

**AGREEMENT BETWEEN OWNER AND CONTRACTOR**

The Parties to this agreement are:

Owner:

FORT BEND COUNTY TOLL ROAD AUTHORITY,  
a political subdivision of the State of Texas.  
c/o The Muller Law Group, PLLC  
16555 Southwest Freeway, Suite 200  
Sugar Land, Texas 77479

Contractor:

ISI CONTRACTING, INC.  
5215 Fidelity St.  
Houston, Texas 77029

THIS AGREEMENT ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019, between the Parties, for and in consideration of the mutual covenants hereinafter set forth, and under the conditions expressed in the Bonds bearing event date herewith, the Contractor and Owner hereby agree as follows:

Scope of Work:

Contractor shall commence and complete the Work generally described as follows:

For the Construction of Concrete Shoulder Drain, Erosion Control, and MBGF  
(Project No. FR1-1)  
Fort Bend Parkway Toll Road at Fondren Road and McHard Road (FM 2234)  
for Fort Bend County Toll Road Authority,  
Fort Bend County, Texas,  
according to those particular Plans and Technical Specifications (each as defined below)  
prepared by BGE, Inc. ("Engineer")

~~and all extra work in connection therewith, as agreed to by the Parties hereof ("Extra Work"), under the terms as stated in this Agreement and the Contract Documents (as defined herein), and, at Contractor's own proper cost and expense, to furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the said Work, in accordance with the conditions and prices stated in the Specifications and Bid attached hereto and in accordance with the contract documents, including, but not limited to, invitation to bidders, instructions to bidders, all documents referenced in the Governing Specifications and Special Provisions, General Notes, plans, and other drawings and printed or written explanatory matter thereof (collectively, "Plans"), and the Specifications and Bid and other technical specifications (collectively, "Technical Specifications"), on file with Engineer (collectively, "Contract Documents"). Contractor represents and warrants to the Owner that it has carefully examined this~~

Management Service, Surety Bond Branch, U.S. Department of the Treasury. A certified copy of the agent's authority to act must accompany all Bonds signed by an agent. Surety must have a minimum Best's Key Rating of "B+". If the surety company does not have such a rating due to the length of time it has existed, the surety company must be eligible to participate in the surety bond guarantee program of the Small Business Administration and must be an approved surety listed in the current U.S. Department of Treasury Circular 570, and must meet all of the rules and regulations of the Treasury Department with respect to performance and payment bonds for federal jobs, including specifically the rules related to the underwriting limitation.

For bonds over \$100,000, the surety must also hold a certificate of authority from the United States Secretary of Treasury to qualify as a surety on obligations permitted or required under federal law, or have obtained reinsurance for any liability in excess of \$1,000,000 from a reinsurer that is authorized and admitted as a reinsurer in the State of Texas and is the holder of a certificate of authority from the United States Secretary of Treasury to qualify as a surety or reinsurer on obligations permitted or required under federal law. The person executing the Bonds must be a licensed Texas local recording agent and such licensing must be recorded in the files of the Texas Department of Insurance.

The person executing the Bonds must be authorized by the surety company to execute the Bonds on behalf of the company in the amount required for this Agreement and such authorization must be recorded in the files of the Texas Department of Insurance. This Agreement shall not be in effect until such Bonds have been provided by the Contractor and accepted by the Owner.

If the surety on any Bond furnished by Contractor is declared bankrupt, becomes insolvent, its right to do business is terminated in any state where any part of the project is located, or it ceases to meet the requirements herein, Contractor shall promptly notify Owner and Engineer, and shall, within 10 calendar days after the event giving rise to such notification, provide another Bond and surety to fulfill the required obligations.

Contract Price:

The Contract Price for this Work is One Hundred Fifty-One Thousand, Five Hundred Thirty-Four Dollars (\$151,534.00). The initial Contract Price may increase or decrease due to Change Orders and the Contract Price Adjustment as provided by this Agreement and the Contract Documents.

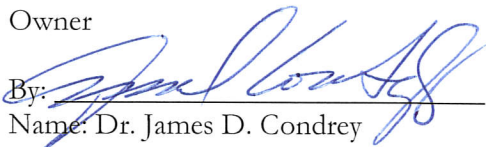
Owner agrees to pay Contractor's invoices for work performed, in accordance with the terms of the Contract Documents, in an aggregate amount not to exceed the Contract Price, plus Change Orders and Extra Work approved by the Board of Directors of the Owner. Failure by Owner to make such payments to the Contractor shall constitute a default by Owner and shall entitle the Contractor to all rights and remedies arising under the Contract Documents for a default in payment of sums due.

Contractor and Owner agree that time is of the essence of this Agreement. Therefore, Contractor and Owner agree that for each and every calendar day the Work or any portion thereof shall remain incomplete after the expiration of the time limits set in the Agreement, or as extended under the provisions of the Contract Documents, the Contract Price will decrease by \$500.00 for Final Acceptance ("Contract Price Adjustment"). The Owner shall have the option to deduct and withhold said amount from any monies that the Owner owes the Contractor or its sureties or to recover such


amount from the Contractor or the sureties on the Contractor's performance bond.

IN WITNESS WHEREOF, the parties to these presents have executed this Agreement in the year and day first above written.

FORT BEND COUNTY TOLL ROAD  
AUTHORITY  
Owner

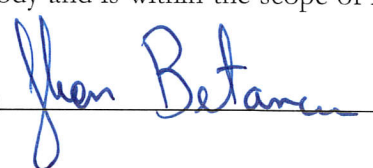
By:   
Name: Dr. James D. Condrey  
Title: Chairman, Board of Directors

ISI CONTRACTING, INC.  
Contractor

By:   
Name: Tim Herbert  
Title: President

(The following to be executed if Contractor is a Corporation)

I, Jhon Betancur certify that I am the secretary of the Corporation named as Contractor herein; that Tim Herbert, who signed this Agreement on behalf of Contractor, was then President of said Corporation; that said Agreement was duly signed for and on behalf of said Corporation by authority of its governing body and is within the scope of its corporate powers.

Signed: 

Corporate Seal

**EFFECTIVE DATE**

THIS AGREEMENT IS EFFECTIVE ON THE DATE IT IS APPROVED BY THE FORT BEND COUNTY COMMISSIONERS COURT, AND IF NOT SO APPROVED SHALL BE NULL AND VOID.

DATE OF COMMISSIONERS COURT APPROVAL: \_\_\_\_\_  
AGENDA ITEM NO.: \_\_\_\_\_

THIS BID MUST BE SUBMITTED IN A SEALED BID ENVELOPE

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# **SPECIFICATIONS AND BID**

FOR

**FORT BEND COUNTY TOLL ROAD AUTHORITY  
FORT BEND PARKWAY TOLL ROAD  
AT FONDREN ROAD AND MCHARD ROAD (FM 2234)**

**For the Construction of Concrete Shoulder Drain, Erosion  
Control, and MBGF  
(Project No. FR1-1)**

Notice To Bidder:

ALL BIDS ARE TO BE SUBMITTED TO THE FORT BEND  
COUNTY TOLL ROAD AUTHORITY, C/O BGE, INC., 10777  
WESTHEIMER, SUITE 400, HOUSTON, TEXAS, 77042 BY  
11:00 A.M. ON WEDNESDAY, OCTOBER 9, 2019.

BIDDER IS REQUIRED TO FILL IN INFORMATION BELOW:

ISI Contracting, Inc.

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BIDDER (Company Name)

TOTAL AMOUNT OF BID \$ 151,534.00

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**FORT BEND COUNTY, TEXAS**

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## SALES TAX EXEMPTION

### NOTICE TO CONTRACTORS

The Contractor's attention is directed to TEX. TAX CODE ANN. 151.311, which was amended by the Texas Legislature, effective October 1, 1993.

Under Section 151.311, as amended, tangible personal property purchased by a contractor for use in the performance of a contract for the improvement of real property for an organization such as Fort Bend County Toll Road Authority (FBCTRA) is exempt from the payment of sales and use tax thereon when the property is incorporated into the realty in the performance of the contract. Building materials, etc., are exempt from tax if they are: (1) necessary and essential for the performance of the contract; and (2) completely consumed at the job site (i.e., after being used once for their intended purpose they are used up or destroyed). Items that can be re-used on other jobs are not tax exempt.

Services purchased by a contractor are also tax exempt, where: (1) the contract is for an improvement to real estate for an exempt organization; and (2) the contract expressly requires the specific service to be provided or purchased by the person performing the contract; or (3) the service is integral to the performance of the contract.

Machinery and equipment, including repair and replacement parts for the same, are not tax exempt when used in the performance of a contract for the improvement of real estate for FBCTRA.

The Contractor should be aware that the Texas Comptroller of Public Accounts issues rules interpreting applicable provisions of the tax code from time to time. The rules should be consulted when answering specific questions. The Contractor can obtain additional information concerning the applicable sales and use tax, as well as sales tax permits and information regarding resale certificates, from the State Comptroller's Office, at (800) 252-5555.

