NORTH TEXAS TOLLWAY AUTHORITY

NORTH TEXAS TOLLWAY AUTHORITY
RFQ 03583-SH161-04-PS-PM

REQUEST FOR QUALIFICATIONS TO SERVE AS
Construction Management Consultant to the NTTA for the President George Bush Turnpike, Western Extension Landscape and Irrigation Improvements, Segment 4 North of Egyptian Way to South of Tarrant Road, 0.70 miles

Non-Mandatory Pre-proposal Meeting

May 7, 2013 10:00 a.m.
Firms are encouraged (but not required) to attend the
Pre-proposal meeting for this project
In the Board Room at the following location:
NORTH TEXAS TOLLWAY AUTHORITY
5900 West Plano Parkway, Suite 100
Plano, Texas 75093

Responses Due:

May 30, 2013 at 4:00 p.m.
At the following location:
NORTH TEXAS TOLLWAY AUTHORITY
Attn: Procurement Services
5900 West Plano Parkway, Suite 100
Plano, Texas 75093

Vendor Information Page

Please Print or Type

FIRM'S NAME: _____

FIRM'S PHYSICAL ADDRESS: _____

_____

CITY/STATE/ZIP: _____

FIRM'S MAILING ADDRESS: _____

_____

CITY/STATE/ZIP: _____

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 RFB 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 RFB and that it agrees with such terms and conditions except those to which it specifically objects in writing.

_____ _____

FIRM'S AUTHORIZED AGENT AUTHORIZED AGENT'S SIGNATURE

_____

TITLE

Acknowledgement of Addendum (please initial for each addendum)

Addendum #1	Addendum#2	Addendum #3	Addendum #4	Addendum #5

Attention All Respondents: *This form must be completed, signed and returned with your proposal in a section labeled "required NTTA forms". Firms must reference all applicable page numbers where the required information can be found in their submitted response. This completed page should be located at the front of your response so that staff may locate the required responses easily.*

		PAGE REFERENCE
☐	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)	_____
☐	Response to debarment and litigation declaration form	_____
☐	Contract Exceptions	
	☐ Exceptions listed (if exceptions are taken a marked up contract must be provided and reviewed by NTTA legal staff)	_____
	☐ No exceptions listed	

_____

FIRM NAME

_____

SIGNATURE

I. INTRODUCTION

A. BACKGROUND

The North Texas Tollway Authority (NTTA) is a regional tollway authority governed by Chapter 366 of the Texas Transportation Code authorized 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)
Mojy Haddad (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 D. Elliott (Governor's appointee)

More information on the NTTA can be obtained by visiting the NTTA's web site at 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. TERM

The contract will become effective upon final execution of contracts by both parties. The initial contract period shall be for a period of ten (10) months, with possible term extension at the NTTA's sole discretion. This contract may be terminated by the NTTA with a thirty (30) day written notice to the other party regardless of the reason.

III. MULTIPLE AWARDS LIMITATION AND CONFLICTS

The following Requests for Qualifications (RFQs) are being issued concurrently by the Authority:

RFQ 03583-SH161-04-PS-PM – Landscape Construction Management, President George Bush Turnpike, Western Extension, Segment 4

RFQ 03584-SH161-04-PS-PM – Landscape Construction Management, President George Bush Turnpike, Western Extension, Segments 2 -3

- The Respondent who is awarded RFQ 03583-SH161-04-PS-PM cannot be awarded RFQ 03584-SH161-04-PS-PM
- The Respondent who is awarded RFQ 03584-SH161-04-PS-PM cannot be awarded RFQ 03583-SH161-04-PS-PM
- The Respondent who is awarded RFQ 03583-SH161-04-PS-PM cannot perform work as a subcontractor on RFQ 03584-SH161-04-PS-PM
- The Respondent who is awarded RFQ 03584-SH161-04-PS-PM cannot perform work as a subcontractor on RFQ 03583-SH161-04-PS-PM
- All Parties in a Joint Venture, Joint Venture enterprise or similar arrangement will be treated as a Prime Respondent

IV. TERMS OF CONTRACT/EXCEPTIONS

The form of the contract is found in Attachment F. By submitting its statement of qualifications, the respondent agrees to the terms and conditions of that contract. If respondent takes any exception with any provision in the contract respondent must note that exception in its response in a separate section entitled "Contract Exceptions." The NTTA may consider any exceptions made by the respondent in evaluating the respondent's proposal pursuant to Section VIII. Respondents are deemed to agree with all terms and conditions of the contract to which it has made no exception. The contract will become effective upon the final approval by the NTTA Board. Contract exceptions must be in the form of a "marked up" version of the contract found in Attachment F. Firms not providing exceptions to the sample contract provided will be expected to sign a substantially similar contract in the event they are selected for an NTTA project. Firms may not seek any modifications to terms and stipulations that are provided in the sample contract in Attachment F unless previously agreed upon in the course of the evaluation of their submittal to this RFQ.

V. ADDITIONAL INFORMATION

A. TELEGRAPHIC/ELECTRONIC PROPOSALS

Proposals sent by facsimile machines and/or emails are not acceptable and will be rejected. Respondents should allow adequate time for delivery of their proposals 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 Brandy Adamson, Senior Buyer, no later than May 10, 2013 at 4:00 p.m. 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 Brandy Adamson, Senior Buyer.

Contact Information
North Texas Tollway Authority
5900 West Plano Parkway, Suite 100
Plano, Texas 75093
Attn: Brandy Adamson, Senior Buyer
badamson@ntta.org
RFQ 03583-SH161-04-PS-PM

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 will 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 MUST or WILL are equivalent in this RFQ and indicate a mandatory requirement or condition, the material deviation from which will 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 will be taken as conclusive evidence of compliance with this condition.

B. PROPRIETARY INFORMATION

Any proprietary information contained in the Response must 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

Proposals should be as brief and concise as possible, providing relevant information and excluding marketing materials. Each proposal must adhere to the following order and content of sections; firms are encouraged to use dividers with indexed tabs that clearly identify the responses requested herein. Firms seeking to qualify in both categories must submit a separate response for each category and their responses must be labeled appropriately with the name of the category shown prominently for easy identification. Responses will be considered individually and a separate response does not guarantee selection for either category. Firms may be selected for one category or both categories. The scopes provided for each category can be found in Attachment F – Exhibit A-1 and A-2.

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 does not include professional resumes, cover sheets, fly leafs, 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

Provide a transmittal cover letter that provides a brief summary and overview of the qualifications of the Consultant. The letter should identify the name, address and phone number of the Prime Provider, and the name of the Project Manager(s). The cover letter should not exceed one page and must be signed by an individual authorized to enter into an Agreement with the Authority (1 page). Firms submitting qualifications for both categories must submit a separate cover letter as part of their separate proposals for each category.

2. Table of Contents

A table of contents indicating the content description and page number of all required responses and documents of this RFQ.

3. Introduction/History of the Firm

Provide a brief overview of the Respondent and all proposed sub-consultant firms (collectively, the "Respondent Team"). Include information regarding the establishment of each team member's local office and the components of the Services that will be provided by that local office, if any. Specify personnel from an office outside the Dallas-Fort Worth area that are expected to be assigned to perform the Services, if any. If the Respondent has no local office, discuss how Respondent intends to establish an office and if so, the Services to be performed by it and the personnel to be assigned to it. Identify the major roles or assignments expected to be undertaken by each member of the Respondent Team, and the name, address, e-mail address and phone number of the primary contact person for each firm in the Respondent Team.

4. Experience

List relevant Landscape and Irrigation Construction Management projects and similar projects undertaken by the Respondent and each sub-consultant, whether currently ongoing or completed within the last five years. Include at least one, but not more than three, projects for each member of the Respondent Team. Include the following for each listed project:

- Project name and location.
- Brief description of the work performed on the project by any or all of the Respondent Team members.
- Respondent Team member's actions leading directly to cost savings or efficiency in operations.
- Name, address and phone number of all client contacts (may be used for reference purposes).

Provide specific experience relevant to the unique nature of the Authority's anticipated construction projects listed in the Scope of Services. This should include, but not be limited to:

- The construction of landscape improvements in association with planting bed preparation, compost, mulch, trees, shrubs, ornamental grasses, sod, concrete mow strip and flume construction, traffic handling, and sediment control measures.
- The construction of irrigation improvements including various valves, controllers, drip irrigation, piping and other components required in irrigation installation and operation.

Also, summarize the relevant experience of Respondent Team members' work with other toll agencies or with transportation agencies and other governmental bodies operating in this region and/or with which the Authority regularly works or interacts, including the Texas Department of Transportation ("TxDOT"), the Federal Highway Administration ("FHWA"), the Environmental Protection Agency ("EPA"), and the US Army Corp of Engineers ("USACE").

5. Understanding of Services

Present a discussion of the Respondent's understanding of the Services set forth in the Scope of Services and its proposed approach to providing those Services.

Discuss how the coordination and exchange of information will be assured between the Authority's Project Delivery Office, the Authority's GEC, other governmental bodies, and Consultant's personnel performing work at more than one office location. Discuss the Respondent's quality control program, cost control procedures, and the policies and procedures used to assure complete, accurate and high-quality work.

6. Organization Chart

Provide a graphical organization chart that identifies the key personnel that would be assigned to perform the Services and their area of expertise and responsibility. Identify the availability during the Contract term of key personnel. In the chart, clearly indicate the firm that each individual is employed by and the lines of responsibility and communication between the individual, his or her firm, the Respondent, and the Authority.

7. Respondent Team Matrix

Provide a table identifying the key personnel of each Respondent team member, including the following data for each individual:

- Name
- Texas professional registration(s), certification(s) and/or license(s) (R.L.A., P.E., E.I.T., other)
- Area(s) of Expertise
- Firm Currently employed by
- Location of the office to with the person is normally assigned (if other than local office)
- Years of experience related to the Services

Resumes for each individual shall be included as Appendix A at the back of the response. Please note that resumes shall be limited to no more than two pages per individual.

The Project Manager on the Respondent Team shall meet the minimum requirements as described below:

- Minimum of five (5) years Construction Management experience on large landscape improvement projects for tollways, highways, streets, airports, railways or light rail with the initial contract amount of $1,000,000.00 or greater.
- Must have at least (5) years project management experience skilled in schedules, budgets and quality.
- He/she shall have landscape and irrigation construction experience with an emphasis on drip irrigation, irrigation central control system, landscape planting, miscellaneous concrete flatwork and joint sealing, storm water management and traffic control.
- Excellent skills in verbal and written communications to convey ideas and concepts; administration, management and public relations.

- Ability to plan, organize and direct the work of others. Ability to maintain effective working relationships.
- Ability to manage construction material conformance to project specifications and ensuring proper incorporation into the project as required by the specifications.
- Must manage the work on a day-to-day basis.

8. Additional Requirements for Project Manager

- Preferred but not mandatory that he/she is licensed by the Texas Board of Architectural Examiners as a Registered Landscape or;
- Preferred but not mandatory that he/she is licensed by the Texas Commission on Environmental Quality as a Licensed Irrigator or;
- Preferred but not mandatory that he/she is licensed by the Texas Department of Agriculture as a Commercial Pesticide Applicator

9. Additional Information Regarding Project Manager

Discuss the qualifications and experience of the Respondent's designated Construction Project Manager. Describe the Project Manager's role in previous projects of similar nature. Elaborate on the unique qualifications of the Project Manager. Do not restate the information provided in the Project Manager's resume.

The Construction Technician on the Respondent Team shall meet the minimum requirements as described below:

- Graduated high school or equivalent plus two (2) years progressively responsible experience on large landscape improvement projects for tollways, highways, streets, airports, railways or light rail.
- Must have one (1) year project management experience.
- Extensive knowledge of methods and materials and procedures used in landscape and irrigation construction and maintenance work, with an emphasis on drip irrigation, irrigation central control system, landscape planting, miscellaneous concrete flatwork and joint sealing,
- Skilled in the use of tools and equipment of the trade.
- Ability to supervise the work of others; instruct; assign; coordinate labor; coordinate materials; coordinate equipment; oversee multiple facets of a project; deal courteously with the public.

10. Business Diversity Program

Respondents to this RFQ must meet the requirements of the NTTA's Business Diversity Program, as stated in Attachments C and D.

VII. PROPOSAL SUBMISSION REQUIREMENTS

A. SUBMISSIONS OF PROPOSALS

The Respondent must submit one (1) original and six (6) copies of the complete written response for each category to:

North Texas Tollway Authority
Director of Procurement Services
RFQ 03583-SH161-04-PS-PM
5900 West Plano Parkway, Suite 100
Plano, TX 75093

B. SCHEDULE

Public notification/advertisement:	April 12, 2013 April 19, 2013
Pre-Proposal meeting	May 7, 2013 at 10:00 a.m.
Deadline for submitting questions:	May 10, 2012 at 4:00 p.m.
RFQ Proposals due:	May 30, 2013 at 4:00 p.m.

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.

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 will 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, or to cancel this RFQ in part or in its entirety. All responses will become the property of the NTTA. If any proprietary information is contained in the response, it should be clearly identified.

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. INTIAL 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.

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.

Responses that are found to be responsive and from responsible respondents will be considered in the evaluation process.

