



ADDENDUM

ISSUE DATE **Thursday, July 30, 2020**

TO	All Prospective Bidders/Proposers
FROM	Lisa K. Hubbell, Trust Specialist
PROJECT NO.	RTA 2021-001 / Addendum No. 1
ACTION NEEDED	The Bidder and/or Proposer shall acknowledge receipt of this Addendum and acceptance of the conditions by checking, dating and initialing the spaces corresponding to the Addendum on the Bid/Proposal Cost Form.

This addendum is part of the Contract Documents and modifies the work. Acknowledge receipt of this addendum must be so noted, as directed in the proposal packet. Failure to do so may result in the disqualification of the submitted proposal.

The Regional Transportation Authority of Central Oklahoma (RTA) is issuing Addendum No. 1 to answer questions received, and to clarify and/or change the following items:

1. Attachment “C” – Contract year 1

Q. When providing pricing information as outlined in Exhibit C – Does year 1 costs include the February 2019 – June 30, 2019 as well as the FY20 audit? Or is year 1 February 2019-June 30, 2019 and year 2 is the June 30, 2020 year end?

A. Contract Year 1, includes the periods of February 2019 through June 30, 2019 and July 1, 2019 through June 30, 2020, a period of 17 months.

2. Q. The RFP mentions an example contract was attached for review, but I didn’t see that attached. Can we get a copy of the example contract?

A. Section Titled “Contract”, Paragraph “X. Contract”, page 17, revised as follows:

A sample of the contract for the audit engagement is included as an attachment (Attachment “D”).

See, Attachment “D”

3. Section Titled, “Objective”, page 2, revised as follows:



ADDENDUM

The Trust Indenture requires an independent audit of the Authority's financial controls, and annual financial report. The report is to be filed annually with the governing body of the Beneficiaries. ~~Oklahoma Statutes provide that an audit must be ordered on or before July 30, and that an audit must be submitted to the State Auditor and Inspector on or before December 31.~~ The Single Audit Act of the United States requires an annual audit of recipients of Federal funds. The Regional Transportation Authority of Central Oklahoma ~~is a recipient of significant~~ will be a recipient of Federal funds in the future. The Authority is committed to providing annual financial reporting in compliance with Generally Accepted Accounting Principles (GAAP) (SEC rule 15c2-12). The objective of the Authority is to comply with all statutory and regulatory requirements.

4. Section Titled, "Description and Scope of Services Required", Paragraph "A. General", page 2, revised as follows:

A. General

The services will be an examination of the ~~government-wide and~~ individual fund statements ~~(major and non-major funds)~~ of the Regional Transportation Authority of Central Oklahoma for the period of February 19, 2019 through June 30, 2019, and fiscal year July 1, 2019 through June 30, 2020. The successful proposer may be retained for three to five years. Proposals must reflect costs for a one-year contract only, and costs for each possible succeeding year for a total of five years.

5. Section Titled, "Description and Scope of Services Required, Paragraph "C. Proposal", page 4, revised as follows:

C. Proposal

Financial statement workpapers will be prepared by the Authority with the Audit Firm auditing those workpapers. ~~The Firm will prepare preliminary drafts of the CAFR. The Authority will review the drafts, providing comments and assistance in finalizing the CAFR for publication.~~ The Firm will prepare preliminary drafts and provide annual reports to the Authority for publishing.

6. Section Titled, "Description and Scope of Services Required, Paragraph "D. Proposal", page 4, revised as follows:

D. General Information Applicable to Proposals



ADDENDUM

Proposals should address the Authority's ~~CAFR~~, Single Audit, public trust report, and the Annual Survey of Authority Finances (SA&I 2643) separately under each option. The Authority reserves the flexibility to choose different options for any combination of reports.

7. Section Titled, "Description and Scope of Services Required, Paragraph "L. Insurance", page 12 and 13, revised as follows:

L. Insurance and Indemnification – Second Paragraph

Indemnity - The Audit Firm agrees to release, defend, indemnify and save harmless ~~the City and its trusts and authorities~~ the Regional Transportation Authority and their officers, agents and employees (i) from and against any and all loss of or damage to property, or injuries to or death of any person or persons, as well as (ii) from and against any and all claims, damages, suits, costs, expense, liability, actions or proceedings of any kind or nature whatsoever caused by the negligent acts or omissions of the Audit Firm, including, without limiting the generality of the foregoing, their officers, employees, representatives, suppliers, invitees, contractors or agents, in connection with the audit, provided, however, the Audit Firm shall not be liable hereunder for any loss or expense occasioned by the negligent acts or omissions of the ~~City and its trusts~~ Regional Transportation Authority or its officers, agents and employees. Each party agrees to give the other parties prompt notice of any claim, suits, actions or proceedings.

(b.) Commercial general liability coverage sufficient to meet the Authority's maximum liability under the Governmental Tort Claims Act (51 O.S. §151 et seq.) and any amendment or addition thereto. The current required minimum commercial general liability coverage is: \$175,000 per person for bodily injury or death, \$25,000 for property damage and \$1,000,000 for any number of claims arising out of a single accident or occurrence. All insurance provided hereunder shall name the Authority ~~or its public trusts~~ as an additional insured.

8. Section Titled, "Description and Scope of Services Required, Paragraph "M. Other", page 14, revised as follows:

M. Other

1. A decision on the independent accounting firm who will be awarded the Authority's audit examinations should be made no later than September ~~4630~~, 2020.



Regional Transportation Authority
of Central Oklahoma

ADDENDUM

4. Conflict of Interest - The Auditing Firm may not represent any entities whose representation is in any way in conflict with the interests of the Regional Transportation Authority of Central Oklahoma ~~trusts of which the City is the beneficiary.~~

ATTACHMENT "D"



PROFESSIONAL SERVICES AGREEMENT

Contract/Project No. Project Name/Title

This Professional Services **Agreement** ("**Agreement**") is entered into as of this ___ day of _____, **2020**, by and between **INSERT VENDOR NAME** ("**SERVICES PROVIDER**"), and the Regional Transportation Authority of Central Oklahoma ("**RTA**"), a public trust organized under the laws of the State of Oklahoma ("**CONTRACTING ENTITY**").