FORT BEND COUNTY TOLL ROAD AUTHORITY  
 FORT BEND PARKWAY TOLL ROAD AT FONDREN ROAD AND MCHARD ROAD (FM 2234)  
 CONCRETE SHOULDER DRAIN, EROSION CONTROL, AND MBGF  
 (PROJECT NO. FR1-1)

COUNTY: FORT BEND			FBCTRA PROPOSAL SHEET		A U T H	U S E  O N L Y
ALT.	TxDOT ITEM- NO.	DESC. CODE	UNIT BID PRICE ONLY, WRITTEN IN WORDS		UNIT	APPROX. QUANTITIES
	104	6054	REMOVING CONCRETE(MOW STRIP) Ten _____ DLRS. and zero _____ CENTS	LF	256.00	
	132	6021	EMBANKMENT (VEHICLE)(ORD COMP)(TY C) Fifty _____ DLRS. and zero _____ CENTS	CY	109.00	
	162	6002	BLOCK SODDING Seven _____ DLRS. and Zero _____ CENTS	SY	752.00	
	166	6001	FERTILIZER One Thousand Two Hundred _____ DLRS. and zero _____ CENTS	AC	0.15	
	168	6001	VEGETATIVE WATERING Twenty _____ DLRS. and zero _____ CENTS	MG	18.00	
	432	6008	RIPRAP (CONC)(CL B)(RR8&RR9) Three Thousand _____ DLRS. and zero _____ CENTS	CY	16.00	
			RIPRAP (STONE COMMON)(DRY)(12 IN)		18.00	
	432	6024	Four Hundred Fifty _____ DLRS. and zero _____ CENTS	CY		
	432	6045	RIPRAP (MOW STRIP)(4 IN) One Thousand Two Hundred _____ DLRS. and zero _____ CENTS	CY	18.00	

FORT BEND COUNTY TOLL ROAD AUTHORITY  
 FORT BEND PARKWAY TOLL ROAD AT FONDREN ROAD AND MCHARD ROAD (FM 2234)  
 CONCRETE SHOULDER DRAIN, EROSION CONTROL, AND MBGF  
 (PROJECT NO. FR1-1)

COUNTY: FORT BEND			FBCTRA PROPOSAL SHEET		AUTH	USE ONLY
ALT.	TXDOT ITEM-CODE		UNIT BID PRICE ONLY, WRITTEN IN WORDS	UNIT	APPROX. QUANTITIES	
ITEM NO.	DESC. CODE					
	500	6001	MOBILIZATION <u>Sixteen Thousand</u> DLRS. and zero CENTS	LS		1.00
	502	6001	BARRICADES, SIGNS AND TRAFFIC HANDLING <u>Two Thousand Five Hundred</u> DLRS. and zero CENTS	MO		3.00
	506	6038	TEMP SEDMT CONT FENCE (INSTALL) <u>Six</u> DLRS. and zero CENTS	LF		90.00
	506	6039	TEMP SEDMT CONT FENCE (REMOVE) <u>Two</u> DLRS. and zero CENTS	LF		90.00
	540	6001	MTL W-BEAM GD FEN (TIM POST) <u>Twenty Five</u> DLRS. and zero CENTS	LF		250.00
	540	6006	MTL BEAM GD FEN TRANS (THRIE-BEAM) <u>Three Thousand</u> DLRS. and zero CENTS	EA		2.00
			<del>REMOVE METAL BEAM GUARD FENCE</del>			<del>125.00</del>
	542	6001	<u>Eight</u> DLRS. and zero CENTS	LF		
	544	6001	GUARDRAIL END TREATMENT (INSTALL) <u>Three Thousand Nine Hundred</u> DLRS. and zero CENTS	EA		2.00

FORT BEND COUNTY TOLL ROAD AUTHORITY  
 FORT BEND PARKWAY TOLL ROAD AT FONDREN ROAD AND MCHARD ROAD (FM 2234)  
 CONCRETE SHOULDER DRAIN, EROSION CONTROL, AND MBGF  
 (PROJECT NO. FR1-1)

COUNTY: FORT BEND			FBCTRA PROPOSAL SHEET		A U T H  U S E  O N L Y	
TXDOT ITEM-CODE			UNIT BID PRICE <u>ONLY</u> , WRITTEN IN WORDS		UNIT	APPROX. QUANTITIES
ALT.	ITEM NO.	DESC. CODE				
	544	6003	GUARDRAIL END TREATMENT (REMOVE)  <u>Seven Hundred Fifty</u> DLRS. and zero CENTS		EA	2.00
	6185	6002	TMA (STATIONARY)  <u>Two Hundred Seventy Five</u> DLRS. and zero CENTS		DAY	30.00
			FORCE ACCOUNT - LAW ENFORCEMENT  <u>FIVE THOUSAND</u> DLRS. and NO CENTS		LS	1.00

Highway: Fort Bend Parkway Toll Road  
at Fondren Rd and McHard  
Road (FM 2234)  
County: Fort Bend

The enclosed Texas Department of Transportation Specifications, Special Provisions, General Notes and Specification Data in this document have been selected by me, or under my responsible supervision, as being applicable to this project(s).

NOTE: For the purpose of constructing this Proposal and the attached form of Contract, the Texas Department of Transportation Standard Specifications for Construction of Highways, Streets and Bridges, as adopted by the Texas Department of Transportation on November 1, 2014, hereinafter referred to are approved and incorporated herein by reference for all purposes by the Fort Bend County Toll Road Authority as official specifications, together with and to be modified by the Special Provisions and Special Specifications as are listed herein.



Project Manager  
BGE, Inc.

9/17/2019

Date:

GENERAL NOTES

County: Fort Bend

Project No. FR1-1

Highway: Fort Bend Parkway Toll Road at Fondren Road and McHard Road (FM 2234)

**General Notes:**

**General:**

References to manufacturer's trade name or catalog numbers are for the purpose of identification only. Similar materials from other manufacturers are permitted if they are of equal quality, comply with the specifications for this project, and are approved.

The cost for materials, labor, and incidentals to provide for traffic across the roadway and for ingress and egress to private property in accordance with Section 7.2.4 of the standard specifications is subsidiary to the various bid items. Restore access roadways to their original condition upon completing construction.

Tolls incurred by the Contractor are incidental to the various bid items.

Procure permits and licenses, which are to be issued by the City, County, or Municipal Utility District.

**General: Site Management**

Do not mix or store materials, or store or repair equipment, on top of concrete pavement or bridge decks unless authorized by the Engineer. Permission will be granted to store materials on surfaces if no damage or discoloration will result.

Personal vehicles of employees are not permitted to park within the right of way, including sections closed to public traffic. Employees may park on the right of way at the Contractor's office, equipment, and materials storage yard sites.

Assume ownership of debris and dispose of at an approved location. Do not dispose of debris on private property unless approved in writing by the Engineer.

**General: Traffic Control and Construction**

When design details are not shown on the plans, provide signs and arrows conforming to the latest "Standard Highway Sign Designs for Texas" manual.

**General: Utilities**

If the Contractor damages or causes damage (breaks, leaks, nicks, dents, gouges, etc.) to the utility, contact the utility facility owner or operator immediately.

If overhead or underground power lines need to be de-energized, contact the electrical service provider to perform this work. Costs associated with de-energizing the power lines or other protective measures required are at no expense to the Authority.

If working near power lines, comply with the appropriate sections of Texas State Law and Federal Regulations relating to the type of work involved.

GENERAL NOTES

County: Fort Bend

Project No. FR1-1

Highway: Fort Bend Parkway Toll Road at Fondren Road and McHard Road (FM 2234)

**Item 8: Prosecution and Progress**

The Lane Closure Assessment Fee is \$ 1,000.00. This fee applies to the Contractor for closures or obstructions that overlap into restricted hour traffic for each hour or portion thereof, per lane, regardless of the length of lane closure or obstruction. For Restricted Hours subject to Lane Assessment Fee refer to the Item, "Barricades, Signs, and Traffic Handling."

**Item 132: Embankment**

Furnish Type C material with a maximum Liquid Limit (LL) of 65, a minimum Plasticity Index (PI) of 5, and composed of suitable earth material such as loam, clay, or other materials that form a suitable embankment.

For unpaved areas, provide a finished grade with the top 4 in. capable of sustaining vegetation. Use fertile soil that is easily cultivated, free from objectionable material and highly resistant to erosion.

**Item 162: Sodding for Erosion Control**

**Item 166: Fertilizer**

**Item 168: Vegetative Watering**

Refer to the "Fertilizer, Seed, Sod, Straw, Compost, and Water" plan sheet for material specifications, application rates, and for watering requirements.

**Item 502: Barricades, Signs, and Traffic Handling**

Furnish and maintain the barricades and warning signs, including the necessary temporary and portable traffic control devices, during the various phases of construction. Place and construct these barricades and warning signs in accordance with the latest "Texas Manual on Uniform Traffic Control Devices" for typical construction layouts.

Cover work zone signs when work related to the signs is not in progress, or when any hazard related to the signs no longer exists.

Keep the delineation devices, signs, and pavement markings clean. This work is subsidiary to the Item, "Barricades, Signs, and Traffic Handling."

Before detouring traffic onto the mainlane shoulders, remove dirt, debris, vegetation, and other deleterious material from the surface of the shoulders. Appropriately sign the detour in an approved manner. This work is subsidiary to the various bid items.

Cover or remove the permanent signs and construction signs that are incorrect or that do not apply to the current situation for a particular phase.

Do not mount signs on drums or barricades, except those listed in the latest Barricades and Construction standard sheets.

GENERAL NOTES

County: Fort Bend

Project No. FR1-1

Highway: Fort Bend Parkway Toll Road at Fondren Road and McHard Road (FM 2234)

Use traffic cones for daytime work only. Replace the cones with plastic drums during nighttime hours.

Do not reduce the existing number of lanes open to traffic except as shown on the following time schedule:

**One Lane Closure**

Day	Daytime Closure Hours	Nighttime Closure Hours	Restricted Hours Subject to Lane Assessment Fee
Monday-Friday	9:00 AM - 4:00 PM	9:00 PM - 5:00 AM	5:00 AM - 9:00 AM 4:00 PM - 9:00 PM
Weekend	ALL DAY		N/A

The above times are approved for the traffic control conditions listed. The Engineer may approve other closure times if warranted. The Engineer may reduce the above times for special events.

