

SERVICE AGREEMENT

This Service Agreement (this "Agreement") is entered into effective October 1, 2012 (the "Effective Date") by and between Fort Bend County Toll Road Authority, a body politic and a political subdivision of the State of Texas, an instrumentality of the State of Texas under Subchapter D of the Texas Transportation Corporation Act, TEX. TRANSP. CODE ANN. §431 et seq., and the Texas Non-Profit Corporation Act, TEX CIV. STATE. Art 1396-1.01 et seq., as amended, (the "Authority"), and Roy Jorgensen Associates, Inc., (the "Contractor").

RECITALS

WHEREAS, the Authority has determined it is in the Authority's best interest to engage a contractor for the services described herein; and

WHEREAS, the Parties have read and understood the terms and provisions set forth in this Agreement, and have been afforded a reasonable opportunity to review this Agreement with their respective legal counsel;

NOW, THEREFORE, in consideration of the premises, mutual promises, covenants, obligations and benefits herein contained, the Authority and Contractor agree as follows:

I. SERVICES

Section 1.01. Services. Contractor shall perform certain services (the "Services") for the Authority from time to time as approved in writing by the Board of Directors (the "Board"), and Contractor shall be compensated for such services as approved by the Board. The Maximum Compensation under this contract is \$1,057,274.87. The amount paid under this agreement may not exceed the Maximum Compensation without an approved supplement or amendment to this Agreement.

Approval of Services shall be evidenced by the scope of services, which includes the location, work requirements and services to be performed. Currently approved scope of services and work requirements are attached hereto as **Exhibit A**. Compensation for the Services shown in **Exhibit A** is unit priced, not lump sum, and Services are to be performed by Contractor as directed by the Authority or its designated representative. During the term of this Agreement, Contractor or Authority may recommend certain additions or changes to the Services. In such case, the additions or changes shall be submitted to the Authority for approval in the form of a new proposal or service order. When any new Services or changes to Services are approved, another exhibit shall be added to this Agreement, signed and dated by each Party. The exhibits added shall be sequenced in alphabetical order beginning with

Exhibit C and shall be dated when approved by the Board. All fees described in the proposal or service order shall include charges for labor, materials, insurance, equipment and any other items required to perform the work in the Services. Contractor shall not deviate from the Services or the associated unit price fees in **Exhibit B** without the prior written consent of the Authority's Board or its duly authorized representative.

II. COMPENSATION

Section 2.01. Payment for Services. Contractor shall submit a detailed monthly invoice (together with any back-up documentation requested by the Authority) indicating the Services performed for that month under the terms of this Agreement. Contractor shall submit detailed invoices to the Authority's manager:

Professional Project Management Services
Attn: Mike Stone
19875 Southwest Freeway, Suite 270
Sugar Land, TX 77479

Payment shall be made within forty-five (45) days of the approval of Contractor's invoice by the Authority. Interest shall not be paid on service invoices.

Contractor agrees that upon completion of the work called for hereunder, it will furnish the Authority with proof, satisfactory to the Authority, that all labor, material, and equipment for which Contractor has been paid, have been satisfied and paid, unless the Authority waives such proof. Upon furnishing such proof, or waiver thereof, the amount billed by Contractor will be reviewed by the Authority for approval, and all undisputed amounts shall be paid to Contractor in accordance with this Section.

III. GENERAL CONDITIONS

Section 3.01. Contractor's Duties. Contractor covenants with the Authority to furnish its best skill and judgment in performing the Services for the Authority. Contractor agrees to furnish efficient business administration and superintendence and to use its best efforts to furnish at all times an adequate supply of workmen, materials, and equipment, and to perform the Services in the most expeditious and economical manner. Contractor agrees to exercise reasonable diligence in performing the Services, using the degree of care and skill that a prudent person in the same or similar profession would use.

Section 3.02. Relationship of Authority and Contractor. Contractor has been retained by the Authority for the sole purpose and to the extent set forth in this

Agreement. It is understood and agreed that all work so done by Contractor shall meet with Authority approval, but that the detailed manner and method of performing the Services shall be under the control of Contractor. Contractor's relationship to the Authority during the term of this Agreement is that of an independent contractor. The relationship between the Authority and Contractor is not exclusive.

