



***NORTH TEXAS TOLLWAY AUTHORITY***

**NORTH TEXAS TOLLWAY AUTHORITY  
RFQ – 03397-NTT-00-CS-LE**

**REQUEST FOR QUALIFICATIONS FOR  
Outside Legal Counsel**

**Responses Due:**

**May 31, 2012 @ 2:00 pm**

**At the following location:**

**NORTH TEXAS TOLLWAY AUTHORITY  
Attn: Procurement Services  
5900 West Plano Parkway, Suite 100  
Plano, Texas 75093**

**Non-Mandatory Pre-Proposal Meeting**

**May 2, 2012 @ 2:00 pm**

**NORTH TEXAS TOLLWAY AUTHORITY  
BOARD ROOM  
5900 West Plano Parkway, Suite 200  
Plano, Texas 75093**

# VENDOR INFORMATION PAGE

**Please Print or Type**

Firm's Name: \_\_\_\_\_

Firm's Physical Address: \_\_\_\_\_

\_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Firm's Mailing Address: \_\_\_\_\_

\_\_\_\_\_

Telephone Number: \_\_\_\_\_ FAX Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Taxpayer Identification Number: \_\_\_\_\_

The undersigned affirms that he or she is authorized to submit the firm's response to this RFQ and execute a contract between the firm and the North Texas Tollway Authority. The undersigned further affirms that all of the statements and representations made in the response were made based on reasonable inquiry and are complete and accurate to the best of the knowledge of the undersigned. The NTTA reserves the right to reject any response found to contain false, misleading or inaccurate information. By signing and submitting this response the firm certifies that it understands the terms and conditions of this RFQ and that it agrees with such terms and conditions except those to which it specifically objects in writing.

Firm's Authorized Agent: \_\_\_\_\_

Title: \_\_\_\_\_

Authorized Agent's Signature: \_\_\_\_\_

**Attention All Respondents:** *This form must be completed and returned with your proposal in a section labeled “required NTTA forms”*

**REQUIRED RESPONSE CHECKLIST:** THE FOLLOWING CHECKLIST IS PROVIDED AS A CONVENIENCE TO AID RESPONDENTS IN COMPLETING THIS RFQ.

**Attention All Respondents:** *These forms must be completed and returned with your response in a section labeled “required NTTA forms”*

**CHECK LIST**

- Vendor Information Form
  
- Confidentiality and Non-disclosure Statement – Attachment A
  
- Conflict of Interest Questionnaire, Affidavit and Supplement to Conflict of Interest Questionnaire – Attachment B
  
- Addenda acknowledgements (if issued by NTTA, the signed acknowledgement form must be included in the response to the RFQ)

Questions about this RFQ should be directed via e-mail to Mr. Felix Alvarez, NTTA Director of Procurement Services, at [bidpurchasing@ntta.org](mailto:bidpurchasing@ntta.org) no later than **May 11, 2012 at 4:00 pm.**

## **I. INTRODUCTION**

### **A. BACKGROUND**

The North Texas Tollway Authority (NTTA) is a regional tollway authority authorized under Chapter 366 of the Texas Transportation Code to acquire, construct, maintain, repair and operate turnpike projects in the North Texas region. The NTTA serves its member counties of Collin, Dallas, Denton and Tarrant and is responsible for the NTTA System, consisting of the Dallas North Tollway, the President George Bush Turnpike, Sam Rayburn Tollway, Addison Airport Toll Tunnel, Lewisville Lake Toll Bridge and the Mountain Creek Lake Bridge, and the NTTA Special Projects System, consisting of the President George Bush Turnpike – Western Extension and the Chisholm Trail Parkway. The NTTA is governed by a nine-member board of directors (Board) with two members appointed by each of the four NTTA member counties. A ninth member is appointed by the Governor of Texas. The following individuals currently serve on the NTTA Board of Directors:

Chairman Kenneth Barr (Tarrant County)  
Vice Chairman Bill Moore (Collin County)  
Victor T. Vandergriff (Tarrant County)  
Jane Willard (Collin County)  
David R. Denison (Denton County)  
Matrice Ellis-Kirk (Dallas County)  
George “Tex” Quesada (Dallas County)  
Michael R. Nowels (Denton County)  
William Elliott (Governor’s appointee)

More information on the NTTA can be obtained by visiting the NTTA’s web site at [www.ntta.org](http://www.ntta.org).

### **B. NTTA MISSION STATEMENT**

The NTTA’s mission is to provide a safe and reliable toll road system, increase value and mobility options for our customers, operate the Authority in a businesslike manner, protect our bondholders, and partner to meet our region’s growing need for transportation infrastructure.

## **II. SCOPE OF SERVICES/TERM**

The NTTA has a two-lawyer in-house counsel group. In recent years the NTTA has spent roughly \$1 million to \$3 million on extensive bond counsel/capital financing legal services annually and \$4 million to \$8 million annually for a wide variety of other outside legal services. Over the next several years, the NTTA expects to transition from an expansive construction program to a focus on operations and anticipates a significant reduction in its outside counsel expense as a result. Cost effectiveness will be an important consideration in the NTTA’s selection and deployment of its outside counsel.

This RFQ process is being conducted pursuant to sections 366.033(a)(5), 366.033(a)(8), and 366.033(j) of the Transportation Code and, where applicable, section 1202.027 of

the Government Code. This RFQ is issued to establish a referral list (“registry”) of outside counsel seeking to perform legal work covered by this RFQ. As the need for outside counsel services arises, the General Counsel will select the respondent (or respondents) from the registry that is most qualified to perform the work and attempt to negotiate a fair and reasonable contract with the respondent(s). The General Counsel’s selection and proposed contract is subject to the approval of the NTTA Board of Directors. The registry established through this RFQ shall be in effect during the time frame beginning July 1, 2012 and ending on December 31, 2014, subject to further extension by the NTTA Board of Directors. Note that this time frame refers to the period under which the NTTA may contract with firms that respond to this RFQ. For sake of continuity, and to protect the NTTA’s interests, a law firm may be allowed after December 31, 2014 to continue handling a matter assigned to the firm before that date.

To the extent allowed by law, the selection of outside counsel for matters as they arise will take into account the background and qualifications of the firm, the expertise of the attorneys proposed to staff the matter, the proposed work plan for representing the NTTA in the matter, the firm’s past performance on NTTA matters, and the firm’s past dealings with the NTTA.

#### SCOPE(S) OF WORK FOR WHICH RESPONDENT IS SUBMITTING QUALIFICATIONS FOR

Please indicate the area or areas of outside counsel work for which you are submitting qualifications. More information on these seven categories (a-g) of available work is found below.

- a. Bond Counsel/Capital Financing
- b. General Litigation
- c. Employment Law & Litigation
- d. Contracts and Intellectual Property
- e. Government Representation
- f. Property Acquisition/Real Estate
- g. Collections Litigation

(Check all that apply.)

The NTTA is seeking outside legal counsel in the following areas (a-g):

- a. Bond Counsel/Capital Financing. Bond counsel, underwriters counsel nominees, issuers counsel, legal advice on standard capital financing, innovative financing options such as public-private partnerships, and other financing sources such as the federal TIFIA program.

