



CENTRAL TEXAS REGIONAL
MOBILITY AUTHORITY

August 26, 2020
AGENDA ITEM #8

Discuss and consider approving a contract
with Fagan Consulting LLC for
general systems consultant services

Strategic Plan Relevance:	Regional Mobility
Department:	Operations
Contact:	Tracie Brown, Director of Operations
Associated Costs:	not to exceed amount approved annually through the fiscal year budgeting process (\$1,082,515 for FY2021)
Funding Source:	Operations Budget
Action Requested:	Consider and act on draft resolution

Summary:

Background - The process to procure General Systems Consultant services program began in May 2020 with the issuance of a Request for Qualifications (RFQ). The General Systems Consultant (GSC) provides the Mobility Authority with independent and objective assistance to ensure its electronic toll collection and PBM systems are functioning at optimal levels and perform other related tasks. Four responses to the RFQ were received and evaluated in accordance with the selection criteria outlined in the RFQ. Fagan Consulting LLC was determined to be the firm that best demonstrates competence, knowledge and qualifications. At the July 29, 2020 Board meeting, staff was authorized to negotiate an agreement with Fagan Consulting LLC for general systems consultant services.

Current Action - The GSC scope of services includes services related to electronic toll collection systems, both roadside and video tolling; interoperability; technical project support; information technology services and other related tasks. This item seeks the Board's authorization to execute an Agreement with Fagan Consulting LLC. The term of the proposed agreement is five (5) years with one 2-year renewal option. Either party may elect not to extend the term by providing ninety (90) days written notice.

Request for Deviation - In September 2019 the Mobility Authority's Board of Directors approved a resolution authorizing the Executive Director to execute work authorization for previously approved contracts with the Mobility Authority (Resolution 19-052.) This resolution acknowledged the responsibility of the Executive Director as the chief administrator as well as the oversight role of Mobility Authority staff in managing contracts. The resolution granted authority to the Executive Director to approve work authorization and task orders that are within the budget, term and scope of previously approved contracts. The resolution stated that work authorizations related to contracts that do not include a previously approved scope, term, budget and "not to exceed" amount must be approved the Board of Directors.

The role of the General Systems Consultant is like that of the General Engineering Consultant in that each is asked to perform planned and ad hoc tasks. An example of the latter is the Authority's recent request for Fagan Consulting to assist in evaluating the habitual violator program's effectiveness. While this request was within the scope of the GSC's current contract and within budget, the urgent need of the request did not allow for Board approval. These types of requests happen often and require agility.

The amount approved for general systems consultant services in FY 2021 operating budget is \$1,082,515. To administer the GSC contract and work in an efficient manner, this action also seeks the Board's authorization for the Executive Director or his designee to act on behalf of the Mobility Authority in issuing and executing letter agreements that are within the established budget as well as the contract term and scope.

Staff Recommendation - Staff recommends approving the contract with Fagan Consulting LLC for general systems consultant services and approval of a letter agreement process for authorizing work under the contract.

Backup Provided - Draft resolution
Draft agreement
Resolution No. 19-052

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

RESOLUTION NO. 20-0XX

**APPROVING A CONTRACT FOR GENERAL SYSTEMS CONSULTING SERVICES
WITH FAGAN CONSULTING LLC FOR GENERAL
SYSTEMS CONSULTANT SERVICES**

WHEREAS, by Resolution No. 20-045, dated July 29, 2020, the Board of Directors authorized the Executive Director to negotiate a contract with Fagan Consulting LLC for general systems consultant services and directed him to present the proposed contract to the Board of Directors for its approval; and

WHEREAS, the Executive Director and Fagan have negotiated a contract for general systems consultant services which is attached hereto as Exhibit A and sets forth the scope of services, compensation and other terms; and

WHEREAS, the Executive Director recommends that the Board approve the contract for general systems consultant services in the form or substantially the same form attached hereto as Exhibit A.

NOW THEREFORE, BE IT RESOLVED that the Board of Directors hereby approves the contract with Fagan Consulting LLC for general systems consulting services; and

BE IT FURTHER RESOLVED that the Executive Director is hereby authorized to finalize and execute the contract with Fagan Consulting LLC on behalf of the Mobility Authority in the form or substantially the same form attached hereto as Exhibit A.

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 26th day of August 2020.

Submitted and reviewed by:

Approved:

Geoffrey Petrov, General Counsel

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

Exhibit A

**AGREEMENT FOR
GENERAL SYSTEMS CONSULTANT SERVICES**

This Agreement for General Systems Consultant Services (“Agreement”) is made and entered into by and between the Central Texas Regional Mobility Authority (“Mobility Authority”), a regional mobility authority and a political subdivision of the State of Texas, and Fagan Consulting, LLC, a limited liability company (the “Consultant”), to be effective the 1st day of September, 2020 (the “Effective Date”). Mobility Authority and Consultant may be referred to collectively in this Agreement as the “parties,” and individually as a “party.”

WITNESSETH:

WHEREAS, pursuant to a Request for Qualifications dated May 29, 2020 (the “RFQ”), the Mobility Authority sought to identify and obtain the services of a qualified firm to provide general systems consultant services for the Mobility Authority at a reasonable cost; and

WHEREAS, four (4) firms submitted responses setting forth their respective qualifications and proposed compensation for the work; and

WHEREAS, the Mobility Authority’s Board of Directors (“Board”) selected Consultant as firm providing the best value for the provision of the general systems consultant services; and

WHEREAS, this Agreement has been negotiated and finalized between the parties whereby services will be provided by the Consultant and compensation will be paid by the Mobility Authority pursuant to the terms hereof.

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

ARTICLE 1: CONSULTANT’S SERVICES

The Mobility Authority hereby retains the Consultant as an independent contractor to provide general systems consulting services to the Mobility Authority under the terms established by this Agreement. The specific services to be provided by Consultant are described in detail in Exhibit “A”, attached and incorporated into this Agreement as if fully set forth herein (the “Services”).

ARTICLE 2: COMPENSATION

A. Services on an As-Needed Basis; Maximum Compensation Payable. The Mobility Authority may request that the Consultant perform specific Services on an as-needed and as-requested basis by approving Letter Agreements under this Agreement. No representation or assurance has been made by or on behalf of the Mobility Authority to the Consultant that a minimum amount of compensation will be paid to the Consultant during the term of this Agreement. The maximum annual amount of compensation the Mobility Authority may pay Consultant under this Agreement shall not exceed the amount approved in an annual budget for the period of July 1st through June 30th (the “Budget Year Period”) for that year without approval of the Board.

B. Letter Agreements. Consultant shall provide its Services at the request of the Mobility Authority pursuant to a separate Letter Agreement signed by the Mobility Authority and the Consultant. Consultant’s Services under a Letter Agreement shall be assigned and documented in a manner appropriate for the size and complexity of the specific tasks, and shall be in accordance with the scope, schedule, and budget set forth in each Letter Agreement. The standard form of Letter Agreement is attached as Exhibit “B”. The standard form of Letter Agreement may be modified during the term of this Agreement upon the reasonable request of either party and agreement of both parties or at the sole discretion of the Mobility Authority. Upon written directive from the Mobility Authority (which may occur via electronic mail), the Consultant shall prepare a Letter Agreement for a specific task and shall submit the Letter Agreement for the Mobility Authority’s approval. No work shall begin on the activity until the Letter Agreement is approved and signed by both parties. Compensation for Services provided under a Letter Agreement will be calculated using the hourly billing rates detailed in subsection C below, in an amount not to exceed the maximum compensation established in the Letter Agreement. Costs associated with work performed on each Letter Agreement will be tracked and billed to the Mobility Authority separately from other work performed by the Consultant. Consultant shall provide a monthly invoice to the Mobility Authority to include a progress summary of the work performed during the previous month on each ongoing Letter Agreement.