Provide full-time, off-duty, uniformed, certified peace officers, as part of traffic control operations. The peace officers must be able to show proof of certification by the Texas Commission on Law Enforcement Officers Standards. The cost of the officers is paid for on a force account basis.

**Item 506: Temporary Erosion, Sedimentation and Environmental Controls**

Use appropriate measures to prevent, minimize, and control the spill of hazardous materials in the construction staging area. Remove and dispose of materials in compliance with State and Federal laws.

Before starting construction, review with the Engineer the SWP3 used for temporary erosion control as outlined on the plans. Before construction, place the temporary erosion and sedimentation control features as shown on the SWP3.

Schedule the seeding or sodding work as soon as possible.

After completing earthwork operations, restore and reseed the disturbed areas in accordance with the Department's specifications for permanent or temporary erosion control.

Implement temporary and permanent erosion control measures to comply with the National Pollution Discharge Elimination System (NPDES) general permit under the Clean Water Act.

Before starting grading operations and during the project duration, place the temporary or permanent erosion control measures to prevent sediment from leaving the right of way.

**Item 540: Metal Beam Guard Fence**

Painting the timber posts is not required.

GENERAL NOTES

County: Fort Bend

Project No. FR1-1

Highway: Fort Bend Parkway Toll Road at Fondren Road and McHard Road (FM 2234)

Use timber posts for galvanized steel metal beam guard fence, except for anchorage at turned down ends.

Furnish and install wood blocks between the rail elements and the timber posts as detailed on the plans. These block-outs are subsidiary to this bid Item.

The quantity of the metal beam guard fence is subject to change.

Provide a mow strip as shown on the plans, at metal beam guard fence locations, including any guardrail end treatments.

Galvanize the rail elements supplied for this project by using a Type II Zinc Coating.

At locations requiring attachment of Metal Beam Guard Fence (MBGF) to concrete railing or concrete traffic barrier, repair and fill any existing holes in the railing or barrier that are not in the correct location for attaching the new MBGF. Perform this work in accordance with the Item, "Concrete Structure Repair." Existing anchor bolt holes that cannot be utilized must be filled with an epoxy grout before drilling new holes. Then core-drill new holes in the correct locations and repair any resulting spalls at no expense to the Department. This work is considered subsidiary to the MBGF transition section (Item 540).

**Item 6185: Truck Mounted Attenuator (TMA) and Trailer Attenuator (TA)**

A shadow vehicle with Truck Mounted Attenuators (TMA) is required as shown on the appropriate Traffic Control Plan (TCP) sheets. Truck Mounted Attenuators must meet the requirements of the Compliant Work Zone Traffic Control Device List.

Level 3 Compliant TMAs are required for this project.

Do not use Trailer Attenuators for this project.

The Contractor is responsible for determining if one or more operations will be ongoing at the same time to determine the total number of TMAs needed on the project.

**GOVERNING SPECIFICATIONS AND SPECIAL PROVISIONS**

All Specifications and Special Provisions applicable to this Project are identified as follows:

**STANDARD SPECIFICATIONS**

Adopted by the Texas Department of Transportation November 1, 2014. Standard Specifications are incorporated into the Contract by reference and a copy may be purchased from TxDOT.

Items 1- 9	General Requirements and Covenants
Item 104	Removing Concrete (9)
Item 132	Embankment (7)(9)(204)(210)
Item 162	Sodding for Erosion Control (166)(168)
Item 166	Fertilizer (520)
Item 168	Vegetative Watering
Item 432	Riprap (420)(421)(440)
Item 500	Mobilization
Item 502	Barricades, Signs, and Traffic Handling (5)(9)
Item 506	Temporary Erosion, Sedimentation, and Environmental Controls
Item 540	Metal Beam Guard Fence (421)(441)(445)(529)
Item 542	Removing Metal Beam Guard Fence
Item 544	Guardrail End Treatments

**SPECIAL PROVISIONS**

Special Provisions will govern and take precedence over the Specifications enumerated hereon wherever in conflict therewith. All Special Provisions are included herein.

Prevailing Wages	
Special Provision	General (FBCTRA)
Special Provision	000-658 Schedule of Liquidated Damages
Special Provision to Item 2	Instructions to Bidders (FBCTRA)
Special Provision to Item 3	Award and execution of the Contract (FBCTRA)
Special Provision to Item 4	Scope of Work (FBCTRA)
Special Provision to Item 5	005-002
Special Provision to Item 7	Legal Relations and Responsibilities to the Public (FBCTRA), 007-001
Special Provision to Item 8	008-017, 008-033
Special Provision to Item 9	Measurement and Payment (FBCTRA)
Special Provision to Item 6185	6185-002

**SPECIAL SPECIFICATIONS**

All Special Specifications are included herein.

Item 6185	Truck Mounted Attenuator (TMA) and Trailer Attenuator (TA)
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General: The above-listed specification items are those under which payment is to be made. These, together with such other pertinent items, if any, as may be referred to in the above-listed specification items, and including the Special Provisions listed above, constitute the complete specifications for this contract.

**PREVAILING WAGES:**

This project is subject to the prevailing wage rate requirements of Chapter 2258 of the Government Code. The Contractor shall pay Fort Bend County Toll Road Authority sixty dollars (\$60.00) for each worker employed by the Contractor for the provision of services described herein for each calendar day or part of the day that the worker is paid less than the below stated rates. Contractors may also visit [www.wdol.gov/dba.aspx](http://www.wdol.gov/dba.aspx).

General Decision Number: TX190038 01/04/2019 TX38

Superseded General Decision Number: TX20180056

State: Texas

Construction Type: Highway

Counties: Austin, Brazoria, Chambers, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, San Jacinto and Waller Counties in Texas.

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension & spandrel arch bridges designed for commercial navigation, bridges involving marine construction; and other major bridges).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.60 for calendar year 2019 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.60 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2019. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Modification Number	Publication Date
0	01/04/2019

\* SUTX2011-013 08/10/2011

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER (Paving and Structures).....	\$ 12.98	
ELECTRICIAN.....	\$ 27.11	
FORM BUILDER/FORM SETTER Paving & Curb.....	\$ 12.34	
Structures.....	\$ 12.23	
LABORER Asphalt Raker.....	\$ 12.36	
Flagger.....	\$ 10.33	
Laborer, Common.....	\$ 11.02	
Laborer, Utility.....	\$ 11.73	
Pipelayer.....	\$ 12.12	
Work Zone Barricade Servicer.....	\$ 11.67	
PAINTER (Structures).....	\$ 18.62	
POWER EQUIPMENT OPERATOR: Asphalt Distributor.....	\$ 14.06	
Asphalt Paving Machine.....	\$ 14.32	
Broom or Sweeper.....	\$ 12.68	
Concrete Pavement Finishing Machine.....	\$ 13.07	
Concrete Paving, Curing, Float, Texturing Machine....	\$ 11.71	
Concrete Saw.....	\$ 13.99	
Crane, Hydraulic 80 Tons or less.....	\$ 13.86	
Crane, Lattice boom 80 tons-or-less.....	\$ 14.97	
Crane, Lattice boom over 80 Tons.....	\$ 15.80	
Crawler Tractor.....	\$ 13.68	
Excavator, 50,000 pounds or less.....	\$ 12.71	
Excavator, Over 50,000 pounds.....	\$ 14.53	
Foundation Drill, Crawler Mounted.....	\$ 17.43	

Foundation Drill, Truck Mounted.....	\$ 15.89
Front End Loader 3 CY or Less.....	\$ 13.32
Front End Loader, Over 3 CY.	\$ 13.17
Loader/Backhoe.....	\$ 14.29
Mechanic.....	\$ 16.96
Milling Machine.....	\$ 13.53
Motor Grader, Fine Grade....	\$ 15.69
Motor Grader, Rough.....	\$ 14.23
Off Road Hauler.....	\$ 14.60
Pavement Marking Machine....	\$ 11.18
Piledriver.....	\$ 14.95
Roller, Asphalt.....	\$ 11.95
Roller, Other.....	\$ 11.57
Scraper.....	\$ 13.47
Spreader Box.....	\$ 13.58
 Servicer.....	 \$ 13.97
 Steel Worker	
Reinforcing Steel.....	\$ 15.15
Structural Steel Welder.....	\$ 12.85
Structural Steel.....	\$ 14.39
 TRUCK DRIVER	
Low Boy Float.....	\$ 16.03
Single Axle.....	\$ 11.46
Single or Tandem Axle Dump..	\$ 11.48
Tandem Axle Tractor w/Semi Trailer.....	\$ 12.27

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family

member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts). Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union

data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

**FORT BEND COUNTY TOLL ROAD AUTHORITY**

**SPECIAL PROVISION – GENERAL**

For this project, the following sections of the Texas Standard Specifications (“TSS”) are hereby modified with respect to the clauses cited below and no other clauses or requirements of the TSS are waived or changed hereby.

**Global** – All references to “State” or “Department” are replaced with “Authority.”

# Special Provision to Item 000

## Schedule of Liquidated Damages



**Table 1**  
**Schedule of Liquidated Damages**

For Dollar Amount of Original Contract		Dollar Amount of Daily Contract Administration Liquidated Damages per Working Day
From More Than	To and Including	
0	100,000	570
100,000	500,000	590
500,000	1,000,000	610
1,000,000	1,500,000	685
1,500,000	3,000,000	785
3,000,000	5,000,000	970
5,000,000	10,000,000	1,125
10,000,000	20,000,000	1,285
20,000,000	Over 20,000,000	2,590

In addition to the amount shown in Table 1, the Liquidated Damages will be increased by the amount shown in Item 8 of the General Notes for Road User Cost (RUC), when applicable.

