

COUNTY OF CAMERON §

12:00 Noon

ABSENT

RMA Minutes\November 3, 2011-Special\Page 1

AGENDA

Special Meeting of the Board of Directors
of the
Cameron County Regional Mobility Authority
Dancy Courthouse
1100 E. Monroe Street
Brownsville, TX 78520
Thursday, November 3, 2011

12:00 Noon

FILED AND RECORDED
OFFICIAL PUBLIC RECORDS
On: Oct 31, 2011 at 08:54A

Joe G Rivera
County Clerk
By
Hilda Perez, Deputy
Cameron County

I. Public Comments

PRESENTATION ITEMS:

- II. Presentation by Duane L. Gordt, CED Inc. and Russ Krauss of Research Environmental Solutions and Discussion of Master Thoroughfare Planning for the North Portion of South Padre Island

CONSENT ITEMS:

- III. Consideration and Approval of the Minutes for October 25, 2011 Special Meeting
- IV. Consideration and Approval of Agreement between the Cameron County Regional Mobility Authority and S&B Infrastructure for the FM 803 Environmental Assessment
- V. Consideration and Approval of Agreement between the Cameron County Regional Mobility Authority and TEDSI Infrastructure for the Port Isabel Port Access Road Project

ITEMS FOR DISCUSSION AND ACTION:

- VI. Approval of Claims

EXECUTIVE SESSION ITEMS

VII. Executive Session

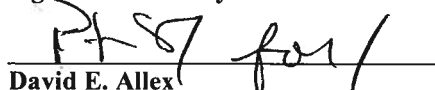
- A. Consultation with, and advice from Legal Counsel concerning negotiations and related contract issues with Cameron County specifically related to providing administrative and professional management services related to transportation projects, building construction projects, road systems and revenue generating facilities pursuant to V.T.C.A. Government Code, Section 551.071 (2)

VIII. Action Relative to Executive Session

- A. Possible Action

IX. Adjournment

Signed this 31st day of October 2011


David E. Alex
Chairman

NOTE: Chairman Alex left the meeting at 12:24 P.M. Vice-Chairman Wood handled the meeting from 12:24 P.M. to 1:39 P.M.

PUBLIC COMMENTS

I. PUBLIC COMMENTS

None were presented.

PRESENTATION AND/OR RESOLUTION ITEMS

II. Presentation by Duane L. Gordt, CDE Inc. and Russ Krauss of Research Environmental Solutions and Discussion of Master Thoroughfare Planning for the North Portion of South Padre Island

Mr. Herb Houston, Chairman of the Padre Island Zoning Commission introduced Mr. Russ Krauss and Mr. Duane L. Gordt. Mr. Krauss made a presentation regarding Ecological Offsets for Permits, Compliance and Liability Transfer. Attached is the power point presentation. Mr. Gordt made a presentation regarding funding opportunities. Attached is the power point presentation.

The Power Points are as follows:

CONSENT ITEMS

ALL ITEM(S) UNDER THE CONSENT RMA AGENDA ARE HEARD COLLECTIVELY UNLESS OPPOSITION IS PRESENTED, IN WHICH CASE THE CONTESTED ITEM WILL BE CONSIDERED, DISCUSSED AND APPROPRIATE ACTION TAKEN SEPARATELY

Director Gallegos made a motion to approve Consent Items III, IV and V. Item V was approved subject to changes recommended by Legal Counsel. The motion was seconded by Director Garza and carried unanimously.

III. Consideration and Approval of the Minutes for October 25, 2011 Special Meeting

IV. Consideration and Approval of Agreement between the Cameron County Regional Mobility Authority and S&B Infrastructure for the FM 803 Environmental Assessment

The Agreement is as follows:

V. Consideration and Approval of Agreement between the Cameron County Regional Mobility Authority and TEDSI Infrastructure for the Port Isabel Access Road Project

The Agreement is as follows:

ACTION ITEMS

VI. Approval of Claims

The attached claims were presented to the Board of Directors for approval.

Mr. Pete Sepulveda, Jr., RMA Coordinator advised the Board of the Claims being presented.

Director Gallegos made a motion to approve the Claims. The motion was seconded by Director Scaief and carried unanimously.

The Claims are as follows:

EXECUTIVE SESSION ITEMS

Director Scaief moved to go into Executive Session, the motion was seconded by Director Gallegos and carried unanimously, the Board met in Executive Session at 12:04 P.M. to discuss the following matter(s):

VII. Executive Session:

- A. Consultation with, and advice from Legal Counsel concerning negotiations and related contract issues with Cameron County specifically related to providing administrative and professional management services related to transportation projects, building construction projects, road systems and revenue generating facilities pursuant to V.T.C.A. Government Code, Section 551.071 (2)**

Upon motion by Director Scaief seconded by Director Gallegos and carried unanimously, the Board reconvened into Regular Session at 12:23 P.M.

VIII. ACTION RELATIVE TO EXECUTIVE SESSION:

- A. Consultation with, and advice from Legal Counsel concerning negotiations and related contract issues with Cameron County Specifically related to providing Administrative and Professional Management Services related to transportation projects, building construction projects, road systems and revenue generating facilities pursuant to V.T.C.A. Government Code, Section 551.071 (2)**

Director Garza made a motion to acknowledge Report. The motion was seconded by Director Gallegos and carried unanimously.

IX. ADJOURNMENT

There being no further business to come before the Board and upon motion by Director Gallegos seconded by Director Garza and carried unanimously the meeting was **ADJOURNED** at 1:39 P.M.

APPROVED this 14th day of November 2011.

ATTESTED:



SECRETARY RUBEN GALLEGOS, JR.



CHAIRMAN DAVID E. ALLEX

**II. PRESENTATION BY DUANE L. GORDT, CDE INC. AND RUSS KRAUSS
OF RESEARCH ENVIRONMENTAL SOLUTIONS AND DISCUSSION OF
MASTER THOROUGHFARE PLANNING FOR THE NORTH PORTION
OF SOUTH PADRE ISLAND**



Austin, Beaumont, El Paso, Port Arthur



VALUE CAPTURE AS A PUBLIC PRIVATE PARTNERSHIP

- Value Capture (VC) is an innovative financing method that relies on leveraging the real estate potential brought by asset improvements.

VALUE CAPTURE AS A PUBLIC PRIVATE PARTNERSHIP

- Value Capture (VC) is an innovative financing method that relies on leveraging the real estate potential brought by asset improvements.
- Value Capture is the means by which capital infrastructure investment is financed through a means of capturing some or all of the value that is added to real property directly from the investment.

- By capturing the value of the development community and then incorporating it into the infrastructure financing it maximizes the return on the investment.

- By capturing the value of the development community and then incorporating it into the infrastructure financing it maximizes the return on the investment.
- This must be achieved at the grass roots level and with comprehensive support.

- By capturing the value of the development community and then incorporating it into the infrastructure financing it maximizes the return on the investment.
- This must be achieved at the grass roots level and with comprehensive support.
- Through assisting governing entities in this process it creates a sustainable economic growth model.

- By capturing the value of the development community and then incorporating it into the infrastructure financing it maximizes the return on the investment.
- This must be achieved at the grass roots level and with comprehensive support.
- Through assisting governing entities in this process it creates a sustainable economic growth model.
- It requires a true integration of the public and private sectors goals and needs.

Stage 1 – Pre-Market Development

- Development of Program with Client
- Process Overview Discussion
- Modeling of ROI – Identify Projects that improve the bottom line leaving additional capital for service needs
- Identify additional Revenue Streams to provide for development expenses
- Identify additional income bases that boost ongoing budgets
- Look for Off Balance Sheet potential projects that provide baseline capital

Stage 2 – Pre Evaluation

- Business Model for Economic Growth
- Construct-ability Evaluation
- Right of Way Valuation
- Engineering Evaluation
- Intergovernmental Relationships Evaluation
- Tax Assessment and Evaluations
- Local Developer Evaluation and Input

Stage 3 – Development for Funding

- All Stage 1 & 2 Elements review and verification
- Public Awareness
- Stakeholder Participation Mediation
- Right of Way to Design Evaluation
- Tax Assessment and Evaluation Review
- Direct Economic Impact determination
- Final Design and Construction Package Evaluation
- Procurement method review

Stage 4 – Project Delivery

- Assemble Construction Package from Stages 1,2, & 3
- Negotiate Program Management Selection
- Assist in Determining best contract Delivery method for Stakeholders
- Determine oversight for Program Management
- Verify Teaming schedule for project coordination
- Monthly Funding and Construction Progress Review
- Insure reporting to all Stakeholders for continuity

Solutions for a time when roadblocks are the issue

Questions and Answers



Resource
Environmental
Solutions

Wetland, Stream & Species Offsets

*Ecological Offsets for
Permits, Compliance and Liability Transfer*



<http://res.us>



- 20,000 acres of wetland restoration
- 3+ miles of stream restoration
- \$60mm invested in mitigation projects
- \$45mm in land assets, capitalized project costs, and cash
- 25 employees; 20-40 seasonal workers

John Elstrott, *Chairman* (also Chairman, Whole Foods Market)

Elliott Bouillion, *CEO* (Landmark Graphics acquired by Halliburton)

Peter Couhig, *President & COO* (Source Capital)

Russ Krauss, *VP, Business Development* (Marathon and others)

Will Donaldson, *VP*, will@res.us

- + Operations & Development Company
- + Land Department
- + GIS & Analytics
- + Field Biologists and Analysts
- + Finance, Accounting, Sales & Marketing, Customer Service

