

ENGINEERING SERVICES AGREEMENT

THIS AGREEMENT is made and entered into by and between the Fort Bend County Toll Road Authority, a transportation corporation organized and operating under the laws of the State of Texas, hereinafter called the "FBCTRA" and Reynolds, Smith and Hills, Inc. (RS&H), a Florida corporation, hereinafter called "Engineer."

WITNESSETH

WHEREAS, the FBCTRA desires to enter into an agreement for the performance by Engineer of services during the Project, and which are within the "Scope of Services" as defined in paragraph 2 below;

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

AGREEMENT

1. General

The Engineer shall render professional services to FBCTRA related to the Project as defined in the Scope of Services in Attachment A.

The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of Engineer's profession practicing under similar conditions at the same time and in the same locality.

2. Compensation and Payment

- a. The Maximum Compensation under this contract is \$236,236.08. The amount paid under this Agreement may not exceed the Maximum Compensation without an approved change order.

Compensation for the performance of services within the Scope of Services described in Attachment A will be paid in an amount not to exceed \$236,236.08, as shown in Attachment B. Progress payments for work detailed in Attachment A will be made when the Engineer has attained a level of completion equal to or greater than agreed upon milestones of completion in the reasonable opinion of FBCTRA.

Compensation for services described in Attachment A will be paid per the rates described in Attachment B only for work authorized in writing prior to being performed and only for such work as was actually performed. The Engineer shall furnish satisfactory documentation of such work (e.g. timesheets, billing rates, classifications, invoices, etc.) as may be required by FBCTRA.

- b. All performance of the Scope of Services and any Additional Services including changes in the contractual scope of work and revision of work satisfactorily performed, will be performed only when approved in advance and authorized by the

FBCTRA, and Additional Services will be reimbursed based on the billing rates in effect at that time, to the extent that such labor costs, and subcontracts are reasonable and necessary for the performance of such services. Out-of-pocket expense costs may be reimbursed only when approved in advance and authorized by the FBCTRA. Payment will be made on the basis of project completion certificate and, for Additional Services, time and expense records and in accordance with those payment procedures set forth in subparagraph d. below. Billing rates will be inclusive of all direct labor, fringe benefits, general overhead, and profit.

- c. Where subcontractors are employed by the Engineer to perform additional services not within the original Scope of Services, the Engineer will be reimbursed for subcontractors' actual salaries and hourly rates, including overtime rates. Reimbursement to the Subcontractor for non-salary costs incurred by subcontractor will be on the same basis as if the cost was incurred by the Engineer. For subcontractors employed for the convenience of the FBCTRA, the Engineer will be paid a subcontract administrative fee equal to ten percent (10%) of all subcontractor invoiced amounts.
- d. It is understood and agreed that monthly payments will be made to the Engineer by the FBCTRA based on the following procedures: On or about the fifteenth day of each month during the performance of services hereunder and on or about the fifteenth day of the month following completion of all services hereunder, the Engineer shall submit to the FBCTRA two (2) copies of invoices showing the amounts due for services performed during the previous month, set forth separately for work under this Agreement and for additional services (accompanied by supporting certified time and expense records of such charges in a form acceptable to the FBCTRA.) It is specifically understood that any requests for travel reimbursements shall comply with those procedures for travel reimbursement to Fort Bend County employees established by the Fort Bend County Auditor. The FBCTRA shall review such invoices and approve them within thirty (30) calendar days with such modifications as are consistent with this Agreement and forward same to the Auditor. The County shall pay each such invoice as approved by the FBCTRA within thirty (30) calendar days after the FBCTRA's approval of same.

3. Time of Performance

It is understood and agreed that the time for performance of the Engineer's services under this Agreement shall begin with receipt of the Notice to Proceed and end February 2015.

4. The FBCTRA's Option to Terminate

- a. The FBCTRA has the right to terminate this Agreement at its sole option at any time, with or without cause, by providing thirty (30) days written notice of such intentions to terminate and by stating in said notice the "Termination Date" which shall be less than thirty (30) days later than the actual receipt of such written notice by the Engineer. Upon such termination, the FBCTRA shall compensate the Engineer in accordance with paragraph 3, above, for those services which were provided under this Agreement prior to its termination and which have not been

previously invoiced to the FBCTRA. The Engineer's final invoice for said services will be presented to and paid by the FBCTRA in the same manner set forth in paragraph 3(b), above.