C. Compensation. Subject to the terms of a Letter Agreement issued pursuant to subsection B above, the Mobility Authority agrees to pay, and the Consultant agrees to accept as full and sufficient payment for its Services, compensation calculated on a per-hour basis using the hourly billing rates for Consultant’s staff providing the Services, as follows:

Key Personnel	Hourly Billing Rate
Sharon Adair	\$105.00
Amy Bishop	\$184.00
Bill Brownsberger	\$208.00
Steve Doolin	\$208.00
Ron Fagan	\$208.00
Geoff Ford	\$185.00
Raj Gore	\$185.00
Drew Lindsay	\$184.00
Claudio Ochipinti	\$185.00
Christopher Peters	\$185.00
Bob Redding	\$205.00
Jason Rhodes	\$185.00
Jeff Saurenmann	\$185.00
Cori Sutherland	\$160.00
Chris Tull	\$156.00
Michael Wingfield	\$185.00
Eric Jerman (Ciber)	\$198.00
A/V Reviewer	\$49.50
Barb Jewell (MBI)	\$165.00
Robin Carty (MBI)	\$132.00
Courtney Powell (ACE)	\$193.60
Laine Powell (ACE)	\$188.10

Jerome Williams (ACE)	\$181.50
Bernard Staco (ACE)	\$181.50
Richard Almario (ACE)	\$133.10
Sonu Thummer (ACE)	\$125.40
Shane Owens (ACE)	\$242.00
Clive Ricketts (ACE)	\$242.00
Theo Briscoe (ACE)	\$200.20
Neil Alvanzo (ACE)	\$242.00
David Kovel (ACE)	\$242.00
James Moore (ACE)	\$181.50
Paul Reid (ACE)	\$133.10

With the prior written consent of the Mobility Authority, each hourly billing rate established above may be revised on January 1, 2022, and on January 1 of each year thereafter by multiplying the then-current hourly billing rate by the Hourly Rate Percentage Adjustment described below and applying the adjusted hourly rate to time billed on and after the January 1 annual revision date. The Hourly Rate Percentage Adjustment shall not exceed 5% for any given billing rate revision.

The “Hourly Rate Percentage Adjustment” shall mean a positive or negative percentage amount calculated by the following formula:

$$(CPI_t - CPI_{t-12}) / CPI_{t-12}$$

In this formula, “CPI_t” means the most recently published non-revised index of Consumer Prices for All Urban Consumers (CPI-U) before seasonal adjustment (the “CPI”), as published by the Bureau of Labor Statistics of the U.S. Department of Labor (“BLS”) prior to the January 1 date for which a calculation is being made. The CPI is published monthly and the CPI for a particular month is generally released and published during the following month. The CPI is a measure of the average change in consumer prices over time for a fixed market basket of goods and services, including food, clothing, shelter, fuels, transportation, charges for doctors’ and dentists’ services, and drugs. In calculating the index, price changes for the various items are averaged together with weights that represent their importance in the spending of urban households in the United States. The contents of the market basket of goods and services and the weights assigned to the various items are updated periodically by the BLS to take into account changes in consumer expenditure patterns. The CPI is expressed in relative terms in relation to a time base reference period for which the level is set at 100.0. The base reference period for the CPI is the 1982-1984 average. “CPI_{t-12}” means the CPI published by the BLS 12 months prior to the CPI used to determine CPI_t, or on the date closest to 12 months prior to the CPI used to determine CPI_t. If the CPI is discontinued or substantially altered, as determined in the sole discretion of the Mobility Authority, the Mobility Authority will determine an appropriate substitute index or, if no such substitute index is able to be determined, the parties may agree to an alternative method of adjusting hourly billing rates by a written amendment to this subsection signed by both parties.

Payment for time spent to provide the Services, billed at the hourly billing rates, together with any reimbursable expenses authorized under this Agreement, shall constitute full payment for all Services, liaisons, products, materials, equipment, and expenses required to deliver the Services.

D. Reimbursable Expenses. The hourly billing rates agreed under subsection C above include anticipated direct expenses and overhead resulting from the Consultant’s performance under this

Agreement. Notwithstanding the foregoing, the Consultant shall be entitled to reimbursement for reasonable out-of-pocket expenses actually incurred by the Consultant that are necessary for the performance of its duties under this Agreement and which are not included in the hourly billing rates under subsection C, said expenses being limited to travel costs, printing costs, automobile expenses being reimbursed at the federal mileage rates for travel originating from the office of the Consultant, and other expenses, provided that in order to be reimbursable the incurrence of such expenses must have been approved in advance and in writing, by the Executive Director..

E. Non-Compensable Time. Time spent by the Consultant's employees or subconsultants to perform Services or functions capable of being carried out by other, subordinate personnel with a lower hourly rate shall be billed at a rate equivalent to that of the applicable qualified subordinate personnel. Time spent by the Consultant's personnel or subconsultants in an administrative or supervisory capacity not related to the performance of the Services is not be compensable and shall not be billed to the Mobility Authority. Time spent on work that is in excess of what would reasonably be considered appropriate for the performance of such Services is not compensable. No compensation is payable for Consultant's or subconsultants' Services or deliverables required due in any way to the error, omission, or fault of the Consultant, its employees, agents, subconsultants, or contractors.

E. Invoices and Records. The Consultant shall submit its monthly invoices certifying the fees charged (and any reimbursable expense authorized under subsection D above) for Services provided under each active Letter Agreement during the previous month, and shall also present a reconciliation of monthly invoices and Letter Agreements (and related estimates) to which the work relates. Each invoice shall also include a summary of the aggregate total that Consultant has invoiced the Mobility Authority for the current Budget Year for all work authorized and performed pursuant to a validly issued Letter Agreement. Invoices shall be in such detail as is required by the Mobility Authority and, if the work is eligible for payment through a financial assistance agreement with the Texas Department of Transportation ("TxDOT"), in such detail as required by TxDOT, including a breakdown of Services provided on a project-by-project basis and/or pursuant to specified Letter Agreements, together with other Services requested by the Mobility Authority. Upon request of the Mobility Authority, the Consultant shall also submit certified time and expense records and copies of invoices that support the invoiced fees and expense figures. All invoices must be consistent with the rates established by this Article. Unless waived in writing by the Executive Director, no invoice may contain, and the Mobility Authority will not be required to pay, any charge which is more than three months old at the time of invoicing. All books and records relating to the Consultant's or subconsultants' time, authorized reimbursable out-of-pocket expenses, materials, or other services or deliverables invoiced to the Mobility Authority under this Agreement shall be made available during the Consultant's normal business hours to the Mobility Authority and its representatives for review, copying, and auditing throughout the term of this Agreement and, after completion of the work, for four (4) years, or such period as is required by Texas law, whichever is longer.