- b. General Litigation. Represent the NTTA in non-employment litigation. NTTA seeks highly qualified defense counsel. In addition, the NTTA would like to be proactive and be a plaintiff where such is in the NTTA's best interest. The NTTA's litigation efforts in the past have included defending against challenges to the NTTA's toll collection system, pursuing lawsuits arising out of construction defects, and defending against personal injury actions.
- c. Employment Law and Litigation. Advise on legal issues relating to employment and, where necessary, defend the NTTA in lawsuits filed by employees or former employees arising out of their employment at the NTTA. The NTTA seeks legal counsel that will proactively keep the NTTA advised of pertinent legal developments in areas such as FMLA, FSLA, workers compensation, Equal Pay Act, civil rights, employee benefits, and local laws that may have an impact on NTTA operations.
- d. Contracts and Intellectual Property. Electronic toll collection, customer accounts, and customer service activities have made toll authorities like the NTTA much more like credit card companies or utilities, processing a large volume of small transactions, than traditional highway authorities, who laid down the concrete and had not continuing relationship with the drivers on the roadways. In addition, technology pervades everything the NTTA does, from maintenance to human resources.. The NTTA needs innovative legal counsel who can help the NTTA navigate a complicated and rapidly changing technological environment. The NTTA needs legal counsel that can assist the NTTA in accessing and implementing technology developed by others and developing and commercializing technology of its own.
- e. Government Representation. The NTTA seeks legal counsel to provide advice and representation in matters specific to the NTTA's status as a governmental entity, including the Open Meetings Act, the Public Information Act, procurement laws, toll violation enforcement, and ethics. Legal counsel in this area must be qualified to assist the NTTA in performing its legal obligations and in meeting its business objectives within the applicable laws. The NTTA is especially interested in counsel experienced in criminal law, enforcement of parking and traffic laws, and in other areas of the law that might be useful to the NTTA in improving its toll violation enforcement efforts.
- f. Property Acquisition/Real Estate/Environmental. The NTTA often requires land acquisition services to assemble land for new projects or to dispose of excess property. The NTTA owns building and other real estate and legal issues may arise in connection with such real estate. The NTTA also needs legal counsel who can assist the NTTA in meeting its obligations under the environmental laws.
- g. Collections Services (toll violations). The NTTA seeks capable collections and litigation counsel to assist in the NTTA's efforts to collect unpaid tolls and administrative fees from toll violators. The NTTA believes that contingent fee billing arrangements may be a mutually beneficial way for the NTTA and the law firms to reduce the amount of unpaid tolls and fees owed to the NTTA. Lawyers in this area should be capable of managing a high volume practice and skilled in collecting on judgments. Law firms should be capable of working with the NTTA to streamline the flow of information between the NTTA and the firm in order to

maximize the number of cases handled while minimizing the administrative burden on the NTTA. Such measures might include posting attorneys or support staff on-site or establishing electronic data depositories for case information.

The NTTA will enter into legal services contract with a firm selected to do legal work. A form of the contract is attached as Attachment D. To the extent allowed by law, the NTTA reserves the right at any time to rebid work in one or more of the categories listed above, advertise for legal work in additional categories or assign legal work outside this RFQ process.

Qualified responses will formulate a referral list for the NTTA to choose outside counsel if and when the need arises. Inclusion of a law firm on the referral list does not guarantee that law firm an outside counsel contract. The NTTA reserves the right, at any time, to advertise for legal work in additional categories or assign legal work outside this procurement vehicle.

### **III. PROPOSAL LIMITS**

Respondents may submit qualifications on any of these areas of outside legal counsel services. In view of anticipated strong interest in this RFQ, respondents are encouraged to submit qualifications only in areas where they have particular strengths. Scattershot submittals will not be favored. Submittals that identify a respondent's particular strengths in an area of special expertise will be favored.

### **IV. TERMS OF CONTRACT/EXCEPTIONS**

The general form of the legal contract is found in Attachment D. By submitting a Proposal, the respondent agrees to the terms and conditions of the attached contract. If respondent takes any exception with any provision in the contract respondent should note that exception in its response in a separate section entitled "Contract Exceptions." The NTTA may consider any exceptions made by the respondent in deciding how to allocate its legal work to outside counsel. A respondent is deemed to agree with all terms and conditions of the contract to which it has made no exception. Legal services contracts will become effective upon the final approval by the NTTA Board and execution by the Executive Director. The final form of each contract will be determined based on the nature and scope of the engagement.

### **V. ADDITIONAL INFORMATION**

#### **A. TELEGRAPHIC/ELECTRONIC PROPOSALS**

Responses sent by facsimile machines and/or emails are not acceptable and will be rejected. Respondents should allow adequate time for delivery of their submittals either by airfreight, postal services, or by other means.

#### **B. QUESTIONS/INQUIRIES**

Questions about this RFQ should be directed in writing, via e-mail to Mr. Felix Alvarez, Director of Procurement Services, no later than **May 11, 2012 at 4:00 pm** at the address

indicated below. The NTTA will transmit all written questions and its written responses to all respondents. Respondents should not rely on anything other than such written responses.

All other communications relating to this RFQ must likewise be directed to the Director of Procurement Services.

### **Contact Information**

North Texas Tollway Authority  
5900 West Plano Parkway, Suite 100  
Plano, Texas 75093  
Attn: Mr. Felix Alvarez, Director of Procurement Services  
[bidpurchasing@ntta.org](mailto:bidpurchasing@ntta.org)  
RFQ –Outside Legal Counsel – 03397-NTT-00-CS-LE

### **C. INTERPRETATIONS AND ADDENDA**

No interpretation or modification of the RFQ is binding on the NTTA unless issued in writing and distributed as an addendum to this RFQ by the NTTA. **Requests for interpretations and/or clarifications of the RFQ must be made in writing and directed to the Director of Procurement Services.** All addenda issued by the NTTA shall become part of this RFQ.

### **D. INSTRUCTIONS REGARDING OTHER COMMUNICATIONS**

From the issuance date of this RFQ until the date the final contract is approved by the NTTA Board of Directors, respondents are prohibited from directly or through intermediaries making any material argument or supplying any material information concerning the RFQ to any NTTA director, officer or employee other than the Director of Procurement Services. Any action or communication in violation or circumvention of this provision will result in the disqualification of the offending respondent.

### **E. LANGUAGE, WORDS USED INTERCHANGEABLY**

For purposes of this RFQ, the words AUTHORITY or NTTA refers to the NORTH TEXAS TOLLWAY AUTHORITY throughout this document. Similarly, RESPONDENT, VENDOR, and PROPOSER refer to the person or company submitting statement of qualifications to the Authority. The words RESPONSE, QUOTATION, and PROPOSAL are all offers from the PROPOSER. The NTTA has established for the purposes of this RFQ that the words SHALL, MUST or WILL are equivalent in this RFQ and indicate a mandatory requirement or condition, the material deviation from which shall not be waived by the Authority. A deviation is material if, at the sole discretion of the Authority, the deficient response is not in substantial accord with this RFQ's mandatory condition requirements. The words SHOULD and MAY are equivalent in the RFQ and indicates very desirable conditions or requirements but are permissive in nature. Deviation from, or omission of, such a desirable condition or requirement will not in and of itself cause automatic rejection of a proposal, but may result in being considered as not in the best interest of the Authority.

