

PUBLIC NOTICE
In association with Agenda Item No. 16 at the
August 27, 2025
Regular Meeting of the CTRMA Board of Directors

This notice is given pursuant to Tex. Gov't Code § 2254.1036.

- A. The Central Texas Regional Mobility Authority (“CTRMA”) intends to pursue claims for monetary damages, declaratory relief, and other legal remedies (“Damages”) in relation to the retaining walls located along the US 183 corridor from approximately US 290 to SH 71 (the “Litigation”). CTRMA’s desired outcome in pursuing the Litigation is to recover Damages owed to CTRMA for the failure to properly design and/or construct the subject retaining walls, in addition to other relief allowed under the law. Therefore, there is substantial need for the legal services.

- B. CTRMA wishes to engage Kaeske Law Firm (“Counselors”). Details regarding their competence, qualifications and experience are attached at Exhibit 1.

- C. The legal services for which the Counselors are retained cannot be adequately performed by the attorneys and supporting personnel of CTRMA. CTRMA’s budget is limited, and the legal department only has a single in-house attorney. CTRMA General Counsel is engaged in numerous transactional matters and in overseeing, managing, and litigating other matters. In addition, the investigation, research, and litigation of the claims will require specialized attorneys who have knowledge and experience with complex engineering principles, including structural and geotechnical engineering; retaining walls, including Mechanically Stabilized Earth walls; construction and contract issues, including the procurement, standards, specifications, and designs associated with roadway projects; and professionals with expertise in these fields. Such work will require numerous specialized attorneys, paralegals and others who are familiar with the wrongful actions and/or inactions involved in the design and construction of retaining walls. Thus, CTRMA does not have the resources it believes will be necessary to engage in protracted, time-consuming, and expensive litigation.

D. The legal services for which Counselors are proposed to be retained cannot reasonably be obtained from attorneys in private practice under a contract providing for the payment of hourly fees without regard to the outcome of the matter for the following reasons:

- (1) **TIME:** It is not economically feasible for CTRMA to pay outside counsel on an hourly basis for what CTRMA anticipates, based on similar previous litigation, will require thousands of hours of unbudgeted attorney time advanced in pursuing the relief CTRMA expects to achieve.

The issues involved in CTRMA's claims, including the parties' respective responsibilities for the proper design and construction of Mechanically Stabilized Earth retaining walls, have not been adjudicated and determined. The parties will likely aggressively oppose all aspects of the Litigation. It will require the skill of attorneys who have familiarity with such unique, complex litigation.

- (2) **COMPLEXITY/DAMAGES:** Besides legal issues, determining damages may be complicated. Damages will be based, in part, on: 1) expenses incurred by CTRMA on a limited portion of the subject walls, and 2) anticipated expenses to be incurred by CTRMA on the remaining portion of the walls which have not yet been remediated. The engineering and construction data necessary to formulate the calculation is unclear at this time, but it is anticipated to be complex and difficult to understand. Further, because there are expected to be multiple defendants, it is likely that they have different business practices and ways of maintaining their data. It will require experienced lawyers with the assistance of experts to decipher the data and determine a mathematical or formulaic calculation for each of the retaining walls at issue, each based on their individual needs.

(3) EXPENSES: Finally, while CTRMA has agreed to reimburse certain expenses, Counselors have agreed to advance any expenses in the case required to retain special outside counsel to assist on matters other than prosecuting CTRMA's claims. Examples of such instances include: a defendant may seek bankruptcy protection; a defendant may attempt to transfer some of its assets to avoid paying CTRMA's claim; a complex, multi-party settlement may require an ethics opinion from outside counsel; or a separate lawsuit may need to be filed against a defendant's insurance company. In such an instance, the fees of such special outside counsel shall be advanced by Counselors. If there is no recovery, Counselors will be solely responsible for payment of such special outside counsel expenses. In CTRMA's experience, hourly lawyers are unable and/or unwilling to make such concessions.

E. The relationship with Counselors would continue until this Litigation is completed. CTRMA's selection of Counselors is based in part on their representation of the North Texas Tollway Authority ("NTTA"), which first began in about April 2012 in another retaining wall civil case captioned Cause No. 12-01431, *North Texas Tollway Authority vs. James Construction Group, LLC, KBR, Inc. and Bureau Veritas North America, Inc.*, then pending in the 160th Judicial District of Dallas County, Texas. In that case and in NTTA's three other retaining wall cases that followed, Counselors demonstrated their specialized skills with respect to this type of complex engineering and construction litigation, and Counselors successfully concluded each of those cases on NTTA's behalf.

F. The advance of expenses for special outside counsel is risky because there is no guarantee litigation will be successful. In contrast, under the terms of the legal services agreement, such expenses are reimbursed only out of any recovery. Because CTRMA has limited funds, it is especially in CTRMA's interest, and that of its constituents, to have Counselors advance those special counsel expenses and only be reimbursed by CTRMA out of any recovery if CTRMA is successful. Entering a contingent fee contract for legal services is also in the best interest of CTRMA and the constituents of CTRMA because it will allow CTRMA to recoup damages owed CTRMA for retaining wall repairs spent to date and obtain a judgment ordering the defendants to

pay the additional repair expenses not yet spent. The damages recovered in the Litigation will be used to support essential CTRMA services in order to protect against further loss of or damage and prevent or minimize serious disruption in critical CTRMA services that affect health, safety, or the collection of substantial toll revenues. Retaining counsel who will perform these services on a contingency fee and who will advance expenses of outside special counsel will allow CTRMA to use those funds instead to support necessary CTRMA services, and if CTRMA does not obtain a recovery from the litigation, CTRMA additionally benefits from the proposed contract by not having to pay for those expenses or the substantial attorneys' fees that would have been incurred if the services had been performed on an hourly basis.

EXHIBIT 1

KAESKE LAW FIRM

Kaeske Law Firm was founded in 1999 by Michael Kaeske. Mr. Kaeske has decades of courtroom experience. He consistently tries tough, complex cases to verdict. Kaeske Law Firm has successfully handled multiple retaining wall litigation matters.

Mr. Kaeske attended Syracuse University, graduating in 1991 summa cum laude with a degree in International Relations and Philosophy. In 1995, Mr. Kaeske graduated from the University of Texas with a joint J.D./M.B.A.

Mr. Kaeske began his legal career by trying cases for Baron & Budd. At this time, D Magazine selected Mr. Kaeske in the first group of the “Best Lawyers in Dallas Under 40” in 2002 and again in 2004. Mr. Kaeske earned this reputation by achieving multiple verdicts for Baron & Budd’s clients.

In 1999, Mr. Kaeske left Baron & Budd to form his own firm and then opened offices in Austin and Dallas, where he has handled a range of significant cases for the last two decades, including complex business and construction litigation.

Mr. Kaeske continues to be recognized by Texas Super Lawyers. In 2011, he tried a large commercial case to verdict that was recognized as the “#1 Contract Case Verdict in Texas” and the “#8 Top Texas Verdict of 2011” by Texas Lawyer.

Since 2012, Mr. Kaeske has been the lead counsel for the North Texas Tollway Authority’s retaining wall litigation. In 2024, Mr. Kaeske achieved a \$280 million jury verdict on behalf of the NTTA. Mr. Kaeske has successfully resolved each of the four retaining wall cases he litigated for NTTA.

In 2020, Mr. Kaeske led the team that received the Public Justice “Trial Lawyer of the Year” award, including for their achievement of monetary verdict awards for their clients in excess of \$500 million in the subject litigation – as documented in the book Knopf published, “Wastelands” by Corban Addison.