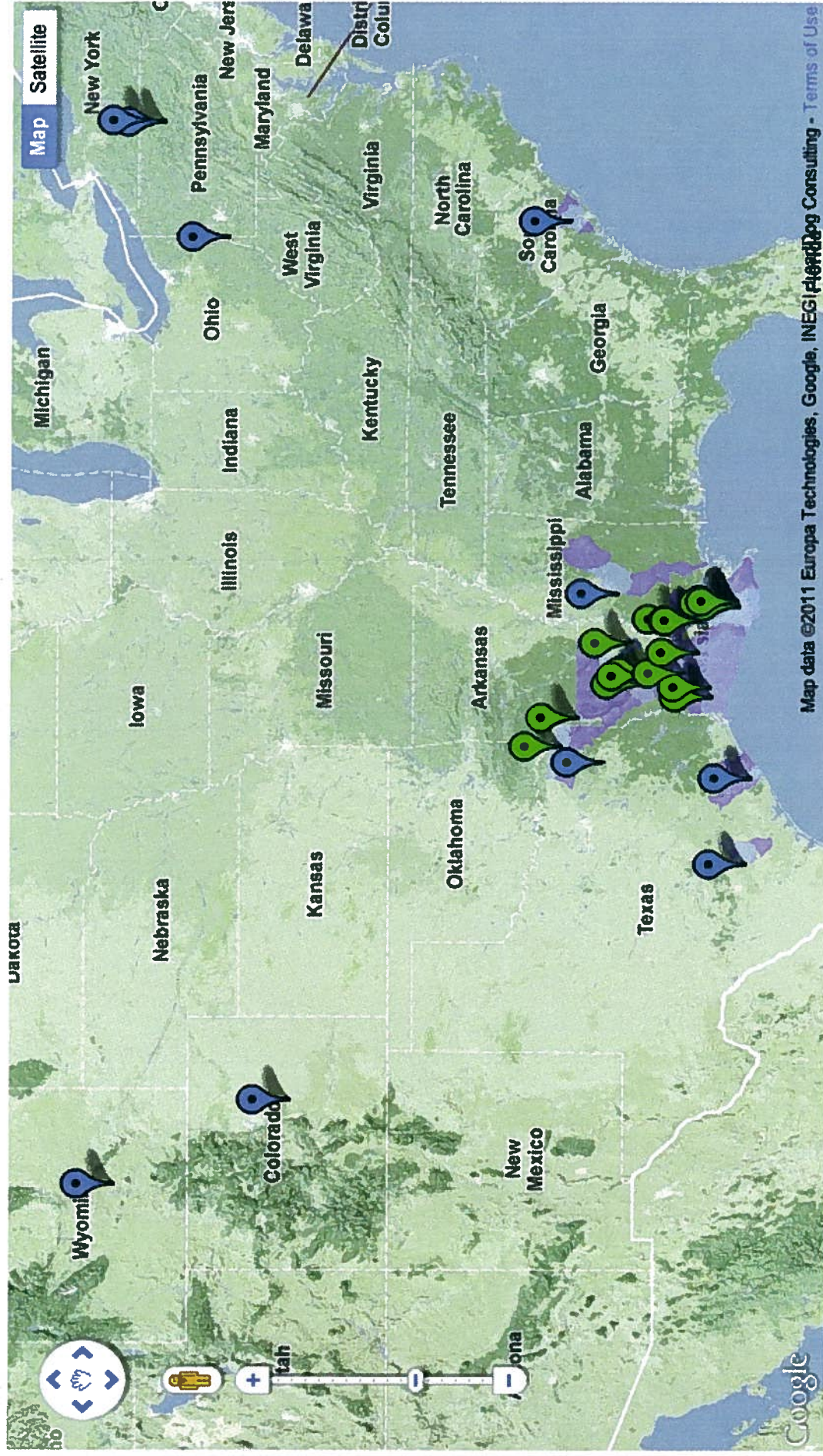


Customers Served





RES Project Areas



Ecological Restoration

- Design and build restoration projects
- Extensive experience providing and managing field labor in marsh assessment and restoration activities
- Provision and supervision of the technical activities of wetlands scientists and other ecological / environmental professionals
- Expertise reforesting wetlands including assessment, site preparation, plant identification, vegetative plantings and ongoing post-planting maintenance
- Fully Insured, OSHA-Compliant, Reporting via ISNetworld

Nursery

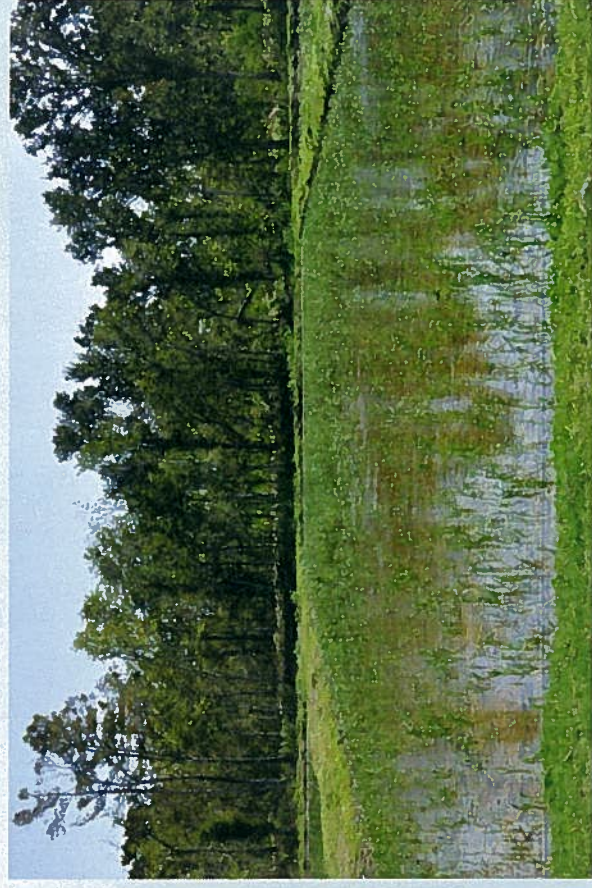
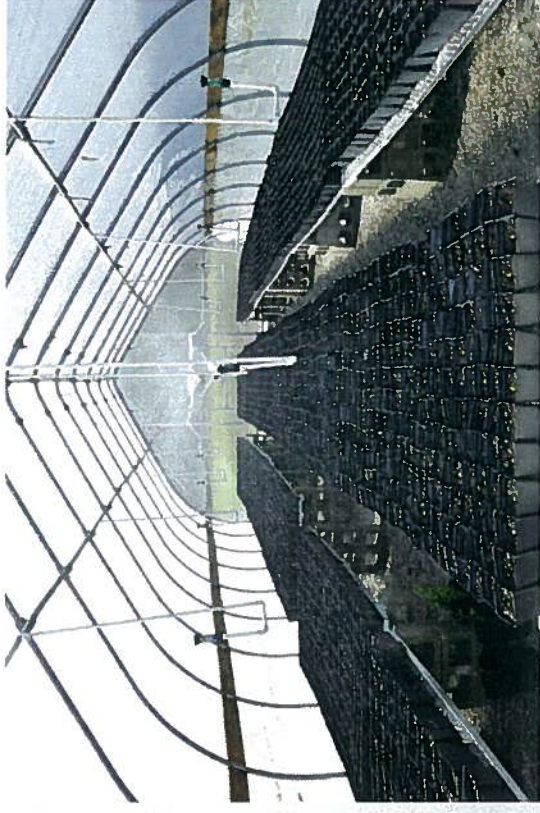
680-acre Coastal marsh grass nursery located in Pointe Aux Chene, Louisiana grows native wetland plant species and has both delivered and planted hundreds of thousands of these species for coastal restoration activities.

Plant Species include:

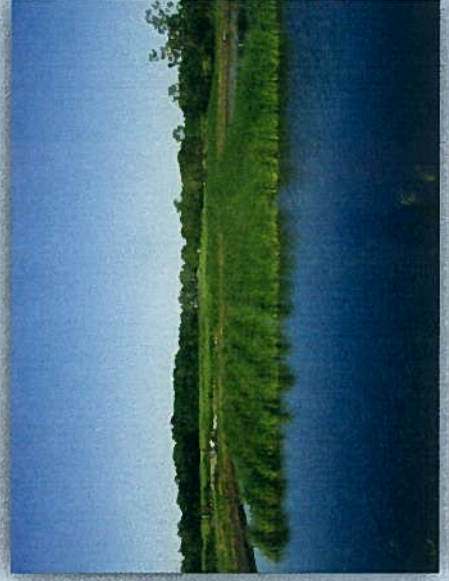
- Smooth Cord Grass
- California Bullrush
- Giant Cut Grass
- Black Mangrove
- Seaoats
- Bitter Panicum
- Marshhay Cordgrass
- Seashore Paspalum
- Gulf Blue Stem



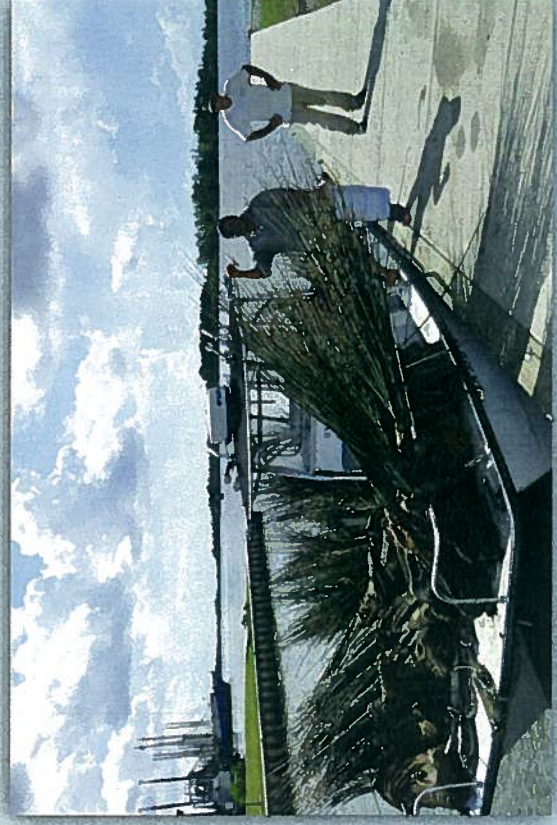
Growing Black Mangrove



Growing Marsh Grasses



Planting Marsh Grasses



Planting Marsh Grasses



Environmental Permitting:
Clean Water Act,
Rivers and Harbors Act,
Dredge, Fill,
Waters of the United States

NEPA: National Environmental Policy Act

No Net Loss: Definition and Application

Permitting and Participating Agencies: USACE, EPA, FWS,
NMFs, NPS, TPWD, TDEQ, TxGLO

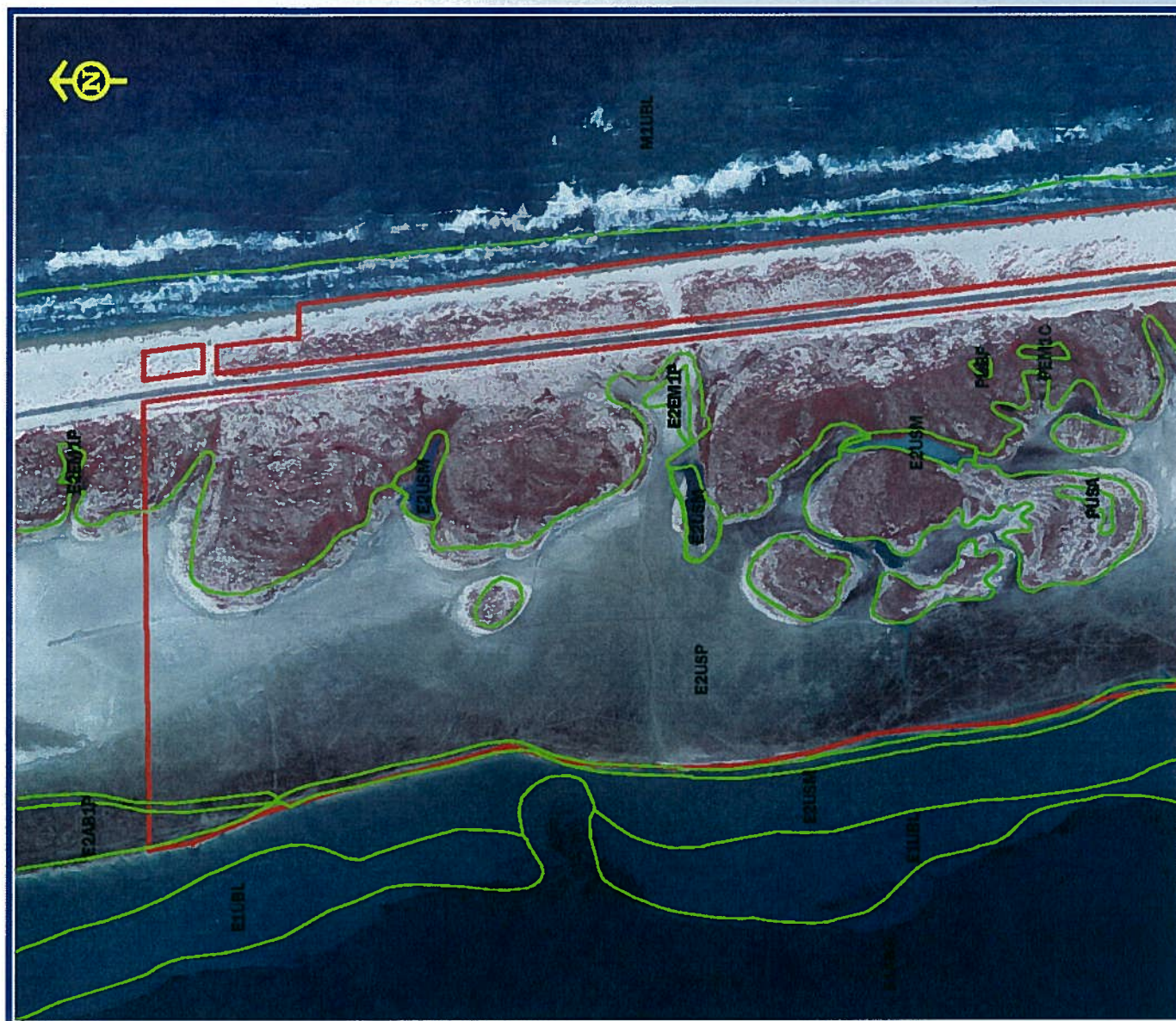
Ecological Offsets:

