



CENTRAL TEXAS REGIONAL  
**MOBILITY AUTHORITY**

October 30, 2024  
**AGENDA ITEM #11**

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Discuss and consider approving an agreement with AtkinsRéalís USA, Inc. for general engineering consulting services

Strategic Plan Relevance: Stewardship  
Department: Engineering  
Contact: Mike Sexton, P.E., Director of Engineering  
Associated Costs: TBD  
Funding Source: Project Funds/General Fund/Operating Fund/Bond Sale Funds  
Action Requested: Consider and act on draft resolution

**Project Description/Background:**

The Mobility Authority entered into an agreement with Atkins North America, Inc. for general engineering consulting (GEC) services on December 19, 2017. The termination date of that agreement is December 31, 2024.

Staff initiated procurement efforts for GEC services with the issuance of a request qualifications (RFQ) on March 7, 2024. A chronology is provided below:

- March 7, 2024 Issued Request for Qualifications (RFQ)
- April 12, 2024 RFQ Response Deadline
- April 29, 2024 Final Scoring of Responses to the RFQ
- May 29, 2024 Mobility Authority awarded the contract to AtkinsRéalís USA, Inc.

Staff has negotiated a contract with AtkinsRéalís USA, Inc. provided in your backup today.

**Action requested/Staff Recommendation:**

Staff recommends authorizing the Executive Director to execute the contract with AtkinsRéalís USA, Inc. for general engineering consulting services.

**Backup provided:** Draft resolution  
Draft contract

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

**RESOLUTION NO. 24-0XX**

**APPROVE AN AGREEMENT WITH ATKINSRÉALIS USA, INC. FOR GENERAL  
ENGINEERING CONSULTANT SERVICES**

WHEREAS, the Mobility Authority issued a request for qualifications to firms interested in providing general engineering consulting services to the Mobility Authority on March 7, 2024; and

WHEREAS, the Mobility Authority received three responses to the request for qualifications and, following evaluation of the responses, recommended that AtkinsRéalis USA, Inc. be selected to provide general engineering consulting services to the Mobility Authority; and

WHEREAS, by Resolution No. 24-027, dated May 29, 2024, the Board approved the selection of AtkinsRéalis USA, Inc. to provide general engineering consulting services to the Mobility Authority and authorized the Executive Director to negotiate a general engineering consulting services agreement with AtkinsRéalis USA, Inc.; and

WHEREAS, the Executive Director and AtkinsRéalis USA, Inc. have negotiated a proposed agreement for general engineering consulting services; and

WHEREAS, the proposed agreement is attached hereto as Exhibit A and sets forth the scope of services, compensation, and other terms and conditions.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors hereby approves the agreement with AtkinsRéalis USA, Inc. for general engineering consulting services in the form or substantially the same form attached hereto as Exhibit A; and

BE IT FURTHER RESOLVED that the Executive Director is authorized to execute the agreement with AtkinsRéalis USA, Inc. on behalf of the Mobility Authority.

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 30<sup>th</sup> day of October 2024.

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**

**CONTRACT FOR PROFESSIONAL SERVICES  
with Work Authorizations**

**THIS CONTRACT FOR PROFESSIONAL SERVICES** is made by and between the Central Texas Regional Mobility Authority, 3300 N Interstate 35 Frontage Rd #300, Austin, Texas 78705, hereinafter called "Mobility Authority," and AtkinsRéalis USA, Inc., having its principal business address at 11801 Domain Boulevard Suite 500 Austin, Texas 78758, hereinafter called "Engineer," for the purpose of contracting for professional services.

**WITNESSETH**

**WHEREAS**, the Mobility Authority desires to contract for services generally described as professional 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 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 Mobility Authority and the Engineer will furnish items and perform those services for fulfillment of this Contract as identified in Attachment B, Services to be provided by the Mobility Authority and Attachment C, Services to be provided by the Engineer. 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 and Land Surveyors. This Contract does not obligate the Mobility Authority to proceed with the Services or authorize the performance of work through a Work Authorization. The Engineer shall represent, advance, and further the interests of the Mobility Authority throughout all aspects and phases of the Mobility Authority's activities and shall, as requested by the Mobility Authority, fully support the Mobility Authority in its dealings with contractors, suppliers, other engineers, consultants, rating agencies, governmental entities, and the public, all in accordance with the standards customarily observed by a professional engineering firm performing the same or similar services.

**ARTICLE 2. CONTRACT PERIOD.** This Contract becomes effective on January 1, 2025 and it shall terminate on December 31, 2027 (the "Contract Period") unless the Contract Period is: (1) extended as agreed by both parties, up to two (2) individual terms, each term being for a period of up to two (2) years; (2) modified by written supplemental agreement prior to the date of termination as set forth in Attachment A, General Provisions, Article 6, Supplemental Agreements; (3) as amended by the parties due to a work suspension as provided for in Attachment A, Article 3, Paragraph C; or (4) otherwise terminated in accordance with Attachment A, General Provisions, Article 15, Termination. 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. The terms of this Contract shall continue in effect solely in respect to a Work Authorization remaining in effect following the expiration of this Contract. No new Services may be added to a Work Authorization remaining in effect following the expiration of this Contract, and no new Work Authorization may be issued after the termination date of this Contract.

**ARTICLE 3. COMPENSATION.**

**A. Amount Payable.** The amount payable under this Contract will be determined by the individual work authorizations authorized over the Contract Period.

**B. Basis of Payment.** The basis of payment is identified in Attachment E, Fee Schedule. Reimbursement of costs incurred under a work authorization shall be in accordance with Attachment E, Fee Schedule. The amount presented in Attachment E, Fee Schedule is the amount the Mobility 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 work authorizations.

**C. Reimbursement of Eligible Costs.** To be eligible for reimbursement, the Engineer's costs must (1) be incurred in accordance with the terms of a valid work authorization; (2) be in accordance with Attachment E, Fee Schedule; and (3) comply with cost principles set forth at 48 CFR Part 31, Federal Acquisition Regulation (FAR 31). Satisfactory progress of work shall be maintained as a condition of payment.

**D. Engineer Payment of Subconsultants.** No later than ten (10) days after receiving payment from the Mobility Authority, the Engineer shall pay all subconsultants for work performed under a subcontract authorized hereunder. The Mobility Authority may withhold all payments that have or may become due if the Engineer fails to comply with the ten-day payment requirement. The Mobility Authority may also suspend the work under this Contract or any work authorization until subconsultants are paid. This requirement also applies to all lower tier subconsultants, and this provision must be incorporated into all subcontracts.

**E. 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 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.

**F. Consistency of Classification/Duties and Hourly Rates.** Time spent by the Engineer's personnel 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.

