



NORTH TEXAS TOLLWAY AUTHORITY

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**REQUEST FOR QUALIFICATIONS FOR
RFQ 03597-NTT-00-PS-PM
Intelligent Transportation Systems Design
Engineering Services**

Non-Mandatory Pre-proposal Meeting

April 30, 2013 at 2:00 p.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
<input type="checkbox"/> Vendor Information Form	_____
<input type="checkbox"/> Confidentiality and Non-disclosure Statement – Attachment A	_____
<input type="checkbox"/> Conflict of Interest Questionnaire, Affidavit and Supplement to Conflict of Interest Questionnaire – Attachment B	_____
<input type="checkbox"/> Addenda acknowledgements (if issued by NTTA, the signed acknowledgement form must be included in the response to the RFQ)	_____
<input type="checkbox"/> Response to debarment and litigation declaration form	_____
<input type="checkbox"/> Complete Response as required in Section VI, subparagraph A, B and C (1 through 9)	_____
<input type="checkbox"/> Contract Exceptions	
<input type="checkbox"/> Exceptions listed (if exceptions are taken a marked up contract must be provided and reviewed by NTTA legal staff)	_____
<input type="checkbox"/> 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)
Mojo 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. Elliot (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 mission of the North Texas Tollway Authority 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 two (2) two years. The initial contract may be extended at the Authority’s option for up to (1) one additional (1) one year period. 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 firms currently serving as the General Engineering Consultant, Program Management Consultant and the Maintenance Management Consultant are expressly prohibited from providing services for this project. Additionally, any firms performing as

sub-consultants the firms providing the services listed above to these firms are also prohibited from providing services for this project.

The firm selected and with whom a contract is executed will be prohibited from providing construction management services during construction of the project.

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 3, 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 03597-NTT-00-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. The scope can be found in Attachment F – Exhibit A-1

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).

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 of the Respondent Team

The Consultant should provide a brief (two page) 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 the local office. If personnel from an office outside the Dallas-Fort Worth area are expected to be assigned some of the services, a statement of such intent should be made. The discussion should identify the major roles or assignments expected to be undertaken by each member of the Respondent Team, the name, address and phone number of the primary contact person for Respondent Team. (2 pages).

4. Project Experience

The Consultant shall provide a list of relevant project services of the Respondent Team currently ongoing or completed within the last five years. The project listing should not exceed three pages and should include the following (up to 2 pages):

- Project name and location,
- Brief description of the work performed on the project by any or all of the Consultant’s team members identified below,
- Proposers actions leading directly to quantifiable cost savings or efficiency in operations, if any, from past projects,

- Name, Address, and Phone Number of Client Contact (may be used for reference purposes).

5. Understanding of the Services

The Consultant should present a discussion of its understanding of the services set forth in the Scope of Services and its proposed approach and methodology to providing those Services. The Consultant should discuss the manner in which coordination and the exchange of information will be assured between the Authority's prime consultants, governmental bodies, and the Authority. The Proposer shall also identify any innovative or cost saving programs performed for past clients and any quantifiable benefits that this firm proposes. The discussion should include the Consultant's quality control program and the policies and procedure utilized to assure complete, accurate and quality contract documents (up to 2 pages)

6. Organization Chart

Prepare a graphical organization chart that identifies the key personnel that will be assigned to the project and their area of expertise (up to 2 pages)

7. Staffing Matrix

Provide a table identifying the key project staff members, including the following information for each individual (up to 2 pages)

- Name
- Texas Registration (architecture, P.E., E.I.T.,L.A., R.L.S.,or any other relevant registrations or certifications)
- Area of expertise
- Location of office where individual is normally assigned (if other than local office)
- Years of experience
- Years of experience (with the responding firm)

8. Project Manager(s)

Discuss the qualifications and experience of the designated Project Manager. Describe the Project Manager's role in previous projects of similar nature. The intent is to allow the proposer to elaborate on the unique qualifications of the Project Manager(s), and not restate the information provided in the resumes. (1 page total)

9. 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 03597-NTT-00-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	April 30, 2013 at 2:00 p.m.
Deadline for submitting questions:	May 3, 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. INITIAL SCREENING

The Director of Procurement Services will conduct an initial screening of each response to determine if the submittals are complete, fully responsive and contain the required signatures.

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 Manager as presented in section VI; paragraph 8 (25 points)
- Key staff assignments as presented in section VI; paragraph 6 & 7, (25 points)
- Firm's Qualifications as presented in section VI; paragraph 3, 4, & 5 (40 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 (40 points)
- Key staff assignments (30 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 be 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 protestor, 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 protestor 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 an 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 Session, 2007. **COMPLETE 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 governmental entity and the person meets requirements under Section 176.006(a). 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.