Federal: Compensatory Mitigation for Losses of Aquatic
Resources; Final Rule, Department of the Army, COE: 33 CFR
Parts 325 and 332 and EPA: 40 CFR Part 230

State: Texas Natural Resources Code, Title 12, Chapter 221,
Wetland Mitigation

Liability for Impacts and Offsets

Developing Ecological Offset Solutions



**IV. CONSIDERATION AND APPROVAL OF AGREEMENT
BETWEEN THE CAMERON COUNTY REGIONAL
MOBILITY AUTHORITY AND S&B INFRASTRUCTURE
FOR THE FM 803 ENVIRONMENTAL ASSESSMENT**

THE STATE OF TEXAS §
§
COUNTY OF CAMERON§

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made, by and between **CAMERON COUNTY REGIONAL MOBILITY AUTHORITY ("Authority")**, and **S&B INFRASTRUCTURE, LTD.**, professional engineers of McAllen, Texas ("**Consultant**").

WITNESSETH:

WHEREAS, the **Authority** desires to contract with the **Consultant** to provide professional services consisting of an Environmental Assessment ("EA") and Programmatic Categorical Exclusion ("PCE") documentation for proposed roadway improvements to FM 803 from US 77/83 at Rancho Viejo overpass to SH 100 (the "**Project**").

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

ARTICLE 1. Employment of Consultant. The **Authority** agrees to employ the **Consultant** and the **Consultant** agrees to perform professional services in connection with the **Project** as stated in the articles to follow, and for having rendered such services, the **Authority** agrees to pay the **Consultant** compensation as stated in the articles to follow.

ARTICLE 2. Character and Extent of Services. This Agreement will provide for the development of the **Project** with the following:

2.1. Scope of Work. The **Authority** will furnish items and provide those services for the development of the **Project** and fulfillment of this Agreement, as identified in **EXHIBIT "A" - Services to be Provided by the Authority**, attached hereto and made a part of this Agreement.

PSB

2.2 Classification of Services. For this Agreement, the professional services to be provided by the **Consultant**, as more particularly identified in **EXHIBIT "B"**, attached hereto, shall be classified as follows:

- (1) **Basic Services:** Basic services, incorporated herein by reference as "**Basic Services**", includes those professional services not otherwise identified under Article 5.2 of this Agreement.
- (2) **Special Services:** Special services, incorporated herein by reference as "**Special Services**", includes those professional services identified under Article 5.2 of this Agreement.

Expanded task descriptions for both **Basic Services** and **Special Services** are more particularly identified in **EXHIBIT "B"**, attached hereto.

2.3 Schedule of Work. The **Consultant** shall prepare a schedule of work for the **Project** (to be approved by the **Authority**) in accordance with the terms identified in **EXHIBIT "C"-Schedule of Work**, attached hereto and made a part of this Agreement.

ARTICLE 3. Period of Service. After execution of this Agreement, the **Consultant** shall not proceed with the work outlined under Article 2 hereof until authorized in writing by the **Authority** to proceed as provided in Article 7 hereof.

3.1 Termination Date. This Agreement shall terminate at the close of business on 31 July 2013 ("**Termination Date**"), unless extended by written supplemental agreement, as provided in Article 8 hereof, duly executed by the **Consultant** and the **Authority** prior to the **Termination Date**, or otherwise terminated as provided in Article 3.4 herein and below. The **Authority** assumes no liability or obligation for payment to the **Consultant** for work performed or costs incurred by the **Consultant** prior to the date authorized by the **Authority** for the **Consultant** to begin work, during periods when work is suspended, or subsequent to the **Termination Date**.

3.2 Extension of the Termination Date. The **Consultant** shall notify the **Authority** in writing as soon as possible if it is determined, or reasonably anticipated, that the work under this Agreement cannot be completed before the **Termination Date**, and the **Authority** may, at the **Authority's** sole discretion, extend the

Termination Date by written supplemental agreement as provided in Article 8 hereof. The **Consultant** shall allow adequate time for review and approval by the **Authority** of the written notice and request by the **Consultant** to extend the **Termination Date**.

3.3 Suspension of Work. Should the **Authority** desire to suspend the work under this Agreement, but not terminate this Agreement, the **Authority** shall provide thirty (30) calendar days verbal notification to the **Consultant**, followed by written confirmation from the **Authority** to the **Consultant** to that effect. The thirty-day notice may be waived as agreed in writing by both the **Authority** and the **Consultant**. The work under this Agreement may be reinstated and resumed in full force and effect within sixty (60) days of receipt of written notice from the **Authority** to the **Consultant**. The sixty-day notice may be waived as agreed in writing by both the **Authority** and the **Consultant**.

If the **Authority** suspends the work, the **Termination Date** as identified above is not affected, and this Agreement will terminate on the date specified, unless extended by written supplemental agreement, as provided in Article 8 hereof, duly executed by the **Consultant** and the **Authority** prior to the **Termination Date**.

3.4 Termination of Agreement. This Agreement may be terminated before the stated **Termination Date** identified in Article 3.1 herein by any of the following conditions:

- (1) **Commitment of Current Revenues.** In the event that, during any term hereof, the **Authority** does not appropriate sufficient funds to meet to the obligations of this Agreement, the **Authority** may terminate this Agreement upon ninety (90) days written notice to the **Consultant**. The **Authority** agrees, however, to use reasonable efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of the **Authority** pursuant to the provisions of Tex. Loc. Govt. Code Ann. § 271.903 (Vernon Supp.1995).
- (2) By mutual agreement and consent, in writing, of both the **Consultant** and the **Authority**.

DRG

- (3) By the **Authority**, upon failure of the **Consultant** to fulfill the **Consultant's** obligations set forth herein in a satisfactory manner as determined by the **Authority** and in sole opinion of the **Authority**, after the **Authority** provides written notice to the **Consultant** of such failure and the **Consultant** has not corrected such failure within (30) days of such written notice by the **Authority**.
- (4) By the **Consultant**, upon failure of the **Authority** to fulfill the **Authority's** obligations set forth herein, after the **Consultant** provides written notice to the **Authority** of such failure and the **Authority** has not corrected such failure within thirty (30) days of such written notice by the **Consultant**.
- (5) By the **Authority** without cause upon ninety (90) days written notice to the **Consultant**.
- (6) By satisfactory completion of all services and obligations described herein.

Should the **Authority** terminate this Agreement as herein provided, no fees other than fees due and payable at the time of termination shall thereafter be paid to the **Consultant** notwithstanding anything herein to the contrary. In determining the value of the work performed by the **Consultant** prior to termination, the **Authority** shall be the sole judge of the value of such work performed. Compensation for work at termination will be based on a percentage of the work completed at that time.

If the termination of this Agreement is due to the failure of the **Consultant** to fulfill the **Consultant's** obligations under this Agreement, the **Authority** may take over the **Project** and prosecute the work to completion. In such case, the **Consultant** shall be liable to the **Authority** for any additional cost occasioned by the **Authority**.

If the **Consultant** defaults in the performance of this Agreement or if the **Authority** terminates this Agreement for fault on the part of the **Consultant**, the **Authority** will give consideration to payment of an amount in settlement to include: the actual costs incurred by the **Consultant** in performing the work to the date of default, the amount of work required which was satisfactorily completed to date of default, the value of the

work which is usable to the **Authority**, the cost to the **Authority** of employing another consultant and/or firm to complete the work required and the time required to do so, and other factors which affect the value to the **Authority** of the work performed at the time of default. This Agreement shall not be considered as specifying the exclusive remedy for any default by the **Consultant**, but all remedies existing at law and in equity may be availed of by either party and shall be cumulative.

The termination of the Agreement and payment of an amount in settlement as prescribed above shall extinguish all rights, duties, and obligations of the **Authority** and the **Consultant** under this Agreement, except the obligations set forth in Articles 11.2, 12, 13, 15, 16, 17, 19, 22, and 26, hereto.

ARTICLE 4. Progress and Coordination. The **Consultant** shall, from time to time during the progress of the work, confer with the **Authority**. The **Consultant** shall prepare and present such information as may be pertinent and necessary, or as may be requested by the **Authority**, in order to evaluate features of the **Consultant's** services and work.

At the request of the **Authority** or the **Consultant**, conferences shall be provided at the **Consultant's** office, the office of the **Authority**, or at other locations designated by the **Authority**. These conferences shall also include evaluation of the **Consultant's** services and work when requested by the **Authority**.

All applicable study reports shall be submitted in preliminary form for approval by the **Authority** before the final report is issued. The **Authority's** comments regarding the **Consultant's** preliminary report will be addressed by the **Consultant** in the final report.

If funds by other agencies or entities are to be used for the development of the **Project** under this Agreement, the **Consultant's** services and work may be subject to periodic review and approval by other agencies or entities, including those of the city, county, state, and/or federal agencies.

Should it be determined that the progress in the production of the **Consultant's** services and work does not satisfy the requirements of the approved **Project Schedule** as provided by **EXHIBIT "C"**, attached hereto,

Handwritten signature

the **Authority** shall review the approved **Project Schedule** with the **Consultant** to determine the corrective action needed by either the **Authority** or the **Consultant**.

The **Consultant** shall promptly advise the **Authority** in writing of events which have a significant impact upon the progress of the **Consultant's** services and work and the approved **Project Schedule**, including:

- (1) problems, delays, adverse conditions which will materially affect the ability to attain contract objectives, prevent the meeting of time schedules and goals, or preclude the timely completion and submittal of **Project** deliverables by the **Consultant** within established time periods; this disclosure will be accompanied by a statement by the **Consultant** of recommended or immediate action taken, or contemplated, and any **Authority** or other agency or entity assistance needed to resolve the situation; and
- (2) favorable developments or events which enable meeting the **Project Schedule** goals sooner than anticipated.

