

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

RESOLUTION NO. 13-11

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, Wood, Cass, Van Zandt, and Titus 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 (“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 HILL”) 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 HILL; 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 HILL, and the design/build CDA was subsequently executed on March 31, 2011; and

WHEREAS, an additional cost related to the need for stream credit mitigation was not anticipated by either the NET RMA or CH2M HILL at the time of the execution of the design/build CDA; and

WHEREAS, the NET RMA and CH2M HILL could not reach a mutual agreement on how to share the costs for the stream credit mitigation; and

WHEREAS, Section 25 of the design/build CDA provides that in the event the NET RMA and CH2M HILL fail to resolve a dispute, the resolution of the dispute is to be submitted to a disputes review board; and

WHEREAS, the disputes review board was constituted and, after considering the positions of both parties, issued the recommendation, attached hereto as Attachment "A"; and

WHEREAS, the NET RMA Interim Executive Director recommends the acceptance and approval of the recommendation made by the disputes review board.


NOW THEREFORE, BE IT RESOLVED, that the NET RMA Board of Directors hereby accepts and approves the recommendation of the disputes review board, attached hereto as Attachment "A"; and


BE IT FURTHER RESOLVED, that the NET RMA Board of Directors hereby authorizes the Interim Executive Director to prepare and present to the Board a Change Order to the CDA which implements the recommendation of the disputes review board.

Adopted by the Board of Directors of the North East Texas Regional Mobility Authority on the 26th day of March, 2013.

Submitted and reviewed by:

Approved:


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


Linda Ryan Thomas
Chair, Board of Directors
Resolution Number 13-11
Date Passed: 03/26/13