



CENTRAL TEXAS REGIONAL
MOBILITY AUTHORITY

July 24, 2019
AGENDA ITEM #12

Award and Approve a contract for
Communications and Marketing Consultant
Services

Strategic Plan Relevance:	Regional Mobility
Department:	Communications
Contact:	Dee Anne Heath, Director of External Affairs
Associated Costs:	Not to exceed \$1,000,000 each year for two years
Funding Source:	General Fund
Action Requested:	Consider and act on draft resolution

On April 8, 2019, the Mobility Authority issued a Request for Qualifications (RFQ) from teams interested in providing communications and marketing consulting services. The current contract with Edelman expired on June 30, 2019.

Eleven firms submitted proposals on April 29, 2019. Three rounds of evaluation followed.

RFQ: A Selection Committee composed of outside public toll agency marketing directors and Mobility Authority consultants evaluated the Responses against criteria provided in the RFQ. The committee reviewed and scored the responses and made a recommendation to the Executive Director to short-list five of the responding teams.

Short-list Interview: The Selection Committee conducted interviews of the short-listed teams on June 14, 2019, and evaluated their responses to prepared questions using an interview-specific criteria.

Finalist Interview: Following this first interview, the Mobility Authority requested a finalist interview with the top three firms resulting out of the short-list interview. A Selection Committee, which included Mobility Authority staff, conducted interviews of the finalist teams on June 21 and June 27, 2019, and evaluated their responses to prepared questions using an interview-specific criteria.

Action Requested/Staff Recommendation -- Based on the three phases of evaluation, the Executive Director seeks Board approval of the recommended team as well as Board approval to finalize and execute a master contract for communications and marketing consultant services.

Backup provided: Summary of Evaluation Process Presentation; Draft Master Contract; Draft Resolution

Recommendation: After a thorough review and assessment from a selection committee, Staff recommends award and execution of a 2- year (with a potential for two one-year extensions) contract based on detailed quality and value-based criteria.

Backup Provided - Draft Resolution
Proposed Contract

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

RESOLUTION NO. 19-0XX

**APPROVING A CONTRACT FOR COMMUNICATIONS
AND MARKETING CONSULTING SERVICES**

WHEREAS, on April 8, 2019, the Mobility Authority issued a Request for Qualifications (“RFQ”) for communications and marketing consulting services; and

WHEREAS, the Mobility Authority received eleven responses to the RFQ by the April 29, 2019 deadline; and

WHEREAS, Mobility Authority staff evaluated the responses based on the criteria set forth in the RFQ and made a recommendation to the Executive Director to short-list five of the responding teams; and

WHEREAS, Mobility Authority staff conducted interviews of the short-listed teams on June 14, 2019, and evaluated their responses to prepared questions using interview-specific criteria; and

WHEREAS, in accordance with the Mobility Authority’s procurement policies and based on the evaluation of the responses to the RFQ and interview questions, the Executive Director recommends awarding a contract for communications and marketing consulting services to _____; and

WHEREAS, the Executive Director requests authorization from the Board to execute a contract for communications and marketing services with _____ in an amount not to exceed \$2,000,000 and in substantially the same form attached hereto as Exhibit A.

NOW THEREFORE, BE IT RESOLVED that the Board hereby awards a contract to provide communications and marketing services to the Mobility Authority to _____; and

BE IT FURTHER RESOLVED, that the Board authorizes the Executive Director to finalize and execute a contract for communications and marketing services with _____ in an amount not to exceed \$2,000,000 and in the form or substantially the same form as is attached hereto as Exhibit A.

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 24th day of July 2019.

Submitted and reviewed by:

Approved:

Geoffrey Petrov, General Counsel

Nikelle Meade
Vice Chair, Board of Directors

Exhibit A

**COMMUNICATION AND MARKETING SERVICES AGREEMENT
BETWEEN
THE CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY
AND**

This Communication and Marketing Services Agreement (the "Agreement") is made and entered into by and between the Central Texas Regional Mobility Authority (the "Mobility Authority"), a Texas political subdivision, and _____ (the "Consultant"), a [state and corporate structure of Consultant], to be effective as of the ____ day of _____, 2019 (the "Effective Date").

WITNESSETH:

WHEREAS, the Mobility Authority desires to obtain the services of a firm to provide communication and marketing services and advice to the Mobility Authority in support of its mission and goals; and

WHEREAS, the Mobility Authority solicited proposals from firms interested in providing communication and marketing services and the Consultant was among the respondents; and

WHEREAS, based on the representations and experience reflected in the response to the request for proposals submitted by Consultant and statements and representations made during interviews conducted as part of the procurement process, the Mobility Authority selected Consultant as the best qualified firm to provide communication and marketing services; and

WHEREAS, by Resolution No. _____, the Mobility Authority's Board of Directors ("Board of Directors") approved the selection of Consultant and authorized the Mobility Authority's Executive Director to finalize and execute a contract for communication and marketing services in an amount not to exceed \$_____.