**G. 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. A "Texas Sales and Use Tax Exemption Certificate" is available from the Mobility 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 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.

F. The Engineer represents that at all times throughout the term of this Agreement that it shall not use an auditable overhead rate that exceeds the rate determined in accordance with FAR 31 (or successor regulations); that the Direct Labor Costs shall not exceed the ranges reflected in Attachment E and shall be based on actual salary amounts for the individuals performing the work; and that, except as previously described in writing, neither auditable overhead rate nor the profit percentage used under this Agreement shall exceed the auditable overhead rate or profit percentage utilized by the Engineer in its agreement(s) with, or subcontracts for, Engineer (or comparable) work for the Texas Department of Transportation, the North Texas Tollway Authority, any other regional mobility authority, or similar transportation authority in the State of Texas.

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

**A. Monthly Invoices.** The Engineer shall request reimbursement of costs incurred by submitting an itemized invoice in a form acceptable to the Mobility Authority. If the work is eligible for payment through an agreement

with another entity, the invoice shall be in a form and include such detail as that entity may require, including a breakdown of Services provided on a Project-by-Project basis, together with other Services requested by the Mobility Authority. The Engineer is authorized to submit requests for reimbursement no more frequently than monthly and no later than ninety (90) days after costs are incurred, with the exception of the closing of the Mobility Authority's fiscal year. Notwithstanding the ninety (90) day submittal deadline, all requests for reimbursement of costs incurred during the Mobility Authority's fiscal year (ending June 30th) must be submitted no later than 15 days after June 30th, or the next business day if that date should occur on a weekend or holiday.

**B. Form of Invoice.** The invoice shall show the work authorization number for each work authorization included in the billing, the total amount earned to the date of submission, and 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 fixed fee will be paid in proportion to the percentage of work completed per work authorization.

**C. Overhead Rates.** The Engineer shall use the provisional overhead rate indicated in Attachment E, Fee Schedule. If a periodic escalation of the provisional overhead rate is specified in Attachment E, Fee Schedule, the effective date of the revised provisional overhead rate must be included. The Engineer represents that at all times 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).

**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. If the Mobility Authority disputes a request for payment by the Engineer, the Mobility Authority agrees to pay any undisputed portion of the invoice within this 30-day window. The Mobility Authority shall notify the Engineer of the disputed amount no later than the 21st day after the date the Mobility Authority receives the monthly invoice.

**E. Withholding Payments.** The Mobility Authority reserves the right to withhold payment of up to 110% of the disputed amount 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 day period; (2) pending verification of satisfactory work performed; or (3) required reports (including third-party verifications, if any) are not received. In the event that payment is withheld, the Mobility Authority shall notify the Engineer and give a remedy that would allow the Mobility Authority to release the payment.

**F. Invoice and Progress Report Submittal Process.**

(1) The invoice submittal shall include:

- Progress report
- Forecast for completion of the scope
- Invoice (in the required format provided by the Mobility Authority)
- Disadvantaged Business Enterprise (DBE)/Historically Underutilized Business (HUB) Forms, as required
- Supporting documents as requested

(2) A progress report shall be submitted to the Mobility 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 the Mobility 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 10th day of the month following service unless otherwise directed; if submitted after the 10th day, it will be processed the following month;

(6) As it relates to the Mobility Authority's end of fiscal year closeout efforts, the Engineer shall submit the invoice including their services through June 30th for a given year no later than 15 days after June 30th, or the next business day if that date should occur on a weekend or holiday;

(7) The Mobility Authority's Director of Engineering 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 Mobility Authority's Director of Engineering will either recommend approval of the invoice by the Executive Director or return it to the Engineer for required correction.

**G. Effect of Payments.** No payment by the Mobility Authority shall relieve the Engineer of its obligation to perform on a timely basis the Services required under this Contract. In addition to all other rights provided in this Contract, the Mobility Authority shall have the right to set off any amounts owed by the Engineer pursuant to the terms of this Contract upon providing the Engineer prior written notice thereof. If the Executive Director determines any 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 Mobility Authority.

**H. Audit.** The Mobility 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 Mobility 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.** The Executive Director will issue work authorizations to authorize all other work under this contract. Refusal to accept a work authorization in the form prescribed by the Mobility Authority may be grounds for termination of the Contract. The Mobility Authority shall not be responsible for actions by the Engineer or any costs incurred by the Engineer relating to work not directly associated with or prior to the full execution of a work authorization. Terms and conditions governing the use of work authorizations are set forth in Attachment A, General Provisions, Article 1. Work authorization Nos. 24\_01, 21\_02, 21\_01, 16, 15, 14, 12, and 2.5 and Letter Agreement 18 which were approved under the GEC agreement between the Mobility Authority and Atkins North America, Inc. effective January 1, 2018 are hereby incorporated into this Contract for all purposes and shall remain in full force and effect until terminated as provided herein.

**ARTICLE 6. 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 Mobility Authority to enter into this Contract.

**ARTICLE 7. 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:

<p><b>Engineer:</b></p> <p>Gregory S. Blake                  AtkinsRéalis USA, Inc.                  3300 N Interstate 35 Frontage Rd #300                  Austin, Texas 78705</p>	<p><b>Mobility Authority:</b></p> <p>Director of Engineering                  Central Texas Regional Mobility Authority                  3300 N Interstate 35 Frontage Rd #300                  Austin, Texas 78705</p>
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**ARTICLE 8. INCORPORATION OF PROVISIONS.** Attachments A through H are attached hereto and incorporated into this Contract as if fully set forth herein.

**ARTICLE 9. 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 10. PRIORITY OF DOCUMENTS/ORDER OF PRECEDENCE.** In the event of any conflict between the Contract and other documents, the order of precedence shall be as set forth below: A) Supplemental Work Authorization; B) Work Authorization; C) Contract Amendments; D) Contract; E) RFP/ RFQ; F) Engineer's Response to RFP/RFQ.

**Each party is signing this agreement on the date stated under that party's signature.**

ATKINSRÉALIS USA, INC.

