



**NORTH TEXAS TOLLWAY AUTHORITY**

**NORTH TEXAS TOLLWAY AUTHORITY  
RFQ 03610-PGB-06-PS-PM**

**REQUEST FOR QUALIFICATIONS FOR  
President George Bush Turnpike Eastern Extension  
Pilot Noise Analysis Consultant Services**

**Non-Mandatory Pre-proposal Meeting**

**April 19, 2013 at 10:00 a.m.**

**Firms are encouraged (but not required) to attend the  
Pre-proposal meeting for this project**

**In the Board Room at the following location:**

**NORTH TEXAS TOLLWAY AUTHORITY  
5900 West Plano Parkway, Suite 100  
Plano, Texas 75093**

**Responses Due:**

**May 10, 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: \_\_\_\_\_

\_\_\_\_\_

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

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

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

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

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

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

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

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

**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"/> 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	

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FIRM NAME

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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)  
Mojoy Haddad (Tarrant County)  
Jane Willard (Collin County)  
David R. Denison (Denton County)  
Matrice Ellis-Kirk (Dallas County)  
George “Tex” Quesada (Dallas County)  
Michael R. Nowels (Denton County)  
William D. Elliott (Governor’s appointee)

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

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

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

## **II. TERM**

The purpose of this contract is to select a firm to provide additional acoustical and noise mitigation alternative for the residential communities surrounding Section 31 (including Ridgecove, Harborview, Magnolia Springs and Lake Forest Estates) of the President George Bush Turnpike Eastern Extension (PGBT EE) which extends from south of Main Street in Rowlett to the north shore of Lake Ray Hubbard, a length of approximately 1.4 miles. The term of this contract is six (6) months but may be extended at the discretion of the NTTA.

## **III. MULTIPLE AWARDS LIMITATION AND CONFLICTS**

The NTTA has not defined any award limitations or conflicts at this time.

#### 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 April 17, 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 the 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](mailto:badamson@ntta.org)  
**RFQ 03610-PGB-06-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 Brandy Adamson, Senior Buyer.** 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 or Brandy Adamson, Senior Buyer. 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.

Responses must not exceed ten (10) page (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 ten (10) pages will not be reviewed. The ten (10) page limit does not include professional resumes, cover sheets, fly leaves, table of contents, requested appendices and dividers or brochure material. These additional items should be limited and directly applicable to this RFQ.

#### 1. **Cover Letter**

Provide a transmittal cover letter that contains a brief summary and overview of the qualifications of the Respondent and the case as to why the respondent's firm should be selected as the Noise Mitigation Consultant for the President George Bush Turnpike Eastern Extension Pilot Noise Analysis Project for the Authority. Identify the name, address, e-mail address and phone number of the Respondent, if applicable names of all sub-consultants the Respondent proposes to use in the provision of the Services, and the name of the Respondent's Project Manager who will have primary day-to-day responsibility for overseeing the Respondent's provision of the Services. The letter must be signed by an individual authorized to enter into an agreement with the Authority.

#### 2. **Table of Contents**

Maximum of one page.

#### 3. **Introduction of the Respondent Team**

Provide a brief overview of the Respondent and all proposed sub-consultant firms (collectively, the "Respondent Team"). Include information regarding the establishment of each team member's local office and the components of the Services that will be provided by that local office, if any. Identify the major roles or assignments expected to be undertaken by each member of the Respondent Team, and the name, address, e-mail address and phone number of the primary contact person for each firm in the Respondent Team.

#### 4. **Experience**

List relevant **noise mitigation** projects undertaken by the Respondent and each sub-consultant, whether currently ongoing or completed within the last five years. Include the following for each listed project:

- Project name and location.
- Professional services "role," i.e. define the nature of the services provided and outcomes and who the services were provided for.
- Brief description of the work performed on the project and all outcomes and innovative alternatives by any or all of the key Respondent Team members.
- Depth of Respondent Team member's demonstrated past performance.
- Current and verified names, addresses and phone contacts of all project listing client references.

