

**GENERAL MEETING OF THE BOARD OF DIRECTORS
OF THE NORTH EAST TEXAS
REGIONAL MOBILITY AUTHORITY**

RESOLUTION NO. 15-58

WHEREAS, the North East Texas Regional Mobility Authority ("NET RMA") was created pursuant to the request of Gregg and Smith Counties and in accordance with provisions of the Transportation Code and the petition and approval process established in 43 Tex. Admin. Code § 26.1, *et seq.* (the "RMA Rules"); and

WHEREAS, the Board of Directors of the NET RMA has been constituted in accordance with the Transportation Code and the RMA Rules; and

WHEREAS, subsequent to the initial formation of the NET RMA the Counties of Cherokee, Rusk, Harrison, Upshur, Bowie, Panola, Titus, Van Zandt, Wood, and Kaufman joined the Authority and are represented on the Board of Directors; and

WHEREAS, in Resolution No. 09-20, dated August 17, 2009, the NET RMA Board of Directors authorized procuring the delivery of Segment 3B of Toll 49 (the "Toll 49 Segment 3B Project") through a design/build comprehensive development agreement ("design/build CDA"); and

WHEREAS, in Resolution No. 10-06, dated June 23, 2010, following the design/build CDA procurement process, the NET RMA Board of Directors approved the selection of CH2M HILL Constructors, Inc. ("CH2M") as the team presenting the best value proposal and directed the Project Director and consulting team to negotiate a design/build CDA for the development of the Toll 49 Segment 3B Project with CH2M; and

WHEREAS, in Resolution No. 10-12, dated October 20, 2010, the Board of Directors approved entry into the design/build CDA for the development of the Toll 49 Segment 3B Project with CH2M, and the design/build CDA was subsequently executed on March 31, 2011; and

WHEREAS, the NET RMA issued a Certificate of Final Acceptance under the design/build CDA for the Toll 49 Segment 3B Project, with an effective date of September 27, 2013, and a one-year warranty period from September 27, 2013 to September 27, 2014; and

WHEREAS, during the warranty period, the area in which the NET RMA operates did not receive substantial rainfall; and

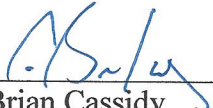
WHEREAS, substantial rains occurred in the area during the spring of 2015, causing failure of several drainage facilities and two culvert discharge areas (collectively, the "Damage"); and

WHEREAS, CH2M has offered to reimburse NET RMA for a portion of the Damage, and the Interim Executive Director recommends accepting CH2M's offer and executing a proposed Settlement Agreement, in the form or substantially the same form attached hereto as Attachment "A".

NOW THEREFORE BE IT RESOLVED, that the Board of Directors of the NET RMA hereby authorizes the Interim Executive Director to negotiate, finalize, and execute a Settlement Agreement with CH2M, in the form or substantially the same form attached hereto as Attachment "A".


Adopted by the Board of Directors of the North East Texas Regional Mobility Authority on the 8th day of December, 2015.

Submitted and reviewed by:



C. Brian Cassidy
General Counsel for the North East
Texas Regional Mobility Authority

Approved:



Linda Ryan Thomas
Chair, Board of Directors
Resolution Number 15-58
Date Passed 12/08/15

SETTLEMENT AGREEMENT & RELEASE

This Settlement Agreement and Release (the "Agreement") is between CH2M Hill Constructors, Inc. ("CH2M"), and the North East Texas Regional Mobility Authority (the "NET RMA"). CH2M and the NET RMA are collectively described in this Agreement as the "Parties" if referenced collectively or the "Party" if referenced individually. The Effective Date of the Agreement will be the date of which the last Party to the Agreement signs it.

