

**AGENDA**  
**NORTH TEXAS TOLLWAY AUTHORITY**  
**BOARD OF DIRECTORS REGULAR MEETING**  
**BOARD ROOM, SUITE 200**  
**5900 WEST PLANO PARKWAY**  
**PLANO, TEXAS 75093**  
**MARCH 16, 2022**  
**10:00 AM**

All items included on this agenda, including those listed for executive session, may be discussed and acted upon by the Board of Directors of the North Texas Tollway Authority (NTTA). Agenda item numbers are assigned for ease of reference and do not necessarily reflect the order of their consideration by the Board. The Board may discuss any agenda item in executive session whenever legally justified under the Texas Open Meetings Act.

1. Call to order and establishment of quorum
2. Pledge of Allegiance
3. Public comments not related to specific agenda items
4. Comments and announcements from the Chairman and Board Members
  - A. 2021 charitable fundraising results
5. Committee Chair reports
  - A. Regional Transportation Council
  - B. Customer Service, Projects, and Operations
  - C. Finance, Audit, and Administration
6. Approval of the minutes from February 16, 2022 regular board meeting

**ITEMS RECOMMENDED FOR APPROVAL BY THE CUSTOMER SERVICE,  
PROJECTS, AND OPERATIONS COMMITTEE**

7. Request to advertise for the following:
  - A. Construction services for President George Bush Turnpike at Arbor Creek erosion mitigation
  - B. Chisholm Trail Parkway Total Routine Maintenance contract
  - C. Janitorial services at Gleneagles

8. Contract approval for the following:
  - A. Construction services for Ohio Maintenance Service Center building improvements
  - B. Video management and analytics system:
    1. Software
    2. Servers
    3. Storage

**ITEMS RECOMMENDED FOR APPROVAL BY THE FINANCE, AUDIT, AND ADMINISTRATION COMMITTEE**

9. Vendor selection for the following:
  - A. Custodial and Trustee services
10. Annual review and approval of the following policies:
  - A. Debt policy
  - B. Investment policy and strategy including qualified financial institutions
11. Underwriting pool selection

**ACTION ITEM**

12. Legal engagement agreement

**BRIEFING ITEMS**

13. Consolidated Monthly Performance Report
14. Executive Director Report
  - A. Contracts, supplements, and change orders not exceeding \$300,000.00 executed in February 2022
15. EXECUTIVE SESSION – Pursuant to Chapter 551, Subchapter D, Texas Government Code:
  - A. Section 551.071, to receive advice from legal counsel about pending or contemplated litigation and/or settlement offers or other legal matters regarding.
    1. Legal update
16. Adjourn

**NOTES**

Any individual with a disability who plans to attend this meeting and requires auxiliary aids or services should notify NTTA as far in advance as possible, but no less than 2 days in advance, so that appropriate arrangements can be made. Contact Human Resources by telephone at 214-461-2079 or Relay Texas at 1-800-735-2989; by e-mail at ADA2@ntta.org; or in person at 5900 W. Plano Parkway, Plano, Texas 75093. Additional information about NTTA is available on the NTTA website at <http://www.ntta.org>.

Board members may participate in this meeting via telephone conference call in accordance with Section 366.262 of the Texas Transportation Code. Pursuant to Texas Penal Code Section 30.07, the open carrying of handguns will not be allowed at this meeting.

**PUBLIC NOTICE**  
**In association with Resolution No. 22-15**

This notice is given pursuant to Tex. Gov't Code § 2254.1036.

- A. The North Texas Tollway Authority (“NTTA”) intends to pursue claims for monetary damages, declaratory relief, and other legal remedies (“Damages”) in relation to the retaining walls located along an approximately 6-mile segment of the President George Bush Turnpike between Interstate Highway 20 and Interstate Highway 30 in Dallas County, Texas (the “Litigation”). NTTA’s desired outcome in pursuing the Litigation is to recover Damages owed to NTTA for the failure to properly design and/or construct the subject retaining walls, in addition to other relief allowed under the law. Therefore, there is substantial need for the legal services.
- B. NTTA wishes to engage the following law firms (“Counselors”): Malouf & Nockels LLP and Kaeske Law Firm. Details regarding their competence, qualifications and experience are attached at Exhibit 1.
- C. The legal services for which the Counselors are retained cannot be adequately performed by the attorneys and supporting personnel of NTTA. NTTA’s budget is strained, and there are limited resources for its legal department. NTTA General Counsel’s office is engaged in hundreds of transactional matters and in overseeing, managing, and litigating numerous other matters. In addition, the investigation, research, and litigation of the claims will require specialized attorneys who have knowledge and experience with complex engineering principles, including structural and geotechnical engineering; retaining walls, including Mechanically Stabilized Earth walls; construction and contract issues, including the procurement, standards, specifications, and designs associated with roadway projects; and professionals with expertise in these fields. Such work will require numerous specialized attorneys, paralegals and others who are familiar with the wrongful actions and/or inactions involved in the design and construction of retaining walls. Thus, NTTA does not have the resources it believes will be necessary to engage in protracted, time-consuming, and expensive litigation.