WITNESSETH:

WHEREAS, on **DATE**, the **CONTRACTING ENTITY** prepared a Request for **Proposal** ("**RFP**") seeking a Professional Services **Agreement** for **INSERT SERVICE PROVIDED** for the **CONTRACTING ENTITY**; and

WHEREAS, on **DATE**, the **CONTRACTING ENTITY** received responses to its RFP; and

WHEREAS, a selection committee reviewed and evaluated the responses; and

WHEREAS, the **SERVICES PROVIDER** represented itself, both in its response ("**Proposal**") and its interviews ("**Interviews**") as an expert in the field of **INSERT SERVICE PROVIDED** with skilled professionals willing, able, and capable of timely providing the services requested and required by the **CONTRACTING ENTITY** in the RFP; and

WHEREAS, based upon the representations, guarantees, and warranties expressed by the **SERVICES PROVIDER** both in the **Proposal** and the **Interviews**, the selection committee recommended, and the **CONTRACTING ENTITY** selected and entered this **Agreement** with the **SERVICES PROVIDER**; and

WHEREAS, the **CONTRACTING ENTITY** strives to obtain **describe what you are obtaining**; and

ATTACHMENT "D"



WHEREAS, CONTRACTING ENTITY retains **SERVICES PROVIDER** to provide professional services as an independent **SERVICES PROVIDER**; and

WHEREAS, SERVICES PROVIDER agrees to provide **CONTRACTING ENTITY** all services, in accordance with the standards exercised by experts in the field, necessary to provide the **CONTRACTING ENTITY** services, products, solutions and deliverables that meet all the purposes and functionality requested or described in the RFP and in this **Agreement**.

NOW, THEREFORE, for and in consideration of the above premises and the mutual covenants set forth herein, the **CONTRACTING ENTITY** and **SERVICES PROVIDER** hereby mutually agree as follows:

1. **PROFESSIONAL SERVICES AGREEMENT**

Subject to the terms and conditions of this **Agreement**, **CONTRACTING ENTITY** retains **SERVICES PROVIDER**, an independent **SERVICES PROVIDER**, to provide **CONTRACTING ENTITY** all services, in accordance with the standards exercised by experts in the field, necessary to provide the **CONTRACTING ENTITY** services, products, solutions, and deliverables that meet all the purposes and functionality requested or described in the RFP and in this **Agreement**.

- (a) This **Agreement** governs the Scope of Services including, but not limited to, all services, products, solutions and deliverables to be provided by **SERVICES PROVIDER** to the **CONTRACTING ENTITY**. The **Attachments** are incorporated into this **Agreement** by reference and, should there be a conflict in language, terms, conditions, or provisions, shall have the priority and precedential value as set forth in this paragraph.
- (b) The text of this **Agreement**, together with the **Attachments**, constitutes the entire **Agreement** and the only understanding and agreement between the **CONTRACTING ENTITY** and **SERVICES PROVIDER** with respect to the services, products, solutions and deliverables to be provided by **SERVICES PROVIDER** hereunder. This **Agreement** may

ATTACHMENT “D”



only be amended, modified or changed in writing when signed by all parties, or their respective specifically authorized representatives, as set forth in this **Agreement**.

- (c) If there is a conflict in language, terms, conditions, or provisions, in this **Agreement** between the text of this document, and any language, term, condition, or provision in any **Attachment**, then the text of this **document**, shall govern and control over any conflicting language, term, condition, or provision in any **Attachment**. As among the **Attachments** any conflict in the language, terms, conditions, or provisions shall be governed in the following order of priority and precedence:

Attachment “A” (“Project Description and Scope of Services”),

Attachment “B” (“List of Products, Solutions and Deliverables”),

Attachment “C” (“Payment Milestones and Schedule of Fees),

Attachment “D” (“SERVICES PROVIDER’S Project Team and CONTRACTING ENTITY’s Resources”),

Attachment “E” (“Request for Proposals, including Addenda”),

Attachment “F” (“Insurance”),

Attachment “G” (“SERVICES PROVIDER’S Interview and Proposal”),

Attachment “H” (Performance Bond).

- (d) Change Order. **CONTRACTING ENTITY’S** Administrator or designated representative is appointed as the authorized representative of **CONTRACTING ENTITY** with authority to process any change order request, as needed.

ATTACHMENT "D"



- (e) **CONTRACTING ENTITY:** The term "**CONTRACTING ENTITY**" as used throughout this **Agreement** shall mean the Regional Transportation Authority of Central Oklahoma ("RTA").

2. TERM AND RENEWAL

- (a) **Term of Agreement:** The initial term of this **Agreement** shall be effective for a period of _____ year(s), as approved by **CONTRACTING ENTITY**, with the option to renew.
- (b) **Renewal of Agreement:** This **Agreement** is renewable for _____ (#) _____ optional _____-year periods at the sole option of the **CONTRACTING ENTITY**. Should the **CONTRACTING ENTITY** desire to renew the **Agreement**, a written preliminary notice will be furnished to the **SERVICES PROVIDER** prior to the expiration date of the **Agreement**. (Such preliminary notice will not be deemed to commit the **CONTRACTING ENTITY** to renew.)

3. SCOPE OF SERVICES

SERVICES PROVIDER is solely responsible for the actions, non-action, omissions, and performance of **SERVICES PROVIDER'S** employees, agents, **SERVICES PROVIDERS**, and subcontractors ("**SERVICES PROVIDER'S Project Team**") and to ensure:

- (a) The timely provision of the Project and timely performance of the Scope of Services as each are defined in **Attachment "A"**,
- (b) The timely provision of all services, products, solutions and deliverables, including but not limited to, the Deliverables listed on **Attachment "B"**,

SERVICES PROVIDER will be solely responsible to ensure the **SERVICES PROVIDER'S** Project Team fully understands the Project, the Scope of Services, the Deliverables, the schedule for performance, and the **CONTRACTING ENTITY'S** goals and purposes. **SERVICES PROVIDER** will be solely responsible to ensure the **SERVICES PROVIDER'S Project Team** is adequately trained, instructed,

ATTACHMENT "D"



and managed so that **SERVICES PROVIDER** timely provides the Project and satisfies **SERVICES PROVIDER'S** obligations under this **Agreement**. **SERVICES PROVIDER** may not change the **SERVICES PROVIDER'S Project Team** as set forth on Attachment "D" ("**SERVICES PROVIDER'S Project Team and CONTRACTING ENTITY'S Resources**") without the prior written consent of the **CONTRACTING ENTITY'S** Administrator. The **CONTRACTING ENTITY'S** Administrator is the **CONTRACTING ENTITY** Manager or designee, as stated in writing.