WHEREAS, the NET RMA is a regional mobility authority created pursuant to the request of Gregg and Smith Counties and operating pursuant to Chapter 370 of the Transportation Code; and

WHEREAS, the NET RMA operates Toll 49 in Smith County; and

WHEREAS, CH2M, an engineering company that designed and constructed Segment 3B of Toll 49 ("Segment 3B") pursuant to a design-build comprehensive development agreement with the NET RMA; and

WHEREAS, the NET RMA issued a Certificate of Final Acceptance for Segment 3B, with an effective date of September 27, 2013, and a one-year warranty period from September 27, 2013 to September 27, 2014; and

WHEREAS, during the warranty period, the area in which the NET RMA operates did not receive substantial rainfall; and

WHEREAS, substantial rains occurred in the area during the spring of 2015, causing failure of several drainage facilities and two culvert discharge areas (collectively, the "Damage"); and

WHEREAS, CH2M has offered to reimburse NET RMA for a portion of the Damage, and the NET RMA desires to accept CH2M's offer; and

WHEREAS, the Parties desire to resolve and settle all potential warranty claims related to the Damage, including any warranty claims that could have been asserted in a lawsuit, an administrative hearing, or in any other forum;

NOW, THEREFORE, the Parties agree and represent as follows:

1. The Damage includes the failure of several drainage facilities at Black Fork Creek (Sta. 347+00 to Sta. 359+00), a culvert discharging to The Healing Place (Sta. 527+00 to Sta. 539+00), and a culvert discharging into Peveto Lake (Sta. 551+00 to Sta. 563+00). As-built plans for these three areas are attached to this Agreement as Attachment "A" and incorporated herein.

2. The consideration for this Agreement includes the respective covenants of the Parties as provided in this Agreement and a payment from CH2M to the NET RMA in the amount of \$275,000 (the "Settlement Sum"). CH2M shall pay the Settlement Sum to the North East Texas Regional Mobility Authority, and shall deliver the Settlement Sum to 909 ESE Loop

323, Ste 520 Tyler, TX 75701 , Attn: Everett Owen within thirty (30) business days of the effective date of this Agreement.

3. Upon CH2M's payment of the Settlement Sum, the NET RMA shall release and discharge CH2M of any and all warranty claims related to the Damage to the areas depicted on Attachment "A", including any claims that the NET RMA could have brought in a lawsuit, an administrative proceeding, or any other forum. This Agreement shall not, however, affect the Parties' respective rights or obligations with respect to any claims arising from errors or omissions with respect to the construction of any portion of Segment 3B.

4. CH2M agrees to indemnify and hold harmless the NET RMA from any third-party claims brought against the NET RMA related to the Damage.

5. The Parties will pay their own costs, fees, and expenses, including attorney fees, with respect to or relating to the dispute over the Damage, the negotiations leading to this Agreement, and implementation of this Agreement.

6. The Parties agree and acknowledge that they may discover facts or laws different from or in addition to those they now know or believe to be true with respect to the claims being released in this Agreement. The Parties agree that this Agreement shall be and will remain effective in all respects notwithstanding such different or additional facts or any changes in applicable laws. The Parties understand fully that they may have suffered damages or losses arising from their claims being released in this Agreement that are unknown to the Parties as of the effective date of this Agreement, and that unknown consequences of presently known damages or losses, or additional damages or losses, may arise, develop, or be discovered in the future.

7. The Parties expressly warrant that no claims, demands, controversies, actions, causes of action, liabilities, damages, injuries, losses, or other rights released, assigned or waived herein have been previously conveyed, assigned, or transferred in any manner, whether in whole or in part, to any person, entity, or other third party.

8. The Parties and each of them individually warrant and represent that they have full legal standing and capacity to enter into this Agreement, that they are not under any form of legal disability or incapacity at the time of signing this Agreement, that this is an arms-length transaction entered into without undue influence or duress, that they join in the execution of this Agreement freely and voluntarily, that they have read it fully and understand the terms of this Agreement, that they have had the opportunity to seek the advice of an independent attorney regarding this Agreement, and that they enter into and execute this Agreement without relying on any promises, conditions, terms, statements or representations that are not expressly contained in this Agreement.

9. This Agreement is contractual, not a mere recital, and is a full and final settlement of the matters expressed herein and is binding on all affiliates, owners, predecessors, successors and/or assigns of the Parties.

10. This Agreement contains the entire understanding between the Parties concerning the matters discussed within it. There are no representations, warranties, agreements, promises, understandings or arrangements, oral or written, express or implied, between the Parties relating to the subject matter of this Agreement except those recited within this Agreement. This Agreement supersedes all previous representations, warranties, agreements, promises, understandings, or arrangements, oral or written, relating to its subject matter, all of which are canceled.

