. The first adjustment to the auditable overhead rate shall be considered no earlier than one year after the execution of this contract. All adjustments shall be agreed to in writing by the Mobility Authority prior to implementation, and the Mobility Authority shall have the right to review and/or audit the Engineer's Direct Labor Costs and auditable overhead rates upon written request. Once approved, the range of Direct Labor Costs and auditable overhead rate will be used going forward until the next annual adjustment is 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 sub consultant of the Engineer does not have a Far 31 overhead rate, they may submit, for Mobility Authority approval, alternate documentation supporting an appropriate auditable overhead rate. If an auditable overhead rate is not submitted or available, fixed hourly rates must be submitted per subsection 2.I. During the term of this Agreement the Engineer shall provide to the Executive Director or his designee, prior to requesting any adjustment to its auditable overhead rate, a copy of the report establishing a new FAR rate for the Engineer.

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.

**C. Limitations on Rates Utilized.** The Engineer represents that at all times, subject to the limitations on timing and approval in subsection 2.A, throughout the term of this Contract that it shall not use an auditable overhead rate that exceeds the rate determined in accordance with FAR 31 (or successor regulations); and shall be based on actual salary amounts for the individuals performing the work; that the Direct Labor Costs shall not exceed the ranges reflected in Attachment A and shall be based on actual salary amounts for the individuals performing the work.

**D. Reimbursable Expenses.** As indicated above, and subject to the terms of any Work Authorization, the compensation computed in accordance with subsections 2.A. and B. is anticipated by the Mobility Authority and the Engineer to be full and sufficient compensation and reimbursement for the Services, and includes all customary out-of-pocket expenses anticipated to result from the Engineer's performance under the Contract that are included in the computation of the auditable overhead rate, such as office supplies, telecommunications systems, postage, general

photocopying, computer hardware/software and service charges, and similar costs. To the extent not otherwise included in the Engineer's auditable overhead rate, non-reimbursable expenses shall also include all tolls incurred by Engineer or any of its sub consultants in connection with the performance of the Services. Notwithstanding the foregoing, the Engineer shall be entitled to reimbursement for reasonable out-of-pocket expenses actually incurred by the Engineer that are necessary for the performance of its duties under this Contract and which are not included in the auditable overhead rate, said expenses being limited to travel costs (at rates which may not exceed those applicable to Mobility Authority employees), printing costs, automobile expenses being reimbursed at the federal mileage rates for travel originating from the office of the Engineer employee or sub consultant, and other expenses directly approved, in advance, by the Executive Director or his designee. Except for automobile expenses paid at the federal mileage rate and travel paid at state approved rates (if available), all such reimbursement shall be at one-hundred percent (100%) of the actual cost thereof paid by the Engineer to unaffiliated entities; provided, however, that aggregate amounts in excess of \$2,500 for which the Engineer intends to seek reimbursement pursuant to this subsection 2.C. must be approved in advance and in writing by the Executive Director or his designee, except when such advance approval is impractical due to a bona fide emergency situation. Except as otherwise authorized in a validly issued Work Authorization, and only then to the extent reimbursable by the Texas Department of Transportation ("TxDOT") under the terms of any form of financial assistance agreement, the Mobility Authority shall not reimburse the Engineer for travel, lodging, and similar expenses incurred by the Engineer to bring additional staff to its local office or to otherwise reassign personnel to provide basic engineering support of the Engineer's performance of the Services, provided, however, that the Mobility Authority shall reimburse, but only in accordance with the terms of this subsection 2.C., such costs incurred by the Engineer to bring to its local office or the Mobility Authority's facilities, with advance approval by the Executive Director or his designee, staff with specialized skills or expertise required for the Services and not customarily available from a staff providing general consulting civil engineering services of the type described in this agreement.

Engineer acknowledges that all expenses and costs paid or reimbursed by the Mobility Authority using federal or state funds shall be paid or reimbursed in accordance with, and subject to, applicable policies of the Mobility 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 actually incurred.