F. Effect of Payments. No payment by the Mobility Authority shall relieve the Consultant of its obligation to deliver timely the Services required under this Agreement. If after approving or paying for any Service, product or other deliverable, the Mobility Authority determines that said Service, product or deliverable does not satisfy the requirements of this Agreement, the Mobility Authority may reject same and, if the Consultant fails to correct or cure same within a reasonable period of time and at no additional cost to the Mobility Authority, the Consultant shall return any compensation received therefore. In addition to all other rights provided in this Agreement, the Mobility Authority shall have the right to set off any amounts owed by the Consultant pursuant to the terms of this Agreement by providing the Consultant notice before the set off.

G. Time and Place of Payment. Payments of undisputed amounts under this Agreement will be made by the Mobility Authority within thirty (30) days after receipt of the monthly invoice therefore, together with suitable supporting information, provided that if the payment is one eligible for reimbursement to the Mobility Authority from TxDOT, payment will be made within fifteen (15) business days of receipt by the Mobility Authority of the TxDOT payment. If the Mobility Authority disputes a request for payment by Consultant, the Mobility Authority agrees to pay any undisputed portion of the invoice when due.

H. Taxes. All payments to be made by the Mobility Authority to the Consultant pursuant to this Agreement are inclusive of federal, state, or other taxes, if any, however designated, levied, or based. The Mobility Authority acknowledges and represents that it is a tax-exempt entity under Sections 151.309, et seq., of the Texas Tax Code. Title to any consumable items purchased by the Consultant in performing this Agreement shall be deemed to have passed to the Mobility Authority at the time the Consultant takes possession or earlier, and such consumable items shall immediately be marked, labeled, or physically identified as the property of the Mobility Authority, to the extent practicable.

I. Most Favored Customer. The Consultant shall voluntarily and promptly disclose to the Mobility Authority, and immediately provide the Mobility Authority with, the benefits of any discounted hourly fees and rates offered by the Consultant to any governmental or public entity customer in the State of Texas for comparable services. The Consultant hereby represents to the Mobility Authority, as of the effective date of this Agreement and throughout the term thereof, that except as previously disclosed in writing it has and will have no contract or arrangement with any public entity customer in the State of Texas for comparable services that provides such customer with fees, or rates that are more favorable than those afforded the Mobility Authority under this Agreement. The Consultant shall make available to the Mobility Authority for review, copying, and auditing throughout the term of this Agreement and for four (4) years after the expiration thereof, or such period as is required by Texas law, whichever is longer, all such books and records as shall be necessary for the Mobility Authority or its representatives to determine compliance with this provision.

ARTICLE 3: TERM

The term of this Agreement shall be five (5) years, commencing September 1, 2020, and terminating on August 31, 2025 (the "Expiration Date"), subject to the earlier termination of this Agreement pursuant to Article 4 or Article 5 or further extension upon written agreement of both parties as provided for herein. There may be one (1) two (2) year renewal term following the Expiration Date subject to approval of the Board. In addition to any other termination rights set forth in this Agreement, either party may elect to terminate this Agreement at the conclusion of the third or the fourth year of the term by providing notice to the other party no later than September 1, 2023, or September 1, 2024, respectively. If at any time during the contract term the Consultant cannot provide the requested Services within the time required by the Mobility Authority or for any other reason, the Mobility Authority may, without waiving any other rights it may have under this Agreement, procure the Services from any other source it deems capable of providing those Services.

ARTICLE 4: TERMINATION FOR DEFAULT

The Consultant shall furnish all Services in such a manner and at such times as Mobility Authority may require. Except as provided below, should the Consultant at any time (a) not carry out its obligations under this Agreement or (b) not be providing the Services to be rendered hereunder in an expeditious and efficient manner and in full compliance with this Agreement, or if the Consultant shall fail in any manner to discharge any other of its obligations under this Agreement, the Mobility Authority may,

upon providing the Consultant with not less than thirty (30) days prior written notice and opportunity to cure (provided that in no event shall the cure period be more than thirty (30) days from receipt of the written notice), terminate this Agreement. Such termination shall not constitute a waiver or release by the Mobility Authority of any claims for damages, claims for additional costs incurred by the Mobility Authority to complete and/or correct the work described in this Agreement, or any other claims or actions arising under this Agreement or available at law or equity which it may have against the Consultant for its failure to perform satisfactorily any obligation hereunder, nor shall such termination abrogate or in any way affect the indemnification obligations of the Consultant set forth in Article 15.

Consultant has provided the Mobility Authority with three (3) years of financial statements as part of its Proposal (as defined in Article 19), and has represented that it has experienced positive cash flow during that three (3) year period. Consultant shall have a continuing obligation under this Agreement to notify the Mobility Authority of: (i) any material adverse change in its financial position or the occurrence of any event which may result in an adverse change (such as claims, litigation, etc.); (ii) the failure to maintain a positive cash flow for any fiscal year during the term of this Agreement; or (iii) any event of insolvency or the initiation of any bankruptcy proceeding or other action seeking protection from creditors or claimants during the term of this Agreement. The failure to provide required notification shall be an event of default for which the Mobility Authority may terminate this Agreement without the requirement for notice as set forth in the preceding paragraph.

If the Mobility Authority terminates this Agreement under this Article or Article 5, no fees of any type shall thereafter be paid to the Consultant other than fees due and payable on the termination date for work performed and acceptable to the Mobility Authority, and the Mobility Authority shall have a right to set-off or otherwise recover any damages incurred by reason of the Consultant's breach hereof, together with the right to set-off amounts owed by the Consultant pursuant to Article 15. In determining the amount of any payment owed to the Consultant, the value of the work performed by the Consultant prior to termination shall be no greater than the value that would result by compensating the Consultant in accordance with Article 2 for all Services performed and expenses reimbursable in accordance with this Agreement.

ARTICLE 5: OPTIONAL TERMINATION BY MOBILITY AUTHORITY

A. Generally. The Mobility Authority has the right to terminate this Agreement for any reason at any time by providing thirty (30) days advance notice of its intention to terminate pursuant to this Article and by stating in the notice the "Optional Termination Date." When terminating the Agreement under this section, the Mobility Authority shall enter into a settlement with the Consultant upon an equitable basis as determined by the Mobility Authority, which shall fix the value of the work performed by the Consultant prior to the Optional Termination Date. In determining the value of the work performed, the Mobility Authority shall compensate the Consultant for any reasonable costs or expenses attributable to the exercise of the Mobility Authority's optional termination, including reasonable costs related to developing a transition plan under Article 6; provided, however, that no consideration will be given to anticipated profit which the Consultant might possibly have made on the uncompleted portion of the Services.

B. No Further Rights, Etc. Termination of this Agreement and payment of an amount in settlement as described in this Article shall extinguish all rights, duties, obligations, and liabilities of the Mobility Authority and the Consultant under this Agreement, and this Agreement shall be of no further force and effect (except for those provisions which survive termination of the Agreement, including without limitation Article 15), provided, however, such termination shall not act to release the Consultant from

liability for any previous default either under this Agreement, whether known or unknown at the time of termination, or under any standard of conduct set by common law or statute.