SERVICES PROVIDER shall comply with all applicable federal, state and local laws, standards, codes, ordinances, administrative regulations and all amendments and additions thereto, pertaining in any manner to the performance or services provided under this **Agreement**. **SERVICES PROVIDER** shall obtain all patents, licenses and any other permission required to provide all services, products, solutions and deliverables and for use of all services, products, solutions and deliverables by the **CONTRACTING ENTITY**.

4. COMPENSATION

CONTRACTING ENTITY shall pay **SERVICES PROVIDER** the compensation after completion of services or products as specified in Attachment "C" ("**Payment Milestones and Schedule of Fees**"), subject to the submission of appropriate documentation and completion and acceptance of all the services and deliverables. No payment will be due or owing for any incomplete or undocumented services and deliverables.

The **CONTRACTING ENTITY** and **SERVICES PROVIDER** acknowledge that the compensation to be paid **SERVICES PROVIDER** pursuant to this **Agreement** has been established at an amount reasonable for the availability and services of **SERVICES PROVIDER** and **SERVICES PROVIDER'S Project Team**.

Price Adjustment Terms. The unit price shall remain firm through the first twelve (12) month of the contract term.

ATTACHMENT "D"



5. INDEPENDENT SERVICES PROVIDER STATUS

The parties hereby acknowledge and covenant that:

SERVICES PROVIDER is an independent **SERVICES PROVIDER** and will act exclusively as an independent **SERVICES PROVIDER** is not an agent or employee of the **CONTRACTING ENTITY** in performing the duties in this **Agreement**.

The parties do not intend, and will not hold out that there exists, any corporation, joint venture, undertaking for a profit or other form of business venture or any employment relationship among the parties other than that of an independent **SERVICES PROVIDER** relationship.

- (a) All payments to **SERVICES PROVIDER** pursuant to this **Agreement** shall be due and payable in the State of Oklahoma, even if services of **SERVICES PROVIDER** are performed outside the State of Oklahoma.
- (b) The **CONTRACTING ENTITY** will not withhold any social security tax, workmen's compensation, medicare tax, federal unemployment tax, federal income tax, or state income tax from any compensation paid to **SERVICES PROVIDER** as **SERVICES PROVIDER** is an independent **SERVICES PROVIDER** and the members of its **SERVICES PROVIDER'S Project Team** are not employees of the **CONTRACTING ENTITY**. Any such taxes, if due, are the responsibilities of **SERVICES PROVIDER** and will not be charged to the **CONTRACTING ENTITY**.
- (c) **SERVICES PROVIDER** acknowledges that as an independent **SERVICES PROVIDER** it and its **Project Team** are not eligible to participate in any health, welfare or retirement benefit programs provided by the **CONTRACTING ENTITY** for its employees.

6. TERMINATION AND STOP WORK.

This **Agreement** shall commence upon execution by the last party hereto and shall continue in effect as stated herein, unless terminated by either party as provided for herein, until the Project is

ATTACHMENT “D”



completed and accepted as provided herein. The **CONTRACTING ENTITY'S** Administrator is hereby authorized to issue notices of termination or suspension on behalf of the **CONTRACTING ENTITY**. This **Agreement** can be terminated, with or without cause, upon written notice, at the option of the **CONTRACTING ENTITY**.

- (a) **Termination for Convenience** - Upon receipt of a notice of termination for the *convenience* from the **CONTRACTING ENTITY**, **SERVICES PROVIDER** shall:
- (1) Immediately discontinue all services and activities (unless the notice directs otherwise); and
 - (2) Upon payment for products or services fully performed and accepted, **SERVICES PROVIDER** shall deliver to the **CONTRACTING ENTITY** all work, products, deliverables, documents, data, drawings, specifications, reports, calculations, field notes, tracings, plans, models, computer files, estimates, summaries and other information and materials accumulated or created in performing this **Agreement**, whether same are complete or incomplete, unless the notice directs otherwise; and
 - (3) Should there be a decision by **CONTRACTING ENTITY** to effectuate at termination for convenience, **CONTRACTING ENTITY** and the **SERVICES PROVIDER** would need to review all actions of the **SERVICES PROVIDER**, that would be due compensation for services and cart manufacture at the time of notice. **CONTRACTING ENTITY's** intent would be to compensate the **SERVICES PROVIDER** for completed services and at the time of notice, or as directed by the notice, to the degree these are satisfactorily performed in accordance with the **Agreement**. Upon termination for the *convenience* by the **CONTRACTING ENTITY**, the **CONTRACTING ENTITY** shall pay **SERVICES PROVIDER** for completed services, up to the time of the notice of termination for *convenience*, in

ATTACHMENT “D”



accordance with the terms, limits and conditions of the **Agreement** and as further limited by the “not to exceed” amounts set out in this **Agreement**.

- (b) **Termination for Cause** - Upon notice of termination for *cause* from the **CONTRACTING ENTITY, SERVICES PROVIDER** shall not be entitled to any prior or future payments, including, but not limited to, any services, performances, work, products, deliverables, solutions, costs, or expenses, and **SERVICES PROVIDER** shall release and waive any interest in any retainage. The **CONTRACTING ENTITY** may hold any outstanding payments for prior completed services or expenses and any retainage as security for payment of any costs, expenses, or damages incurred by the **CONTRACTING ENTITY** by reason of **SERVICES PROVIDER’S** breach or other cause. Provided, however, upon notice of termination for cause, **SERVICES PROVIDER** shall deliver to the **CONTRACTING ENTITY** services, products, solutions and deliverables including, but limited to, all documents, data, drawings, specifications, reports, calculations, field notes, tracings, plans, models, computer files, estimates, summaries and other information and materials accumulated or created in performing this **Agreement**, whether complete or incomplete, unless the notice directs otherwise.