**E. Subcontractors.** For the purposes of this Contract, a "subcontractor" is an individual or entity contracted by the Engineer to provide services related to or part of those which the Engineer owes to the Mobility Authority under this Contract. The Engineer may engage a subcontractor to provide services, and the Mobility Authority will reimburse the Engineer for the Engineer's cost of engaging the subcontractor for those services, if the Engineer provides a written description of the proposed services and the proposed price (using rates approved in Attachment A), to the Mobility Authority before the services are provided and the Mobility Authority has provided to the Engineer a written approval for the services and the proposed price. If an approved subcontractor bills on an hourly rate, each invoice from the subcontractor submitted to the Mobility Authority for reimbursement must report the tasks performed by each billing person and the amount of time spent performing the task. The Engineer may not charge a mark-up or commission on a subcontractor's invoice, and the Mobility Authority will not reimburse the Engineer in an

amount that exceeds the price proposal from the subcontractor that was approved by the Mobility Authority.

**F. Non-compensable Time.** Time spent by the Engineer's personnel or subcontractors in an administrative or supervisory capacity not related to the performance of the Services is not compensable and shall not be billed to the Mobility 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 Mobility Authority's delay in providing information, materials, feedback, or other necessary cooperation to the Engineer. The Mobility 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. Invoices and Records.** 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 Mobility Authority and, if the work is eligible for payment through a financial assistance agreement with the Texas Department of Transportation ("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 Mobility Authority, with the Engineer provided advance notice of such TxDOT requirements. Upon request of the Mobility Authority, the Engineer shall also submit certified time and expense records directly related to Services provided to the Mobility Authority, and copies of invoices that support invoiced fees and reimbursable expenses. All invoices must be consistent with the rates established by this Contract. Unless waived in writing by the Executive Director, no invoice may contain, and the Mobility Authority will not be required to pay, any charge for billable hours which is more than (90) days old at the time of invoicing.

**H. Effect of Payments.** No payment by the Mobility Authority shall relieve the Engineer of its obligation to deliver timely the Services required under this Contract or a Work Authorization. If, prior to acceptance of any Service, product or other deliverable, the Mobility Authority determines that said Service, product or deliverable does not satisfy the requirements of this Contract (beyond mere creative differences), the Mobility Authority 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 Mobility Authority.

**I. Time and place of payment.** Upon receipt of an invoice that complies with all invoice requirements set forth in Article 3, the Mobility Authority shall make a good faith effort to pay the 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 a financial assistance agreement between TxDOT and the Mobility Authority, the Mobility Authority shall make a good faith effort to pay such amounts within thirty (30) days of receipt of such payments from TxDOT. **If the Mobility Authority disputes a request for payment by the Engineer, the Mobility Authority agrees to pay any undisputed portion of the invoice when due. Any such dispute must be detailed in writing within 30 days after the Mobility Authority's receipt of**

**the monthly invoice. The Engineer reserves the right to stop work under this Contract if payments are not timely made per the terms of this Contract.**

**J. Taxes.** All payments to be made by the Mobility Authority to the Engineer pursuant to this Contract are inclusive of federal, state, or other taxes, if any, however designated, levied, or based. The Mobility Authority acknowledges and represents that it is a tax-exempt entity under Sections 151.309, *et seq.*, of the Texas Tax Code. Title to any consumable items purchased by the Engineer in performing this Contract shall be deemed to have passed to the Mobility 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 Mobility Authority, to the extent practicable.

### **ARTICLE 3 PAYMENT REQUIREMENTS**

**A. Monthly Invoices.** The Engineer shall submit its monthly invoices and any reimbursable expenses for Services provided during the previous month. The invoice submittal shall include the original and one copy in a form acceptable to the Mobility Authority. The Engineer is authorized to submit requests for payment no more frequently than monthly and no later than ninety (90) days after costs are incurred.

**B. 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 to the date of submission; 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 billing is for partial completion of the work. The invoice shall be substantially in a form provided or approved by the Mobility Authority.

**C. DBE Forms.** The Engineer will be responsible for completing and including with each invoice all TxDOT required DBE reporting forms included in Exhibits E, and F of Attachment B - Work Authorization(s).

**D. Thirty Day Payments.** Upon receipt of an invoice that complies with all invoice requirements set forth in this Article, the Mobility Authority shall make a good faith effort to pay the 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 a financial assistance agreement between TxDOT and the Mobility Authority, the Mobility Authority shall make a good faith effort to pay such amounts within thirty (30) days of receipt of such payments from TxDOT.

