

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

RESOLUTION NO. 21-076

**APPROVING AN AGREEMENT WITH THE SOUTHWEST RESEARCH INSTITUTE FOR
THE DEVELOPMENT, INTEGRATION, MAINTENANCE AND SUPPORT OF THE
LONESTAR ACTIVEITS ADVANCED TRAFFIC MANAGEMENT SYSTEM**

WHEREAS, the Mobility Authority is developing a Traffic Incident Management and Intelligent Transportation System Program Plan to standardize and coordinate its regional traffic incident management operations with regional partner agencies; and

WHEREAS, by Resolution No. 20-023, dated April 29, 2020, the Board approved an agreement with Southwest Research Institute for the implementation and support of the Lonestar ActiveITS Advanced Traffic Management System (Lonestar ATMS); and

WHEREAS, additional services are currently required from the Southwest Research Institute for continued maintenance and support of the Lonestar ATMS, integration of current and future ITS field devices and systems, development of new software modules to unlock additional functionality, preventative and emergency maintenance and web-hosting services; and

WHEREAS, the Executive Director has negotiated a proposed agreement with the Southwest Research Institute for the further development, integration, maintenance and support of the Lonestar ATMS in an amount not to exceed \$2,000,000; and

WHEREAS, the Executive Director recommends that the Board approve the proposed agreement with Southwest Research Institute for the further development, integration, maintenance and support of the Lonestar ATMS in the form or substantially the same form attached hereto as Exhibit A.

NOW THEREFORE, BE IT RESOLVED, that the Board approves the agreement with Southwest Research Institute for the further development, integration, maintenance and support of the Lonestar ActiveITS Advanced Traffic Management System in an amount not to exceed \$2,000,000 and hereby authorizes the Executive Director to finalize and execute the agreement with Southwest Research Institute on behalf of the Mobility Authority in the form or in substantially the same form attached hereto as Exhibit A.

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 15th day of December 2021.

Submitted and reviewed by:



James M. Bass
Executive Director

Approved:



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

Exhibit A

CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY

AGREEMENT FOR

**CONTINUED MAINTENANCE AND SUPPORT SERVICES FOR ADVANCED
TRAFFIC MANAGEMENT SYSTEM SOFTWARE**

This Services Agreement (the “Agreement”) is made and entered into by and between the **CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY** (hereinafter referred to as the “Mobility Authority” or “CTRMA”), 3300 N. IH-35 Suite 300, Austin, TX, 78705, a regional mobility authority and political subdivision of the State of Texas, and **SOUTHWEST RESEARCH INSTITUTE** (hereinafter referred to as the “Service Provider” or “SwRI”), 6220 Culebra Road, San Antonio, Texas 78238, a nonprofit corporation organized under the laws of the State of Texas, to be effective as of the 1st day of May, 2021 (the “Effective Date”) with respect to the development, implementation, and maintenance of the LoneStar ActiveITS® Advanced Transportation Management System software (“LoneStar”).

WITNESSETH:

WHEREAS, to improve coordination and standardize traffic management systems across the region, the Mobility Authority will need to interface the existing traffic management system(s) and subsequent field and network devices with LoneStar currently utilized by regional partner agencies—namely the Texas Department of Transportation (“TxDOT”); and

WHEREAS, LoneStar is made available by the State of Texas by and through TxDOT and the State of Florida by and through its Department of Transportation (“FDOT”) through existing non-exclusive license agreements with Service Provider; and

WHEREAS, pursuant to Resolution No. 20-023 adopted April 29, 2020, the Mobility Authority accepted the justification for the proprietary purchase and implementation of LoneStar from SwRI and authorized the Mobility Authority to enter into a software sublicense agreement for LoneStar; and

WHEREAS, the Mobility Authority requires the services of a firm for the continued development, implementation, and maintenance of LoneStar; and

NOW, THEREFORE, in consideration of the mutual and individual benefits received and realized by the respective parties hereto, the parties do hereby agree as follows:

ARTICLE I

DESCRIPTION OF SERVICES

The Mobility Authority hereby retains the Service Provider, as an independent contractor, and the Service Provider agrees to provide services to the Mobility Authority, and possibly other entities, based upon the terms and conditions provided in this Agreement. The Service Provider agrees to provide those services listed in the Scope of Services, as set forth in the attached Appendix A (hereinafter referred to as the “Services”) in a professional and complete manner in all respects. The Services may be performed directly by the Service Provider or, subject to the agreement of the Mobility Authority, provided by the Service Provider through its subcontractors. The Service Provider agrees to provide adequate resources at all times

throughout the term of this Agreement to provide the Services promptly and professionally as requested by the Mobility Authority. Without limiting any of its other rights under this Agreement or otherwise, the Mobility Authority may withhold payment of compensation to the Service Provider if the Service Provider fails to meet any provision of this Agreement.

The Service Provider acknowledges and agrees that the Services provided for herein will be provided to the Mobility Authority and may also be provided for the benefit of additional entities, and the Mobility Authority shall have the right, without objection from the Service Provider, to see performance hereunder and enforce the terms of this Agreement on its own behalf and on behalf of any other entities receiving the Services provided for herein.

The Service Provider will provide the Mobility Authority and/or representative of the Mobility Authority various reports and real-time access to the records and data developed and maintained by the Service Provider in accordance with the terms of this Agreement and as otherwise agreed between the parties from time to time.

The Service Provider shall be expected to operate independently from the Mobility Authority and without extensive oversight and direction. The Service Provider shall commit the personnel and resources reasonably required to promptly and fully perform and fulfill the responsibilities and tasks.

ARTICLE II **TERM**

The initial term of this Agreement shall commence on the Effective Date, terminating June 30, 2026 (hereinafter referred to as the “Initial Term”), subject to the earlier termination of this Agreement or further extension upon the agreement of both parties. The Agreement shall automatically extend for two (2) additional one (1) year periods following the expiration of the Initial Term (hereinafter referred to as the “Automatic Renewal Terms”). By mutual written agreement of the Mobility Authority and the Service Provider and subject to approval of the Mobility Authority Board of Directors, following the Initial Term and the two (2) Automatic Renewal Terms, this Agreement may be extended for up to one (1) additional two (2) year term. In addition to any termination rights set forth in this Agreement, either party may elect not to extend the term of the Agreement through the Automatic Renewal Terms by providing sixty (60) days written notice to the other party prior to the end of the then current term. Absent such written notice of termination pursuant to other provisions of this Agreement, the Automatic Renewal Terms will automatically take effect. If at any time during the term of this Agreement the Service Provider cannot provide the Services required by the Mobility Authority or for any other reason the Mobility Authority reserves the unilateral right to procure the Services from any other service provider it deems capable of providing those Services in addition to any other rights the Mobility Authority may have.