The rights and remedies of the **CONTRACTING ENTITY** provided in this paragraph are in addition to any other rights and remedies provided by law or under the **Agreement**. Termination herein shall not terminate or suspend any warranty, indemnification, insurance, or confidentiality required to be provided by **SERVICES PROVIDER** under this **Agreement**.

- (c) **Stop Work** - Upon notice to **SERVICES PROVIDER**, the **CONTRACTING ENTITY** may issue a stop work order suspending any services, performances, work, products, deliverables, or solutions under this **Agreement**. Any stop work order shall not terminate or suspend any warranty, indemnification, insurance, or confidentiality required to be provided by **SERVICES PROVIDER** under this **Agreement**. In the event the **CONTRACTING ENTITY** issues a stop work order to **SERVICES PROVIDER**, the

ATTACHMENT "D"



CONTRACTING ENTITY will provide a copy of such stop work order to **SERVICES PROVIDER**. Upon receipt of a stop work order issued by the **CONTRACTING ENTITY**, **SERVICES PROVIDER** shall suspend all work, services and activities except such work, services, and activities expressly directed by the **CONTRACTING ENTITY** in the stop work order. Upon notice to **SERVICES PROVIDER**, this **Agreement**, and any or all work, services, and activities thereunder, may be suspended up to thirty (30) days by the **CONTRACTING ENTITY**, without cause and without cost to **CONTRACTING ENTITY**; provided however, **SERVICES PROVIDER** shall be entitled to an extension of all subsequent deadlines for a period equal to the suspension periods for those suspended work, services, and activities only. The **CONTRACTING ENTITY'S Contract Administrator** is hereby authorized to issue stop work orders on behalf of the **CONTRACTING ENTITY**.

7. OBLIGATION UPON TERMINATION FOR CONVENIENCE.

Except for the any warranties, indemnification, confidentiality, or insurance required or provided by the **SERVICES PROVIDER** under this **Agreement**, which shall survive the termination of this **Agreement** for *convenience* or for *cause*, in the event this **Agreement** is terminated for convenience hereunder, the **CONTRACTING ENTITY** shall pay **SERVICES PROVIDER** for such properly documented invoices, if any, in accordance with the provisions of this **Agreement** above, through the date of termination for *convenience* and the period set forth in the notice, and thereafter the **CONTRACTING ENTITY** shall have no further liability under this **Agreement** to **SERVICES PROVIDER** and **SERVICES PROVIDER** shall have no further obligations to the **CONTRACTING ENTITY**.

8. WARRANTIES

- (a) **SERVICES PROVIDER** warrants that all services, products, solutions and deliverables performed or provided under this **Agreement** shall be performed consistent with generally prevailing professional standards and expertise normally employed by expert professionals performing the same or similar services. **SERVICES PROVIDER** shall

ATTACHMENT “D”



maintain during the term of this **Agreement** said standard of care, expertise, skill, diligence and professional competency for any and all such services, products, solutions and deliverables. **SERVICES PROVIDER** agrees to require all members of the **SERVICES PROVIDER'S Project Team** to provide any and all services, products, solutions and deliverables at said same standard of care, expertise, skill, diligence and professional competence required of **SERVICES PROVIDER**.

- (b) During the term of this **Agreement**, **CONTRACTING ENTITY'S** initial remedy for any breach of the above warranty shall be to permit **SERVICES PROVIDER** one additional opportunity to perform the services, or provide the products, solutions and deliverables without additional cost to **CONTRACTING ENTITY**. If **SERVICES PROVIDER** cannot perform the services, or provide the products, solutions and deliverables according to the standards and requirements set forth in this **Agreement** within thirty (30) calendar days of the original performance date, the **CONTRACTING ENTITY** shall be entitled to recover, should the **CONTRACTING ENTITY** so determine to be in their best interest, any fees paid to **SERVICES PROVIDER** for previous payments, including, but not limited to, services, products, solutions, and deliverables and **SERVICES PROVIDER** shall make reimbursement or repayment within thirty (30) days of a demand by the **CONTRACTING ENTITY**. Should **SERVICES PROVIDER** fail to reimburse the **CONTRACTING ENTITY** within thirty (30) days of demand, the **CONTRACTING ENTITY** shall also be entitled to interest at 1.5% percent per month on all outstanding reimbursement and repayment obligations.
- (c) The **SERVICES PROVIDER** also acknowledges and agrees to provide all express and implied, warrants required or provided for by Oklahoma statutory and case law. This warrant is in addition to other warranties provided in or applicable to this **Agreement** and may not be waived by any other provision, expressed or implied, in this **Agreement** or in any **Attachment** hereto.

ATTACHMENT “D”



9. INDEMNIFICATION

SERVICES PROVIDER agrees to release, defend, and indemnify the **CONTRACTING ENTITY**, and each of them, and hold the **CONTRACTING ENTITY**, and each of them, harmless against any losses, claims, damages, liabilities, expenses (including all reasonable legal fees and expenses), judgments, fines or settlements in connection resulted from the intentional acts or omissions, negligence, and misconduct of **SERVICES PROVIDER** and the **SERVICES PROVIDER'S Project Team**. Any such indemnification or reimbursement shall be made by **SERVICES PROVIDER** within thirty (30) days of an appropriate finding of facts, whether by mutual agreement or by a court of law.

The provisions of this paragraph shall survive the expiration of this **Agreement**. It is understood that these indemnities and hold harmless provisions are not limited or defined by the insurance required under the insurance provisions of this **Agreement**.

10. CONFIDENTIALITY

SERVICES PROVIDER acknowledges that in the course of training and providing other support services to **CONTRACTING ENTITY**, **CONTRACTING ENTITY** may provide **SERVICES PROVIDER** with access to valuable information of a confidential and proprietary nature including but not limited to information relating to **CONTRACTING ENTITY'S** employees, customers, marketing strategies, business processes and strategies, security systems, data and technology. **SERVICES PROVIDER** agrees that during the time period this **Agreement** is in effect, and thereafter, neither **SERVICES PROVIDER** nor **SERVICES PROVIDER'S Project Team**, without the prior written consent of **CONTRACTING ENTITY**, shall disclose to any person, other than another member of **CONTRACTING ENTITY'S Administrative Team** or the **SERVICES PROVIDER'S Contract Administrator**, any information obtained by **SERVICES PROVIDER**. **SERVICES PROVIDER** will require and maintain adequate confidentiality agreements with its employees, agents, **SERVICES PROVIDERS**, and sub-contracted providers.