## VI. RESPONSE TO THIS RFQ

### A. EXAMINATION OF RFQ DOCUMENTS

A respondent's failure to receive or examine any form, instrument, addendum or other document does not relieve the respondent from any obligation with respect to its proposal or to any contract resulting from this RFQ. The submission of a proposal shall be taken as conclusive evidence of compliance with this condition.

### B. PROPRIETARY INFORMATION

Any proprietary information contained in the Response shall be so indicated with the following notation in **BOLD** letters at the top and bottom of the page: **THIS PAGE CONTAINS PROPRIETARY INFORMATION**. A general statement that the entire content or major portion of the Response is proprietary will not be honored.

### C. PROPOSAL FORMAT GUIDELINES

Responses to this RFQ should include at least the following information: (1) a description of the firm's or attorney's qualifications for performing the legal services, including the firm's prior experience in the specific area of law for which the firm is responding; (2) the expertise, including scientific or technical, of the attorneys that would be assigned to work on such matters; (3) a description of the efforts made by the firm to encourage and develop the participation of minorities and women in the provision both of the firm's legal services generally and the specific areas of law for which the firm seeks to do legal work for the NTTA; (4) disclosures of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the NTTA or any of its officers or employees; (5) the firm's agreement with the billing guidelines set forth in Attachment D; and (6) confirmation of willingness to comply with policies, directives, and guidelines of the NTTA.

Respondents are to provide the NTTA with a proposal in the following format:

Responses must not exceed thirty (30) pages (8.5 x 11 inches with one-inch margins from all sides), type font size not less than 11-point and printed on one side. Submittals of information in response to this RFQ greater than the specified thirty (30) pages will not be reviewed. The thirty (30) page limit shall be exclusive of professional resumes, cover sheets, fly leaves, table of contents, requested appendices and dividers or brochure material. These additional items should be limited and directly applicable to this RFQ.

#### 1. Cover Letter

A cover letter should summarize key elements of offered services. The letter must be signed by an individual authorized to bind the respondent. The letter must

indicate the address and telephone number of the respondent's office from which the project will be managed.

2. Background Information Concerning Respondent

List and provide answers to the following:

- a. Name of Business (Official Name and D/B/A)
- b. Business headquarters (include address, telephone and facsimile)
- c. If a division or subsidiary of another organization provide the name and address of the parent
- d. Billing Address
- e. Name of Chief Executive Officer
- f. Customer contact (include name, title, address, telephone, and e-mail address)
- g. Company web site
- h. Type of organization (e.g., sole proprietor, corporation, partnership)
- i. Each person or entity with an ownership interest of five (5) percent or more in the respondent
- j. Length of time in business
- k. Annual sales (for most recently completed fiscal year)
- l. Number of full-time employees (average from most recent fiscal year)
- m. Type of and description of business
- n. State of incorporation, state of formation or state of organization
- o. Identify and specify the location(s) and telephone numbers of the major offices and other facilities that would be involved in respondent's performance of the contract contemplated by this RFQ
- p. Information Regarding Debarment, Litigation and Terminations:
  - i. During the last five (5) years has any federal, state or local governmental entity issued an order, judgment or decree of any kind barring, suspending or otherwise limiting respondent's right to contract with any governmental entity or to engage in any business practice or activity? Yes\_\_\_\_ No\_\_\_\_

- ii. Are there any current, pending or threatened litigation, administrative or regulatory proceedings or similar matters that could affect respondent's ability to perform the required services? Yes\_\_\_\_ No\_\_\_\_
  - iii. During the last five (5) years has any customer terminated a contract with respondent for cause or accepted damages in lieu of termination? Yes\_\_\_\_ No\_\_\_\_
  - iv. Is there any reason why the NTTA might be legally prohibited from doing business with the respondent or the respondent legally prohibited from doing business with the NTTA? Yes\_\_\_\_ No\_\_\_\_
- q. Each of the persons or entities identified in subsection (i) must identify any of the following that occurred with respected to the person or entity within the previous 5 years:
- i. Debarment from contracting with any governmental entity. Yes\_\_\_\_ No\_\_\_\_
  - ii. Professional licensure discipline. Yes\_\_\_\_ No\_\_\_\_
  - iv. Adverse civil judgments or administrative findings. Yes\_\_\_\_ No\_\_\_\_
  - v. Criminal felony convictions. Yes\_\_\_\_ No\_\_\_\_

If any of the answers are in the affirmative, please explain the nature and circumstances of the matter and what relevance if any to the NTTA's consideration of respondent's proposal.

- r. Attach the most recent annual financial statement for the respondent.

3. Methodology and Approach

Provide a detailed description of the approach and methodology to be used to accomplish the requirements as detailed in the scope of services of this RFQ. The methodology section should include:

- a. information as to the capabilities and resources of the office(s) from which respondent proposes to perform the required services, and a listing of professional personnel by name and discipline that would be assigned to perform the services requested by this RFQ;
- b. an abstract of respondent's cost control procedures and how it charges for its services; and
- c. a description of respondent's quality control program, focusing on the policies and procedures to be employed to assure a complete, accurate and quality product.

**Note that respondents are not to submit pricing proposals with their responses. Pricing will be negotiated pursuant to Section VIII.E.**

4. Key Staff Assignments

Provide a list of key individuals who will be working on this project if selected and indicate the role and responsibilities that each will perform. Include a detailed resume for each of these individuals which identify similar projects that each individual has been involved with and his or her specific responsibilities in such projects. Indicate whether the key individual is an employee of the respondent or of a subcontractor, and, if employed by a subcontractor, identify the subcontractor.

Provide an organizational chart identifying the staff who will perform the requested services. Indicate the number of full-time professional employees that would be assigned to or be available to provide services to the NTTA.

5. Qualifications

The information requested in this section should describe the firm's qualifications and a list of any subcontractor(s) that will be utilized on this project. NOTE: The NTTA disfavors the subcontracting of legal work, preferring to have direct contractual relationships with its legal counsel. The NTTA will not approve subcontracting of legal work. However, the NTTA is willing to consider teaming agreements, joint ventures, or other innovative forms of service delivery so long as the NTTA has a direct contractual relationship with each of its legal counsel. For purposes of this RFQ only, "subcontractor" shall mean a participant in such a teaming arrangement and not a traditional subcontractor. Describe the relevant experience of the firm and of all subcontractors with projects of a similar nature or scope with public or private entities within the past five years. Information should include:

- a. A summary of the firm's and all subcontractor(s)' demonstrated capability and areas of specialization, including length of time that the firm has provided the requested and/or similar services requested by this RFQ.
- b. A summary of the firm's and all subcontractors' current or prior experience providing similar services to those requested in this RFQ.
- c. Information demonstrating the current financial capacity of the respondent to handle the assignment that is the subject of this RFQ.
- d. A listing of significant current assignments with and pending contract awards from public entities in any of the NTTA's four member counties and transportation tolling entities.
- e. Other experience that the respondent believes supports the conclusion that the respondent is the best qualified vendor to perform the services requested by this RFQ.

- f. With respect to bond counsel/capital financing counsel indicate whether the firm seeks to be considered lead bond counsel, underwriters counsel or issuers counsel, or wishes to be considered only in a co-counsel capacity.