**CENTRAL TEXAS REGIONAL MOBILITY  
 AUTHORITY**

\_\_\_\_\_  
 (Signature)  
 Brad Dennard  
 \_\_\_\_\_  
 (Printed Name)  
 Sr. Vice President  
 \_\_\_\_\_  
 (Title)  
 \_\_\_\_\_  
 (Date)

\_\_\_\_\_  
 (Signature)  
 James M. Bass  
 \_\_\_\_\_  
 (Printed Name)  
 Executive Director  
 \_\_\_\_\_  
 (Title)  
 \_\_\_\_\_  
 (Date)



**Attachments and Exhibits to Contract for Professional Services  
Incorporated into the Contract by Reference**

<b>Attachments</b>	<b>Title</b>
A	General Provisions
B	Services to Be Provided by the Mobility Authority
C	Services to Be Provided by the Engineer
D	Key Personnel
E	Fee Schedule
F	Work Schedule
G	Form of Work Authorization
H	Subcontracting

**ATTACHMENT A**

**GENERAL PROVISIONS**

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**ATTACHMENT A****GENERAL PROVISIONS****ARTICLE 1. WORK AUTHORIZATIONS**

**A. Use.** The Engineer shall not begin any work until the Executive Director and the Engineer have signed a Work Authorization and the Engineer has 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. The Executive Director will issue Work Authorizations to authorize all other work under this Contract. 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 using fees set forth in Attachment E, Fee Schedule.; and (6) DBE/HUB Requirements. The Engineer shall not include additional contract terms and conditions in the Work Authorization. In the event of any conflicting terms and conditions between the Work Authorization and the Contract, the terms and conditions of the Contract shall prevail and govern the work and costs incurred.

**C. Work Authorization Budget.** A Work Authorization budget shall be prepared by the Engineer and set forth in detail (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 at the hourly rates established in Attachment E, Fee Schedule; (3) a work plan that includes a list of the work to be performed, (4) a stated maximum number of calendar days to complete the work, and (5) a cost-not-to-exceed-amount or unit or lump sum cost and the total cost or price of the Work Authorization. The Mobility Authority will not pay items of cost that are not included in or rates that exceed those approved in Attachment E.

**D. No Guaranteed Work.** Work Authorizations are 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 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.

**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 executed within the period of performance specified in the Work Authorization. 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 the performance or prior to the execution of the Supplemental Work Authorization. The Engineer shall allow adequate time for review and approval of the Supplemental Work Authorization by the Executive Director prior to expiration of the Work Authorization. Any Supplemental Work Authorization must be executed by both parties within the Contract Period established in Article 2 of the Contract.

**F-1. More Time Needed.** If the Engineer determines or reasonably anticipates that the work authorized in a Work Authorization cannot be completed before the specified completion date, the Engineer shall promptly notify the Executive Director. The Executive Director may, at his sole discretion, extend the Work Authorization period by execution of a Supplemental Work Authorization.

**F-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 Engineer must allow adequate time for the Executive Director to review, negotiate, and approve any request for a Supplemental Work Authorization prior to expiration of the Work Authorization.

**G. Deliverables.** Upon satisfactory completion of the Work Authorization, the Engineer shall submit a letter of completion along with the deliverables as specified in the executed Work Authorization to the Executive Director for review and acceptance.

## **ARTICLE 2. 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 Mobility 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. Inspections.** If federal funds are used to reimburse costs incurred under this Contract, the work and all reimbursements will be subject to periodic review by the U. S. Department of Transportation.

**D. 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 statement of the action taken or contemplated, and any State or federal assistance needed to resolve the situation; and
2. favorable developments or events which enable meeting the work schedule goals sooner than anticipated.

**E. Corrective Action.** Should the Executive Director determine that the progress of work does not satisfy the work 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.

## **ARTICLE 3. SUSPENSION OF WORK AUTHORIZATION**

**A. Notice.** Should the Executive Director desire to suspend a Work Authorization 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-day notice in writing.

**C. Contract Period Not Affected.** If the Executive Director suspends a Work Authorization, the Contract Period as determined in Article 2 of the Contract is not affected and the Contract and the Work Authorization will terminate on the date specified unless the Contract is amended to authorize additional time.

**D. Limitation of Liability.** The Engineer shall not be entitled to any damages or other compensation of any form in the event that the Mobility Authority exercises its rights to suspend or modify the Services pursuant to

this Article 3. The Mobility 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 4. ADDITIONAL WORK**

**A. 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.

**B. Supplemental Agreement.** If the Executive Director finds that the work does constitute additional work, the Executive Director shall so advise the Engineer, and a written supplemental agreement will be executed as provided in General Provisions, Article 6, Supplemental Agreements.

**C. 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 agreement.

#### **ARTICLE 5. 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.

**C. Errors/Omissions.** The Engineer shall make revisions to the work authorized in this Contract which are necessary to correct errors or omissions appearing therein, when required to do so by the Executive Director. No additional compensation shall be paid for this work.

#### **ARTICLE 6. SUPPLEMENTAL AGREEMENTS**

**A. Need.** The terms of this Contract may be modified if the Executive Director determines that there has been a significant increase or decrease in the duration, scope, cost, complexity or character of the services to be performed. A supplemental agreement will be executed to authorize such significant increases or decreases.

**B. When to Execute.** Both the Engineer and the Executive Director must execute a supplemental agreement within the Contract Period specified in Article 2 of the Contract.

#### **ARTICLE 7. DATA OWNERSHIP**

**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, models, animations, and other documents and files created or collected under the terms of this Contract are the property of the Mobility 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 Mobility Authority's website and together with all materials and data furnished to it by the Mobility Authority, are and at all times shall be and remain the property of the Mobility Authority and shall not be subject to any restriction or limitation on their further use by or on behalf of the Mobility Authority. Engineer

hereby assigns any and all rights and interests it may have in the foregoing to the Mobility Authority, and Engineer hereby agrees to provide reasonable cooperation as may be requested by the Mobility Authority in connection with the Mobility Authority's efforts to perfect or protect rights and interests in the foregoing; and if at any time demand be made by the Mobility 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 Mobility Authority without delay. The Mobility 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 Mobility 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 Mobility 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 Mobility Authority, Engineer hereby agrees to provide reasonable cooperation as may be requested by the Mobility Authority in connection with the Mobility Authority's efforts to perfect or protect such intellectual property. The Mobility Authority retains an unrestricted license for software packages developed in whole or in part with Mobility Authority funds.

**C. Separate Assignment.** If for any reason the agreement of the Mobility Authority and the Engineer set forth in subarticle 7.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 Mobility 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 Mobility Authority hereby acknowledges, however, that all documents and other work product provided by the Engineer to the Mobility 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 Mobility 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 prepared by Engineer and all documents furnished to Engineer by the Mobility Authority shall be delivered to the Mobility Authority upon request. 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 permission by the Mobility Authority.

**E. Release of Design Plan.** The Engineer (1) will not release any roadway 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 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 subconsultants, including costs, damages, or other liability resulting from improper use. Neither Engineer nor any subconsultant may charge a fee for any portion of the design plan created by the Mobility Authority."

## **ARTICLE 8. 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. The requirements of Subchapter J, of the Public Information Act, may apply to this Contract and the Engineer agrees that the Contract can be terminated if the Engineer knowingly or intentionally fails to comply with a requirement of that subchapter.