- b. Termination of this Agreement and payment as described in subparagraph (a) of this Paragraph shall extinguish all rights, duties, obligations, and liabilities of the FBCTRA and the Engineer under this Agreement and this Agreement shall be of no further force and effect, provided, however, such termination shall not act to release the Engineer from liability for any previous default either under this Agreement or under any standard of conduct set by common law or statute. The obligations in Paragraph 6 shall survive the termination of this Agreement.
- c. If the FBCTRA terminates this Agreement as provided in this paragraph, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to the Engineer.
- d. The FBCTRA'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 and privileges otherwise available under law or equity to the FBCTRA by virtue of this Agreement or otherwise. Failure of the FBCTRA to exercise any of its said rights, actions, options or privileges to terminate this Agreement as provided in any provision of this Agreement shall not be deemed a waiver of any rights, actions or privileges otherwise available under the 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.
- e. Copies of all completed and partially completed documents prepared under this Agreement shall be delivered to the FBCTRA within thirty (30) days or upon Engineer's receipt of termination payment, whichever is sooner, when and if this Agreement is terminated.

5. Inspection of the Engineer's Books and Records

The Engineer will permit the FBCTRA, or any duly authorized agent of the FBCTRA, to inspect and examine the books and records of the Engineer for the purpose of verifying the amount of work performed on the Project. FBCTRA's right to inspect survives the termination of this Agreement for a period of four years.

6. Ownership and Reuse of Documents

All documents, including original drawings, estimates, specifications, field notes, and data created, produced, developed or prepared by Engineer or its approved outside advisory or support consultants (collectively, the "Documents") shall be the property of the FBCTRA subject to all of the following terms and conditions; provided, however, FBCTRA shall not own and shall have no right to receive any documents not deemed "final" by the Engineer until termination of this Agreement. Engineer will deliver the Documents to FBCTRA within thirty (30) days of the termination of this agreement and may retain a set of reproducible record copies of the Documents, provided that the Engineer has received full

compensation due pursuant to the terms of this Agreement. It is mutually agreed that FBCTRA will use the Documents solely in connection with the Project and for no other purposes, except with the express written consent of the Engineer, which consent will not be unreasonably withheld. Any use of the Documents without the express written consent of the Engineer will be at District's sole risk and without liability or legal exposure to Engineer.

FBCTRA shall also be the owner of all intellectual property rights of the services rendered hereunder, including all rights of copyright therein. It is the intention of Engineer and FBCTRA that the services provided are a "work for hire" as the term is used in the federal Copyright Act. Moreover, Engineer hereby agrees to assign, and by these presents, does assign to FBCTRA all of Engineer worldwide right, title and interest in and to such work product and all rights of copyright therein.

Engineer agrees that all trademarks, trade names, service marks, logos, or copyrighted materials of FBCTRA that Engineer is permitted to use in connection with the services will not be used without FBCTRA's consent and shall remain in the sole and exclusive properties of FBCTRA and this Agreement does not confer upon Engineer any right or interest therein or in the use thereof.

7. Personnel, Equipment, and Material

- a. The Engineer represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the Scope of Services required under this Agreement and that the Engineer shall furnish and maintain, at its own expense, adequate and sufficient personnel and equipment, in the opinion of the FBCTRA, to perform the Scope of Services when and as required and without delays. It is understood that the FBCTRA will approve assignment and release of all key Engineer personnel and that the Engineer shall submit written notification of all key Engineer personnel changes for the FBCTRA's approval prior to the implementation of such changes. For the purpose of this agreement, key Engineer personnel are defined as: Project Manager. Services described in this Agreement shall be performed under the direction of an engineer licensed to practice professional engineering in the State of Texas.
- b. All employees of the Engineer shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of the Engineer who, in the opinion of the FBCTRA, is incompetent or by his conduct becomes detrimental to the Project shall, upon request of the FBCTRA, immediately be removed from association with the Project.
- c. Except as otherwise specified, the Engineer shall furnish all equipment, transportation, supplies, and materials required for its operation under this Agreement.

8. Items to be furnished to Engineer by the FBCTRA

As applicable, the following items will be supplied to the Engineer:

- a. Copies of preliminary studies by others.
- b. Assistance in coordination with all utility companies.
- c. Assistance in coordination with all public and governmental entities.

9. Subletting

The Engineer shall not sublet, assign, or transfer any part of its rights or obligations in this Agreement without the prior written approval of the FBCTRA. Responsibility to the FBCTRA for sublet work shall remain with the Engineer.