6. References

Provide no more than three (3) references for which respondent has supplied similar services within the last five years. The NTTA reserves the right to contact any of the organizations or individuals listed. Information provided shall include:

- Client Name
- Project Description
- Project Start and End Dates
- Client Project Manager Information including: name and contact information (mailing address, telephone number, fax number and email address).

*Note: references should not include members of the evaluation committee.*

7. Business Diversity Program

Respondents must not discriminate on the basis of race, gender, religion, age or other improper category in its hiring or staffing decisions. Rather than establish subcontracting goals, the NTTA has opted to unbundle its outside counsel work into seven categories in order to give the greatest opportunity for smaller firms, including MBE/WBE firms, to compete for NTTA legal work. Respondents should describe the efforts made by the firm to encourage and develop the participation of minorities and women in the provision both of the firm's legal services generally and the specific areas of law for which the firms seeks to do legal work for the NTTA.

9. Conflicts of Interest

Respondents should describe any conflicts of interest involving the NTTA, identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the NTTA or any of its officers or employees.

10. Minimum experience

Respondents must be members in good standing of the Texas bar. **Respondents should demonstrate compliance with this requirement by attaching documentation demonstrating that he/she is a member in good standing of the Texas bar.** Respondents should have at least five years of experience in the area or areas for which they are submitting a proposal. They can demonstrate compliance with this requirement by describing their professional experience and including citations to cases, transactions, articles or presentations demonstrating their familiarity with the relevant subject matter. Note that this experience requirement applies only to the lead attorney or attorneys who are being proposed to handle matters on the NTTA's behalf and does not preclude use of more junior attorneys to work on NTTA matters under supervision of the lead attorney(s).

## VII. PROPOSAL SUBMISSION REQUIREMENTS

### A. SUBMISSIONS OF PROPOSALS

**The Respondent must submit one (1) original and four (4) copies of the complete written response to:**

North Texas Tollway Authority  
Director of Procurement Services  
RFQ– 03397-NTT-00-CS-LE  
5900 West Plano Parkway, Suite 100  
Plano, TX 75093

Submissions must be clearly marked to indicate the RFQ number on the outside of the envelope the submission is delivered in. The NTTA is not responsible for submissions received that are not clearly marked.

**B. SCHEDULE**

Public notification/advertisement:	April 20, 2012
Second Advertisement	April 27, 2012
Pre-Proposal meeting	May 2, 2012 @ 2:00 pm
Deadline for submitting questions:	May 11, 2012 @ 4:00 pm
NTTA Responses to Questions	May 15, 2012
<b>RFQ Proposals due:</b>	<b>May 31, 2012 @ 2:00 pm</b>
Oral Presentations:	[At NTTA Request]

**Note:** All times listed herein are Central Standard Time (CST) or Central Daylight Savings Time (CDST) as applicable, unless otherwise noted.

**C. OFFICIAL TIME CLOCK**

The time stamp device in the NTTA's customer reception lobby is the official time clock used for the purpose of the due date and time of the Proposals. Any discrepancies between this official time clock and any other time keeping devices are not the responsibility of the NTTA. Late proposals will be returned unopened to the submitting firm. Firms are encouraged to submit responses early so that they can be time stamped within the time allowed.

**D. RESPONSES PROPERTY OF THE NTTA**

All material contained in proposals, except copyrighted material, become the property of the NTTA regardless of the respondent selected. All copyrighted material must be clearly marked indicating the copyrighted status. Respondent shall hold the NTTA harmless from any claims arising from the release of proprietary information not clearly designated as such by the respondent.

**E. NO COMMITMENT**

This RFQ does not commit the NTTA to award a contract or to pay any costs incurred for any services. The NTTA, at its sole discretion, reserves the right to accept or reject any or all responses received as a result of this RFQ, to negotiate with any qualified source, to cancel this RFQ in part or in its entirety, or select legal counsel in any manner allowed by applicable law. All RFQ responses will become

the property of the NTTA. If any proprietary information is contained in the response, it should be clearly identified.

Respondents shall not consider or identify themselves as representing the NTTA or as acting as attorneys for the NTTA until they have been engaged by the NTTA through a written contract. There shall be no attorney-client relationship between the NTTA and a respondent until the respondent has been engaged. The NTTA does not guarantee that any or all respondents will receive an assignment of legal work from the NTTA.

#### **F. CLARIFICATION**

Respondent may be requested to provide additional information and/or clarify contents of their response package. Other than information requested by the NTTA, no respondent will be allowed to alter their response or add new information after the final filing date.

#### **G. MINOR ERRORS/WAIVER**

The NTTA reserves the right, in its sole discretion, to waive any technicality in a response to this RFQ, provided such action is in the best interest of the NTTA. Where the NTTA waives minor technicalities, such waiver does not modify the RFQ requirements or excuse the respondent from full compliance with the RFQ. Notwithstanding the waiver of any minor technicalities, the NTTA requires all respondents substantially comply with the requirements of this RFQ. The NTTA reserves the right to adjust schedule, issue addenda or take other action that is in the NTTA's best interest and will ensure a fair bidding process.

### **VIII. EVALUATION, AWARD AND CONTRACT**

#### **A. INITIAL SCREENING**

The Director of Procurement Services will conduct an initial screening of each response to determine if the submittals are complete, fully responsive and contain the required signatures. **Failure to submit proof of meeting the minimum qualification requirements of section VI.C.10 may result in rejection of the firm's proposal.**

#### **B. RESPONSIBLE RESPONDENT DETERMINATION**

The Director of Procurement Services will next determine whether each respondent with a responsive proposal is a "responsible" respondent with whom the NTTA can or should do business, considering appropriate factors such as past convictions or debarments.

**Firms that submit a response that is found to be responsive and responsible will be included on the NTTA Outside Legal Counsel registry.**

**C. AWARD OF SERVICES**

Firms will not be selected until assignment of a matter is necessary. NTTA General Counsel will identify the most qualified respondent for that matter from the registry created by this RFQ and begin negotiations with the selected firm to attempt to enter into a fair and reasonable agreement for services. If such negotiations are unsuccessful they will be terminated and negotiations initiated with the next most highly qualified firm. This process will continue until a fair and reasonable agreement is reached with qualified counsel. Once selected for the assignment of a matter, a firm will be required to enter into an Attorney Fee Contract with NTTA, in the contract form shown in Attachment D, or as may be amended as appropriate given the nature of the legal work and the NTTA's best interests. Such contracts may, from time to time, be renegotiated and/or canceled for any reason. The contract will be presented to the NTTA Board of Directors for final approval. The NTTA may engage more than one firm to work together on a matter where having more than one firm is in the NTTA's best interest.

**IX. ADDITIONAL RFQ TERMS & CONDITIONS**

**A. OPEN RECORDS**

Information included in a proposal is subject to the Texas Public Information Act, Chapter 552 of the Texas Government Code (the Act). Information is not exempt as confidential under the Act simply because the party submitting the information anticipates or requests that it be kept confidential. Accordingly, a Respondent whose proposal includes information that the Respondent believes in good faith to be proprietary or confidential and release of which will harm the Respondent shall mark such information in accordance with Section VI.B. The NTTA reserves the right in its sole discretion to respond to any request under the Act for a copy of an RFQ response in a manner that it deems appropriate and consistent with the requirements of the Act.