C. No Further Compensation. If the Mobility Authority terminates this Agreement under this Article, no compensation or reimbursement of any type, other than compensation due and payable as of the Optional Termination Date, shall be due or paid to the Consultant, provided that the Mobility Authority shall not waive any right to damages incurred by reason of the Consultant's breach thereof. Consultant shall not receive any compensation for Services performed by the Consultant after the Optional Termination Date, and any such Services performed shall be at the sole risk and expense of the Consultant.

ARTICLE 6: NO WAIVER BY MOBILITY AUTHORITY OF RIGHTS/TRANSITION PLAN

The Mobility Authority's rights and options to terminate this Agreement, as provided in any provision of this Agreement, shall be in addition to, and not in lieu of, any and all rights, actions, options, and privileges otherwise available under law or equity to the Mobility Authority by virtue of this Agreement or otherwise. Failure of the Mobility Authority to exercise any of its said rights, actions, options, and privileges to terminate this Agreement as provided in any provision of this Agreement or otherwise shall not be deemed a waiver of any of said rights, actions, options, or privileges or of any rights, actions, options, or privileges otherwise available under law or equity with respect to any continuing or subsequent breaches of this Agreement or of any other standard of conduct set by common law or statute.

Upon request by the Executive Director, and subject to Article 11, the Consultant shall develop a transition plan to be implemented upon termination of this Agreement for any reason so as to ensure a smooth, efficient, and uninterrupted transition to any successor consultant or subconsultant. The plan shall anticipate the steps necessary to transfer documents, computerized data, plans, work tasks, etc. in possession of or to be provided by the Consultant or its subconsultant(s), as the case may be, and include a schedule of events necessary to complete the transition. The plan should include, but not be limited to, a list of original documents/data being held on behalf of the Mobility Authority by the Consultant or its subconsultants; the manner and form in which information is being held; accessibility to the information; the Consultant's records retention policy and/or plan; and strategy to minimize disruption of Services in the event of the release of a subconsultant. The Consultant shall provide the transition plan to the Executive Director for review and approval no later than thirty (30) days of receipt of the Executive Director's request to develop that plan and shall be updated as necessary to reflect any changes in Consultant activity and the Services being provided.

ARTICLE 7: SUSPENSION OR MODIFICATION OF SERVICES; DELAYS AND DAMAGES

In addition to the foregoing rights and options to terminate this Agreement, the Mobility Authority may elect to suspend any portion of the Services of the Consultant, but not terminate this Agreement, by providing the Consultant with advance written notice to that effect. Suspended Services may be reinstated and resumed upon thirty (30) days advance written notice from Mobility Authority to Consultant to resume the suspended Services. Similarly, the Mobility Authority may expand, limit, or cancel any portion of the Services previously assigned to the Consultant in accordance with this Agreement. The Consultant shall not be entitled to any damages or other compensation of any form if the Mobility Authority exercises its rights to suspend or modify the Services pursuant to this Article; provided, however, that any time limits established by the parties in any Letter Agreement or otherwise for the completion of specific portions of the Services suspended pursuant to this Article shall be extended to allow for said suspension or modifications thereof. Without limiting the foregoing, the

Consultant agrees that no claims for damages or other compensation shall be made by the Consultant for any delays or hindrances occurring during the progress of any portion of the Services specified in this Agreement as a result of any suspension or modification of the Services or otherwise. Such delays or hindrances, if any, shall be provided for by an extension of time for such reasonable periods as the Mobility Authority may decide. It is acknowledged, however, that permitting the Consultant to proceed to complete any Services or any part of them after the originally specified date for completion, or after the date to which the time for completion may have been extended, shall not operate or be construed as a waiver on the part of the Mobility Authority of any rights under this Agreement.

ARTICLE 8: PERSONNEL, EQUIPMENT, AND MATERIAL

Consultant shall provide personnel and equipment as follows:

A. Key Personnel. Consultant acknowledges and agrees that the individual(s) identified as “Key Personnel” in subsection C of Article 2 are key and integral to the satisfactory performance of the Consultant under this Agreement. Throughout the term of this Agreement, the Consultant agrees that the identified individual(s) will remain in charge of the performance of the Services and shall devote substantial and sufficient time and attention thereto. The death or disability of any such individual, his/her disassociation from the Consultant or an approved subconsultant, or his/her failure or inability to devote sufficient time and attention to the Services shall require the Consultant promptly to replace said individual with a person suitably qualified and otherwise acceptable to the Mobility Authority. In no event shall the Consultant remove, transfer, or reassign any individual identified in subsection C of Article 2, except as instructed by (pursuant to subsection C below), or with the prior written consent of, the Mobility Authority, which consent shall not be unreasonably withheld. The Consultant shall use its best efforts to enhance continuity in the key personnel, subconsultants, and other employees regularly performing the Services. Individuals may be added or deleted as “Key Personnel” under subsection C of Article 2 by a written agreement signed by both parties.

B. Adequate Personnel, Etc. The Consultant shall furnish and maintain, at its own expense, adequate and sufficient personnel (drawn from its own employees or from approved subconsultants) and equipment, in the reasonable opinion of the Mobility Authority, to perform the Services with due and reasonable diligence customary of a firm providing similar services to toll authorities of a similar or greater size or with a comparable array of projects and revenue collection operations, and in all events without delays attributable to the Consultant which have a reasonable likelihood of adversely affecting the progress of others involved with one or more of the Mobility Authority’s projects. All persons who provide Services under this Agreement, whether employees of the Consultant or of an approved subconsultant, shall be fully licensed to the extent required by their respective professional discipline associations’ codes or otherwise by law.

C. Removal of Personnel. All persons providing the Services, whether employees of the Consultant or of an approved subconsultant, shall have such knowledge and experience as will enable them, in the Consultant’s reasonable belief, to perform the duties assigned to them. Any such person who, as determined by the Mobility Authority, is incompetent or by his/her conduct becomes detrimental to the provision of the Services shall, upon request of the Mobility Authority, immediately be removed from providing Services to the Mobility Authority. The Consultant shall furnish the Mobility Authority with a fully qualified candidate for the removed person within five (5) business days thereafter, provided, however, said candidate shall not begin work under this Agreement unless and until approved by the Mobility Authority.

D. Consultant Furnishes Equipment, Etc. Except as otherwise specified or agreed to by the Mobility Authority, the Consultant shall furnish all equipment, transportation, supplies, and materials required for its provision of the Services under this Agreement.

ARTICLE 9: BUSINESS OPPORTUNITY PROGRAM AND POLICY COMPLIANCE

Consultant acknowledges that the Mobility Authority has a Business Opportunity Program and Policy (“BOPP”) with which it requires contractors to comply in connection with Disadvantaged Business Enterprises. To the extent the Consultant utilizes third parties to provide the Services hereunder, Consultant agrees to comply with the BOPP and observe the guidelines set forth therein. Consultant shall provide annual reporting to the Mobility Authority (beginning one (1) year from the Effective Date) regarding its utilization of disadvantaged business enterprises (“DBEs”) and the manner in which such utilization complies with, or deviates from, Consultant’s commitment to DBE utilization as reflected in its Proposal (as defined in Article 19) attached as Exhibit “D”.

