

PROFESSIONAL SERVICES AGREEMENT

WHEREAS, pursuant to a qualifications-based selections process consistent with provisions of federal regulations (23 C.F.R. § 172), the Professional Services Procurement Act (Tex. Gov't Code § 2254.001. et seq.), and the Authority's "Policies and Procedures Governing Procurements of Goods and Services," the Cameron County Regional Mobility Authority (the "Authority") selected _____ (the "Engineer") to provide professional engineering services for the Authority; and,

WHEREAS, the Authority needs the Engineer to provide professional engineering services for the Dana Road Project (the "Project"); and,

WHEREAS, the Project is funded entirely by local funds pursuant to interlocal agreements between the Authority and Cameron County, Texas, and between the Authority and the City of Brownsville, Texas; and,

WHEREAS, the Engineer agrees to provide professional engineering services for the Project in accordance with this Agreement; and,

WHEREAS, this Professional Services Agreement (the "Agreement") between the Authority and the Engineer is hereby entered into and agreed to as of the __ day of _____ 2020 (the "Effective Date");

NOW, THEREFORE, the parties agree, as follows:

1.0 Definitions.

1.1 Authority. Any reference herein to the "Authority" shall be interpreted to mean the same as the Cameron County Regional Mobility Authority.

1.2 Engineer. Any reference herein to the "Engineer" shall be interpreted to mean the same as _____.

1.3 The Agreement. The Agreement is comprised of the Agreement, the Exhibits listed and referenced herein, and all formal changes to any of those documents by addendum or other agreement signed by the Authority and the Engineer. This Agreement is intended to be an integral whole and shall be interpreted as internally consistent. Services required by any page, part, or portion of the Agreement shall be deemed to be required as if called for in the whole Agreement and no claim for extra Services shall be based upon the fact that the description of the Services in question is incomplete.

1.4 Services. Any reference herein to the "Services" shall be interpreted to mean the same as those certain professional engineering services for the Project described on **Exhibit 1** attached hereto and incorporated by reference.

- 1.5 Project.** Any reference herein to the “Project” shall be interpreted to mean the same as the Dana Road Project.
- 1.6 Provision of All Things Required.** Anything that may be required, implied or inferred by the Agreement, shall be provided by the Engineer for the Compensation.
- 1.7 Privity only with the Engineer.** Nothing contained in this Agreement shall create, nor be interpreted to create, privity or any other relationship whatsoever between the Authority and any person except the Engineer and the Engineer's permitted successors and assigns.
- 1.8 “Include” Intended to be Encompassing.** “Include”, “includes”, or “including”, as used in the Agreement, shall be deemed in all cases to be followed by the phrase, “without limitation.”
- 1.9 Use of Singular and Plural.** Words or terms used as nouns in the Agreement shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.
- 1.10 Definition of Material Breaches not Exhaustive.** The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of the Agreement shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of the Agreement.
- 2.0 Engineer’s Representations.** In order to induce the Authority to execute this Agreement and recognizing that the Authority is relying thereon, the Engineer, by executing this Agreement, and without superseding, limiting, or restricting any other representation or warranty set forth elsewhere in this Agreement, or implied by operation of law, makes the following express representations to the Authority:
- 2.1** The Engineer is fully qualified to perform the Services.
- 2.2** The Engineer shall maintain all necessary licenses or other authorizations necessary for the Services until the Engineer’s duties under this Agreement have been fully satisfied.
- 2.3** The Engineer has the expertise, experience, and knowledge as well as the necessary team, personnel, and financial capability to perform the Services in accordance with the terms of this Agreement.
- 2.4** Prior to the execution of this Agreement, the Engineer has become familiar with the Project and the Services required by this Agreement as well as has reviewed the Authority’s concerns, if any, and the Engineer accepts the foregoing in entering into this Agreement.

2.5 The Engineer assumes full responsibility to the Authority for the improper acts and omissions of its subcontractors, subconsultants, or others employed or retained by Engineer in connection with the Services.

3.0 Compensation.

3.1 The total not-to-exceed (NTE) value of the Agreement is the amount of \$ _____ to be paid in accordance with the provisions herein. The Engineer exceeds the NTE amount at its own risk. The Authority reserves the right to amend this amount (increase/decrease) at any time during the Agreement when the Authority determines, in its sole discretion, that doing so is in its best interests. The foregoing right includes the Authority requiring the Engineer to modify the Services by executing an amendment or other supplemental agreement.

3.2 Notwithstanding any other provision of this Agreement, the Authority shall only be obligated to issue payment under this Agreement to the extent local funds are available.