11. This Agreement may be amended only by written agreement signed by the Parties.

12. This Agreement has been executed and delivered in the State of Texas, and its validity, interpretation, performance and enforcement shall be governed by the laws of the State of Texas. Exclusive venue for any dispute regarding this Agreement shall be the District Court of Smith County, Texas.

13. If any portion of this Agreement is deemed unenforceable, void, voidable or of no force and effect, no other portion will be affected because of that development, and the remainder of this Agreement will continue in full force and effect.

14. The Parties represent and warrant that each has received adequate consideration for their respective representations, warranties and agreements within this Agreement.

15. This Agreement has been prepared through the joint efforts of the Parties, and each of the Parties acknowledges reading this Agreement and acknowledges that this Agreement expresses the entire agreement concerning the settlement of the Damage.

16. The Parties agree they will each execute such other and further instruments and documents or take such other steps as may become necessary to carry out the intent of this Agreement.

17. This Agreement may be executed simultaneously in multiple counterparts, by facsimile or otherwise, and those counterparts together shall constitute one instrument. Facsimile or e-mailed signatures shall have the same force and effect as original signatures.

18. Each signatory to this Agreement warrants that he or she has the authority to sign this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth on the following page.

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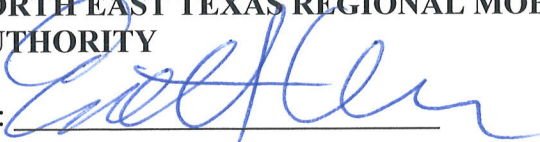
Date: _____

CH2M HILL, INC.

By: _____

Date: 12/28/15

**NORTH EAST TEXAS REGIONAL MOBILITY
AUTHORITY**

By:  _____

ACKNOWLEDGMENT

(To Be Completed By Each Person Signing This Settlement Agreement)

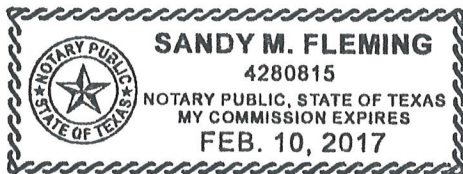
STATE OF Texas

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COUNTY OF Maric

BEFORE ME, the undersigned Notary Public, on this day personally appeared Everett Dwyer, known to me to be one of the individuals whose name is subscribed to the attached Settlement Agreement. He/she acknowledged to me that he/she has read and executed the attached Settlement Agreement for purposes and consideration expressed in the attached Settlement Agreement.

GIVEN under my hand and seal of office this 28th day of December, 2015.



Sandy M. Fleming
Signature of Notary Public

Sandy M. Fleming
Printed Name of Notary Public

Notary Public in and for the State of Texas

Date: January 7, 2016 CH2M HILL, INC.

By: 

Date: _____

**NORTH EAST TEXAS REGIONAL MOBILITY
AUTHORITY**

By: _____

ACKNOWLEDGMENT

(To Be Completed By Each Person Signing This Settlement Agreement)

STATE OF Colorado

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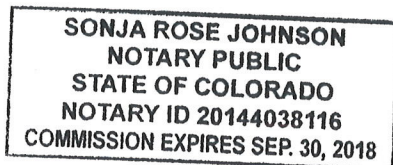
COUNTY OF Douglas

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BEFORE ME, the undersigned Notary Public, on this day personally appeared James Boyne, known to me to be one of the individuals whose name is subscribed to the attached Settlement Agreement. He/she acknowledged to me that he/she has read and executed the attached Settlement Agreement for purposes and consideration expressed in the attached Settlement Agreement.

GIVEN under my hand and seal of office this 7 day of January, 2018.