ARTICLE 10: PLANNING AND PERFORMANCE REVIEWS; INSPECTIONS

As directed by the Mobility Authority, key personnel shall meet with the Mobility Authority’s Executive Director and/or his designee(s) upon request to: (a) assess the Consultant’s progress under this Agreement and performance of the Services; and (b) plan staffing levels to be provided by the Consultant to the Mobility Authority for the upcoming calendar quarter. The Consultant shall permit inspections of its Services and work by the Mobility Authority or others, when requested by the Mobility Authority. Nothing contained in this Agreement shall prevent the Mobility Authority from scheduling such other planning and performance reviews with the Consultant or inspections as the Mobility Authority determines necessary.

ARTICLE 11: OWNERSHIP OF REPORTS

Ownership of reports and related materials prepared by Consultant (or any subconsultant) at the direction of the Mobility Authority shall be as follows:

A. Generally. All of the documents, reports, plans, computer records, software maintenance records, discs and tapes, proposals, sketches, diagrams, charts, calculations, correspondence, memoranda, opinions, testing reports, photographs, drawings, analyses and other data and materials, and any part thereof, created, compiled or to be compiled by or on behalf of the Consultant solely under this Agreement (“work product”), including all information prepared for or posted on the Mobility Authority’s website and together with all materials and data furnished to it by the Mobility Authority, shall at all times be and remain the property of the Mobility Authority and, for a period of four (4) years from completion of the Services or such period as is required by Texas law, whichever is longer, if at any time demand be made by the Mobility Authority for any of the above materials, records, and documents, whether after termination of this Agreement or otherwise, such shall be turned over to the Mobility Authority without delay. The Mobility Authority hereby grants the Consultant a revocable license to retain and utilize the foregoing materials, said license to terminate and expire upon the earlier to occur of (a) the completion of Services described in this Agreement or (b) the termination of this Agreement, at which time the Consultant shall deliver to the Mobility Authority all such materials and documents and shall cease utilizing any such materials unless otherwise authorized in writing to do so by the Mobility Authority. If the Consultant or a subconsultant desires later to use any of the data generated or obtained by it in connection with the Projects or any other portion of the work product resulting from the Services, it shall secure the prior written approval of the Mobility Authority.

Notwithstanding anything contained herein to the contrary, the Consultant shall have the right to retain a copy of the above materials, records, and documents for its archives.

B. Separate Assignment. If for any reason the agreement of the Mobility Authority and the Consultant set forth in subsection A above regarding the ownership of work product and other materials is determined to be unenforceable, either in whole or in part, the Consultant hereby assigns and agrees to assign to the Mobility Authority all right, title, and interest that Consultant may have or at any time acquire in said work product and other materials which are prepared solely for this Agreement, without royalty, fee or other consideration of any sort, and without regard to whether this Agreement has terminated or remains in force. The Mobility Authority hereby acknowledges, however, that all documents and other work product provided by the Consultant to the Mobility Authority and resulting from the Services performed under this Agreement are intended by the Consultant solely for the use for which they were originally prepared. Notwithstanding anything contained herein to the contrary, the Consultant shall have no liability for the use by the Mobility Authority of any work product generated by the Consultant under this Agreement on any project other than for the specific purpose and Project for which the work product was prepared. Any other reuse of such work product without the prior written consent of the Consultant shall be at the sole risk of the Mobility Authority.

C. Development Of Consultant Work Product. The Mobility Authority acknowledges that the Consultant's work product will be developed using data that is available at the time of the execution of a given Letter Agreement, and will not constitute any guarantee or other assurance of future events. The Consultant will prepare work product using practices that are standard procedures in the industry.

ARTICLE 12: SUBCONSULTANTS

Consultant may, with the prior written consent of the Executive Director, employ one or more subconsultants to provide Services under this Agreement, provided that no approval shall be necessary for those subconsultants identified in the Consultant's Proposal (as defined in Article 19). Responsibility for any Services under this Agreement performed by a subconsultant shall remain with the Consultant. If Consultant proposes the use of a subconsultant to provide Services, the Consultant shall obtain and provide to the Mobility Authority a schedule of the subconsultant's rate. The Executive Director shall review and approve, in his discretion, any rates, including overhead, to be paid to the subconsultant. All subconsultants providing Services under this Agreement shall be subject to, and compensated or reimbursed in accordance with, all requirements of Article 2, provided that each subconsultant shall use its own actual hourly rates (computed using its own multiplier based on audited overhead rates, if overhead rates are approved) provided that no such rates shall exceed the corresponding rates paid by the Consultant for its personnel of comparable grade, category and experience. The Consultant agrees to pay its subconsultants for satisfactory performance of their contracts no later than thirty (30) days from its receipt of payment from the Mobility Authority. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Mobility Authority. This clause applies to payments to all subconsultants.

ARTICLE 13: APPEARANCE AS WITNESS AND ATTENDANCE AT MEETINGS

Consultant shall cooperate with the Mobility Authority and its requests for Consultant to attend meetings in various proceedings as follows:

A. Witness. At the request of the Mobility Authority, the Consultant shall prepare such exhibits as may be requested for all hearings and trials related to any of the Projects, the Services, or the Mobility Authority's activities generally and, further, it shall prepare for and appear at conferences at the offices

of legal counsel and shall furnish competent expert witnesses to provide such oral testimony and to introduce such demonstrative evidence as may be needed throughout all trials and hearings with reference to any litigation relating to the Services or the Mobility Authority's projects or activities.

B. Meetings. At the request of the Mobility Authority, the Consultant shall provide appropriate personnel for conferences at its offices, or attend meetings and conferences at (a) the various offices of the Mobility Authority, (b) TxDOT offices, (c) the offices of the Mobility Authority's legal counsel, bond counsel, and/or financial advisors, (d) at the site of any Project, or (e) any reasonably convenient location designated by the Mobility Authority.

C. Letter Agreement. If services provided under this Article are not covered by an existing Letter Agreement, the Mobility Authority will issue a Letter Agreement to request the services.

ARTICLE 14: COMPLIANCE WITH LAWS AND MOBILITY AUTHORITY POLICIES

The Consultant shall comply with all federal, state, and local laws, statutes, ordinances, rules, regulations, codes and with the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance under this Agreement, including, without limitation, workers' compensation laws, antidiscrimination laws, environmental laws, minimum and maximum salary and wage statutes and regulations, health and safety codes, licensing laws and regulations, the Mobility Authority's enabling legislation (Chapter 370 of the Texas Transportation Code), and all amendments and modifications to any of the foregoing, if any. The Consultant shall also comply with the Mobility Authority's policies and procedures related to operational and administrative matters, such as, but not limited to, security of and access to Mobility Authority information and facilities. When requested, the Consultant shall furnish the Mobility Authority with satisfactory proof of compliance with said laws, statutes, ordinances, rules, regulations, codes, orders, and decrees above specified.