**FORT BEND COUNTY TOLL ROAD AUTHORITY**  
**SPECIAL PROVISION TO ITEM 2**  
**INSTRUCTIONS TO BIDDERS**

Item 2, "Instructions to Bidders," of the Texas Department of Transportation Standard Specifications is hereby amended with respect to the clauses cited below. No other clauses or requirements are waived or changed.

Except for Section 1, the remainder of Item 2 is voided and replaced by the following:

**Section 2, Eligibility of Bidders.** For this project, the Fort Bend County Toll Road Authority (FBCTRA) requires that bidders be prequalified by the Texas Department of Transportation. Submit to Texas Department of Transportation for approval a Confidential Questionnaire Form and an audited financial statement at least 10 days before the date that bids are to be opened. Once approved, the eligibility is valid for a period of one year. Comply with all technical prequalification requirements in the bid form. Obtain prequalification forms from the Construction Division.

**Section 3, Issuing Bid Forms.** Request bid forms orally, in writing, or electronically.

In the case of a joint venture, all joint venture participants must be prequalified. An equally divided portion of the Engineer's estimate must be within each participant's available bidding capacity.

The FBCTRA will not issue a bid form for a proposed Contract if one or more of the following apply:

- The Bidder is disqualified by an agency of the federal government.
- The Bidder is suspended or debarred by the TxDOT Commission, or is prohibited from rebidding a specific proposal because of bid error or failure to enter into a Contract of the first awarded bid.
- The Bidder has not fulfilled the requirements for prequalification.
- The Bidder or a subsidiary or affiliate of the Bidder has received compensation from the FBCTRA to participate in the preparation of the plans or specifications on which the bid or Contract is based.
- The Bidder did not attend an advertised mandatory pre-bid conference.

**Section 4, Interpreting Estimated Quantities.** The quantities listed in the bid form are approximate and will be used for the comparison of bids. Payments will be made for the work performed in accordance with the Contract.

**Section 5, Examining Documents and Work Locations.** Examine the bid form, plans, specifications, and specified work locations before submitting a bid for the work contemplated.

Submitting a bid will be considered evidence that the Bidder has performed this examination. Borings, soil profiles, water elevations, and underground utilities shown on the plans were obtained for use of the FBCTRA in the preparation of plans. This information is provided for the Bidder's information only and the FBCTRA makes no representation as to the accuracy of the data. Be aware of the difficulty of accurately classifying all material encountered in making foundation investigations, the possible erosion of stream channels and banks after survey data have been obtained, and the unreliability of water elevations other than for the date recorded.

Oral explanations, instructions, or consideration for contractor-proposed changes in the Items of work, specifications, plans or bid forms given during the bidding process are not binding. Only requirements included in the bid form, associated specifications, plans and FBCTRA issued addenda are binding. Request explanations of documents in adequate time to allow the FBCTRA to reply before the bid opening date.

Immediately notify the FBCTRA of any error, omission, or ambiguity discovered in any part of the bid form, specifications or plans. The FBCTRA will issue an addendum when appropriate.

**Section 6, Preparing the Bid.** Prepare the bid on the form furnished by the FBCTRA. Bid forms may be printed or electronic (if permitted). Informational forms will not be accepted.

Specify a unit price in dollars and cents for each Item for which an estimated quantity is given. When "Working Days" is an Item, submit the number of working days to be used to complete the Contract, or phases of the Contract shown on the plans.

An Item left blank will constitute an incomplete bid and will be handled as prescribed in Section 11, "Tabulating Bids." Include unit bid prices for each Item in the Item group or alternate Item group, except for instances when alternate Items pertain to foreign steel or iron materials.

If a bid form contains both regular bid Items for domestic and alternate bid Items pertaining to foreign steel or iron materials the bidder must either:

- Submit unit bid prices for domestic bid items only, or
- Submit unit bid prices for both the alternate foreign bid items and domestic bid items.

Verify whether addenda have been issued on a proposed Contract. Acknowledge all addenda.

**Section 7, Nonresponsive Bids.** A bid that has one or more of the deficiencies listed below is nonresponsive and will not be considered.

- The person or, in the case of a manually submitted joint venture bid, persons did not sign the bid form.
- The proposal guaranty did not comply with the requirements contained in Article 2.8, "Bid Guaranty."
- The bid was in a form other than the official bid form issued to the Bidder or Bidders.

- The bid was not in the hands of the letting official at the time and location specified in the advertisement. For electronic bids, “in the hands of the letting official” means CivCast vault acknowledgement.
- The bid form submitted had the incorrect number of Items.
- A computer printout, when used, was not signed in the name of the Bidder (or joint Bidders, in the case of a joint venture), or omitted required Items or included an Item or Items not shown in the bid form.
- The Bidder was not authorized to receive a bid form under Article 2.3, “Issuing Bid Forms.”
- The Bidder failed to acknowledge receipt of all addenda issued.
- The Bidder bid more than the maximum or less than the minimum number of allowable working days shown on the plans when working days was an Item.
- The Bidder modified the bid in a manner that altered the conditions or requirements for work as stated in the bid form.
- The Bidder did not attend a specified mandatory pre-bid conference.
- The FBCTRA will not accept or read any of the bids submitted on the same project by:
  - A joint venture and one or more of its partners, or
  - Affiliated bidders.

**Section 8, Electronic Bid (if permitted).**

**Section 8.1. Electronic Bid Form (if permitted).** Use the electronic bid form in CivCast. Acknowledge an addendum by initialing each addendum listed under the addenda tab in CivCast.

**Article 8.2. Bid Guaranty.** For electronic bids, upload a copy of the guaranty check or bid bond on CivCast. Submit the original guaranty check or bid bond within 24 hours to FBCTRA.

**Article 8.3. Electronically Submitted Bids (if permitted).** Submit the electronic bid to the electronic vault using CIVCAST. It is the bidder’s responsibility to ensure that the bid is received by the electronic vault on or before the time and date set for the opening.

**Article 8.4. Revising Bid Forms.** Make desired changes up until the time and date set for the opening of bids using CIVCAST. The electronically submitted bid with the latest time stamp by the electronic vault will be used for tabulation purposes.

**Article 8.4.1. After Bid Opening.** Revisions to bids are not allowed after the time and date set for the opening.

**Article 8.5. Withdrawing Bids.** Submit a written request to withdraw the bid. For a written request, submit a signed request to the Letting Official. A request to withdraw an electronic bid must be made by a person authorized to bind the Bidder and must be made prior to the time and date set for the opening. For written request for withdrawals of electronic bids and in the case of joint venture, the FBCTRA will accept a request from any person authorized to bind a party to the joint venture to withdraw a bid.

**Article 8.6.** The FBCTRA will not be responsible for Internet unavailability. The FBCTRA will not provide a computer for preparing, submitting, revising or withdrawing an electronic bid.

### **Section 9, Printed Bid.**

**Article 9.1. Printed Bid Form.** Make all entries and execute the bid form in ink. Acknowledge all addenda by checking the appropriate box on the addendum acknowledgement page. Provide the complete and correct name of the Bidder submitting the bid. A person authorized to bind the Bidder must sign the bid form. In the case of a joint venture, provide the complete and correct name of all Bidders submitting the bid. The bid form must be signed by person(s) authorized to bind the Bidder(s).

As an alternative to hand writing the unit prices in the bid form, submit a computer printout signed by the person authorized to bind the Bidder or for a joint venture the persons authorized to bind the Bidders. As a minimum, computer printouts must contain the information in the format shown on the "Example of Bid Prices Submitted by Computer Printout" form in the bid form.

**Article 9.2. Bid Guaranty.** The bid guaranty amount is fixed at the amount indicated on the bid form on the date the bid form is released to the public. Provide a bid guaranty in the amount indicated on the bid form as follows:

- For printed bids, use either a guaranty check or a bid bond.

**Article 9.2.1. Guaranty Check.** The guaranty check must be payable to the Fort Bend County Toll Road Authority and must be a cashier's check, money order, or teller's check drawn by or on a state or national bank, a savings and loan association, or a state or federally chartered credit union (collectively referred to as "bank"). The check must be dated on or before the date of the bid opening. Post dated checks will not be accepted. The type of check or money order must be indicated on the face of the instrument and the instrument must be no more than 90 days old. A check must be made payable at or through the institution issuing the instrument; be drawn by a bank and on a bank; or be payable at or through a bank. The FBCTRA will not accept personal checks, certified checks, or other types of money orders as a bid guaranty.

**Article 9.2.2. Bid Bond.** The bid bond shall be on the American Institute of Architects, AIA Document 310, with powers of attorney attached, and in the amount specified on the bid bond form. The bond form must be dated on or before the date of the bid opening, bear the impressed seal of the Surety and be signed by the Bidder or Bidders, in the case of a joint venture, and an authorized individual of the Surety. As an alternative for joint venture Bidders, each of the Bidders may submit a separate bid bond, completed as outlined in this Subarticle. Bid bonds will only be accepted from Sureties authorized to execute a bond under and in accordance with state law.

**Article 9.3. Submittal of Bid.** Place the completed bid form and the bid guaranty in a sealed envelope marked to indicate the contents.