NTTA, its directors, officers, employees, agents, and attorneys are not liable for any disclosure of any information submitted in a response to this RFQ. By submitting a proposal, the respondent waives any claim against, and releases from liability, NTTA, its directors, officers, employees, agents, and attorneys with respect to disclosure of any information included in the proposal, including information labeled as "Confidential Proprietary Information." The Respondent also authorizes NTTA, in its sole discretion, to submit any information contained in the proposal, including information the respondent has labeled as being proprietary, to the Office of the Attorney General for a determination as to whether any such information submitted by the respondent may be excepted from public disclosure under the Act, either by its provisions alone or in conjunction with other law.

**B. AWARD NON-EXCLUSIVE**

The NTTA reserves the right to award a contract to more than one Respondent based on the NTTA's consideration of its operational needs. There will be no minimum amount of services awarded any successful respondent under this RFQ. A successful respondent shall assume total responsibility for all deliverables awarded to them whether a subcontractor or other third party produces them in whole or in part. The NTTA considers a successful respondent to be the sole point of contact with regard to contractual matters, including payment of all charges resulting from the Contract. A successful respondent will be fully responsible for any default by a subcontractor, just as if the successful respondent itself had defaulted. No subcontractor will be paid directly by NTTA. A successful respondent will be solely responsible for the performance of the portion of the entire project awarded to them under this RFQ.

### **C. GENERAL RIGHTS**

The NTTA expressly reserves the right to reject any or all Responses, in whole or in part, to re-solicit the requested services through a new RFQ or otherwise and to make the award based on demonstrated competence and qualifications to perform the services as determined to be in the best interest of the NTTA. The NTTA's Policy Regarding Procurement Of Goods And Services And Disposition Of Property and the terms of this RFQ shall, in the stated order of precedence, govern and control the procedures and practices entailed in this procurement.

### **D. UNDERSTANDING OF CONTRACT REQUIREMENTS**

Respondent certifies by submitting a response to this RFQ that it is fully aware of the conditions of service and purpose for which services included in this RFQ are to be purchased, and that its offering will meet the requirements of service and purpose to the satisfaction of the NTTA.

Respondent also certifies that it understands and accepts the terms and conditions of the form of contract (Attachment F) except to the extent that it has expressly stated in writing its exception to a contract provision and set forth an alternative to each provision to which it objects.

### **E. PROCUREMENT PROTESTS**

The NTTA encourages respondents to bring questions and concerns relating to this RFQ to the NTTA's attention promptly pursuant to the process set forth in Section V. Any formal protest relating to this RFQ or the contract award thereunder must be made in writing and submitted to the Director of Procurement Services no later than five (5) business days after the earlier of the (i) date the protestor was or reasonably should have been aware of the matter giving rise to the protest or (ii) the date the contract award was made by the NTTA Board of Directors. Any protest submitted outside this deadline will not be considered. Each protest must include the following:

1. the name and address of the protester, and the respondent it represents, if different;
2. the title and number of the RFQ to identify the procurement in question;
3. a statement of the grounds for protest; and

4. all documentation supporting the protest

The Director of Procurement Services shall review the information relevant to the protest and render a decision on the protest no later than twenty (20) business days after the bid protest was received.

The decision shall describe the action taken and the reasons for such action, and shall be mailed, certified mail, return receipt requested, to the protestor at the address set forth in the bid protest.

The protesting party may appeal the decision of the Director of Procurement Services to the Executive Director. The appeal must be in writing and must be received in the Office of the Executive Director no later than five (5) business days after receipt of the decision of the Director of Procurement Services. The appeal must include the original protest, the decision of the Director of Procurement Services, all information contained in the original written protest, as well as any new information supporting the protest that was not reasonably available to the protester when the original protest was filed.

The Executive Director shall render a written decision not later than thirty (30) business days after the appeal of the protest was received. The decision of the Executive Director shall be mailed, certified mail, return receipt requested, to the protestor at the address set forth in the bid protest.

The protesting party may appeal the decision of the Executive Director to the Board of Directors. The appeal must be in writing and must be received in the Office of the Secretary for the Board of Directors no later than five (5) business days after receipt of notice of the Executive Director's decision. The appeal must include the original protest, the decision of the Director of Procurement Services, the decision of the Executive Director, the original protest, all information contained in the original written protest, as well as any newly discovered information supporting the protest that was not reasonably available to the protester when the original protest was filed.

The Board of Directors shall review the information relevant to the appeal and shall render a written decision within sixty (60) business days after the appeal of the protest was received. The decision of the Board of Directors shall be final. The final decision of the Board of Directors shall be mailed, certified mail, return receipt requested, to the protestor at the address set forth in the bid protest.

Respondents understand and agree that in light of the NTTA's operational needs and customer service obligations, the filing of a protest or any legal action challenging any aspect of this RFQ or the contract award thereunder shall not prevent the NTTA from proceeding with the RFQ process, a contract award thereunder or utilization of the services requested through this RFQ. To the fullest extent allowed by law, respondents waive any claim for injunctive relief pertaining to this RFQ, the contract award or the commencement of services thereunder. By submitting a response to this RFQ respondents unconditionally and irrevocably acknowledge that adequate remedies exist at law, without resort to injunctive or other equitable relief, to fully redress any potential claim against arising in connection with this RFQ.

# **ATTACHMENT A**

## **CONFIDENTIALITY AND NON-DISCLOSURE STATEMENT**

Respondent agrees that it will not disclose to any unauthorized person, association, firm, corporation or other party any proprietary or confidential information relating to the Authority. The Confidential Information includes all information directly or indirectly furnished, obtained or acquired directly, indirectly or by inference in the course of providing services to the NTTA, or other information that the receiving Party should reasonably know is of a confidential nature. Confidential Information shall include, but not be limited to, security operations, equipment, measures, plans, policies, procedures or devices, intellectual property, ideas, inventions, processes, know-how, techniques, business methods, financial data and information, accounting and control procedures, information or data concerning the parties' products, services, policies, violation enforcement system, patrons, Toll-Tag customers, personnel and any other aspect of its operation and the like, whether such information is tangible or intangible, or transferred, maintained or obtained orally, visually, electronically or by any other means.

Respondent confirms that such information constitutes the exclusive property of the Authority. All confidential and proprietary information shall be held in strict confidence. Respondent shall protect the confidentiality of all related records, data and information, with the same degree of care given toward the protection of Respondent's confidential information. Respondent agrees to be responsible for the negligent or willful release or unauthorized use of the Confidential Information by its employees, agents, representatives, affiliates, subcontractors, contractors, or any other third party which shall gain access to Confidential Information via Respondent, its employees, agents, representatives, affiliates, subcontractors or contractors that results in any damages to the NTTA, including loss to persons, property and revenues.