10. Conference

At the request of the FBCTRA, the Engineer shall provide appropriate personnel for conferences at its offices, or attend conferences at the various offices of the FBCTRA, or at the site of the Project, and shall permit inspections of its offices by the FBCTRA, or others when requested by the FBCTRA.

11. Appearance as Witness

If requested by the FBCTRA, or on its behalf, the Engineer shall prepare such engineering exhibits and plans as may be requested for all hearings and trials related to the Project and, further, it shall prepare for and appear at conferences at the office of the FBCTRA's Executive Director and shall furnish competent expert engineering 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 Project. Trial preparation and appearance by the Engineer in courts regarding litigation matters are Additional Services and compensation will be made in accordance with the Engineer's rates.

12. Compliance with Laws

The Engineer shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required, the Engineer shall furnish the FBCTRA with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

13. Insurance

The Engineer shall obtain and maintain, throughout the term of the Agreement, insurance of the types and in the minimum amounts set forth in Attachment C.

14. Indemnification

With respect to claims brought by third parties against either Engineer of the FBCTRA relating to the property or facilities with respect to which this Agreement pertains, Engineer and the FBCTRA agree as follows:

- a. **ENGINEER WILL INDEMNIFY AND HOLD HARMLESS THE FBCTRA, ITS DIRECTORS, OFFICERS, AND EMPLOYEES AGAINST ANY CLAIMS, DEMANDS OR CAUSES OF ACTION; AND COSTS, LOSSES, LIABILITIES, EXPENSES AND JUDGMENTS INCURRED IN CONNECTION THEREWITH, INCLUDING REASONABLE ATTORNEY'S FEES AND COURT COSTS, BROUGHT BY ANY OF ENGINEER'S EMPLOYEES OR REPRESENTATIVES, OR BY ANY OTHER THIRD PARTY, BASED UPON, IN CONNECTION WITH, RESULTING FROM OR ARISING OUT OF THE NEGLIGENT ACTS, ERRORS OR OMISSIONS OF ENGINEER; HOWEVER, ENGINEER'S CONTRACTUAL OBLIGATION OF INDEMNIFICATION SHALL NOT EXTEND TO THE NEGLIGENCE OR OTHER FAULT OF THE FBCTRA OR STRICT LIABILITY IMPOSED UPON THE FBCTRA AS A MATTER OF LAW (INCLUDING STRICT LIABILITY IMPOSED UPON THE FBCTRA AS A RESULT OF THE CONDITION OF THE PROPERTY OR FACILITIES WITH RESPECT TO WHICH THIS AGREEMENT PERTAINS).**
- b. In the event that both the FBCTRA and Engineer are adjudicated negligent or otherwise at fault or strictly liable without fault with respect to damage or injuries sustained by the claimant, each shall be responsible for its own costs of litigation and pro rata share of damages as determined by the proceedings.

It is a condition precedent to the indemnitor's contractual obligation of indemnification under this Agreement that the party seeking indemnity shall provide written notice of a third party claim, demand or cause of action within thirty (30) days after such third party claim, demand or cause of action is received by the party seeking indemnity. It is a further condition precedent to the indemnitor's contractual obligation of indemnification under this Agreement that the indemnitor shall thereafter have the right to participate in the investigation, defense and resolution of such third party claim.

15. Dispute Resolution

Except as expressly provided in Section 4. Termination, if a dispute arises out of, or relates to, the breach thereof, and if the dispute cannot be settled through negotiation, then the FBCTRA and the Engineer agree to submit the dispute to mediation. In the event the FBCTRA or the Engineer desires to mediate any dispute, that party shall notify the other party in writing of the dispute desired to be mediated. If the parties are unable to resolve their differences within 10 days of the receipt of such notice, such dispute shall be submitted for mediation in accordance with the procedures and rules of the American Arbitration Association (or any successor organization) then in effect. The deadline for submitting the dispute to mediation can be changed if the parties mutually agree in writing to extend the

time between receipt of notice and submission to mediation. The expenses of the mediator shall be shared 50 percent by the FBCTRA and 50 percent by the Engineer. This requirement to seek mediation shall be a condition required before filing an action at law or in equity.