When submitting by mail or delivery service, place the envelope in another sealed envelope and address as indicated in the official advertisement. It is the bidder's responsibility to ensure that the sealed bid arrives at the location described in the official advertisement of the project on or before the time and date set for the opening. The bid must be in the hands of the Letting Official by that time, regardless of the method chosen for delivery, in order to be accepted.

In addition to the requirements above, all pages of a bid form printed from CIVCAST must be submitted.

**Article 9.4. Revising Bid Forms.** Revisions to bids will be handled as follows:

**Article 9.4.1. Before Submission.** Make desired changes to the printed bid form in ink and initial the changes.

**Article 9.4.2. After Submission.** Withdraw the bid in accordance with Article 2.11, "Withdrawing Bids." Make desired changes to the printed bid form in ink and initial the changes. Resubmit to the Letting Official in accordance with Article 2.9, "Delivery of Bid." The FBCTRA will not make revisions to a bid on behalf of a Bidder.

**Article 9.4.3. After Bid Opening.** Revisions to bids are not allowed after the time and date set for the opening.

**Article 9.5. Withdrawing Bids.** Submit a signed written request to the Letting Official. The FBCTRA will not accept telephone or electronic requests, but will accept a properly signed telefacsimile request. The request must be made by a person authorized to bind the Bidder, and must be in the hands of the Letting Official before the time and date set for the opening. In the case of joint venture, the FBCTRA will accept a request from any person authorized to bind a party to the joint venture to withdrawal a bid.

**Section 10, Opening and Reading of Bids.** At the time, date and location specified in the official advertisement, the Letting Official will publicly:

- Open and read manually submitted bids; and
- Read electronically submitted bids.

**Section 11, Tabulating Bids.**

**Article 11.1. Official Total Bid Amount.** The FBCTRA will sum the products of the quantities and the unit prices bid in the bid form to determine the official total bid amount. Except as provided in Section 11.5.3., "Special Item Considerations," the official total bid amount is the basis for determining the apparent low Bidder. The total bid amounts will be compared and the results made public.

**Article 11.2. Consideration of Bid Format.** When a Bidder submits both an electronic bid and a properly completed manual bid, the unit bid prices in the manual bid will be used to determine

the total bid amount. If a bidder submits an electronic bid and an incomplete manual bid, the electronic bid will be used in the tabulation of the total bid amount.

If a bidder submits two or more manual bids, all responsive bids will be tabulated. The bid with the lowest tabulation will be used to determine the total bid amount.

**Article 11.3. Rounding of Unit Prices.** The FBCTRA will round off all unit bids involving fractional parts of a cent to the nearest one-tenth cent (\$0.001) in determining the amount of the bid as well as computing the amount due for payment of each Item under the Contract. For rounding purposes, entries of five-hundredths of a cent (\$0.0005) or more will be rounded up to the next highest tenth of a cent, while entries less than five-hundredths of a cent will be rounded down to the next lowest tenth of a cent.

**Article 11.4. Interpretation of Unit Prices.** The FBCTRA will make a documented determination of the unit bid price for tabulation purposes if a unit bid price is illegible. The FBCTRA's determination will be final.

**Article 11.5. Consideration of Unit Prices.** Unit bid price entries such as no dollars and no cents, zero dollars and zero cents, or numerical entries of \$0.00, will be tabulated as one-tenth of a cent (\$0.001).

The FBCTRA will consider proposals where unit bid prices have been left blank incomplete and nonresponsive. If a proposal has a regular and a corresponding alternate Item or group of Items, the bid will be considered complete if:

- The regular Item or group of regular Items has unit prices entered, or
- The alternate Item or group of alternate Items has unit prices entered.

The bid will be considered incomplete and nonresponsive if:

- A regular Item or group of regular Items is left blank, and
- A corresponding alternate Item or group of alternate Items is left blank.

**Article 11.5.1. Consideration of Alternate Items.** The FBCTRA will make two calculations using one-tenth of a cent (\$0.001) for each Item if:

- A regular Item or a group of Items have an entry such as no dollars and no cents, zero dollars and zero cents, or numerical entries of \$0.00, and
- A corresponding alternate Item or group of Items, have an entry such as no dollars and no cents, zero dollars and zero cents, or numerical entries of \$0.00.

The FBCTRA will select the regular Item or Items or the alternate Item or Items at the FBCTRA's discretion if both the regular and alternate bid results in the same cost to the State.

The FBCTRA will use the unit price that is greater than zero for bid tabulation if:

- A unit price greater than zero has been entered for either a regular bid or a corresponding alternate Item or group of Items, and
- An entry of no dollars and no cents, zero dollars and zero cents, or a numerical entry of \$0.00 has been entered for the other corresponding Item or group of Items.

If a unit price has been entered for both the regular Item and a corresponding alternate Item, the FBCTRA will select the option (regular or alternate) that results in the lowest cost to the State. The FBCTRA will select the regular Item or Items or the alternate Item or Items at the FBCTRA's discretion if both the regular and alternate bid results in the same cost to the State.

#### **Article 11.5.2. Special Item Considerations.**

**Article 11.5.2.1. Rubber Additives.** For proposed Contracts without federal funds, if an alternate Item for "Hot Asphalt-Rubber Surface Treatments" or "Hot Mix Asphalt Concrete Pavement" which contains ground tire rubber is shown in the bid form and the Bidder bids that alternate Item, the amounts bid for "Hot Asphalt-Rubber" and "Aggregate" or "Hot Mix Asphalt Concrete" will be reduced to 85% of the amounts actually bid. This reduction will only be used for the purposes of determining the lowest Bidder. To qualify, the ground tire rubber used must be produced from scrap tire ground in a facility in Texas. Payment for "Hot Asphalt-Rubber" and "Aggregate" or "Hot Mix Asphalt Concrete" will be at the actual unit prices bid.

**Article 11.5.2.2. "Buy America."** For proposed Contracts where unit bid prices are submitted for both domestic and foreign steel or iron materials, the total bid amount will be calculated using both the domestic and foreign steel unit bid prices. If the total bid amount using the foreign steel or iron materials is the low bid, and the lowest bid using domestic steel or iron materials exceeds the low bid using foreign steel or iron materials by 25% or more, the apparent low Bidder will be the bid using foreign steel or iron materials. If the difference between the low bid using foreign steel or iron materials and the lowest bid using domestic steel or iron materials is less than 25%, the apparent low Bidder will be the bid using domestic steel or iron materials.

**Article 11.5.2.3. Home State Bidding Preference.** For the purpose of determining the apparent low Bidder on proposed Contracts without federal funds, the total bid amount will be based upon the reverse application of the non-resident Bidder's home state bidding preference, if any.

**Section 12, Consideration of Bid Errors.** The FBCTRA will consider a claim of a bid error by the apparent low Bidder if the following requirements have been met:

- Submit written notification to the FBCTRA within 5 business days after the date the bid is opened.
- Identify the Items of work involved and include bidding documentation. The FBCTRA may request clarification of submitted documentation.

The FBCTRA will evaluate the claim of an error by the apparent low Bidder by considering the following:

- The bid error relates to a material Item of work.

- The bid error amount is a significant portion of the total bid.
- The bid error occurred despite the exercise of ordinary care.
- The delay of the proposed work will not impact cost and safety to the public.

Acceptance of the bid error claim by the FBCTRA will result in the rejection of all bids. The erring Contractor will not be allowed to bid the project when it is relet. Rejection of bids due to the Contractor's bid error may result in the application of sanctions by the FBCTRA.

**Section 13, Gratuities.** Do not offer FBCTRA employees benefits, gifts, or favors. The only exceptions allowed are ordinary business lunches. Failure to honor this policy may result in the termination of the Contract and sanctions under the Texas Administrative Code. Termination of the Contract will be in accordance with Article 8.7, "Termination of Contract."

END OF SPECIAL PROVISION

**FORT BEND COUNTY TOLL ROAD AUTHORITY**

**SPECIAL PROVISION TO ITEM 3**

**AWARD AND EXECUTION OF CONTRACT**

Item 3, "Award and Execution of Contract," of the Texas Department of Transportation Standard Specifications is hereby amended with respect to the clauses cited below. No other clauses or requirements are waived or changed.

**Section 1, "Award of the Contract,"** is voided and replaced in its entirety as follows:

The Authority will award, reject, or defer the Contract within 60 days after the opening of the proposal. The Authority reserves the right to reject any or all proposals and to waive technicalities in the best interest of the County.

**Article 4.2., "Bonds,"** is supplemented by the following:

Performance Bond and Payment Bond forms provided by the Authority must be completed.

**FORT BEND COUNTY TOLL ROAD AUTHORITY**

**SPECIAL PROVISION TO ITEM 4**

**SCOPE OF WORK**

Item 4, "Scope of Work," of the Texas Department of Transportation Standard Specifications is hereby amended with respect to the clauses cited below. No other clauses or requirements are waived or changed.

**Section 4, "Changes in the Work,"** is supplemented by the following:

For purposes of extra work, the following individuals have the authority shown to approve extra work. The Authority has no obligation to pay for extra work unless the Contractor secures written authorization executed by the appropriate person prior to commencement of the work. Extra work may not be split or severed to avoid the requirements of this section.

Mike Stone (Chief Operating Officer): \$ 50,000 or less

Board of Directors: greater than \$ 50,000

**Article 4.1., "Change Orders,"** is added as follows:

The unit prices Bid shall govern for additions to, or deductions from the Contract. If materials or labor are required for which no unit price is bid, the price shall be that reached by agreement by the Authority and the Contractor after definite evidence is furnished by the Contractor to the Authority that the price is the current prevailing price in the area. If the Authority and the Contractor cannot agree, the Engineer shall determine the price for changes.