**B. Confidentiality.** The Engineer shall not disclose information obtained from the Mobility 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 Mobility Authority pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the Mobility Authority.

## **ARTICLE 9. 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 Mobility 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 Director of Engineering may instruct the Engineer to remove any employee from association with work authorized in this Contract if, in the sole opinion of the Director of Engineering, 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; or for any other reason identified by the Director of Engineering.

**C. Mobility Authority Approval of Replacement Personnel.** The Engineer may not replace any Key Personnel, as designated in the applicable Work Authorization or identified in Attachment D, without prior written approval of the Director of Engineering. Throughout the term of the applicable Work Authorization, the Engineer agrees that the identified individual(s), whether employee(s) of the Engineer or of an approved sub-consultant, will remain in charge of the performance of the Services and shall devote substantial and sufficient time and attention thereto, to the extent indicated by the applicable Work Authorization. His/her failure or inability to devote sufficient time and attention to the Services shall, at the Mobility Authority's sole option, require the Engineer promptly to replace said individual with a qualified replacement acceptable to the Mobility Authority. In no event shall the Engineer remove, transfer, or reassign any individual identified on applicable Work Authorization or in Attachment D except as instructed by, or with the prior written consent of, the Mobility Authority.

If any Key Personnel 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 Personnel. The Director of Engineering's approval will be based upon the proposed replacement Key Personnel qualifications to provide the required Services. Approval will not be unreasonably withheld.

**D. Liquidated Damages.** The selection of the Engineer to provide the Services under this Contract was based, in part, on the Key Personnel identified in Engineer's proposal. Because of the importance and unique nature of the Services to be provided by Key Personnel as identified in Attachment D or the applicable Work Authorization it is impractical to calculate the actual losses that would be suffered by the Mobility Authority by the loss of Key Personnel from the Contract. Therefore, the Engineer agrees to compensate the Mobility Authority for its losses by paying liquidated damages in the amount of \$2,500 per day per Key Personnel position identified in Attachment D or the applicable Work Authorization if any Key Personnel is removed by the Engineer without prior written approval from the Director of Engineering. Liquidated damages will accrue from the date the Engineer removes the Key Personnel in Attachment C from the Contract if the parties do not agree on a replacement within (14) calendar days after the Key Personnel 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 7.B, the Mobility Authority shall own all intellectual 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 Mobility Authority shall be delivered to the Director of Engineering when the Contract 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 Mobility Authority, title shall pass or transfer to the Mobility Authority upon acquisition and prior to any use of the item by the Engineer.

#### **ARTICLE 10. 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 proposed rates.

**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 for professional services shall include the provisions included in Attachment A, General Provisions, and any provisions required by law.

**D. 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).

**E. 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.

#### **ARTICLE 11. 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 inspect, 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 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 12. 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 13. 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 agreement shall not be considered as specifying the exclusive remedy for any default, and all remedies existing at law and in equity may be availed of by either party and shall be cumulative.

#### **ARTICLE 14. TERMINATION**

**A. Causes.** 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 20, 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.
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 14.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 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. 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 reasonable 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.

**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 16.

**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 15. 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. The Engineer shall comply with all applicable Mobility Authority policies and procedures as outlined in the Mobility Authority Policy Code handbook available on the Mobility Authority's website (<https://www.mobilityauthority.com/about/policy-disclaimers/code>). When required, the Engineer shall furnish the Mobility Authority with satisfactory proof of its compliance therewith.

## **ARTICLE 16. INDEMNIFICATION**

**A. Indemnification.** THE ENGINEER SHALL INDEMNIFY AND HOLD HARMLESS THE MOBILITY AUTHORITY AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND CONSULTANTS WHICH, FOR THE PURPOSES OF THIS CONTRACT, SHALL INCLUDE THE MOBILITY AUTHORITY'S 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 MOBILITY AUTHORITY AND ITS OFFICERS, DIRECTORS, AND EMPLOYEES AND THE INDEMNIFIED PARTIES FROM ANY AND ALL REASONABLE AND NECESSARY EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES, INCURRED BY THE MOBILITY AUTHORITY OR ANY OF THE INDEMNIFIED PARTIES IN LITIGATING OR OTHERWISE RESISTING SAID CLAIMS, COSTS OR LIABILITIES. IN THE EVENT THE MOBILITY AUTHORITY AND ITS OFFICERS, DIRECTORS, AND EMPLOYEES AND/OR ANY OF THE INDEMNIFIED PARTIES, IS/ARE FOUND TO BE PARTIALLY AT FAULT, THE ENGINEER SHALL, NEVERTHELESS, INDEMNIFY THE MOBILITY AUTHORITY AND ITS OFFICERS, DIRECTORS, AND EMPLOYEES AND/OR ANY OF THE INDEMNIFIED PARTIES FROM AND AGAINST THE PERCENTAGE OF FAULT ATTRIBUTABLE TO THE ENGINEER OR ITS OFFICERS, DIRECTORS, EMPLOYEES, SUBCONSULTANTS AND AGENTS OR TO THEIR CONDUCT.

#### **ARTICLE 17. 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 Mobility 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 any phase of project development. 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 prior to Project construction will be corrected at the Engineer's expense with no additional cost to the Mobility Authority.
  6. During and after construction, errors and omissions can potentially result in significant additional costs to the Mobility Authority that they would not have incurred if the construction plans had been correct. The resulting additional costs are considered damages that the Mobility 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 Mobility Authority and are to be recovered should represent actual cost to the Mobility 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 Mobility 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 Mobility Authority staff to ensure that the Mobility 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 Mobility Authority in accordance with the Texas Engineering Practice Act and the rules of the Texas Board of Professional Engineers and Land Surveyors.

**E. Resealing of Documents.** Once the work has been sealed and accepted by the Director of Engineering, the Mobility Authority, as the owner, will notify the party to this Contract, 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 18. NON-COLLUSION**

**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 19. INSURANCE**

The Engineer shall furnish the Mobility 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 Mobility 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 Mobility 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 Mobility 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 18.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 18.E., a rating by A. M. Best Company or similar rating service satisfactory to the Mobility 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 18.B., C., and D., above, shall name the Mobility Authority as additional insured and shall protect the Mobility 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 16, above, is included.

The insurance carrier shall include in each of the insurance policies required under subarticles 18.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 20. 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.

**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 21. DISADVANTAGED BUSINESS ENTERPRISE OR 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 Mobility Authority's Request for Qualifications or Request for Proposals.

#### **ARTICLE 22. 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 Mobility 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 Mobility 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 23. CERTIFICATE OF INTERESTED PARTIES**

If applicable, 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/>.