ARTICLE 15: MOBILITY AUTHORITY INDEMNIFIED

THE CONSULTANT SHALL INDEMNIFY AND SAVE HARMLESS THE MOBILITY AUTHORITY AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND CONSULTANTS FROM ANY CLAIMS, COSTS OR LIABILITIES OF ANY TYPE OR NATURE AND BY OR TO ANY PERSONS WHOMSOEVER, ARISING FROM THE CONSULTANT'S ACTS, ERRORS OR OMISSIONS WITH RESPECT TO THE CONSULTANT'S PERFORMANCE OF THE WORK TO BE ACCOMPLISHED UNDER THIS AGREEMENT, WHETHER SUCH CLAIM OR LIABILITY IS BASED IN CONTRACT, TORT OR STRICT LIABILITY. IN SUCH EVENT, THE CONSULTANT SHALL ALSO INDEMNIFY AND SAVE HARMLESS THE MOBILITY AUTHORITY, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND CONSULTANTS (COLLECTIVELY THE "INDEMNIFIED PARTIES") FROM ANY AND ALL EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES, INCURRED BY THE MOBILITY AUTHORITY OR ANY OF THE INDEMNIFIED PARTIES IN LITIGATING OR OTHERWISE RESISTING SAID CLAIMS, COSTS OR LIABILITIES. IN THE EVENT THE MOBILITY AUTHORITY, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, OR CONSULTANTS IS/ARE FOUND TO BE PARTIALLY AT FAULT, THE CONSULTANT SHALL, NEVERTHELESS, INDEMNIFY THE MOBILITY AUTHORITY OR ANY OF THE INDEMNIFIED PARTIES FROM AND AGAINST THE PERCENTAGE OF FAULT ATTRIBUTABLE TO THE CONSULTANT, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUBCONSULTANTS, AND CONTRACTORS OR TO THEIR CONDUCT.

ARTICLE 16: CONFLICTS OF INTEREST

The Consultant represents and warrants to the Mobility Authority, as of the effective date of this Agreement and throughout the term hereof, that it, its employees, and subconsultants: (a) have no financial or other beneficial interest in any contractor, engineer, product or service evaluated or recommended by the Consultant, except as expressly disclosed in writing to the Mobility Authority, (b) shall discharge their responsibilities under this Agreement professionally, impartially and independently, and after considering all relevant information related thereto, and (c) are under no contractual or other restriction or obligation, the compliance with which is inconsistent with the execution of this Agreement or the performance of their respective obligations hereunder. If a firm (individually or as a member of a consortium) submits a proposal to work for the Mobility Authority, Consultant shall comply with the Mobility Authority's conflict of interest policies and shall make disclosures as if it were one of the key personnel designated under such policies.

ARTICLE 17: CONSULTANT NON-DISCLOSURE

The Consultant and each subconsultant who provides Services to Mobility Authority under this Agreement shall execute a Non-Disclosure Agreement in the form attached as Exhibit "C" no later than the date the Consultant signs the first Letter Agreement issued under Article 2 or the date the subconsultant begins providing Services to Mobility Authority, respectively.

ARTICLE 18: INSURANCE

Prior to beginning the Services designated in this Agreement, the Consultant shall obtain and furnish the following certificates of insurance and additional documents to the Mobility Authority:

A. Workers' Compensation Insurance, in accordance with the laws of the State of Texas, and employer's liability coverage with a limit of not less than \$500,000. Consultant shall also obtain from its insurance company and provide to the Mobility Authority a "waiver of subrogation" in favor of the Mobility Authority.

B. Commercial General Liability Insurance, with limits not less than \$500,000 for bodily injury, including those resulting in death, and property damage on account of any one occurrence, with an aggregate limit of \$500,000. Consultant shall also obtain from its insurance company and provide to the Mobility Authority a "waiver of subrogation" in favor of the Mobility Authority.

C. Business Automobile Liability Insurance, applying to owned, non-owned, and hired automobiles in an amount not less than \$500,000 for bodily injury, including death, to any one person, and 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. Consultant shall also obtain from its insurance company and provide to the Mobility Authority a "waiver of subrogation" in favor of the Mobility Authority.

D. Valuable Papers Insurance, in an amount not less than \$100,000 for the full restoration of any plans, drawings, field notes, logs, test reports, diaries, or other similar data or materials of Consultant relating to the Services provided under this Agreement in the event of their loss or destruction, until such time as the work has been delivered to the Mobility Authority.

E. Excess Umbrella Liability, with minimum limits of \$500,000 per claim and in the aggregate, annually, as applicable excess of the underlying policies required by subsections A through D. The Umbrella Policy shall contain the provision that it will continue in force as an underlying insurance in the event of exhaustion of underlying aggregate policy limits.

F. General for All Insurance. The Consultant shall promptly, upon execution of this Agreement, furnish the required certificates of insurance and “waiver of subrogation” to the Mobility Authority indicating compliance with the above requirements. Certificates shall indicate the name of the insured, the name of the insurance company, the name of the agency/agent, the policy number, the term of coverage, and the limits of coverage. The “waiver of subrogation” shall be in a form acceptable to the Mobility Authority.

All policies are to be written through companies that are: (a) registered to do business in the State of Texas; (b) rated: (i), with respect to the companies providing the insurance under subsections A through D, by A. M. Best Company as “A-X” or better (or the equivalent rating by another nationally recognized rating service), or (ii) with respect to the company providing the insurance under subsection E, a rating by A. M. Best Company or similar rating service satisfactory to the Mobility Authority and/or its insurance consultant; and (c) otherwise acceptable to the Mobility Authority.

All policies are to be written through companies registered to do business in the State of Texas. Such insurance shall be maintained in full force and effect during the life of this Agreement or for a longer term as may be otherwise provided for hereunder. Insurance furnished under subsections B, C, and E shall name the Mobility Authority as an additional insured and shall protect the Mobility Authority, the Consultant, their officers, employees, 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 wrongful 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. Applicable Certificates shall also indicate that the contractual liability assumed in Article 15, above, is included.

The insurance carrier shall include in each of the insurance policies required under this Article the following statement: “This policy will not be canceled or non-renewed during the period of coverage without at least thirty (30) days prior written notice addressed to the Central Texas Regional Mobility Authority, Attention: Executive Director, 3300 North IH 35, Suite 300, Austin, Texas 78705.”

ARTICLE 19: COORDINATION OF CONTRACT DOCUMENTS

The proposal submitted by Consultant to the Mobility Authority in response to the General Systems Consulting Services RFQ, dated June 2, 2020 (the “Proposal”) is attached and incorporated as Exhibit “D” for all purposes; provided, however, that in the event of any conflict between the Proposal and any provision of this Agreement including its exhibits (but not Exhibit “D”), the Proposal shall be subordinate and the provision, appendices, or exhibits of this Agreement shall control.

ARTICLE 20: RELATIONSHIP BETWEEN THE PARTIES

Notwithstanding the anticipated collaboration between the parties, or any other circumstances, the relationship between the Mobility Authority and the Consultant shall be one of an independent contractor. The Consultant acknowledges and agrees that neither it nor any of its employees, subconsultants, or subcontractors shall be considered an employee of the Mobility Authority for any purpose. The Consultant shall have no authority to enter into any contract binding upon the Mobility

Authority, or to create any obligation on behalf of the Mobility Authority. As an independent contractor, neither the Consultant nor its employees shall be entitled to any insurance, pension, or other benefits customarily afforded to employees of the Mobility Authority. Under no circumstances shall the Consultant, or its employees, subconsultants, or subcontractors, represent to suppliers, contractors or any other person that it is employed by the Mobility Authority or serves the Mobility Authority in any capacity other than as an independent contractor. The Consultant shall clearly inform all suppliers, contractors and others that it has no authority to bind the Mobility Authority. Nothing contained in this Agreement shall be deemed or construed to create a partnership or joint venture, to create the relationship of employee-employer or principal-agent, or to otherwise create any liability for the Mobility Authority whatsoever with respect to the liabilities, obligations or acts of the Consultant, its employees, subconsultants, or subcontractors, or any other person.