Section 3.03. Insurance and Indemnification. Before commencing any work hereunder, Contractor shall furnish certificates of its insurance and copies of any required endorsements to the Authority evidencing the following insurance coverage, which coverage shall be maintained throughout the term of this Agreement. Certified copies of each policy shall be furnished to the Authority upon the Authority's request. Contractor shall not violate or knowingly permit to be violated any condition of the insurance policies required by this Agreement. Nothing contained in this Section shall limit or waive Contractor's legal or contractual responsibilities to the Authority or others. Cancellation or expiration of any of said insurance policies shall not preclude the Authority from recovery thereunder for any liability arising under this Agreement.

Contractor shall obtain the following insurance from companies having a Best's rating of B+/VII or better and licensed to transact business in the State of Texas:

- A. Workers' Compensation Insurance covering liability arising out of Contractor's employment of workers and anyone for whom the employer may be liable for workers' compensation claims at limits as imposed by statute. Workers' compensation insurance is required, and no alternative forms of insurance shall be permitted.
- B. Employer's Liability Insurance Limitations with limits of not less than \$1,000,000.
- C. Commercial General Liability Insurance with limits not less than:
 - a. Each occurrence - \$1,000,000
 - b. General aggregate - \$2,000,000
 - c. Products-Completed Operations Aggregate - \$2,000,000
 - d. Personal & Advertising Injury - \$1,000,000
- D. Comprehensive Automobile Liability Insurance with limits not less than \$1,000,000 (combined)
- E. Excess Liability: \$1,000,000/\$3,000,000.

Contractor's insurance shall include the following endorsements:

- A. The Authority and the Authority's agents and employees shall be added as additional insureds to all coverage required under this Agreement for all liability arising out of Contractor's work under this Agreement, except for workers' compensation insurance, as to the full limits of liability provided by each insurance policy (including limits greater than the minimum limits required herein).

- B. All required insurance shall be endorsed to provide that coverages afforded under the policy will not be canceled or modified without at least seven days prior written notice to the Authority. Renewal certificates shall be provided at least 30 days prior to the termination date of the current certificates of insurance during the term of this Agreement.
- C. All policies written on behalf of Contractor shall contain a waiver of subrogation in favor of the Authority and the Authority's agents and employees. In addition, all of the aforesaid policies shall be endorsed to provide that the coverage provided to the Authority as an additional insured will be on a primary basis, and not in excess of other insurance coverage available to the Authority, and that neither Contractor nor its insurer will seek contribution or recovery from the Authority or such other insurance available to the Authority.
- D. Contractor shall cause its subcontractors, including all persons hired by Contractor who are not Contractor's employees, who perform any part of the work hereunder, to be added as additional insureds to all coverage required under this Agreement, as to the full limits of liability provided by each insurance policy (including limits greater than the minimum limits required herein).

AS PART OF THE CONSIDERATION FOR THIS AGREEMENT, THE CONTRACTOR, FOR ITSELF AND ITS SUCCESSORS AND ASSIGNS, AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE AUTHORITY AND ITS OFFICERS, DIRECTORS, REPRESENTATIVES, AND AGENTS, FROM EVERY LOSS, DAMAGE, INJURY, COST, EXPENSE, CLAIM, JUDGMENT, OR LIABILITY OF EVERY KIND OR CHARACTER, WHETHER IN CONTRACT, TORT, OR OTHERWISE, WHICH ARISES DIRECTLY OR INDIRECTLY FROM THE CONTRACTOR'S WILLFUL, INTENTIONAL, RECKLESS, OR NEGLIGENT (WHETHER ACTIVE, PASSIVE, OR GROSS) ACTS OR OMISSIONS RELATED TO OR ARISING FROM THIS AGREEMENT. THIS INDEMNITY AND HOLD HARMLESS PROVISION WILL APPLY WHETHER SUCH ACTS OR OMISSIONS ARE CONDUCTED BY THE CONTRACTOR OR ANY SUBCONTRACTOR OR AGENT OF THE CONTRACTOR.