ARTICLE 5. Compensation and Fees. For and in consideration of the services to be rendered by the **Consultant**, the **Authority** shall compensate the **Consultant** with **Fee** identified as follows:

5.1 Basic Services. For and in consideration of the **Basic Services** to be rendered by the **Consultant**, as identified in Article 2 and more particularly identified in **EXHIBIT "B"**, attached hereto, the maximum amount payable by the **Authority** to the **Consultant** for **Basic Services**, subject to adjustment in accordance with Article 6.1 herein, is Four Hundred Thousand United States Dollars (\$400,000.00) (hereinafter referred to as the "**Basic Services Fee**"). Payments to the **Consultant** for **Basic Services** shall be made by the **Authority**, upon presentation by the **Consultant** of the monthly **Request for Payment**, in accordance with the terms and provisions of Article 6 herein.

5.2 Special Services. Those services to be provided by the **Consultant** as **Special Services** are set forth below and more particularly described in **EXHIBIT "B"**, attached hereto. For and in consideration of these **Special Services** rendered as required by the **Consultant**, the **Authority** shall pay the **Consultant** a

negotiated lump sum fee (hereinafter referred to as "**Special Services Fee**") at the hourly labor rates and non-labor rates (hereinafter referred to as "**Contract Rates**") specified in **EXHIBIT "D"-Contract Rates**, attached hereto and made a part of this Agreement, and as follows:

Special Service

Basis of Compensation

- | | |
|--|--|
| 1. FORMAL SECTION 7 CONSULTATION, BIOLOGICAL SURVEYS OR ASSESSMENTS, HAZARDOUS MATERIALS DUE DILIGENCE /SITE ASSESSMENTS. | By Consultant at Contract Rates shown in EXHIBIT "D" , attached hereto, and/or negotiated subcontract expense plus a 10% service charge.
By Consultant at Contract Rates shown in EXHIBIT "D" , attached hereto, and/or negotiated subcontract expense plus a 10% service charge. |
| 2. NOISE BARRIER ANALYSIS | By Consultant at Contract Rates shown in EXHIBIT "D" , attached hereto, and/or negotiated subcontract expense plus a 10% service charge. |
| 3. IMPACTS AND CUMULATIVE IMPACTS ANALYSIS INCLUDING QUANTITATIVE MSAT ANALYSIS | By Consultant at Contract Rates shown in EXHIBIT "D" , attached hereto, and/or negotiated subcontract expense plus a 10% service charge. |
| 4. USACE PERMITTING, SECTION 404 PERMITTING OR ENVIRONMENTAL PERMITTING | By Consultant at Contract Rates shown in EXHIBIT "D" , attached hereto, and/or negotiated subcontract expense plus a 10% service charge. |
| 5. HISTORIC STRUCTURES SURVEYS INCLUDING ARCHAEOLOGICAL TESTING AND DATA RECOVERY | By Consultant at Contract Rates shown in EXHIBIT "D" , attached hereto, and/or negotiated subcontract expense plus a 10% service charge. |
| 6. SECTION 4(f) EVALUATIONS OR RESOURCE AGENCY COORDINATION | By Consultant at Contract Rates shown in EXHIBIT "D" , attached hereto, and/or negotiated subcontract expense plus a 10% service charge. |
| 7. EXTRA TRAVEL
Extra travel required of Consultant and authorized by Authority to points outside of Cameron County | By Consultant at Contract Rates shown in EXHIBIT "D" , attached hereto |
| 8. EXPERT WITNESS
Assistance to the Authority as expert witness in any litigation with third parties, arising from the development or construction of the Project . | By Consultant at Contract Rates shown in EXHIBIT "D" , attached hereto |



The negotiated lump sum fee(s) for *Special Services* shall be incorporated into a **Supplemental Agreement(s)** as defined and described in Article 8 herein. Payments to the **Consultant** for *Special Services* authorized by the **Authority** shall be made by the **Authority**, upon presentation by the **Consultant** of the monthly **Request for Payment**, more particularly defined and in accordance with the terms and provisions of Article 6 hereof.

ARTICLE 6. Method of Payment.

6.1 Request for Payment. Payments to the **Consultant** for services rendered will be made while work is in progress as executed through a lump sum fee assigned to each work authorization (hereinafter referred to as "**Work Authorization**") in accordance with Article 7 herein. For each **Work Authorization**, the **Consultant** shall prepare and submit to the **Authority** monthly progress reports in sufficient detail to support the progress of the work and in support of a request for payment (hereinafter referred to as "**Request for Payment**"). The progress report shall indicate the percent completion of the work accomplished by the **Consultant** during the billing period and to the date of the **Request for Payment**. On or before noon of the first Monday of each month during the performance of the services, the **Consultant** shall submit to the **Authority** for approval a **Request for Payment**. Payment of the lump sum fee for each **Work Authorization** identified in the **Request for Payment** will be in proportion to the percent completion of the work tasks identified in such **Work Authorizations**. The **Authority** shall review each such **Request for Payment** and may make such exceptions as the **Authority** reasonably deems necessary or appropriate under the circumstances then existing. About thirty (30) working days after the Commissioners Court of the **Authority** meets approving such payment, the **Authority** shall make payment to the **Consultant** in the amount approved as aforesaid subject to Article 6.3 herein and below.

6.2 Final Payment. After final completion of the work and acceptance thereof by the **Authority**, the **Consultant** shall submit a final request for payment ("**Final Request for Payment**") which shall set forth all amounts due and remaining unpaid to the **Consultant** and upon approval thereof by the **Authority**, the **Authority** shall pay to the **Consultant** the amount due ("**Final Payment**") under such **Final Request for**

Payment in accordance with the provisions of Article 6.1 hereof. The **Final Payment** shall not be made until the **Consultant** delivers to the **Authority** an affidavit that so far as the **Consultant** has knowledge or information any and all amounts due for materials and services over which the **Consultant** has control have been paid.

6.3 Qualification on Obligations to Pay. Any provision hereof to the contrary notwithstanding, the **Authority** shall not be obligated to make any payment (whether a payment under Article 6.1 hereof or **Final Payment**) to the **Consultant** hereunder if any one or more of the following conditions precedent exist:

- (1) The **Consultant** is in default of any of its obligations hereunder or otherwise is in default under this Agreement or under any contract documents related to this Agreement;
- (2) Any part of such payment is attributable to the **Consultant's** services which are not performed in accordance with this Agreement; provided, however, such payment shall be made as to the part thereof attributable to the **Consultant's** services which were performed in accordance with this Agreement;
- (3) The **Consultant** has failed to make payments promptly to consultants or other third parties used in connection with the **Project** for which the **Authority** has made payment to the **Consultant**;
- (4) If the **Authority**, in good faith judgment, determines that the portion of the compensation then remaining unpaid will not be sufficient to complete the **Consultant's** services in accordance with this Agreement, no additional payments will be due the **Consultant** hereunder unless and until the **Consultant**, at its sole cost, performs a sufficient portion of the **Consultant's** services so that such portion of the compensation then remaining unpaid is determined by the **Authority** to be sufficient to so complete the **Consultant's** services.

6.4 No partial payment made hereunder shall be or construed to be final acceptance or approval of that part of the **Consultant's** services to which such partial payment related or relieves the **Consultant** of any of its obligations hereunder with respect thereto.

6.5 The **Consultant** shall promptly pay all bills for labor and material performed and furnished by others in connection with the performance of the **Consultant's** services.

6.6 Waiver. The making of the **Final Payment** shall constitute a waiver of all claims by the **Authority** except those arising from (1) faulty or defective services of the **Consultant** appearing after completion of the **Project**, (2) failure of the **Consultant's** services to comply with the requirements of this Agreement or any

contracts or Agreements related to the **Project**, or (3) terms of any special warranties required by this Agreement or provided at law or in equity. The acceptance of **Final Payment** shall constitute a waiver of all claims by the **Consultant** except those previously made in writing and identified by the **Consultant** as unsettled at the time of the **Final Request for Payment**.

ARTICLE 7. Work Authorization. After execution of this Agreement, the **Consultant** shall proceed with the work outlined under Article 2 hereof, only as authorized by the **Authority** through an agreed **Work Authorization** document in the form identified in **EXHIBIT "E" – Work Authorization Form**, attached hereto and made a part of this Agreement. The **Consultant** will identify, as approved by the **Authority**, the needed services for the **Project**, as required through the course of the development of the **Project**. The **Authority** shall authorize the **Consultant** to perform one or more of the agreed tasks identified in **EXHIBIT "B"**, attached hereto, in the form of individual work authorizations. Upon authorization from the **Authority**, the **Consultant** will prepare a **Work Authorization** document, which will include a description of the work to be performed, including a description of the tasks and milestones, a work schedule, and an estimated cost proposal agreed upon by the **Authority** and the **Consultant**. The estimated cost proposal shall set forth in detail the computation of the cost of each work task, at the hourly rates established and identified in **EXHIBIT "D"**, attached hereto. The **Work Authorization** shall not waive the **Authority's** and the **Consultant's** responsibilities and obligations established in this Agreement.

The estimated cost proposal for each **Work Authorization**, developed by the **Consultant** and approved by the **Authority**, shall be used by the **Authority** to appropriate a purchase order for the **Work Authorization**. The estimated cost proposal does not waive or alter the **Authority's** obligation established in this Agreement regarding the *Basic Services Fee* and/or *Special Services Fee*, as identified in Articles 5.1 and 5.2, respectively and hereof.

10/13

Each executed **Work Authorization** shall become a part of this Agreement. Upon satisfactory completion of the **Work Authorization**, the **Consultant** shall submit the **Project's** deliverables as specified in the executed **Work Authorization** to the **Authority** for review and acceptance.

Work included in a **Work Authorization** shall not begin until the **Authority** and the **Consultant** have signed the **Work Authorization**. All work must be completed on or before the completion date specified in the **Work Authorization**, unless extended by written agreement by the **Consultant** and the **Authority**. The **Consultant** shall promptly notify the **Authority** of any event that will affect completion of the **Work Authorization**. All **Work Authorizations** must be executed and completed by both the **Consultant** and the **Authority** within the period established for this Agreement as specified in Article 3 hereof.

The final acceptance by the **Authority** of each **Work Authorization** for the **Project** shall serve as evidence of completion, on the part of the **Consultant**, of all services under this Agreement insofar as they pertain to that portion of work on the **Project** identified in the applicable work authorization.

ARTICLE 8. Supplemental Agreements. The terms of this Agreement may be amended by supplemental agreement if the **Authority** determines that (1) there is a need to extend the **Termination Date** identified in Article 3.1 hereof, (2) there has been a significant change in the scope, complexity or character of the services to be performed by the **Consultant**, and/or (3) for any other reason agreeable to the **Authority** and the **Consultant**. All supplemental agreements will be developed in the form identified in **EXHIBIT "F" – Supplemental Agreement Form**, attached hereto and made a part of this Agreement, and incorporated herein by reference as "**Supplemental Agreement**".

If determined appropriate by the **Authority**, additional compensation to the **Consultant** for (1), (2) and/or (3) above shall be paid as a negotiated lump sum fee at the **Contract Rates** specified in **EXHIBIT "D"**, attached hereto. The negotiated lump sum fee shall be incorporated into the **Supplemental Agreement**.

Any **Supplemental Agreement** must be executed by both the **Consultant** and the **Authority** prior to the **Termination Date** specified in Article 3 hereof.