ARTICLE III **COMPENSATION**

Authorization for the Service Provider to perform the Services, compensation for the Service Provider’s work, and other aspects of the mutual obligations concerning the Service Provider’s work and payment are as follows:

1. **COMPENSATIONS GENERALLY.** The Mobility Authority shall have no further obligation to pay any funds or provide any compensation to the Service Provider in relation to any of the Services, except as otherwise specifically provided herein.
2. **TAXES.** The Service Provider acknowledges that the Mobility Authority is a tax-exempt entity under Sections 151.309, et seq. of the Texas Tax Code. All payments to be made by the Mobility Authority to the Service Provider pursuant to this Agreement are inclusive of federal, state, or other taxes, if any, however designated, levied, or biased.
3. **OVERALL COMPENSATION.** The Board of Directors shall identify an annual budget amount which authorizes funding for the Services provided for herein. For each respective year, the Executive Director shall, in his or her sole discretion, designate how much of the annual budget shall be allocated to Services. The aggregate of expenditures approved under this Agreement may not exceed, on a corresponding annual basis, the amount identified in the budget for the Services or a corresponding amendment to the budget approved by the Mobility Authority Board of Directors.
4. **EXPENSES.** The compensation described above is anticipated by the Mobility Authority and the Service Provider to be full and sufficient compensation and reimbursement for the Services. The Service Provider shall be entitled to reimbursement from the Mobility Authority for lodging and transportation expenses incurred by the Service Provider related to the performance of its duties under this Agreement.
5. **BOOKS AND RECORDS.** All books and record relating to the Services provided under this Agreement shall be made available during the Service Provider's normal business hours to the Mobility Authority and its representatives for review, copying, and auditing throughout the term of this Agreement and, after completion of the work, for three (3) years, or such period as required by Texas law, whichever is longer. Subject to Article XII, section 2 of this Agreement, the Mobility Authority shall not have access to and Service Provider shall not be obligated to provide records that contain personnel information, trade secrets or information that is deemed proprietary to Service Provider.
6. **INVOICING.** The Service Provider shall invoice the Mobility Authority for Services rendered. Each invoice must include the total amount payable, the total amount paid during the Mobility Authority fiscal year, and such other detail or information as the Mobility Authority requests from time to time. The Service Provider shall certify each invoice as true and correct for the period (e.g., month) for which invoiced Services were provided and reimbursable expenses were incurred. Except as otherwise agreed to by the parties, no compensation shall accrue or be paid prior to the effective date of any license agreement necessary to make the data and information described in this Agreement (including without limitation Appendix A) available to the Mobility Authority and other governmental entities.

By mutual agreement between the Mobility Authority and the Service Provider, certain compensation, including but not limited to license fees, milestone payments, or other monthly payments, may be made in advance of certain Services being performed; provided, however, that in the event of termination, such advance compensation shall be reimbursed to the Mobility Authority in a pro rata share for the Services actually performed under this Agreement. In no event

shall the compensation exceed the amount approved by the Mobility Authority's Board of Directors for the Services provided herein in its annual budget.

The Service Provider acknowledges that the compensation to be paid will depend on budgetary considerations of the Mobility Authority and operational success of earlier performance of the Services. The Initial Term shall provide for Services to be made available with respect to the Mobility Authority projects and efforts and, unless adjusted per this Article III, at the compensation agreed upon by both parties.

Upon receipt of an invoice that complies with the requirements set forth in this Agreement, the Mobility Authority shall pay all undisputed amounts, which are due and payable within thirty (30) days. The Mobility Authority reserves the right to withhold payment of all or part of the disputed amount of a Service Provider invoice in the event of any of the following: (1) dispute over the work or costs thereof is not resolved within a thirty (30) day period; (2) pending verification of satisfactory work performed; or (3) if required reports are not received.

Invoices shall be sent to:

Central Texas Regional Mobility Authority
3300 N IH-35, Suite 300
Austin, TX 78705
ATTN: Director of Operations

7. **AS-NEEDED BASIS.** The Mobility Authority shall request that the Service Provider perform specific services on an as-needed basis and through the issuance of written Work Authorizations and/or Letter Agreements. No representation or assurance has been made on behalf of the Mobility Authority to the Service Provider as to the total compensation to be paid to the Service Provider under this Agreement.

ARTICLE IV **TERMINATION**

1. **TERMINATION.** Either party may terminate this Agreement for any reason, with or without cause, and thereby sever the independent contractor relationship between the Service Provider and the Mobility Authority, by providing a minimum of thirty (30) days prior written notice of its election to terminate to the other party. However, any termination for cause by Mobility Authority is effective immediately upon the delivery of notice of termination to the Service Provider. The Mobility Authority may terminate this Agreement for cause if the Service Provider fails to satisfactorily perform or adhere to any material provisions of this Agreement, breaches the confidentiality requirements, or otherwise engages in activity that, in the Mobility Authority's sole reasonable judgment, would subject the Mobility Authority in any manner to damages, liability, or damage to the Mobility Authority's reputation. Subject to the following, upon any termination the Mobility Authority shall pay any undisputed fees and reimbursable expenses, including non-cancelable expenses, approved by the Mobility Authority in accordance with the terms of this Agreement which are incurred before the termination date provided that the Service Provider has made reasonable efforts to mitigate all costs or other damages associated with the termination.

Notwithstanding the foregoing, in the event of a termination for cause the Mobility Authority may withhold funds in order to pay for expenses incurred as a result of the termination and potential transition to a new service provider.

ARTICLE V
PERSONNEL, EQUIPMENT, AND MATERIAL

1. **PERSONNEL.** The Service Provider acknowledges and agrees to identify within Work Authorization and/or Letter Agreements any and all individuals that are key and integral to the satisfactory performance of the Services by the Service Provider under this Agreement. Throughout the term of this Agreement, the Service Provider agrees that the identified individual(s) will remain in charge of the performance of the Services and shall devote substantial and sufficient time and attention thereto. The death or disability of any such individual, his/her disassociation from the Service Provider or the approved subcontractor, or his/her failure or inability to devote sufficient time and attention to the Services shall require the Service Provider promptly to replace said individual with a person suitably qualified and otherwise acceptable to the Mobility Authority. Failure to do so within thirty (30) days of the event requiring replacement shall be an event of default under this Agreement.
2. **SUBCONSULTANTS.** The Consultant may provide for the performance of portions of the Services with the assistance of one or more subconsultants or subcontractors provided that any subconsultant or subcontractor proposed to be utilized is approved, in advance and in writing, by the Mobility Authority. In the event the Service Provider does utilize one or more approved subconsultants or subcontractor, Service Provider shall remain fully liable for the actions or inactions of such subconsultants or subcontractors and shall be solely responsible for compensating the subconsultants or subcontractors.
3. **REMOVAL OF PERSONNEL.** All persons providing the Services, whether employees of the Service Provider or of an approved subconsultant or subcontractor, shall have such knowledge and experience as will enable them, in the Service Provider's reasonable belief, to perform the duties assigned to them. Any such person who, as determined by the Mobility Authority in its sole discretion, is incompetent or by his/her conduct becomes detrimental to the provision of the Services shall, upon request of the Mobility Authority, immediately be removed from performance of the Services. The Service Provider shall furnish the Mobility Authority with a fully qualified candidate for the removed person within thirty (30) days thereafter, provided, however, said candidate shall not begin work under this Agreement unless and until approved by the Mobility Authority.
4. **CONTRACTOR FURNISHES EQUIPMENT, ETC.** Except as otherwise specified or agreed to by the Mobility Authority, the Service Provider shall furnish all equipment, transportation, supplies, and materials required for its performance of the Services under this Agreement.

ARTICLE VI
OWNERSHIP OF REPORTS, SOFTWARE, AND LICENSES

Ownership of reports, software, and licenses shall be governed by the terms of the ActiveITS Software Sublicense Agreement, effective June 15, 2020, between the Mobility Authority and Service Provider, a copy of which is attached hereto as Appendix B.