C. EVALUATION STEP ONE

An evaluation committee will then evaluate and score the applicable responses; and a short list of the most qualified firms may be invited for an interview and presentation, or at the sole discretion of the NTTA firms may be selected solely on the Step One evaluation. For step one, the NTTA will use the following evaluation factors:

- Project Plan, Methodology & Approach (30 points)
- Key staff assignments (30 points)
- Firm's Qualifications (30 points)
- Business Diversity (10 points)

Based on the selection committee's evaluation of the RFQ responses and any other information the Selection Committee deems pertinent, the Authority may either select the most highly qualified provider of the requested services with which to negotiate a contract for a fair and reasonable price or establish a "short-list" of firms which will be invited to proceed to Stage Two Evaluations. Voting Selection Committee members shall individually score each item listed above, with the Business Diversity component being scored solely by the Business Diversity

Selection Committee member. The total score from each Selection Committee member, with the addition of the Business Diversity score shall be averaged.

D. EVALUATION STEP TWO

In step two, the short-listed respondents will make a formal presentation to the evaluation committee. The evaluation committee will interview the respondents at the time of the presentation. The evaluation committee will score of each presentation/interview utilizing the criteria listed below.

- Project Plan, Methodology & Approach (30 points)
- Key staff assignments (40 points)
- Firm's Qualifications (30 points)

If short list interviews are conducted all short-listed firms will be notified by the Senior Buyer via email and letter. Notification will include the date, time, and location of interview/presentation as well as the format for their presentation. The short-listed firms will be asked a set list of standardized questions that will not be provided in advance and each firm will be given the same amount of time for each presentation/interview.

Note: During stage two, the diversity plan will not be rescored but the submitted plans will carry forward and the selected firm will be required to comply with its submitted business diversity plan as part of the final contract. The Director of Business Diversity or assigned designee will provide input and participate in stage two as a non-scoring member of the evaluation committee.

E. AWARD OF SERVICES

Once the evaluation committee has identified the most qualified respondent, the Board of Directors will consider making a contract award to that respondent. If the Board makes the contract award the NTTA will enter into negotiations with the selected respondent for an agreement for services at a fee which the NTTA determines is fair and reasonable. If these negotiations are unsuccessful, the NTTA will provide formal written notice to respondent and then open negotiations with the next highest ranked respondent. The NTTA will continue this process until it reaches an acceptable agreement or it decides to reject all responses. When agreement is reached between the NTTA and a respondent, the contract will then be presented to the NTTA Board of Directors for final approval.

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 must 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 will 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 will, 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. Any exceptions must be clearly stated and the page number of the written exceptions must identified clearly on the form provided on page 3 of this RFQ.

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 will 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 will describe the action taken and the reasons for such action, and will 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 will 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 will 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 will review the information relevant to the appeal and will render a written decision within sixty (60) business days after the appeal of the protest was received. The decision of the Board of Directors will be final. The final decision of the Board of Directors will 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 will 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.

F. REVOLVING DOOR

The NTTA has adopted and Employee Ethics Policy that includes the following "revolving door" provision: "An employee after leaving NTTA employment will not participate on behalf of any third party in a matter involving the NTTA in which the employee participated while employed at the NTTA. For purposes of this subsection, an employee participated in a matter if the employee made a decision or recommendation on the matter, approved, disapproved or gave advice on the matter, conducted an investigation related to the matter, or took similar action related to the matter."

Absent express written approval from the NTTA, Contractor will not direct or allow a former NTTA employee to do any work on behalf of the Contractor that might put the former employee in violation of this provision.

G. EQUAL OPPORTUNITY

Each Proposer submitting a proposal agrees not to refuse to hire, discharge, promote, demote, or to otherwise discriminate in matters of compensation against any person otherwise qualified solely because of race, creed, sex, sexual orientation, gender identity, veteran status, national origin, ancestry or physical handicap.

H. VENDOR POLICING OF EMPLOYEE ETHICS POLICY

The NTTA has adopted an Employee Ethics Policy, which, among other things, directs employees to avoid conflicts of interest or appearances of impropriety, comply with the law, and use NTTA property for only NTTA purposes. Contractor is expected to be aware of these requirements and must promptly report to the NTTA

any conduct by an employee that the Contractor reasonably believes may be in violation of the Policy. https://www.ntta.org/whoweare/policies/Pages/default.aspx

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 includes, but is not 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 will be held in strict confidence. Respondent will 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 will 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 must pay to the NTTA all damages which arise from said breach. Respondent understands and acknowledges that its responsibilities under this Agreement will 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:_____

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor or other person doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Sess

This questionnaire is being filed in accordance with Chapter 176, Local Governme by a person who has a business relationship as defined by Section 176.001(1-a) wit governmental entity and the person meets requirements under Section 176.006(a)

By law this questionnaire must be filed with the records administrator of the local gove entity not later than the 7th business day after the date the person becomes aware that require the statement to be filed. See Section 176.006, Local Government Co

A person commits an offense if the person knowingly violates Section 176.00 Government Code. An offense under this section is a Class C misdemeanor.

OFFICE USE ONLY

This should include the vendor name even if a conflict does not exist, by both vendors doing business with the NTTA, and seeking to do business with the NTTA.

1 **Name of person who has a business relationship with local governmental entity.**

Name of Vendor or person seeking business with NTTA

2 ☐ **Check this box if you are filing an update to a previously filed questionnaire.**

(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.)

3 **Name of local government officer with whom filer has employment or business relationship.**

Insert conflict here, or state NA

Name of Officer

This section (item 3 including subparts A, B, C & 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.

A. 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?

☐ Yes ☐ No

Complete A-C if a conflict exists

B. 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?

☐ Yes ☐ No

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?

☐ Yes ☐ No

D. Describe each employment or business relationship with the local government officer named in this section.

Identify relationship if applicable

4

Signature Required

Signature of person doing business with the governmental entity

Date

Date

Adopted 06/29/2007

ATTACHMENT B

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor or other person doing business with local governmental entity

FORM CIQ

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session. OFFICE USE ONLY

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).

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.

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.

OFFICE USE ONLY

Date Received

1

Name of person doing business with local governmental entity.

2

☐ **Check this box if you are filing an update to a previously filed questionnaire.**
(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.)

3

Name of local government officer with whom filer has employment or business relationship.

_____

Name of Officer

This section (item 3 including subparts A, B, C & 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.

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?

   ☐ Yes ☐ No

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?

   ☐ Yes ☐ No

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?

☐ Yes ☐ No

D. Describe each employment or business relationship with the local government officer named in this section.

4

_____ _____

Signature of person doing business with the governmental entity Date

Adopted 6/29/2007

AFFIDAVIT CONFLICT OF INTEREST AND DISCLOSURE STATEMENT

Project:	President George Bush Turnpike Western Extension, Segment 4 Landscape and Irrigation Project Construction Management
RFQ number:	RFQ 03583-SH161-04-PS-PM

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 Date
(Original signature required)

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.

NAME OF FIRM (PROPOSER)

Debarment, Litigation and Terminations

		YES	NO
1	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?		
2	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?		
3	During the last five (5) years has any customer terminated a contract with respondent for cause or accepted damages in lieu of termination?		
4	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?		

Each of the persons or entities identified in (1) above must identify any of the following that occurred with respected to the person or entity within the previous 5 years:

		YES	NO
1	Debarment from contracting with any governmental entity		
2	Professional licensure discipline		
3	Adverse civil judgments or administrative findings		
4	Criminal felony convictions		

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.

Explanations if any

_____

_____

_____

_____

_____

_____

ATTACHMENT C
BUSINESS DIVERSITY PROGRAM
NORTH TEXAS TOLLWAY AUTHORITY
"DISADVANTAGED, MINORITY, WOMEN-OWNED, AND SMALL BUSINESS ENTERPRISE PROGRAM"

Professional Services, Consulting and Goods/Services Contracts, and Special Provision for Construction and Maintenance related projects

1. General

The North Texas Tollway Authority (the Authority) is committed to providing contracting opportunities for disadvantaged, minority, women-owned, and small business enterprises (D/M/WBE). In this regard, the Authority maintains DBE, M/WBE, and SBE programs in order to facilitate contracting opportunities for these businesses.

The programs are implemented in accordance with the NTTA's Disadvantage, Minority, Women-Owned and Small Business Enterprises Policy (Diversity Policy), originally adopted by the NTTA Board of Directors under Resolution No. 10-19 on January 20, 2010, and any revisions thereafter.

The following document outlines:

- Criteria regarding commercially useful function
- Factors to determine good faith efforts
- Contractor responsibilities
- Monthly reporting and compliance requirements
- Noncompliance enforcement

The Business Diversity Department Contracting and Compliance Manual (CCM) outlines the procedures, provisions and compliance requirements to support and comply with the Authority's Diversity Policy. The CCM is approved and incorporated into the contract by reference for all purposes by the Authority.

The CCM and the Diversity Policy may be obtained online at the NTTA website at https://www.ntta.org/procurement/busdiv/bestpractices/Pages/default.aspx or by contacting the Business Diversity Department at (214) 461-2007.

2. Commercially useful function criteria

A commercially useful function (CUF) is when the D/M/WBE is responsible for the performance, management and supervision of a distinct element of work, in accordance with normal industry practice. The criteria utilized to determine a commercially useful function is set forth in the CCM (page 18).

3. Factors to determine good faith efforts

All prime contractors are required to demonstrate a good faith effort toward achieving a D/M/WBE goal. A good faith effort can be demonstrated by actions which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to, either individually or collectively, achieve the goal.

If a prime contractor does not meet the designated goal, it may nevertheless be eligible for award of the contract if it can demonstrate to the NTTA that it has made a good faith effort to meet the goal. The factors that determine if a good faith effort has been met are set forth in the CCM (page 23).

4. Contractor's responsibilities

All responding firms, including D/M/WBE certified firms, must submit documentation regarding all subcontractor utilization and how they will meet or exceed the established goal using certified D/M/WBE firms for this project on the Commitment Agreement Form (Form 4906) provided.
Commitment Agreement Form (Form 4906), good faith effort documentation and supporting information must be submitted to the Business Diversity Department for all contracting opportunities in accordance to the CCM. Form 4906 must be submitted to the Authority with the proposal.

Information for construction and maintenance related projects

For all construction and maintenance related projects, Form 4906 must be submitted to the Authority no later than 5:00 pm on the 14th day after written notification of the conditional award of the contract.

Additional questions and/or clarification can be obtained by contacting the Director of Business Diversity at businessdiversity@ntta.org. Please copy the Procurement Services Department at bidpurchasing@ntta.org on all correspondence. Form 4906 must include a brief description of the type of work to be performed and the dollar value or percentage of utilization of work that will be assigned to the subcontractors including D/M/WBEs and must be signed by both the prime contractor and subcontractor.
All compliance forms may be obtained online at the NTTA website at https://www.ntta.org/procurement/busdiv/bestpractices/Pages/default.aspx

5. Monthly reporting and compliance requirements

Prime contractors must submit monthly reports, no later than the 15th of each month, using the Monthly Subcontractor Progress Report (Form 4907) throughout the term of the contract, and submit the Subcontractor Final Report (Form 4908) upon completion of the Contract in accordance with the CCM.

Prime contractors are also required to electronically submit their respective Form 4907 information into the business diversity contract compliance tracking system by the 15th of each month. Prime contractors will have a designated User ID & password to login to the contract compliance tracking system via the following link: https://pro.prismcompliance.com

6. Noncompliance enforcement

All participants of the D/M/WBE business process must comply with the requirements set forth in the Diversity Policy and are subject to noncompliance enforcement as set forth in the Non Compliance Enforcement section of the CCM.

NORTH TEXAS TOLLWAY AUTHORITY
"D/M/WBE GOAL"

Contract No: RFQ 03583-SH161-04-PS-PM

Project: President George Bush Turnpike Western Extension, Segment 4 Landscape and Irrigation Project Construction Management

The following goal is established for DBE, MBE, and WBE subcontractor participation:

DBE	_____% of total contract amount
M/WBE	_____% of total contract amount
Total D/M/WBE Goal	**_____20_____% of total contract amount**

Pursuant to the Authority's Disadvantaged, Minority, Women-Owned and Small Business Enterprises Policy, and as outlined in the "Business Diversity Department Contractors Compliance Handbook", SBE utilization will continue to be tracked, reported, and monitored in its procurements. However, SBE participation will be counted independent of D/M/WBE participation goal and tracked separately. Women-owned minority firms certified as WBEs will count towards NTTA's MBE participation. Minority firms certified as DBEs will count towards NTTA's DBE participation.

DBE = Disadvantaged Business Enterprise
MBE = Minority Business Enterprise
WBE = Women-Owned Business Enterprise
SBE = Small Business Enterprise

Information related to Business Diversity scoring

Business Diversity Evaluation Criteria (10 points)

1. **Respondent demonstrates that the business diversity plan meets or exceeds the established goal (6 points)**

   - The D/M/WBE firm(s) to be utilized to meet or exceed the diversity goal on the project.
   - The business diversity plan submitted meets or exceeds the diversity goal percentage established by the business diversity department for the procurement.
   - The business diversity plan submitted incorporates meaningful work and significant project roles for D/M/WBE firm(s). The D/M/WBE firm(s) has the opportunity to be exposed to experiences that allow for professional growth and the development of marketable skills. (Examples of meaningful work and significant project roles include participation as team lead or project manager)

2. **Respondent demonstrates subcontractor participation on previous/similar projects (4 points)**

   - Demonstration that the D/M/WBE participation has been a part of the normal business practice.
   - Demonstration that subcontracting level of D/M/WBE firm(s) reflect meaningful and significant roles. (Examples of meaningful work and significant project roles include participation as team lead or project manager)
   - Participation in a teaming or partnership arrangement with certified D/M/WBE firm(s) in the last two years. (Examples of teaming or partnership arrangement can include contractor/subcontractor relationship, participation in a mentor-protégé program or a joint venture relationship)

NORTH TEXAS TOLLWAY AUTHORITY
SPECIAL PROVISION
IMPORTANT NOTICE TO CONTRACTORS
"NTTA BUSINESS DIVERSITY PRISM CONTRACT COMPLIANCE TRACKING SOFTWARE"

1. Introduction

The NTTA PRISM contract compliance software (NTTA PRISM system) is the Authority's web-based computer system that tracks the monthly subcontractor payment reporting for NTTA contracts.