#### **ARTICLE 24. 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), the Federal Highway Administration (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, will 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 will not participate directly or indirectly

in the discrimination prohibited by the Acts and the 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 will 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 will provide all information and reports required by the Acts and Regulations, and directives issued pursuant thereto, and will 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 Acts and 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 will so certify to the Mobility Authority or the Federal Highway Administration, as appropriate, and will 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 will 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.

**F. Incorporation of Provisions:** The Engineer will include the provisions of paragraphs (A) through (E) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Acts and Regulations and directives issued pursuant thereto. The Engineer will take such action with respect to any subcontract or procurement as the Mobility Authority, TxDOT, or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Engineer becomes involved in, or is threatened with, litigation with a subcontractor or supplier because of such direction, the Engineer may request the Mobility Authority to enter into such litigation to protect the interests of the Mobility Authority.

#### **ARTICLE 25. PATENT RIGHTS**

The Mobility Authority 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. SECTION NOT USED**

#### **ARTICLE 27. CHILD SUPPORT CERTIFICATION**

Under Section 231.006, Texas Family Code, the Engineer certifies that the individual or business entity named in this Contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate. If the above certification is shown to be false, the Engineer is liable to the state for attorney's fees, the cost necessary to complete the Contract, including the cost of advertising and awarding a second Contract, and any other damages provided by law or the Contract. A child support obligor or business entity ineligible to receive payments because of a payment delinquency of more than thirty (30) days remains ineligible until: all arrearages have been paid; the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency; or the court of continuing jurisdiction over the child support order has granted the obligor an exemption from Subsection (a) of Section 231.006, Texas Family Code, as part of a court-supervised effort to improve earnings and child support payments.

#### **ARTICLE 28. 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 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 29. SUCCESSORS AND ASSIGNS**

The Engineer and the Mobility 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 without the prior written consent of the Executive Director.

**ARTICLE 30. 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 31. 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 32. CONFLICT OF INTEREST**

**A. Representation by Engineer.**

The 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 Mobility Authority or which in any way conflicts with the interests of the Mobility Authority and certifies that it is in full compliance with the Mobility 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 Mobility 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; or
3. a government consultant.

**C. Environmental Disclosure.** If the Engineer will prepare an environmental study 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 study 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 33. AUDIT REQUIREMENTS**

The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in 2 CFR 200.

**ARTICLE 34. DEBARMENT CERTIFICATIONS**

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this Contract, the Engineer certifies that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this Contract shall require any party to a subcontract or purchase order awarded under this Contract to certify its eligibility to receive Federal funds and, when requested by the

Executive Director, to furnish a copy of the certification.

### **ARTICLE 35. PERTINENT NON-DISCRIMINATION AUTHORITIES**

During the performance of this Contract, the Engineer, for itself, its assignees, and successors in interest agree to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- A.** Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- B.** The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects).
- C.** Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), as amended, (prohibits discrimination on the basis of sex).
- D.** Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27.
- E.** The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age).
- F.** Airport and Airway Improvement Act of 1982, (49 U.S.C. Chapter 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex).
- G.** The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not).
- H.** Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38.
- I.** The Federal Aviation Administration’s Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex).
- J.** Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations.
- K.** Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, the parties must take reasonable steps to ensure that LEP persons have meaningful access to the programs (70 Fed. Reg. at 74087 to 74100).
- L.** Title IX of the Education Amendments of 1972, as amended, which prohibits the parties from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

### **ARTICLE 36. BOYCOTT ISRAEL**



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

**ARTICLE 37. FIREARM ENTITIES AND TRADE ASSOCIATIONS DISCRIMINATION**

The Engineer verifies that:

1. It does not, and will not for the duration of this Contract, 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 the Contract.

If circumstances relevant to this provision change during the course of this Contract, Engineer shall promptly notify the Executive Director.

**ARTICLE 38. ENERGY COMPANY BOYCOTT**

The Engineer verifies that:

1. It does not, and will not for the duration of the Contract, boycott energy companies; or
2. The verification required by Section 2274.002 of the Texas Government Code does not apply to the Contract.

If circumstances relevant to this provision change during the course of this Contract, the Engineer shall promptly notify the Executive Director.

**ARTICLE 39. ABBREVIATIONS AND DEFINITIONS**

Acts and Regulations	Federal, state, and local acts and regulations which are applicable to the Contract
Agreement	This Contract
Business Days	Any day the Mobility Authority is open for business
CFR	Code of Federal Regulations
Contract	This Contract document and its attachments
Days	Calendar days
DBE	Disadvantaged Business Enterprise
Engineer	The service provider performing the services under this Contract
Executive Director	The Executive Director of the Mobility Authority, or anyone to whom he has delegated the authority to act on his behalf
FAR	Federal Acquisition Regulations
FHWA	Federal Highway Administration
HUB	Historically Underutilized Business
Mobility Authority	The Central Texas Regional Mobility Authority
OMB	Office of Management and Budget
Project	Any capital improvement, rehabilitation, repair, maintenance, or other work in conjunction with the Mobility Authority's or other entity'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

## **ATTACHMENT B**

### **SERVICES TO BE PROVIDED BY THE MOBILITY AUTHORITY**

**To be determined in each work authorization.**

## **ATTACHMENT C**

### **SERVICES TO BE PROVIDED BY THE ENGINEER**

**The work authorization scopes will be derived from this attachment.**

The services to be provided to the Mobility Authority are the usual broad, expert general civil engineering, and general professional services provided to multimodal transportation agencies such as the Mobility Authority. The general elements of work that will be required by the Mobility Authority are shown below.

#### **1. Program Management**

The Engineer shall furnish a Program Manager, Deputy Program Manager, and project managers to provide overall management of assigned projects through all stages of development beginning with the feasibility stage through construction of the project. The Program Manager will manage all activities assigned to the Engineer and coordinate their activities with the staff of the Mobility Authority. The Program Manager will be responsible for ensuring the Engineering services are provided on time, on schedule and meet quality standards. This Key Personnel position must be able to convert technical information to understandable public messaging. The Program Manager must coordinate projects through all departments of the Mobility Authority, and ensure all aspects of project are properly documented and managed by their staff.

#### **2. Preparation or Management of Preliminary/Feasibility Project Details**

Engineering services shall be inclusive of all services required to identify potential routes to the extent necessary to estimate and evaluate the cost, environmental impacts and technical feasibility of alternate routes. The projects may consist of new location or expansion of existing facilities including managed lanes projects.

Fiscal feasibility analyses of the potential of financing from capital created by the issuance of turnpike revenue bonds or other sources will be conducted jointly among the Mobility Authority, the Engineer, the traffic and revenue engineers, financial advisors, general counselors, bond counselors, and investment bankers separately retained by the Mobility Authority. Indications of potential revenue bond financing feasibility can lead to more intensive services being required of the Engineer and will be tailored to fit each turnpike prospect.