ARTICLE VII
PROTECTION OF DATA AND INFORMATION

As part of their operations, Mobility Authority and other entities to whom Services may be provided collect and maintain information about individuals (including toll customers, vehicle owners, and employees) that may include data such as a person's Social Security number, driver's license number, license-plate number, geolocation or travel data, bank account or credit card information, health information, employment-related information, or login and password credentials (all such data pertaining to individuals, whether or not specifically listed, being "Personal Information"). As part of its performance of the Services, the Service Provider may have access to, handle, or receive Personal Information or other confidential or proprietary materials, information, or data maintained by or concerning the Mobility Authority and other entities to whom Services may be provided (collectively with Personal Information, the "Mobility Authority Information"). The Service Provider therefore agrees that:

1. The Service Provider is responsible for the security of Mobility Authority Information that it receives or accesses in performing the Services, and Service Provider shall at all times maintain appropriate information-security measures with respect to Mobility Authority Information in a manner consistent with applicable law.
2. The Service Provider must implement and maintain current and appropriate administrative, technical, and physical safeguards with respect to Mobility Authority Information in its possession, custody, or control, or to which it has access, to protect against unauthorized access or use of such Mobility Authority Information. At a minimum, such safeguards shall be consistent with generally recognized best practices for information security in the handling of similar types of data. Without limiting the foregoing, Service Provider must encrypt Mobility Authority Information (i) transmitted over the Internet, other public networks, or wireless networks, and (ii) stored on laptops, tablets, or any other removable or portable media or devices, in such a manner so as to assure that Mobility Authority Information cannot be accessed in an unauthorized manner or by unauthorized persons or entities.
3. The Service Provider must identify to the Mobility Authority all subconsultants, subcontractors, and other persons who may have access to Mobility Authority Information in connection with the Services. Service Provider must restrict the Mobility Authority Information to which a given employee or approved subcontractor has access to only that Mobility Authority Information which such employee, or approved subcontractor or subconsultant, needs to access in the course of such employee's, or approved subcontractor's or subconsultant's, duties and responsibilities in connection with the Services.
4. Before granting access to Mobility Authority Information, the Service Provider must ensure that its employees and each approved subcontractor agrees to abide by these information security measures (or other applicable measures that are at least as protective of Mobility Authority Information).

5. Mobility Authority Information must not be stored, accessed, or processed at any location outside of the United States.
6. The Service Provider may use the Mobility Authority Information only for performing the Services, and the Service Provider must ensure that its employees, approved subcontractor, or approved subconsultant are restricted from any use of Mobility Authority Information other than for such purpose.
7. Except to the extent otherwise expressly permitted, Service Provider may not disclose Mobility Authority Information except as required by law or a governmental authority having jurisdiction over the Service Provider. In the event of such required disclosure, Service Provider must notify the Mobility Authority in advance (if legally permissible to do so) and reasonably cooperate with any decision by the Mobility Authority to seek to condition, minimize the extent of, or oppose such disclosure.
8. The Service Provider will immediately notify the Mobility Authority if Service Provider discovers any actual or reasonably suspected breach of security or unauthorized use of Mobility Authority Information (i) in the possession, custody, or control of Service Provider, its employees, or its subcontractors and/or (ii) effectuated using access permissions or credentials extended to an employee or subcontractor of Service Provider (either of occurrences (i) or (ii) being referred to as a “Security Incident”). In no event shall Service Provider's notification to the Mobility Authority be later than three (3) calendar days after Service Provider discovers the Security Incident; provided, however, that more immediate notification shall be given as the circumstances warrant or if more immediate notification is required by law. Service Provider must provide all necessary and reasonable cooperation with respect to the investigation of such Security Incident, including the exchange of pertinent details (such as log files). In addition, Service Provider must promptly undertake appropriate remediation measures and inform the Mobility Authority regarding the same.
9. Subject to requirements of data security or privacy laws, the Mobility Authority, in its sole discretion, will determine whether, and when to provide notice of a Security Incident to (a) any individuals whose personal information has been actually or potentially compromised; (b) any governmental authority; and/or (c) any other entity, including, but not limited to, consumer credit reporting agencies or the media. All notices must be approved by Mobility Authority before they are distributed. The Service Provider must reimburse the Mobility Authority for costs or expenses Mobility Authority incurs in connection with such notices (including the provision of credit monitoring or other identity protection services, to the extent the provision of such services is legally required or customary for similar data security incidents). Furthermore, and in addition to any other indemnification requirements under this Agreement, the Service Provider shall indemnify and hold the Mobility Authority harmless from all claims, costs, expenses, and damages (including reasonable attorneys’ fees) that the Mobility Authority incurs in connection with any regulatory action or third-party claim arising from a Security Incident.
10. The Service Provider must cooperate and permit the Mobility Authority (and any governmental authorities with jurisdiction in connection with an audit requested by the Mobility Authority) reasonable access for on-site review of the Service Provider’s data security systems and procedures to verify Service Provider’s compliance with its obligations under this Agreement.

11. Whenever the Mobility Authority Information is no longer needed for the performance of Services, or at any time upon written notification from the Mobility Authority, the Service Provider must unconditionally and without any additional charge or fee, return or, at Mobility Authority's written election, certify the secure destruction of, all Mobility Authority Information in Service Provider's possession, custody, or control (including Mobility Authority Information in the possession, custody, or control of any of Service Provider's subcontractors or consultants).

ARTICLE VIII
MOBILITY AUTHORITY INDEMNIFIED

THE SERVICE PROVIDER SHALL INDEMNIFY AND SAVE HARMLESS THE MOBILITY AUTHORITY AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND SERVICE PROVIDERS FROM ANY CLAIMS, COSTS OR LIABILITIES OF ANY TYPE OR NATURE AND BY OR TO ANY PERSONS WHOMSOEVER, ARISING FROM THE SERVICE PROVIDER'S NEGLIGENT ACTS, ERRORS OR OMISSIONS WITH RESPECT TO THE SERVICE PROVIDER'S PERFORMANCE OF THE SERVICES TO BE PROVIDED UNDER THIS AGREEMENT, WHETHER SUCH CLAIM OR LIABILITY IS BASED IN CONTRACT, TORT OR STRICT LIABILITY. IN SUCH EVENT, THE SERVICE PROVIDER SHALL ALSO INDEMNIFY AND SAVE HARMLESS THE MOBILITY AUTHORITY, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND SERVICE PROVIDERS (COLLECTIVELY THE "INDEMNIFIED PARTIES") FROM ANY AND ALL 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, ITS OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS, IS/ARE FOUND TO BE PARTIALLY AT FAULT, THE SERVICE PROVIDER SHALL, NEVERTHELESS, INDEMNIFY THE MOBILITY AUTHORITY OR ANY OF THE INDEMNIFIED PARTIES FROM AND AGAINST THE PERCENTAGE OF FAULT ATTRIBUTABLE TO THE SERVICE PROVIDER, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUBCONSULTANTS, AND SUBCONTRACTORS OR TO THEIR CONDUCT.

NOTWITHSTANDING ANY PROVISION CONTAINED HEREIN, EACH PARTY'S TOTAL AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH ANY WORK AUTHORIZATION ISSUED UNDER THIS AGREEMENT FOR ALL CLAIMS OF ANY KIND WILL NOT EXCEED THE APPLICABLE FISCAL YEAR EXPENDITURES APPROVED BY THE MOBILITY AUTHORITY EXECUTIVE DIRECTOR PURSUANT TO ARTICLE III, SECTION 3 OF THIS AGREEMENT.

ARTICLE IX
CONFLICTS OF INTEREST

The Service Provider represents and warrants to the Mobility Authority, as of the Effective Date of this Agreement and throughout the term hereof, that it, its employees and subcontractors (a) have no financial or other beneficial interest in any contractor, engineer, product or service evaluated or recommended by the Service Provider, except as expressly disclosed in writing to the Mobility Authority, (b) shall discharge their responsibilities under this Agreement professionally, impartially and independently, and (c) are under

no contractual or other restriction or obligation, the compliance with which is inconsistent with the execution of this Agreement or the performance of their respective obligations hereunder. In the event that a firm (individually or as a member of a consortium) submits a proposal to work for the Mobility Authority, Service Provider shall comply with the Mobility Authority's conflict of interest policies and shall make disclosures as if it were one of the key personnel designated under such policies.