As outlined in the NTTA Business Diversity Department Contracting and Compliance Manual (CCM), if a contract includes a D/M/WBE subcontracting commitment, the prime contractor will submit a Monthly Subcontractor Progress Report (Form 4907) to the Business Diversity Department (BDD). Form 4907 reflects actual payments made for the specific month indicated. Information provided on Form 4907 is utilized to monitor and track the percentage of work performed by all subcontractors and to confirm whether the contract-specific goal established is fulfilled.

When fully implemented, the NTTA PRISM system is intended to replace the current manual subcontractor payment reporting with a more efficient online reporting process.

2. Contractor's Obligations

The Contractor will utilize the NTTA PRISM system for monthly subcontractor payment reporting and other reporting compliance as outlined in the CCM. Contractors will have a designated User ID and password to login to the NTTA PRISM system and may access the NTTA PRISM system over the internet 24 hours a day, seven days a week via the following link: https://pro.prismcompliance.com

The NTTA PRISM system is an official record of communications between the Contractor and the NTTA Business Diversity Department. Information provided in the NTTA PRISM system is utilized to monitor and track the percentage of work performed by all subcontractors and to confirm whether the contract-specific goal established is fulfilled.

The Contractor must understand the procedures listed in the Pre-Award and Post-Award Compliance sections of the CCM which can be found at the NTTA website at https://www.ntta.org/procurement/busdiv/bestpractices/Pages/default.aspx. Within 14 days after the Contract is awarded, the Contractor will submit a list containing the name, company, role/title, telephone number, and e-mail address of individuals who will attend the training sessions for the use of the NTTA PRISM system. Training will be provided by the Authority at no cost. All the NTTA PRISM system users must complete the training prior to receiving access to the NTTA PRISM system; no exceptions will be granted. The Contractor will agree to comply with all terms and conditions associated with its use of the NTTA PRISM system. At any time during the contract, the Contractor may request for additional

NTTA PRISM system training as a refresher course for existing NTTA PRISM system users or to add new individuals who will require use of the NTTA PRISM system.

3. Equipment

The Contractor will obtain the necessary computer equipment, at its own expense, to access the NTTA PRISM system. Please refer to the General Notes in the plan set regarding the list of computer equipment and software required for this project to meet the requirements set forth in the in the Special Provision 0.19, "Importance Notice to Contractors – NTTA Enterprise Project Delivery System", if applicable. This same list of computer equipment and software required will suffice for the NTTA PRISM system.

The Contractor will be able to access the NTTA PRISM system via the internet from any location 24 hours a day using their designated user id and password via the following link: https://pro.prismcompliance.com. In the event that the NTTA PRISM system becomes inoperable or unavailable to the Contractor, the Contractor will contact the Business Diversity Department to have the software repaired and for directions of processing required documentation until the NTTA PRISM system is operational. Once the NTTA PRISM system is in operation again, the Contractor will upload the required documentation through the NTTA PRISM system.

4. Documentation

The Contractor must understand the procedures listed in the Pre-Award and Post-Award Compliance sections of the CCM and submit all required documentation.

5. Noncompliance

The Contractor must understand and be required to comply with the procedures listed in the Pre-Award and Post-Award Compliance sections of the CCM which can be found at the NTTA at https://www.ntta.org/procurement/busdiv/bestpractices/Pages/default.aspx.

6. Measurement and Payment

The work performed, materials furnished, equipment, labor, tools, and incidentals required for compliance with this special provision will not be measured or paid for directly, but will be subsidiary to the various bid Items.

ATTACHMENT D –BUSINESS DIVERSITY REPORTING FORMS

FORM 4906
FORM 4907
FORM 4908

NORTH TEXAS TOLLWAY AUTHORITY

COMMITMENT AGREEMENT FORM FOR ALL SUBCONTRACTORS

Form NTTA 4906

(Please complete one form for each subcontractor)

This commitment is subject to the award and receipt of a signed contract from the North Texas Tollway Authority for the subject project.

Project Description:		**County:**		**Contract No:**	
Corridor/Project:		**Segment/Section:**			

Items of work/service to be performed* (attach a list of work/service items, if more room is required):

Work/Service Description	Unit Price	Quantity/Percentage	Total Per Item
	$ -		$ -
	$ -		$ -
	$ -		$ -
	$ -		$ -
	$ -		$ -
	$ -		$ -
	$ -		$ -
	$ -		$ -
	$ -		$ -
	$ -		$ -
	$ -		$ -
	$ -		$ -
	$ -		$ -
		TOTAL	$ -

IMPORTANT! The signatures of the prime contractor, the subcontractor, and the total commitment amount must always be on the same page.

Prime Contractor:		**Name:**	
Contact Name:		**Title:**	
Address:		Signature:	
City:	ST, Zip:		
Phone:	Fax:		
Email:		Date:	
Subcontractor:		**Name:**	
☐ 8(a) ☐ DBE ☐ MBE ☐ WBE ☐ SBE ☐ Non-Minority		**Title:**	
Certification Entity:			
Contact Name:		Signature:	
Address:			
City:	ST, Zip:		
Phone:	Fax:		
Email:		Date:	
2nd Tier Sub:		**Name:**	
☐ 8(a) ☐ DBE ☐ MBE ☐ WBE ☐ SBE ☐ Non-Minority		**Title:**	
Certification Entity:			
Contact Name:		Signature:	
Address:			
City:	ST, Zip:		
Phone:	Fax:		
Email:		Date:	

The NTTA maintains the information collected through this form. With few exceptions, upon request you may be informed of the information that is collected about you. Under Sections 552.021 and 552.023 of the Texas Government Code, you are permitted to receive and review the information. Under Section 559.004 of the Texas Government Code, you are also permitted to have the NTTA correct information about you that it is incorrect.

To ensure prompt and efficient handling of your project file, we are requesting that all commitments be presented to the NTTA's stakeholder using this form.

Revised August 2010

Form NTTA 4907

NORTH TEXAS TOLLWAY AUTHORITY

NORTH TEXAS TOLLWAY AUTHORITY
MONTHLY SUBCONTRACTOR PROGRESS REPORT

Contract No.:	number	County:	Name
SA/WA/ETC#:	number	Reporting Period (M/D/Yr to M/D/Yr)	date to date
Contractor:	Name	Original Contract Amount:	$ -
D/M/WBE Goal:	0.00%	Current Contract Amount:	$ -
D/M/WBE Goal Attained to Date:	0.0%	D/M/WBE Goal Dollars:	$ -
		Current Year to date D/M/WBE Dollars paid (Beginning January 1st - December 31st)	$ -

Name of Subcontractor/Supplier		Type of Work/Service performed	Amount Paid This Period to Subcontractor	Amount Paid To Date to Subcontractor
D/M/WBE Certified Firms:				
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
		D/M/WBE Firm Totals:	$ -	$ -
SBE Firms:				
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
		SBE Firm Totals:	$ -	$ -
Non-Minority Firms:				
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
		Non-Minority Firm Totals:	$ -	$ -

Include payments to all certified DBEs, WBEs, MBEs, SBE's and all Non-Minority firms during the period noted above.

If using a non-minority hauling firm that leases from D/M/WBE truck owner-operators, payments made to each owner-operator must be reported.

Any changes to the original commitments previously approved by the department must be reported to the NTTA's stakeholder and the Business Diversity Department.

For projects with assigned D/M/WBE Goals, submission of this report for periods of negative D/M/WBE activity is required. This report is required until all subcontracting or material supply activity is completed. ***This report must be submitted to the NTTA or Construction Manager each month with your monthly invoices***.

I hereby certify that the above is a true and correct statement of the amounts paid to all the firms listed above.

Signature: _____

Authorized Company Official Date

The NTTA maintains the information collected through this form. With few exceptions, upon request you may be informed of the information that is collected about you. Under Sections 552.021 and 552.023 of the Texas Government Code, you are permitted to receive and review the information. Under Section 559.004 of the Texas Government Code, you are also permitted to have the NTTA correct information about you that it is incorrect.

Revised January 2012

Form NTTA 4908

NORTH TEXAS TOLLWAY AUTHORITY

NORTH TEXAS TOLLWAY AUTHORITY
SUBCONTRACTOR FINAL REPORT

Contract No.:	number	Original Contract Amount:	$ -
SA/WA/ETC#:	number	Final Contract Amount:	$ -
Contractor:	Name	D/M/WBE Goal Amount:	$ -
D/M/WBE Goal:	0.00%	Goal Amount Attained to Date:	$ -

Name of Subcontractor/Supplier	SBE, DBE, MBE, WBE, Non-Minority	Final Amount Paid To Subcontractor to Date
D/M/WBE Certified Firms:		
		$ -
		$ -
		$ -
		$ -
		$ -
		$ -
		$ -
	Total:	$ -
SBE Firms:		
		$ -
		$ -
		$ -
		$ -
	Total:	$ -
Non-Minority Firms:		
		$ -
		$ -
		$ -
		$ -
		$ -
		$ -
	Total:	$ -

* Include payments to all **NON-MINORITY** and certified DBEs, WBEs,MBEs and SBEs.

This is to certify that 0.0% of the work was completed by D/M/WBE firms, as stated above.

IF THE GOAL WAS NOT ATTAINED, THEN ATTACH DOCUMENTATION THAT EXPLAINS THE REASONING.

Signature of General Contractor: _____ Date: _____

AFFIX NOTARY STAMP/SEAL ABOVE

Sworn to and subscribed before me, by the said _____, this the _____ day of _____, 20____, to certify which, witness my hand and seal of office.

Signature of Notary Public: _____ Printed Name of Notary Public: _____

The NTTA maintains the information collected through this form. With few exceptions, upon request you may be informed of the information that is collected about you. Under Sections 552.021 and 552.023 of the Texas Government Code, you are permitted to receive and review the information. Under Section 559.004 of the Texas Government Code, you are also permitted to have the NTTA correct information about you that it is incorrect.

Revised January 2012

ATTACHMENT E – INSURANCE REQUIREMENTS

NORTH TEXAS TOLLWAY AUTHORITY
Special Provision Addressing Insurance Requirements

Contract No.: 03583-SH161-04-PS-PM
Title: Construction Management Consultant
Project: Landscape and Irrigation Project
Location: President George Bush Turnpike Western Extension
Segment: 4
County: Dallas

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 coverage's 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 an ACORD Form. Except for professional liability insurance, occurrence-based policies are required. Any professional liability policy written on a claims-made basis must include coverage for an extended reporting period of not less than five years from the termination of the

coverage period under the policy. 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.

Each of the required policies (1), (2), and (3) listed below shall be endorsed to reflect a "Waiver of Subrogation" in favor of the Authority and the Additional Insured.

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

(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** 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) **Umbrella Liability Insurance** with minimum limits of **$1,000,000** per occurrence and in the aggregate annually, as applicable, within the underlying policies. The Umbrella Policy shall contain the provision that it will continue in force as an underlying insurance in the event of exhaustion of underlying aggregate policy limits.

(5) **Architects' and/or Engineers' Professional Liability Insurance** in the amounts normally carried for its own protection in the practice of providing architectural/engineering services, but in no event less than **$1,000,000** per claim and **$1,000,000** per aggregate.

(6) **Valuable Papers Insurance** in the amount of **$50,000** to ensure the full restoration of any plans, drawings, field notes, logs, test reports, diaries, or other similar data or materials, whether in an electronic or other format, relating to the work covered by the Agreement in the event of their loss or destruction, until such time as the data and materials have been delivered to the Authority.

The **Authority, TxDOT and the City of Grand Prairie** shall be included as additional insureds by endorsement to all policies required under the Agreement, other than Workers' Compensation and Professional Liability Insurance policies.

(7) **Insurance for Subconsultants.**

Insurance for any Subcontractor hired to work on this Contract will be the responsibility of the Primary Consultant and may be addressed by one of the following options:

(a) **Option 1:** The Contractor shall secure and maintain, until the expiration of the applicable Texas statute of limitations, Certificates of Insurance from all subconsultants, evidencing the proper types of insurance coverage's for the work to be performed by the Subconsultant. The Consultant shall also ensure that the Subconsultants required insurance coverage's are in amounts sufficient to cover the type of work assigned to the subconsultant, which coverage's will be approved by the NTTA; or

(b) **Option 2:** The Consultant shall take responsibility for the subconsultants insurance coverage by including the subconsultant as an additional insured under their required insurance coverage's.

(c) Insurance Certificates of subconsultants and sub-subconsultants will be maintained by the Consultant for the duration of the project.

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 Program Administrator."

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 coverage's by reason of such waiver.