D. The legal services for which Counselors are proposed to be retained cannot reasonably be obtained from attorneys in private practice under a contract providing for the payment of hourly fees without regard to the outcome of the matter for the following reasons:

- (1) **TIME:** It is not economically feasible for NTTA to pay outside counsel on an hourly basis for what NTTA anticipates, based on NTTA's experience with similar previous litigation, will require thousands of hours of unbudgeted attorney time advanced in pursuing the relief NTTA expects to achieve.

The issues involved in NTTA's claims, including the parties' respective responsibilities for the proper design and construction of Mechanically Stabilized Earth retaining walls, have not been adjudicated and determined. The parties will likely aggressively oppose all aspects of the Litigation. It will require the skill of attorneys who have familiarity with such unique, complex litigation.

- (2) **COMPLEXITY/DAMAGES:** Besides legal issues, determining damages may be complicated. Damages will be based, in part, on: 1) expenses incurred by NTTA on a limited portion of the subject walls, and 2) anticipated expenses to be incurred by, NTTA on the remaining portion of the walls which have not yet been remediated. The engineering and construction data necessary to formulate the calculation is unclear at this time, but it is anticipated to be complex and difficult to understand. Further, because there are expected to be multiple defendants, it is likely that they have different business practices and ways of maintaining their data. It will require experienced lawyers with the assistance of experts to decipher the data and determine a mathematical or formulaic calculation for each of the approximately 100 retaining walls at issue, each based on their individual needs.

- (3) EXPENSES: Finally, while NTTA has agreed to reimburse certain expenses, Counselors have agreed to advance any expenses in the case required to retain special outside counsel to assist on matters other than prosecuting NTTA's claims. Examples of such instances include: a defendant may seek bankruptcy protection; a defendant may attempt to transfer some of its assets to avoid paying NTTA's claim; a complex, multi-party settlement may require an ethics opinion from outside counsel; or a separate lawsuit may need to be filed against a defendant's insurance company. In such an instance, the fees of such special outside counsel shall be advanced by Counselors. If there is no recovery, Counselors will be solely responsible for payment of such expenses. Also, out of Counselors' share of any recovery, Counselors have agreed to reimburse NTTA for attorney's fees incurred in relation to the Litigation that occurred prior to Counselors' retention under the proposed contract. In NTTA's experience, hourly lawyers are unable and/or unwilling to make such concessions.
- E. The relationship with Counselors would continue until this Litigation is completed. NTTA's relationship with Counselors first began on or about April 2, 2012, when NTTA retained them to represent NTTA in another retaining wall civil case captioned Cause No. 12-01431, *North Texas Tollway Authority vs. James Construction Group, LLC, KBR, Inc. and Bureau Veritas North America, Inc.*, then pending in the 160th Judicial District of Dallas County, Texas. In that case and in NTTA's two other retaining wall cases that followed, Counselors demonstrated to NTTA their specialized skills with respect to this type of complex engineering and construction litigation, and Counselors successfully concluded each of those cases on NTTA's behalf.
- F. The advance of expenses for special outside counsel is risky because, under the terms of the legal services agreement, such expenses are reimbursed only out of any recovery. Because NTTA has limited funds, it is especially in NTTA's interest, and that of its constituents, to have Counselors advance those expenses and only be reimbursed by NTTA out of any recovery if NTTA is successful. Entering a contingent fee contract for legal services is also in the best interest of NTTA and the constituents of NTTA because it will allow NTTA to recoup damages

owed NTTA for retaining wall repairs incurred to date and obtain a judgment ordering the defendants to pay the expenses that will be incurred. The damages recovered in the Litigation will be used to support essential NTTA services and repair NTTA property in order to protect against further loss of or damage and prevent or minimize serious disruption in critical NTTA services that affect health, safety, or the collection of substantial toll revenues. Retaining counsel who will perform these services on a contingency fee and who will advance expenses of outside special counsel will allow NTTA to use those funds instead to support necessary NTTA services, and if NTTA does not obtain a recovery from the litigation, NTTA additionally benefits from the proposed contract by not having to pay for those expenses or the substantial attorneys' fees that would have been incurred if the services had been performed on an hourly basis.