ARTICLE 21: NOTICE

A notice, demand, request, report, and other communication required or permitted under this Agreement, or which any party may desire to give, shall be in writing and shall be deemed to have been given on the sooner to occur of (i) receipt by the party to whom the notice is hand-delivered, with a written receipt of notice provided by the receiving party, or (ii) two (2) business days after deposit in a regularly maintained express mail receptacle of the United States Postal Service, postage prepaid, or registered or certified mail, return receipt requested, express mail delivery, addressed to such party at their address set forth below, or to such other address as a party may from time to time designate under this Article, or (iii) receipt of a fax or an electronic mail transmission (the latter of scanned documents in a format such as .pdf or .tif) for which confirmation of receipt by the other party has been obtained by the sending party:

*In the case of the **Consultant**:*

Fagan Consulting, LLC
Attn: Ron Fagan, Managing Partner
16001 Spillman Ranch Loop
Austin, TX 78738
Email: rfagan@faganconsulting.com

*In the case of the **Mobility Authority**:*

Central Texas Regional Mobility Authority
Attn: Tracie Brown, Director of Operations
3300 North IH 35, Suite 300
Austin, TX 78705
Fax: (512) 996-9784
Email: tbrown@ctrma.org

with a copy to:

Geoff Petrov, General Counsel
Central Texas Regional Mobility Authority
3300 North IH 35, Suite 300
Austin, TX 78705
Fax: (512) 225-7788
Email: gpetrov@ctrma.org

A party may change the information provided in this Article for notification purposes by providing notice to the other party of the new information and the effective date of the change.

ARTICLE 22: REPORTS OF ACCIDENTS, ETC.

No later than twenty-four (24) hours after occurrence of any accident or other event which results in, or might result in, injury to the person or property of any third person (including an employee or subconsultant or employee of a subconsultant of the Consultant) which results from or involves any action or failure to act of the Consultant or any employee, subconsultant, employee of a subconsultant, or agent of the Consultant or which arises in any manner from the performance of this Agreement, the Consultant shall provide a written report of such accident or other event to the Mobility Authority, setting forth a full and concise statement of the facts pertaining thereto. The Consultant also shall immediately send the Mobility Authority a copy of any summons, subpoena, notice, or other documents served upon the Consultant, its agents, employees, subconsultants, or representatives, or received by it or them, in connection with any matter before any court arising in any manner from the Consultant's performance of the Services under this Agreement.

ARTICLE 23: MOBILITY AUTHORITY'S ACTS

Anything to be done under this Agreement by the Mobility Authority may be done by such persons, corporations, firms, or other entities as the Mobility Authority's Executive Director may designate in writing.

ARTICLE 24: LIMITATIONS

Notwithstanding anything herein to the contrary, all covenants and obligations of the Mobility Authority under this Agreement shall be deemed to be valid covenants and obligations only to the extent authorized by Chapter 370 of the Texas Transportation Code and permitted by the laws and the Constitution of the State of Texas, and no officer, director, or employee of the Mobility Authority shall have any personal obligations or liability thereunder.

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

ARTICLE 25: CAPTIONS NOT A PART HEREOF

Captions or subtitles of the several articles, subsections, and other divisions of this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Agreement or the scope or content of any of its articles, subsections, or other divisions.

ARTICLE 26: CONTROLLING LAW, VENUE

This Agreement shall be governed and construed in accordance with the laws of the State of Texas. The parties acknowledge that venue is proper in Travis County, Texas, for all disputes arising under this Agreement and waive any right to sue and be sued elsewhere.

ARTICLE 27: COMPLETE AGREEMENT

This Agreement sets forth the complete agreement between the parties with respect to the Services and, except as provided for in Article 19 above, expressly supersedes all other agreements (oral or written) with respect thereto. Any changes in the character, agreement, terms and/or responsibilities of the parties must be enacted through a written amendment, executed by the Mobility Authority and the Consultant. This Agreement may not be orally canceled, changed, modified or amended, and no cancellation, change, modification or amendment shall be effective or binding, unless in writing and signed by the parties to this Agreement. This provision cannot be waived orally by either party.

ARTICLE 28: TIME OF ESSENCE

As set forth in Article 4, with respect to any specific delivery or performance date or other deadline provided hereunder, time is of the essence in the performance of the provisions of this Agreement. The Consultant acknowledges the importance to the Mobility Authority of the project schedule and will perform its obligations under this Agreement with all due and reasonable care and in compliance with that schedule.

ARTICLE 29: SEVERABILITY

If any provision of this Agreement, or the application thereof to any person or circumstance, is rendered or declared illegal for any reason and shall be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby but shall be enforced to the greatest extent permitted by applicable law.

ARTICLE 30: AUTHORIZATION

Each party to this Agreement represents to the other that it is fully authorized to enter into this Agreement and to perform its obligations hereunder, and that no waiver, consent, approval, or authorization from any third party is required to be obtained or made in connection with the execution, delivery, or performance of this Agreement.

ARTICLE 31: SUCCESSORS

This Agreement shall be binding upon and inure to the benefit of the Mobility Authority, the Consultant, and their respective heirs, executors, administrators, successors, and permitted assigns. The Consultant may not assign the Agreement or any portion thereof without the prior written consent of the Mobility Authority.

ARTICLE 32: INTERPRETATION

No provision of this Agreement shall be construed against or interpreted to the disadvantage of any party by any court, other governmental or judicial authority, or arbiter by reason of such party having or being deemed to have drafted, prepared, structured, or dictated such provision.

ARTICLE 33: 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.

ARTICLE 34: SURVIVAL

Each of the provisions in the Agreement are important and material and significantly affect the successful conduct of the business of the Mobility Authority, as well as its reputation and goodwill. Any breach of the terms of this Agreement is a material breach of this Agreement, from which the Consultant may be enjoined and for which the Consultant also shall pay to the Mobility Authority all damages which arise from said breach. The Consultant understands and acknowledges that the Consultant's responsibilities under Articles 11 and 15 of this Agreement shall continue in full force and effect after the date this Agreement terminates for any reason.

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

**CENTRAL TEXAS REGIONAL
MOBILITY AUTHORITY**

FAGAN CONSULTING, LLC

By: _____
Mike Heiligenstein, Executive Director

By: _____
Ron Fagan, Managing Partner

EXHIBIT "A"

SCOPE OF SERVICES

I. Purpose

The Consultant shall provide technical assistance and advice to the Mobility Authority and assist in the management and oversight of the Electronic Toll Collection System (ETCS) and Intelligent Transportation System (ITS) Implementation and Maintenance Services Agreement between the Mobility Authority and the Toll Systems Integrator.

The Consultant shall provide qualified technical and professional personnel to perform the duties and responsibilities assigned under the terms of this Agreement. The Mobility Authority, at its option, may elect to expand, reduce, or delete the extent of each work element described in this Scope of Services document, provided such action does not alter the intent of this Agreement.

The Mobility Authority will request all Services on an as-needed basis, through issuance of a Letter Agreement. Mobility Authority makes no representation that any or all of the Services described in this Agreement will be assigned during the term of this Agreement. Further, the Consultant is providing these Services on a nonexclusive basis. The Mobility Authority, at its option, may elect to have any of the Services set forth herein performed by other consultants or by the Mobility Authority's staff.