Section 3.04. Term and Termination. The initial term shall begin on the Effective Date, through September 30, 2014. Additionally, either party may terminate this Agreement without cause upon thirty (30) days written notice to the other party. Contractor shall not be entitled to any payment or further payment other than for work performed or material, equipment, or supplies furnished prior to such termination. The Authority does not waive any other remedy allowed under Texas law.

Section 3.05. Agreement Controls. To the extent that there is any inconsistency between the provisions of this Agreement and any attachments or exhibits hereto, the terms of this Agreement shall control.

Section 3.06. Regulatory Requirements. All work will be done in strict compliance with all applicable city, county, and state rules, regulations and laws, and any codes which may apply to the Services being provided. Contractor will obtain all permits and licenses required to perform the Services and will be responsible for securing inspections and approvals of its work from any authority having jurisdiction over Contractor's Services.

Section 3.07. Safety and Health Standards. Contractor shall observe and comply with all applicable federal, state and local health and safety laws and regulations.

Section 3.08. Inspection. The Authority and its duly authorized representatives shall have the right to inspect all Services being performed hereunder at any time. Contractor agrees to maintain adequate books, payrolls, and records satisfactory to the Authority in connection with any and all Services performed hereunder and to maintain such books, payrolls, and records for at least four years. The Authority and its duly authorized representatives shall have the right to audit such books, payrolls, and records at any reasonable time or times.

Section 3.09. Warranty. In addition to other common law and statutory warranties, whether implied or express, Contractor's warranty applies to materials, parts, labor and workmanship for one year from the date of completion of the Project. Contractor shall transfer all manufacturers' warranties to the Authority.

Section 3.10. Assignability. Contractor shall not assign its rights or obligations or any sum that may accrue to it hereunder without the written consent of the Authority, which shall be granted or denied in the Authority's sole discretion.

Section 3.11. Modifications. This Agreement shall be subject to amendment, change or modification only with the prior mutual written consent of the Authority and Contractor, except to add any future exhibits pursuant to Section 1.01.

Section 3.12. Force Majeure. In the event either party to this Agreement is rendered unable, wholly or in part, by force majeure including an act of God; strikes; lockouts, or other industrial disturbances; acts of the public enemy; orders of any kind of government of the United States or the State of Texas or any civil or military authority (other than a party to this Agreement); insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; storms; floods; droughts; arrests; civil disturbances; explosions; or other inability similar to those enumerated; to carry out its obligations under this Agreement, it is agreed that party shall give written notice of such act to the other party as soon as possible after the occurrence of the cause relied

on and shall, thereafter, be relieved of its obligations, so far as they are affected by such act, during the continuance of any inability so caused, but for no longer.

Section 3.13. Agreement Subject to Applicable Law. This Agreement and the obligations of the parties hereunder are subject to all rules, regulations and laws which may be applicable by the United States, the State of Texas or any other regulatory agency having jurisdiction.

Section 3.14. Governing Law. This Agreement is governed in accordance with the laws of the State of Texas and shall be enforceable in the county in which the Authority is located.

Section 3.15. Waiver. No waiver or waivers of any breach or default by a party hereto of any term, covenant or condition or liability hereunder of performance by the other party of any duty or obligation hereunder will be deemed a waiver thereof in the future, nor will any such waiver or waivers be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, character or description, under any circumstances.

Section 3.16. Intended Beneficiaries. This Agreement is for the sole and exclusive benefit of the Authority and Contractor and will not be construed to confer any benefit upon any other party.

Section 3.17. Severability. The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application thereof to any person or circumstance is ever held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement to other persons or circumstances will not be affected hereby.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiple copies, each of equal dignity, as of the date set forth on the first page hereof.

[EXECUTION PAGE FOLLOWS]

FORT BEND COUNTY TOLL ROAD
AUTHORITY



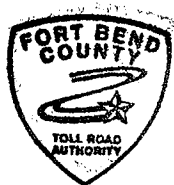
Chairman, Board of Directors

ATTEST:



Secretary, Board of Directors

(SEAL)



CONTRACTOR: Roy Jorgensen Associates, Inc.

By:


Name: Douglas W. Selby

Title: President