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 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.

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** **Date**
 Signature of person doing business with the governmental entity Date

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**

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).

Date Received

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.

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:	Intelligent Transportation System Engineer
RFQ number:	RFQ 03597-NTT-00-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
(Original signature required)

Date

NOTICE

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

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.

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
MONTHLY SUBCONTRACTOR PROGRESS REPORT**

Form NTTA 4907

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.



**NORTH TEXAS TOLLWAY AUTHORITY
SUBCONTRACTOR FINAL REPORT**

Form NTTA 4908

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.

ATTACHMENT E – INSURANCE REQUIREMENTS

**NORTH TEXAS TOLLWAY AUTHORITY
Design Only Contract
Special Provision Addressing
Insurance Requirements**

Option 1

Contract No.: 03597-NTT-00-PS-PM

**Contract Title: Intelligent Transportation System Professional Engineering
Services Consultant**

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

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

The Consultant shall purchase and maintain in full force and effect, until completion of the Services and the expiration of all applicable Texas statutes of limitations, with respect to claims that could arise out of the Services or the Consultant's performance of the Services, such insurance as will cover the obligations and liabilities of the Consultant and its agents, employees, and subconsultants which may arise from the Services or the Consultant's performance of the Services under the Agreement. All such insurance shall be written with companies having an A.M. Best Financial Strength Rating of **A-** or better, and be in a Financial Size Category of **X** or greater. The Consultant hereby agrees that all policies shall be on 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.

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 and the Consulting Engineer** 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 coverages by reason of such waiver.

**NORTH TEXAS TOLLWAY AUTHORITY
Design Only Contract
Special Provision Addressing
Insurance Requirements**

Option 2

Contract No.: 03597-NTT-00-PS-PM

**Contract Title: Intelligent Transportation System Professional Engineering
Services Consultant**

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

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

The Consultant shall purchase and maintain in full force and effect, until completion of the Services and the expiration of all applicable Texas statutes of limitations, with respect to claims that could arise out of the Services or the Consultant's performance of the Services, such insurance as will cover the obligations and liabilities of the Consultant and its agents, employees, and subconsultants which may arise from the Services or the Consultant's performance of the Services under the Agreement. All such insurance shall be written with companies having an A.M. Best Financial Strength Rating of **A-** or better, and be in a Financial Size Category of **X** or greater. The Consultant hereby agrees that all policies shall be on 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.

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:

- \$1,000,000** General Aggregate
- \$1,000,000** Products and Completed Operations Aggregate
- \$1,000,000** Personal and Advertising Injury
- \$1,000,000** 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) **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.

(5) **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 and the Consulting Engineer** shall be included as additional insureds by endorsement to all policies required under the Agreement, other than Workers' Compensation and Professional Liability Insurance policies.

(6) **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 coverages by reason of such waiver.

ATTACHMENT F – FORM OF CONTRACT

NORTH TEXAS TOLLWAY AUTHORITY

AGREEMENT FOR

**Intelligent Transportation System Professional Engineering Services
Contract 03597—NTT-00-PS-PM**

TABLE OF CONTENTS

1. THE SERVICES, GENERALLY 1
2. ASSIGNMENT OF SERVICES BY WORK AUTHORIZATION 2
3. COMPENSATION 2
4. INSURANCE 3
5. TERM; TERMINATION 4
6. INSPECTION OF BOOKS AND RECORDS 5
7. NOTICES 6
8. COMPLIANCE WITH LAWS 6
9. WARRANTIES 7
10. NON-DISCRIMINATION; DIVERSITY POLICY 7
11. PRIMARY CONTACT 7
12. OWNERSHIP OF INFORMATION 8
13. CONFLICTS OF INTEREST 8
14. RFQ 9
15. CONSULTANT’S RESPONSE 9
16. MISCELLANEOUS 9
17. SSAE 16 TYPE II AUDIT REQUIREMENT 15
18. PREVIOUS AGREEMENT 15

EXHIBITS

- Exhibit A - Scope of Services
- Exhibit B - Compensation
- 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
INTELLIGENT TRANSPORTATION SYSTEM PROFESSIONAL ENGINEERING
CONSULTANT FOR NTTA
CONTRACT 03597-NTT-00-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 _____.