ATTACHMENT F – FORM OF CONTRACT

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NORTH TEXAS TOLLWAY AUTHORITY

AGREEMENT FOR

Construction Management Consultant Services
Contract 03583-SH161-04-PS-PM

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EXHIBITS

Exhibit A - Scope of Services

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Exhibit B-1 - Rate Schedule

Exhibit C - Insurance Requirements

Exhibit D - Consultant's Response to RFQ

Exhibit E - Commitment Agreement Form For All Subcontractors (Form 4906)

NORTH TEXAS TOLLWAY AUTHORITY
AGREEMENT FOR
CONSTRUCTION MANAGEMENT SERVICES CONSULTANT FOR NTTA
CONTRACT 03583-SH161-04-PS-PM

THIS PROFESSIONAL SERVICES AGREEMENT is made as of this _____ day of _____ _____, 2013 ("Effective Date"), by and between the NORTH TEXAS TOLLWAY AUTHORITY ("NTTA"), whose address is 5900 West Plano Parkway, Suite 100, Plano, Texas 75026, and _____ _____, a _____ _____, whose address is _____.

W I T N E S S E T H

WHEREAS, NTTA is a regional tollway authority under Chapter 366 of the Texas Transportation Code ("Act"), and is authorized to enter into agreements necessary or incidental to its duties and powers; and

WHEREAS, NTTA operates, in addition to other turnpike projects, the Dallas North Tollway, the Addison Airport Toll Tunnel, the President George Bush Turnpike, the Eastern Extension of the President George Bush Turnpike, the Mountain Creek Lake Bridge, the Sam Rayburn Tollway, and the Lewisville Lake Toll Bridge, which as of the Effective Date comprise a system of turnpike projects (said system, as it may hereafter be modified by additions or deletions of turnpike projects comprising the system, will be referred to in this Agreement as the "NTTA System"); and NTTA operates the Western Extension of the President George Bush Turnpike and the Chisholm Trail Parkway, which as of the Effective Date comprise a system of turnpike projects (said system, as it may hereafter be modified by additions or deletions of turnpike projects comprising the system, shall be referred to in this Agreement as the "Special Projects System")

WHEREAS, referred to herein, the NTTA System and Special Projects System are collectively referred to as "NTTA"; and

WHEREAS, pursuant to that certain Request for Qualifications dated April 12, 2013 ("RFQ"), NTTA sought to identify and obtain the services of a qualified engineering firm to provide landscape construction management services as a Consultant for the NTTA; and

WHEREAS, <name of firm>. submitted a response to the RFQ ("Response"); and

WHEREAS, <name of firm>, was identified by NTTA as one of the most highly qualified provider of the required services and this Agreement has been negotiated and finalized between the parties whereby the services will be provided to NTTA at a fair and reasonable price.

AGREEMENT

NOW, THEREFORE, in consideration of the payments and mutual promises hereinafter stipulated, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. THE SERVICES, GENERALLY

NTTA hereby retains <name of firm>. ("Consultant") to serve as NTTA's engineering Consultant for the NTTA pursuant to the terms set forth in this Agreement and perform the duties of the engineer, as may be defined by the Authority's Trust Indenture for the NTTA. All work to be performed by or on behalf of Consultant hereunder is hereinafter referred to as the "Services". The Services are generally described as assisting NTTA staff and consultants with engineering-related aspects of NTTA projects. A detailed description of the Services is set forth on the Scope of Services, attached as Exhibit A. In performing the Services, Consultant will operate as an extension of, and in complete coordination with, NTTA's staff with respect to NTTA projects which now or in the future are studied, constructed or operated by NTTA. To that end, Consultant will represent and forward the interests of NTTA throughout all aspects and phases of NTTA's activities and will, when and as requested by NTTA, fully support NTTA in its dealings with contractors, suppliers, engineers, accountants, financial advisors, rating agencies and underwriters, legal counsel, governmental entities, and the public, all in accordance with the standards customarily possessed and exercised by a practicing member of the engineering profession enjoying a favorable national reputation for engineering-consulting. As part of the Services, Consultant will assist NTTA in achieving the goals established in NTTA's Strategic Plan, taking into account all modifications to said Strategic Plan incorporated throughout the Term of this Agreement (as hereinafter defined). Consultant will commit the personnel and resources required to respond promptly and fully to the responsibilities and tasks assigned by NTTA throughout the Term. Consultant covenants and agrees that the Services will be of the highest quality, complete in all respects, comply fully with the terms of this Agreement, and be subject to NTTA's approval.

2. ASSIGNMENT OF SERVICES BY WORK AUTHORIZATION

The Services to be performed by Consultant are described in the Scope of Services set forth in Exhibit A. In consideration of Consultant's performance throughout the Term of such Services described in Exhibit A, Consultant will be entitled to the compensation described in Exhibit B. As described in Exhibit A and Exhibit B, certain Services will be compensated by NTTA's payment of an annual retainer and other Services will be performed and compensated pursuant to work authorizations (each, a "Work Authorization") issued by NTTA in accordance with the procedure described below.

The Services to be performed by Consultant pursuant to Work Authorizations will be assigned and documented as follows: Upon oral or written directive from NTTA, Consultant will prepare a Work Authorization for a specific task (including the scope of Services for the task, the schedule, and the budget). All proposed Work Authorizations will be submitted for NTTA's approval. No work will begin under a Work Authorization until the Work Authorization is approved and fully executed. All such work will be in accordance with the scope, schedule, and budget set forth in the Work Authorization. Unless otherwise approved by NTTA, the basis for payment of each Work Authorization will be cost plus to a maximum, as stipulated in the Work Authorization. The maximum will not be exceeded without prior written approval from NTTA. The monthly invoice to NTTA will include a progress summary of the work performed the previous month by every Consultant employee, including approved subconsultants, on the ongoing Work Authorization.

3. COMPENSATION

a) Consultant agrees to accept, as full and sufficient compensation and reimbursement for the satisfactory performance of the Services and its other obligations under this Agreement, the consideration described on Exhibit B, and, as applicable, in each Work Authorization issued under this Agreement. Payments by NTTA will be inclusive of all federal, state, and local taxes, if any, and will constitute full payment for the Services and all resources required to deliver the Services, including materials, training, equipment used, travel (except as provided in Exhibit B), overhead, and expenses.

b) If after paying for the Services or any other products or deliverables, NTTA determines that the Services, products or deliverables do not satisfy the requirements of this Agreement, NTTA may reject them, and Consultant will return the compensation received therefor. No payment by NTTA will relieve Consultant of its obligation to deliver timely the Services in accordance with the terms of this Agreement. In addition to all other available rights and remedies, NTTA may set off amounts owed by Consultant under this Agreement against amounts owed by NTTA to Consultant.

c) Consultant will provide fully documented and accurate itemized statements of invoices within thirty (30) days of the end of the month being billed, with appropriate and applicable attachments, statistical and programmatic documentation reports as required. Each statement must, at a minimum, include a description of the Services performed on a task or project basis and/or with reference to a specific work authorization, the day(s) and the time during the day(s) that Consultant performed the Services, and the total amount billed for the Services rendered. Upon request, Consultant will also submit certified time and expense records and copies of invoices that support the invoiced salary and expense figures. NTTA will review and approve each statement in a timely manner and compensate Consultant for all compliant and unquestioned amounts within thirty (30) business days of the statement's receipt. All reimbursable travel expenses must comply with and be submitted in conformance with NTTA's Travel Authorization and Expense Reimbursement Procedure. NTTA will have the right to withhold all or part of any payments to Consultant to offset any payment or reimbursement made to Consultant for ineligible expenditures, use or sales taxes assessed for which NTTA is exempt, undocumented units of service billed, and any profit made by Consultant not provided for herein on the Services performed hereunder.

d) Notwithstanding anything to the contrary contained or implied in this Agreement, all compensation billed to and payable by NTTA hereunder will be subject to the rate discounts and other benefits consistent with the most substantial discounts and benefits that Consultant provides to other comparable clients for the provision of services similar to those required under this Agreement (an arrangement referred to herein as a "most favored client" discount). Consultant represents and warrants, as of the Effective Date and throughout the Term (as hereinafter defined), that it has and will have no contract or arrangement with any comparable client for the provision of services similar to those required under this Agreement that provides such client with fees, rates, or terms that are more favorable than those afforded NTTA under this Agreement. Consultant will make available to NTTA for review, copying and auditing throughout the Term and for three (3) years after the expiration thereof all such books and records as may be necessary for NTTA or its representatives to determine compliance with this provision.

e) Consultant acknowledges and agrees that no representation or assurance has been made by or on behalf of NTTA to Consultant as to the total compensation to be paid to Consultant under this Agreement. Further, Consultant is providing the Services on a nonexclusive basis, and NTTA, at its option, may elect to have any of the Services performed by other consultants or by NTTA's staff.

4. INSURANCE

a) Prior to beginning its performance of the Services, Consultant will, at Consultant's own expense, obtain insurance coverage in the amounts specified in Exhibit C and incorporated into this Agreement for all purposes. Consultant hereby agrees that it will maintain any and all required insurance in full force and effect during the Term.

b) Consultant hereby agrees that all polices will be written through companies licensed or approved to transact that class of insurance in the State of Texas, rated with respect to the companies providing the insurance by A.M. Best Co. as "A-" and "X," or better. Except for professional liability insurance, occurrence-based policies are required. Any professional liability policy written on a claims-made basis must include coverage for an extended reporting period of not less than five years from the termination of the coverage period under the policy or the Consultant will maintain such coverage for a period of five years after the completion of its services. NTTA has the right to review the insurance providers, and all providers must be acceptable to NTTA.

c) Prior to beginning its performance of the Services, Consultant will furnish certificates of insurance on the Association for Cooperative Operations Research and Development Form 25 (i.e., ACORD Form 25), acceptable to NTTA and evidencing compliance with the requirements of this Section 4. The certificates must indicate the name of insured, the name of insurance company, the name of the agency/agent, the policy number, the term of coverage, and the limits of coverage. Additionally, all insurance furnished for Commercial General Liability and Business Automobile must name NTTA as an additional insured. The insurance carrier must include in each of the insurance policies required under Exhibit C the following statement: "This policy will not be canceled or materially changed during the period of coverage without at least thirty (30) days' prior written notice addressed to the North Texas Tollway Authority, P.O. Box 260729, Plano, Texas 75026, Attention: Insurance and Claims Coordinator". To the extent such statement is not available from the insurance carrier, the Consultant agrees to provide at least 30 days prior written notice to the Owner at any time Consultant becomes aware of any cancellation, or material change or non-renewal of the above insurance policies

d) If during the Term there is an adverse change in Consultant's financial condition or if NTTA reasonably determines that such an adverse change is threatened, Consultant will procure such additional errors and omissions or similar professional liability insurance as NTTA reasonably requires and is commercially available.

5. TERM; TERMINATION

a) The term of this Agreement will start on the Effective Date and will remain in effect for ten (10) months; this Agreement may be extended at the sole discretion of NTTA. The term of this Agreement, as subsequently extended or earlier terminated in accordance with the provisions of this Section 5, is defined as the "Term".

b) In addition to any other remedy set forth in this Agreement or otherwise available at law or in equity, NTTA may terminate this Agreement by written notice to Consultant at any time, without prejudice to any other legal rights to which NTTA may be entitled, upon the occurrence of any one or more of the following:

   i) NTTA's determination, in its sole judgment, that Consultant's performance under this Agreement is unsatisfactory; or

   ii) Consultant's default in the performance of any of the provisions of this Agreement; or

   iii) any representations or warranties made by Consultant to NTTA prove to be untrue or inaccurate in any material respect; or

   iv) NTTA's determination, in its sole judgment, that termination is in NTTA's best interest.

c) If NTTA, in its sole judgment, determines that Consultant's performance is unsatisfactory, Consultant is in default in the performance of this Agreement, or Consultant made untrue or inaccurate representations or warranties in any material respect, then NTTA may immediately terminate this Agreement and will have a right to set off or otherwise recover any damages incurred by reason of Consultant's breach hereof. NTTA's rights and options to terminate this Agreement will be in addition to, and not in lieu of, any and all rights, actions, options, and privileges otherwise available to NTTA as a consequence of said default, whether arising under law or equity pursuant to this Agreement, or otherwise. During the pendency of a default by Consultant hereunder, NTTA may withhold payment of any sums that Consultant claims are owed by NTTA pending determination of the amount of any setoff or damages available to or suffered by NTTA due to Consultant's failure to satisfactorily perform under this Agreement.

d) If NTTA terminates this Agreement pursuant to clause 5(b) (iv) above, and not due to the default of Consultant, upon such termination, NTTA will compensate Consultant for all Services performed and expenses reimbursable in accordance with this Agreement to the date of that termination; provided, however, that no consideration will be given to anticipated profit which Consultant might possibly have made on the uncompleted portion of the Services.

e) Termination of this Agreement for any reason will not relieve either party from its obligation to perform up to the effective date of termination or to perform all obligations that survive termination. If before the termination of the Agreement, NTTA makes payments hereunder attributable to periods after termination, Consultant will refund those payments promptly to NTTA. Subject to the provisions of Subparagraphs 5(d) and (e), Consultant will not be entitled to any compensation after the effective date of termination. Nothing in this subparagraph will limit the rights otherwise available to a party arising from the breach of the provisions hereof.

6. INSPECTION OF BOOKS AND RECORDS

a) NTTA, its employees, agents or any duly authorized representative of NTTA, will have the right at all reasonable times to inspect and examine the books and records of Consultant, in whatever form said records may be kept, at Consultant's office for all lawful purposes, including but not limited to the following:

i) examination;

ii) audit;

iii) investigation;

iv) contract administration;

v) checking the salary costs and other expenses described and/or contemplated in the Agreement; or

vi) otherwise confirming compliance with the terms of the Agreement.

b) Books and records for the purposes of this section include any and all authorization logs, transaction records, books, documents, and papers that are directly pertinent to the performance of the Services. Consultant will maintain such records, together with such supporting or underlying documents and materials, for the duration of this Agreement and according to NTTA's Records Retention Schedules after the completion of this Agreement, including any and all renewals or extensions thereof. The records, together with the supporting or underlying documents and materials, will be made available, upon request, to NTTA, through its employees, agents, representatives, contractors or other designees, during normal business hours. Consultant will provide such access in reasonable comfort and will provide any furnishings, equipment, or other conveniences deemed reasonably necessary to fulfill the purposes described in this section.