4.0 Authority's Obligations. Pursuant to the Agreement, the Authority agrees to perform any obligations of the Authority as detailed herein.

4.1 The Authority shall review any documents submitted by the Engineer requiring the Authority's decision, and shall render any required decisions pertaining thereto.

4.2 The Authority shall provide the Engineer with such information, existing and reasonably available, or necessary to the Engineer's performance of the Agreement as the Engineer may request.

4.3 The Authority's agreement not to exercise, or its delay or failure to exercise, any right under the Agreement or to require strict compliance with any obligation of the Engineer under the Agreement shall not be a waiver of the right to exercise such right or to insist on such compliance at any other time or on any other occasion.

4.4 **Right to Audit.** The Authority shall be entitled to rely upon the accuracy and completeness of the information furnished by the Engineer in connection with its request for payment. The Authority shall have the right, however, upon demand, to make a detailed examination, audit, or inspection of the Engineer's books and records for the purpose of verifying the accuracy and completeness of such information. In the event the Authority determines that the Engineer has been paid any sums not due, then such sums shall be reimbursed by the Engineer to the Authority within two (2) Working Days of written demand by the Authority.

5.0 Additional Obligations of the Engineer.

5.1 The Engineer shall be solely responsible for providing supervision and oversight to all of the Engineer's personnel.

- 5.2 The Engineer agrees to submit a status report to the Authority at least one (1) time every ten (10) business days during the term of this Agreement in addition to any scheduling and reporting requirements under the Agreement.
- 5.3 The Engineer warrants and represents that it will assign only qualified personnel to perform the Services.
- 5.4 All Services provided by the Engineer shall be done in accordance with applicable all Federal, State and local laws, regulations, codes, and ordinances.
- 5.5 The Engineer shall provide insurance for the Services performed for this Project consistent with the insurance requirements described in **Exhibit 2** or as otherwise required by the Authority.
- 5.6 The Engineer, in connection with performing its services hereunder, will have access to or may be provided certain confidential information concerning the Authority and agrees that any information concerning the finances, accounting practices, business, client, client lists, property information, client data, records of the Authority or any other information which a reasonable person could conclude that should remain confidential (collectively “Confidential Information”), will not be disclosed to any party and without limitation, any employee of the Authority or any client or potential client of the Authority at any time, except for the Engineer’s legal counsel, accounts, or financial advisors, who will also hold such Confidential Information in confidence. The Engineer acknowledges that the information is being provided with the sole understanding that all Confidential Information will remain confidential and will be held in the strictest confidence. The Engineer further acknowledges that any disclosure of the Confidential Information, whether intentional or inadvertent, may harm the Authority. The Authority will have the right to enforce the Agreement by specific performance, as well as hold the Engineer liable for any damages caused by any disclosure of any Confidential Information, whether intentional or inadvertent. The Engineer agrees that it has received valuable consideration for the entering into of the Agreement and agrees to be bound all of its terms and conditions. The Agreement will be binding on the Engineer and any attorney, accountant, financial advisor, or other consultant who also may be provided Confidential Information.
- 5.7 The Engineer shall comply with any other requirements of the Request for Qualifications applicable to this Agreement.

6.0 Notices, Invoices, and Reports.

6.1 All notices, invoices, or reports shall be delivered to the Authority and to the Engineer, as follows:

Cameron County Regional Mobility Authority
Attn: Pete Sepulveda, Executive Director
3461 Carmen Avenue
Rancho Viejo, Texas 78575

Engineer

7.0 Additional Considerations.

7.1 Severability. The invalidity of any provision of the Agreement, as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision herein.

7.2 Applicable Laws. THIS AGREEMENT SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. VENUE FOR ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL BE EXCLUSIVELY IN THE STATE AND FEDERAL COURTS OF CAMERON COUNTY, TEXAS.

7.3 Official, Agent and Employees of the Authority Not Personally Liable. It is agreed by and between the parties hereto that in no event shall any Director, officer, employee, or agent of the Authority in any way be personally liable or responsible for any covenant or agreement herein contained, whether either expressed or implied, nor for any statement, representation or warranty made herein or in any connection with this agreement.

7.4 Subcontractors/Subconsultants. Unless otherwise authorizing in writing by the Authority, the Engineer may not use any subcontractors or subconsultants to accomplish any portion of the Services without obtaining the prior written permission of the Authority. Moreover, by signing the Agreement, the Engineer is certifying to the Authority that the Engineer shall not enter into any subcontract with a subcontractor or a subconsultant that is debarred or suspended by the Texas Department of Transportation or any federal agency. By entering this Agreement, the Authority provides its written permission for the Engineer to use the services of the subcontractors or subconsultants listed on **Exhibit 3** attached hereto and incorporated by reference. Notwithstanding the foregoing, in no way does the Authority providing written permission to the Engineer to use the services of a

subcontractor or subconsultant waive the Authority's governmental immunity or make such subcontractor or subconsultant a third party beneficiary to this Agreement.