#### **3. Preparation or Management of Environmental Documents**

For all projects the Engineer may produce the Environmental Documents necessary for environmental clearance based on NEPA requirements. For larger projects, the Engineer in coordination with The Mobility Authority staff may procure, manage and monitor a third-party consultant who will perform the services required to obtain environmental clearance for the project. The Engineer will be expected to provide oversight services for all required disciplines. The Engineer will be responsible for ensuring compliance with all applicable regulations, permitting requirements, and be capable of preparing risk assessments of various alternatives.

#### **4. Preparation or Management of PS&E Documents**

For smaller projects the Engineer may prepare PS&E and architectural documents necessary for the bidding and construction of projects ranging from roadway to small structures required for the Mobility

Authority to perform its operations and maintenance activities. For larger projects, the Engineer in coordination with the Mobility Authority staff will procure, manage and monitor a third party who will be responsible for designing and bidding the project if it is to be delivered in a traditional design/bid/build method. The Engineer will be expected to provide oversight services for all technical services required to design the complete project.

The projects may be delivered using the design/build or public/private/partnership method in which case the Engineer will actively manage the procurement activities.

The Engineer will need to ensure compliance with TxDOT's LGPP requirements, the Texas Administrative Code and other applicable State and Federal regulations.

## **5. Procurement Services**

The Engineer will assist the Mobility Authority in the procurement of a variety of contractors including Design/Build, 3P, Design, Environmental, Construction, CE&I, Geotechnical, Surveying, Maintenance and other professional services as required. All contracts will be procured in conformance with The Mobility Authority's Procurement Policy. The Engineer will need to be able to provide a team that is capable of actively managing the entire procurement process, and ensure that the Mobility Authority is managing the risk register appropriately.

## **6. Tolling & ITS System Services**

The Engineer should be knowledgeable of All Electronic Tolling (AET) and dynamically priced tolling systems, including toll system and communication infrastructure requirements. Their toll systems capability should include design, maintenance requirements, integration oversight and testing.

The Engineer should be knowledgeable of Traffic Management Centers and ITS systems and communication infrastructure including traffic detection, CCTV and DMS. Their ITS capability should include design, maintenance requirements, integration oversight and testing.

## **7. Public Involvement Services**

Proposer's primary responsibility will be the oversight and implementation of robust and proactive community outreach as well as other communication initiatives. They will be a strategic, forward-thinking contractor, immersed in all Mobility Authority projects and programs, accountable to success metrics, working for and with the Communications Department and be able to fully collaborate with other communications consultants. Specific roles are shown below.

During the environmental phase, the Engineer will provide oversight and implementation of public involvement activities per NEPA requirements and Mobility Authority standards for an elevated and unique commitment to community outreach and informed consent building.

During the Construction phase, the Engineer will provide oversight and implementation of construction communications as directed by the Communications Department, including a robust Good Neighbor program.

During the Open-to-Tolling and Operations phase, the Engineer will assist the Communications Department with payment marketing, maintenance outreach and any other need specific to the assigned corridor.

The Engineer will also support the Communications Department with public involvement, outreach and other communication services including but not limited to agency branding, marketing, graphic design, website development and management, social media, communication tool creation and management, copy creation and management, and industry relations.

## **8. Scheduling Services**

The Engineer will provide scheduling services for both specific projects as well as a programmatic master schedule, consisting of multiple projects using all available scheduling resources ranging from spreadsheets to P6. The Engineer should be able to utilize schedules in the actual management and oversight of projects. Oversight will include the independent verification of contractor schedule including development of early indicators of potential schedule slippage. Schedules will include all aspects of total project including T&R, ROW, utilities and finance. The Engineer should provide improvements for the scheduling system utilized by the Mobility Authority.

## **9. Toll & Traffic Operations Services**

The Engineer should be knowledgeable in regard to revenue collection including; AVI processing and reconciliation, interoperability, back office processing, video billing, violation processing, enforcement, collections and call center operations.

The Engineer should be knowledgeable in the operations of Traffic Management Centers and ITS including incident detection and response, dispatch, tracking, incident clearance and reporting.

The Engineer should be knowledgeable of Traffic Management Centers and ITS systems and communication infrastructure including traffic detection, CCTV and DMS. Their ITS capability should include design, integration and testing.

The Engineer should also be capable of performing all standard traffic performance and capacity models including simulation models. They should be experienced in presenting results in both tabular and visual format to technical and lay audiences.

The Engineer should be capable of analyzing large amounts of data to look for trends, groupings, or other relationships between different types of data. The Engineer should also be capable of visualizing that data to support interpretation and decision-making.

## **10. CE&I Services**

For smaller projects, the Engineer may provide complete CE&I services. For larger projects, the Engineer in coordination with Mobility Authority staff may procure, manage and monitor a third party who will be responsible for some or all of the CE&I services. The Engineer will be responsible for any coordination required between the CE&I contractor and the design contractor. The Engineer will be required to provide auditing capabilities to verify contractor compliance, as well as CE&I compliance with the applicable contractual requirements.

## **11. Renewal/Replacement Maintenance Support Services**

The Engineer shall assist in a systematic management process to plan and budget for known cyclic repair and replacement requirements that extend the life and retain usable condition of facilities and systems that are not normally contained in the annual operating budget.

The Engineer shall be knowledgeable with the design of plans, specifications, competitive bidding and the required oversight to accomplish major maintenance projects.

## **12. Maintenance Oversight Services**

The Engineer should be knowledgeable of maintenance operation support and oversight for all maintenance operations programs including but not limited to maintenance of roads, bridges and drainage systems, facility maintenance, vegetation management, emergency operations such as, snow and de-icing efforts.

The Engineer shall be knowledgeable with the design of plans, specifications, competitive bidding and the required oversight to accomplish routine maintenance.

## **13. Utility Coordination Services**

The Engineer will provide a Utility Coordination Manager who will assist the Mobility Authority in the relocation of utilities required by construction of its projects and review of utility permits submitted by utility owners. Services may include identification of utilities to be relocated from existing records, procurement and oversight of SUE contractors, procurement and oversight of specialty utility design consultants and preparation and negotiation of utility agreements with affected utility owners.

## **14. ROW Services**

The Engineer will provide a ROW Manager who will assist the Mobility Authority in the procurement of ROW services by a third-party contractor and will assist the Mobility Authority staff in the management, coordination with other project team members and the oversight of the ROW contractor. The Engineer may provide full ROW services on small or special projects. All ROW will be acquired and any relocations made according to TxDOT and FHWA standards.