ARTICLE X **INSURANCE**

Prior to beginning the Services under this Agreement, the Service Provider shall obtain and furnish certificates to the Mobility Authority for the following minimum amounts of insurance:

1. **WORKERS' COMPENSATION INSURANCE.** In accordance with the laws of the State of Texas covering all of Service Provider's employees and employer's liability coverage with a limit of not less than \$1,000,000. A "Waiver of Subrogation" in favor of the Mobility Authority shall be provided.
2. **COMMERCIAL GENERAL LIABILITY INSURANCE.** On an "occurrence basis" with limit a limit of not less than \$1,000,000 combined single limit per occurrence for bodily injury, including those resulting in death; and property damage on an "occurrence basis" with an aggregate limit of not less than \$2,000,000. A "Waiver of Subrogation" in favor of the Mobility Authority shall be provided.
3. **BUSINESS AUTOMOBILE LIABILITY INSURANCE.** Applying to owned, nonowned, and hired automobiles in an amount not less than \$1,000,000 for bodily injury, including death, to anyone person, and for property damage on account of anyone 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 Service Provider's obligations under this Agreement. A "Waiver of Subrogation" in favor of the Mobility Authority shall be provided.
4. **PROFESSIONAL LIABILITY INSURANCE.** Professional Liability Insurance with a limit of \$1,000,000 each claim, to include, Technology Errors & Omissions insurance, including coverage for third-party claims and for liabilities arising from errors, omissions, or negligent acts in rendering or failing to render technology services and technology products.
5. **GENERAL FOR ALL INSURANCE.** The Service Provider shall promptly, upon execution of this Agreement, furnish certificates of insurance to the Mobility Authority 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) registered to do business in the State of Texas; and (b) issued by insurers maintaining an AM Best rating of A- or better.

All policies are to be written through companies registered to do business in the State of Texas. Such insurance shall be maintained in full force and effect during the life of this Agreement or for a longer term as may be otherwise provided for hereunder. Commercial General Liability and

Business Automobile Liability Insurance shall include the Mobility Authority as additional insureds and shall protect the Mobility Authority and the Service Provider from bodily injury and property damage claims arising out of Service Provider's performance of Services under this Agreement.

Thirty (30) days prior written notice will be provided to the Mobility Authority in the event of cancellation of any insurance policy provided herein. Such notice will be addressed to:

Central Texas Regional Mobility Authority
3300 N. IH 35, Suite 300
Austin, TX 78705
ATTN: Executive Director

ARTICLE XI

COMPLETE AGREEMENT; COORDINATION OF CONTRACT DOCUMENTS

This Agreement, including all Appendices attached hereto, sets forth the complete agreement between the parties with respect to the Services. Any changes in the character, agreement, terms and/or responsibilities of the parties hereto must be enacted through a written amendment. No amendment to this Agreement shall be of any effect unless in writing and executed by the Mobility Authority and the Service Provider. This Agreement may not be orally canceled, changed, modified or amended, and no cancellation, change, modification or amendment shall be effective or binding, unless in writing and signed by the parties to this Agreement. This provision cannot be waived orally by either party.

ARTICLE XII

MAINTENANCE OF, ACCESS TO, AND AUDIT OF RECORDS

1. **RETENTION AND AUDIT OF RECORDS.** Service Provider shall maintain at its offices in Texas a complete set of all books, records, electronic files and other documents prepared or employed by Service Provider in its provision of the Services related to this Agreement. Service Provider shall maintain all records and documents relating to this Agreement, including copies of all original documents delivered to the Mobility Authority until three (3) years after the date of the termination or expiration of this Agreement. Service Provider shall notify the Mobility Authority where such records and documents are kept. If approved by the Mobility Authority, photographs, microphotographs or other authentic reproductions may be maintained instead of original records and documents.

Service Provider shall make these records and documents available for audit and inspection to the Mobility Authority without charge, and shall allow the Mobility Authority or its representatives to make copies of such documents. The Mobility Authority may direct its own auditors or representatives to perform such audits or reviews. Service Provider shall cooperate fully with the entity performing the audit or review.

Notwithstanding the foregoing, the Service Provider shall comply with all laws pertaining to the retention of records and the provision of access thereto. The Service Provider shall maintain its books and records in accordance with generally accepted accounting principles in the United States, subject to any exceptions required by existing bond indentures of the Mobility Authority, and shall

provide the Mobility Authority with a copy of any audit of those books and records as provided herein or otherwise requested by the Mobility Authority.

2. **PUBLIC INFORMATION ACT.** Service Provider acknowledges and agrees that all records, documents, drawings, plans, specifications and other materials in the Mobility Authority's possession, including materials submitted by Service Provider, are subject to the provisions of the Texas Public Information Act. Service Provider shall be solely responsible for all determinations made by it under such law, and for clearly and prominently marking each and every page or sheet of materials with "Trade Secret" or "Confidential", as it determines to be appropriate. Service Provider is advised to contact legal counsel concerning such law and its application to Service Provider.

If any of the materials submitted by the Service Provider to the Mobility Authority are clearly and prominently labeled "Trade Secret" or "Confidential" by Service Provider, the Mobility Authority will endeavor to advise Service Provider of any request for the disclosure of such materials prior to making any such disclosure. Under no circumstances, however, will the Mobility Authority be responsible or liable to Service Provider or any other person for the disclosure of any such labeled materials, whether the disclosure is required by law, or court order, or occurs through inadvertence, mistake or negligence on the part of the Mobility Authority.

In the event of litigation concerning the disclosure of any material marked by Service Provider as "Trade Secret" or "Confidential," the Mobility Authority's sole obligation will be as a stakeholder retaining the material until otherwise ordered by the Attorney General or a court, and Service Provider shall be fully responsible for otherwise prosecuting or defending any action concerning the materials at its sole cost and risk; provided, however, that the Mobility Authority reserves the right, in its sole discretion, to intervene or participate in the litigation in such manner as it deems necessary or desirable.

ARTICLE XIII **GENERAL PROVISIONS**

1. **RELATIONSHIP BETWEEN THE PARTIES.** The parties recognize that the Mobility Authority, through its Executive Director and assigned staff, manage the day-to-day business and affairs of the Mobility Authority and that only an independent contractor relationship, and no other type of relationship, exists between the Mobility Authority and Service Provider. The Service Provider acknowledges and agrees that neither it nor any of its employees or subcontractors, shall be considered an employee of the Mobility Authority for any purpose. Nothing contained in this Agreement shall be deemed or construed to create a partnership or joint venture, to create the relationship of employee-employer or principal-agent, or to otherwise create any liability for the Mobility Authority whatsoever with respect to the liabilities, obligations or acts of the Service Provider, its employees, subcontractors, or any other person.
2. **DELIVERY OF NOTICES.** In each instance under this Agreement in which one party is required or permitted to give notice to the other, such notice shall be deemed given either (a) when delivered by hand; (b) one (1) business day after being deposited with a reputable overnight air courier service; or (c) three (3) business days after being mailed by United States mail, registered or

certified mail, return receipt requested, and postage prepaid. Any notices provided under this Agreement must be sent or delivered to:

In the case of the Service Provider:

Southwest Research Institute
6220 Culebra Road
San Antonio, TX 78238
ATTN: W. Troy Nagy, Director, Contracts

In the case of the Mobility Authority:

Central Texas Regional Mobility Authority
3300 N IH-35, Suite 300
Austin, TX 78705
ATTN: Executive Director

and:

Central Texas Regional Mobility Authority
3300 N IH-35, Suite 300
Austin, TX 78705
ATTN: General Counsel

Either party hereto may from time to time change its address for notification purposes by giving the other party prior written notice of the new address and the date upon which it will become effective.