ATTACHMENT "D"



11. RIGHT TO AUDIT

The **CONTRACTING ENTITY** shall have the right to examine books, papers and records of the **SERVICES PROVIDER** relative to all aspects of the **Agreement** awarded. Failure to provide the requested information may result in termination of the **Agreement**. This right to audit only affects **Agreement** compliance as a result of this **Agreement** and does not apply to vendor records beyond scope of **Agreement**.

12. MISCELLANEOUS

- (a) **Validity.** The invalidity or unenforceability of any provision of this **Agreement** shall not affect the validity or enforceability of any other provisions of this **Agreement**, which shall remain in full force and effect.
- (b) **No Waiver.** The failure or neglect of any party hereto to insist, in any one or more instances, upon the strict performance of any of the terms or conditions of this **Agreement**, or waiver by any party of strict performance of any of the terms or conditions of this **Agreement**, shall not be construed as a waiver or relinquishment in the future of such term or condition, but such term or condition shall continue in full force and effect.
- (c) **No Assignment without Consent.** The parties hereby agree that as this is an agreement for the provision of specialized services, therefore **SERVICES PROVIDER** may not assign this **Agreement** in whole or in part without the prior written consent of the **CONTRACTING ENTITY**. In addition, **SERVICES PROVIDER** agrees that the **SERVICES PROVIDER'S Project Manager** may not be removed or replaced without the express written consent of the **CONTRACTING ENTITY'S Contract Administrator**.
- (d) **Venue and Applicable Law.** **Clients** and **SERVICES PROVIDER** hereby agree that any dispute, legal proceeding or action which may arise between or among them arising out of or in connection with this **Agreement** shall be adjudicated before a court located in

ATTACHMENT “D”



Oklahoma City, Oklahoma, and each hereby submit to the exclusive personal jurisdiction of the courts of the State of Oklahoma located in Oklahoma City, Oklahoma and of the Federal District Court for the Western District of Oklahoma, located in Oklahoma City, with respect to any action or legal proceeding commenced by any party. The **SERVICES PROVIDER** irrevocably waives any objection they now or hereafter may have respecting the venue of any such action or proceeding brought in such a court or respecting the fact that such court is an inconvenient forum, relating to or arising out of this **Agreement**, and consents to the service of process in any such action or legal proceeding by means of registered or certified mail, return receipt requested, in care of the address set forth in the notice provision of this paragraph. This **Agreement** shall be construed and enforced in accordance with the laws of the State of Oklahoma.

- (e) **Descriptive Headings.** The descriptive headings herein are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this **Agreement**.
- (f) **Counterparts.** This **Agreement** may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement.
- (g) **Amendments.** This **Agreement** may not be modified, amended, altered or supplemented except upon the execution and delivery of a written amendment executed by each of the parties hereto.
- (h) **Entire Contract.** This **Agreement** constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof.

ATTACHMENT "D"



- (i) **Time is of Essence.** Both the **CONTRACTING ENTITY** and **SERVICES PROVIDER** expressly agree that time is of the essence with respect to this **Agreement**, and the time for performance of each task shall be made a part of the **Agreement** and shall be strictly observed and enforced. Any failure on the part of the **CONTRACTING ENTITY** to timely object to the time of performance shall not waive any right of the **CONTRACTING ENTITY**, to object later.
- (j) **Upgrades and Substitutions.** During the performance of this **Agreement**, if any software named in this **Agreement** is upgraded in the software provider's product line by software performing the same functions, but using improved technology, then the newer product will be substituted upon the direction and approval of the **CONTRACTING ENTITY'S Contract Administrator**, or their written designee, and implemented by **SERVICES PROVIDER** for no increase in costs or fees.
- (k) **No Extra Work.** No claims for extra work, product, services, solution, or deliverables of any kind or nature or character shall be recognized or paid by or be binding upon the **CONTRACTING ENTITY** unless such services, work, product, solution, or deliverable is first requested and approved in writing by the **CONTRACTING ENTITY** through a contract amendment.
- (l) **Notices.** Any notice, request, demand or other communication required or permitted hereunder shall be in writing and shall be deemed to have been given if e-mailed, hand delivered, or sent by facsimile transmission (upon confirmation of receipt), or if sent by certified mail (upon the sooner of the expiration of three (3) days after deposit in United States post office facilities properly addressed with first class postage prepaid or acknowledgment of receipt). All notices and payments to a party will be sent to the addresses set forth below or to such other address or person as such party may designate by notice to each other party hereunder:
- (m) **To SERVICES PROVIDER:**

ATTACHMENT "D"



Services Provider Name

Address1

Address2

City/ST/Zip

Telephone:

E-mail:

To CONTRACTING ENTITY:

Regional Transportation Authority of Central Oklahoma

c/o COTPA/EMBARK

2000 S May Avenue

Oklahoma City, OK 73108

Telephone: 405.291.1331

E-mail: embarkok@okc.gov

(n) **Effective.** This **Agreement** shall become effective upon execution by the last party.

13. CONTRACTING ENTITY'S RESPONSIBILITIES

The **CONTRACTING ENTITY** shall only provide such space, equipment and personnel to assist **SERVICES PROVIDER** as expressly set forth in **Attachment "D" (CONTRACTING ENTITY'S Resources)**.

All financial obligations of the **CONTRACTING ENTITY** under this **Agreement** shall be solely the obligations of the **CONTRACTING ENTITY** regardless of how stated herein.

14. NONDISCRIMINATION

In connection with the performance of services and deliverable under this **Agreement**, **SERVICES PROVIDER** agrees as follows:

- (a) **SERVICES PROVIDER** shall not discriminate against any employee or applicant for employment because of age, race, creed, color, religion, sex, national origin, ancestry or disability as defined by the Americans with Disabilities Act of 1990, Section 3(2). **SERVICES PROVIDER** shall take action to ensure that employees or applicants for

ATTACHMENT "D"



employment are treated without regard to their age, race, creed, color, religion, sex, national origin, ancestry or disability as defined by the Americans with Disabilities Act of 1990, Section 3(2). Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruiting or recruitment, advertising, layoff, termination or cancellation, rates of pay or other forms of compensation and selection for training, including apprenticeship. **SERVICES PROVIDER** shall agree to post, in conspicuous places, available to employees and applicants for employment.