WITNESSETH

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 intelligent transportation system professional engineering services as an engineering 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 policies 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 three (3) years, until September 19, 2015; this Agreement may be extended at the sole discretion of NTTA for two (2) additional one-year (1-year) terms. 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

b) If to <name of firm>:

Attention: <contact person>
 <complete address>

If to NTTA by United States mail:

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

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 will be 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, except 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:

CONSULTANT:

NORTH TEXAS TOLLWAY AUTHORITY

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

ATTEST:

ATTEST:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT A

Scope of Services

[following this cover page]

EXHIBIT A
NORTH TEXAS TOLLWAY AUTHORITY
GENERAL SCOPE OF SERVICES
FOR
DESIGN ENGINEER FOR INTELLIGENT TRANSPORTATION SYSTEM (ITS)
INFRASTRUCTURE PROJECTS
03597-NTT-00-PS-PM

The exact Scope of Services (SOS) under this Agreement will be determined during the life of the Agreement on a project-by-project, as needed basis. As a specific SOS will be determined when required, this solicitation will not describe construction/design project limits, locations, estimates of project costs, or schedules.

The work to be performed by the Design Engineer under this contract consists of providing engineering services for planned Intelligent Transportation System (“ITS”) infrastructure projects. The Design Engineer shall provide engineering services required for the preparation of Plans, Specifications and Estimates (PS&E) for:

- Closed Circuit Television (CCTV) camera automated Incident Detection Systems (IDS)
- Dynamic Message Signs (DMS)
- AVI Travel Time Sensors (TTS)
- Road Weather Information Systems (RWIS) sensors

The Authority has developed design guidelines that provide parameters to help preserve, maintain, or improve its assets to ensure the maximum useful life and provide acceptable service to its customers. It will be Design Engineer’s responsibility to consider and provide designs which address the life-cycle costs of asset given in the design guide.

In general, and except as may be modified herein or directed by the Authority, all engineering designs, plans, specifications and construction procedures will follow the usual practices of the Authority and the Texas Department of Transportation (TxDOT) for work of similar character and extent.

The Design Engineer shall coordinate the development of proposed projects with any local entity having jurisdiction or interest in the project (e.g. TxDOT, city, county, municipal utility district, etc.) or the engineering firm or firms performing similar engineering or engineering-related services, and shall cooperate fully with them in all matters.

Continuous close contact and cooperation between the Design Engineer and other firms furnishing engineering or engineering-related services, between the Design Engineer and the Authority, and the Authority’s Consultants will be essential to obtain the uniformity and high professional standard of design and construction which is mandatory throughout the design and construction of the project.

The Design Engineer shall collect, review and evaluate the available existing data pertaining to the project and prepare the Plans, Specifications and Estimates in accordance with the requirements and policies of the Authority.

The Design Engineer shall be responsible for identifying and delineating required temporary construction easements in areas outside the Authority's ROW. The Authority shall secure the necessary legal instruments. If, as the plans are further developed, it becomes apparent that easements or additional right of way is required within or abutting the Project, the Design Engineer shall immediately determine its extent and recommend to the Authority the limits of said easements or additional right of way required.

An evaluation of the Design Engineer's performance, professionalism, fee proposal spreadsheets for work, quality of plan preparation, etc. will be performed by the Authority.

Items To Be Furnished By The Authority

The Authority will furnish to the Design Engineer the following items:

- Conceptual designs, if available
- Available horizontal control points
- Available benchmark elevations and descriptions for vertical control
- Prepare required legal description, plats and sketches when additional ROW and/or easement(s) required
- ROW staking for additional field topography related to design work
- Photogrammetric mapping
- An electronic copy of the existing 2D Microstation planimetrics mapping file, on a reproducible CD
- Existing roadway 3D Microstation Digital Terrain Mapping (DTM) file on a reproducible CD
- Existing facilities construction documents and "as-builts"
- Available interface data for any projects adjacent to, crossing, and/or within limits
- Authority's CADD Guidelines (Latest Version) including Microstation seed files, Microstation resource files, and title sheet
- Existing geotechnical information, if available
- Available right-of-way maps
- Applicable Authority's special specifications, special provisions
- Latest Authority's bid tabulations
- Sample Invoice and Progress Report
- The Authority will secure all required agreements with governmental agencies and others
- Assistance will be provided to the Design Engineer to obtain the required data and information from other local, regional, TxDOT and federal agencies

- Timely review and decisions necessary for the Design Engineer to maintain the contracted project schedule