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

- Depth of relevant past experience providing noise analysis and mitigation services on major projects and innovative alternatives.
- Demonstrated experience in use/application of Traffic Noise Guidelines, traffic noise modeling software, and appropriate sound measuring equipment under the detailed requirements of TxDOT and the Authority
- The current status and a detailed description of the Consultant Team's accreditations and certifications.
- An in-depth description of the firm's experience in providing services substantially similar to the Services described in this RFQ and the attached Scope of Services on schedule.

## 5. Understanding of the Services

Present a response of the Respondent's understanding of the Services set forth in the Scope of Services as found in Exhibit A of the form contract and its proposed approach and methodology to providing those Services. Discuss the Respondent's quality control program and the policies and procedures used to assure complete, accurate and high-quality work, which may include identifying any supplemental tasks deemed necessary or alternatives that may enhance this specific project, reduce costs, or accelerate project delivery.

## 6. Organization Chart

Provide a graphical organization chart that identifies the **key** personnel of each Respondent team member that would be assigned to perform the Services and their area of expertise and responsibility. In the chart, clearly include the following data for each individual:

- Name,
- Position,
- Texas professional registration(s) (P.E., E.I.T., R.P.L.S., T.A.R., S.E.T., other),
- Area(s) of expertise,
- Firm currently employed by,
- Years of experience related to the services,
- Location of the office to which the person is normally assigned (denote in organizational chart, by asterisk, if individual is **not** normally assigned to local office) and
- Anticipated availability beginning May 1, 2013 (indicated by a percentage).

## 7. Résumés

Résumés for each key individual shall be included as part of the response. The senior personnel on the Respondent Team shall meet the minimum requirements as described below:



## 8. Respondent's Project Manager

The Respondent's proposed Project Manager must have a minimum of ten (10) years of experience in serving in the lead role of managing noise analysis and mitigation services on larger-scale transportation construction projects. The Project Manager must possess a Bachelor's Degree in environmental studies, urban planning, civil or environmental engineering, or a related field.

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 potential provider to elaborate on the unique qualifications of the Project Manager.

## 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 to:**

North Texas Tollway Authority  
Director of Procurement Services  
**RFQ: # RFQ 03610-PGB-06-PS-PM**  
5900 West Plano Parkway, Suite 100  
Plano, TX 75093

### B. SCHEDULE

Public notification/advertisement:	<b>April 5, 2013</b>
	<b>April 12, 2013</b>
Pre-Proposal meeting	<b>April 19, 2013</b>
Deadline for submitting questions:	<b>April 26, 2013</b>
RFQ Proposals due:	<b>May 10, 2013</b>

**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, creating a short list of the most qualified firms to be invited for an interview and presentation. At this step, the NTTA will use the following evaluation factors:

- Relevant technical experience in transportation noise analysis (40 points)
- Understanding of project objectives and priorities (40 points)
- Ability to meet time constraints of the project (10 points)
- Business Diversity (10 points)

Scoring in this stage will only be utilized to short-list firms and scores will not be carried forward to next stage of the evaluation process.

Based on the selection committee's evaluation of the RFQ responses in this stage, 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 Step Two Evaluations.

### **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.

- Demonstrate understanding of project by describing a work plan outline including technical approach, schedule and reporting details (60 points)
- Ability to appropriately communicate findings and recommendations (40 points)

All short-listed firms will be notified by Procurement Services, by letter of 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 designated person 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.

The NTTA intends to qualify a limited number of firms in each of the categories listed in section II, of this RFQ. The most qualified firms will be chosen based on a specific qualifying criteria and taking into consideration our business needs within each category.

## **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 protester when the original protest was filed.

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

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

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

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

#### **F. REVOLVING DOOR**

The NTTA has adopted 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: \_\_\_\_\_



## ATTACHMENT B

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

Adopted 6/29/2007

**AFFIDAVIT CONFLICT OF INTEREST AND DISCLOSURE STATEMENT**

Project:	President George Bush Turnpike Eastern Extension Pilot Noise Analysis Consultant Services
RFQ number:	03610-PGB-06-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.