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

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

- (1) A progress report shall be submitted to Mobility Authority at least once each calendar month;
- (2) In the event that invoices are not submitted on a monthly basis, a monthly submittal of the progress report information will be required nevertheless;
- (3) The Mobility Authority and/or the GEC Manager (as defined below) will review the invoices for supporting documentation, compliance with the Contract, and consistency with the submitted progress report;
- (4) The invoice will either be recommended for approval by Mobility Authority and/or GEC Manager, or the Mobility Authority and/or GEC Manager will return it to the Engineer for required correction; and
- (5) Upon satisfactory review and approval of the invoice, the Mobility Authority will submit it to the Mobility Authority CFO for payment.

**G. Audit.** The Mobility Authority shall have the 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 any pending litigation has been completely and fully resolved and the Mobility authority approves of the destruction of records, whichever occurs last. The Mobility Authority or any of its duly authorized representatives, TxDOT, 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 4 WORK AUTHORIZATIONS**

**A. Use.** 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 Mobility Authority will issue Work Authorizations using the form attached as Attachment B 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) 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 fixed fee, unit cost, lump sum, or specified rate; (5) a Work Authorization budget as described in subsection C below ; and (6) DBE Requirements. The Engineer is not to 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 Work Authorization; (2) the estimated time (hours/days) required to complete the work using the fees set forth in Attachment A; (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 Authorization.

**D. No Guaranteed Work.** Work Authorizations will be issued at the sole discretion of the Mobility Authority. While it is the Mobility Authority's intent to issue Work Authorizations hereunder, the Engineer shall have no cause of action conditioned upon the lack 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 Mobility Authority's or the Engineer's responsibilities and obligations established in this Contract. The Engineer shall promptly notify the Mobility Authority of any event that will affect completion of the Work Authorization in accordance with the terms thereof.

**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 in the form identified and attached hereto as Attachment C. Supplemental Work Authorizations, if required, must be executed by both parties within the period of performance specified in the Work Authorization. The Engineer shall allow adequate time for review and approval of the Supplemental Work Authorization by the Mobility Authority.

(1) **Notice.** If the Engineer is of the opinion that any assigned work is beyond the scope of this Contract and constitutes additional work beyond the Services to be provided under this Contract, it shall promptly notify the Mobility Authority 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 Mobility Authority's approval. The Mobility Authority shall analyze the proposed justification, work hour estimate and cost. Upon approval of the need, the Mobility Authority shall negotiate the Supplemental Agreement scope with the



Engineer, and then process the final Supplemental, subject to final written approval by the Mobility Authority.

**(3) Limitation of Liability.** The Mobility 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 prior to the execution of a Supplemental Work Authorization.

**G. Deliverables.** Upon satisfactory completion of the Work Authorization, the Engineer shall submit the deliverables as specified in the executed Work Authorization to the Mobility Authority for review and acceptance.

## **ARTICLE 5 SCHEDULE**

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

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

**C. Reports.** The Engineer shall promptly advise the Mobility Authority 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 Mobility Authority or 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 Mobility Authority determine that the progress of work does not satisfy the milestone schedule set forth in a Work Authorization, the Mobility Authority shall review the work schedule with the Engineer to determine the nature of corrective action needed.

**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 Mobility Authority and shall follow the procedure set forth in the Work Authorization. The Mobility Authority may, at its sole discretion, modify the work schedule to incorporate an extension of time.

## **ARTICLE 6 SUSPENSION OF WORK AUTHORIZATION**

**A. Notice.** Should the Mobility Authority desire to suspend a Work Authorization but not terminate the Contract, the Mobility Authority may verbally notify the Engineer followed by written confirmation, giving fifteen (15) days prior notice. Both parties may waive the fifteen (15) day notice requirement in writing.

**B. Reinstatement.** A Work Authorization may be reinstated and resumed in full force and effect within sixty (60) days of receipt of written notice from the Mobility Authority to resume the work. Both parties may waive the sixty (60) day notice in writing.

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

## **ARTICLE 7 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 Mobility Authority 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 Mobility Authority, 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 Mobility Authority 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 this work.

**C. Errors/Omissions.** The Engineer shall make revisions to the work authorized in this Contract or Work Authorization(s) that are necessary to correct errors or omissions appearing therein, when required to do so by the Mobility Authority. No additional compensation shall be paid for this work.

## **ARTICLE 8 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, and other

documents created or collected under the terms of this Contract are the property of the Mobility Authority.

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

**C. Release of Design Plan.** The Engineer (1) will not release any roadway design plan created or collected under this Contract except to its subproviders as necessary to complete the Contract; (2) shall include a provision in all subcontracts which acknowledges the Mobility 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 subproviders, including costs, damages, or other liability resulting from improper use. Neither the Engineer nor any subprovider may charge a fee for any portion of the design plan created by the Mobility Authority.