- (b) In the event of **SERVICES PROVIDER** 's noncompliance with this nondiscrimination clause, this **Agreement** may be suspended, canceled or terminated by **CONTRACTING ENTITY**. **CONTRACTING ENTITY** may declare **SERVICES PROVIDER** ineligible for further contracts or agreements until compliance, and/or satisfactory proof of intent to comply shall be made by **SERVICES PROVIDER**.
- (c) **SERVICES PROVIDER** agrees to include this nondiscrimination clause in any subcontracts connected with the performance of this **Agreement**.

15. ANTI-COLLUSION.

SERVICES PROVIDER warrants that it has not employed or retained any company or person other than a bona fide employee working solely for **SERVICES PROVIDER** to solicit or secure this **Agreement**. **SERVICES PROVIDER** further warrants that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for **SERVICES PROVIDER**, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this **Agreement**.

16. INSURANCE

SERVICES PROVIDER shall obtain and provide **CONTRACTING ENTITY** with a copy of the certificate of insurance prior to execution of the contract by **CONTRACTING ENTITY** and shall maintain

ATTACHMENT “D”



such insurance throughout the term of this **Agreement** as required and in the form and in the amount set forth in **Attachment “F”** which is incorporated herein by reference.

17. PERFORMANCE BOND

SERVICES PROVIDER is required to provide and maintain bonds as set forth in **Attachment “H”** which is incorporated herein by reference. The bonds shall be executed by a surety company licensed to do business in the State of Oklahoma; having an “A” or better rating by A.M. Best or Standard and Poors; and included on the list of surety companies approved by the Treasurer of the United States. The bonds shall be in force from execution through the date of completion and acceptance of the initial order.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

ATTACHMENT “D”



**Regional Transportation Authority
of Central Oklahoma**

[Date/Year]

SAMPLE

ATTACHMENT "D"



APPROVED by the Board of Directors and **SIGNED** by the Chairman of the Regional Transportation Authority of Central Oklahoma this _____ of _____, 2020.

ATTEST:

REGIONAL TRANSPORTATION AUTHORITY OF CENTRAL OKLAHOMA

Mary Mélon, Administrator

Brad Henry, Chairman

Reviewed for form and legality.

General Counsel

SAMPLE

Professional Services Agreement Attachments

The following **Attachments** are incorporated by reference into the **Agreement** by and between the **CONTRACTING ENTITY** and **SERVICES PROVIDER** and shall have the priority and precedence as first set forth in paragraph one of this **Agreement**.

The Attachments include:

Attachment “A” (“Project Description and Scope of Services”),

Attachment “B” (“List of Products, Solutions and Deliverables”),

Attachment “C” (“Payment Milestones and Schedule of Fees),

Attachment “D” (“SERVICES PROVIDER’S Project Team and CONTRACTING ENTITY’S Resources”),

Attachment “E” (“Request for Proposals, including Addenda”),

Attachment “F” (“Insurance”),

Attachment “G” (“SERVICES PROVIDER’S Interview and Proposal”),

Attachment “H” (“Performance Bond”),

Attachment “A”
(“Project Description and Scope of Services”)

Attached behind this page is a copy of the Project Description and the Scope of Services to be provided by the SERVICES PROVIDER in accordance with this Agreement.

SAMPLE

Attachment “B”

(“List of Products, Solutions and Deliverables”)

Attached behind this page is a copy of the List of Products, Solutions and Deliverables to be provided by the SERVICES PROVIDER and the timeframe upon which same must be completed and provided with supporting documentation by the SERVICES PROVIDER and in accordance with the requirements of this Agreement. The milestone payments and schedule of fees to provide these products, solutions and deliverables are listed in Attachment C.

SAMPLE

Attachment “C”

(“Milestone Payments and Schedule of Fees”)

Milestone Payments and Schedule of Fees are attached on the following pages.

SAMPLE

Attachment “D”

(“SERVICES PROVIDER’S Project Team and CONTRACTING ENTITY’S Resources”)

The **SERVICES PROVIDER** may not modify, revise or change any other member of the **SERVICES PROVIDER’S Project Team** without the prior written consent of the **CONTRACTING ENTITY’S Contract Administrator**, which if the **SERVICES PROVIDER** clearly and convincingly presents verifiable documentation and information that the **SERVICES PROVIDER’S Project Team** replacement is equally skilled with the listed team member, the **CONTRACTING ENTITY’S Contract Administrator’s** consent will not be unreasonably withheld.

CONTRACTING ENTITY’S Resources shall consist of the following:

Attachment “E”
(“Request for Proposals, including Addenda”)

Attached behind this page is a copy of the CONTRACTING ENTITY’s Request for Proposals, including Addenda.

SAMPLE

Attachment “F”

(“Insurance”)

Insurance Certificates

Attached behind this page is a Certificate of Insurance provided by the **SERVICES PROVIDER** to meet the requirements listed below. The **SERVICES PROVIDER** shall maintain the insurance throughout the entire contract.

Prior to approval of this contract, the **SERVICES PROVIDER** shall obtain insurance coverage as provided below. No work or occupancy of the Facilities will commence unless and until the required certificates of insurance are provided and in effect. Any deductibles or self-insured retentions or any scheme other than a full insured program of general liability, automobile liability, and/or employer’s liability must be declared by the Contractor for approval in advance by the **CONTRACTING ENTITY**.