NOW, THEREFORE, the Mobility Authority and Consultant, in consideration of the mutual covenants and agreement herein contained, do hereby agree as follows:

**ARTICLE I
RETENTION OF THE CONSULTANT**

The Mobility Authority agrees to and hereby retains Consultant as an independent contractor, in accordance with the terms and conditions of this Agreement. The Consultant will be required to complete tasks described below, at the direction of the Director of External Affairs and within the budget established by the Board of Directors.

**ARTICLE II
SCOPE OF SERVICES**

Consultant covenants and agrees to provide those services listed in the Scope of Services, as set forth in the attached Appendix A (the "Services") in a professional and complete manner in all respects. The Services shall include but are not limited to the Account Maintenance Services,

described below. The Services may be performed directly by Consultant or, subject to the agreement of the Director of External Affairs, provided by Consultant through its subcontractors and subconsultants. Consultant agrees to provide adequate staff and resources at all times throughout the term of this Agreement to provide the Services promptly and professionally as requested by the Mobility Authority. Without limiting any of its other rights under this Agreement or otherwise, the Mobility Authority may withhold payment of fees or reimbursement of expenses to Consultant for certain Services if Consultant's performance fails to comply with industry standards, is not performed by specified deadlines, or fails to meet any other provision of this Agreement regarding the Services, and the failure or noncompliance is not due to the fault of the Mobility Authority.

ARTICLE III ACCOUNT MAINTENANCE SERVICES

As part of the provision of Services, Consultant will provide a day-to-day account lead to manage the Agreement and generally support the Mobility Authority in its efforts to elevate the agency's brand, mission, and vision (the "Account Maintenance Services"). Account Maintenance Services may include but are not limited to: keeping abreast of relevant local, regional and industry news and events; advising the Mobility Authority of earned media, outreach, and/or public speaking opportunities; and maintaining familiarity with the business and industry such that meaningful recommendations can be made and opportunities to achieve agency goals are identified and acted upon swiftly.

ARTICLE IV WORK PRODUCT

1. Copyrights.

With respect to third party materials which Consultant elects to include in the work product it generates and which is intended for public dissemination, Consultant shall provide such third party materials, including the associated third party license terms and conditions governing the Mobility Authority's use thereof, to the Mobility Authority for its pre-approval. If the Mobility Authority approves such third party materials, then the Mobility Authority's use thereof shall be governed by such terms and conditions. If the Mobility Authority does not provide written approval of such third party material, the Mobility Authority and Consultant shall engage in reasonable efforts to substitute such third party materials. In the event any claims are asserted against the Mobility Authority for copyright or license violations related to the Consultant's use of third party materials, such claims will be considered a material breach of this Agreement and be subject to indemnification by Consultant pursuant to Article XII.

At the Mobility Authority's written request, Consultant shall coordinate the Mobility Authority's seeking of copyright and/or trademark registrations for the Work Product. The Mobility Authority acknowledges and agrees that (i) such registration activities shall be subject to the parties' mutual agreement on an appropriate budget to be paid by the Mobility Authority in connection therewith (i.e., separate and apart from the budget set forth under Appendix B), (ii) Consultant may use a third party law firm or other third party subcontractor, to be designated at Consultant's reasonable discretion, for the foregoing registration efforts, and (iii) the Mobility

Authority shall cooperate and provide information as needed in connection with such registration efforts.

Consultant shall not assert rights at common law or in equity or establish any claim to statutory copyright in any deliverables, material, information or products created by Consultant on the Mobility Authority's behalf or provided by or through Consultant as part of the Services hereunder (collectively, "Work Product").

The Mobility Authority shall have the right to use, reproduce, or distribute any or all Work Product without the necessity of obtaining any permission from Consultant and without any additional expense and charge (i.e., beyond the applicable compensation specified under Appendix B).

Materials or information made or obtained by Consultant on behalf of the Mobility Authority may be used by Consultant for other purposes only if approved in writing by the Mobility Authority.

The Mobility Authority will not be held liable/responsible for any copyright or intellectual property infringements or liabilities arising from Work Product provided by or through Consultant.

2. Ownership of materials and products.

In accordance with the terms of this Agreement, the Mobility Authority will retain all property rights, including publication rights, to all Work Product.

Consultant shall ensure that duplication and distribution rights for all Work Product are secured by Consultant for the Mobility Authority from all of its employees, contractors and subcontractors, and applicable third parties.

Consultant warrants that individuals or characters appearing or depicted in print, videotapes or other media have provided their written consent and have been compensated by Consultant (either directly or by and through its subconsultants) for their appearance, as appropriate.

**ARTICLE V
TERM AND TERMINATION**

This Agreement is for a term of two (2) years from the Effective Date, terminating on the _____ day of _____, 2021. By mutual written agreement of the Mobility Authority and Consultant, this Agreement may be extended for up to two (2) additional one-year periods.