## **ARTICLE 9 PUBLIC INFORMATION AND CONFIDENTIALITY**

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

**B. Confidentiality.** The Engineer shall not disclose information obtained from the Mobility Authority under this Contract without the express written consent of the Mobility Authority.

## **ARTICLE 10 PERSONNEL, EQUIPMENT AND MATERIAL**

**A. Engineer Resources.** The Engineer shall furnish and maintain quarters 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 Mobility Authority.

**B. Removal of Contractor 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 Mobility Authority may instruct the Engineer to remove any employee from association with work authorized in this Contract if, in the sole opinion of the Mobility Authority, the work of that employee does not comply with the terms of this Contract or if the conduct of that employee becomes detrimental to the work.

**C. Replacement of Key Personnel.** The Engineer must notify the Mobility Authority in writing as soon as possible, but no later than three (3) business days after a project manager or other key personnel is removed from association with this Contract, giving the reason for removal.

**D. Mobility Authority Approval of Replacement Personnel.** The Engineer may not replace the project manager or key personnel, as designated in the applicable Work Authorization, without prior consent of the Mobility Authority. The Mobility Authority must be satisfied that the new project manager or other key personnel is qualified to provide the authorized services. If the Mobility Authority determines that the new project manager or key personnel is not acceptable, the Engineer may not use that person in that capacity and shall replace him or her with one satisfactory to the Mobility Authority within thirty (30) days.

**E. Ownership of Acquired Property.** Except to the extent that a specific provision of this Contract states to the contrary, the Mobility Authority shall own all intellectual property acquired or developed under this Contract and all equipment purchased by the Engineer or its subcontractors under this Contract. All intellectual property and equipment owned by the Mobility Authority shall be delivered to the Mobility Authority when the Contract or applicable Work Authorization terminates, or when it is no longer needed for work performed under this Contract, whichever occurs first.

## **ARTICLE 11 SUBCONTRACTING**

**A. Prior Approval.** The Engineer shall not assign, subcontract, or transfer any portion of professional 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 Mobility Authority. Request for approval should include a written description of the proposed services, and, using rates established in Attachment A, a proposed price.

**B. DBE Compliance.** The Engineer's subcontracting program shall comply with the requirements of Exhibits E, and F of Attachment B - Work Authorization(s).

**C. Required Provisions.** All subcontracts for professional services shall include the provisions included in this Contract and any provisions required by law. The Engineer is authorized to pay subcontractors in accordance with the terms of the subcontract.

**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 subcontractor or other third party performing work for or on behalf of the Engineer.

**E. Invoice Approval and Processing.** All subcontractors 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), and in the event that the cycles are not concurrent, a detailed explanation will be submitted to the Mobility Authority.

## **ARTICLE 12 INSPECTION OF WORK**

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

**B. Reasonable Access.** If any review or evaluation is made on the premises of the Engineer or a subcontractor under this Article, the Engineer shall provide and require its subcontractors 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 13 SUBMISSION OF REPORTS**

All applicable study reports shall be submitted in preliminary form for approval by the Mobility Authority before a final report is issued. The Mobility Authority's comments on the Engineer's preliminary report must be addressed in the final report.

## **ARTICLE 14 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, and any increased or additional cost incurred by the Mobility 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, but all remedies existing at law and in equity may be availed of by either party and shall be cumulative.

**C. Excusable Delays.** Except with respect to defaults of subcontractors, 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 15 TERMINATION**

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

- (1) by mutual agreement and consent, in writing from both parties;
- (2) by the Mobility Authority 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 22, Gratuities, or Exhibit E to Attachment B, DBE 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 Mobility Authority for its convenience and in its 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 Mobility Authority 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 Mobility Authority 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 Mobility Authority terminate this Contract under paragraph A (3) or (4) above, the Engineer shall not incur costs during the thirty-day notice period in excess of the amount incurred during the preceding thirty (30) days and only as necessary to terminate the work in progress.

**C. Value of Completed Work.** If the Engineer defaults in the performance of this Contract or if the Mobility Authority terminates this Contract for fault on the part of the Engineer, the Mobility Authority 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 Mobility Authority; (4) the cost to the Mobility 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 Mobility Authority of the work performed.