**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 14<sup>th</sup> 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](mailto:businessdiversity@ntta.org). Please copy the Procurement Services Department at [bidpurchasing@ntta.org](mailto: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 15<sup>th</sup> 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 15<sup>th</sup> of each month. Prime contractors will have a designated User ID & password to login to the contract compliance tracking system via the following link: <https://pro.prismcompliance.com>

#### **6. Noncompliance enforcement**

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

**NORTH TEXAS TOLLWAY AUTHORITY  
“D/M/WBE GOAL”**

**Contract No:** 03610-PGB-06-PS-PM

**Project:** President George Bush Turnpike Eastern Extension Pilot Noise Analysis Consultant Services

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

DBE	_____	% of total contract amount
M/WBE	_____	% of total contract amount
<b>Total D/M/WBE Goal</b>	<b><u>10</u></b>	<b>% of total contract amount</b>

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

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



## **Information related to Business Diversity scoring**

### **Business Diversity Evaluation Criteria (10 points)**

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

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

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

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

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

**1. Introduction**

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

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

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

**2. Contractor’s Obligations**

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

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

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

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

### **3. Equipment**

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

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

### **4. Documentation**

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

### **5. Noncompliance**

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

### **6. Measurement and Payment**

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

**ATTACHMENT D –BUSINESS DIVERSITY REPORTING FORMS**

FORM 4906  
FORM 4907  
FORM 4908







**NORTH TEXAS TOLLWAY AUTHORITY  
SUBCONTRACTOR FINAL REPORT**

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

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

\* 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  
Special Provision Addressing  
Insurance Requirements**

**Contract No.:** 03610-PGB-06-PS-PM

**Project:** Noise Analysis

**Location:** President George Bush Turnpike Eastern Extension

**Section:** 31

**County:** Dallas

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

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

The Consultant shall purchase and maintain in full force and effect, until completion of the Services and the expiration of all applicable Texas statutes of limitations, with respect to claims that could arise out of the Services or the Consultant's performance of the Services, such insurance as will cover the obligations and liabilities of the Consultant and its agents, employees, and subconsultants which may arise from the Services or the Consultant's performance of the Services under the Agreement. All such insurance shall be written with companies having an A.M. Best Financial Strength Rating of **A-** or better, and be in a Financial Size Category of **X** or greater. The Consultant hereby agrees that all policies shall be on an ACORD Form. Except for professional liability insurance, occurrence-based policies are required. Any professional liability policy written on a claims-made basis must include coverage for an extended reporting period of not less than five years from the termination of the coverage period under the policy. The Consultant hereby agrees that the Authority has

the right to review the insurance providers, and that all companies must be acceptable to the Authority.

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

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

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

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

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

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

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

(3) **Business Auto Liability Insurance** with minimum limits of \$500,000 Combined Single Limit for Bodily Injury and/or Property Damage, including Owned, Hired and Non-Ownership Liability Coverage. This policy shall not contain any limitation with respect to a radius of operation for any vehicle covered, and shall not exclude from the coverage of the policy any vehicle to be used in connection with performance of the Services.

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

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

(7) **Insurance for Subconsultants.**

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

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

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

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

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

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

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

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

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

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

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

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

**ATTACHMENT F – FORM OF CONTRACT**

**NORTH TEXAS TOLLWAY AUTHORITY**

**AGREEMENT FOR**

**President George Bush Turnpike Eastern Extension  
Pilot Noise Analysis Consultant Services  
Contract 03610-PGB-06-PS-PM**

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**EXHIBITS**

- Exhibit A - Scope of Services
- Exhibit B - Compensation
- 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  
PILOT NOISE ANALYSIS CONSULTANT FOR NTTA  
CONTRACT 03610-PGB-06-PS-PM**

THIS PROFESSIONAL SERVICES AGREEMENT is made as of this <day> day of <month, 20xx ("Effective Date"), by and between the NORTH TEXAS TOLLWAY AUTHORITY ("NTTA"), whose address is 5900 West Plano Parkway, Suite 100, Plano, Texas 75026, and <FIRM NAME>, a <state of incorporation or partnership>, whose address is <complete address>

**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 5, 2013 ("RFQ"), NTTA sought to identify and obtain the services of a qualified firm to provide <type of services> services as a <type of services>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 <type of services>Consultant for the NTTA pursuant to the terms set forth in this Agreement and perform the duties of the <type of services>, 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 noise mitigation analysis. 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 services.. 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

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, Services will be compensated based on the negotiated fee.