The services designated herein as “Services provided by the Engineer” shall include the performance of all professional engineering services for the projects that will be assigned by the Authority. In no way limiting the complete character of the services to be performed by the Design Engineer, the following is given as indication of the extent of those services and of the procedures contemplated

1) Geotechnical

All geotechnical work should be performed in accordance with the latest version of the NTTA’s Geotechnical Engineering Criteria:

- The Design Engineer shall determine the location of proposed soil borings for all structure foundations. The Authority will review and provide recommendation for a boring layout submitted by the Design Engineer showing the general location and depths of the proposed borings. Once the Design Engineer receives the Authority’s recommendations, the Design Engineer shall perform soil borings (field work), soil testing and prepare the soil borings in accordance with TxDOT’s procedures.
- Perform soil borings, testing and analysis to include settlement analysis and foundation design recommendations for column structures.
- Provide a signed, sealed (by the Design Engineer and the Geotechnical Engineer) and dated geotechnical report which contains soil boring locations, logs of borings, laboratory test results and design capacity curves including skin friction and point bearing for piling and drilled shaft foundations.
- Sign, seal and date soil boring data sheets to be used in the PS&E package. The preparation of soil boring data sheets are to be in accordance with Authority’s standards.

2) Field Surveying

The Design Engineer shall provide supplemental field surveying services necessary to verify Digital Terrain Model (DTM), produce topographic maps, establish the project baseline on the ground, locate and tie existing utilities to the project baseline, and update topography. Coordinate geometry shall be based on and tied into State plane surface coordinate system. During all surveying operations the traffic shall be controlled in accordance with the latest edition of the Texas Manual on Uniform Traffic Control Devices-Part IV. Unless noted otherwise, it will be the Design Engineer’s sole responsibility to provide all traffic control measures for the entire design team, including sub-consultants.

- Secure written permission on forms provided by the Authority to enter private property for the purpose of performing any surveying and or soil boring activities. In pursuance of the Authority’s policy with the general public, the Design Engineer shall not commit acts which will result in damages to private property

and the Design Engineer will make every effort to comply with the wishes and address the concerns of private property owners.

- Verify the benchmark coordinates and establish additional horizontal and vertical control for the project. The Design Engineer shall coordinate control with the adjacent design engineers, if any for consistency and accuracy of the project. In the event agreement cannot be reached, each Design Engineer shall meet jointly with the Authority for resolution. The Authority shall have sole discretion over the Design Engineers' disagreements and its decision shall be final
- Stake Project Baseline: The project baseline must be coincidental with, or parallel to, the stationed "Design Center Line." Baseline control points shall be established using 15M(ASTM) (5/8 inch) iron rods, 36 inches long, at P.C.'s, P.I.'s and P.T.'s of horizontal curves and at 1000 feet maximum intervals on tangents. Baseline control points shall be offset with set iron rods on both sides near the existing ROW lines at a measured distance. If available, coordinate to field tie to the Project baseline set by adjacent Design Engineers for consistency and accuracy
- Vertical Control: Locate previously set benchmarks established by TxDOT and Authority (State Datum); establish benchmark circuit (run levels) throughout the Project; establish additional benchmarks at intervals not to exceed 1,000 feet for the limits of the Project; tie benchmarks (station/offset) to Project baseline. Benchmarks shall be 20M (ASTM) (3/4-inch) diameter, 48 inches long, located near the existing ROW line at a measured distance. All benchmark circuits shall be tied to the State's elevation datum. Perform the benchmark circuits in accordance with good surveying practices. The Surveyor shall verify the closure and submit adjustments to Authority in a format provided by the Authority, for approval prior to beginning the field surveys.
- Ties to existing underground and overhead utilities (location, elevation, size and direction)
- Determine and make changes to topography from outdated maps due to development, erosion, etc.

3) Traffic Control Plan, Detours and Sequence of Construction:

- The Design Engineer shall prepare Traffic Control Plans (TCP) for the project. A detailed TCP shall be developed in accordance with the latest edition of the *Texas Manual on Uniform Traffic Control Devices for Streets and Highways* (Texas MUTCD). The Design Engineer is to implement the current Barricade and Construction (BC) standards as applicable. The Design Engineer shall interface and coordinate phases of work, including the TCP, with adjacent design engineers, if applicable
- The Design Engineer shall maintain continuous access to abutters during all phases of the TCP. The Design Engineer shall develop an inventory of all abutters along its alignment. The Design Engineer shall prepare exhibits for and attend meetings with the public, as requested by the Authority.
- The Design Engineer shall make every effort to prevent detours and utility relocations from extending beyond the proposed Right-of-way lines.