No compensation shall be allowed under a Change Order for any person not actively engaged in the performance of the specified work.

No extra work shall be paid for without an approved Change Order prior to the start of the extra work.

If additional time is required by reason of the Change, the number of days for completion provided for in this Contract shall be adjusted at the time the Change Order is entered into, and if no adjustment is made on the Change Order form, any additional time is to be considered waived by the Contractor.

Any extension of time given shall not release the Contractor or the Surety from their Performance and Payment Bonds or from all obligations hereunder, which shall remain in full force until the discharge of the Contract.

All time limits stated in the Contract Documents are the essence of the agreement. The provisions of this Article shall not exclude recovery of damage (including but not limited to fees

and charges of engineers, architects, attorneys and other professionals and court and arbitration costs for delay by either party.)

**Section 6, “Requests for Additional Compensation and Damages,”** is revised by removing the first two paragraphs and replacing as follows:

In the event the Contractor requests additional compensation for work not clearly covered in the contract, the contractor shall notify the Authority in writing of his intention to make a claim for additional compensation before beginning such work, within 21 days of the day Contractor knows or should have known of such claim. The Contractor must provide a written estimate of the amount of the claim or assessment of damages within 30 days of timely notice of the claim. If such notice is not given, then the Contractor waives his right to file a claim for such work. Notice of such claim by the Contractor and the documentation of the cost of the claim work by Contractor shall not be construed as proof or substantiation of the validity of such claim. All such claims must be approved in writing by the Board of Directors of the Authority.

No claims for delay damages may be made nor will the Authority ever be obligated to pay delay damages. Contractor’s sole remedy for damages caused by delay is an extension of the contract time. This limitation applies to delay caused by the Authority and delay caused by third parties only. Contractor will not be entitled to extension of time for delays resulting in whole or part from the Contractor’s actions or omissions.

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## Special Provision to Item 5

### Control of the Work

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Item 5, "Control of the Work," of the Standard Specifications is amended with respect to the clauses cited below. No other clauses or requirements of this Item are waived or changed.

**Article 5.1, "Authority of Engineer,"** is voided and replaced by the following.

The Engineer has the authority to observe, test, inspect, approve, and accept the work. The Engineer decides all questions about the quality and acceptability of materials, work performed, work progress, Contract interpretations, and acceptable Contract fulfillment. The Engineer has the authority to enforce and make effective these decisions.

The Engineer acts as a referee in all questions arising under the terms of the Contract. The Engineer's decisions will be final and binding.

The Engineer will pursue and document actions against the Contractor as warranted to address Contract performance issues. Contract remedies include, but are not limited to, the following:

- conducting interim performance evaluations requiring a Project Recovery Plan, in accordance with Title 43, Texas Administrative Code (TAC) §9.23,
- requiring the Contractor to remove and replace defective work, or reducing payment for defective work,
- removing an individual from the project,
- suspending the work without suspending working day charges,
- assessing standard liquidated damages to recover the Department's administrative costs, including additional project-specific liquidated damages when specified in the Contract in accordance with 43 TAC §9.22,
- withholding estimates,
- declaring the Contractor to be in default of the Contract, and
- in case of a Contractor's failure to meet a Project Recovery Plan, referring the issue directly to the Performance Review Committee for consideration of further action against the Contractor in accordance with 43 TAC §9.24.

The Engineer will consider and document any events outside the Contractor's control that contributed to the failure to meet performance standards, including consideration of sufficient time.

Follow the issue escalation ladder if there is disagreement regarding the application of Contract remedies.

**FORT BEND COUNTY TOLL ROAD AUTHORITY**  
**SPECIAL PROVISION TO ITEM 7**  
**LEGAL RELATIONS AND RESPONSIBILITIES**

Item 7, "Legal Relations and Responsibilities," of the Texas Department of Transportation Standard Specifications is hereby modified with respect to the clauses cited below. No other clauses or requirements are waived or changed.

**Section 3, "Laws to be Observed,"** is supplemented by the addition of the following:

It is the intent of the Authority that all construction work shall be accomplished with minimum disturbance and inconvenience to the public.

The operation of heavy construction equipment over adjacent streets shall be avoided to the greatest extent practicable. If such operation is unavoidable, care shall be taken to prevent the creation of any nuisance, including, but not limited to, the tracking of dirt or the blowing of dust from uncovered loads.

If sites, buildings, and locations of historical, archaeological, educational, or scientific interests are discovered after construction operations are begun, operation in that particular area shall cease immediately and the sites, buildings, or location shall be investigated or evaluated by the Fort Bend County Toll Road Authority (FBCTRA). An extension of time will be granted, if necessary, for delays caused by these investigations and evaluations. It is specifically understood, however, that if the Contractor is delayed by virtue of an investigation and evaluation that this delay will not be considered as basis for claim for damages or additional compensation of any kind by the Contractor and that an extension of time will be sole remedy of Contractor for such delay.

**Section 6, "Personal Liability of Public Officials,"** is revised to read in its entirety as follows:

In carrying out provisions of the Contract Documents or in exercising any power or authority granted there under, there shall be no liability for the Project Engineer, the Section Engineer(s), Construction Phase Engineer, their respective officers, employees, subcontractors, or authorized assistants, either personally or otherwise, as they are agents and representatives of the Authority, and there shall be no liability, either personal or otherwise for any member of the Commissioners' Court, the FBCTRA, or any of the FBCTRA's officers, employees, or consultants. Neither the Contract Document nor FBCTRA's or Contractor's course of conduct shall be deemed to create the relationship of principal and agent by and between the FBCTRA and the Contractor.

**Article 7.7.2, "Texas Pollutant Discharge Elimination System (TPDES) Permits and Storm Water Pollution Prevention Plans (SWP3),"** is voided and replaced by the following:

The Contractor will file the Notice of Intent (NOI) and the Notice of Termination (NOT) for work shown on the plans in the right of way. Adhere to all requirements of the SWP3.

Section 15, "Responsibility of Damage Claims," is voided and replaced by the following:

**TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS FORT BEND COUNTY TOLL ROAD AUTHORITY, THE PROJECT ENGINEER, THE SECTION ENGINEER(S), THE CONSTRUCTION PHASE ENGINEER, AND THEIR RESPECTIVE OFFICERS AND EMPLOYEES (COLLECTIVELY, THE "INDEMNIFIED PARTIES") FROM AND AGAINST EVERY LOSS, ITEM OF DAMAGE, INJURY, EXPENSE, DEMAND, CLAIM, CAUSE OF ACTION, JUDGMENT OR LIABILITY, OF WHATSOEVER KIND OR CHARACTER, WHETHER ARISING IN CONTRACT OR TORT OR UNDER ANY STATUTE, FOR EVERY ELEMENT OF RECOVERY, WHETHER DIRECT OR INDIRECT, INCLUDING SPECIAL AND CONSEQUENTIAL DAMAGES, AND INCLUDING ALL RELATED FINES, FEES AND COSTS, TO INCLUDE ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS AND OTHER PROFESSIONALS AND ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS, FOR:**

**(I) BODILY INJURY OR DEATH OF AN EMPLOYEE OF ANY CONTRACTOR PARTIES, EVEN IF SUCH BODILY INJURY OR DEATH IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE, BREACH OF CONTRACT, BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, OR OTHER FAULT OF AN INDEMNIFIED PARTY; AND**

**(II) BODILY INJURY TO OR DEATH OF ANY PERSON NOT ENCOMPASSED IN (I), ABOVE, PROPERTY DAMAGE OR ECONOMIC LOSS (INCLUDING LOSS OF USE) CAUSED BY OR ARISING OUT OF ANY BREACH OF THIS CONTRACT, OR THE BREACH OF ANY COMMON LAW DUTY, OR THE VIOLATION OF ANY STATUTE OR REGULATION BY THE CONTRACTOR PARTIES IN CONNECTION WITH THE PERFORMANCE (OR NON-PERFORMANCE) OF THE WORK, IN EACH INSTANCE, EVEN IF DUE IN PART TO THE NEGLIGENCE, BREACH OF CONTRACT, BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, OR OTHER FAULT OF AN INDEMNIFIED PARTY, PROVIDED, HOWEVER, THAT CONTRACTOR'S OBLIGATION OF INDEMNIFICATION SHALL NOT EXTEND TO THE PERCENTAGE OF DAMAGES, INJURIES, EXPENSES, DEMANDS, CLAIMS, CAUSES OF ACTION, JUDGMENTS, LIABILITIES, COSTS AND FEES CAUSED BY THE INDEMNIFIED PARTIES.**

THIS INDEMNITY AGREEMENT IS INTENDED TO MEET THE TEXAS "EXPRESS NEGLIGENCE RULE" BECAUSE CONTRACTOR AGREES THAT IT APPLIES AND IS ENFORCEABLE EVEN AS TO LOSSES, DAMAGES, INJURIES, EXPENSES, CLAIMS, CAUSES OF ACTION, JUDGMENTS OR LIABILITIES JOINTLY OR CONCURRENTLY CAUSED BY THE NEGLIGENCE OR OTHER FAULT OF THE INDEMNIFIED PARTIES. THE TERM "FAULT" IN THE PREVIOUS SENTENCE INCLUDES THE VIOLATION OR

BREACH BY THE INDEMNIFIED PARTIES OF ANY COMMON LAW DUTY, ANY TERM OF THIS CONTRACT, OR ANY STATUTE OR REGULATION.