- 7.5 Attorney's Fees.** In the event that litigation is commenced by one party hereto against the other in connection with the enforcement of any provision of this agreement, the prevailing party shall be paid by the losing party all court costs and other expenses of such litigation, including reasonable attorneys' fees. The amount so allowed as attorneys' fees shall be taxed to the losing party as costs of the suit, unless prohibited by law.
- 7.6 Independent Contractor.** The Engineer is an independent contractor. Nothing herein shall create any association, agency, partnership or joint venture between the parties hereto and neither shall have any authority to bind the other in any way.
- 7.7 Waiver of Breach.** A waiver of either party of any terms or condition of this agreement in any instance shall not be deemed or construed as a waiver of such term or condition for the future, or of any subsequent breach thereof. All remedies, rights, undertakings, obligations, and agreements contained in this agreement shall be cumulative and none of them shall be in limitation of any other remedy, right, obligation or agreement of either party.
- 7.8 Time of the Essence.** Time is of the essence under this Agreement as to each provision in which time of performance is a factor.
- 7.9 Limitation of Liability.** IN NO EVENT SHALL THE AUTHORITY BE LIABLE TO THE ENGINEER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES.
- 7.10 Indemnification.**
- 7.10.1** THE ENGINEER RELEASES THE AUTHORITY FROM AND AGREES TO INDEMNIFY, DEFEND, AND HOLD THE AUTHORITY (AND ITS OFFICERS, EMPLOYEES, AND AGENTS) HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, LOSSES, SUITS, ACTIONS, DECREES, JUDGMENTS, ATTORNEY'S FEES, COURT COSTS, AND OTHER EXPENSES OF ANY KIND OR CHARACTER FOR DEFENDING THE CLAIMS AND DEMANDS, WHICH ARE CAUSED BY, ARISE OUT OF, OR OCCUR DUE TO ANY FAILURE OF THE ENGINEER TO PERFORM THE OBLIGATIONS REQUIRED BY THE AGREEMENT AS WELL AS FEDERAL, TEXAS, OR OTHER APPLICABLE LAW, INCLUDING BUT NOT LIMITED TO CLAIMS OR DEMANDS BASED ON THE NEGLIGENCE, GROSS NEGLIGENCE, OR OTHER ACTIONS OR INACTIONS OF THE ENGINEER, OR THE ENGINEER'S AGENTS, EMPLOYEES, SUBCONTRACTORS, SUBCONSULTANTS, OR OTHER THIRD

PARTIES. THE ENGINEER HEREBY WAIVES ANY RIGHT TO DEFEND AGAINST THE ENFORCEABILITY OF THIS INDEMNIFICATION PROVISION AND EXPRESSLY AGREES THAT THIS PROVISION MEETS ALL LEGAL REQUIREMENTS AND IS LEGALLY ENFORCEABLE AGAINST THE ENGINEER.

- 7.10.2** In this connection, it is expressly agreed that the Engineer shall, at its own expense, defend the Authority, its officers, employees, and agents, against any and all claims, suits or actions which may be brought against them, or any of them, as a result of, or by reason of, or arising out of, or on account of, or in consequence of any act or failure to act of the Engineer the consequences of which the Engineer has indemnified the Authority. If the Engineer shall fail to do so, the Authority shall have the right, but not the obligation, to defend the same and to charge all direct and incidental costs of such defense to the Engineer including attorney's fees and court costs.
- 7.10.3** Any money due to the Engineer under and by virtue of the Agreement, which the Authority believes must be withheld from the Engineer to protect the Authority, may be retained by the Authority so long as it is reasonably necessary to ensure the Authority's protection; or in case no money is due, its surety may be held until all applicable claims have been settled and suitable evidence to that effect furnished to the Authority provided, however, the Engineer's payments shall not be withheld, and its surety shall be released, if the Engineer is able to demonstrate that it has adequate liability and property damage insurance to protect the Authority from any potential claims.
- 7.10.4** The Engineer shall provide that any contractual arrangement with a subcontractor or subconsultant shall be in conformance with the terms of the Agreement including the terms of this indemnity provision. The Engineer guarantees that it will promptly handle and rectify any and all claims that may be made against it or any of its subcontractors or subconsultants in connection with the Agreement.
- 7.10.5** THE ENGINEER RELEASES THE AUTHORITY FROM AND AGREES TO INDEMNIFY, DEFEND, AND HOLD THE AUTHORITY (AND ITS OFFICERS, EMPLOYEES, AND AGENTS) HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, LOSSES, SUITS, ACTIONS, DECREES, JUDGMENTS, ATTORNEY'S FEES, COURT COSTS, AND OTHER EXPENSES OF ANY KIND OR CHARACTER FOR DEFENDING THE CLAIMS AND DEMANDS BASED ON THE NEGLIGENCE, GROSS NEGLIGENCE, OR OTHER ACTIONS OR INACTIONS OF THE AUTHORITY, OR THE AUTHORITY'S AGENTS, EMPLOYEES, OR OTHER THIRD PARTIES. THE ENGINEER HEREBY WAIVES ANY RIGHT TO DEFEND AGAINST THE ENFORCEABILITY OF THIS