7. NOTICES

All notices required to be given hereunder must be in writing and must be sent by certified mail, return receipt requested, hand delivered, or via reputable overnight air courier, addressed as follows:

a) If to NTTA by hand delivery or air courier:

North Texas Tollway Authority
Attention: Executive Director
5900 W. Plano Parkway, Suite 100
Plano, Texas 75093

If to NTTA by United States mail:

North Texas Tollway Authority
Attn: Executive Director
P.O. Box 260729
Plano, Texas 75026

b) If to <name of firm>:

Attention: <contact person>
<complete address>

or to such other address as either party may provide to the other in accordance herewith. All written notices, demands, and other papers or documents served upon NTTA or Consultant in the aforesaid manner will be deemed served or delivered for all purposes hereunder either (a) three (3) days following the U.S. Postal Service's postmarked date if mailed, registered or certified mail and return receipt requested, or (b) immediately upon actual delivery or refusal of delivery if transmitted by courier or overnight delivery service.

8. COMPLIANCE WITH LAWS

Consultant and its employees and agents will strictly comply with all laws, rules and regulations applicable to its performance of this Agreement. Consultant warrants to NTTA that it has obtained and will maintain all required permits, licenses, registrations, and filings in connection with its performance of this Agreement.

9. WARRANTIES

Consultant represents, warrants and covenants to NTTA that (a) it has the full right, power, capacity and legal authority to enter into and fully perform all obligations required of Consultant under this Agreement in accordance with its terms, (b) the execution, delivery, and performance of this Agreement has been duly authorized by Consultant and does not and will not violate or cause a breach of any other agreement or obligation to which it is a party or by which it is bound, and (c) no approval or other action by any third party is required in connection herewith.

Consultant warrants that the Services will be performed consistent with the highest prevailing professional or industry standards. In the event of a breach of Consultant's warranties under this Agreement, NTTA will be entitled to the expeditious cure of any breach in a manner least disruptive to the operation of NTTA's business. If Consultant is unable to cure the breach, NTTA will be entitled to recover the fees paid to Consultant and to recover any additional costs incurred by NTTA specific to curing deficiencies in Consultant's performance of the Services. Nothing contained in this section, nor NTTA's making of a warranty claim under this section, will be deemed to constitute an election of remedies by NTTA for a breach by Consultant under this Agreement, nor will this section or the making of a claim under this section limit or otherwise impair NTTA's ability to pursue any and all remedies available under this Agreement or under applicable law for a breach by Consultant under this Agreement.

10. NON-DISCRIMINATION; DIVERSITY POLICY

NTTA is an equal opportunity employer. In conducting business with or on behalf of NTTA, Consultant will not discriminate against any person because of race, age, color, religion, sex, sexual orientation, gender identity, disability, ancestry, national origin, place of birth, or veteran status. Consultant further acknowledges NTTA's commitment to facilitate and assure the participation of disadvantaged and small businesses in NTTA's procurement process through its Disadvantaged, Minority, Women-Owned and Small Business Enterprises (Diversity) Policy (the "Diversity Policy") and agrees that it will use its best good faith efforts to assist NTTA in NTTA's fulfillment of such commitment. It is the policy of NTTA's Board of Directors that disadvantaged and small businesses have the maximum practicable opportunity to participate in the awarding of NTTA contracts and related subcontracts. To do so NTTA has developed its Diversity Policy, incorporated by reference into this Agreement for all purposes as if fully set forth herein. NTTA requires that all consultants, including certified D/M/WBE firms, agree to submit a fully executed copy of the Commitment Agreement Form For All Subcontractors (Form 4906) to NTTA, a copy of which is attached hereto as Exhibit E and incorporated herein for all purposes, in relation to this Agreement. In connection with any subletting, assignment, or transfer of its work or obligations hereunder, Consultant will serve in a role typically described as the prime contractor with respect to all Services provided pursuant to this Agreement and will be responsible for ensuring the delivery all of the Services of whatever kind provided pursuant

to this Agreement in compliance with the terms of this Agreement. Consultant will also submit a monthly report of the status of its D/M/W/SBE subconsultants. Reports will be submitted monthly with Consultant 's monthly invoices to NTTA's Business Diversity Liaison and the applicable department director in the form designated by the Business Diversity Liaison.

11. PRIMARY CONTACT

The Consultant employee to whose attention notices are to be sent under Section 7(b) will serve as Consultant's primary contact with NTTA ("Primary Contact") for the provision of the Services. Consultant will not remove, transfer, or reassign the Primary Contact without providing prior written notice to NTTA designating such person's successor as Primary Contact. Such successor must be reasonably satisfactory to NTTA.

12. OWNERSHIP OF INFORMATION

a) Notwithstanding any provision in this Agreement or in common law or statute to the contrary, all of the estimates, specifications, documents, reports, computer records, discs, tapes, proposals, diagrams, charts, calculations, correspondence, memoranda, narratives, and other data and materials, and any part thereof, created, compiled or to be compiled by or on behalf of Consultant in providing the Services, together with all materials and data furnished to it by NTTA, will at all times be and remain the property of NTTA and will not be subject to any restriction or limitation on their further use by or on behalf of NTTA; and, if at any time demand be made by NTTA for any of the above materials, records, and documents, whether after expiration or termination of this Agreement or otherwise, such will be turned over to NTTA without delay. Consultant will have the right to retain a copy of the above materials, records and documents for its archives. If Consultant or a subconsultant desires later to use any of the data generated or obtained by it in connection with the Projects or any other portion of the work product resulting from the Services, it must secure the prior written approval of NTTA.

b) If for any reason the agreement of NTTA and Consultant set forth in subsection 12(a) above regarding the ownership of work product and other materials is determined to be unenforceable, either in whole or in part, Consultant hereby assigns and agrees to assign to NTTA all right, title and interest that Consultant may have or at any time acquire in said work product and other materials, without royalty, fee or other consideration of any sort, and without regard to whether this Agreement has terminated or remains in force. NTTA hereby acknowledges, however, that all documents and other work product provided by Consultant to NTTA and resulting from the Services performed under this Agreement are intended by Consultant solely for the use for which they were originally prepared. Notwithstanding anything contained herein to the contrary, Consultant will have no liability for the use by NTTA of any work product generated by Consultant under this Agreement on any project other than for the specific purpose and project for which the work product was prepared. Any other reuse of such work product without the prior written consent of Consultant will be at the sole risk of NTTA.

c) Notwithstanding any provision to the contrary contained in this Agreement, Consultant will retain sole ownership to its preexisting proprietary information, including but not limited to computer programs, software, standard details, figures, templates and specifications.

13. CONFLICTS OF INTEREST

Consultant represents to NTTA, as of the Effective Date and throughout the Term, that it, and each of its employees, agents, subcontractors, and subconsultants: (a) has no financial or other beneficial interest in any contractor, engineer, consultant, product or service evaluated or recommended by Consultant, except as expressly disclosed in writing to NTTA, (b) will discharge its responsibilities under this Agreement professionally, impartially, and independently, and after considering all relevant information related thereto, and (c) is under no contractual or other restriction or obligation, the compliance with which is inconsistent with the execution of this Agreement or the performance of its obligations hereunder.

Consultant and its subconsultants will not knowingly support, advance, or endorse any project, plan, position, or initiative that is hostile to NTTA's announced position or interests. If Consultant or a subconsultant believes that another client is seeking services or support for such a matter, it must contact NTTA immediately. NTTA will determine if (and the extent to which) the matter is hostile to NTTA's position or interests, and what steps, if any, are required, which may include Consultant or the subconsultant declining work offered by another party. A project, plan, position, or initiative is "hostile" to NTTA's position or interests if it (a) substantially and materially conflicts with, (b) is substantively incompatible with, or (c) is overtly antagonistic to that position or those interests. NTTA will afford Consultant a reasonable opportunity to present alternatives or modifications to NTTA's required action(s) or to otherwise address NTTA's concerns. However, after providing that opportunity and considering its proposals, NTTA's decision will be final.

14. RFQ

The RFQ is hereby incorporated herein by reference for all purposes; provided, however, that in the event of any conflict between the RFQ and any other provision of or exhibit to this Agreement, the RFQ will be subordinate and the other provision or exhibit to this Agreement will control.

15. CONSULTANT'S RESPONSE

Consultant's response to NTTA's RFQ is attached hereto as Exhibit D and made a part hereof for all purposes, provided, however, that in the event of any conflict between said response and any other provision of or exhibit to this Agreement, the response will be subordinate and the other provision or exhibit to this Agreement will control.

16. MISCELLANEOUS

a) **NTTA INDEMNIFIED. CONSULTANT WILL INDEMNIFY AND HOLD HARMLESS NTTA AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CONSULTANTS, AND REPRESENTATIVES (COLLECTIVELY, THE "INDEMNITEES") FROM ANY CLAIMS, COSTS, OR LIABILITIES OF ANY TYPE OR NATURE, OWED TO OR CLAIMED BY ANY PERSONS WHOMSOEVER, TO THE EXTENT ARISING FROM CONSULTANT'S PERFORMANCE OF THE SERVICES, OR CONSULTANT'S FAILURE TO PERFORM SUCH SERVICES WHETHER SUCH CLAIM OR LIABILITY IS BASED IN TORT OR STRICT LIABILITY OR CAUSED BY AN EMPLOYEE, AGENT, CONTRACTOR, CONSULTANT OR REPRESENTATIVE CONSULTANT AGAINST THE INDEMNITEES. IN SUCH EVENT, CONSULTANT ALSO WILL INDEMNIFY AND HOLD HARMLESS THE INDEMNITEES FROM ANY AND ALL**

EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES, INCURRED BY ANY INDEMNITEES IN LITIGATING OR OTHERWISE RESPONDING TO SAID CLAIM OR LIABILITIES, PAYING THE SAME AS THEY ACCRUE. IN THE EVENT THAT ANY OF THE INDEMNITEES IS/ARE FOUND TO BE PARTIALLY AT FAULT, CONSULTANT WILL, NEVERTHELESS, INDEMNIFY THE INDEMNITEES FROM AND AGAINST THE EXPENSES, CLAIMS, OR LIABILITIES RELATING TO THE PERCENTAGE OF FAULT ATTRIBUTABLE TO CONSULTANT, ITS EMPLOYEES, AGENTS, CONTRACTORS, CONSULTANTS OR REPRESENTATIVES OR TO THEIR CONDUCT. THE PROVISIONS OF THIS SECTION WILL SURVIVE THE TERMINATION OF THIS AGREEMENT FOR ANY REASON, INCLUDING PURSUANT TO ANY TERMINATION RIGHT PROVIDED FOR OR ALLOWED HEREUNDER.

b) Confidentiality. Any information that Consultant or its employees, agents, subcontractors, subconsultants or representatives obtains regarding the operation or financial condition of NTTA, its products, services, policies, personnel, and any other aspect of its operation or financial condition is confidential, and will not be revealed or disclosed to any person, company, or other entity without the express written consent of NTTA. Consultant's employees, agents, subcontractors, subconsultants, or representatives performing work or Services on behalf of NTTA must agree to be bound by the terms of this Agreement. Each Consultant employee or contractor assigned to work on the Services will sign any confidentiality and/or computer access and security document/form required by NTTA. Any subcontractor or subconsultant employee or contractor utilized by Consultant pursuant to this Agreement must also sign the same. Consultant will not use NTTA's confidential information except in the course of providing the Services under this Agreement. However, Consultant may disclose confidential information of NTTA to subcontractors, subconsultants, regulatory authorities, and others, as necessary to meet its obligations under this Agreement, provided the recipient of any such information agrees in writing to keep such information confidential as required under this subsection.

c) Personnel, Equipment, and Material. Consultant will furnish and maintain, at its own expense, adequate and sufficient personnel, equipment, supplies, transportation, and material, in the sole opinion of NTTA, to perform the Services when and as required, and without delay. All persons providing the Services, whether employees of Consultant or of an approved subconsultant, will have such knowledge and experience as will enable them to perform the duties assigned to them and will be fully licensed to the extent required by their professional discipline associations' codes and by law within the State of Texas. All persons in responsible charge of design, plan preparation, and related work willbe approved by Consultant prior to their involvement with such Services. Any employee of Consultant or an approved subconsultant who, in the sole opinion of NTTA, is incompetent or by his/her work or conduct becomes detrimental to the performance of the Services will, upon the request of NTTA, immediately be removed from association with providing Services to NTTA. Consultant will furnish NTTA with a fully qualified candidate for the removed person within ten (10) days thereafter, provided, however, said candidate will not begin work under this Agreement unless and until approved by NTTA. While working at any of NTTA's facilities, personnel of Consultant and its subconsultants must comply with NTTA's workplace policies and abide by NTTA's standards of employee conduct. Consultant will take all steps required to ensure the proper coordination and exchange of information among the locations at which the Services are performed.

d) Acts and Limitations of NTTA. Anything to be done under this Agreement by NTTA may be done by such persons, corporations, firms, or other entities as NTTA may designate, expect as otherwise provided in this Agreement or by law. Notwithstanding anything herein to the contrary, all covenants and obligations of NTTA under this Agreement will be deemed to be valid covenants and obligations only to the extent authorized by the Act and permitted by the laws and the Constitution of the State of Texas, and no officer, director or employee of NTTA will have any personal obligations or liability hereunder.

e) Authority of Consultant. Consultant represents and warrants that it is duly formed under the laws of the State of _____ and qualified to do business under the laws of the State of Texas, and the individual or individuals executing this Agreement on its behalf are fully authorized to do so without the necessity of any additional action by its board of directors, officers, partners, owners, shareholders, members, or any other party. Consultant further represents and warrants that the execution, delivery, and performance by Consultant of this Agreement will neither conflict with any laws, statutes, regulations, or decisions affecting Consultant nor breach any contractual covenants or restrictions between Consultant and any other party.