- The Design Engineer shall provide a written narrative of the construction sequencing and work activities per phase and determine the existing and proposed traffic control devices (regulatory signs, warning signs, guide signs, route markers, construction pavement markings, barricades, flag personnel, temporary traffic signals, etc.) to be used to handle traffic during each construction sequence. The Design Engineer shall show proposed traffic control devices at grade intersections during each construction phase (stop signs, flag person, signals, etc.).
- Where detours are required, the Design Engineer shall develop typical sections, and calculate quantities. The Design Engineer shall provide a detailed layout and arrangement of construction signs, and traffic control devices (including temporary signals and signal heads).
- The Design Engineer shall assist the Authority in coordinating mitigation of impacts to adjacent schools, emergency vehicles, pedestrians, bicyclists and neighborhoods.
- The Design Engineer shall assist the Authority in developing time of day lane closure restrictions and/or lane rental specifications.

4) Removal Plans

- The Design Engineer shall prepare removal plans detailing the removal limits and quantities of existing pavement, utilities, landscape, and various other removal items. The Design Engineer shall be required, whenever necessary, to contact the property owners and obtain any information that is needed so that the construction plans and specifications fully describe the work to be done. When appurtenances to buildings such as water lines, sanitary and storm sewer lines, utility service lines, wells, springs, septic tanks, underground storage tanks, etc., will be covered, exposed, or otherwise affected by or conflict with construction of the proposed improvements, the construction plans shall show the necessary disposition of these items.

5) Utilities:

- The Design Engineer shall identify all utility conflict points and prepare drawings early in the design phase to be used as exhibits in utility agreements. The exhibits shall be prepared using English units. The Design Engineer shall show existing utilities, including those in conflict with construction on these projects. The Design Engineer shall prepare plans to avoid or minimize utility adjustments, where feasible. The Design Engineer shall be responsible for sending out notices, with copies of exhibits and plans, including all milestone submittals. The Design Engineer shall determine prior to 30 percent milestone submittal if Subsurface Utility Engineering (SUE) will be required for any of these projects.
- The Design Engineer shall coordinate with and assist the Authority's ROW and Utilities Consultant with obtaining new utilities or the relocation of all existing utilities, including those in conflict with construction on these projects.

6) ITS:

Design Engineer shall be responsible for ensuring consistency with the Authority's ITS initiatives and coordinating with NTTA Information Technology (IT) and System Incident Management (SIM) Departments and their Consultants. The Design Engineer shall be responsible for the exact location and design of necessary ITS infrastructure such as CCTV camera towers, DMS structures, associated electrical systems, fiber optic communications cable, duct banks and associated access vaults to provide connectivity to the existing, proposed, and relocated communications backbone and laterals. Existing ITS CCTV camera towers shall be maintained in an operational state until proposed CCTV towers are operational. If existing CCTV towers cannot be maintained in an operational state, provision interim CCTV shall be provided. The Design Engineer shall provide the following information on ITS plans:

- Fiber Optics Conduit and Cable Layout(s) including backbone and laterals
- DMS (s)
- Proposed and Interim CCTV Camera (s)
- Ground Box(es)
- Pavement Sensors
- AVI Speed Map Antenna(es)
- Electrical System Conduit and Conductor Layouts (s)

Potentially awarded projects may include, but may not be limited to the following design services:

A) CCTV and DMS Retrofit Design Projects

- Retrofit projects include the installation and integration of ITS elements (CCTV camera locations, DMS, TTS and RWIS) throughout high-impact areas of existing roadway corridors to address existing camera coverage gaps and Traffic Management enhancement strategies.
- Provide the Engineer of Record services for awarded projects.
- Attend project meetings and coordinate with designated personnel upon the request of the Authority.
- Develop civil engineering Plans, Specifications and Estimates (PS&E) governing the design and construction of selected ITS elements in accordance with the Authority's established Quality Management System, EPDS, and its associated processes.
- PS&E shall include general notes, plan sheets, details, quantities, detailed cost estimates and specifications for the construction of ITS projects.
- Develop traffic control plans for the phasing and sequencing of traffic during project construction.
- Develop electrical plans in accordance with the Authority's existing Roadway Electrical System Manual and any applicable state, local or other jurisdictional requirements.