Either party may terminate this Agreement for any reason, with or without cause, and thereby sever the independent contractor relationship between Consultant and the Mobility Authority, by providing a minimum of sixty (60) days prior written notice of its election to terminate to the other party. However, any termination for cause by Mobility Authority is effective immediately upon the delivery of notice of termination to Consultant. The Mobility Authority may terminate this Agreement for cause if Consultant fails to satisfactorily perform or adhere to any provisions of this Agreement, breaches the confidentiality requirements, or otherwise engages in

activity that, in the Mobility Authority's sole judgment, would subject the Mobility Authority in any manner to damages, liability, or damage to the Mobility Authority's reputation. Upon any termination, the Mobility Authority shall pay any undisputed fees and reimbursable expenses, including non-cancelable expenses, approved by the Mobility Authority in accordance with the terms of this Agreement which are incurred before the termination date provided that Consultant has made reasonable efforts to mitigate all costs or other damages associated with the termination.

ARTICLE VI COMPENSATION

1. **Compensation.** The Board of Directors has established a not to exceed amount for this Agreement as provided in Appendix B. The Mobility Authority agrees to pay and Consultant agrees to accept the compensation set forth in the attached Appendix B. This compensation, including a monthly baseline retainer, as described below, and additional costs approved under a Work Authorization, constitutes full payment for all services, liaison, products, materials, and equipment required to provide and deliver the Services, including, but not limited to, materials, training, equipment used, overhead, and administrative expenses. No compensation shall be paid for work performed that is not authorized as the Retainer under this Agreement or by the Director of External Affairs in a written Work Authorization.

All payments to be made by the Mobility Authority to Consultant pursuant to this Agreement are inclusive of federal, state, or other taxes, if any, however designated, levied, or based. The Authority acknowledges and represents that it is a tax-exempt entity under Sections 151.309, et seq., of the Texas Tax Code.

2. **Retainer.** The Mobility Authority agrees to pay and Consultant agrees to accept a monthly baseline retainer (the "Retainer") in an amount set forth in Appendix B to compensate Consultant for the Account Maintenance Services provided by the day-to-day account lead. The Retainer is limited to labor costs for the day-to-day account lead and does not include hard costs, special projects, or account management from additional personnel. Other Services shall be subject to a signed Work Authorization that has been issued by the Mobility Authority.

3. **Reimbursement.** Provided that a signed Work Authorization has been issued by the Mobility Authority, the Mobility Authority shall reimburse Consultant for reasonable, ordinary, and necessary business expenses incurred by Consultant in performing the authorized duties and Services under the Work Authorization, including all reasonable out-of-pocket, third-party vendor expenses incurred by Consultant in performing the Services, direct expenses such as reasonable postage, delivery, shipping, duplication, printing costs; supplies and out of pocket expenses for production, on-line research, media, and purchased goods necessary to perform the Services.

The Mobility Authority shall reimburse Consultant monthly for pre-approved (in writing) travel outside of Williamson and Travis Counties and related expenses incurred by Consultant or its employees in performing the Services, including, but not limited to, air travel, ground transportation, lodging, meals, tips and wireless internet and long distance telephone calls, cellular phones, messengers, and overnight delivery.

Consultant shall take all reasonable steps to acquire all goods and services subject to reimbursement by the Mobility Authority under this Agreement on a tax-free basis pursuant to the Authority's tax-exempt status described in subarticle VI.1.

4. **Work Authorizations.** Consultant shall prepare and submit a Work Authorization for approval by the Director of External Affairs for each task to be performed under this Agreement that is outside the scope of the Account Maintenance Services. At a minimum, each Work Authorization shall include: (1) types of Services to be performed; (2) a period of performance with a beginning and ending date; (3) a full description of the work to be performed; (4) a work schedule with milestones; (5) a not to exceed cost amount, (6) the individual Consultant staff and/or subconsultants and their assigned rates and responsibilities, and (7) a Work Authorization budget calculated using rates set forth in Appendix B. Consultant is not to include additional contract terms and conditions in the Work Authorization.

Consultant shall not proceed with any task required under this Agreement, other than Account Maintenance Services, without an approved Work Authorization from the Mobility Authority for such Services. Any Services performed or expenses incurred by Consultant prior to Consultant's receipt of an approved Work Authorization shall be entirely at Consultant's risk.

5. **Invoicing.** Consultant shall bill the Mobility Authority for Services rendered and the reimbursable expenses incurred by providing to the Mobility Authority's Director of External Affairs a monthly invoice dated on the last day of each month and delivered on or before the 15th day of the following month. Each monthly invoice shall describe in detail the Services performed (including both Account Maintenance Services and other Services approved under a Work Authorization), hours worked and rate, and the reimbursable expenses incurred by Consultant from, as applicable, the first day of the month through the last day of that month (each such period being called a "Pay Period" under this Agreement). All Services shall be billed on an hourly basis at the hourly rates submitted by Consultant in Appendix B. Each Consultant employee or separately billed subconsultant must report the tasks they performed and the amount of time spent performing those tasks. Each monthly invoice must include the total amounts payable for the Pay Period, the total amount paid during the then-current calendar year, and such other detail or information as the Mobility Authority requests from time to time. Monthly invoices shall be compiled and submitted to the Mobility Authority by separate Work Authorizations, project names and/or numbers as reasonably requested by the Mobility Authority. Consultant shall certify each monthly invoice as true and correct, and as accurately reflecting billings incurred for the month for which invoiced Services were provided and reimbursable expenses were incurred.