3. **REPORTING OF SUBPOENAS, NOTICES.** The Service Provider shall immediately send the Authority a copy of any summons, subpoena, notice, or other documents served upon the Contractor, its agents, employees, subcontractors, or representatives, or received by it or them, in connection with any matter related to the Services under this Agreement.
4. **MOBILITY AUTHORITY'S ACTS.** Anything to be done under this Agreement by the Mobility Authority may be done by such persons, corporations, firms, or other entities as the Mobility Authority's Executive Director may designate in writing.
5. **LIMITATIONS.** Notwithstanding anything herein to the contrary, all covenants and obligations of the Mobility Authority under this Agreement shall be deemed to be valid covenants and obligations only to the extent authorized by Chapter 370 of the Texas Transportation Code and permitted by the laws and the Constitution of the State of Texas, and no officer, director, or employee of the Authority shall have any personal obligations or liability thereunder or hereunder.

The Service Provider is obligated to comply with applicable standards of professional care in the performance of the Services. The Mobility Authority shall have no obligation to verify any information provided to the Service Provider by the Authority or any other person or entity.

6. **CAPTIONS NOT A PART HEREOF.** The captions or subtitles of the several articles, subsections, and divisions of this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Agreement or the scope or content of any of its articles, subsections, divisions, or other provisions.
7. **CONTROLLING LAW, VENUE.** This Agreement shall be governed and construed in accordance with the laws of the State of Texas. The parties hereto acknowledge that venue is proper in Travis County, Texas, for all disputes arising hereunder and waive the right to sue and be sued elsewhere.
8. **TIME OF ESSENCE.** With respect to any specific delivery or performance date or other deadline provided hereunder, time is of the essence in the performance of the provisions of this Agreement. The Service Provider acknowledges the importance to the Mobility Authority of the timely provision of the Services and will perform its obligations under this Agreement with all due and reasonable care.
9. **SEVERABILITY.** If any provision of this Agreement, or the application thereof to any person or circumstance, is rendered or declared illegal for any reason and shall be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby but shall be enforced to the greatest extent permitted by applicable law.
10. **AUTHORIZATION.** Each party to this Agreement represents to the other that it is fully authorized to enter into this Agreement and to perform its obligations hereunder, and that no waiver, consent, approval, or authorization from any third party is required to be obtained or made in connection with the execution, delivery, or performance of this Agreement. Each party represents and warrants that the individual executing this Agreement on its behalf is duly authorized to do so, and that this Agreement constitutes a valid and legally binding agreement enforceable against each party in accordance with its terms.
11. **SUCCESSORS.** This Agreement shall be binding upon and inure to the benefit of the Mobility Authority, the Service Provider, and their respective heirs, executors, administrators, successors, and permitted assigns. The Service Provider may not assign the Agreement or any portion thereof without the prior written consent of the Mobility Authority.
12. **INTERPRETATION.** No provision of this Agreement shall be construed against or interpreted to the disadvantage of any party by any court, other governmental or judicial authority, or arbiter by reason of such party having or being deemed to have drafted, prepared, structured, or dictated such provision.
13. **BENEFITS INURED.** This Agreement is solely for the benefit of the parties hereto and their permitted successors and assigns. Nothing contained in this Agreement is intended to, nor shall be deemed or construed to, create or confer any rights, remedies, or causes of action in or to any other persons or entities, including the public in general.
14. **SURVIVAL.** The parties hereby agree that each of the provisions in the Agreement can affect the successful conduct of the business of the Mobility Authority, as well as its reputation and goodwill. The Service Provider understands and acknowledges that the Service Provider's responsibilities

under certain provisions of this Agreement shall continue in full force and effect after the Service Provider's contractual relationship with the Mobility Authority ends for any reason.

15. **FORCE MAJEURE.** If a Force Majeure Event occurs, the Nonperforming Party is excused from performance of its obligations under this Agreement but only for the time and to the extent that such performance is prevented by the Force Majeure Event. During a Force Majeure Event that prevents Service Provider from delivering Services, Service Provider's entitlement to compensation under this Agreement is suspended.

When the Nonperforming Party is able to resume performance of its obligations under this Agreement, it will immediately give the Performing Party (defined below) written notice to that effect and promptly resume performance under this Agreement.

The relief offered by this Force Majeure provision is the exclusive remedy available to the Nonperforming Party with respect to a Force Majeure Event.

The Performing Party may terminate this Agreement if:

- a. The Nonperforming Party's failure to perform under this Agreement due to a Force Majeure Event impairs material benefits of this Agreement to the other party (the "Performing Party"); and
- b. The Nonperforming Party does not resume performance in accordance with this Agreement within thirty (30) days following the giving of notice to the Nonperforming Party of the Performing Party's intent to terminate this Agreement.

In this Agreement, "Force Majeure Event" means any act, event, or condition not foreseeable by a party (the "Nonperforming Party") that: (A) prevents the Nonperforming Party from performing its obligations under this Agreement; (B) is beyond the control of, not caused in whole or in part by, and not otherwise the fault of the Nonperforming Party; and (C) is not able to be overcome or avoided by the Nonperforming Party's exercise of diligence or preventative measures. Notwithstanding the foregoing, Force Majeure Events shall be limited to the following: any earthquake, tornado, hurricane, flood or other natural disaster, fire, freight embargo, strike, blockade, rebellion, war, riot, act of sabotage or civil commotion. The following do not constitute a Force Majeure Event: economic hardship, changes in market conditions, or insufficiency of funds.

[Signature on the Next Page]

IN WITNESS WHEREOF, the parties have executed this Agreement effective on the date and year first written above.

MOBILITY AUTHORITY:

Central Texas Regional Mobility Authority
3300 N IH-35, Suite 300
Austin, TX 78705

SERVICE PROVIDER:

Southwest Research Institute
6220 Culebra Road
San Antonio, TX 78238

By: _____

Name: James Bass
Title: Executive Director

By: _____

Name: W. Troy Nagy
Title: Director, Contracts

APPENDIX A

Scope of Services

APPENDIX A

**GENERAL SCOPE OF SERVICES AND REQUIREMENTS FOR
CONTINUED MAINTENANCE AND SUPPORT SERVICES FOR ADVANCED
TRAFFIC MANAGEMENT SYSTEM SOFTWARE**

The Service Provider shall provide all personnel, materials, and documentation necessary for the development, implementation, enhancement, support, and maintenance of the Lonestar ActiveITS® Automated Traffic Management System (ATMS) software. Utilized by regional partners of the Mobility Authority – namely Texas Department of Transportation (TxDOT), this centralized open-source software is a proven and stable platform for deploying and maintain both small and large-scale systems. Positioned at the heart of the Mobility Authority’s Intelligent Transportation System (ITS) deployment, Lonestar shall be capable of interfacing with all of the existing and/or proposed field devices, subsystems, and systems to provide a wide ranges service functionality to meet the specific needs of the Mobility Authority, including but not limited to, Event Management, Performance Measures, Center-to-Center (C2C) Connectivity, Integrated User Interface, and more.

The Mobility Authority has deployed Lonestar at the Traffic Incident Management Center (TIMC) to support with collection, assessment, and management of real-time data and video to enhanced traffic and incident management and deliver real-time, accurate traveler information to the motoring public. This effort is expected to evolve over the term of this Agreement through incremental software development designed to meet specific functionality requirements determined by the Mobility Authority.

As part of the Scope of Services, the Service Provider shall be responsible for the following activities, as identified and described in greater detail in Work Authorization and/or Letter Agreements:

1. DEVELOPMENT AND IMPEMENTATION.

- **Conceptual Development** – The Service Provider shall coordinate with the Mobility Authority to identify user needs, functional requirements, and system performance to be addressed by the Lonestar software. The Service Provider shall develop documentation necessary to detail the proposed enhancements and functionality of the Lonestar software, as well as identify interfaces with field devices, subsystems, and systems; diagnose potential risks and mitigation strategies; and more. This documentation may include, but is not limited to, updates to existing or development of new Concept of Operations (ConOps) reports, technical system and requirements analysis, and testing plans. Documentation shall be submitted to the Mobility Authority for review, comment, and approval.
- **Design** – The Service Provider shall be responsible for the development of all enhancements, functionality, and interfaces (e.g., field devices, APIs) incorporated into the Lonestar software. At a minimum, the Service Provider shall organize a preliminary design review with the Mobility Authority and/or designees to ensure the design sufficiently meets the identified needs and requirements for the proposed enhancement(s). Depending on the size and complexity of the proposed enhancement(s), the Mobility Authority may request additional design reviews. The Service Provider shall be responsible for documenting any

comments made by the Mobility Authority and providing formal responses for approval for each review. All design efforts shall be properly documented and submitted to the Mobility Authority for official record keeping.