**D. Calculation of Payments.** The Mobility Authority shall use the fee structure established by the applicable Work Authorization in determining the value of the work performed up to the time of termination. In the event that a cost plus fixed fee basis of payment is utilized in a Work Authorization, any portion of the fixed fee not previously paid in the partial payments shall not be included in the final payment.

**E. 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 Mobility 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 17.

**F. Payment of Additional Costs.** If termination of this Contract is due to the failure of the Engineer to fulfill its Contract obligations, the Mobility Authority may take over the project and prosecute the work to completion, and the Engineer shall be liable to the Mobility Authority for any additional cost to the Mobility Authority.

## **ARTICLE 16 COMPLIANCE WITH LAWS**

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 Mobility Authority's enabling legislation (Chapter 370 of the Texas Transportation Code), and all amendments and modifications to any of the foregoing, if any. When required, the Engineer shall furnish the Mobility Authority with satisfactory proof of its compliance therewith.

## **ARTICLE 17 INDEMNIFICATION**

**THE ENGINEER SHALL INDEMNIFY AND HOLD HARMLESS THE MOBILITY AUTHORITY AND ITS OFFICERS, DIRECTORS, EMPLOYEES, ENGINEERS, AND AGENTS (WHICH, FOR THE PURPOSES OF THIS AGREEMENT, SHALL INCLUDE THE MOBILITY AUTHORITY'S GEC, GENERAL COUNSEL, BOND COUNSEL, FINANCIAL ADVISORS, TRAFFIC AND REVENUE ENGINEERS, TOLL OPERATIONS/COLLECTIONS FIRMS, AND UNDERWRITERS) 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, AND AGENTS WITH RESPECT TO THE ENGINEER'S PERFORMANCE OF THE WORK TO BE ACCOMPLISHED UNDER THIS AGREEMENT. IN SUCH EVENT, THE ENGINEER SHALL ALSO INDEMNIFY AND HOLD HARMLESS THE MOBILITY AUTHORITY, ITS OFFICERS, DIRECTORS, EMPLOYEES, ENGINEERS, AND AGENTS (AS DEFINED ABOVE) FROM ANY AND ALL REASONABLE AND NECESSARY EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES, INCURRED BY THE MOBILITY AUTHORITY IN LITIGATING OR OTHERWISE RESISTING SAID CLAIMS, COSTS OR LIABILITIES. IN THE EVENT THE MOBILITY AUTHORITY, ITS OFFICERS, DIRECTORS, EMPLOYEES, ENGINEERS, AND AGENTS (AS DEFINED ABOVE), IS/ARE FOUND TO BE PARTIALLY AT FAULT, THE ENGINEER SHALL, NEVERTHELESS, INDEMNIFY THE MOBILITY AUTHORITY FROM AND AGAINST THE PERCENTAGE OF FAULT ATTRIBUTABLE TO THE ENGINEER OR ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS OR TO THEIR CONDUCT.**

## **ARTICLE 18 ROLE OF GENERAL ENGINEERING CONSULTANT**

The Mobility Authority will utilize a General Engineering Consultant (“GEC”) to assist in its management of this Contract. The GEC is an independent contractor and is authorized by the Mobility Authority to provide the management and technical direction for this Contract on behalf of the Mobility 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 Mobility Authority; however, requests for such amendments or adjustments shall be made through the GEC, who shall forward such requests to the Mobility Authority with its comments and recommendations.

Should any dispute arise between the General Engineering Consultant and the Engineer, concerning the conduct of this Contract, either party may request a resolution of said dispute by the Executive Director of the Mobility Authority or his designee, whose decision shall be final. The parties shall first try to resolve the dispute at the lowest level practical. In the event that an agreement cannot be reached, the Engineer may schedule a meeting with the GEC Program Manager. If an agreement cannot be reached at this level, then a meeting will be scheduled with the Mobility Authority and the GEC Program Manager, so the Engineer can present its case. The Mobility Authority’s decision in the matter will be final. In no case will the Engineer go directly to the Mobility Authority with a dispute unless the Engineer believes that the GEC is violating, or is directing the Engineer to take an action which would violate, any laws or similar provisions described in Article 16 or any ethical obligations owed to the Mobility Authority.

## **ARTICLE 19 ENGINEER’S RESPONSIBILITY**

**A. Accuracy.** The Engineer shall have total responsibility for the accuracy and completeness of the documents prepared under this Contract and shall check all such material accordingly.