INDEMNIFICATION PROVISION AND EXPRESSLY AGREES THAT THIS PROVISION MEETS ALL LEGAL REQUIREMENTS AND IS LEGALLY ENFORCEABLE AGAINST THE ENGINEER.

- 7.11 Rights in Data (Ownership and Proprietary Interest).** The Authority shall have exclusive ownership of, all proprietary interest in, and the right to full and exclusive possession of all information, materials, and documents discovered or produced by the Engineer pursuant to the terms of the Agreement, including but not limited to, videos, reports, or other documents or information concerning the Agreement.
- 7.12 Assignment/Transfer.** The Engineer shall not assign or transfer any of its rights or interest under the Agreement without first obtaining the Authority's prior written consent to such assignment or transfer. Whether to provide such prior written consent shall be in all respects within the Authority's sole and absolute discretion.
- 7.13** THE ENGINEER EXPRESSLY AGREES THAT: (1) THE AUTHORITY RETAINS ITS GOVERNMENTAL IMMUNITY IN ALL RESPECTS UNDER THIS AGREEMENT; AND, (2) NO AGREEMENTS, BETWEEN THE ENGINEER AND ANY THIRD PARTY SHALL BE ENFORCEABLE AGAINST THE AUTHORITY. THE ENGINEER WARRANTS TO THE AUTHORITY THERE ARE NO THIRD PARTY BENEFICIARIES TO THIS AGREEMENT AND THAT, IN THE EVENT A THIRD PARTY ATTEMPTS TO HOLD THE AUTHORITY LIABLE FOR ANY ACTION OR INACTION OF THE ENGINEER, THAT THE ENGINEER SHALL INDEMNIFY THE AUTHORITY UNDER SECTION 7.10.
- 7.14** IN THE EVENT OF A QUESTION AS TO THE INTERPRETATION OF ANY PROVISION OF THIS AGREEMENT, THE PROVISION SHALL NOT BE CONSTRUED AGAINST THE DRAFTING PARTY. THIS INCLUDES BUT IS NOT LIMITED TO THE ENGINEER'S AGREEMENT THAT SECTION 7.10, AND ANY OTHER CLAUSE HEREIN, SHALL IN NO EVENT BE STRICTLY CONSTRUED AGAINST THE AUTHORITY.

8.0 Exhibits.

- 8.1** The following noted documents are a part of the Agreement:
- 8.1.1 Exhibit 1.** Description of Services.
- 8.1.2 Exhibit 2.** Request for Qualifications (RFQ) 2020-001. A true and correct copy of the foregoing is on file with the Authority.
- 8.1.3 Exhibit 3.** List of approved Subcontractors/Subconsultants.
- 8.2** To the extent that any provisions of this Agreement conflict with the provisions of the Exhibits, the more specific provision shall control except that, notwithstanding

the foregoing, to the extent that any provision of this Agreement conflicts with a provision of **Exhibit 1**, this Agreement shall control. In the event that any provisions of the Exhibits themselves conflict with each other, **Exhibit 1** shall control.

9.0 CERTIFICATIONS. Each party hereby acknowledges by signature below that they have reviewed the foregoing and understand and agree to abide by their respective obligations as defined herein.

ENGINEER

By: _____ **Date:** _____
Name/Title

CAMERON COUNTY REGIONAL MOBILITY AUTHORITY

By: _____ **Date:** _____
Frank Parker, Jr., Chairman

EXHIBIT 1

DESCRIPTION OF SERVICES

DRAFT

EXHIBIT 2

REQUEST FOR QUALIFICATIONS (RFQ) 2020-001

DRAFT

EXHIBIT 3

LIST OF APPROVED SUBCONTRACTORS/ SUBCONSULTANTS

DRAFT