# **EXHIBIT 1**

## **MALOUF & NOCKELS LLP**

Malouf & Nockels LLP is primarily a complex commercial litigation firm with a predominantly contingency-fee practice. Malouf & Nockels LLP has been retained in cases involving mining, sovereign debt, partnerships, equity finance, environmental negligence and nuisance, oil and gas, and as applicable here, complex commercial and construction litigation. Malouf & Nockels LLP has successfully handled multiple retaining wall litigation matters.

Since its founding in 2011, Malouf & Nockels LLP has been continually involved in a litigation practice. The firm has tried numerous cases to verdict in courts across the State of Texas, both state and federal; handled numerous arbitration and mediation matters; and practiced extensively here throughout our years of practice.

Stephen F. Malouf has over 30 years of experience. Mr. Malouf is a member and Fellow of the American Bar Foundation, Dallas Bar Foundation, and Foundation of the American Board of Trial Advocates. He is listed in Who's Who in America, Who's Who Among Rising Young Americans, and Who's Who in Litigation - Dallas Business Journal. He has been recognized by D Magazine as one of the best lawyers in Dallas and by Texas Monthly Magazine as a Texas Super Lawyer.

He has served as an Associate Director of the Texas Trial Lawyers Association; a director and Chief Executive Officer of American Mineral Fields, Ltd; Chairman of the Board of Empower African Children; a member of the Board of Trustees of St. Alcuin Montessori School; and a director of Diamond Fields International and Aesculapius International Medicine. He also served as a volunteer commentator on draft laws for the Republic of Kazakhstan and Republic of Kyrgyzstan for the CEELI Program of the American Bar Association.

Mr. Malouf speaks nationally on the use of technology in trial practice, technology and demonstrative evidence, and presentation strategies for trial and mediation. He has written or spoken for the Association of Trial Lawyers of America, National College of Advocacy; Law Education Law Center Institute and Georgetown University Law Center; University of Houston Law Center; Louisiana Trial Lawyers Association; State Bar of Texas; Texas Trial Lawyers Association; Dallas Trial Lawyers Association; Dallas Bar Association; and South Texas College of Law.

He is a 1982 graduate of St. Mary's University School of Law. He was a clinical intern for the Honorable Fred Shannon, United States District Judge, an Associate Editor of the St. Mary's Law Journal, and elected by the law faculty to Who's Who Among American University and College Students. Immediately after law school he served as a briefing attorney to the Honorable Ted Z. Robertson, Associate Justice on the Court of Appeals Fifth District of Texas at Dallas.

## **KAESKE LAW FIRM**

Kaeske Law Firm was founded in 1999 by Michael Kaeske. Mr. Kaeske has decades of courtroom experience. He consistently tries tough, complex cases to verdict. Kaeske Law Firm has successfully handled multiple retaining wall litigation matters.

Mr. Kaeske attended Syracuse University, graduating in 1991 summa cum laude with a degree in International Relations and Philosophy. In 1995, Mr. Kaeske graduated from the University of Texas with a joint J.D./M.B.A.

Mr. Kaeske began his legal career by trying cases for Baron & Budd. At this time, D Magazine selected Mr. Kaeske in the first group of the “Best Lawyers in Dallas Under 40” in 2002 and again in 2004. Mr. Kaeske earned this reputation by achieving multiple verdicts for Baron & Budd’s clients.

In 1999, Mr. Kaeske left Baron & Budd to form his own firm and then opened offices in Austin and Dallas, where he has handled a range of significant cases for the last two decades, including complex business and construction litigation.

Mr. Kaeske continues to be recognized by Texas Super Lawyers. In 2011, he tried a large commercial case to verdict that was recognized as the “#1 Contract Case Verdict in Texas” and the “#8 Top Texas Verdict of 2011” by Texas Lawyer.

In 2020, Mr. Kaeske led the team that received the Public Justice “Trial Lawyer of the Year” award, including for their achievement of monetary verdict awards for their clients in excess of \$500 million in the subject litigation.