Upon receipt of an invoice that complies with all requirements set forth herein, the Mobility Authority shall make a good faith effort to pay all undisputed amounts, which are due and payable within thirty (30) days. The Mobility Authority reserves the right to withhold payment of Consultant's billing statement in the event of any of the following: (1) dispute over the work or costs thereof is not resolved within a thirty (30) day period; (2) pending verification of satisfactory work performed; or (3) if required reports are not received.

Monthly invoices shall be sent to:

Central Texas Regional Mobility Authority
3300 N IH-35, Suite 300
Austin, TX 78705
Attn: Director of External Affairs

ARTICLE VII SUBCONSULTANTS AND KEY PERSONNEL

The Consultant may provide for the performance of portions of the Services through one or more subconsultants, provided that any subconsultant proposed to be utilized are approved, in advance and in writing, by the Director of External Affairs. In the event Consultant does utilize one or more approved subconsultants, Consultant shall remain fully liable for the actions or inactions of such subconsultants and shall be solely responsible for compensating the subconsultants.

Consultant acknowledges and agrees that the individual(s) identified as Key Personnel on Appendix B are key and integral to the satisfactory performance of Consultant under this Agreement. Throughout the term of this Agreement, Consultant agrees that the identified individual(s), whether employee(s) of Consultant or of an approved subconsultant selected and engaged by Consultant, will remain in charge of the performance of the Services and shall devote substantial and sufficient time and attention thereto. The death or disability of any such individual, his/her disassociation from Consultant or the approved subconsultant selected and engaged by Consultant, or his/her failure or inability to devote sufficient time and attention to the services shall, at the Mobility Authority's option, constitute a default requiring Consultant promptly to replace said individual with a person suitably qualified and otherwise acceptable to the Mobility Authority. In no event shall Consultant transfer, or reassign any individual identified on Appendix B except as instructed by, or with the prior written consent of, the Mobility Authority.

Consultant shall use its best efforts to enhance continuity in the Key Personnel, subconsultants selected and engaged by Consultant, and other employees regularly performing the Services. Consultant shall notify the Mobility Authority regarding the scheduling of the Key Personnel's corporate activities, vacations, and other engagements during which he or she is unavailable for the Services if such unavailability shall materially impact the provision of Services to the Mobility Authority. Individuals may be added to Appendix B with the mutual written consent of Consultant and the Mobility Authority (email to be deemed sufficient).

ARTICLE VIII REMOVAL OF PERSONNEL

All persons providing the Services, whether employees of Consultant or of an approved subconsultant selected and engaged by Consultant, shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any such person who, in the opinion of the Mobility Authority, is incompetent or by his or her conduct becomes detrimental to the provision of the Services shall, upon request of the Mobility Authority, promptly be removed from providing the Services to the Mobility Authority. Consultant shall furnish the Mobility Authority with an equally qualified candidate for replacement of the removed person within ten (10) days

thereafter; provided, however, said candidate shall not begin work under this Agreement unless and until approved by the Mobility Authority.

ARTICLE IX RELATIONSHIP BETWEEN THE PARTIES

The parties recognize that the Mobility Authority, through its Executive Director and assigned staff, manage the day-to-day business and affairs of the Mobility Authority and that only an independent contractor relationship, and no other type of relationship, exists between the Mobility Authority and Consultant. Consultant acknowledges and agrees that neither it, nor any of Consultant's employees, officers, agents, or contractors, shall be considered an employee of the Mobility Authority for any purpose.

Consultant has no authority to enter into any contract binding upon the Mobility Authority, or to create any obligation on behalf of the Mobility Authority, without express and specific written authorization from the Executive Director. Under no circumstances may Consultant represent to suppliers, contractors, subcontractors, or any other parties that Consultant, its employees, and affiliates are employees of the Mobility Authority or serve the Mobility Authority in any capacity other than as an independent contractor. Consultant shall clearly inform others that it has no authority to bind the Mobility Authority, unless the Mobility Authority specifically authorizes otherwise in writing.

In the performance of the Services, Consultant as an independent contractor possesses the sole right to supervise, manage, operate, control, and direct the performance of the details incident to the Services. Consultant is not entitled to any insurance, pension, vacation, sick leave, or other benefits customarily afforded to employees of the Mobility Authority. Nothing in this Agreement is deemed or construed to create a partnership, joint venture, or joint enterprise; or relationship of employee-employer or principal-agent.

ARTICLE X REPRESENTATION AND WARRANTIES

Consultant represents and warrants that the individual executing this Agreement on behalf of Consultant is duly authorized Consultant to do so, and that this Agreement constitutes a valid and legally binding agreement of Consultant enforceable against it in accordance with its terms.