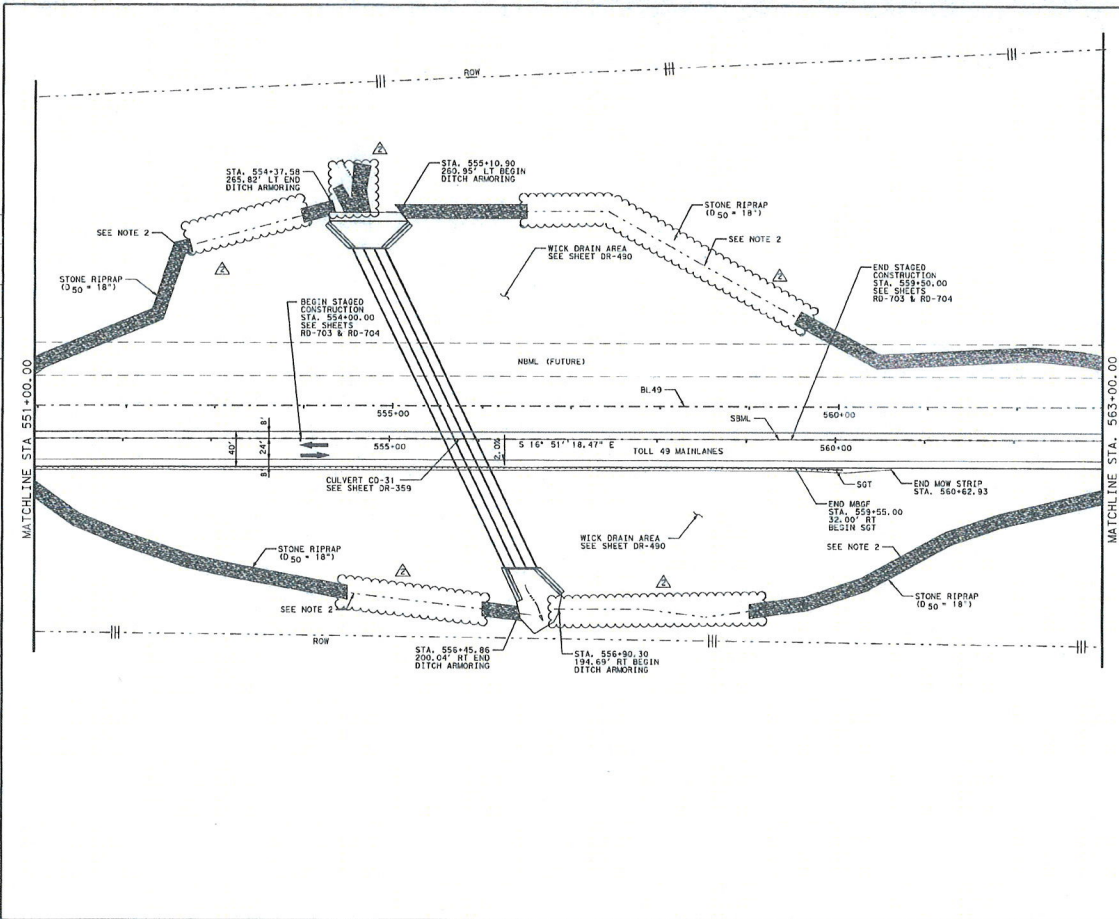
[Signature]
Signature of Notary Public

Sonja Rose Johnson
Printed Name of Notary Public

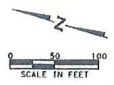
Notary Public in and for the State of Colorado

Attachment “A”


DATE: 5/21/2013 3:41:22 AM
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NOTES:
 1. ALL STATIONS AND OFFSETS ARE BASED ON SNAL ALIGNMENT UNLESS STATED OTHERWISE.
 2. FOR LIMITS OF SPECIAL DITCH AT CULVERT CD-31 SEE SHEET RD-606.



ISSUE OF RECORD			
NO.	DATE	DESCRIPTION	
2	2013/05/20	AS-BUILT DITCHES	
1	2013/02/12	NO. 45	
0	2011/07/25	SEGMENT 1 TOLL 49 PLANS - TFC	



WILLIAM DARRELL CHAMBERS P.E. *WDC* DATE

CH2MHILL
TYPE FIRM NO. F-2297

NET RMA
North East Texas
Regional Mobility Authority

TOLL 49 SEGMENT 3B

**MAINLANE
ROADWAY PLAN
551+00 TO 563+00**

FED. RD. DIST. NO.	PROJECT NO.	SHEET NO.
3487-01-006	RD-370	
STATE	COUNTY	
TEXAS	TYLER	SMITH
CONTRACT	SECT.	JOB
3487	01	006
TOLL 49		