It is distinctly understood and agreed that no claim by the **Consultant** for additional work, as identified in Article 9 hereof, or changes or revisions in work, as identified in Article 10 hereof, shall be made by the **Consultant** until full execution of the **Supplemental Agreement** and authorization to proceed is granted by the **Authority**. The **Authority** reserves the right to withhold payment to the **Consultant** pending verification of satisfactory work performed by the **Consultant**.

Article 9. Additional Work. If the **Consultant** is of the opinion that any work it has been directed to perform is beyond the scope of this Agreement and constitutes extra work, the **Consultant** shall promptly notify the **Authority** in writing. In the event the **Authority** finds that such work does constitute extra work or requests that the **Consultant** provide services for extra work, the **Authority** shall so advise the **Consultant** and a written supplemental agreement will be executed between the **Authority** and the **Consultant** as provided herein. The **Consultant** shall not perform any proposed additional work or incur any additional costs prior to the execution by both the **Consultant** and the **Authority** of a supplemental agreement. Additional compensation from the **Authority** to the **Consultant** shall be paid as a negotiated lump sum fee at the **Contract Rates** specified in **EXHIBIT "D"**, attached hereto. The negotiated lump sum fee shall be incorporated into the supplemental agreement as specified in Article 8 hereof. The **Authority** shall not be liable or under any obligation to compensate the **Consultant** for work performed or costs incurred by the **Consultant** relating to additional work not directly associated with the performance of the work authorized in this Agreement or as amended through supplemental agreement.

ARTICLE 10. Changes or Revisions in Work. If the **Authority** finds it necessary to request changes to the work, and the changes are within the applications of sound engineering principles, the **Consultant** shall make such revisions if requested and directed by the **Authority**.

10.1 Preliminary Work. The **Consultant** will make, without expense to the **Authority** (unless previously approved as identified in Article 10.2 herein), such revisions of any preliminary reports or drawings as may be required to meet the needs of the **Authority** and the applications of sound engineering principles.

10.2 Previously Approved or Satisfactorily Completed Work. If the **Authority** finds it necessary to request the **Consultant** to make changes to work previously approved by the **Authority** or work satisfactorily completed for which the **Authority** approves or, after a definite plan has been approved by the **Authority**, if a decision is subsequently made by the **Authority**, which for proper execution involves extra services and expenses for changes in or additions to the drawings, specifications or other documents, this will be considered as additional work, and compensation from the **Authority** to the **Consultant** will be in accordance with Article 9 hereof.

10.3 Project Delays. If the **Consultant** is required to perform additional work due to delays by the imposition of causes not within the **Consultant's** control, such as by the re-advertisement of bids or by the delinquency or insolvency of contractors, such work associated with these delays approved by the **Authority** shall be considered additional work, and the **Consultant** shall be compensated by the **Authority** for such extra services and expense in accordance with Article 9 hereof.

ARTICLE 11. Ownership and Release of Documents.

11.1 Ownership of Documents. Original drawings and specifications are the property of the **Consultant**; however, the **Project** is the property of the **Authority**, and the **Consultant** may not use the drawings and specifications thereof for any purpose not relating to the **Project** without the **Authority's** consent. The **Authority** shall be furnished with such reproductions of drawings and specifications as the **Authority** may reasonably require. Upon completion of the work or any earlier termination of this Agreement under Article 3.4 hereof, the **Consultant** will revise drawings to reflect changes made during construction and will promptly furnish the **Authority** with one complete set of reproducible record prints. Prints shall be furnished by the **Consultant**, as an additional service, at any other time requested by **Authority**. All such reproductions shall be the property of the **Authority** who may use them without the **Consultant's** permission for any proper purpose relating to the **Project**, including, but not limited to, additions to or completion of the **Project**. Any additions or revisions by the **Authority** to a drawing signed, sealed, and dated by a registered professional engineer, shall be


made in accordance with the Texas Engineering Practice Act and the Rules of the State Board of Registration for Professional Engineers.

All documents furnished to the **Consultant** by the **Authority** shall be delivered to the **Authority** upon completion or termination of this Agreement. The **Consultant**, at the **Consultant's** own expense, may retain copies of such documents or any other data under this Agreement.

11.2 Release of Documents or Information. Release of information to the public or others regarding the **Project** will be in accordance with the Texas Public Information Act.

ARTICLE 12. Discounts, Rebates, Refunds. In connection with procurement services rendered by the **Consultant**, if procurement services are required of the **Consultant** hereunder, all discounts, rebates and refunds shall accrue to the **Authority**. For some purchases, the **Consultant** may deem that payment within the discount period is not safe; and/or inspection, guarantees, or other considerations may dictate delay. In such cases, the **Consultant** shall promptly notify the **Authority** so that a course of action may be mutually agreed upon by the **Authority** and the **Consultant**.

ARTICLE 13. Records, Accounting, Inspection. As to Special Services performed on a cost reimbursable or time and materials basis, the **Consultant** shall keep full and detailed records and accounts in a manner approved by the **Authority**. For Special Services performed on a cost reimbursable or time and materials basis, **Consultant** shall afford the **Authority's** authorized personnel and independent auditors, if any, full access to the work performed by the **Consultant** regarding the **Project** and to all of the **Consultant's** books, records, correspondence, instructions, drawings, receipts, vouchers and other documents relating to such cost reimbursable or time and materials work under this Agreement, and the **Consultant** shall preserve all such records for three (3) years after final payment. The **Consultant** shall deliver to the **Authority** upon completion of such work, a statement of the cost of such cost reimbursable or time and materials work detailed according to the accounting procedures of the **Authority**. **Consultant** shall be entitled to exclude from any such



inspection or audit any accounting information relating to the composition of fixed or unit prices and established rates for test equipment, computer and reprographics.

ARTICLE 14. Subcontracting and Assignment. The **Consultant** shall bind every subconsultant by written subcontract to observe all the terms of this Agreement to the extent that they may be applicable to such subconsultants.

The **Consultant**, and the **Authority**, do hereby bind themselves, their successors, executors, administrators and assigns to each other party of this agreement and to the successors, executors, administrators, and assigns of such other party in respect to all covenants of this contract. The **Consultant** shall not assign, subcontract or transfer its interest in this contract without the prior written consent of the **Authority**.

ARTICLE 15. Patents. The **Consultant** shall indemnify and save the **Authority** harmless from all liability for alleged or actual infringement of any patent resulting from the use of apparatus or equipment furnished or designed by the **Consultant** or from the use of any process designed by the **Consultant** or effected by said apparatus or equipment, and the **Consultant** shall indemnify and save the **Authority** harmless from and against all costs, legal fees, expenses and liabilities incurred in or about any claim of or action for such infringement; provided, however, that the **Authority** shall promptly transmit to the **Consultant** all papers served on the **Authority** in any suit involving such claim of infringement, and provided further, that the **Authority** permits the **Consultant** to have entire charge and control of the defense of any such suit. If because of actual infringement the use of such apparatus, equipment, or process is enjoined, the **Consultant** shall refund the purchase price thereof in proportion to the length of service uncompleted, the life of such apparatus or equipment being assumed as five years. The **Consultant** hereby grants to the **Authority** a non-exclusive, royalty-free license under patents now or hereafter owned by the **Consultant** covering any machines, apparatus, processes, articles, or products included in the **Consultant's** work hereunder.

7/2/0

ARTICLE 16. Confidential Information, Inventions and Other Restrictions.

16.1 Confidential Information. The **Consultant** shall not use in any way, commercial or otherwise, except to the extent required by the proper performance of this Agreement; and shall hold in confidence and not disclose to any person, for any reason or at any time, any information relating to the secret processes, products, compositions, machinery, apparatus or trade secrets of the **Authority**, or any other confidential information given to the **Consultant** by any of the **Authority's** commissioners, elected officials, employees, or representatives or acquired by the **Consultant** during the term of or as a result of this Agreement. Any information not generally available to the public shall be considered secret and confidential for the foregoing purposes; provided, however, that any technical information which was lawfully in the **Consultant's** possession prior to such disclosure to the **Consultant** by the **Authority** or which is or shall lawfully be published or become part of general knowledge from sources other than the **Consultant** or which otherwise shall lawfully become available to the **Consultant** from a source other than the **Authority**, shall not be subject to these provisions. All the foregoing stipulations shall apply to such information and work hereunder as well as to any information and ideas originated or developed by the **Consultant** in performing such work. Such information may, of course, be disclosed to the proper officials or employees of the **Authority** if necessary to perform the work hereunder. The **Consultant** shall, however, inform each of its employees who receive such information of these restrictions and the **Consultant** shall take all reasonable precautions and exert all reasonable efforts to assure conformance with such restrictions by all of its officers, employees, and agents, obtaining from them if necessary, agreements satisfactory to the **Authority**, effectuating the purposes of this Article.

16.2 Inventions. The **Consultant** shall communicate to the **Authority** at once, and require the **Consultant's** employees assigned to this **Project** to communicate to the **Authority** all inventions and improvements which any of the **Consultant's** employees, either alone or in conjunction with any of the **Authority's** employees may conceive, make or discover during the course of or as a result of work on this **Project** under this or any ensuing agreement with the **Authority** that relates to the processes, products,

compositions, machinery or plants of the **Authority**, or relating in any way to any of the operations in which the **Authority** has been or is engaged at the time, and such inventions and improvements shall become the sole, exclusive property of the **Authority** without any obligation on its part to make any payment therefor in addition to any sums which the **Authority** may be obligated to pay to the **Consultant** as compensation for services rendered by the **Consultant** under contract with the **Authority**. The **Consultant** shall require its employees to execute patent applications and assignments thereof to the **Authority** or its nominees, and powers of attorney relating thereto for any country the **Authority** may designate, and shall take all other actions as the **Authority** may request to maintain and protect such inventions and improvements. The **Authority** shall pay all costs or charges incurred in protecting such inventions and improvements if the **Authority** desires to protect them. Before assigning any of the **Consultant's** employees to work under any contract with the **Authority** concerning this **Project**, the **Consultant** shall obtain from them agreements satisfactory to **Authority** complying in all respects with the terms and provisions of this Article.

16.3 The rights and obligations set forth in Article 16 shall survive the performance of this Agreement, or any termination, discharge or cancellation thereof.

ARTICLE 17. Consultant's Seal, Responsibility and Warranties.

17.1 **Consultant's Seal.** The **Consultant** shall assign a responsible engineer or engineers licensed to practice in the State of Texas, who shall sign, seal and date all appropriate engineering submissions to the **Authority** in accordance with the Texas Engineering Practice Act and the Rules of the State Board of Registration for Professional Engineers.

17.2 Warranties.

(a) The **Consultant** warrants that engineering design work performed by the **Consultant** hereunder shall be in accordance with sound engineering design practices and in conformance with applicable code and standards established for such work.



(b) Notwithstanding anything to the contrary contained in this Agreement, the **Authority** and the **Consultant** agree and acknowledge that the **Authority** is entering into this Agreement in reliance on the **Consultant's** experience and abilities with respect to performing the **Consultant's** services hereunder. The **Consultant** accepts the relationship of trust and confidence established between it and the **Authority** by this Agreement. The **Consultant** covenants with the **Authority** to use the **Consultant's** best efforts, skill, judgment and abilities to design the **Project** and to further the interests of the **Authority** in accordance with the **Authority's** requirements and procedures, in accordance with all professional standards, and in compliance with all applicable national, federal, state, county and municipal laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction. The **Consultant** represents, covenants and agrees that there are no obligations, commitments or impediments of any kind that will limit or prevent performance of the **Consultant's** services.