Consultant further represents and warrants to the Mobility Authority that Consultant (a) is under no contractual or other restriction or obligation, the compliance with which is inconsistent with or would hinder the execution of this Agreement, the performance of Consultant's obligations hereunder, or of the rights of the Mobility Authority hereunder; (b) in relation to its engagement hereunder, and without limiting the representation in preceding clause, is not an employee, contractor, or representative of, or contractor for any other firm currently under contract with the Mobility Authority or intending to bid for any contract; and (c) is under no physical, financial, or mental disability at this time that would hinder the full performance of the obligations under this Agreement; (d) is not under contract, and must not without the Mobility Authority's prior written consent, contract with any company, organization, or person that the Mobility Authority reasonably believes to be in opposition or hostile to the Mobility Authority's operation and

mission. Consultant further represents and warrants that, except in connection with the request for proposal and related discussions in connection with the Services contemplated under this Agreement, Consultant and each individual identified on Appendix B has no current business relationship or a previous business relationship that existed on or after January 1, 2016, with any of the Mobility Authority's personnel, other than as that business relationship is identified on the form attached as Appendix C hereto.

The Mobility Authority represents and warrants that it is the owner or licensee of all intellectual property rights sufficient to enable Consultant to edit, reproduce and otherwise use, publish and distribute such materials in performing Services for the Mobility Authority.

ARTICLE XI CONFIDENTIAL INFORMATION

All materials and ideas created during the performance of the Services under this Agreement in whole or in part by Consultant, its employees and subcontractors, is proprietary and confidential information and is owned by the Mobility Authority in accordance with the terms of Article IV, and the Mobility Authority will retain ownership of all work-in-progress. Such proprietary and confidential materials and information may only be used by Consultant during the term of this Agreement as necessary to carry out the purposes of this Agreement. Consultant shall return all such materials in Consultant's possession to the Mobility Authority upon termination of this Agreement. Consultant agrees not to disclose during the term of this Agreement or at any time thereafter to any unauthorized person, association, firm, corporation, or other party any proprietary or confidential information relating to the Mobility Authority, and Consultant confirms that such information constitutes the exclusive property of the Mobility Authority.

The parties agree that each of the provisions in this Article XI are important and material, and significantly affect the successful conduct of the Mobility Authority's business, as well as its reputation and goodwill. Any breach of the terms of this Article XI, is a material breach of this Agreement from which Consultant may be enjoined and for which Consultant also shall be liable to the Mobility Authority for all damages arising or resulting from the breach in accordance with the terms of this Agreement. Consultant understands and acknowledges that Consultant's responsibilities under this Article XI continue in full force and effect after Consultant's contractual relationship with the Mobility Authority ends for any reason.

Notwithstanding anything in this Agreement to the contrary, Consultant has no obligation of confidentiality with respect to information that (a) is or becomes part of the public domain through no act or omission of Consultant; (b) was in Consultant's lawful possession prior to the disclosure and had not been obtained by Consultant either directly or indirectly from the Mobility Authority; (c) is lawfully disclosed to Consultant by a third party without restriction on disclosure; (d) is independently developed by Consultant without use of or reference to the Mobility Authority's confidential information; or (e) is required to be disclosed by law or judicial, arbitral or governmental order or duly executed process, provided Consultant gives the Mobility Authority prompt written notice of the requirement sufficient to permit the Mobility Authority a reasonable opportunity to seek a protective order or other appropriate relief.

**ARTICLE XII
INDEMNIFICATION; LIMITATION ON LIABILITY**

CONSULTANT SHALL DEFEND, INDEMNIFY AND SAVE HARMLESS THE MOBILITY AUTHORITY AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS, AND CONSULTANTS FROM ANY THIRD PARTY CLAIMS, COSTS, EXPENSES, OR LIABILITIES OF ANY TYPE OR NATURE, INCLUDING REASONABLE ATTORNEYS' FEES AND COSTS (COLLECTIVELY, "CLAIMS"), TO THE EXTENT ARISING FROM CONSULTANT'S PERFORMANCE OF THE SERVICES TO BE ACCOMPLISHED UNDER THIS AGREEMENT, OR CONSULTANT'S FAILURE TO PERFORM SUCH SERVICES, WHETHER SUCH CLAIM IS BASED IN CONTRACT, TORT, OR STRICT LIABILITY. CONSULTANT ALSO SHALL DEFEND, INDEMNIFY AND SAVE HARMLESS THE MOBILITY AUTHORITY AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS, AND CONSULTANTS FROM ANY CLAIMS (AS DEFINED ABOVE), TO THE EXTENT ARISING FROM CONSULTANT'S MATERIAL BREACH OF THIS AGREEMENT (INCLUDING WITHOUT LIMITATION WITH RESPECT TO ARTICLE IV). IN THE EVENT THE MOBILITY AUTHORITY, OR ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND THE CONSULTANTS ARE FOUND, INDIVIDUALLY OR COLLECTIVELY, TO BE PARTIALLY AT FAULT WITH RESPECT TO A CLAIM (AS DEFINED ABOVE) UNDER THIS PARAGRAPH, CONSULTANT SHALL, NEVERTHELESS, INDEMNIFY THE MOBILITY AUTHORITY, AND ITS EMPLOYEES, DIRECTORS, AGENTS AND CONSULTANTS FROM AND AGAINST THE PORTION OF SUCH CLAIM RELATING TO PERCENTAGE OF FAULT ATTRIBUTABLE TO CONSULTANT, ITS EMPLOYEES, AGENTS, OR CONTRACTORS SELECTED AND ENGAGED BY CONSULTANT. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT FOR ANY REASON.