NOTWITHSTANDING THE FOREGOING, THE CONTRACTOR ASSUMES NO RESPONSIBILITY FOR THE TIMELY DELIVERY AND ADEQUACY, ACCURACY AND/OR SUFFICIENCY OF THE PLANS, SPECIFICATIONS, OR DRAWINGS PRODUCED BY FBCTRA'S ENGINEERS, AND IT SHALL NOT BE LIABLE TO THE FBCTRA FOR DAMAGES RESULTING FROM ERRORS, INCONSISTENCIES OR OMISSIONS IN SUCH PLANS, SPECIFICATIONS, OR DRAWINGS.

**THIS INDEMNIFICATION OBLIGATION SHALL NOT BE LIMITED IN ANY WAY BY ANY OTHER PROVISION OF THIS CONTRACT OR BY ANY LIMITATIONS ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR PARTIES UNDER WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFITS ACTS.**

**THIS INDEMNIFICATION OBLIGATION IS IN ADDITION TO ALL OTHER LEGAL, EQUITABLE, OR INDEMNIFICATION REMEDIES AVAILABLE TO THE INDEMNIFIED PARTIES. THIS INDEMNIFICATION OBLIGATION SURVIVES THE TERMINATION OR EXPIRATION OF THIS CONTRACT.**

**CONTRACTOR DOES HEREBY WAIVE, RELEASE AND FOREVER RELINQUISH AND DISCHARGE AUTHORITY FROM ALL OF CONTRACTOR'S CAUSES OF ACTION ARISING FROM BODILY INJURY OR DEATH OR DAMAGE TO ANY PROPERTY ARISING OUT OF THE WORK, REGARDLESS OF WHETHER THE INJURY OR DAMAGE IS CAUSED IN FULL OR IN PART BY THE NEGLIGENCE OR OTHER FAULT OF THE INDEMNIFIED PARTIES.**

In the event that any statute, rule of law or equitable principle should be held applicable to any indemnity clause contained in this Contract in favor of one or more of the Indemnified Parties which would render void, voidable, or unenforceable any such indemnity clause as to any party by reason of any provisions contained therein, then and in only such event, such indemnity clause shall be deemed modified and read, construed and enforced as to such party with respect to the provisions held to violate the statute, rule of law or equitable principle to require indemnity by Contractor of the Indemnified Parties to the fullest extent required by such indemnity provision modified and limited only to the degree or extent necessary to bring such indemnity into compliance with such statute, rule of law or equitable principle, but otherwise, the indemnity shall remain in full force and effect and binding upon the parties hereto.

Each party hereto agrees and covenants that it will not contest the validity or enforceability of any indemnity or exculpatory provision of this Contract on the basis that the party has no notice or knowledge of such provision or that the provision is not "conspicuous."

If other provisions contain any indemnities or limitations, such indemnities shall be deemed to be cumulative of and to operate independently of the indemnities provided herein to the end that all

indemnities provided in the Contract shall be construed to grant indemnity to the Indemnified Parties to the fullest extent of each such indemnity.

Contractor shall include in each of its subcontracts with its subcontractors of every tier provisions the same as in all material respects those contained herein. Such provisions shall be for the benefit of and in favor of the Indemnified Parties and such other parties on whom Contractor and such subcontractors may agree.

## Special Provision to Item 7

### Legal Relations and Responsibilities



Item 7, "Legal Relations and Responsibilities," of the Standard Specifications is amended with respect to the clauses cited below. No other clauses or requirements of this Item are waived or changed.

#### Section 7.2.6.5, "Training," is supplemented by the following:

Coordinate enrollment, pay associated fees, and successfully complete Department-approved Training or Contractor-developed Training. Training is valid for the period prescribed by the provider. If no training period is prescribed by the provider, then training is valid for 3 yrs. from the date of completion. The Engineer may require training at a frequency in lieu of the period prescribed based on the Department's needs. Training and associated fees will not be measured or paid for directly but are considered subsidiary to pertinent Items.

**2.6.5.1. Department-approved Training.** Department-approved training is listed below. For Section 7.2.6.5.1.4., "Other Work Zone Personnel", the Contractor may use Contractor-developed Training in lieu of Department-approved Training.

#### 2.6.5.1.1 Contractor Responsible Person and Alternate.

Provider	Course Title
American Traffic Safety Services Association	Traffic Control Supervisor
National Highway Institute <sup>1</sup>	Design and Operation of Work Zone Traffic Control, Work Zone Traffic Control for Maintenance Operations
Texas Engineering Extension Service	Work Zone Traffic Control for CRPs
University of Texas Arlington, Division for Enterprise Development	Traffic Control Supervisor

1. Both classes are required in order to equal the level of training taught in a single class by other providers.

#### 2.6.5.1.2. Flagger Instructor Training.

Provider	Course Title
American Traffic Safety Services Association	Flagging Instructor Training
Texas Engineering Extension Service	Train-the-Trainer Flaggers
National Safety Council	Flagger Instructor Training
University of Texas at Arlington, Division for Enterprise Development	Certified Instructor: Qualified Flagger Training

**Flagger Training.**

Provider	Course Title
Texas Engineering Extension Service	Flaggers in the Work Zone
National Safety Council	Work Zone Flagger (Flagger Novice)
University of Texas Arlington, Division for Enterprise Development	Flaggers in Work Zones
University of Texas at Arlington, Division for Enterprise Development	Work Zone Traffic Control & Qualified Flagger
Associated Builders and Contractors, Austin Chapter	Flagger Training

**2.6.5.1.3. Law Enforcement Personnel.**

Provider	Course Title
National Highway Institute	Safe and Effective Use of Law Enforcement Personnel in Work Zones

**2.6.5.1.4. Other Work Zone Personnel.**

Provider	Course Title
American Traffic Safety Services Association	Traffic Control Technician
Texas Engineering Extension Service	Work Zone Traffic Control
National Highway Institute	Maintenance of Traffic for Technicians
National Highway Institute	Maintenance Training Series: Basics of Work Zone Traffic Control
University of Texas at Arlington, Division for Enterprise Development	Temporary Traffic Control

**2.6.5.2. Contractor-developed Training.** Develop and deliver Contractor-developed Training meeting the minimum requirements established by the Department. The outline for this training must be submitted to the Engineer for approval at the preconstruction meeting. The CRP or designated alternate may deliver the training in lieu of the Department-approved training. The work performed and materials furnished to develop and deliver the training will not be measured or paid for directly but will be considered subsidiary to pertinent Items.

**2.6.5.2.1 Flagger Training Minimum Requirements.** A Contractor's certified flagging instructor is permitted to train other flaggers.

**2.6.5.2.2 Other Work Zone Personnel Minimum Requirements.** Contractor-developed Training must provide information on the use of personnel protection equipment, occupational hazards and health risks, and other pertinent topics related to traffic management. The type and amount of training will depend on the job duties and responsibilities. Develop training applicable to the work being performed. Develop training to include the following topics:

- The Life You Save May Be Your Own (or other similar company safety motto)
- Purpose of the Training
  - It's The Law

- To make work zones safer for workers and motorist
  - To understand what is needed for traffic control
  - To save lives including your own
- Personal and Co-Worker Safety
- High Visibility Safety Apparel: Discuss compliant requirements; Inspect regularly for fading and reduced reflective properties; If night operations are required, discuss the additional and appropriate required apparel in addition to special night work risks; If moving operations are underway, discuss appropriate safety measures specific to the situation and traffic control plan.
  - Blind Areas: A blind area is the area around a vehicle or piece of construction equipment not visible to the operators, either by line of sight or indirectly by mirrors. Discuss the "Circle of Safety" around equipment and vehicles; Use of spotters; Maintain eye contact with equipment operators; Use of hand signals.
  - Runovers and Backovers: Remain alert at all times; Keep a safe distance from traffic; Avoid turning your back to traffic and if you must then use a spotter; Stay behind protective barriers, whenever possible. Note: It is not safe to sit on or lean against a concrete barrier, these barriers can deflect 4+ feet when struck by a vehicle.
  - Look out for each other, warn co-workers
  - Be courteous to motorists
  - Do not run across active roadways
  - Workers must obey traffic laws and drive courteously while operating vehicles in the work zones.
  - Workers must be made aware of company distracted driving policies
- Night Time Operations: Focus should be placed on projects with a nighttime element.
- Traffic Control Training: Basics of Traffic Control.
- Identify Work Zone Traffic Control Supervisor and other appropriate persons to report issues to when they arise.
  - Work Zone Traffic Control Devices must be in clean and in undamaged condition. If devices have been hit but not damaged, put back in their correct place and report to traffic control supervisor. If devices have been damaged, replace with new one and report to traffic control supervisor. If devices are dirty, faded or have missing or damaged reflective tape clean or replace and report to traffic control supervisor. Show examples of non-acceptable device conditions. Discussion on various types of traffic control devices to be used and where spacing requirements can be found.
  - Channelizing Devices and Barricades with slanted stripes: Stripes are to slant in the direction you want traffic to stay or move to; Demonstrate this with a device.
  - Traffic Queuing: Workers must be made aware of traffic queuing and the dangers created by it. Workers must be instructed to immediately notify the traffic control supervisor and other supervisory personnel if traffic is queuing beyond advance warning sign and devices or construction limits.
  - Signs: Signs must be straight and not leaning. Report problems to the traffic control supervisor or other as designated for immediate repair. Covered signs must be fully covered. If covers are damaged or out of place, report to traffic control supervisor or other as designated.

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## Special Provision to Item 8

### Prosecution and Progress

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Item 8, "Prosecution and Progress," of the Standard Specifications, is amended with respect to the clauses cited below. No other clauses or requirements of this Item are waived or changed.