- Review applications necessary for project construction permits, which will be signed and submitted by the Authority or the Authority's designated representative.
- Assist in the preparation of project specifications and procurement materials, attend, at the Authority's request, pre-proposal meetings and provide written responses to questions submitted by proposers.
- Attend, at the Authority's request, ITS construction coordination meetings with construction contractors and designated NTTA representatives to discuss strategy, problem areas or required coordination activities.
- Review shop drawings and other information submitted by construction contractors to assess general conformance with system design plans and contract documents.
- Provide written responses to Requests for Information (RFI) submitted by construction contractors, the Authority's staff or Construction Management personnel.
- Prepare record drawings utilizing construction record information provided by construction contractors.
- All plans and drawings shall be prepared in accordance with the Authority's CADD Guidelines and electronic files will be submitted to the Authority upon request.

B) ITS Master Planning

The development of schematic-level ITS master plans for proposed roadway corridors. Work may include the collection and organization of roadway design data, the development of draft, schematic-level ITS Master Plans based upon existing Authority ITS design standards and specific technical requirements provided by the Authority.

- Attend project meetings and coordinate with designated personnel upon the request of the Authority.
- Develop schematic-level ITS master plans in accordance with the Authority's established Quality Management System, EPDS, and its associated processes.

C) Fiber Optic Cable Installation Plans

The development of fiber optic cable telecommunication installation plans based upon existing Authority's design standards and specific technical requirements provided by the Authority. Work may include development of installation drawings, details and quantity estimates.

- Attend project meetings and coordinate with designated personnel upon the request of the Authority.
- Develop Plans, Specifications and Estimates (PS&E) governing the installation of fiber optic cable in accordance with the Authority's established Quality Management System, EPDS, and its associated processes.
- PS&E will include plan sheets, general notes, quantities, detailed cost estimates and specifications for fiber optic cable projects.

- Develop traffic control plans for the phasing and sequencing of traffic during project construction.
- Review applications necessary for project construction permits, which will be signed and submitted by the Authority or the Authority's designated representative.
- Assist in the preparation of project specifications and procurement materials, attend, at the Authority's request, pre-proposal meetings and provide written responses to questions submitted by proposers.
- Attend ITS construction coordination meetings with construction contractors and designated Authority representatives to discuss strategy, problem areas or required coordination activities.
- Review shop drawings and other information submitted by construction contractors to assess general conformance with system design plans and contract documents.
- Provide written responses to Requests for Information (RFI) submitted by construction contractors, Authority's staff or Construction Management personnel.
- Prepare record drawings utilizing construction record information provided by construction contractors.
- All plans and drawings shall be prepared in accordance with the Authority's CADD Guidelines and electronic files will be submitted to the Authority upon request.

7) Permits:

- If applicable, the Design Engineer shall determine if the Airway-Highway Clearance requirement and agreements have been met in accordance with the latest FAA form 7460-1 "Notice of Proposed Construction or Alteration".
- All permit requirements and environmental requirements will be incorporated by the Design Engineer into the Design Engineer's plans and specifications as applicable and required.

8) Miscellaneous Details:

- Design Engineer will be responsible for developing miscellaneous construction details, modifications to the TxDOT and Authority's standards, and all incidentals as required.

9) Quantity Sheets:

Checked quantities for each pay item of work included in the proposal form for each construction contract shall be tabulated on a general summary sheet for each construction contract. The Design Engineer shall prepare item summaries, to be included in the plans, for the various items of the construction contract. The general summary sheet or sheets shall conform to TxDOT standards. Each item summary shall include the pay item number, unit of payment, plan sheet number, station limits or

locations, and any special notes. All quantities shall be summarized on the general summary sheet.

10)Estimate:

Prepare estimates of construction costs based on preliminary and final construction plans for the Project. The initial estimate of construction cost shall be prepared and submitted at the 30-percent plan completion stage. An estimate shall also be prepared and submitted at the 60-percent, 90-percent, and 100-percent completion stage and a final estimate prepared upon plan completion and acceptance by the Authority. One additional estimate may be requested at any time during the plan development process.

11)Specifications:

Prepare preliminary and final drafts of supplemental specifications, special provisions, notices, proposal, quantities, estimates, and other information necessary for the preparation of construction contract documents, including alternate bids. Standard Specifications, General Notes, and Special Provisions for the Project will be provided by the Authority; the Design Engineer shall modify the Standard Specifications, General Notes, and Special Provisions to fit its designs, plans, and construction requirements. All revisions of specifications, special provisions, special specifications or general notes must be submitted with the 90-percent complete plans in marked-up or draft copy format. The Design Engineer will compile and prepare the proposal book. The Authority will sign and seal the proposal book sealing page for Special Provisions 1 through 9. The Design Engineer will sign and seal the proposal book sealing page for all other specifications, special provisions and general notes.