## **15. Programmatic Services**

The Engineer may provide programmatic services which include coordination, monitoring and providing input to the MPO and TxDOT planning activities including the UTP, TIP and other long-range planning including financial considerations and limitations.

## **16. Administrative Support Services**

The Engineer may provide administrative support on an as need basis to the various departments of the Mobility Authority which consist of Engineering, Finance, Operations, ITS/Tolling, Communications, Legal and IT.

## **17. Asset Management Services**

The Engineer may provide support services regarding inspecting, inventorying, and reporting on the condition and status of the Mobility Authority's assets as required by the Government Accounting Standards Board or the Mobility Authority's policy. The Engineer will be integrally involved in the

implementation, operation, and management of an asset management system, and provide recommendations and expertise to the Mobility Authority.

### **18. Contract/LGPP Support Services**

The Engineer may provide support services regarding tracking and reporting the various requirements that the Mobility Authority is required to meet from agreements such as Bond Covenants, Loan Agreements and TxDOT LGPP requirements. The Engineer will provide services to ensure that reimbursement from other agencies is maintained at all times.



## **ATTACHMENT D**

### **Key Personnel**

1. Program Manager – Greg Blake
2. Deputy Program Manager – Brian Gurley
3. Design Manager – Brian Gurley
4. Construction Manager -Mike McKissick
5. Public Involvement Manager – Hillary Lacy
6. IT/Tolling/Innovation Manager – Mike Yager

## ATTACHMENT E

### FEE SCHEDULE (Final Cost Proposal)

This attachment provides the basis of payment and fee schedule. **The basis of payment for this contract is indicated by an “X” in the applicable box.** The basis shall be supported by the Final Cost Proposal (FCP) included with each Work Authorization. If more than one basis of payment is used, each one must be supported by a separate FCP.

“X”	Basis	
<input checked="" type="checkbox"/>	Lump Sum	<p>The lump sum shall be equal to the maximum amount payable. The lump sum includes all direct and indirect costs and profit. For payment the Engineer is not required to provide evidence of actual hours worked, travel, overhead rates or other evidence of cost, but must submit billing information in a form acceptable to the Mobility Authority as required by Article 4 A &amp; B including classifying work, partial or completed, according to the Table of Deliverables.</p> <p>The Mobility 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.</p> <p>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.</p> <p>The portion of the Lump Sum amount billed for Engineer's Services will be based upon Engineer's estimate, as approved by the Mobility Authority's Director of Engineering, of the proportion of the total Services completed during the billing period to the Lump Sum amount.</p>

<input checked="" type="checkbox"/>	<p>Unit Cost</p>	<p>The unit cost(s) for each type of unit and number of units are shown in the FCP. The unit cost includes all direct and indirect costs and profit. For payment, the Engineer is not required to provide evidence of actual hours worked, travel, overhead rates or any other cost data. The FCP may include special items, such as equipment which are not included in the unit costs. Documentation of these special costs may be required. The maximum amount payable equals the total of all units times their respective unit cost plus any special direct items shown.</p> <p>The Mobility 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.</p> <p>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.</p>
<input checked="" type="checkbox"/>	<p>Specified Rate Basis</p>	<p>The specified rates for each type of labor are shown in the FCP below. The FCP may include special items, such as equipment which are not included in the specified rates. The specified rate includes direct labor and indirect cost and profit. The Mobility Authority may request documentation of reimbursable direct costs including hours worked. Documentation of special item costs may be required. The specified rate is not subject to audit. Revisions to the specified 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.</p> <p>The Mobility 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.</p>
<input checked="" type="checkbox"/>	<p>Cost Plus</p>	<p>The Mobility 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:  <i>Direct Labor Cost x (1.0 + Overhead Rate) x (1.0 + 10 %, in decimal form).</i></p> <p>The invoice must itemize labor rates, hours worked, other direct costs and indirect costs. The Engineer may be required to provide documentation of hours worked and any eligible direct costs claimed. The provisional overhead rate charged is subject to audit and adjustment to actual rates incurred. The FCP below shows the hourly rates for labor, other direct expenses including but not limited to travel and allowable materials, and provisional overhead rate. Actual wages must be within the allowable range shown on the Final Cost Proposal.</p>

Without prior approval by the Executive Director, the Mobility 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 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 incurred.

\* The **AMOUNT PAYABLE** will be established by work authorizations authorized over the Contract Period

The amount payable is based on the following rate data shown below. Rates will be adjusted on an annual basis starting no sooner than 12 months following the Effective Date. Annual rate adjustments will be capped at a 5% per annual increase.

The overhead rate will be adjusted annually and effective upon approval by the Chief Financial Officer.

\* The maximum amount payable must be based on the contract scope. The work authorization fee schedules will be derived from this attachment.

# **ATTACHMENT F**

## **Work Schedule**

**To be provided with each Work Authorization**

## ATTACHMENT G

### Form of Work Authorization

WORK AUTHORIZATION NO. \_\_\_\_\_

This Work Authorization is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 202\_, under the terms and conditions established in the **CONTRACT FOR PROFESSIONAL SERVICES**, dated as of \_\_\_\_\_, 2024 (the “Agreement”), between the **Central Texas Regional Mobility Authority** (the “Authority”) and **AtkinsRéalis USA, Inc.** (the “Contractor”). This Work Authorization is made for the following purpose, consistent with the services defined in the Agreement:

*[Brief description of the Project elements to which this Work Authorization applies]*

#### Section A. - Scope of Services

A.1. The Contractor shall perform the following Services:

*[Enter description of the Scope of Services here for which this Work Authorization applies, or make reference to an attached Appendix]*

A.2. The following Services are not included in this Work Authorization, but shall be provided as Additional Services if authorized or confirmed in writing by the Authority:

A.3. In conjunction with the performance of the foregoing Services, the Contractor shall provide the following submittals/deliverables (Documents) to the Authority:

#### Section B. - Schedule

The Contractor shall perform the Services and deliver the related Documents (if any) according to the following schedule:

#### Section C. - Compensation

C.1. In return for the performance of the foregoing obligations, the Authority shall pay to the Contractor the amount not to exceed \$ \_\_\_\_\_, based on the attached fee estimate. Compensation shall be in accordance with the Agreement.

C.2. Compensation for Additional Services (if any) shall be paid by the Authority to the Contractor according to the terms of a future Work Authorization.

#### Section E. Key Personnel

*[Enter list of Key Personnel]*

#### Section F. Authority’s Responsibilities

The Authority shall perform and/or provide the following in a timely manner so as not to delay the Services of the Contractor. Unless otherwise provided in this Work Authorization, the Authority shall bear all costs incident to compliance with the following:

#### Section G. - Other Provisions

The parties agree to the following provisions with respect to this specific Work Authorization:

Except to the extent expressly modified herein, all terms and conditions of the Agreement shall continue in full force and effect.