## 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 six (6) months, until \_\_\_\_\_; 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) 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.
- u) 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.

- v) 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.
- w) 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.
- x) 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.

- y) 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

<NAME OF FIRM>

By: \_\_\_\_\_

\_\_\_\_\_

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

By: \_\_\_\_\_

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

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

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

ATTEST:

ATTEST:

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

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

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

**EXHIBIT A**

**Scope of Services**

[following this cover page]



President George Bush Turnpike Eastern Extension Section 31  
Pilot Noise Mitigation Scope of Services

**General Description**

The selected firm will provide additional acoustical and noise mitigation solutions for the residential communities surrounding Section 31 (including Ridgecove, Harborview, Magnolia Springs and Lake Forest Estates) of the President George Bush Turnpike Eastern Extension (PGBT EE) which extends from south of Main Street in Rowlett to the north shore of Lake Ray Hubbard, a length of approximately 1.4 miles.

The work effort of the selected firm is to present additional noise mitigation solutions that provide the greatest noise reduction at the most economical cost. Mitigation solutions must meet highway use standards.

**Deliverables**

Prior to commencement of work, a work plan is required to be submitted within 2 weeks of the Notice to Proceed given by NTTA that will address:

- Plan of analysis; method, equipment and/or hardware and software to be used
- The work plan will be approved by NTTA prior to commencement of any work.

Following review and analysis, findings will be presented in a written report and presented to NTTA.

- The report will include a detailed description of the analysis performed; discussing methodology and findings.
- It will also include up to three mitigation options along with mitigation costs and predicted noise decibel reduction for each option presented. Costs should including:
  - Product costs and installation, including design and construction costs
  - Maintenance costs of the installed product
  - Construction duration and work area needed for mitigation options
- The specialists shall deliver the final report no later than 30 days after the work plan is approved by NTTA.

**EXHIBIT B**

**COMPENSATION**

[following this cover page]

**EXHIBIT C**

**Insurance Requirements**

[following this cover page]

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

**Contract No.: 03610-PGB-06-PS-PM**

**Project: Noise Analysis**

**Location: President George Bush Turnpike Eastern Extension**

**Section: 31**

**County: Dallas**

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

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

The Consultant shall purchase and maintain in full force and effect, until completion of the Services and the expiration of all applicable Texas statutes of limitations, with respect to claims that could arise out of the Services or the Consultant's performance of the Services, such insurance as will cover the obligations and liabilities of the Consultant and its agents, employees, and subconsultants which may arise from the Services or the Consultant's performance of the Services under the Agreement. All such insurance shall be written with companies having an A.M. Best Financial Strength Rating of **A-** or better, and be in a Financial Size Category of **X** or greater. The Consultant hereby agrees that all policies shall be on an ACORD Form. Except for professional liability insurance, occurrence-based policies are required. Any professional liability policy written on a claims-made basis must include coverage for an extended reporting period of not less than five years from the termination of the coverage period under the policy. The Consultant hereby agrees that the Authority has

the right to review the insurance providers, and that all companies must be acceptable to the Authority.

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

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

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

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

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

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

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

(3) **Business Auto Liability Insurance** with minimum limits of \$500,000 Combined Single Limit for Bodily Injury and/or Property Damage, including Owned, Hired and Non-Ownership Liability Coverage. This policy shall not contain any limitation with respect to a radius of operation for any vehicle covered, and shall not exclude from the coverage of the policy any vehicle to be used in connection with performance of the Services.

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

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

(7) **Insurance for Subconsultants.**

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

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

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

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

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

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

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

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

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

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

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

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

**EXHIBIT D**

**Consultant 's Response**

[following this cover page]



**EXHIBIT E**

**Commitment Agreement Form For All Subcontractors**  
**(Form 4906)**

[following this cover page]