Respondent agrees that this Non-disclosure and Confidentiality Agreement is important and material to the RFQ process and subsequent contract award, and disclosure of said confidential and proprietary information would significantly affect the successful conduct of the business of the Authority, as well as its reputation and goodwill. Any breach of the terms of this Agreement is a material breach, from which Respondent may be enjoined and for which the Respondent also shall pay to the NTTA all damages which arise from said breach. Respondent understands and acknowledges that its responsibilities under this Agreement shall continue in full force and effect after the award of the contract for an independent performance review services and after termination of Respondents contractual relationship with the Authority ends for any reason.

**IN WITNESS THEREOF**, executed this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_.

**RESPONDENT:**

\_\_\_\_\_  
(Signature)  
Name/Title:\_\_\_\_\_

\_\_\_\_\_  
Company Name:\_\_\_\_\_

## ATTACHMENT B

<b>CONFLICT OF INTEREST QUESTIONNAIRE</b>		<b>FORM CIQ</b>
<b>For vendor or other person doing business with local governmental entity</b>		<b>OFFICE USE ONLY</b>
<b>1</b>	<p><b>This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session. OFFICE USE ONLY</b></p> <p>This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a).</p> <p>By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.</p> <p>A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.</p>	<p>Date Received</p>
<b>2</b>	<p><input type="checkbox"/> <b>Check this box if you are filing an update to a previously filed questionnaire.</b>            (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)</p>	
<b>3</b>	<p><b>Name of local government officer with whom filer has employment or business relationship.</b></p> <p>_____</p> <p><b>Name of Officer</b></p> <p>This section (item 3 including subparts A, B, C &amp; D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.</p> <p>1. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?</p> <p style="padding-left: 40px;"><input type="checkbox"/> Yes      <input type="checkbox"/> No</p> <p>2. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?</p> <p style="padding-left: 40px;"><input type="checkbox"/> Yes      <input type="checkbox"/> No</p> <p>C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?</p> <p style="padding-left: 40px;"><input type="checkbox"/> Yes      <input type="checkbox"/> No</p> <p>D. Describe each employment or business relationship with the local government officer named in this section.</p>	
<b>4</b>	<p>_____</p> <p style="display: flex; justify-content: space-between;"> <span>Signature of person doing business with the governmental entity</span> <span>Date</span> </p>	

Adopted 6/29/2007

**AFFIDAVIT CONFLICT OF INTEREST AND DISCLOSURE STATEMENT**

Project:	<b>OUTSIDE LEGAL COUNSEL</b>
RFQ number:	03397-NTT-00-CS-LE

THE STATE OF TEXAS           §  
   §  
 COUNTY OF \_\_\_\_\_ §

Before me, the undersigned, on this day personally appeared

\_\_\_\_\_ who, being by me duly sworn, upon oath says: that

he/she is duly qualified and authorized to make this affidavit for and on behalf of

\_\_\_\_\_ (“Contractor”) and is fully cognizant of the facts herein

set out; that Contractor covenants and agrees that Contractor’s officers, employees, agents or board members have no interest, and will acquire no interest, either direct or indirect, which will conflict in any manner with the performance of the services called for under this Contract; and that Contractor’s officers, employees, agents, or board members have not and will neither solicit nor accept gifts, gratuities, favors or anything of monetary value from the Authority, employees, board members, agents, and representatives other than that which is the required compensation for services rendered or to be rendered pursuant to Contract.

Contractor’s acknowledges that one or more of the items listed below are applicable to Contractor officers, its employee(s) agents or board member. Please check all that apply.

I have no business or familial relationship with a board member, employee, consultant or agent of the Authority, one of its member counties or another toll agency.

I have a business relationship with a board member, employee, consultant or agent of the Authority, one of its member counties or another toll agency which is as follows:

\_\_\_\_\_  
 \_\_\_\_\_

I have a familial relationship with a board member, employee, consultant or agent of the Authority, one of its member counties or another toll agency which is as follows:

\_\_\_\_\_  
 \_\_\_\_\_

I have other interest in the Authority which is as follows:

\_\_\_\_\_  
 \_\_\_\_\_

By signature of this Agreement, Contractor acknowledges to the Authority that Contractor has made full disclosure of any existing conflicts of interest and that Contractor will disclose any potential conflicts of interest, including personal financial or real property interests, direct or indirect, which develop after signature of the contract and prior to completion of the contract.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

SWORN TO AND SUBSCRIBED BEFORE ME by the said \_\_\_\_\_ this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, to certify which witness my hand and seal of office.

\_\_\_\_\_  
Notary Public in and for

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Please Print Name of Notary

# NTTA SUPPLEMENT TO CONFLICT OF INTEREST QUESTIONNAIRE

## SECTION I: INSTRUCTIONS

Please complete and submit the NTTA Supplement to Conflict of Interest Questionnaire below. This requirement also applies to any proposed sub consultant(s). Failure to comply with this requirement may cause your proposal to be declared nonresponsive.

In order to answer the questions contained in this form, please review NTTA's Conflict of Interest provisions, the list of the NTTA's Board of Directors and member counties. Any questions regarding the information required to be disclosed in this form should be directed to Kimberly Tolbert, Assistant Executive Director of Administration.

**Name of Firm:** \_\_\_\_\_

**Name of Preparer:** \_\_\_\_\_

**Date:** \_\_\_\_\_

## SECTION II: QUESTIONS

1. During the last twenty-four (24) months, has your firm provided a source of income to a director, officer or employee of the NTTA, one of its member counties or other toll agency, or have any director, officer or employee, of the NTTA held any financial interest in your firm (including real property)?

**YES**                      **NO**

If "yes," please list the names of the person(s) and the nature of the financial interest:

**Name:**

**Nature of Financial Interest:**

2. Have you or any members of your firm served as a director, officer or employee of the NTTA within the last twelve (12) months?

**YES**                      **NO**

If "yes," please list name, position, and dates of service:

**Name:**

**Position:**

**Dates of Service:**

3. Are you or any of the owners, partners or officers of your firm or any employee who you anticipate working on this contract related by blood or marriage/domestic partnership to a director, officer or employee of the NTTA?

**YES**                      **NO**

If "yes," please list name and the nature of the relationship:

**Name:**

**Relationship:**

4. Does any director, officer or employee of the NTTA hold a position at your firm as a director, officer, partner, trustee, employee, or any position of management?

**YES**                      **NO**

If "yes," please list name and the nature of the relationship:

**Name:**

**Relationship:**

**SECTION III: VALIDATION STATEMENT**

This Validation Statement must be completed and signed by at least one General Partner, Owner, Principal, or Officer authorized to legally commit the proposer.

**DECLARATION**

**I, (printed full name) \_\_\_\_\_, hereby declare that I am the (position or title) \_\_\_\_\_ of (firm name) \_\_\_\_\_, and that I am duly authorized to execute this Validation Statement on behalf of this entity. I hereby state that this NTTA Conflict of Interest Form dated \_\_\_\_\_ is correct and current as submitted. I acknowledge that any false, deceptive, or fraudulent statements on this Validation Statement will result in rejection of my contract proposal.**

\_\_\_\_\_  
Signature of Person Certifying for Proposer  
(Original signature required)

\_\_\_\_\_  
Date

**NOTICE**

A material false statement, omission, or fraudulent inducement made in connection with this NTTA Conflict of Interest Form is sufficient cause for rejection of the contract proposal or revocation of a prior contract award.