Authority: Central Texas Regional Mobility  
Authority

Contractor: AtkinsRéalis USA, Inc.

By: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## **ATTACHMENT H**

### **Subcontracting**

AtkinsRéalis planned subcontract team members at the Contract effective date:

McGray & McGray Land  
Surveyors, Inc. (DBE)  
Rodriguez Engineering Laboratories, LLC (R.E.L.) (DBE)  
Foresight Planning & Engineering Services, LLC. (DBE)  
REBI, LLC (DBE)  
K Friese & Associates (KFA), a Lochner Company  
Anderson Infrastructure, LLC  
Monkee Boy  
Blonde Ambition  
Cambrian Environmental  
MBCO (DBE)



## ATTACHMENT I

### Information Resources and Security Requirements

#### TYPES OF DATA

“Mobility Authority Data” means Mobility Authority information, data, records, and information to which the Engineer has access, has possession, or is otherwise provided to the Engineer by the Mobility Authority, whether or not intended under or for the purposes of the agreement, including, without limitation, data generated or collected under this agreement, intellectual property created as a work for hire under this agreement, and Personal Identifying Information (as defined below).

Mobility Authority Data is classified into the four categories that control applicability of security standards: Public, Sensitive, Confidential, and Regulated. See Section 4 for Definitions.

Any data that the Engineer accesses and downloads from a Mobility Authority system, for use, manipulation, storage, or management is considered Confidential Data unless otherwise specified in writing by the Executive Director.

#### DATA REQUIREMENTS

##### Data Transfer

At the completion of a deliverable, the Engineer shall transfer all Mobility Authority Data generated and stored for that deliverable to the Director of Engineering in a manner and format acceptable to the Director of Engineering.

All metadata associated with the Mobility Authority Data transferred must remain attached to that data.

The Engineer shall maintain the appropriate level of data security throughout the transfer of the Mobility Authority Data.

##### Backup and Disaster Recovery

The Engineer shall implement business continuity procedures to fulfill all requirements of this agreement that address, as a minimum, fire, theft, natural disaster, technical difficulty, workforce problems equipment failure, or other disruption of business.

The Engineer shall maintain a disaster recovery plan. The Engineer is responsible for all project related costs of disaster recovery during the project except for costs associated with disasters beyond the Engineer’s reasonable control, and for those costs included as part of the Mobility Authority infrastructure responsibilities.

##### Open Records Requests

The Engineer shall not release Information in response to an open record request related to this agreement request unless the Executive Director has approved the release in writing.

#### INFORMATION RESOURCE AND SECURITY REQUIREMENTS

##### Information Security Safeguards

Contractor shall implement appropriate administrative, physical, and technical safeguards, in accordance with good industry practice, that reasonably and appropriately protects the confidentiality, integrity, and availability of Mobility Authority Data.

##### Potential Cybersecurity Incident or Breach Notification

The Engineer shall immediately report to the Mobility Authority any potential cybersecurity incident or breach involving Mobility Authority Data (See Section 4, Definitions).

### Demonstrating Compliance with Information Security Requirements

Prior to contract award, at renewal, on a recurring basis as documented in the contract, upon reasonable notice to the Engineer, and if the Executive Directory determines that the Engineer has violated this agreement, the Executive Director, directly or through its agent, may request an attestation and evidence that the Engineer is in compliance with applicable laws, regulations, and standards outlined in 3.4.

### Information Resources Technology

Any proposed information resources technology that will be installed on any Mobility Authority-owned equipment or that will access any Mobility Authority network must be reviewed and approved by the Executive Director prior to any development, design, delivery, or implementation.

### Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

In accordance with 2 CFR §§ 200.216 and 200.471, Contractor shall not provide services, equipment, or systems for telecommunications or video surveillance that (a) are provided or manufactured by or (b) have components provided or manufactured by any of the following business entities:

Huawei Technologies Company

ZTE Corporation

Hyatera Communications Corporation

Hangzhou Hikvision Digital Technology Company

Dahua Technology Company

Any subsidiary or affiliate of an entity listed above

### DEFINED TERMS

“Breach” means “breach of system security” as defined in Section 521.053(a) of the Texas Business and Commerce Code, which defines breach of system security as “the unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of sensitive personal information maintained by a person, including data that is encrypted if the person accessing the data has the key required to decrypt the data.”

“Confidential Information” has the meaning provided in 1 Texas Administrative Code § 202.1(5), which states the confidential information means “information that must be protected from unauthorized disclosure or public release based on published laws or legal agreements.” Information that is Confidential Information under this definition includes:

Dates of birth of living persons

Driver’s license numbers

License plate numbers

Credit card numbers

Insurance policy numbers

Attorney-Client communications

Drafts of policymaking documents

Information related to pending litigation

Audit working papers

Competitive bidding information before contract awarded.

Personal Identifiable Information

Sensitive Personal Information

Regulated data

Information excepted from disclosure requirements of Chapter 552 of the Texas Government Code ("Texas Public Information Act") or other applicable state or federal law

Compliance reports for which the Texas Attorney General has granted permission to withhold

Investigative working papers and draft reports excepted from disclosure under Section 552.116 of the Texas Government Code

"Data" means the representation of facts; as the raw material of information that is used as a basis for reasoning, decision-making, discussion, or calculation.

"Information" means data, regardless of form, that is created, contained in, or processed by information resources facilities, communications networks, or storage media.

"Information Resources Technology" means data processing and telecommunications hardware, software, services, supplies personnel, facility resources, maintenance and training that are employed, designed, built, operated, and maintained to collect, record, process, store, retrieve, display, and transmit information.

"Personal Identifying Information" means information that alone or in conjunction with other information identifies an individual, including an individual's:

Name, social security number, date of birth, or government-issued identification number;

Mother's maiden name;

Unique biometric data, including the individual's fingerprint, voice print, and retina or iris image; and

Unique electronic identification number, address, or routing code.

"Potential Cybersecurity Incident" means an event which may result in the accidental or deliberate unauthorized access, loss, disclosure, modification, disruption, or destruction of information or information resources.

"Regulated Data" means information for which the use and protection of is dictated by a state or federal agency or by third party agreements.

"Sensitive Personal Information" has the meaning provided by Section 521.002(2) of the Texas Government Code, which defines sensitive personal information as:

An individual's first name or first initial and last name in combination with any one or more of the following items, if the name and item are not encrypted:

Social Security Number

Driver's license number or government-issued identification number; or

Account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to an individual's financial account;  
or

Information that identifies an individual and relates to:

The physical or mental health or condition of the individual;

The provision of health care to the individual; or

Payment for the provision of health care to the individual.