CONSULTANT'S AGGREGATE LIABILITY ARISING OUT OF, OR RELATING TO, THIS AGREEMENT (WHETHER IN CONTRACT, TORT OR OTHER LEGAL THEORY), BUT EXCLUDING DAMAGES AND CLAIMS COVERED BY INSURANCE PROCEEDS, SHALL NOT EXCEED DOUBLE THE "NOT TO EXCEED AMOUNT" SET FORTH IN ATTACHMENT B TO THIS AGREEMENT. IN NO EVENT SHALL CONSULTANT BE LIABLE TO CLIENT FOR ANY SPECIAL, CONSEQUENTIAL, PUNITIVE OR OTHER INDIRECT DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOST REVENUES OR PROFITS), WHETHER OR NOT NOTIFIED OF SUCH DAMAGES.

THE FOREGOING LIMIT OF LIABILITY AND WAIVER OF CONSEQUENTIAL DAMAGES SHALL NOT EXCLUDE OR AFFECT (A) ANY LIABILITY FOR GROSS NEGLIGENCE, FRAUD, INTENTIONAL MISCONDUCT, OR CRIMINAL ACTS BY CONSULTANT, IT'S EMPLOYEES OR SUBCONSULTANTS (B) ANY LIABILITY FOR ANY TYPE OF DAMAGE OR LOSS, TO THE EXTENT SUCH LOSS OR DAMAGE IS COVERED BY INSURANCE PROCEEDS FROM INSURANCE CONSULTANT CARRIES, REGARDLESS OF WHETHER REQUIRED TO BE CARRIED HEREUNDER AND (C) DAMAGES ARISING FROM A BREACH OF ARTICLES IV AND X, ABOVE.

**ARTICLE XIII
GENERAL PROVISIONS**

1. **Insurance.** Consultant shall maintain, and shall require its subcontractors to retain the insurance required in Appendix D, which is hereby incorporated in this Article XIII, Section 1 for all purposes. Until Consultant has obtained the specified insurance, Consultant may not perform any Services or undertake any other activity that might result in personal injury while performing the Services.

2. **Compliance with Laws.** Consultant and the Mobility Authority each shall comply with all applicable federal, state, and local laws, statutes, ordinances, rules, codes, and regulations, and with the orders and decrees of any courts, administrative bodies, or tribunals in any matter affecting its performance under this Agreement, including, without limitation, workers' compensation laws, antidiscrimination laws, minimum and maximum salary and wage statutes and regulations, health and safety codes, and licensing laws and regulations.

3. **Audit.** The Mobility Authority shall have the exclusive right to examine Consultant's books and records to verify the costs or expenses incurred in the performance of this Agreement and for the purpose of checking the amount of work performed by Consultant. Consultant shall maintain all books, documents, papers, accounting records and other evidence pertaining to cost incurred and shall make such materials available at its office during the term of the Agreement and for four (4) years from the date of final payment under this Agreement or until pending litigation has been completely and fully resolved, whichever occurs last. The Mobility Authority or any of its duly authorized representatives, the Texas Department of Transportation ("TxDOT"), the Federal Highway Administration ("FHWA"), the United States Department of Transportation Office of Inspector General and the Comptroller General shall have access to any and all books, documents, papers and records of Consultant which are directly pertinent to this Agreement for the purpose of making audits, examinations, excerpts and transcriptions.

4. **Entire Agreement.** This Agreement is the entire agreement of the parties, and supersedes any and all oral representations, warranties, understandings, stipulations, agreements, or promises pertaining to this Agreement that are not incorporated in writing in this Agreement.

5. **Choice of Law.** This Agreement shall be construed and given effect in accordance with the laws of the State of Texas.

6. **Exclusive Jurisdiction and Venue.** Consultant agrees that the exclusive jurisdiction and venue for any legal action or proceeding, at law or in equity, arising out of or relating to the Agreement or the Project, shall be the District Court in Austin, Texas. Consultant waives all objections it might have to the jurisdiction or venue of such court and hereby consents to such court's jurisdiction, regardless of Consultant's residence or domicile, for any such action or proceeding.

7. **Invalidity.** If any term or condition of this Agreement is declared legally invalid or unenforceable by a court of competent jurisdiction, that decision does not affect the validity of any remaining terms and conditions in this Agreement. Terms and conditions not declared invalid

remain in full force and effect as if this Agreement had been executed without the inclusion of the invalid term or condition.

8. **Modification.** This Agreement may not be changed, altered, or modified unless in writing and signed by the parties.

9. **Binding Effect.** The rights and benefits of Consultant under this Agreement are personal to Consultant and may not be subject to voluntary or involuntary alienation, assignment, subletting, or transfer. This Agreement may, upon prior notice to Consultant, be assigned by the Mobility Authority and inure to the benefit of any assignee which is a governmental or political subdivision entity engaged in the same or similar mission as the Mobility Authority.

10. **Waiver.** Waiver by the Mobility Authority or Consultant of any breach of this Agreement by the other party is not effective unless in writing, and no such waiver operates as a waiver of any subsequent breach.