**ATTACHMENT C – INSURANCE REQUIREMENTS**

**NORTH TEXAS TOLLWAY AUTHORITY**  
**Special Provision Addressing**  
**Insurance Requirements**

**Contract No.: 03397-NTT-00-CS-LE**  
**Project: Outside Legal Counsel**

**Laws to be Observed.** The Consultant shall comply with all federal, state, and local laws, ordinances, and regulations applicable to the performance of the Services. **THE CONSULTANT SHALL INDEMNIFY AND HOLD HARMLESS THE AUTHORITY AND ITS REPRESENTATIVES AGAINST ANY CLAIM ARISING FROM VIOLATION BY THE CONSULTANT OF ANY LAW, ORDINANCE, OR REGULATION APPLICABLE TO THE SERVICES.** The Agreement is between the Authority and the Consultant only. Except with respect to claims arising from the Consultant's indemnity obligations owed to the Authority's directors, employees, and consultants, no person or entity may claim third-party beneficiary status under the Agreement or any of its provisions, nor may any non-party sue for personal injuries or property damage under the Agreement.

**Insurance.** The Consultant shall not commence performing the Services under the Agreement until it has furnished the Authority with satisfactory proof that the Consultant has obtained insurance of such character and in such amounts as set forth below. The Consultant shall submit complete policies or certificates evidencing the policy coverages and stipulations. The certificate submittals shall be provided on forms adopted by the Association for Cooperative Research and Development (ACORD).

The Consultant shall purchase and maintain in full force and effect, until completion of the Services and the expiration of all applicable Texas statutes of limitations, with respect to claims that could arise out of the Services or the Consultant's performance of the Services, such insurance as will cover the obligations and liabilities of the Consultant and its agents, employees, and subconsultants which may arise from the Services or the Consultant's performance of the Services under the Agreement. All such insurance shall be written with companies having an A.M. Best Financial Strength Rating of **A-** or better, and be in a Financial Size Category of **X** or greater. The Consultant hereby agrees that all policies shall be on ACORD Form. The Consultant acknowledges that except for Professional Liability, Claims Made Policy Forms are not acceptable. The Consultant hereby agrees that the Authority has the right to review the insurance providers, and that all companies must be acceptable to the Authority.

Until the expiration of all applicable Texas statutes of limitations, the Consultant shall secure and maintain, in the Consultant's own name, the following:

(1) **Workers' Compensation Insurance** in compliance with the laws of the State of Texas and Employer's Liability Insurance with minimum limits of:

\$ 500,000 Each Accident  
\$ 500,000 Disease Policy Limit  
\$ 500,000 Disease Each Employee

A "Waiver of Subrogation" in favor of the Authority shall be attached to the policies.

(2) **Commercial General Liability Insurance** covering the Consultant with minimum limits of:

2004 ISO, CGL or Equivalent Limits for Bodily Injury and/or Property Damage:

\$ 500,000 General Aggregate  
\$ 500,000 Products and Completed Operations Aggregate  
\$ 500,000 Personal and Advertising Injury  
\$500,000 Each Occurrence  
\$ 50,000 Fire Damage

(3) **Business Auto Liability Insurance** with minimum limits of \$500,000.00 Combined Single Limit for Bodily Injury and/or Property Damage, including Owned, Hired and Non-Ownership Liability Coverage. This policy shall not contain any limitation with respect to a radius of operation for any vehicle covered, and shall not exclude from the coverage of the policy any vehicle to be used in connection with performance of the Services.

(4) **Professional Liability Insurance** in the amounts normally carried for its own protection in the practice of providing services, but in no event less than \$500,000.00 per claim and aggregate.

(5) The **Authority** shall be included as additional insured by endorsement to all policies required under the Agreement, other than Workers' Compensation Insurance policy.

(6) **Insurance for Subconsultants.**

(a) The Consultant shall secure and maintain, until the expiration of all applicable Texas statutes of limitations with respect to claims that could arise out of a subconsultant's performance of the Services, certificates of insurance from all subconsultants, evidencing the

fore going types and amounts of insurance coverages, with respect to the Services to be performed by the subconsultant.

(b) Insurance certificates of subconsultants and sub-subconsultants will be maintained by the Consultant for the duration of the Agreement.

**Required Addendum.** The insurance carrier shall include in each of the insurance policies required under the Agreement the following statement:

**“This policy shall not be canceled or materially changed nor non-renewed during the period of coverage without at least thirty (30) days’ prior written notice to the North Texas Tollway Authority, 5900 West Plano Parkway, Suite 100, Plano, Texas 75093, Attention: Insurance Coordinator”.**

**Payment of Deductibles.** The Consultant shall be responsible for any deductible stated in any policy required under the Agreement.

**Duration of Coverage.** The Consultant shall carry the insurance specified above until all of the Services required to be performed under the terms of the Agreement are satisfactorily completed, as evidenced by the formal acceptance thereof and final payment of all amounts owed to the Consultant by the Authority, or provide, prior to the end of coverage, a new certificate of insurance. If, for any reason, the required insurance coverage is not kept in force, the Consultant shall stop all work until it provides acceptable documentation to the Authority. The Consultant shall notify the Authority, in writing, by certified mail or hand delivery of any material change in the insurance coverage of the Consultant or any subconsultant or sub-subconsultant within ten (10) days of such change.

**Certification by the Insurer.** On all policies, the insurer shall certify that the aggregate amount shown on insurance limits is in full force and has not been diminished.

**No Special Payments.** No special payments shall be made for any insurance that the Consultant may be required to carry, but all costs thereof shall be included in the price bid for the various items included in the proposal. Bidders shall determine all the kinds and costs of insurance that may be required before submitting their bids and shall submit acceptable evidence of same to the Authority.

**No Waiver by the Authority.** Neither the approval by the Authority of any insurance supplied by the Consultant nor the failure to disapprove that insurance shall relieve the Consultant from full responsibility for any liability as set forth herein.

**Waiver by the Consultant.** The Consultant hereby waives any and every claim which arises or may arise in its favor against the Authority, the Engineer, the Construction Manager, the Section Engineer, and the Consulting Engineers and their respective owners, directors, officers, employees, consultants, contractors, and agents pursuant to the Agreement which is covered, in whole or in part, by insurance provided or to be provided pursuant to the terms hereof. Such waiver shall be in addition to, and not limitation of, any other waiver or release contained in the Agreement. Inasmuch as such waiver shall preclude the assignment of any aforesaid claim by way of subrogation or otherwise to an insurance company (or any other person), the Consultant hereby agrees immediately to give to each insurance company which has issued policies of insurance pursuant hereto written notice of the terms of such waiver and to cause such insurance policies to be properly endorsed, if necessary, to prevent the invalidation of such insurance coverages by reason of such waiver.

**ATTACHMENT D – FORM OF CONTRACT**

STATE OF TEXAS                   §  
  §  
COUNTY OF COLLIN §

**ATTORNEY FEE CONTRACT**

This Attorney Fee Contract (“Contract”) sets out the relationship between the North Texas Tollway Authority, a regional tollway authority and a political subdivision of the State of Texas, whose address is 5900 West Plano Parkway, Suite 100, Plano, Texas 75093 (the “NTTA”) and the law firm of (the “Firm”).