The undersigned signatory or signatories for Consultant hereby represent and warrant that each signatory is a fully authorized officer, partner, owner, member, or representative, as applicable, of Consultant and that said signatory has full and complete authority to execute this Agreement on behalf of Consultant. NTTA is relying upon the assurances provided in this subparagraph when entering into this Agreement.

f) Waiver. The failure of either party to object to or to take affirmative action with respect to any conduct of the other party which is in violation of the terms hereof will not be construed as a waiver thereof, nor of any subsequent breach or wrongful conduct. The rights and remedies set forth herein are intended to be cumulative, and the exercise of any right or remedy by either party will not preclude or waive its exercise of any other rights or remedies hereunder or pursuant to law or equity.

g) Independent Contractor Status. Consultant will be and act as an independent contractor under this Agreement. Under no circumstances will this Agreement be construed as one of agency, partnership, joint venture or employment, or as creating a joint enterprise, between the parties. Without limiting the foregoing, the purposes for which Consultant and NTTA have entered into this Agreement are separate and distinct, and there are no pecuniary interests, common purposes, and/or equal rights of control among the parties hereto. Consultant acknowledges and agrees that neither it nor any of its employees, subconsultants, or subcontractors will be considered an employee of NTTA for any purpose. Consultant will have no authority to enter into any contract binding upon NTTA, or to create any obligation on behalf of NTTA, without express authorization from the Executive Director of NTTA. Under no circumstances will Consultant or its employees, agents, subconsultants, or subcontractors, represent that it serves NTTA in any capacity other than as an independent contractor.

Consultant is solely responsible for its employees' and subconsultants' work, as well as for providing all necessary training, instruction, and supervision to its employees and subconsultants' necessary for Consultant's delivery of the Services in accordance with this Agreement. Notwithstanding the foregoing, work by Consultant to be performed at NTTA's offices or on NTTA's premises must be conducted during business hours for NTTA, which are 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding NTTA

holidays, unless otherwise coordinated with and approved by NTTA's Chief Financial Officer.

Nothing contained in this Agreement will be deemed or construed to create any liability for NTTA whatsoever with respect to the liabilities, obligations or acts of Consultant, its employees, agents, subconsultants, or subcontractors, or any other person.

h) Assignment; Successors; and Beneficiaries. Consultant has no right or authority to assign its rights and/or obligations or to delegate its duties under this Agreement without NTTA's prior written approval, and such approval may be granted or withheld at NTTA's sole discretion. Any attempted assignment or delegation without such approval will be void and constitute a material breach of this Agreement. This Agreement and all of the terms and provisions hereof will be binding upon, and will inure to the benefit of, the parties hereto, and their respective successors and approved assigns. In any event, the responsibility for subcontracted, assigned, or transferred work will remain with Consultant.

Nothing in this Agreement nor in any approval subsequently provided by either party hereto will be construed as giving any benefits, rights, remedies, or claims to any other person, firm, corporation, or other entity, including, without limitation, the public in general or any member thereof, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries, property damage, or any other relief in law or equity in connection with this Agreement.

i) No Contingent Fees; Etc. Consultant warrants that it has neither employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. In the event of a breach or violation of this warranty, NTTA will have the right to annul and terminate this Agreement without liability or, in its sole discretion, to deduct from the compensation or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

j) Texas Franchise Tax Certification. Consultant hereby certifies that it is not delinquent in its Texas Franchise Tax Payments or, alternatively, that it is exempt from, or not subject to, such tax. A false statement concerning Consultant's franchise tax status will constitute grounds for cancellation of this Agreement at the sole option of NTTA.

k) Sales and Use Tax. The stated amounts of all payments to be made by NTTA to Consultant pursuant to this Agreement are inclusive of federal, state, or other taxes, if any, however designated, levied, or based; provided, however, that NTTA acknowledges and represents that it is a tax-exempt entity under Sections 151.309, et seq., of the Texas Tax Code. A Tax Exemption Certification ("TEC") from NTTA will be provided Consultant to avoid sales and uses taxes on any purchases made on behalf of NTTA under this Agreement. Consultant will use the TEC solely for purchases made under this Agreement. Consultant will not be reimbursed for taxes assessed on any purchase to which NTTA's exemption applies. All copies of the TEC will be destroyed by Consultant upon termination of this Agreement.

l) Conferences; Appearance as Witness; etc.

i) When requested by NTTA, Consultant will provide appropriate personnel for conferences at its offices, or attend meetings and conferences at the various offices of NTTA, project offices, offices of other consultants, and any other reasonably convenient location.

ii) When requested by NTTA, Consultant will prepare such exhibits and demonstrative aids as may be requested for all hearings and trials related to any of NTTA projects, the Services, or NTTA's activities generally.

iii) Consultant will prepare for and appear, and furnish competent expert engineering witnesses to provide such oral testimony and to introduce such demonstrative evidence as may be needed throughout all trials and hearings with reference to any litigation relating to NTTA's projects, the Services, or NTTA's activities.

m) Governing Law; Venue. This Agreement will be governed and construed in accordance with the laws of the State of Texas. The parties hereto acknowledge that venue is proper in Collin County, Texas, for all disputes arising hereunder and waive the right to sue or be sued elsewhere.

n) Headings. The section and subparagraph headings set forth herein are for convenience only and do not constitute a substantive part of this Agreement.

o) Counterparts. This Agreement may be executed in two or more counterparts, each of which will be an original, but all of which will constitute one and the same instrument.

p) Severability. If any provision of this Agreement is deemed to be invalid or unenforceable by any court of competent jurisdiction, then the balance of this Agreement will remain enforceable, and such invalid or unenforceable provision will be enforced by such court to the maximum possible extent.

q) Entire Agreement; Amendments. Upon the Effective Date, this Agreement will supersede all prior discussions and agreements of the parties relating to the subject matter hereof. This Agreement constitutes the final, complete, and exclusive understanding between the parties with respect to its subject matter and supersedes all prior or contemporaneous agreements, whether oral or written, in regard thereto, except as expressly provided in Section 18. This Agreement cannot be amended or waived except by an agreement in writing signed by authorized representatives of both parties and specifically referring to this Agreement. All exhibits and other attachments to this Agreement are hereby made a part of this Agreement for all purposes.

r) Time is of the Essence. Time is of the essence with respect to the performance and completion of all the Services that specify an agreed-upon completion or delivery date. Without limiting the foregoing, Consultant will furnish all Services in such a manner and at such times as the development schedules of the applicable projects require so that no delay in the progression of the evaluations, funding, design, or construction of the projects will be caused by or be in any way attributable to Consultant. If at any time during the Term, Consultant cannot provide the requested Services within the time required by NTTA or for any other reason, NTTA, without limiting any other remedy available under this Agreement or at law or equity, reserves the unilateral right to procure the Services from any other source it deems capable of providing those Services.

s) Interpretation. No provision of this Agreement will be construed against or interpreted to the disadvantage of any party by any court, other governmental or judicial authority, or arbiter by reason of such party having or being deemed to have drafted, prepared, structured, or dictated such provision.

t) Computer System Networks. NTTA will allow Consultant to utilize NTTA's data processing and computer network for programs requested by Consultant and approved by NTTA. No software or computer program will be installed onto any of NTTA's computers without the expressed written approval of the Director of Information Technology, or his/her designee. Consultant must exercise due diligence to protect and maintain its computer networks in such a manner to minimize any unauthorized intrusions and destruction of information collected or maintained on behalf of NTTA.

u) Revolving Door. NTTA has adopted an Employee Ethics Policy (available for review at *https://www.ntta.org/whoweare/policies/Pages/default.aspx*) that includes the following "revolving door" provision: "An employee after leaving NTTA employment will not participate on behalf of any third party in a matter involving NTTA in which the employee participated while employed at NTTA. For purposes of this subsection, an employee participated in a matter if the employee made a decision or recommendation on the matter, approved, disapproved or gave advice on the matter, conducted an investigation related to the matter, or took similar action related to the matter." Absent express written approval from NTTA, Consultant will not direct or allow a former NTTA employee to do any work on behalf of Consultant that might put the former employee in violation of this provision.

v) Vendor Policing of Employee Ethics. NTTA has adopted an Employee Ethics Policy, which, among other things, directs employees to avoid conflicts of interest or appearances of impropriety, comply with the law, and use NTTA's property for only NTTA's purposes. Consultant is expected to be aware of these requirements and promptly report to NTTA any conduct by an employee that Consultant reasonably believes may be in violation of the Policy.

w) Open Records. This Agreement and Consultant's work product under this Agreement is or will become the property of NTTA and may be subject to disclosure under the Public Information Act (Texas Government Code Chapter 552). Consultant covenants to familiarize itself with the provisions of that act. In no event will NTTA or any of its agents, representatives, operators, directors, officers, or employees be liable to Consultant for the disclosure of all or any portion of this Agreement or any work product under this Agreement. If NTTA receives a request for public disclosure of all or any portion of this Agreement or any work product under this Agreement, NTTA will notify Consultant of the request and give Consultant an opportunity to assert, in writing, a claimed exception under the Public Information Act or other applicable law within the time period specified by law. NTTA may elect to seek one or more exceptions to disclosure under the act; nonetheless, Consultant will be solely responsible for ascertaining and forwarding its claims for exceptions directly to the Office of the Attorney General. If Consultant has special concerns about information that it makes available to NTTA and which it believes is confidential or constitutes a trade secret, proprietary information or other information excepted from disclosure, Consultant agrees to specifically and conspicuously designate that information as such.

x) Suspension or Modification of Services; Delays and Damages. NTTA may elect to suspend the work of Consultant hereunder, but not terminate this Agreement, by providing Consultant with written notice thereof which will be given a reasonable time (but in no event more than fourteen [14] days) before the effective date of such suspension. Similarly, NTTA may expand, limit, or cancel any portion of the services previously assigned to Consultant in accordance with this Agreement. Thereafter, the work may be reinstated and resumed in full force and effect upon receipt from NTTA of thirty (30) days' prior written notice requesting same. Consultant will not be entitled to any damages or other compensation of any form in the event that NTTA exercises its right to suspend the work; provided, however, that the completion period will be extended for a period of time determined by NTTA at its discretion to allow for said suspension of work. Similarly, NTTA may expand, limit, or cancel any portion of the services previously assigned to Consultant in accordance with this Agreement. Consultant will not to make claims for damages or for other compensation for any delays or hindrances occurring during the progress of any portion of the Services. Such delays or hindrances, if any, will be provided for by an extension of time for such reasonable periods as NTTA may decide. Permitting Consultant to proceed to complete any services or any part of them after the originally specified date for completion, or after the date to which the time for completion may have been extended, will in no way operate as a waiver on the part of NTTA of any of its rights under this Agreement.

y) Reports of Accidents, Etc. Within twenty-four (24) hours after an accident or event that: (i) causes or may cause injury to any third party or to the property of any third party (including an employee or subconsultant of Consultant), (ii) arises in connection with any action or failure to act by Consultant or its employee, subconsultant, or agent, and (iii) occurs on NTTA property or in connection with the provision of the Services under this Agreement, Consultant will send a written report of such accident or other event to NTTA, setting forth a full and concise statement of the facts pertaining thereto. Consultant also will immediately send NTTA a copy of any summons, subpoena, notice, or other documents served upon Consultant, its agents, employees, subconsultants, or representatives, or received by it or them, in connection with any matter before any court arising in any manner from Consultant's performance of the Services under this Agreement.

z) Referral of Third-Party Inquiries. Personnel of Consultant and its subconsultants (including, but not limited to, directors, officers, and employees of Consultant or a subconsultant) will not discuss any matter handled by Consultant or its subconsultants or share with third parties information about NTTA obtained through their work for NTTA without express authorization from NTTA. All personnel of Consultant and its subconsultants will refer all media inquiries concerning NTTA or matters Consultant is handling pursuant to this Agreement to NTTA's Communications Department.

17. SSAE 16 TYPE II AUDIT REQUIREMENT

At the sole discretion of NTTA, NTTA may require Consultant to cause a SSAE 16 Type II audit to be conducted at least annually for each location from which Consultant and/or any Consultant subconsultant provides Services. Consistent with applicable determination of the scope and focus any such audit being determined by the applicable audit standard, the Consultant acknowledges that each such SSAE 16 Type II audit must include within its general focus Consultant's and/or its subconsultant's policies, procedures and internal controls during the preceding twelve (12) months. As part of the sample, Consultant will

ensure that NTTA data is included. Consultant will ensure that the SSAE 16 Type II audit includes all the processes for which services are provided to NTTA. Consultant or the firm conducting the audit will also review the scope of the SSAE 16 Type II audit with NTTA to verify that the scope includes all the processes pertinent to NTTA. Consultant will permit NTTA to participate in the planning of each such audit, will confer with NTTA as to the scope and timing of each such audit and will accommodate NTTA's requirements and concerns to the extent reasonably practicable. Unless otherwise agreed by the Consultant and NTTA, such audit will be conducted so as to result in a final audit report dated as of each December 31st during the Term and will be provided by Consultant to NTTA within thirty (30) days of such date. In all events, each report delivered by such date will be unqualified (or, if not, will be accompanied by a plan intended to address any identified deficiencies, which plan will be timely implemented to resolve such deficiencies) and Consultant will respond to such report.