11. **Acknowledgment.** Each party agrees by its signature to this Agreement that it (a) fully understands the Agreement's purposes, terms, and provisions, (b) has obtained advice of legal counsel for review of this Agreement and has had substantial involvement in its preparation, and (c) expressly acknowledges receipt of a copy of this Agreement.

12. **Benefits Inured.** This Agreement is solely for the benefit of the parties and their permitted successors and assigns. Nothing contained in this Agreement is intended to, nor shall be deemed or construed to, create or confer any rights, remedies, or causes of action in or to any other persons or entities, including the public in general.

13. **Survival.** Articles IV, V, IX, X, XI, XII and this Section survive the expiration or termination of this Agreement for any reason.

14. **Availability of Funds.** The awarding of this Agreement and continuation hereof is dependent upon the availability of funding and budget authorization during the entire term of this Agreement.

15. **Notices.** Notice is deemed given under this Agreement (a) when delivered by hand; (b) one business day after being deposited with a reputable overnight air courier service; or (c) three business days after being mailed by United States mail, registered or certified mail, return receipt requested, and postage prepaid. Any notices provided under this Agreement must be sent or delivered to:

In the case of Consultant:

With a copy to:

In the case of the Mobility Authority:

**Mike Heiligenstein, Executive Director
Central Texas Regional the Mobility Authority
3300 N IH-35, Suite 300
Austin, TX 78705**

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

THE CONSULTANT

**CENTRAL TEXAS REGIONAL
MOBILITY AUTHORITY**

By: _____
_____ [Name]
_____ [Title]
_____ [Firm Name]

By: _____
Mike Heiligenstein
Executive Director

Appendix A

SCOPE OF SERVICES

This Appendix A is attached to and made a part of the Communication and Marketing Services Agreement between the Mobility Authority and the Consultant effective as of the ____ day of _____, 2019. Any term used in this appendix has the meaning given to that term by the Agreement. Services provided under this Agreement include, but are not limited to, strategic communications consulting, public relations, and creative services. The Consultant will work at the direction and supervision of the Mobility Authority to provide the Services and work cooperatively and collaboratively with the Mobility Authority's other consultants. The Services to be provided by the Consultant include the following key elements:

1. Daily support of the Mobility Authority in its efforts to elevate the agency's brand, mission, and vision.
2. Implement innovative and proven public relations strategies.
3. Secure earned media placements, which could include but are not limited to: media sources in Central Texas, national trade publications of significance to the transportation industry, and national digital media as needed.
4. Provide executive voice support through social media posts and blogs, etc. for the executive team.
5. Develop relevant content, including thought leadership pieces and opinion editorials related to infrastructure development in the region.
6. Provide creative services, including the development of targeted education campaigns to key stakeholders (including industry leaders, customers, elected officials, and the general public), graphic design, and printed collateral. Manage implementation of all aspects of campaigns as requested, including campaign-specific social media.
7. Identify and provide access to media production, media buyers, media planners, and market research. Oversee the management of these vendors and/or subconsultant firms.
8. Provide copywriting and proofreading services as requested.
9. Track analytics and report on success metrics for all efforts, initiatives and campaigns, and provide forward-thinking and strategic recommendations based on results.
10. Prepare monthly progress reports of activities performed and resulting metrics

Other communications and marketing efforts may be requested of the selected firm as needs arise. Of note, government relations is not part of this scope of services.

Appendix B
COMPENSATION

Payment

The Mobility Authority agrees to pay, and Consultant agrees to accept, as full and sufficient compensation for the performance of all Services, monthly payments based on the monthly Retainer provided for Account Maintenance Services, approved Work Authorizations, corresponding invoices and the budget set forth therein, to be submitted to the Mobility Authority by Consultant consistent with the requirements of Article VI. Payment under this Agreement shall be made within thirty (30) days of an approved invoice date. This compensation constitutes full payment for all of the Services, including, but not limited to overhead and administrative expenses.

The Retainer for the Account Maintenance Services shall be \$_____ per month.

The total amount of this Agreement shall not exceed \$_____ (the “Not to Exceed Amount”), which shall include the Retainer for the Account Maintenance Services.

Fee Billing

At the end of each month, Consultant shall invoice the Mobility Authority the exact fees based upon the Retainer for Account Maintenance Services and the hours incurred in performing any additional Services during that month. Any additional fees will be based upon Consultant’s rate cards as described below. Consultant’s hourly rate schedule is as follows:

Key Personnel Rate Card

<i>Title</i>	<i>Key Personnel</i>	<i>Rate</i>
Agency Principal		
Day-to-Day Account Lead		
Account Service Resources		
Strategic Planning Resources		
Public Relations Resources		
Media Resources		
Creative Resources		

Billing of Third Party Expenses

Consultant shall invoice the Mobility Authority the actual out-of-pocket expense amount(s) at the end of the month on an as incurred basis. Actual expenses may vary from any estimated amounts provided. Consultant will provide detailed invoices for all services provided by subconsultants and other third parties. Billing for direct expenses, subconsultant services and media buys shall be at a flat rate with no markups or agency commissions, in accordance with the Agreement.