**B. Errors and Omissions.** The Engineer's responsibility for all questions arising from errors and/or omissions will be determined by the Mobility Authority. The Engineer shall not be relieved of the responsibility for subsequent correction of any such errors or omissions or for clarification of any ambiguities until after the project has been completed. In the event that the Mobility Authority discovers a possible error or omission, the Mobility Authority shall notify the Engineer and seek to involve the Engineer in determining the most effective solution with respect to time and cost, provided that the Mobility Authority shall ultimately determine the solution that is chosen.

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



**D. Resealing of Documents.** Once the work has been sealed and accepted by the Mobility Authority, the Mobility Authority, as the owner, will notify the Engineer, in writing, of the possibility that a Mobility 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 20 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 Mobility 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 21 INSURANCE**

The Engineer and all subcontractors shall furnish the Mobility Authority a properly completed Certificate of Insurance approved by the Mobility Authority 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 Mobility Authority. The Engineer certifies that it has and will maintain insurance coverages as follows:

**A. Comprehensive General Liability Insurance or Commercial General Liability Insurance.** If coverages are specified separately, they must be at least these amounts:

Bodily Injury	\$1,000,000 each occurrence
Property Damage	\$1,000,000 each occurrence \$2,000,000 for aggregates

Manufacturers' or Contractor Liability Insurance is not an acceptable substitute for Comprehensive General Liability Insurance or Commercial General Liability Insurance.

**B. 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 subcontractors and subconsultants (including, but not limited to design subcontractors and subconsultants) of any tier.

**C. Workers Compensation.** Engineer shall provide and maintain worker's compensation insurance coverage with statutory benefits, and Employers Liability insurance coverage, with limits not less than \$1,000,000.

**D. Automobile Liability Insurance.** Engineer shall provide and maintain automobile liability insurance coverage in the amount of \$1,000,000 per occurrence for bodily injury and property damage.

**E. Subcontractor Insurance Coverage Election.** If a subcontractor selected by the Engineer to perform work associated with this Contract is unable to secure insurance coverage in the amounts set forth in this Article 21, Engineer may provide to the Mobility Authority an explanation of coverages that a subcontractor does possess, why those coverages are adequate to cover the potential exposure for the work to be performed by the subcontractor, and an acknowledgement that the Engineer remains liable for the work performed under the contract, including that performed by the subcontractor. The Mobility Authority may, in its sole discretion, elect to accept the insurance coverage obtained by the subcontractor in lieu of the coverage required by this Article 21.

## **ARTICLE 22 GRATUITIES**

**A. Employees Not to Benefit.** Mobility Authority policy mandates that the director, employee or agent of the Mobility 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 Mobility Authority.

**B. Liability.** Any person doing business with or who reasonably speaking may do business with the Mobility Authority under this Contract may not make any offer of benefits, gifts or favors to Mobility 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 23  
DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS**

The Engineer agrees to comply with the DBE requirements and reporting guidelines set forth in Exhibits E, and F of Attachment B - Work Authorization(s). The DBE Goal established for this project is 10%. The Engineer also agrees to comply with the DBE subcontracting plan that was included in the response that the Engineer submitted to the Mobility Authority's Request for Qualifications.

**ARTICLE 24  
CIVIL RIGHTS COMPLIANCE**

**A. Compliance with Regulations.** The Engineer shall comply with the regulations of the Department of Transportation, Title 49, Code of Federal Regulations, Parts 21, 24, 26 and 60 as they relate to nondiscrimination; also Executive Order 11246 titled Equal Employment Opportunity as amended by Executive Order 11375.

**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 subcontractors, including procurement of materials and leases of equipment.

**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 subcontractor or supplier shall be notified by the Engineer of the Engineer's obligations under this Contract and the 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 Regulations, or 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 Mobility Authority or the FHWA to be pertinent to ascertain compliance with such 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 Mobility 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 Mobility 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) cancellation, termination, or suspension of the Contract, in whole or in part.

**ARTICLE 25  
PATENT RIGHTS**

The Mobility 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 26  
DISPUTES**

The Engineer shall be responsible for resolving all contractual and administrative issues that arise from any purchase or contract made by the Engineer in support of the Services required by this Contract.

**ARTICLE 27  
ASSIGNMENT**

The Engineer shall not assign, subcontract, or transfer its interest in this Contract without the prior written consent of the Mobility Authority.