18. PREVIOUS AGREEMENT

Without limiting the provisions of Subparagraph 16(q), this Agreement supersedes and terminates as of the Effective Date that certain agreement with Consultant's predecessor or affiliate, Wilbur Smith Associates designated as Contract DNT-544, as amended ("Previous Agreement"), provided, however, that nothing contained in Subparagraph 16(q) or this section will be deemed or construed as releasing Consultant from any representation, warranty, covenant, liability, or other obligation with respect to the services it provided under the Previous Agreement or otherwise, or as waiving or otherwise limiting the rights and remedies of NTTA in the event of any default, breach, or failure of performance by Consultant in connection therewith.

[Remainder of page intentionally blank;
signature pages follow this page.]

IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts hereof as of the effective date first above written.

NTTA:

NORTH TEXAS TOLLWAY AUTHORITY

By:_____

Name:_____

Title:_____

CONSULTANT:

_____

By:_____

Name:_____

Title:_____

ATTEST:

By:_____

Name:_____

Title:_____

ATTEST:

By:_____

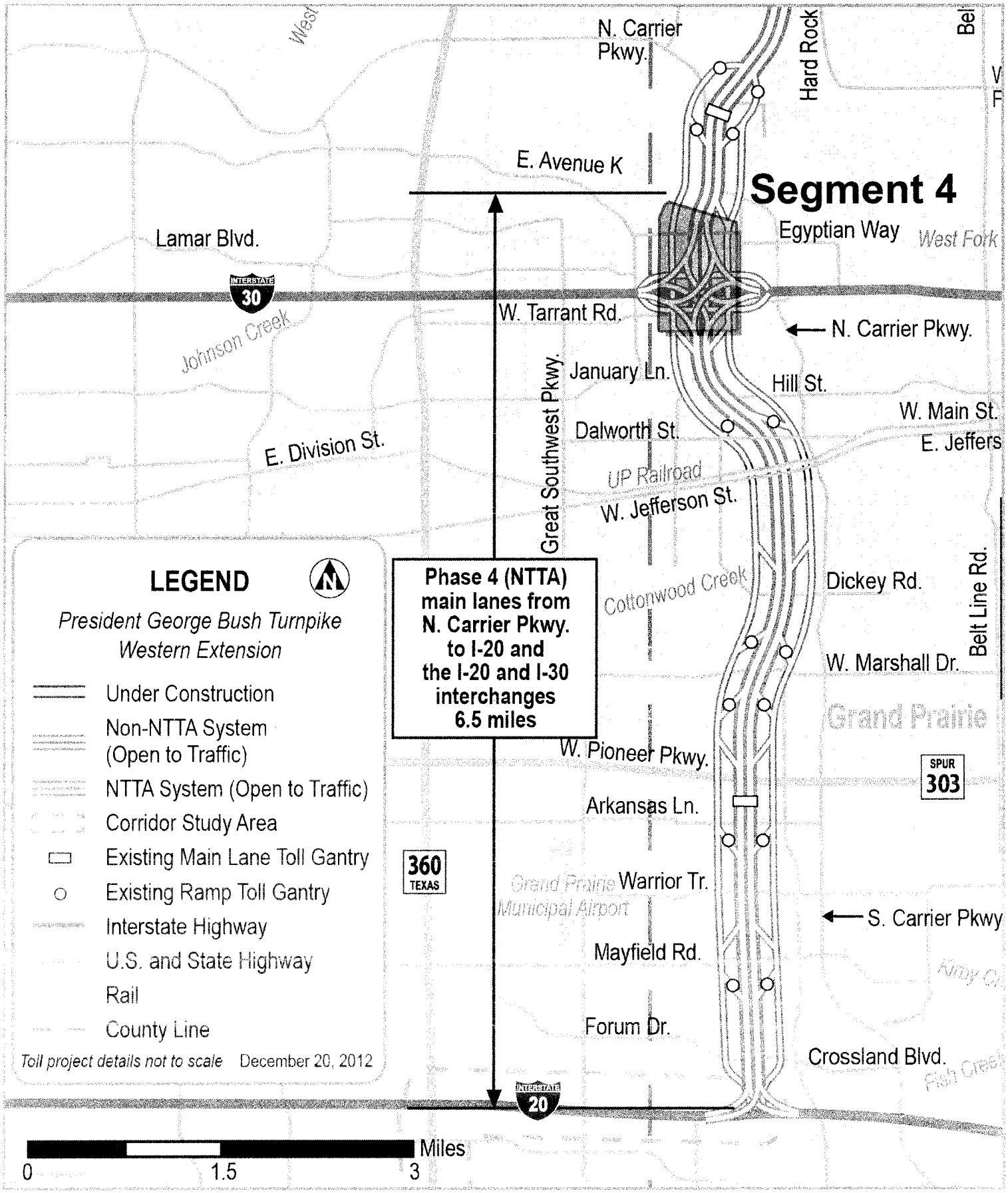
Name:_____

Title:_____

EXHIBIT A

Scope of Services

[following this cover page]



President George Bush Turnpike Western Extension

Project Location Map - Segment 4

NTTA
NORTH TEXAS TOLLWAY AUTHORITY

NORTH TEXAS TOLLWAY AUTHORITY
SCOPE OF SERVICES
FOR
CONSTRUCTION MANAGMENT CONSULTANT
FOR THE PRESIDENT GEORGE BUSH TURNPIKE WESTERN EXTENSION
LANDSCAPE AND IRRIGATION PROJECT

CONTRACT NUMBER
03583-SH 161-04-PS-PM

NOTE: This Scope of Services is attached to the Request for Qualifications to Serve as Construction Management Consultant for the President George Bush Turnpike Western Extension Landscape and Irrigation Project to the North Texas Tollway Authority (the "RFQ") and is made a part of the RFQ as if set forth in the body of the RFQ. All terms used in this Scope of Services have the same meaning given to those terms in the RFQ.

This Scope of Services is being provided to Respondents as part of the RFQ for informational purposes only. The Authority anticipates that a similar attachment will be attached to and made a part of the Contract with the Consultant. However, the Authority reserves the right to make modifications and clarifications to this form prior to its attachment to the Agreement for these Services to be negotiated between the Authority and the Consultant.

The services to be provided by the Consultant shall include managing the landscape and irrigation improvements project to the President George Bush Turnpike Western Extension. Overall, the project includes planting bed preparation, compost, mulch, trees, shrubs, ornamental grasses, sod, irrigation, concrete mow strip and flume construction, traffic handling, and sediment control measures. The Construction Manager will operate as an extension of, and in complete coordination with, the Authority's staff. To that end, the Construction Manager shall be expected to represent and forward the interests of the Authority throughout all aspects and phases of the Authority's activities dealing with contractors and suppliers, engineers, legal counsel, accountants, other consultants, government entities and the public, all in accordance with the highest professional standards.

The Construction Manager shall provide qualified technical and professional personnel, to perform to professional standards consistent with those typically met by nationally known and highly regarded construction management firms regarding the duties and responsibilities assigned under the terms of this Agreement. Unless otherwise instructed by the Authority, the Construction Manager shall minimize to the greatest extent possible the Authority's need to apply its own resources to assignments authorized by the Authority. The Authority, at its option, may elect to expand, reduce, and/or delete the extent of each work element described in the Scope of Services document, provided such action does not alter the intent of this Agreement.

I. PROJECT DESCRIPTION

The project involves construction of landscape and irrigation improvements along the corridor of President George Bush Turnpike Western Extension (PGBT-WE). These improvements are

located in Dallas County and include the following: planting bed preparation, compost, mulch, trees, shrubs, ornamental grasses, sod, irrigation, concrete mow strip and flume construction, traffic handling, and sediment control measures.

II. SERVICES TO BE PROVIDED

The Services provided under this Agreement shall be commensurate with the professional standards and quality consistent with those typically met by nationally known and highly regarded construction management firms. The Services shall include monitoring, management, coordination, planning, reporting, liaison, inspection, claims avoidance, problem-mitigation, and quality assurance for the construction of the Project. The overall service to be delivered by the Construction Manager is to ensure the timely completion of the construction of the Project in conformance with the plans and specifications issued by the Authority, including, but not limited to, verifying that construction and plant materials conform to Project specifications and are properly incorporated into the Project as required by the Project specifications. Safety of the public and the workers, public relations, construction and construction management cost control, dispute resolution, and environmental controls and mitigation are all important components of the daily construction management service and activities.

The Construction Manager shall not control or have charge of, and shall not be responsible for, construction means, methods, techniques, sequences, procedures of construction, health or safety programs or precautions connected with the work and shall not manage, supervise, control or have charge of construction.

The Construction Manager is considered to be an extension of the staff of the Authority and shall be subject to oversight, monitoring, and direction of the Authority. The Construction Manager shall ensure the Project is constructed in conformance to all federal, state, and applicable local environmental laws, regulations, and commitments entered into by the Authority. The Services shall include but not necessarily be limited to the following:

A. *Review of Documents and Information*

1. Authority-furnished Documents' Review

The Construction Manager shall review and evaluate Authority-furnished documents provided under this Agreement which detail existing and future elements of the Project. As part of that review effort, the Construction Manager shall meet with the Authority staff as necessary, to obtain an understanding of the contents of the Authority-furnished documents. The Construction Manager shall identify in writing any additional information that may be required.

The Authority-furnished documents shall include, as a minimum, the following:

- All project plans and specifications prepared by designers retained by the Authority
- All applicable Authority design manuals

2. Site Familiarization

The Construction Manager shall visit the Project sites and become familiar with the natural characteristics of the areas and shall familiarize itself with the existing information and conditions related to the Project.

B. *Technical Support Services*

The Construction Manager shall provide technical support systems and services including document control, Project cost control, cost estimates, and schedules.

1. Document Control / Document Control Structure

The Construction Manager shall utilize the Authority's document control systems namely the Enterprise Project Delivery System (EPDS) to assure the appropriate control of documentation and reporting. The Construction Manager shall comply with applicable Quality Management Systems Manual (QMS) procedures, while coordinating with the Construction Contractor to verify that the Contractor also complies with related requirements, including workflow response timeframes, etc. The purpose of this system is to provide the Authority with the most accurate and current information in a timely manner, while avoiding the deferral of outstanding issues until end of the project.

The Construction Manager shall keep complete and accurate record of documents received and issued by all parties involved in the construction of the project. Reviews and comments on these documents by the Construction Manager and others shall also be recorded and distributed to the Authority (via EPDS for both QMS related workflows and control of project documentation.)

2. Project Information Library

The Construction Manager shall create and maintain a Project information library, accessible at all times by the Authority and representatives of the Authority. This library will contain all pertinent Project documentation and will include, but not be limited to copies of the following:

- The Agreement, including Appendix "A"
- All Project related contracts and amendments
- Written, facsimile, photocopies, electronic and oral noted correspondence with all contactors, consultants, agencies, and other interest parties, related to the Project
- Design documents including construction plans and specifications
- Construction documents including addenda, change orders, supplemental agreements, extra work orders, plans and specification revisions, and "as built" documents
- Permits
- Monitoring reports
- Project budgets, estimates and schedules
- Testing and inspection reports, where records of all material testing shall be maintained with user friendly access, in a readily retrievable format
- Periodic status reports
- Submittals and shop drawings
- Progressive construction progress payments (via EPDS)
- SW3P Monitoring reports
- Monthly Progress reports

- Reports and documents as required in the NTTA Construction Manual, applicable QMS procedures, and "TxDOT's Area Engineers and Inspector's Contract Administration Handbook"
- Other information related to the project

3. **Cost Reporting System**

The Construction Manager shall utilize the EPDS software of the Authority for monitoring the Project budgets. The software allows reporting of Project costs, both actual and estimated and provides for projection of anticipated costs. The EPDS software shall be utilized by the Construction Manager, with updates included in the Monthly Progress Report.

4. **Contract Change Cost Estimating**

The Construction Manager shall develop independent and detailed estimates of cost for any change orders, extra work orders, or supplemental agreements on the Project.

5. **Scheduling**

Scheduling for the Project utilizing Primavera Project Management (P6) software shall be performed in a manner which is compatible with and complementary of the requirements for all construction contracts as set forth in QMS procedures and the Special Provision to Item 8, "Prosecution and Progress" of the Authority's construction contracts.

6. **Monthly Progress Report**

The Construction Manager shall issue detailed monthly project update information during the first week of each month. The Monthly Progress Report will contain, but not be limited to the following:

- An Executive Summary which summarizes its contents into a two or three page narrative
- Period covered
- General progress and status of Project construction
- Budget summary/cash flow information
- Schedule review and update
- Any major decision requiring input from the Authority
- Major milestones or other items of particular interest
- Progress photographs

The format of the Monthly Progress data reporting shall be developed by the Construction Manager and submitted to the Authority for approval.