16. Delivery of Notices, Etc.

- a. All written notices, demands, and other papers or documents to be delivered to the FBCTRA under this Agreement shall be delivered to the Fort Bend Grand Parkway Toll Road Authority, P.O. Box 2789, Sugar Land, Texas 77498-2789, Attention: Mike Stone, or at such other place or places as it may from time to time designate by written notice delivered to the Engineer. For purposes of notice under this Agreement, a copy of any notice or communication hereunder shall also be forwarded to the following address: Fort Bend County Clerk, 301 Jackson Street, Richmond, Texas 77469, Attention: County Judge.
- b. All written notices, demands, and other papers or documents to be delivered to the Engineer under this Agreement shall be delivered to RS&H, 8140 North Mo Pac Expressway, Building 2, Suite 100, Austin, Texas, 78759 Attention: Rick Hurst, or such other place or places as the Engineer may designate by written notice delivered to the FBCTRA.

17. Reports of Accidents, Etc.

Within 24 hours after the occurrence of any accident or other event which results in, or might result in, injury to the person or property of any third person (other than an employee of the Engineer), whether or not it results from or involves any action or failure to act by the Engineer or any employee or agent of the Engineer and which arises in any manner from the performance of this Agreement, the Engineer shall send a written report of such accident or other event to the FBCTRA, setting forth a full and concise statement of the facts pertaining thereto. The Engineer shall also immediately send the FBCTRA a copy of any summons, subpoena, notice, other documents served upon the Engineer, its agents, employees, or representatives, or received by it or them, in connection with any matter before any court arising in any manner from the Engineer's performance of work under this Agreement.

18. The FBCTRA's Acts

Anything to be done under this Agreement by the FBCTRA may be done by such persons, corporations, or firms as the FBCTRA may designate.

19. Limitations

Notwithstanding anything herein to the contrary, all covenants and obligations of the FBCTRA under this Agreement shall be deemed to be valid covenants and obligations only to extent authorized by the Act creating the FBCTRA and permitted by the laws and the Constitution of the State of Texas. This Agreement shall be governed by the laws of the State of Texas, and no officer, director, or employee of the FBCTRA shall have any personal obligation hereunder.

20. Captions Not a Part Hereof

The captions of subtitle of the several sections and divisions of this Agreement constitute no part of the content hereof, but are only labels to assist in locating and reading the provisions hereof.

21. Controlling Law, Venue

This Agreement shall be governed and construed in accordance with the laws of the State of Texas. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all disputes arising hereunder and waive the right to sue or be sued elsewhere.

22. Successors and Assigns

The FBCTRA and the Engineer bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of the other party, in respect to all covenants of this Agreement.


23. Appendices

The Appendices attached to this Agreement, which consists of:

Attachment A	Scope of Services
Attachment B	Compensation for Scope of Services
Attachment C	Insurance Requirements


IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the 16th day of July, 2014.

FORT BEND COUNTY TOLL ROAD
AUTHORITY, a local government Texas corporation

By: 
James D. Condrey
Chairman, Board of Directors

ATTEST: 
By: _____
Secretary, Board of Directors

REYNOLDS, SMITH AND HILLS, INC.

By: 
Name: Richard Hurs
Title: Vice President

ATTACHMENT A

FORT BEND COUNTY TOLL ROAD AUTHORITY TOLL COLLECTION SYSTEM CONVERSION

BACKGROUND

The Fort Bend County Toll Road Authority (FBCTRA) is in the process of replacing toll equipment on Westpark Tollway and the Fort Bend Parkway. In order to accommodate the placement of new tolling, infrastructure must be constructed. The timeframe to incorporate new tolling equipment and infrastructure is by the fall of 2014. This scope of services complies with recommendation made in the August 2013 Toll Conversion Concept Report submitted to FBCTRA. This additional scope of services includes:

- Phase I - Plans Review and Document Development
- Phase II – System Development, Testing, and Training
- Phase III –System Installation and Oversight

Specific details of these services consist of the following:

PHASE I – PLANS REVIEW AND DOCUMENT DEVELOPMENT

1. Shop drawing review
 - a. Review shop drawings, erection drawings, and working drawings prepared and submitted by manufacturers and/or fabricators for conformity to the plans, specifications, special provisions, and any subsidiary criteria in a timely manner
 - b. Review and approve all necessary items including required material samples, tests and mock-ups prior to installation, placement, fabrication or use in the project
 - c. Coordinate with contractor and manufacturers as required
 - d. Maintain, log, and retain all documents associated with shop drawings
2. Request For Information (RFI)
 - a. Review and respond to RFIs issued by the contractor or owner in a timely manner
 - b. Maintain, log, and retain all documents associated with transmittals of RFIs
3. Survey Control Maps
 - a. Provide one (1) sheet with three (3) sites placed on the sheet
 - b. Provide final survey map with RPLS seal
4. Review and provide comment on the System Integrator's Project Management Plan (PMP), which includes review of:
 - a. System Integrators Management Approach
 - b. Detailed Critical Path Method (CPM) Schedule describing system design, development, installation, and testing
5. Participate in Project Initiation Conference, which includes:
 - a. Introduction of key personnel
 - b. Review the overall design of the Project as based on the project requirements, including traffic control and lane closures
 - c. Review key aspects of the PMP