**ARTICLE 28  
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 29  
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 30  
CONFLICT OF INTEREST**

The undersigned Engineer represents that such firm has no conflict of interest that would in any way interfere with its or its employees' performance of services for the Mobility Authority or which in any way conflicts with the interests of the Mobility Authority. The Mobility Authority shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the Mobility Authority's interests.

**ARTICLE 31  
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 32  
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 Mobility Authority authorization to enter into this Contract on behalf of the firm. These representations and warranties are made for the purpose of inducing the Mobility Authority to enter into this Contract.

**ARTICLE 33  
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:

Keith Jackson, P.E., Vice President  
RS&H, Inc.  
8140 North Mo Pac Expressway  
Building 2, Suite 100  
Austin, TX 78759  
Email:keith.jackson@rsandh.com

In the case of the Mobility Authority:

Mike Heiligenstein, Executive Director  
Central Texas Regional Mobility Authority  
3300 North IH 35, Suite 300  
Austin, TX 78705  
Email: mstein@ctrma.org

with a copy to:

Justin Word  
Central Texas Regional Mobility Authority  
3300 North IH 35, Suite 300  
Austin, TX 78705

Email: [jword@mobilityauthority.com](mailto:jword@mobilityauthority.com)

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 34 BUSINESS DAYS AND DAYS**

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

#### **ARTICLE 35 INCORPORATION OF PROVISIONS**

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

#### **ARTICLE 36 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 Mobility 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:

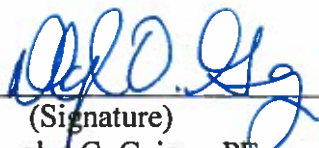
- A. Supplemental Work Authorizations;
- B. Work Authorizations;
- C. Contract Amendments;
- D. This Contract.
- E. The Request for Qualifications
- F. The Engineer’s Response to the Request for Qualifications.

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 36, 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 Mobility Authority shall have the right to determine, in its sole discretion, which provision applies.

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

**THE ENGINEER**

**CENTRAL TEXAS REGIONAL  
MOBILITY AUTHORITY**

  
 \_\_\_\_\_  
 (Signature)  
 Douglas G. Geiger, PE  
 \_\_\_\_\_  
 (Printed Name)  
 Sr. Vice President  
 \_\_\_\_\_  
 (Title)  
 December 9, 2015  
 \_\_\_\_\_  
 (Date)

  
 \_\_\_\_\_  
 (Signature)  
 Mike Heiligenstein  
 \_\_\_\_\_  
 Executive Director  
 \_\_\_\_\_  
 12-15-15  
 \_\_\_\_\_  
 (Date)

**Attachments and Exhibits to Contract for Construction Inspection Services**

<b>Attachments</b>	<b>Title</b>
A	Rate Schedule
B	Work Authorization
C	Supplemental Work Authorization

**ATTACHMENT A  
RATE SCHEDULE**

**RANGE OF LABOR RATES**

	2015			2016	2017	2018	2019	2020
	Low	High	Avg					
<b>Project Officer</b>	\$ 77.62	\$ 111.83	\$ 94.73	\$ 97.57	\$ 100.49	\$ 103.51	\$ 106.61	\$ 109.81
<b>Project Manager</b>	\$ 69.75	\$ 84.56	\$ 77.16	\$ 79.47	\$ 81.85	\$ 84.31	\$ 86.84	\$ 89.44
<b>Record Keeper/ Auditor</b>	\$ 38.00	\$ 39.52	\$ 38.76	\$ 39.92	\$ 41.12	\$ 42.35	\$ 43.62	\$ 44.93
<b>Administrative Assistant II</b>	\$ 14.58	\$ 19.50	\$ 17.04	\$ 17.55	\$ 18.08	\$ 18.62	\$ 19.18	\$ 19.75
<b>Chief Inspector</b>	\$ 42.00	\$ 43.50	\$ 42.75	\$ 44.03	\$ 45.35	\$ 46.71	\$ 48.12	\$ 49.56
<b>Senior Inspector</b>	\$ 33.50	\$ 41.50	\$ 37.50	\$ 38.63	\$ 39.78	\$ 40.98	\$ 42.21	\$ 43.47
<b>Inspector</b>	\$ 25.00	\$ 33.50	\$ 29.25	\$ 30.13	\$ 31.03	\$ 31.96	\$ 32.92	\$ 33.91

Notes:

- 1.) An average rate was for each position in development of the fee schedule
- 2.) A 3% annual rate increase was assessed for each position.