Payments to Subconsultants

The Mobility Authority will have no responsibility or direct obligation for payment to subconsultants selected and engaged by Consultant for Services rendered in connection with Consultant's performance under this Agreement, unless otherwise agreed to in writing by the parties (email to be deemed sufficient).

Appendix C

DISCLOSURE STATEMENT FORM

This Disclosure Statement outlines potential conflicts of interest as a result of a previous or current business relationship between the undersigned individual (and/or the firm for which the individual works) and an individual or firm submitting a proposal or otherwise under consideration for a contract associated with COMMUNICATION AND MARKETING SERVICES under this Agreement. Section I of this Disclosure Statement Form describes the potential conflicts of interest. Section II of this Disclosure Statement Form describes the proposer's management plan for dealing with the potential conflicts of interest as described in Section I of this form. This Disclosure Statement is being submitted in compliance with the Central Texas Regional Mobility Authority's Conflict of Interest Policy for Consultants. The undersigned acknowledges that approval of the proposed management plan is within the sole discretion of the Central Texas Regional Mobility Authority.

SECTION I. Description of Potential Conflicts of Interest.

SECTION II. Management Plan for Dealing with Potential Conflicts of Interest.

SIGNED: _____ **DATE:** _____
NAME AND TITLE: _____
REPRESENTING: _____

Appendix D

INSURANCE REQUIREMENTS

The Consultant and all subconsultants shall furnish the Mobility Authority a properly completed Certificate of Insurance approved by the Mobility Authority prior to beginning work under the Agreement and shall maintain such insurance through the term of the Agreement. The Consultant shall provide proof of insurance in a form reasonably acceptable by the Authority. The Consultant certifies that it has and will maintain insurance coverages as follows:

- A. **Workers Compensation Insurance.** In accordance with the laws of the State of Texas and Consultant's liability coverage with a limit of not less than \$1,000,000. This policy shall be endorsed to include a waiver of subrogation in favor of the Authority.
- B. **Comprehensive General Liability Insurance.** With limits not less than \$1,000,000 for bodily injury, including those resulting in death, and \$1,000,000 for property damage on account of any one occurrence, with an aggregate limit of \$1,000,000.
- C. **Comprehensive Automobile Liability Insurance.** Applying to owned, non-owned, and hired automobiles in an amount not less than \$1,000,000 for bodily injury, including death, to any one person, and \$1,000,000 on account on any one occurrence, and \$1,000,000 for property damage on account of any one occurrence. This policy shall not contain any limitation with respect to a radius of operation for any vehicle covered and shall not exclude from the coverage of the policy any vehicle to be used in connection with the performance of the Consultant's obligations under this Agreement.
- D. **Excess Liability Insurance.** In an amount of \$5,000,000 per occurrence and aggregate.
- E. **General for All Insurance.** The Consultant shall promptly, upon execution of this Agreement, furnish certificates of insurance to the Authority indicating compliance with the above requirements. Certificates shall indicate the name of the insured, the name of the insurance company, the name of the agency/agent, the policy number, the term of coverage, and the limits of coverage.

All policies are to be written through companies (a) authorized to transact that class of insurance in the State of Texas; (b) rated (i), with respect to the companies providing the insurance under subarticles A. through D., above, by A. M. Best Company as "A-VII" or better (or the equivalent rating by another nationally recognized rating service) and (ii) with respect to the company providing the insurance under subarticle E., a rating by A. M. Best Company or similar rating service satisfactory to the Authority and/or its insurance consultant; and (c) otherwise acceptable to the Authority.

All policies are to be written through companies authorized to transact that class of insurance in the State of Texas. Such insurance shall be maintained in full force and effect during the life of this Agreement or for a longer term as may be otherwise provided for hereunder. Insurance furnished under subarticles B., C., and D., above, shall name the Authority as additional insured and shall protect the Authority, its officers, employees, and directors, agents, and representatives from claims for damages for bodily injury and death and for damages to property arising in any manner from the negligent or willful acts or failures to act by the Consultant, its officers, employees, directors, agents, and representatives in the performance of the Services rendered under this Agreement. Certificates shall also indicate that the contractual liability assumed in Article XII, above, is included.

The insurance carrier shall include in each of the insurance policies required under subsections A., B., C., D., E., and F., the following statement: "This policy will not be canceled or materially changed during the period of coverage without at least thirty (30) days prior written notice addressed to the Central Texas Regional Authority, 3300 N. IH-35, Suite 300, Austin, Texas 78705, Attn: Executive Director"

- F. **Subconsultant.** In the event a subconsultant selected by the Consultant to perform work associated with this Agreement is unable to secure insurance coverage in the amounts set forth in subarticles B., D., and F. above, Consultant may provide to the Authority an explanation of coverages that a subconsultant does possess, why those coverages are adequate to cover the potential exposure for the work to be performed by the subconsultant, and an acknowledgement that the Consultant remains liable for the work performed under the Agreement, including that performed by the subconsultant. The Authority may decide, in its sole discretion, whether to accept the coverages available to the subconsultant, and may condition its acceptance, if granted, on satisfactory evidence that Consultant will remain liable for work performed by the subconsultant and that Consultant's insurance will cover the work, actions, errors and omissions of the subconsultant.