- **Implementation** – The Service Provider shall perform all development efforts—including the modification of existing and/or building of new code base—and unit testing of the enhancement(s). This procedure shall be completed utilizing an established coding standard identified in the software design documentation. A copy of the coding standard shall be provided to the Mobility Authority for official record keeping. Over the course of the implementation process, the Mobility Authority and/or designees reserve the right to review the Service Provider’s work products while in progress. All results of unit testing shall be made available to the Mobility Authority upon request.
- **Integration** – The Service Provider shall perform all integration efforts including testing of the enhancement using the software development process identified in the conceptual design phase. The Service Provider may request to modify testing procedures with approval from the Mobility Authority. Additionally, the Mobility Authority may request, at any time, the ability to be present or review the status and results of the integration testing. The Service Provider shall perform adequate regression testing as part of integration, as necessary. At the conclusion of integration testing, the Service Provider shall provide all testing results to the Mobility Authority demonstrating the integration success and/or failure of each field device, subsystem, or system proposed in the enhancement.
- **Acceptance Testing** – The Mobility Authority will perform all acceptance testing from the TIMC facility, unless otherwise agreed between all parties, to determine the enhancement includes the desired functionality and performs as expected. The Mobility Authority will provide the Service Provider with acceptance testing documentation identifying all defects or user comments for review. All comments agreed upon by both parties will be addressed at no cost to the Mobility Authority. The Service Provider shall provide verification that all defects and comments have been addressed through successful testing. The Mobility Authority, at its sole discretion may request attendance or other form of demonstration for all retesting.
- **Deployment** – The Service Provider shall provide a written plan for each deployment, identifying deployment procedures, date and time(s), approximate duration, anticipated outages to operations, and necessary personnel, materials, or hardware for successful deployment. The Service Provider shall provide the deployment plan to the Mobility Authority prior to the anticipated deployment.
- **Training** – The Service Provider shall provide sufficient training to the Mobility Authority personnel as required for successful implementation and operation of all enhancements to the Lonestar software. The length of sessions proposed per training shall be adequate to cover the required material in sufficient depth for the trainees to perform expected responsibilities on the system. The Service Provider shall provide a written training plan, identifying subject matter, date and time(s), approximate duration, maximum number of trainees, necessary materials, and all other pertinent information to the Mobility Authority prior to the anticipated training session date.
- **Research** – The Service Provider shall maintain the ability to design, develop, implement, and test various enhancements, including systems, subsystems, and functional upgrades

within an isolated, non-production environment. This non-production environment shall be reserved for the testing of proposed software enhancements and shall not degrade the operations, functionality, performance of the production environment in any manner. The non-production environment shall be a replicate of the existing Mobility Authority operational system and have the same functionality and capabilities. This subsystem shall be able to run simultaneously with the production environment, without any hindrance to the expected operations and functionality of the Lonestar software.

2. **SUPPORT AND MAINTENANCE.**

The Service Provider shall support and maintain the Lonestar software platform for the term of the Agreement. Updates, which include all changes, enhancements, and problem fixes, shall be provided to the Mobility Authority at a mutually agreeable time. All enhancements, releases, and new builds of the Lonestar software shall first be coordinated with the Mobility Authority and approved for release and implementation. The Service Provider shall provide the Mobility Authority with appropriate deliverables for work performed under this Agreement and paid for by the Mobility Authority, as defined by the Task Work Order (TWO). All updated software and enhancements shall be first tested in a non-production (e.g., operationally live or active) environment before it is released. The Service Provider may be requested to produce maintenance releases to resolve issues identified during software support. The release may be performed concurrently with any enhancement development that may also be ongoing. The Mobility Authority may, at its sole discretion, suspend or cancel a maintenance release or combine it with an enhancement release.

Lonestar ActiveITS® software general support includes at a minimum:

- Providing Lonestar software project home office and on-site support staff, as necessary.
- Providing a web-based issue tracking system for Lonestar users to report defects, deployment, configuration, or enhancement issues in real-time for tracking purposes. This system may also be used as a Lonestar knowledge base for users to research issues. This system shall be available twenty-four (24) a day, seven (7) days a week.
- Providing a support phone line for receiving phones twenty-four (24) a day, seven (7) days a week.
- Requesting the Mobility Authority Project Manager or designee to help resolve any specific issue. The Mobility Authority Project Manager will work with the Service Provider to resolve the issue. The enhancement request may also be sent to either the Mobility Authority Project Manager or entered into the web-based issue tracking system.

The Service Provider shall provide support services based on the definitions identified below. There are six (6) levels of software issue severity defined below:

- **Critical Failure** – a failure of multiple Lonestar software subsystems or a single critical Lonestar subsystem that prevents operation of the Lonestar ActiveITS® software platform. Critical subsystems to Lonestar may include the Databus, or graphical user interface (GUI).
- **Failure** – a single Lonestar application, subsystem, or driver failure that prevents operation of a part of the Lonestar software.

- **External Failure** – Lonestar interfaces with external systems are failing.
- **Defect** – a software issue that can be compensated for through manual operation or that does not impact operation of the Traffic Incident Management Center.
- **Deployment/Configuration Issue** – an issue related to either an installation or configuration that is prohibiting proper operation of the software.
- **Enhancement** – an improvement to the software that can be included in a future software release.

The Service Provider shall provide staffing support on the definitions identified below:

- **On-Site Staff** – the Service Provider shall provide adequate on-site staff such that personnel can initiate travel to the TIMC facility. The Service Provider shall ensure staff are available within the state of Texas. The Service Provider is responsible for providing alternate staffing solutions if the originally proposed personnel are unavailable.
- **Home Office Staff** – the Service Provider shall provide adequate home office staff to support the existing Lonestar deployment and any future enhancements or deployments. The Service Provider shall have development staff available to the Mobility Authority to provide software integration, testing, configuration, installation, troubleshooting, and other support activities as needed. Critical Failures, Failures, and External Failures shall only be reported via a phone call regardless of the time of day or day of the week. Defect and Deployment/Configuration issues will be reported using either the issue tracking system or via a phone call. All Enhancement requests shall be entered using the issue tracking system.

Initial Response is defined as the maximum amount of time that can elapse after an issue has been reported and the Service Provider acknowledges the issue. The initial response will be provided within the prescribed identified within the Task Work Order (TWO) regardless of how the issue was reported. The initial response will be provided to the reporting person to acknowledge the issue and, if necessary, obtain more information.

Escalation Response is the maximum amount of time that can elapse after an issue has been acknowledged, but no resolution has been identified before escalating the issue. When a reported issue has not been processed within the prescribed time, the issue will be escalated. The staff member will determine the resources needed and bring those resources to bear on the issue. If the staff member is not able to make progress on the issue or cannot secure the necessary resources, the Project Manager will be contacted and expected to personally oversee the effort to resolve the issue until it has been satisfactorily resolved.

On-Site Response is the maximum amount of time that can elapse before travel is initiated, once the travel has been approved by the Mobility Authority's Project Manager, and after it has been determined that Service Provider staff are required on site to address the issue. During the analysis of an issue, if it is determined that on-site support is required by the Service Provider Project Manager, the Service Provider will inform the Mobility Authority Project Manager of the situation. A phone call is acceptable to initially inform the Mobility Authority Project Manager, but a follow

up email is mandatory to document the situation. The Mobility Authority Project Manager will then consider the request and determine whether travel is required.