- d. Review the preliminary requirements trace matrix and discuss any exceptions
- e. Discuss early project coordination
- 6. Participate in Project Meetings, Workshops (if necessary), and Presentations with:
 - a. FBCTRA
 - b. Consultants
 - c. Others (as requested)
- 7. Insure the System Integrator Obtains all Required FCC Licenses in the Name of FBCTRA

PHASE II – SYSTEM DEVELOPMENT AND TESTING

- 1. Review reports for proper inclusion of new toll locations
- 2. Participate in Site Acceptance Testing (SAT)
 - a. Review/Comment/Finalize SAT test scripts and plans
 - b. Participate in testing for each location
 - c. Review/Comment/Finalize SAT test report
- 3. Participate in Commissioning Testing
 - a. Review/Comment/Finalize Commissioning Test scripts and plans
 - b. Participate in Commissioning Test
 - c. Review/Comment/Finalize Commissioning Test report
- 4. Participate in Operational Testing
 - a. Review/Comment/Finalize Operational test scripts and plans
 - b. Participate in Operation Test
 - c. Review/Comment/Finalize Operational Test report
- 5. Train FBCTRA staff and stakeholders on lane and back-office software systems

PHASE III – SYSTEM INSTALLATION AND OVERSIGHT

- 1. Provide system installation oversight and conflict resolution as needed at the ten (10) tolling points for the five (5) toll zones. Installation oversight includes inspection of loops, installation of the tolling equipment, installation of toll cabinets, and hardware checkout. Oversight activities will also include system monitoring at startup and coordination of activities associated with integration into the Interoperability HUB (HUB) and Violation Processing Center (VPC) respectively. Toll zones include:
 - a. Westmoor (WB, EB)
 - b. Peek (WB, EB)
 - c. Lake Olympia (South)
 - d. McHard (South)
 - e. McHard (North)

ATTACHMENT B

Contingency	10%	\$21,476.01
Total		\$236,236.02

Attachment C

The Engineer shall furnish certificates of insurance to the FBCTRA evidencing compliance with the insurance requirements hereof. Certificates shall indicate name of the Engineer, name of insurance company, policy number, term of coverage and limits of coverage. The Engineer shall cause its insurance companies to provide the FBCTRA with at least thirty (30) days prior written notice of any reduction in the limit of liability by endorsement of the policy, cancellation or non-renewal of the insurance coverage required under this Agreement. The Engineer shall obtain such insurance from such companies having a Bests rating of B+/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

- a. Workers' Compensation insurance in accordance with the laws of the State of Texas, or state of hire/location of Services, and Employers' Liability coverage with a limit of not less than \$500,000 each employee for Occupational Disease, \$500,000 policy limit for Occupational Disease; and Employer's Liability of \$500,000 each accident.
- b. Commercial General Liability insurance including coverage for Products/Completed Operations, Blanket Contractual, Contractors' Protective Liability Broad Form Property Damage, Personal Injury/Advertising Liability, and Bodily Injury and Property Damage with limits of not less than:

\$3,000,000	general aggregate limit
\$2,000,000	each occurrence, combined single limit
\$2,000,000	aggregate Products, combined single limit
\$2,000,000	aggregate Personal Injury/Advertising Liability
\$50,000	Fire Legal Liability
\$5,000	Premises Medical
- c. Business Automobile Liability coverage applying to owned, non-owned and hired automobiles with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.
- d. Umbrella Excess Liability insurance written as excess of Employer's Liability, with limits not less than \$3,000,000 each occurrence combined single limit.
- e. Professional Liability insurance with limits not less than \$3,000,000 each claim/annual aggregate.

The FBCTRA and the FBCTRA's Directors shall be named as additional insureds to all coverages required above, except for those requirements in paragraphs "a" and "e." All policies written on behalf of the Engineer shall contain a waiver of subrogation in favor of the FBCTRA and the FBCTRA's Directors, with the exception of insurance required under paragraph "e."