Policy Limits: The insurance coverage and limits required of the **CONSULTANT/SERVICES PROVIDER** under this contract are designed to meet the minimum requirements of the **CONTRACTING ENTITY**. Such coverage and limits are not designed as a recommended insurance program for the **CONSULTANT/SERVICES PROVIDER**. The **CONSULTANT/SERVICES PROVIDER** alone shall be responsible for the sufficiency of its own insurance program. Should the **CONSULTANT/SERVICES PROVIDER** have any question concerning its exposures to loss under this contract or the possible insurance coverage needed therefore, the **CONSULTANT/SERVICES PROVIDER** should seek professional assistance. The minimum aggregate limits of such insurance policies and continuing coverage shall be:

Worker's Compensation and Employer's Liability Insurance. The **CONSULTANT/SERVICES PROVIDER** shall provide and maintain, during the term of the contract, worker's compensation insurance as prescribed by the laws of the state of Oklahoma and employer's liability Insurance in an amount not less than One Hundred Thousand Dollars (\$100,000.00) each for all its employees employed at the site of the Project, and in case any work is subcontracted, the **SERVICES PROVIDER** employees, unless such employees are covered by the protection afforded by the **CONSULTANT/SERVICES PROVIDER**. In the event any class of employees engaged in work performed under the contract or at the site of the Project is not protected under such insurance heretofore mentioned, the **CONSULTANT/SERVICES PROVIDER** shall provide and shall cause each subcontractor to provide adequate insurance for the protection of the employees not otherwise protected. If the **CONSULTANT/SERVICES PROVIDER** is exempt under the

laws of the state of Oklahoma from the requirement to obtain and maintain worker's compensation insurance, then the **CONSULTANT/SERVICES PROVIDER** must provide the **CONTRACTING ENTITY** a copy of its Affidavit of Exempt Status from the Oklahoma Insurance Department.

Commercial General Liability Insurance. The **CONSULTANT/SERVICES PROVIDER** shall provide and maintain commercial general liability insurance coverage sufficient to meet the including the **CONTRACTING ENTITY** and any public trust participating in the Project, under the Governmental Tort Claims Act, 51 O.S. § 151 *et seq.*, (GTCA) and any amendment or addition thereto, as provided herein.

Property damage liability in an amount not less than Twenty-Five Thousand Dollars (\$25,000.00) per claimant for loss, damage to or destruction of property, including but not limited to consequential damages arising out of a single accident or occurrence.

All other liability in an amount not less than One Hundred Seventy-Five Thousand Dollars (\$175,000.00) per claimant for claims including death, personal injury, and all other claims arising out of a single accident or occurrence.

Single occurrence or accident liability in an amount not less than One Million Dollars (\$1,000,000.00) for any number of claims arising out of a single accident or occurrence.

Automobile Liability Insurance. The **CONSULTANT/SERVICES PROVIDER** shall provide and maintain comprehensive automobile liability insurance coverage as to the maintenance, and use of all owned, non-owned, leased or hired vehicles sufficient to meet **the** including the **CONTRACTING ENTITY** and any public trust participating in the Project, under the Governmental Tort Claims Act, 51 O.S. § 151 *et seq.*, (GTCA) and any amendment or addition thereto, unless otherwise specifically and expressly provided herein.

Property damage liability in an amount not less than Twenty-Five Thousand Dollars (\$25,000.00) per claimant for loss, damage to or destruction of property, including but not limited to consequential damages arising out of a single accident or occurrence.

All other liability in an amount not less than One Hundred Seventy-Five Thousand Dollars (\$175,000.00) per claimant for claims including death, personal injury, and all other claims arising out of a single accident or occurrence.

Single occurrence or accident liability in an amount not less than One Million Dollars (\$1,000,000.00) for any number of claims arising out of a single accident or occurrence.

Professional liability insurance. Before this **Agreement** may become effective, the Contractor will provide the **CONTRACTING ENTITY** with a certificate of insurance evidencing the Contractor's coverage under a Professional Liability Insurance Policy in an amount not less than \$100,000 aggregate annual limit of liability. Such insurance will be maintained for a period of two (2) years after the completion of this **Agreement**.

Notice of Change, Reduction, Modification, Suspension, Lapse, or Cancellation. There may be no termination, non-renewal, reduction, suspension, lapse or cancellation in coverage, or modification of such insurance coverage. **SERVICES PROVIDER** shall be responsible for providing the **RTA** actual notice of any change, reduction, suspension, lapse, or cancellation of any insurance provided under this Contract at least thirty (30) days prior to such change, reduction, suspension, lapse, or cancellation. Any lapse of insurance coverage is declared a breach of this **Agreement**. The **CONTRACTING ENTITY** may, at its option, suspend this **Agreement** until there is full compliance with this Exhibit D or terminate this **Agreement** for nonperformance. The provisions of this Exhibit will not limit or define the provisions of any other paragraph in this **Agreement**.

SERVICES PROVIDER shall be responsible for providing the **CONTRACTING ENTITY** actual notice of any change, reduction, suspension, lapse or cancellation of any insurance provided under this **Agreement** at least thirty (30) days prior to such change, reduction, suspension, lapse or cancellation.

Should any insurance required by this **Agreement** be changed, reduced, suspended or cancelled, or otherwise lapse for any reason during the term of this **Agreement**, then **CONTRACTING ENTITY** may terminate this **Agreement** for cause and **SERVICES PROVIDER** shall also be liable and responsible for any claim by **CONTRACTING ENTITY** on their own behalf or on behalf of another, for:

- (a) any loss or damages, including direct, indirect, and consequential; and
- (b) any cost or expense, including attorney fees, court costs and administrative expenses;
and
- (c) any other loss, damage cost or expense which would have been covered or assumed by the insurer had the changed, reduced, suspended, terminated, or lapsed policy been in effect without limitation as to the policy amount.

The **CONTRACTING ENTITY** reserves the right to withhold payment of any funds otherwise due **SERVICES PROVIDER** to pay any claim or potential claim which it reasonably believes would otherwise be payable under the insurance policy but only if there is a lapse or termination of any required insurance coverage, or if there is a change in coverage and such change results in a material reduction in the dollar value of coverage or materially changes the policy's scope of coverage.

Other Requirements. The **SERVICES PROVIDER** agrees to purchase and maintain prior to the approval of and during the life of this Contract, with an insurance company acceptable to the RTA the insurance policies set forth in **Section A** of this **Attachment** which may be met through a combination of primary and excess policies.

The **SERVICES PROVIDER** must provide, pay for, and maintain the types of insurance policies provided herein, in amounts of coverage not less than those set forth herein. Certified, true, and exact copies of all insurance certificates required, and endorsement pages shall be provided to the **RTA** on a timely basis if requested by **RTA** staff.

All insurance must be from responsible insurance companies which are authorized to do business in the state of Oklahoma and are acceptable to the **RTA**. The required insurance coverage and policies shall be performable in Oklahoma City, Oklahoma, and shall be construed in accordance with the laws of Oklahoma.