Issues reported via telephone line shall be entered as new issues into the issue tracking system by the Service Provider staff so that the issue and its resolution can be tracked. The Service Provider staff shall provide the caller insight into how long it may take to resolve the issue. The Service Provider is obligated to respond to Lonestar software issues in a timely manner. On-call support staff must have working functional knowledge of the Lonestar software, be knowledgeable in installation and configuration of Lonestar, and have working knowledge of the Lonestar Intelligent Transportation Systems (ITS) supported devices.

The issue tracking system shall be password protected; however, user logins may be requested by contacting the Mobility Authority Project Manager. Users should use their best judgment in classifying software issues based on their opinion of the severity of the issue. Users will only be able to enter defect, enhancement, and deployment/configuration issues in the issue tracking system. The clarification definitions are provided in this document to guide the user to determine the severity.

The issue tracking system shall be capable of sending alerts to staff specified by the Mobility Authority when a new issue is entered or modified. No issues shall ever be deleted. The alerts shall come in the form of email and/or text messages to the specified list of staff as defined by the Mobility Authority.

3. **CLOUD-HOSTED ENVIRONMENT SUPPORT.**

The Service Provider shall be responsible for all efforts, incidental materials, and continued subscription fees for the maintenance, support, and troubleshooting of the Amazon Web Service (AWS) cloud-hosted environment. The Service Provider shall coordinate any necessary changes resulting in additional costs, including expansion, with the Mobility Authority.

APPENDIX B

ActiveITS Software Sublicense Agreement, effective June 15, 2020,
between the Mobility Authority and Service Provider

ACTIVEITS SOFTWARE SUBLICENSE AGREEMENT

This is a Software Sublicense Agreement, effective on the 15th day of June 2020, between SOUTHWEST RESEARCH INSTITUTE® (SwRI®) a nonprofit corporation organized under the laws of the State of Texas, with offices at 6220 Culebra Road, San Antonio, Texas 78238-5166 (hereinafter referred to as “SwRI”) and the CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY with offices at 3300 North IH-35, Suite 300, Austin, TX 78705 (hereinafter referred to as “Mobility Authority”). SwRI agrees to grant to the Mobility Authority, and the Mobility Authority agrees to accept from SwRI, a nonexclusive, nontransferable, royalty free software sublicense in accordance with this Agreement during the term specified in Article 6.

WHEREAS:

SwRI has obtained and currently has licenses from Florida and Texas to computer programs whose purposes are operation of traffic management centers, and SwRI has the right to sublicense the same under licenses obtained from Florida and Texas who own such computer programs; and

SwRI, as an authorized distributor of such computer programs, desires to market and sublicense those computer programs; and

SwRI and the Mobility Authority wish to enter into an agreement authorizing the Mobility Authority and/or any of its designated contractors to use copies of those computer programs for the benefit of the Mobility Authority; and

The Mobility Authority wishes to save development time and reduce costs by leveraging Florida and Texas Software.

NOW, IT IS HEREBY AGREED:

1.0 DEFINITIONS

1.1 Florida and Texas who are listed in the table of Exhibit A, mean the original issuers of licenses for individual or collective software programs to SwRI.

1.2 “Software” means the actual transportation management center computer programs, source code, and software modules under license to SwRI at the time of this Agreement.

1.3 “Documentation” means the user manuals and other materials, including issues lists in printed or electronic form, which facilitate the use of the Software by the Mobility Authority.

1.4 “Licensed Software” means any combination of the Software and Documentation covered by any of the license agreements listed in Exhibit A and furnished by SwRI to the Mobility Authority.

1.5 “Modifications” mean any modifications, improvements, enhancements, or changes to the Licensed Software and any and all computer programs in any code form and associated documentation, derived from or based upon the Licensed Software, developed, or otherwise acquired by the Mobility Authority, SwRI, or their employees, contractors, or agents.

1.6 “Geographic Limits” means the established geopolitical boundaries associated with the Mobility Authority.

2.0 SUBLICENSE

2.1 Sublicense Grant. In consideration of the premises put forth, and subject to all other conditions herein, SwRI hereby grants to the Mobility Authority a nontransferable and nonexclusive license to use and modify the Licensed Software and its changes, modifications, or enhancements for its internal purposes, with no right to sublicense, sell, lease, assign, or transfer the Licensed Software.

2.2 Notwithstanding 2.1 herein and with SwRI’s written approval, the Mobility Authority may sub-sublicense, royalty free, the executable code of the Sub-Sublicense to other governmental entities within the Geographic Limits.

2.3 Sublicense. This Sublicense, granted by SwRI in 2.1 herein, shall be only for use in the Geographic Limits.

2.4 Title in Licensed Software and Modifications. Title and all proprietary rights in the Licensed Software, including changes, modifications, or enhancements made by or for the Mobility Authority, shall at all times remain the property of Florida and Texas.

2.5 No Support by Florida and Texas. the Mobility Authority recognizes and agrees that Florida and Texas will not provide any support or maintenance and that any warranties provided are provided solely by SwRI and not on behalf of Florida and Texas.

2.6 The Mobility Authority-Owned Modules. the Mobility Authority will own all computer software programs that are created and/or developed for the Mobility Authority, but not changes, modifications, or enhancements of the Licensed Software, even though they are incorporated into a system that includes the Licensed Software.

3.0 CERTAIN SwRI OBLIGATIONS

3.1 Compliance. SwRI agrees to comply fully with all of its obligations under this Agreement.

3.2 Maintenance and Support. SwRI will solely and on behalf of itself, where appropriate, enter into agreements with the Mobility Authority for maintenance and support of the Licensed Software.

4.0 CERTAIN MOBILITY AUTHORITY OBLIGATIONS

4.1 The Mobility Authority agrees to reproduce, and have reproduced on all permitted copies of Licensed Software existing copyright and other proprietary notices.

4.2 The Mobility Authority agrees to require its employees, contractors, and agents to comply with the terms and conditions of this Agreement prior to permitting any access to use the Licensed Software by the individual and shall take all steps necessary to remedy any violation, including, but not limited to, immediately terminating the individual's access to and use of the Licensed Software.

4.3 The Mobility Authority agrees it will not authorize, permit, or allow the use or disclosure of the Licensed Software by its employees, contractors, or agents except as expressly authorized under this agreement.

4.4 The Mobility Authority agrees that it retains no rights in the Licensed Software or its changes, modifications, or enhancements and other Licensed Software-related materials except for the limited rights specifically granted under this Agreement.

4.5 The Mobility Authority agrees to inform SwRI of any changes, modifications, or enhancements to be made to the Licensed Software by the Mobility Authority and/or any of its designated contractors.

4.6 The Mobility Authority agrees to provide SwRI source code for all changes, modifications, or enhancements and documentation updates made to the Licensed Software by the Mobility Authority and/or any of its designated contractors.

4.7 The Mobility Authority agrees it will make no changes to the Licensed Software without corresponding changes also being made to applicable Documentation.

4.8 The Mobility Authority agrees to utilize the issues database established by SwRI to track the identification and resolution of issues associated with the Licensed Software products utilized under this Agreement.

4.9 The Mobility Authority agrees to provide a report to SwRI due not later than January 7, April 7, July 7, and October 7 of each year this license is in effect, detailing the use of the Licensed Software. The report will include a description of modifications made to the Licensed Software, specific name of the Mobility Authority, the Mobility Authority site location, and specific programs licensed.

4.10 The Mobility Authority agrees the Licensed Software contains highly confidential information. The Mobility Authority agrees to take all reasonable precautions to protect the Licensed Software and preserve its confidential, proprietary and trade secret status in perpetuity. The Mobility Authority agrees it is responsible for the supervision, management, and control of its use of the Licensed Software.