(c) The **Consultant** represents, covenants and agrees that all of **Consultant's** services to be furnished by the **Consultant** under or pursuant to this Agreement from the inception of the Agreement until the **Project** has been fully completed, shall be of the standard and quality which prevail among environmental professionals of similar experience, knowledge, skill and ability engaged in environmental work throughout Texas under the same or similar circumstances involving a project such as the **Project**.

(d) In connection with the **Consultant's** performance of procurement services hereunder, if any, the **Consultant** shall use its best efforts to obtain from all vendors of equipment and materials, fullest possible warranties against defective materials and workmanship for the benefit the **Authority**.

ARTICLE 18. Consultant's Resources. The **Consultant** shall furnish and maintain, at the **Consultant's** own expense, office space for the performance of all services, skilled and sufficient personnel, as well as adequate and sufficient equipment to perform the services as required under this Agreement.

18.1 Project Manager. The **Consultant** shall provide a manager (**Project Manager**) for the **Project** that is an environmental professional. The **Project Manager** shall have such knowledge and experience as will

enable the **Project Manager** to perform the duties required for the services under this Agreement. The **Consultant** may not change the **Project Manager** during the course of the **Project** without prior consent of the **Authority**. If, due to situations beyond the control of the **Consultant**, the **Consultant** must change the **Project Manager** prior to the completion and acceptance of the **Project**, the **Consultant** will submit a request to change the **Project Manager** to the **Authority** for approval.

18.2 Employees of the Consultant. All employees of the **Consultant** shall have such knowledge and experience as will enable them to perform the duties assigned to them and required for the services under this Agreement. Any employee of the **Consultant** who, in the opinion of the **Authority**, is incompetent, or whose conduct becomes detrimental to the work required under this Agreement, shall immediately be removed from association with the **Project** when so instructed by the **Authority**. The **Consultant** certifies that the **Consultant** presently has employed sufficient and qualified personnel, and will maintain sufficient and qualified personnel for performance of the services under this Agreement.

18.3 Documents/Information Exchange. The purpose of this Article is to define the required automated resources, format for graphics files, and information exchange pertaining to the **Project**. Recognizing that there will be several members of the **Project Team** participating in the development of the **Project**, and taking into consideration that the **Authority** has a significant investment in the development of the **Project**, there is a need for the **Consultant** to provide consistency in document development for information exchange. Consistency in document development for information exchange and production will help facilitate an economically efficient **Project**. Therefore, the **Consultant** shall provide the **Authority** with documents and information in accordance with the special requirements outlined in **EXHIBIT "G"- Computer Documents and Information Exchange**, attached hereto and made a part of this Agreement.

ARTICLE 19. Indemnification. To the fullest extent permitted by applicable law, the **Consultant** and its agents, partners, subcontractors, and consultants (collectively "**Indemnitors**") shall and do agree to indemnify, protect, defend and hold harmless the **Authority**, the **Authority's** respective directors, elected

officials, employees and agents (collectively "**Indemnitees**") from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses, including attorney fees, of any nature, kind or description (collectively "**Liabilities**") of any person or entity whomsoever arising out of, caused by or resulting from the performance of the **Consultant's** services through activities of the **Consultant**, its agents, partners, subcontractors and/or consultants performed under this Agreement, and which are caused by or result from error, omission, or negligent act of the **Consultant** or of any person employed or contracted by the **Consultant** provided that any such **Liabilities** (1) are attributable to bodily injury, personal injury, sickness, disease or death of any person, or to the injury to or destruction of tangible personal property including the loss of use and consequential damages resulting therefrom and (2) are caused in whole or in part by any negligent act or omission of the **Consultant**, anyone directly or indirectly employed by the **Consultant** or anyone for whose acts the **Consultant** may be legally liable. The **Consultant** shall also save harmless the **Authority** from any and all expense, including, but not limited to, attorney fees which may be incurred by the **Authority** in litigation or otherwise resisting said claim or liabilities which may be imposed on the **Authority** as a result of such activities by the **Consultant**, its agents, partners, subcontractors and/or consultants. In this connection, it is agreed and understood that the **Consultant** shall not be responsible for any portion of the liability proximately caused by the **Authority's** negligence.

ARTICLE 20. Joint and Several Liability. In the event more than one of the **Indemnitors** are connected with an accident or occurrence covered by the indemnification in Article 19 hereof, then each of such **Indemnitors** shall be jointly and severally responsible to the **Indemnitees** for indemnification and the ultimate responsibility among such **Indemnitors** for the loss and expense of any such indemnification shall be settled by separate proceedings and without jeopardy to any **Indemnitee**. The provisions of this Article shall not be construed to eliminate or reduce any other indemnification or right which the **Authority** or any of the **Indemnitees** has by law.

WLB

ARTICLE 21. Insurance. The **Consultant** shall obtain and maintain insurance in the minimum limits of liability for each of the types of insurance coverage identified as follows:

- (1) Workers' Compensation, endorsed with a waiver of subrogation in favor of the **Authority** in limits of liability not less than the benefits allowed under the Texas Workers' Compensation Law ("Statutory Texas").
- (2) Commercial General Liability, endorsed with the **Authority** as an additional insured to the extent of the liabilities assumed by Engineer and endorsed with a waiver of subrogation in favor of the **Authority**, in limits of liability not less than two million dollars (\$2,000,000) combined single limit each occurrence and in the aggregate for bodily injury and property damage.
- (3) Professional Liability in limits of not less than two million dollars (\$2,000,000) on a claims-made basis.
- (4) Texas Business Automobile Policy, endorsed with the **Authority** as an additional insured and endorsed with a waiver of subrogation in favor of the **Authority**, in limits of liability not less than two hundred fifty thousand dollars (\$250,000) each person for bodily injury, five hundred thousand dollars (\$500,000) each occurrence for bodily injury, and one hundred thousand dollars (\$100,000) each occurrence for property damage.

The **Consultant** covenants and agrees to maintain an insurance policy in the minimum limits of liability for each of the types of insurance coverage identified above. The **Consultant** shall furnish the **Authority** with a certificate of insurance showing the said policy to be in full force and effect during the period of service, identified in Article 3 hereto, for this Agreement. The **Consultant** will be considered in breach of contract should the **Consultant** fail to maintain an insurance policy in the minimum limits of liability and requirements identified above while performing services for and under this Agreement, and will be subject to default and termination of the Agreement as outlined in Article 3.4 hereto. Additionally, the **Consultant** covenants and

DSK

agrees to use its best efforts to maintain an insurance policy in the minimum limits of liability and requirements identified above until one year following the date of the acceptance of the **Project** by the **Authority**.

The insurance limits listed in this Article are established as contractual requirements and are not to be considered indicative of the ultimate amounts and types of insurance that Engineer maintains. Any additional insurance that Engineer maintains for its own purposes will not apply to additional insured or subrogation requirements nor cover Company, an Affiliate or User for matters for which Engineer does not provide defense or indemnity as reflected in Article 19.

ARTICLE 22. Compliance with Laws. The **Consultant** 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 Agreement, including, without limitation, worker's compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the **Consultant** shall furnish the **Authority** with satisfactory proof of its compliance therewith.

ARTICLE 23. Noncollusion. The **Consultant** warrants that the **Consultant** has not employed or retained any company or persons, other than a bona fide employee working solely for the **Consultant**, to solicit or secure this Agreement, and that the **Consultant** has not paid or agreed to pay any company, engineer or any other person or entity any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or execution of this Agreement. For breach or violation of this warranty, the **Authority** shall have the right to annul this Agreement without liability or, in the **Authority's** discretion, to deduct from the *Basic Services Fee* and/or *Special Services Fee*, as identified in Articles 5.1, and 5.2, hereto and respectively, or otherwise recover, the full amount of each fee, commission, percentage, brokerage fee, gift or contingent fee.

DRB

ARTICLE 24. Gratuities. The **Owner** mandates that the **Engineer** and employees of the **Owner** conduct themselves in accordance with the applicable Cameron County ethics requirements. Failure on the part of the **Engineer** to adhere to this provision may result in the termination of this Agreement.

ARTICLE 25. Payment of Franchise Tax. The **Consultant** hereby certifies that the **Consultant** is not delinquent in Texas franchise tax payments, or that the **Consultant** is exempt from, or not subject to, such a tax. A false statement concerning corporation's franchise tax status shall constitute grounds for termination of the Agreement at the sole option of the **Authority**.

ARTICLE 26. Disputes. The **Consultant** shall be responsible for the settlement of all contractual and administrative issues arising out of any procurement made by the **Consultant** in support of the services under this Agreement.

ARTICLE 27. Severability. In the event any one or more of the provisions contained in this Agreement 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 Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

ARTICLE 28. Notices. All notices to either party by the other required under this Agreement shall be personally delivered or mailed to such party at the following respective addresses:

AUTHORITY: *Cameron County Regional Mobility Authority*

1100 East Monroe

Brownsville, TX 78521

CONSULTANT: *S&B Infrastructure, Ltd.*

5408 North 10th Street

McAllen, Texas 78504

The address may be changed by either party by written notice, and notice so mailed shall be effective upon mailing.

MEB

ARTICLE 29. Miscellaneous Provisions.

- (a) This Agreement constitutes the entire Agreement between the **Consultant** and the **Authority** relating to the work herein described, and supersedes any prior understanding or written or oral contracts between the parties respecting the subject matter defined herein. There are no previous or contemporary representations or warranties of the **Authority** or the **Consultant** not set forth herein.
- (b) Except as specifically provided herein, no modification, waiver, termination, rescission, discharge, or cancellation of this Agreement or of any terms thereof shall be binding on the **Authority** unless in writing and executed by an officer or employee of the **Authority** specifically authorized to do so.
- (c) No waiver of any provision of or a default under this Agreement shall affect the right of the **Authority** thereafter to enforce said provision or to exercise any right or remedy in the event of any other default, whether or not similar.
- (d) No modification, waiver, termination, discharge or cancellation of this Agreement or of any terms thereof shall impair the **Authority's** rights with respect to any liabilities, whether or not liquidated, of the **Consultant** to the **Authority** theretofore accrued.
- (e) All rights and remedies of the **Authority** specified in this Agreement are in addition to the **Authority's** other rights and remedies.
- (f) The **Consultant** shall remain an independent contractor and shall have no power, nor shall the **Consultant** represent that the **Consultant** has any power, to bind the **Authority** or to assume or to create any obligation express or implied on behalf of the **Authority** except as specifically authorized in advance by the **Authority**.
- (g) The Agreement shall be construed under the laws of the State of Texas and is performable in Cameron County, Texas.
- (h) This Agreement may only be amended by a written document executed by the **Authority** and the **Consultant** as provided by Article 8 herein.



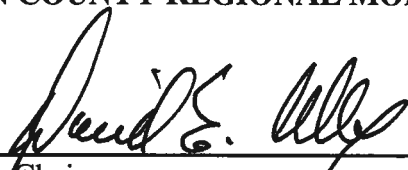
ARTICLE 30. Signatory Warranty. The undersigned signatory or signatories for the **Consultant** hereby represent and warrant that the signatory is an officer of the organization for which he or she has executed this Agreement, and that he or she has full and complete authority to enter into this Agreement on behalf of the **Consultant**. The above-stated representations and warranties are made for the purpose of inducing the **Authority** to enter into this Agreement.