1. **Engagement.** This Contract identifies the matter for which legal services are to be provided, the chargeable fees for services, the cost of the billable expenses incurred in rendering services and sets out the estimated standard hours for the following matter(s):

(Generally describe matters for which services are to be rendered.)

2. **Compensation.** The maximum hourly rates charged the NTTA for legal services performed under this Contract for the members of the Firm are as follows (blended rate or by category of attorney):

[There may be alternative approaches for bond counsel and collections counsel. See RFQ, Attachment C.]

Both the NTTA and the Firm may propose alternative fee arrangements, which may include full or partial contingent fees, fixed fees, or blended hourly rates.

3. **Secretarial Costs/Overhead.**

The NTTA shall not pay secretarial costs, overtime costs or other costs for administrative or support staff for the Firm.

4. **Scope of Services.**

The scope of services provided under this Contract shall be of the highest quality and preformed in compliance with The Texas Lawyer’s Creed. The scope of services is described as follows:

[Description of scope of services]

3. **Modifying the Engagement.** Neither the Firm nor the NTTA may unilaterally change or expand the Contract from what is set out in this Contract. If the Firm determines that the scope of the Contract needs to be changed, the Firm must notify the NTTA General Counsel and submit an amended proposal for written approval. No work should be done on an expanded engagement unless the amended proposal has been approved by the NTTA, as you will not be paid for the additional work without the appropriate and advance approval.

4. **Invoice Review.** The NTTA reviews and approves legal services and disbursements on invoices for payment when submitted by the Firm. If there is an objection to a portion of an invoice or additional information is needed for approval, a letter will accompany a check payment reduced by the questioned charges. The Firm is requested to respond to the reduction letter within thirty

(30) days of receipt. Failure by the Firm to provide adequate and timely support for the questioned charge will result in the reduction considered final. After the additional information on a particular invoice has been reviewed, you will either receive a second check covering payment for the original reductions or you will receive a letter explaining the reason for the continued non-payment. In performing this function, the NTTA enforces the rules set out by this Contract and NTTA Board Resolution No. 11-31, which is attached hereto and incorporated herein, including as amended.

5. **Communications.** All communication regarding any matter handled by the Firm must be directed to NTTA General Counsel, unless otherwise directed in writing. The NTTA General Counsel must be copied on non-routine written communications between outside counsel and all other parties to the matter, whether adverse or not. The Firm must take care to protect the attorney/client and work product privileges. Accordingly, all memoranda and opinions submitted to the NTTA should contain conspicuous notice that the writing is protected under those privileges.

The firm shall not discuss any matter handled by the Firm or share information about the NTTA obtained through its work for the NTTA with third parties without express authorization from the NTTA. The firm will refer all media inquiries concerning the NTTA to the NTTA's Communications Department.

6. **Budgets.** The Firm shall upon the NTTA's request prepare a budget for a new matter and shall update such budgets periodically (no less than annually) at the NTTA's request.
7. **Compliance with Applicable Law.** The Firm is expected to assist the NTTA in complying with all applicable laws and regulations. Please notify the General Counsel if you believe the NTTA has violated an applicable law in the course of a matter so that the NTTA may have a chance to cure the defect.
8. **Monitoring of Matters.** All matters will be actively monitored by the NTTA. You will be asked upon engagement to identify the legal issues and defenses raised by the case or transaction as well as research that might be required. Your responses to these requests must be updated while you are working on the matter.
9. **Litigation Practices.** No appeals of any case may be taken without the written approval of NTTA General Counsel. The Firm shall not add or remove parties from a matter without the prior approval of the General Counsel. Except for formal discovery, no information or photocopies should be released from the NTTA files to any litigant or other third party without a subpoena or court order from a court of competent jurisdiction. Opportunities for settlement or for alternative dispute resolution should be identified early in the litigation and given serious consideration. Settlements may not be publicized until after approval of the Board of Directors.
10. **Defensive Litigation Matters.** The Firm will notify the NTTA General Counsel immediately of any claims, counterclaims or litigation against the NTTA in connection with cases or matters the Firm is handling. The Firm is not authorized and must never accept service on behalf of the NTTA unless authorized to do so in writing by the NTTA General Counsel.
11. **Billing Guidelines.**

For hourly billing, the Firm must:

- bill by 1/10 of an hour;
- itemize time entries by each task;
- charge only actual costs of copies, faxes and delivery/courier charges;
- all travel and expense reimbursement to be consistent with NTTA Travel and Business Expense Policy;

- obtain authorization for more than one lawyer per firm to attend a witness interview, deposition, hearing, mediation, conference call, meeting or trial;
- not bill the NTTA for electronic legal research resources (i.e., Lexis® or Westlaw®);
- use or employ expert witnesses or outside consultants only after written approval of the NTTA General Counsel;
- outside expenditures greater than \$5,000 require pre-approval in writing from the NTTA General Counsel;
- not bill the NTTA for opening/updating/closing files;
- submit invoices and update status of assigned matters using an electronic format acceptable to the NTTA;
- submit invoices no later than 30 days after the end of the billing period;
- use courier services only when necessary;
- billings for communications between attorneys within the firm will be kept to a minimum;
- business meals will be kept to a minimum and, when they occur, expenses must be consistent with the NTTA Travel and Business Expense Policy;
- when subcontracted counsel is retained for a matter, the managing outside counsel will provide only general oversight and billing will be kept to a minimum.
- 

Invoices not prepared in accordance with the guidelines may be returned to the outside counsel without being processed for payment.

Billing procedures for alternative fee arrangements shall be established in conjunction with those arrangements.

13. **Submission of Invoices.** If a monthly invoice would be less than \$500 for services and expenses combined, firms may choose to forego sending an invoice until the cumulative charges exceed the \$500 amount. However, invoices for those matters must be submitted at least once a quarter. You may submit monthly invoices for amounts less than \$500. In any case, invoices exceeding \$500 for individual matters must be submitted monthly.
14. **Waiver of Conflicts.** Conflicts of interest may only be waived in writing by NTTA General Counsel.
16. **Termination.** Either party may terminate this agreement upon written notice to the other party at the address first written above. Upon termination, the Firm shall cease all representation of the NTTA, take appropriate action or advise NTTA General Counsel of any action needed to be taken to protect any interest of NTTA and to withdraw from the matter as required by law. All files, materials, work product, and attorney-client matters will be returned to the NTTA. The Firm may keep such copies of the legal materials as it deems necessary. The Firm will cooperate with the transfer of the matters to the NTTA General Counsel or another law firm at no cost to the NTTA.
15. **Venue.** Venue for the enforcement of any disputes related to this Contract shall be in Collin County, Texas.

- 16. **Attorney's Fees.** Attorney's fees are recoverable in an action to enforce this Contract.
- 17. **Indemnification.** Firms will be required to defend, indemnify, and hold the NTTA and all of its officers, agents, employees and officials whole and harmless against any and all claims for damages, costs, and expenses of person or property that may arise out of, or be occasioned by, or from any negligent act or omission of firm, or any agent, servant or employee of firm in the performance of the contract.

**AGREED AND APPROVED:**

**The Firm**

\_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Date

**North Texas Tollway Authority**

\_\_\_\_\_  
By: Acting Executive Director  
(The NTTA)

\_\_\_\_\_  
Date