C. *Communication and Coordination*

1. **Public Relations Activities**

The Construction Manager shall assist the Authority and Corridor Manager in public relations activities as requested, including the preparation of Project information and

attendance at internal or public meetings for the purpose of providing relevant Project information.

2. **Project Coordination**

   The Construction Manager will monitor construction activities on other project(s) which may be under construction within the boundaries of or adjacent to the Project. Specifically, the Construction Manager shall provide liaison services to promote coordination among the various jurisdictions, including cities and the county. The Construction Manager will initiate and conduct meetings between contractor representatives and parties performing or managing construction work on other projects related to the Authority's Project with a goal to maintain adequate cooperation among all adjacent stakeholders.

3. **Utilities**

   The Construction Manager shall provide liaison services to promote coordination among the various utility companies, and the contractors as necessary to provide all required service connectivity.

4. **Permitting**

   The Construction Manager shall assist the Authority in identifying any permits required for the construction of the Project and shall notify the Authority in writing of any needs relating to permit acquisition.

   The Construction Manager shall monitor the contractors to ensure that all applicable permits required for the construction are obtained in a timely manner, while also assisting the Authority on an as requested basis in obtaining additional construction project related permits (i.e. irrigation meter permits).

5. **Progress Review and Coordination Meetings**

   The Construction Manager shall meet with the Authority on a weekly basis. These meetings shall serve as a forum for the exchange of information, coordination of work efforts, identification of critical issues, determination of action plans and schedules for resolving critical issues, schedules and budget considerations and discussion of other issues deemed appropriated by the Construction Manager or the Authority. The Construction Manager shall prepare a summary of the above current project issues and submit it to the Authority.

D. ***Construction Phase Services***

During the construction of an assigned Project the Construction Manager shall:

1. **Preconstruction Meeting**

   Schedule and conduct a preconstruction meeting for the Project. The Construction Manager shall develop an agenda for the meetings for review and approval by the Authority. The Construction Manager shall document the meeting and provide copies of the minutes to the participating parties.

2. **Construction Contractor Liaison**

   Serve as a liaison among the construction contractor working on the Project and other concurrent constructions, interested public and private entities, and utilities companies to achieve maximum efficiency and continuity during the construction.

3. **Construction Observation Responsibilities**

Provide a professional qualified field organization satisfactory to the Authority to monitor, observe and manage the construction of all elements of the Project in a manner commensurate with industry standards. Elements of construction under the responsibility of the Construction Manager include, but are not necessarily limited to; planting bed preparation, compost, mulch, trees, shrubs, ornamental grasses, sod, irrigation, concrete mow strip and flume construction, traffic handling, and sediment control measures.

E. *Construction Management Team*

The Construction Manager shall propose a team structure consisting of Project Manager and Technician/Inspector. In addition, the Construction Manager shall designate the particular staff member assigned lead responsibility for assuring Construction Contractor conformance with contract requirements contained within the Project Specifications. The Construction Manager's field personnel shall be reviewed by the Authority to verify their qualifications and their adequacy of numbers. The Authority will advise the Construction Manager if in its judgment differing or specialized field inspectors are required or when their numbers need to be increased or decreased. The Construction Management Team shall:

1. **Daily Inspection and Reporting**

Maintain on a daily basis a complete and accurate inspection report documenting all activities and events related to the Project and a record of all work undertaken or completed by the contractors including quantities of pay items. Daily reports for the construction contract shall be furnished to the Authority on a timely basis.

2. **Material Testing and Inspection**

The Construction Manager shall be responsible for providing construction materials sampling, testing, documenting, and reporting for materials used in the construction of the Project, to verify that they comply with the Project's construction specifications and the relevant TxDOT and NTTA testing and inspection specifications and procedures (as defined in the NTTA Construction Manual and construction contract documents) in effect when the Project's construction contract was bid. In all cases, the tests are to be performed at a frequency equal to or greater than the minimum requirements of TxDOT and the NTTA. The Construction Manager shall perform plant material inspections and selection with the contractor and Authority's representative at vendor and/or grower sites prior to shipment.

The Construction Manager shall perform plant acceptance inspections of plant material delivered to the construction site to verify material is in accordance with plan specifications.

3. **Quantity Updates**

In tracking of work quantities for the purpose of verifying the Material Testing Consultant's conformance to contract requirements for material testing frequencies and locations, as contained within TxDOT's Guide Schedule and NTTA project specific testing requirements, the Construction Manager shall verify that the proper number of tests are taken and that the interpretation of those tests are in accordance with industry standard.

4. **Project Coordination**

   Meet with the construction contractor on a weekly basis for Project coordination and problem resolution. The Construction Manager shall obtain from the contractor a weekly schedule depicting progress over the past week and anticipated activities for the next week. Meeting Minutes shall be generated to document issues discussed and decisions made during these weekly progress meetings.

5. **Project Files**

   Maintain accurate and complete files of correspondence, telephone conversations, and other written documentation concerning construction activities. All records to be maintained as a part of the Project Information Library.

6. **Shop Drawing Submittals**

   Log, monitor, and coordinate the contractors' submittal of fabrication plans, shop drawings, and product and material submittals or brochures to/from the Authority.

7. **Accident Reporting**

   Report and record accidents involving the contractor's operations and/or accidents occurring on the job site or in the vicinity of the job site. Photograph and document conditions around each accident site to the extent reasonably possible with particular emphasis on the location and legend of regulatory signs and traffic control devices.

8. **Field Revision Modifications**

   Report field conditions that conflict with design drawings to the Authority and make timely recommendations for field modification to resolve conflicts.

9. **General Site Existing Condition Survey**

   Prior to the beginning of each construction contract, make a video record of existing physical features and facilities in and along the Project right-of-way to document the general site condition. Maintain a video camera at the Project at all times and record, by videotape, any unusual conditions and special events relating to construction activities.

10. **Project Site Communications System**

    Provide and maintain a radio or wireless telephone communication system adequate to allow prompt communication of all technician(s)/inspectors(s) with their project manager and senior staff personnel.

11. **Construction Contract Change Controls**

    Prepare change orders, supplemental agreements, extra work orders, force account documentation, and other similar items necessary to properly document changed conditions or modified construction activities.

12. **Monthly / Final Pay Estimates**

    Review contractor and Construction Material Testing (CMT) payment requests, as well as Utility Company submitted reimbursement requests, and prepare monthly and final contractor and CMT pay estimates.

13. **Claims Avoidance**

Act as liaison for and make sound claims avoidance recommendations to the Authority, so as to proactively resolve potential and actual construction problems and conflicts. Provide negotiation assistance on contractors' claims and make recommendations for resolutions of claims.

14. **Project Documentation Provisions**

Prepare and distribute those necessary forms for monitoring and inspecting construction activities, test reports, etc., using the standardized forms developed by the Authority and supplemented by the required TxDOT forms.

15. **Current Contract Document Provisions**

Establish and maintain a current set of contract documents (plan sheets and specifications) in the field office containing revised drawings and markups of changed conditions and field modifications. These plans will be used by the Construction Manager in developing Record Drawings.

16. **Project Photograph Log**

Maintain a project photograph log to record construction activity and preconstruction conditions. Digital color photographs are to be taken monthly and shall be sufficient in quantities to document all construction activities on the Project. All photographs shall have an imprinted date and labeled with a detailed description. Digital photos shall be filed with the Project records and shall be provided to the Authority as requested. The Biweekly Project Update reporting shall include representative pictures.

Additional photographs shall be taken of unusual construction techniques, accidents, unsafe working conditions, damaged equipment or materials, vandalism, construction problems, potential construction claim events, or any other items deemed worthy of records.

17. **Surveying Services**

Retain the services of a qualified firm to perform surveying services, in the event that such services may be requested by the Authority.

18. **Biweekly Inspection Reporting**

Maintain biweekly inspections reports (2 per month) of all traffic control devices for conformity with the Manual of Uniform Traffic Control Devices for Streets and Highways (MUTCD) and the suggested traffic control plans.

19. **Environmental Quality Coordination**

The environmental quality coordinator will be responsible to review all environmental documents associated with the project including but not limited to NEPA documents, delineations of waters of the U.S., Phase I ESAs, Phase II ESIs, and regulated material reports. Ensure compliance with all Authority commitments associated with Environmental documents and associated permitting requirements. Ensure compliance with the Clean Water Act including but not limited to temporary and permanent impacts to Waters of the U.S. Respond to contractor and construction manager questions pertaining to environmental issues.

20. **Maintenance Department Coordination**

In a timely manner, notify the Authority's Maintenance Department and Program Management (PMO) Environmental Compliance Manager (ECM) when and where the proposed schedule or sequence of construction is not attainable due to environmental issues, recommending alternative courses of action to resolve conflicts between environmental compliance requirements and the proposed sequence or schedule, when and where appropriate. Report any such potential conflicts to the PMO ECM regarding environmental issues affecting the Project.

21. **Storm Water Management**

The Construction Manager shall be responsible to verify that contractors comply with SW3P and the TPDES Construction General Permit TXR150000 as well as storm water processes stated in the *NTTA Environmental Manual.* The Construction Manager shall monitor construction activities to verify permit compliance throughout construction. Where the NTTA does not assign an ECT, the Construction Manager shall be responsible for ECT processes. In the event that environmental specialist services may prove to be required, the Construction Manager shall coordinate with NTTA to obtain such services. Specifically, ensure that a SWPPP meeting TCEQ requirements is in place and appropriate notifications filed prior to initiation of construction activities.

22. **Hazardous Materials**

Assess the site for suspected hazardous materials during construction activities. If the need arises, prepare documentation to assist the Authority in developing the Project in compliance with all regulations. Conduct on-site inspections to ensure that any hazardous materials are addressed in accordance with federal, state, and applicable local regulations.

23. **Control of Environmental Nonconformance**

The Construction Manager is responsible to review and approve proposed environmental nonconformance resolutions to ensure they are feasible. The PMO ECM remains available for as-needed support. The Construction Manager shall also be responsible to provide the approved resolution to the Construction Contractor for implementation and shall be responsible to verify that the approved resolution has been implemented.

F. *Construction Contract Finalization*

1. **Final Inspection Reporting**

For each construction contract conduct final inspection of the completed work and make recommendations relative to its acceptance, in conformance to current QMS requirements.

2. **Final Payment Determination**

Certify the accuracy of all final pay quantities and make recommendations relative to final payment to the contractors.

3. **Final Documentation**

Maintain detailed and accurate records that are compiled throughout the course of construction, so as to assure adequately detailed Record Drawing documentation of

completed construction activities, including the record drawing deliverable required for the final irrigation installations per the Project specifications.

4. **Project Close Out Documentation**

   Develop and submit all construction close out documents for approval by the Authority.

EXHIBIT B

COMPENSATION

[following this cover page]

EXHIBIT C

Insurance Requirements

[following this cover page]

NORTH TEXAS TOLLWAY AUTHORITY
Special Provision Addressing Insurance Requirements

Contract No.: 03583-SH161-04-PS-PM
Title: Construction Management Consultant
Project: Landscape and Irrigation Project
Location: President George Bush Turnpike Western Extension
Segment: 4
County: Dallas

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 coverage's 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 an ACORD Form. Except for professional liability insurance, occurrence-based policies are required. Any professional liability policy written on a claims-made basis must include coverage for an extended reporting period of not less than five years from the termination of the

coverage period under the policy. 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.

Each of the required policies (1), (2), and (3) listed below shall be endorsed to reflect a "Waiver of Subrogation" in favor of the Authority and the Additional Insured.

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

(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** 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) **Umbrella Liability Insurance** with minimum limits of **$1,000,000** per occurrence and in the aggregate annually, as applicable, within the underlying policies. The Umbrella Policy shall contain the provision that it will continue in force as an underlying insurance in the event of exhaustion of underlying aggregate policy limits.

(5) **Architects' and/or Engineers' Professional Liability Insurance** in the amounts normally carried for its own protection in the practice of providing architectural/engineering services, but in no event less than **$1,000,000** per claim and **$1,000,000** per aggregate.

(6) **Valuable Papers Insurance** in the amount of **$50,000** to ensure the full restoration of any plans, drawings, field notes, logs, test reports, diaries, or other similar data or materials, whether in an electronic or other format, relating to the work covered by the Agreement in the event of their loss or destruction, until such time as the data and materials have been delivered to the Authority.

The **Authority, TxDOT and the City of Grand Prairie** shall be included as additional insureds by endorsement to all policies required under the Agreement, other than Workers' Compensation and Professional Liability Insurance policies.

(7) **Insurance for Subconsultants.**

Insurance for any Subcontractor hired to work on this Contract will be the responsibility of the Primary Consultant and may be addressed by one of the following options:

(a) **Option 1:** The Contractor shall secure and maintain, until the expiration of the applicable Texas statute of limitations, Certificates of Insurance from all subconsultants, evidencing the proper types of insurance coverage's for the work to be performed by the Subconsultant. The Consultant shall also ensure that the Subconsultants required insurance coverage's are in amounts sufficient to cover the type of work assigned to the subconsultant, which coverage's will be approved by the NTTA; or

(b) **Option 2:** The Consultant shall take responsibility for the subconsultants insurance coverage by including the subconsultant as an additional insured under their required insurance coverage's.

(c) Insurance Certificates of subconsultants and sub-subconsultants will be maintained by the Consultant for the duration of the project.

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 Program Administrator."

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 coverage's by reason of such waiver.

EXHIBIT D

Consultant 's Response

[following this cover page]

EXHIBIT E

Commitment Agreement Form For All Subcontractors (Form 4906)

[following this cover page]