Nothing in this Section shall define or limit the rights of any party to this contract under any other provision of this contract, including but not limited to any indemnification provision.

Additional Insureds. All liability policies (except professional liability and worker's compensation and employer's liability policies) shall provide that the **RTA** are named additional insureds without reservation or restriction. The **RTA** and any of its participating trusts shall be named as loss payees on the **SERVICES PROVIDER's** valuable papers insurance policy for this Project.

All insurance coverage (except worker's compensation and employer's liability policies) of the **SERVICES PROVIDER** shall be primary and non-contributory to any insurance or self-insurance program carried by the **RTA**.

All insurance policies (except professional liability and worker's compensation and employer's liability policies) shall include a severability of interest provision wherein claims involving any insured hereunder, except with respect to limits of insurance, interests shall be deemed separate from any and all other interest herein, and coverage shall apply as though each such interest was separately insured.

Deductibles. All policies must be fully insured with any single policy deductible not exceeding \$25,000. All deductibles must be declared on the certificate of insurance. If no deductible is declared, the **SERVICES PROVIDER** is stating a deductible does not exist and thus a deductible is not approved or accepted. If the **SERVICES PROVIDER's** deductible is different than declared, then the **RTA** will hold an equal amount from pay claims until corrected.

At the option of the **CONTRACTING ENTITY**:

- (a) The **SERVICES PROVIDER** will require the insurer to reduce or eliminate such deductibles or self-insured retentions with respect to the **CONTRACTING ENTITY**;
- (b) The Contractor will procure a bond guaranteeing payment of the losses and related investigations, claim administration, and defense expenses not otherwise covered by the Contractor's insurance because of deductibles or self-insurance retentions; or,
- (c) The Contractor will provide the **CONTRACTING ENTITY**'s protection liability coverage with the **CONTRACTING ENTITY** each as the named insureds, for the commercial general liability coverage requirement, in a combined single-limit bodily injury and property damage in the cumulative amount of the maximum liability exposure of the **CONTRACTING ENTITY** as set forth in the Governmental Tort Claims Act and any addition or amendments thereto.

Self-insured Retentions. Self-insured retentions will not be accepted unless accompanied by a bond (financial guarantee bond) or irrevocable letter of credit guaranteeing payment of the losses, related investigations, claim administration and defense expenses not otherwise covered by the **SERVICES PROVIDER/SERVICES PROVIDER**'s self-insured retention.

The insurance coverage and limits required of the **SERVICES PROVIDER** under this contract are designed to meet the minimum requirements of the **RTA**. Such coverage and limits are not designed as a recommended insurance program for the **SERVICES PROVIDER**. The **SERVICES PROVIDER** alone shall be responsible for the sufficiency of its own insurance program. Should the **SERVICES PROVIDER** have any question concerning its exposures to loss under this contract or the possible insurance coverage needed therefore, the **SERVICES PROVIDER** should seek professional assistance.

Occurrence/Claims-made. All policies, except Professional Liability Insurance, shall be in the form of an occurrence insurance coverage or policy. If any insurance is written in a claims-made form, the **SERVICES PROVIDER** shall also provide tail coverage that extends a minimum of two year from the expiration of this contract.

Certificates. The insurance coverage and limits required must be evidenced by properly executed certificates of insurance on forms approved by the Oklahoma Insurance Commissioner. Copies of these certificates have been provided to the **RTA** Contracting Officer prior to execution of this contract and are attached hereto. The certificates must be signed by the authorized representative of the insurance company(s) shown in the certificates. The **SERVICES PROVIDER** must attach a copy of the

power of attorney evidencing the authority of the authorized representative to execute the certificate of insurance. The certificate must include the **Project or Contract number** and **Project or Contract description or name**. There may be no termination, non-renewal, reduction in coverage, or modification of such insurance coverage.

The **SERVICES PROVIDER** authorizes the **RTA** to confirm all information so furnished as to the **SERVICES PROVIDER's** compliance with its bonds and insurance requirements with the **SERVICES PROVIDER's** insurance agents, brokers, surety and insurance carriers. The lapse of any insurance policy or coverage required by this contract is a breach of this contract for which the **SERVICES PROVIDER** shall repay and reimburse all payment made under the contract and such other damages, losses, and costs incurred by the **RTA**. The **RTA** may at their option suspend this contract until there is full compliance with this paragraph, and/or may suspend payment under this contract, and/or may cancel or terminate this contract and seek damages for the breach of this contract. The remedies in this paragraph shall not be deemed to waive or release any remedy available to the **RTA**. The **RTA** expressly reserve the right to pursue and enforce any other cause or remedy in equity or at law.

In the event of a reduction in any aggregate limit, the **SERVICES PROVIDER** shall immediately notify the **RTA** and shall make reasonable efforts to have the full amount of the limits appearing on the certificate reinstated. If at any time the **RTA** request a written statement from the insurance company(s) as to any impairments to or reduction of the aggregate limit, the **SERVICES PROVIDER** hereby agrees to promptly authorize and have delivered to the **RTA** such statement.

All insurance coverage required under this Contract shall be maintained in full force and effect until completion and formal acceptance of the Project by the **RTA**. If the **SERVICES PROVIDER** is providing claims-made insurance coverage, such coverage must be maintained in full force and effect for a period of two (2) years after the final, formal acceptance of this Project by the **RTA**.

Duration of Coverage. All insurance coverage required under this contract shall be maintained in full force and effect until completion and formal acceptance of the Project by the **CONTRACTING ENTITY**. For **CONSULTANT/SERVICES PROVIDERs** providing claims-made insurance coverage, such coverage must be maintained in full force and effect for a period of two (2) years after the final, formal acceptance of this Project by the **CONTRACTING ENTITY**.

The requirements of the insurance provisions listed above shall survive the completion, expiration, cancellation or termination of this contract.

Attachment “G”

(“Service Provider’s Interview and Proposal”)

Attached behind this page is a copy of the SERVICES PROVIDER’S Proposal and certain documents submitted during the interview, review, and selection process, and certain recordings of the Interview.

SAMPLE

Attachment "H"
("Performance Bond")

Attached behind this page is a copy of the SERVICES PROVIDER'S Performance Bond.

SAMPLE