II. Services

The Scope of Services to be provided by the Consultant include the following:

1. Electronic Toll Collection System

- A. Assist the CTRMA with the oversight of its contract with the TSI and participate in system requirements analysis.
- B. Oversee system implementation support for ETCS and Dynamic Pricing RFPs including integration and testing oversight.
- C. Review contract deliverables from the TSI to include without limitation the Preliminary System Design Document and Final System Design Document, interface plans, and the QA/QC Manual to ensure that deliverables conform to ETCS contract terms and to standards established by the CTRMA and under interoperability agreements.
- D. Participate in ETCS design reviews. Design reviews will include a high-level overview of hardware and software development, design configurations, system interfaces and highlight any design issues and risk mitigation. Monitor the ETCS Design Testing and Acceptance Testing and advise the CTRMA regarding test process, progress, and results.
- E. Review detailed development and implementation schedules and assist with progress reporting.
- F. Oversee and participate in annual or biennial system accuracy testing and perform lane audits when necessary.

- G. Review claims and change orders.
- H. Perform monthly maintenance reviews for compliance with KPIs and SLAs and advise the CTRMA regarding ETCS contract performance standards and results.

2. Technical Project Support

- A. Provide support for the PBM program including, but not limited to, defining business requirements, maintaining and/or reviewing requirements trace matrices, participating in test plan development, overseeing testing and monitoring results, etc.
- B. Provide interoperability support including National and Regional IOP, testing and reconciliation, and tri-protocol reader upgrades and support.
- C. Provide project management, basic IT support and assist with requirement development.
- D. Support pilot projects for new technologies.
- E. Perform feasibility studies, industry reviews, and surveys.
- F. Research best practices and develop white papers.
- G. Develop cost/benefit analyses.
- H. Assist in the development of RFQs, RFPs, and RFIs.
- I. Augment operations and IT staff including possible co-location at CTRMA facilities.
- J. Provide other related technical services as requested by the CTRMA.

3. ITS Support

- A. Assist the CTRMA with the oversight of its contractor providing for ITS (Intelligent Transportation Systems) maintenance (the “ITS Maintenance Contractor”), including integration and testing oversight, and the contractor performing ITS installations (the “Civil Contractor”).
- B. Review contract deliverables from the ITS Maintenance Contractor or Civil Contractor to include without limitation design documents, interface plans, and test plans to ensure that deliverables conform to the contract terms and to standards established by the CTRMA and under regional data sharing agreements.
- C. Participate in ITS design reviews. Design reviews should include a high-level overview of hardware and software development, design configurations, system interfaces and highlight any design issues and risk mitigation. Monitor ITS testing and advise the CTRMA regarding test process, progress, and results.
- D. Review detailed development and implementation schedules and assist with progress reporting.

- E. Oversee and participate in periodic system accuracy testing when necessary.
- F. Review claims and change orders.
- G. Perform monthly maintenance reviews for compliance with KPIs and SLAs and advise the CTRMA regarding ITS Maintenance contract performance standards and results.
- H. Provide ITS support including support of cameras, radar vehicle sensing devices, dynamic message signs, wrong way driver applications, automated traffic management systems, and other ITS implementations as needed.

EXHIBIT “B”

FORM OF LETTER AGREEMENT

LETTER AGREEMENT NO. _____

This Letter Agreement is made as of this day of _____, 20____, under the terms and conditions established in the AGREEMENT FOR GENERAL SYSTEMS CONSULTANT SERVICES, dated as of _____, 2020 (the “Agreement”), between the Central Texas Regional Mobility Authority (“Mobility Authority”) and Fagan Consulting, LLC (“Consultant”).

This Letter Agreement is made for the following purpose, consistent with the services defined in the Agreement:

[Brief description of the Project to which this Letter Agreement applies]

Section A. Scope of Services

A.1. Consultant shall perform the following Services:

[Describe the Scope of Services established for this Letter Agreement, or make reference to an attached Exhibit where the Scope of Services is set out.]

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

[Describe any Additional Services that may be authorized by future written confirmation from the Mobility Authority.]

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

[Describe Documents to be delivered by Consultant.]

Section B. Service Providers

[Describe Key Personnel and subconsultants, if any, assigned to the Project.]

Section C. Schedule

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

[Describe agreed Project schedule.]

Section D. Compensation

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

D.2. Compensation for Additional Services (if any) shall be paid by the Mobility Authority to Consultant according to the terms of a future Letter Agreement.

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

**CENTRAL TEXAS REGIONAL
MOBILITY AUTHORITY**

[CONSULTANT]

By: _____
Mike Heiligenstein, Executive Director

By: _____
[CONSULTANT]

EXHIBIT "C"
NONDISCLOSURE AGREEMENT

EXHIBIT "D"
CONSULTANT'S PROPOSAL

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

RESOLUTION NO. 19-052

**AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE WORK AUTHORIZATIONS
FOR PREVIOUSLY APPROVED CONTRACTS WITH THE MOBILITY AUTHORITY**

WHEREAS, the Central Texas Regional Mobility Authority (“Mobility Authority”) was created in 2002 pursuant to the request of Travis and Williamson Counties and in accordance with the provisions of the Transportation Code and the petition approval process established in 43 TAC 26.01, et seq.; and

WHEREAS, at its inception, the Mobility Authority did not have a staff, so the majority of agency operations were performed by consultants under the direct oversight of the Board of Directors; and

WHEREAS, in 2003, the Board of Directors hired an Executive Director to be the chief administrator responsible for the general management, hiring and termination of employees, and day-to-day operations of the Mobility Authority; and

WHEREAS, over time the Mobility Authority has continued to grow and currently has a staff of twenty-eight professionals with specialized skills carrying out agency operations; and

WHEREAS, today Mobility Authority staff directly oversee the work performed by agency contractors and consultants, including the implementation of work authorizations and task orders pursuant to contracts approved by the Board of Directors; and

WHEREAS, it is necessary and appropriate for the Board of Directors to establish budgets for all Mobility Authority Activities and to approve contracts and other actions that result in a commitment of Mobility Authority funds as described in the Mobility Authority Policy Code; and

WHEREAS, once the Board of Directors has approved an action and established a budget through the approval of a contract, the work to be performed under the contract could be more efficiently be administered by allowing the Executive Director to approve work authorizations and task orders prepared by Mobility Authority staff; and

WHEREAS, in the interest of administrative efficiency, the Executive Director requests authorization to execute work authorizations on behalf of the Mobility Authority for contracts executed prior to the date of this Resolution and within the budget, term and scope of the contract previously approved by the Board of Directors; and

NOW THEREFORE, BE IT RESOLVED that, for current Mobility Authority contracts, the Board of Directors hereby authorizes the Executive Director to act on behalf of the Mobility Authority to execute and issue work authorizations that are within the budget, term and scope of the contract previously approved by the Board of Directors; and

BE IT FURTHER RESOLVED that, for work authorizations for Mobility Authority contracts and master agreements that do not include a previously approved scope, term, and budget or "not to exceed" amount for the work, the Executive Director will continue to obtain approval from the Board of Directors prior to the execution and issuance of any work authorization for that contract or master agreement.

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 11th day of September 2019.

Submitted and reviewed by:



Geoffrey Petrov, General Counsel

Approved:



Bobby Jenkins
Chairman, Board of Director