Article 8.6., "Failure to Complete Work on Time," is supplemented by the following:

**8.6.1. Lane Closure Assessment Fees.**

Monetary assessment, as shown on the plans, will be made against the Contractor for any lane closure or obstruction that overlaps into the peak hour traffic for each hour or portion thereof, per lane, regardless of the length of lane closure or obstruction.

**8.6.1.1. Definition of Terms.** For this Contract the following definitions apply:

**8.6.1.1.1 Hour.** Any continuous 60 min. period or portion of a continuous 60 min. period beginning at that point when a lane(s) is closed or obstructed by the Contractor's operations.

**8.6.1.1.2. Assessment Fee.** The amount shown in the proposal, representing the average hourly cost of interference and inconvenience to the road user for each lane closed or obstructed during peak hour traffic.

**8.6.1.1.3. Closure or Obstruction.** When the Contractor's operations result in a useable lane width of the travelway or shoulder less than that specified in the plan documents.

**8.6.1.1.4. Peak Hour Traffic Times.** Schedule of days and times described in the General Notes, when lane closures or obstructions are not allowed.

**8.6.1.2. Fee Calculation and Collection.** The assessment fee will be deducted from the amount due the Contractor on the monthly construction estimate, and thus retained by the Department. The Engineer will determine the time of overlap of lane closure(s) or obstruction(s) for calculating the assessment fee. The assessment fee is based on road user costs and is assessed not as a penalty, but for added expense incurred by the traveling public.

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## Special Provision to Item 8 Prosecution and Progress

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Item 8, "Prosecution and Progress" of the Standard Specifications is amended with respect to the clause cited below. No other clauses or requirements of this Item are waived or changed.

**Article 8.7.2., "Wrongful Default,"** is revised and replaced by the following:

If it is determined after the Contractor is declared in default, that the Contractor was not in default, the rights and obligations of all parties will be the same as if termination had been issued for the convenience of the public as provided in Article 8.8 "Termination of Contract."

**FORT BEND COUNTY TOLL ROAD AUTHORITY**  
**SPECIAL PROVISION TO ITEM 9**  
**MEASUREMENT AND PAYMENT**

Item 9, "Measurement and Payment," of the Texas Department of Transportation Standard Specifications is hereby amended with respect to the clauses cited below. No other clauses or requirements are waived or changed.

**Section 6, "Payment for Material on Hand (MOH),"** is supplemented by the following:

The Contractor shall furnish an affidavit that the material is stored in a bonded facility approved by the Fort Bend County Toll Road Authority (FBCTRA). The estimate shall be made and included for 75 percent of the invoice material cost and invoice freight cost of materials involved after the Contractor has furnished the engineer with a copy of the paid invoices. Only materials requiring approved shop drawings, or where shop drawings are permitted due to quantities of units or because of stage construction, which are completely constructed and/or fabricated on the Contractor's order for a specific project, and on which an approved Test Report has been issued are eligible.

**Section 8, "Retainage,"** is voided and replaced in its entirety as follows:

The Authority will withhold 5.0 percent retainage from the total amount approved for payment until the completion and final acceptance. The Contractor may withhold retainage on subcontractors in accordance with state and federal regulations.

The retainage will be released after all submittals are received and final quantities have been determined.

**Article 9.7.1.1., "Labor,"** is voided and replaced in its entirety as follows:

The Contractor will receive an additional 15% as compensation based on the total wages paid said laborers and foremen. For cost of premiums on public-liability and workers compensation insurance, social security and unemployment insurance taxes, an amount equal to 55 percent of the sum of the labor cost, excluding the 15 percent compensation provided above, will be paid to the Contractor.

**Article 9.7.1.3., "Materials,"** is voided and replaced in its entirety as follows:

The Contractor will receive the actual cost, including freight charges, of the materials used on such work to which cost will be added a sum equal to 15 percent thereof as compensation.

**Section 10, "Final Payment,"** is supplemented by the following:

The Contractor shall after completion of his contract submit his final estimate for quantities installed during the construction period and the value thereof at the Contract unit prices.

The Engineer shall approve and submit the final estimate to the Commissioners' Court and the County shall at such time or within thirty (30) days from and after the date of said estimate as the County may elect, pay the entire sum so found to be due after audit and approval by the County Auditor, after deducting therefrom all previous payments and all amounts to be kept and all amounts to be retained under the provisions of the Contract. All prior partial estimates and payments shall be subject to correction in the final estimate and payment. It is mutually agreed between the parties to the Contract that no estimate or payment made under the Contract, except the final payment, shall exclude any claim of the County or shall constitute conclusive evidence of acceptable performance of the Contract either wholly or in part by the County; and no payments shall be construed to be an acceptance of any defective work or improper materials, or a release from any claims for damages. The Contractor hereby further agrees that the payment of the final amount due under the Contract and adjustment and payment of the bill rendered for any work done in accordance with any alterations to the Contract on a Change In Contract form shall release the County and the Engineer from any and all claims or liability on account of work performed under the Contract or alterations thereof. The Contractor agrees to examine the final estimate and, if he finds it correct, to execute thereon his release in full of all claims due by Fort Bend County, and to certify under oath to the payment by him of all claims against him for labor, materials, and supplies furnished by the Contractor by all persons and firms in the performance of the Contract.

**Section 11, "Electronic Wire Transfers,"** is added as follows:

If the Contractor requests in writing to the Engineer, the Authority will make payments via electronic wire transfer.

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## Special Provision to Special Specification 6185 Truck Mounted Attenuator (TMA) and Trailer Attenuator (TA)

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Item 6185, "Truck Mounted Attenuator (TMA) and Trailer Attenuator (TA)" of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

**Article 4. "Measurement"**, is voided and replaced by the following:

- 4.1. **Truck Mounted Attenuator/Trailer Attenuator (Stationary).** This Item will be measured by the day. TMA/TAs must be set up in a work area and operational before a calendar day can be considered measureable. A day will be measured for each TMA/TA set up and operational on the worksite.
- 4.2. **Truck Mounted Attenuator/Trailer Attenuator (Mobile Operation).** This Item will be measured by the hour or by the day. The time begins once the TMA/TA is ready for operation at the predetermined site and stops when notified by the Engineer. When measurement by the hour is specified, a minimum of 4 hr. will be paid each day for each operating TMA/TA used in a mobile operation. When measurement by the day is specified, a day will be measured for each TMA/TA set up and operational on the worksite.

# Special Specification 6185

## Truck Mounted Attenuator (TMA) and Trailer Attenuator (TA)



### 1. DESCRIPTION

Furnish, operate, maintain and remove upon completion of work, Truck Mounted Attenuator (TMA) or Trailer Attenuator (TA).

### 2. MATERIALS

Furnish, operate and maintain new or used TMAs or TAs. Assure used attenuators are in good working condition and are approved for use. A list of approved TMA/TA units can be found in the Department's Compliant Work Zone Traffic Control Devices List. The host vehicle for the TMA and TA must weigh a minimum of 19,000 lbs. Host vehicles may be ballasted to achieve the required weight. Any weight added to the host vehicle must be properly attached or contained within it so that it does not present a hazard and that proper energy dissipation occurs if the attenuator is impacted from behind by a large truck. The weight of a TA will not be considered in the weight of the host vehicle but the weight of a TMA may be included in the weight of the host vehicle. Upon request, provide either a manufacturer's curb weight or a certified scales weight ticket to the Engineer.

### 3. CONSTRUCTION

Place or relocate TMA/TAs as shown on the plans or as directed. The plans will show the number of TMA/TAs needed, for how many days or hours, and for which construction phases.

Maintain the TMA/TAs in good working condition. Replace damaged TMA/TAs as soon as possible.

### 4. MEASUREMENT

4.1. **Truck Mounted Attenuator/Trailer Attenuator (Stationary).** This Item will be measured by the each or by the day. TMA/TAs must be set up in a work area and operational before a calendar day can be considered measurable. When measurement by the day is specified, a day will be measured for each TMA/TA set up and operational on the worksite.

4.2. **Truck Mounted Attenuator/Trailer Attenuator (Mobile Operation).** This Item will be measured by the hour. The time begins once the TMA/TA is ready for operation at the predetermined site and stops when notified by the Engineer. A minimum of 4 hr. will be paid each day for each operating TMA/TA used in a mobile operation.

### 5. PAYMENT

The work performed and materials furnished in accordance with this Item and measured as provided under "Measurement" will be paid for at the unit price bid for "Truck Mounted Attenuators/Trailer Attenuators (Stationary)," or "Truck Mounted Attenuators/Trailer Attenuators (Mobile Operation)." This price is full compensation for furnishing TMA/TA: set up; relocating; removing; operating; fuel; and equipment, materials, tools, labor, and incidentals.

# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.  
 Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

**OFFICE USE ONLY  
 CERTIFICATION OF FILING**

Certificate Number:  
 2019-559129

Date Filed:  
 11/06/2019

Date Acknowledged:  
 11/08/2019

**1 Name of business entity filing form, and the city, state and country of the business entity's place of business.**

ISI Contracting, Inc.  
 Houston, TX United States

**2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.**

Fort Bend County Toll Road Authority

**3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.**

FR1-1  
 Construction of concrete shoulder drain, erosion control, and metal beam guard fence

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

**5 Check only if there is NO Interested Party.**

**6 UNSWORN DECLARATION**

My name is \_\_\_\_\_, and my date of birth is \_\_\_\_\_.

My address is \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_.  
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in \_\_\_\_\_ County, State of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
(month) (year)

\_\_\_\_\_  
 Signature of authorized agent of contracting business entity  
 (Declarant)