12)Additional Services:

These services are not part of the scope of services but may be requested of the Design Engineer by the Authority, as the Authority may determine to be necessary to provide complete construction plans and bidding documents for usual items of construction.

- Provide assistance to the Authority, the construction manager selected by the Authority, and/or the PMC in matters relating to the clarifications or supplementation of plans and specifications during the construction period for the Project which is not a part of this SOS.
- In general, it is contemplated that the utility companies will prepare the necessary plans and estimates, complete the relocation of its facilities, and be reimbursed for this expense directly by the Authority if warranted, except when the Authority is requested to prepare utility plans. Should this not prove feasible in certain

cases, the Authority may direct or authorize the Design Engineer to prepare the designs, create the specifications, and prepare utility relocation or adjustment plans and include such relocations in its construction plans, and the Design Engineer will be compensated according to the Extra Work provisions of the Agreement. The utility companies may request the inclusion of their construction plans and specifications in plans issued by the Authority for construction of the project. If so, the Authority will require the Design Engineer to include such utility relocation plans, in logical numbered sequence, within the construction plans and specifications it is preparing and tabulate utility quantities in the construction plan quantity summary and bidding documents. To include this work, the Design Engineer will be compensated according to the Extra Work provisions of the Agreement. In addition to preparing the plans and data required, the Design Engineer shall be required to participate in negotiations with the utility companies for the maintenance, relocation, and restorations of all utilities.

- The following tasks are excluded without written authorization from the Authority:
 - i.) Provide Construction Phase Services including shop drawing reviews and response to Requests for Information, contract administration, pay estimate review, field inspections or materials testing.
 - ii.) Provide miscellaneous plans, details, etc. beyond those identified at project initiation.
 - iii.) Other miscellaneous professional services as may be reasonably requested by the Authority at its sole discretion.
 - iv.) Provide program and project management services.
 - v.) Provide on-site representation.
 - vi.) The development of functional, operational or technical requirements and specifications.
 - vii.) The technical review or Independent Verification and Validation (IV&V) of submitted system design plans and technical design materials.
 - viii.) The selection, procurement, installation, integration operation or maintenance of ETCS, ITS and FOC telecommunications hardware and software.

Control of Work:

The Design Engineer shall implement their Quality Assurance/Quality Control program prior to submitting plans to the Authority for each of the milestones. The Design Engineer is responsible for design errors and/or omissions that become evident before, during or after construction of the project. The Design Engineer's responsibility for all questions arising from design errors and/or omissions will be determined by the Authority and all decisions shall be final and binding. This would include, but not necessarily be limited to:

- All design errors and/or omissions resulting in additional design work to correct the errors and/or omissions.

- Preparation of design documents and detail drawings necessary for a field change due to design errors and/or omissions.
- Revisions of original tracings to the extent required for a field change due to design errors and/or omissions. The Design Engineer shall promptly make necessary revisions or corrections resulting from the Design Engineer's errors, omissions or negligent acts without additional compensation. Acceptance of the work by the Authority will not relieve the Design Engineer of the responsibility for subsequent correction of any such errors or omissions or for clarification of any ambiguities.

The Design Engineer shall submit for review, and shall participate in reviews of, its engineering designs, plans, and specifications by and with the staffs of TxDOT, the Authority, including the Maintenance and IT Departments, the City(s), PMC and other consultants working in the corridor. The PMC's review will consist of checking for and commenting on the format, adequacy, and economy of design and conformance with TxDOT and Authority's requirements including design standards, policies, specifications, and special provisions, and the Authority's Maintenance and IT requirements. The Design Engineer solely shall be responsible for the accuracy and adequacy of its respective engineering and technical work. Formal reviews shall occur at approximately 30-percent, 60-percent, 90-percent, and 100-percent completion of designs, plans, and specifications. A final submittal of PS&E shall be made after review and inclusion of comments from all reviewing agencies. The number of copies required for each review is outlined in the QMS manual. Microstation CADD files shall be submitted on approved electronic media with the interim milestone submittals and the final submittal to check for compliance with the Authority's CADD Guidelines. All designs, plans, schedules, and progress shall be performed as required, shall account for all maintenance and information technology issues, and shall be subject to the control, review, and approval of the Authority. Submittals will be rejected if not complete and a complete re-submittal will follow. Rejection of an incomplete submittal will not be cause for an extension of the schedule for submittals.