IN WITNESS WHEREOF, the **Consultant** and the **Authority** have caused this **Agreement for Professional Services** to be effective as of the **1st** day of November 2011.

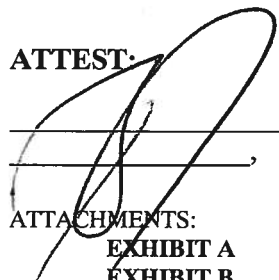
CONSULTANT:
S&B INFRASTRUCTURE, LTD.

BY: 
Daniel O. Rios, PE, Senior Vice-President

AUTHORITY:
CAMERON COUNTY REGIONAL MOBILITY AUTHORITY

BY: 
David Allex, Chairman

ATTEST:



_____,

ATTACHMENTS:

EXHIBIT A	-Scope of Services to be Provided by the Authority
EXHIBIT B	-Scope of Services to be Provided by the Consultant
EXHIBIT C	-Schedule of Work
EXHIBIT D	-Contract Rates
EXHIBIT E	-Work Authorization Form
EXHIBIT F	-Supplemental Agreement Form
EXHIBIT G	-Computer Graphics Files

**V. CONSIDERATION AND APPROVAL OF AGREEMENT
BETWEEN THE CAMERON COUNTY REGIONAL
MOBILITY AUTHORITY AND TEDSI INFRASTRUCTURE
FOR THE PORT ISABEL PORT ACCESS ROAD PROJECT**

**STANDARD FORM OF AGREEMENT
BETWEEN
PUBLIC AGENCY AND TEDSI
FOR
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT made as of 3rd day of November, 2011, between CAMERON COUNTY REGIONAL MOBILITY AUTHORITY (PUBLIC AGENCY) and TEDSI INFRASTRUCTURE GROUP (ENGINEER).

The professional services which PUBLIC AGENCY has employed ENGINEER to perform under this Agreement between PUBLIC AGENCY and ENGINEER are for the Port Isabel Port Access Road (PROEJCT).

The PUBLIC AGENCY agrees to employ the ENGINEER and the ENGINEER agrees to perform Engineering services in connection with this Agreement and as stated in Attachment B--"Basic Services of ENGINEER" Work will be authorized under a Work Authorization format under Attachment D "Work Authorization".

PUBLIC AGENCY and ENGINEER agree as set forth below.

ENGINEER shall perform services in accordance with the terms and conditions of this Agreement as PUBLIC AGENCY's independent ENGINEER, shall be responsible for the means and methods used in performing services under this Agreement and is not a joint-venture with PUBLIC AGENCY. PUBLIC AGENCY shall be the general administrator and coordinator of ENGINEER's services and shall facilitate the exchange of information among the independent professional associates and consultants employed by ENGINEER as necessary for the coordination of their services.

PUBLIC AGENCY and ENGINEER hereby agree as set forth below:

SECTION 1 - BASIC SERVICES OF ENGINEER

1.1 As this Agreement is of a Work Authorization format, ENGINEER shall provide PUBLIC AGENCY the basic consulting services described in detail in the scope of work for each work authorization. Basic Services will be paid for by PUBLIC AGENCY at the rates indicated in Attachment C "Fee Schedule" and as indicated in each Work Authorization, Attachment D hereof. PUBLIC AGENCY shall prepare and issue work authorizations to authorize the ENGINEER to perform one or more Project(s). Each work authorization shall include a description of the work to be performed, including a description of the tasks and deliverables, a work schedule, and a lump sum or not-to-exceed amount fee agreed upon by PUBLIC AGENCY and the ENGINEER. The lump sum or not-to-exceed amount payable for a work authorization shall be supported by the estimated cost of each work task as described in the work authorization. The work authorization will not waive PUBLIC AGENCY's and the ENGINEER's responsibilities and obligations established in this contract. The executed work authorization(s) shall become part of this contract. The ENGINEER shall at ENGINEER's own expense obtain all data and information (other than that referred to in the work authorization) necessary for the performance of ENGINEER's services. ENGINEER is responsible to see that the documents prepared by ENGINEER

and the services ENGINEER renders hereunder conform to the applicable laws, rules, regulations, ordinances, codes, orders and special requirements of the place where the project is located.

Upon satisfactory completion of the work authorization, the ENGINEER shall submit the deliverables as specified in the executed work authorization to PUBLIC AGENCY for review and acceptance.

SECTION 2 - ADDITIONAL SERVICES OF ENGINEER

2.1 When authorized in writing by PUBLIC AGENCY and executed supplemented by ATTACHMENT E (Supplemental Agreement), ENGINEER shall provide Additional Services which are not included as part of Basic Services. The Scope of Work / Cost Proposal for additional services will be provided by ENGINEER for such services. Approved Additional Services will be compensated for by PUBLIC AGENCY as indicated in Section 5 hereof.

SECTION 3 - PUBLIC AGENCY'S RESPONSIBILITIES

PUBLIC AGENCY shall do the following in a timely manner so as not to delay the services of ENGINEER:

3.1 Provide all criteria and full information pertinent to ENGINEER's services hereunder including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all previous reports, maps, projections and other items specified in the Attachment A "PUBLIC AGENCY Scope of Work", , including all applicable design and construction standards which ENGINEER will require to be included in the Report / Design to be furnished by ENGINEER under this Agreement, if any. ENGINEER shall request from PUBLIC AGENCY such information required for performance of ENGINEER's assignment(s).

3.2 Make available to ENGINEER all materials from PUBLIC AGENCY which are relevant to the project and associated to the services to be provided by the ENGINEER and other information, interpretations and data which were prepared by PUBLIC AGENCY, or by others which ENGINEER knows are reasonably available to PUBLIC AGENCY, and which PUBLIC AGENCY and ENGINEER consider pertinent to ENGINEER's responsibilities hereunder, all of which ENGINEER may rely upon in performing services hereunder except as may be specifically provided otherwise in writing. PUBLIC AGENCY assumes responsibility for this information.

3.3 Arrange for access to and make all provisions for ENGINEER to enter upon private and public property as required for ENGINEER to perform services under this Agreement.

3.4 Consult with ENGINEER before issuing interpretations or clarifications of documents furnished by ENGINEER, and obtain written consent of ENGINEER before acting upon recommendations of Report / Designer change orders affecting This Part of the Project, and assume full responsibility for any such action taken without such consultation or consent of ENGINEER.

3.5 Prior to acceptance of any contractor or subcontractor proposed for This Part of the Project, consult with ENGINEER to determine if ENGINEER, after due investigation, has reasonable objection to any such contractor or subcontractor.

3.6 Furnish to ENGINEER a copy of bidding documents and such other construction contract data as pertain to ENGINEER's services.

3.7 Give prompt written notice to ENGINEER whenever PUBLIC AGENCY observes or otherwise becomes aware of any development that affects the scope or timing of ENGINEER's services affecting This Part of the Project.

3.8 Advise ENGINEER of the identity of other independent professional associates or consultants participating or associated in the Report / Design or administration of This Part of the Project and the scope of their services.

3.9 The information and services to be provided by PUBLIC AGENCY under this Section 3 will be without cost to ENGINEER.

3.10 Obtain all necessary agreements, permits, studies, approvals and signatures for ENGINEER's work from public and private utility companies, unless otherwise specified in ATTACHMENT A.

SECTION 4 - PERIOD OF SERVICE

4.1 Time Period.

4.1.1 This contract becomes effective when fully executed by all parties hereto and it shall terminate upon construction of the PROJECT or as follows: (1) modified by written supplemental agreement prior to the date of termination; (2) extended due to a work suspension as provided for in Section 4.2; or (3) otherwise terminated in accordance with Section 6.1. Any work performed or cost incurred before or after the contract period shall be ineligible for reimbursement. The maximum contract time is the time needed to complete all work authorizations that will be issued.

4.1.2 PUBLIC AGENCY recognizes that the services of ENGINEER and others involved in the Project are dependent upon the timely performance of PUBLIC AGENCY's services. Unless otherwise provided in ATTACHMENT D or elsewhere in the Agreement, ENGINEER shall perform such services in the same character, timing and sequence as PUBLIC AGENCY is required to perform said services under this Agreement. If such periods of time or dates are exceeded through no fault of ENGINEER, all rates, measures and amounts of compensation provided herein shall be subject to equitable adjustment and compensation to ENGINEER from the PUBLIC AGENCY for such.

4.2 Time Extensions.

4.2.1 Upon written request of the ENGINEER to the PUBLIC AGENCY, time extensions will be allowed to the extent of any delays caused by factors beyond the control of the ENGINEER or by the ENGINEER's consultants or by the PUBLIC AGENCY or other agencies with whom the work must be coordinated. These time extensions are expressly contingent upon approval thereof by the ENGINEER and the PUBLIC AGENCY.

4.3 ENGINEER's schedule of completion is contingent upon delivery of materials and information provided by PUBLIC AGENCY as specified in Section 3 as well as in ATTACHMENT D.

SECTION 5 - PAYMENTS TO ENGINEER

5.1 Method of Payment.

5.1.1 PUBLIC AGENCY shall pay ENGINEER for Basic Services rendered under Section 1 and 2 more particularly described in ATTACHMENT D in accordance with Section 5.3.

5.2 Future Adjustment.

5.2.2 If the general scope, extent or character of This Part of the Project is changed materially through no fault of ENGINEER, the amount of compensation provided for herein shall be subject to equitable adjustment upon written approval of PUBLIC AGENCY.

5.3 Time of Payment.

5.3.1 ENGINEER shall submit monthly invoices, no later than the last calendar day of each month, for services rendered. The statements will reflect charges to the project as per work tasks identified in ATTACHMENT D.

5.3.2 PUBLIC AGENCY shall pay Engineer within thirty (30) calendar days of receipt of invoice.

5.3.3 If PUBLIC AGENCY has received an acceptable statement from ENGINEER for services or expenses and if thereafter PUBLIC AGENCY fails to pay ENGINEER for the services and expenses covered by such statement within thirty days, then after said thirtieth day, (a) the amounts covered by such statement will be increased at the rate of 0.0137% per day from the date of receipt of invoice, and (b) ENGINEER may, after giving seven days' written notice to PUBLIC AGENCY, suspend services under this Agreement until payment in full of all amounts covered by ENGINEER's acceptable statements for services and expenses.

5.3.4 In the event of any termination, and if PUBLIC AGENCY has received an acceptable statement from ENGINEER, ENGINEER will be paid on the basis shown in ATTACHMENT A for all unpaid Basic Services performed to the date of termination, and for the unpaid charges of ENGINEER approved independent professionals and consultants employed by ENGINEER to render services on This Part of the Project to the date of termination. PUBLIC AGENCY shall not be obligated to pay ENGINEER any other termination expenses.

5.4 Reproductions and Information.

5.4.1 ENGINEER shall at ENGINEER's expense furnish PUBLIC AGENCY copies as stated in ATTACHMENT D of all progress reproductions and information required by PUBLIC AGENCY for performance of ENGINEER's services under this Agreement or for review of ENGINEER's services while in progress.

5.4.2 ENGINEER shall at ENGINEER's expense furnish information and progress reproductions of ENGINEER's work and that of others assigned to the Project as may be required for the orderly performance of ENGINEER's services.