4.11 The Mobility Authority agrees to notify SwRI promptly and provide reasonable assistance to SwRI, Florida and Texas without charge in prosecution of any trade secret, copyright, trademark, or service mark infringements that come to the attention of the Mobility Authority.

4.12 The Mobility Authority agrees that if at any time it becomes aware of unauthorized use, copying, or disclosure of the Licensed Software, it shall immediately notify SwRI and fully cooperate with Florida and Texas to protect the proprietary rights of Florida and Texas. The Mobility Authority shall agree that a breach or threatened breach of its obligation to protect the Licensed Software may cause immediate and irreparable harm, entitling Florida and Texas to seek immediate termination of the Sublicense. The Mobility Authority's compliance with this paragraph shall not be construed in any way as a waiver of the rights of Florida and Texas to recover damages or obtain other relief against the Mobility Authority for harm to the proprietary rights of Florida and Texas or for breach of contractual rights.

4.13 The Mobility Authority agrees that any warranties provided are provided solely by SwRI and not on behalf of Florida and Texas. The Mobility Authority agrees to accept the Limitation of Liability and Disclaimer of Warranty provisions included in this Agreement for the benefit of SwRI and Florida and Texas.

4.14 The Mobility Authority agrees that Florida and Texas may make Modifications to the Licensed Software without notice to the Mobility Authority. Florida and Texas shall not be required to provide any Modifications of the Licensed Software. If any copy of a Modification of the Licensed Software is received by the Mobility Authority, the Mobility Authority agrees that all the terms and conditions of their agreement with SwRI apply to the Modification.

5.0 LIMITATION OF LIABILITY and DISCLAIMER OF WARRANTY

5.1 EXCEPT AS OTHERWISE PROVIDED IN THE VENDOR CONTRACT, SWRI DISCLAIMS ALL WARRANTIES WITH REGARD TO THE LICENSED SOFTWARE SOLD OR LICENSED HEREUNDER, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL OBLIGATIONS OR LIABILITIES FOR DAMAGES, INCLUDING BUT NOT LIMITED TO, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE DELIVERY, USE, OR PERFORMANCE OF THE SOFTWARE. SERVICES MAY BE WARRANTED IN A SERVICE AGREEMENT.

5.2 EXCEPT AS OTHERWISE PROVIDED HEREIN, FLORIDA AND TEXAS DISCLAIM ALL WARRANTIES WITH REGARD TO THE LICENSED SOFTWARE SOLD OR LICENSED HEREUNDER, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL OBLIGATIONS OR LIABILITIES ON THE PART OF FLORIDA AND TEXAS FOR DAMAGES, INCLUDING, BUT NOT LIMITED TO, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE DELIVERY, USE, OR PERFORMANCE OF THE LICENSED SOFTWARE.

6.0 TERM AND TERMINATION

6.1 This Agreement shall enter into force on the 15th day of June, 2020 and shall continue as long as SwRI's licenses from Florida and Texas are in force plus one year from the date Florida or Texas terminate the license to SwRI.

6.2 If the license from Florida or Texas to SwRI is terminated, or under termination, SwRI shall notify The Mobility Authority within ten business days.

6.3 In the event that the license from Florida or Texas to SwRI is terminated as specified in 6.2, then the Mobility Authority, if not in breach of any terms and conditions with this Agreement, may elect, with Florida or Texas approval, to continue with this Agreement directly with Florida and Texas under the same terms and conditions as were agreed between SwRI and Florida and Texas, as long as those terms are not more burdensome than the terms of the latest agreement between Florida and Texas and SwRI.

6.4 If either party fails to perform any other term, covenant, or condition of this Agreement, and has not performed such term, covenant, or condition within sixty (60) days after a notice of default has been received, the non-defaulting party shall have the right to forthwith terminate this Agreement by means of a written notice to the other party.

6.5 The Mobility Authority agrees to immediately return or certify destruction of the Licensed Software Documentation, including any copies, information, or notes relating thereto except to the extent retention is necessary to keep the Traffic Management Centers ("TMCs") installed with Intelligent Transportation Systems ("ITS") Software operational for up to one (1) year or until the Mobility Authority receives a license from Florida and Texas directly upon any sublicense termination under Article 6 of this Agreement.

7.0 REMEDIES

7.1 The rights of the Mobility Authority and SwRI, pursuant to Article 6 hereof, are without prejudice to any other rights or remedies that the Mobility Authority and SwRI may have. The Mobility Authority's and SwRI's pursuit and enforcement of any one or more remedies shall not be deemed an election or waiver by the Mobility Authority or SwRI of any other remedy.

8.0 NOTICES

Service of all notices under this Agreement by either party to the other shall be sufficient only if posted by certified or registered post, return receipt requested, or personally delivered and receipted. Either party may change its address for service of all notices by written notice to the other.

AS TO SwRI:

Contracts: Director of Contracts
 Southwest Research Institute

Post Office Drawer 28510
San Antonio, Texas 78228-0510
U.S.A.

Technical: ISD Department Director
Southwest Research Institute
Post Office Drawer 28510
San Antonio, Texas 78228-0510
U.S.A.

AS TO MOBILITY AUTHORITY:

Contracts: Geoff Petrov
General Counsel
Central Texas Regional Mobility Authority
3300 N IH-35, Suite 300
Austin, Texas 78705
U.S.A.

Technical: Greg Mack
Assistant Director of IT & Toll Systems
Central Texas Regional Mobility Authority
3300 N IH-35, Suite 300
Austin, Texas 78705
U.S.A.

9.0 UNFORESEEN EVENTS

Neither party shall be responsible for any delay or failure to perform due to causes beyond reasonable control of the party, including, but not limited to, strikes, lockouts, or other labor disputes, riots, civil disturbances, actions, or inactions of governmental authorities or suppliers, epidemics, war, embargoes, severe weather (including hurricanes), fire, Acts of God or the public enemy, nuclear disasters, or default of a common carrier.

10.0 SEVERABILITY

In the event that any one or more of the provisions of this Agreement shall for any reason be held unenforceable in any respect under the United States patent and copyright laws that are in effect, such unenforceability shall not affect any other provision, and this Agreement shall then be construed as if such unenforceable provision or provisions had never been contained herein.

11.0 ENTIRE SUBLICENSE AGREEMENT

This Agreement and its Exhibit A constitutes the entire agreement governing the sublicense of Licensed Software from SwRI to the Mobility Authority. SwRI acknowledges that

it has not been induced to enter into this Agreement by representations or statements, oral or written, not expressly contained herein. This Agreement may be modified only in writing signed by duly authorized representatives of each party.

12.0 GENERAL CONDITIONS

12.1 Applicable Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Texas.

12.2 The headings and subheadings in this Agreement are for convenience only and do not form a part of this Agreement.

12.3 The failure of either party to enforce at any time any of the provisions hereof shall not be construed to be a waiver of the right of such party thereafter to enforce any such provisions.

12.4 This Agreement may be executed electronically and in counterparts, each of which shall be deemed to be an original, and when taken together, shall constitute one binding agreement. A facsimile or exact image of an original signature transmitted to the other party is as effective as if the original were sent to the other party.

EXECUTED BY BOTH PARTIES AS PROVIDED BELOW:

SOUTHWEST RESEARCH INSTITUTE

MOBILITY AUTHORITY

By: W. Troy Nagy

By: Mike Heiligenstein

Name: W. Troy Nagy

Name: Mike Heiligenstein

Title: Director, Contracts

Title: Executive Director

Date: June 11, 2020

Date: Jul 14, 2020

EXHIBIT A

Software Name	Licensor	Date of License
TxSoftware	TxDOT	May 30, 2006
SunGuide	FDOT	Sep 1, 2006