Progress of Engineering Services

- The Design Engineer shall submit a project design schedule in Microsoft Project format.
- During the preparation of the PS&E documents, the Design Engineer will be required to participate in external agency meetings to resolve design issues. The Design Engineer will further coordinate plan developments with the City(s), County(s), and other public or private entities having an interest the project.
- The Design Engineer will be required to participate in design coordination meetings that will include representatives from the Authority, the PMC, Section Design Engineers, and other consultant(s) engaged in working on the project. The Design Engineer shall prepare a monthly progress report of engineering services as an attachment to monthly pay estimate requests. The Design Engineer will be required to coordinate right-of-way requirements with the Authority and the Authority's Right-of-Way Consultant.

Deliverables

- All design calculations, including electronic computations, shall be neatly recorded on 8-1/2" x 11" sheets, fully titled, numbered, signed by the maker, checked, and indexed. A copy of these computations, fully checked, shall be submitted with the completed tracings.
- All prints of plans necessary for the development of the bidding and final construction plans and specifications, including prints required to be submitted for the approval of TxDOT and the Authority shall be clear and legible and shall be furnished at the expense of the Design Engineer. Final plans, specifications, and contract documents for the bidding process shall be printed and dispersed by the Authority. Provide the number of copies as required by the Authority's review process.
- The original white film mylar tracings (11"x17") on white bond paper shall be submitted to the Authority after the project letting and will reflect all addendum revisions that occur between the Final plan set and the letting. This shall be the original record copy, which shall be signed and sealed by the Engineer of Record. In addition, the Design Engineer will submit prior to letting one original set of final construction plans (11"x17") (printed directly from the printer) on white bond paper (min. 24lb.), which copy shall be the "make ready" set for use in printing copies for bidding.
- Any changes to the plans after final submittal for letting shall be noted with revision blocks, and the affected sheets (signed and sealed originals) shall be submitted to the Authority for distribution. Revisions will be numbered sequentially for each sheet.
- Upon completion of all work to be performed by the Design Engineer, all drawings, tracings, plans, calculations, estimates, specifications, and other items shall be delivered to the Authority. The Design Engineer will deliver, without limiting the provisions of the Agreement between the Design Engineer and the Authority, all electronic files and/or records developed for this project including Microstation files, coordinate geometrics in Geopak format (GPK files), and all other supporting documentation.

EXHIBIT B

COMPENSATION

[following this cover page]

EXHIBIT C

Insurance Requirements

[following this cover page]

**NORTH TEXAS TOLLWAY AUTHORITY
Design Only Contract
Special Provision Addressing
Insurance Requirements**

Option 1

Contract No.: 03597-NTT-00-PS-PM

**Contract Title: Intelligent Transportation System Professional Engineering
Services Consultant**

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

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

The Consultant shall purchase and maintain in full force and effect, until completion of the Services and the expiration of all applicable Texas statutes of limitations, with respect to claims that could arise out of the Services or the Consultant's performance of the Services, such insurance as will cover the obligations and liabilities of the Consultant and its agents, employees, and subconsultants which may arise from the Services or the Consultant's performance of the Services under the Agreement. All such insurance shall be written with companies having an A.M. Best Financial Strength Rating of **A-** or better, and be in a Financial Size Category of **X** or greater. The Consultant hereby agrees that all policies shall be on 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.

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 and the Consulting Engineer** 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 coverages by reason of such waiver.

**NORTH TEXAS TOLLWAY AUTHORITY
Design Only Contract
Special Provision Addressing
Insurance Requirements**

Option 2

Contract No.: 03597-NTT-00-PS-PM

**Contract Title: Intelligent Transportation System Professional Engineering
Services Consultant**

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

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

The Consultant shall purchase and maintain in full force and effect, until completion of the Services and the expiration of all applicable Texas statutes of limitations, with respect to claims that could arise out of the Services or the Consultant's performance of the Services, such insurance as will cover the obligations and liabilities of the Consultant and its agents, employees, and subconsultants which may arise from the Services or the Consultant's performance of the Services under the Agreement. All such insurance shall be written with companies having an A.M. Best Financial Strength Rating of **A-** or better, and be in a Financial Size Category of **X** or greater. The Consultant hereby agrees that all policies shall be on 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.

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:

\$1,000,000 General Aggregate
\$1,000,000 Products and Completed Operations Aggregate
\$1,000,000 Personal and Advertising Injury
\$1,000,000 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) **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.

(5) **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 and the Consulting Engineer** shall be included as additional insureds by endorsement to all policies required under the Agreement, other than Workers' Compensation and Professional Liability Insurance policies.

(6) **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 coverages 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]