SECTION 6 - GENERAL CONSIDERATIONS

6.1 Termination.

6.1.1 The obligation to provide further services under this Agreement may be terminated by ENGINEER upon thirty days' written notice to PUBLIC AGENCY in the event of substantial failure by PUBLIC AGENCY to perform in accordance with the terms hereof through no fault of ENGINEER. This Agreement may be terminated by PUBLIC AGENCY with appropriate cause upon thirty days' written notice to ENGINEER.

6.1.2 Upon Notice of Termination, the ENGINEER shall thereupon cease all work under this agreement to the extent required, and shall inform his employees to turn over to the PUBLIC AGENCY all completed work and work in progress and upon the basis expressed in this Agreement, be compensated for all work performed to the date of termination.

6.2 Reuse of Documents.

6.2.1 The ENGINEER shall furnish to the PUBLIC AGENCY, if requested, all field notes, reports, the original tracings of all drawings and plans, maps, photographs and other materials (including, if requested by the PUBLIC AGENCY, design computations, design sketches and review drawings) prepared pursuant to this contract (hereinafter collectively referred to as "documents") for delivery to the PUBLIC AGENCY. The originals of such documents shall be and remain the property of the PUBLIC AGENCY.

6.2.2 All documents prepared or furnished by ENGINEER (and ENGINEER's independent professional associates and consultants) pursuant to this Agreement are instruments of service and PUBLIC AGENCY shall retain an ownership and property interest therein. ENGINEER may make and retain copies for information and reference; however, such documents are not intended or represented to be suitable for reuse by PUBLIC AGENCY or others. Any reuse without written verification or adaptation by ENGINEER for the specific purpose intended will be at PUBLIC AGENCY's sole risk and without liability or legal exposure to ENGINEER, or to ENGINEER's independent professional associates or consultants, and PUBLIC AGENCY shall indemnify and hold harmless ENGINEER and ENGINEER's independent professional associates and consultants from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by PUBLIC AGENCY and ENGINEER.

6.3 Records.

6.3.1 Fiscal records of ENGINEER pertinent to ENGINEER's compensation and payments under this Agreement will be kept in accordance with generally accepted accounting practices.

6.3.2 ENGINEER shall maintain all records (fiscal and other) and design calculations on file in legible form. A copy of these shall be available to PUBLIC AGENCY at ENGINEER's expense within sixty (60) days' of written notice by the PUBLIC AGENCY.

6.3.3 ENGINEER's records and design calculations will be available for examination and audit if and as required by this Agreement. ENGINEER shall retain such records for not less than three (3) years after the cessation of this Agreement.

6.4 Insurance.

6.4.1 ENGINEER and any of ENGINEER'S subcontractors shall each procure and maintain insurance for protection from claims under workers' compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any and all employees or of any person other than such employees, and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom, and any other insurance prescribed by laws, rules regulations, ordinances, codes or orders, as well as insurance covering Professional Errors and Omissions. Certificates indicating that all such insurance is in effect will be provided to PUBLIC AGENCY by ENGINEER. The following insurance limits shall be provided:

- (a) Worker's Compensation and Employer's Liability Insurance as required under laws applicable to the work which shall cover all the ENGINEER's employees engaged in the work.
 - \$500,000 each accident
 - \$500,000 each employee for disease
 - \$500,000 policy limit for disease
- (b) Commercial General Liability Insurance coverage with limits not less than \$1,000,000 general aggregate and \$1,000,000 per occurrence, with coverage extended for:
 - (i) Premises-Operations Liability;
 - (ii) Contractual Liability covering the ENGINEER's indemnification obligation contained herein;
 - (iii) Personal Injury Liability extending to claims arising from employees of ENGINEER.
- (c) Automobile Liability Insurance covering all owned, hired, and non-owned automobiles used in connection with the work, with limits not less than \$1,000,000 combined single limit.
- (d) Professional Errors and Omissions Insurance, with a limit of not less than \$1,000,000.
- (e) Waiver of subrogation in favor of OWNER, except for (d).
- (f) OWNER to be named as additional insured, except for (a) & (d).

Certificates evidencing such insurance coverage shall be delivered to the PUBLIC AGENCY prior to commencement of any work under this Agreement. Such certificates shall contain a provision that coverage under such policies will not be canceled until at least thirty (30) days' prior written notice has been given to the PUBLIC AGENCY.

6.4.2 ENGINEER will also cause other independent professional associates and consultants retained by ENGINEER to procure and maintain comparable insurance coverage.

6.5 Indemnity.

6.5.1 The ENGINEER shall indemnify and hold harmless the PUBLIC AGENCY from and against liabilities, expenses and costs (including attorney's fees) incurred in connection with claim asserted against the PUBLIC AGENCY by action in court or otherwise, by reason of or in connection with any negligent act on the part of any copyright or patent rights arising out of the use or adoption of any designs or specifications furnished by the ENGINEER.

6.5.2 It is understood and agreed that the ENGINEER is not an agent of the PUBLIC AGENCY, but instead is an independent contractor with full control over all details of work undertaken by the ENGINEER.

6.5.3 ENGINEER agrees to and shall indemnify and hold harmless PUBLIC AGENCY, its directors and employees from and against claims, losses, damages, causes of action, suits and liability, including expenses of litigation, court costs and attorney's fees, for bodily injury, sickness, disease or death of any person, or for damages to any property, including consequential damages or loss of use thereof, brought or recoverable by third parties against PUBLIC AGENCY, its directors and/or employees and arising out of or resulting from any negligent act or omission by the ENGINEER in the performance of this Contract. However, ENGINEER shall not indemnify or hold harmless PUBLIC AGENCY, its officers, managers, directors,

employees and agents from any claims, demands or causes of action caused by sole negligence or misconduct by PUBLIC AGENCY.

6.5.4 Where personal injury, death, or loss of or damage to property referred to in the immediately preceding paragraph is the result of the joint negligence or misconduct of PUBLIC AGENCY and ENGINEER, then each party's duty of indemnification and responsibility for defense costs shall be in proportion to its allocable share of such joint negligence or misconduct.

6.5.5 To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of ENGINEER and ENGINEER's officers, directors, partners, employees and ENGINEER's Consultants, and any of them, to PUBLIC AGENCY and anyone claiming by, through or under PUBLIC AGENCY, for claims, losses, costs or damages whatsoever arising out of or resulting from the Project or the Agreement from any cause or causes, limited to the negligence, professional errors or omissions, strict liability or breach of contract or warranty expressed or implied of ENGINEER or ENGINEER's officers, directors, partners, employees, or ENGINEER's Consultants or any of them, shall not exceed the total compensation received by ENGINEER under this Agreement.

6.6 Controlling Law.

6.6.1 This Agreement is to be governed by the law of the principal place of business of ENGINEER.

6.7 Successors and Assigns.

6.7.1 PUBLIC AGENCY and ENGINEER each is hereby bound, and the partners, successors, executors, administrators, and legal representatives of each and to the extent permitted by paragraph 6.7.2. The assigns of PUBLIC AGENCY and ENGINEER are hereby bound, to the other party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

6.7.2 Neither PUBLIC AGENCY nor ENGINEER shall assign, sublet or transfer any rights under or interest in this Agreement (including, but without limitation, moneys that may become due or moneys that are due) without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

6.7.3 Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than PUBLIC AGENCY and ENGINEER and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of PUBLIC AGENCY and ENGINEER and not for the benefit of any other party.

6.8 Delegation of Duties.

6.8.1 ENGINEER may employ such other independent professional associates and consultants as ENGINEER may deem appropriate to assist in the performance of services hereunder.

SECTION 7 - SPECIAL PROVISIONS, ATTACHMENTS AND SCHEDULES

7.1 Special Provisions.

7.1.1 This Agreement is subject to the following special provisions.

7.2 Notice to Proceed.

7.2.1 No professional services of any nature shall be undertaken by the ENGINEER under this Agreement until a written Notice to Proceed is issued by PUBLIC AGENCY.

7.3 Coordination with the PUBLIC AGENCY.

7.3.1 The ENGINEER shall hold periodic conferences with the PUBLIC AGENCY to the end that this Part of the Project, as perfected, shall have full benefit of the ENGINEER's experience and knowledge of existing needs and facilities and be consistent with the PUBLIC AGENCY's current policies and construction standards. To implement this coordination, the PUBLIC AGENCY shall make available as necessary to the ENGINEER for use in planning this part of the Project, any information relative to the performance of this Part of the Project.

7.3.2 The PUBLIC AGENCY may require review drawings on an "as needed" or monthly basis to monitor progress of this Part of the Project.

7.4 Hold Harmless Clause.

7.4.1 The ENGINEER shall assume liability for its Professional Services and indemnify and hold harmless the PUBLIC AGENCY arising out of the negligent acts, error or omissions of the ENGINEER as follows:

- (a) The standard of care for all professional engineering and related services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession practicing under similar conditions at the same time and in the same locality.
- (b) The ENGINEER shall perform such professional services as may be necessary to accomplish the work required to be performed under this Agreement, in accordance with this Agreement and applicable PUBLIC AGENCY/ENGINEER requirements.

7.5 **Exhibit(s) and Schedules.** The following ATTACHMENT(s) is included and therefore made a part of this Agreement:

7.5.1 Attachment A: PUBLIC AGENCY's Generalized Scope of Work ".

7.5.2 Attachment B "ENGINEER's Generalized Scope of Work ".

7.5.3 Attachment C "Fee Schedule"

7.5.4 Attachment D "Work Authorization"

7.5.5 Attachment E "Supplemental Agreement"

7.4.2 This Agreement (consisting of pages 1 to 10 inclusive) together with the ATTACHMENT(s) identified above constitute the entire agreement between PUBLIC AGENCY and ENGINEER and supersede all prior written or oral understandings. This Agreement and said ATTACHMENTS (s) and Schedules may

only be amended, supplemented, modified or canceled by a duly executed written Supplemental Agreement (ATTACHMENT E).

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

Cameron County Regional Mobility Authority
PUBLIC AGENCY

Paul E. Allip
Signature

November 3, 2011
Date

RMA Chairman
Title

Address for Giving Notices:

1100 E. Monroe

Brownsville, Texas 78521

TEDSI Infrastructure Group, Inc.
ENGINEER

[Signature]
Signature

December 6, 2011
Date

Vice President
Title

Address for Giving Notices:

1201 E. Expressway 83

Mission, Texas 78572

VI. APPROVAL OF CLAIMS



Cameron County Regional Mobility Authority
Daily Check Register 11/03/2011

FY 2012

Page 1

<u>Check No.</u>	<u>Vendor Name</u>	<u>Fund</u>	<u>Dept.</u>	<u>Purpose</u>	<u>PO#</u>	<u>Amount</u>
00001079	GREEN MOUNTAIN ENERGY COMPANY	109	1121	1895 FM 511 UNIT 1		246.93
				Check No. 00001079	Total	246.93
00001080	MCCARTHY BUILDING COMPANY	110	1116	CONTRACT BETWEEN CAMERON	P160836	1,199,322.47
				Check No. 00001080	Total	1,199,322.47
00001081	SEPULVEDA,PETE	110	110	REIMB SEC SERV 10/25 J.REYNA		120.00
				Check No. 00001081	Total	120.00
00001082	WOOD,JOHN	110	110	TRVL REIMB/WOOD AUS 10/26-27		436.40
				Check No. 00001082	Total	436.40

Print Date: 11/03/2011 **Print By:** HENDRICK

Total for All Checks: 1,200,125.80