

STATE OF TEXAS           §  
  §  
DISTRICT OF FORT BEND   §

**PURCHASE AGREEMENT**

THIS AGREEMENT is made and entered into by and between the Fort Bend County Drainage District, (hereinafter "District"), a body corporate and politic under the laws of the State of Texas, and Hi-Way Equipment Company LLC (hereinafter "Contractor"), a corporation authorized to conduct business in the State of Texas.

WITNESSETH

WHEREAS, District desires to purchase a 60 ton trailer as described in RFP 11-042 (hereinafter "Trailer"):

WHEREAS, Contractor represents that it has available and desires to sell the Trailer to District.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

**AGREEMENT**

**Article I. Scope of Services**

Contractor shall provide the Trailer as specified in RFP 11-042 (attached hereto as Exhibit A). Contractor shall not deviate from the specifications contained in RFP 11-042 without prior written consent from District.

**Article II. Compensation and Payment**

2.1 Contractor shall provide the Trailer at the price set forth in the attached Exhibit A. The Maximum Compensation for the provision of the Trailer described in Exhibit A is sixty-two thousand seven hundred and forty-six dollars and no/100 (\$62,746.00). In no case shall the amount paid under this Agreement exceed the Maximum Compensation without an approved change order.

2.2 It is understood and agreed that payments will be made to Contractor by District based on the following procedures: Upon delivery of Trailer, Contractor shall submit to District an invoice for the Trailer in a form acceptable to District. District shall review such invoice and approve it within thirty (30) calendar days with such modifications as are consistent with this Agreement and forward same to the Auditor for processing. District shall pay the approved invoice within thirty (30) calendar days.

2.3 Payment of the invoice will not be deemed acceptance of the Trailer, but rather Trailer will be subject to inspection, test, and rejection by District for a period of five (5) days. District may reject Trailer if it does not comply with the specifications contained in RFP 11-042 and Contractor will retrieve Trailer at no cost to County. District may elect to accept replacement tender if Trailer does not comply with the specifications contained in RFP 11-042.

**Article III. Limit of Appropriation**

3.1 Prior to execution of this Agreement, Contractor has been advised by District, and Contractor clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that District shall have available the total maximum sum of sixty-two thousand seven hundred and forty-six dollars and no/100 (\$62,746.00), specifically allocated to fully discharge any and all liabilities which may be incurred by District.

3.2 Contractor does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Contractor may become entitled to hereunder and the total maximum sum that District shall become liable to pay to Contractor hereunder shall not under any conditions, circumstances, or interpretations thereof exceed sixty-two thousand seven hundred and forty-six dollars and no/100 (\$62,746.00).

**Article IV. Time of Performance**

It is understood and agreed that the Trailer shall be delivered to District on or before January 31, 2012 or within such additional time as may be extended by the District at District's sole discretion.

**Article V. Modifications**

Any modifications to this Agreement must be in writing and must be signed by both parties.

**Article VI. Termination**

6.1 Termination for Convenience

6.1.1 District may terminate this Agreement without cancellation charge at any time upon thirty (30) days written notice.

6.2 Termination for Default

6.2.1 District may terminate the whole or any part of this Agreement for cause without cancellation charge in the following circumstances:

6.2.1.1 If Contractor fails to perform within the time specified in Section V. of this Agreement or any extension thereof granted by District in writing; or

6.2.1.2 If Contractor materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in any of these circumstances does not cure such breach or failure to District's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from District specifying such breach or failure.

6.2.2 If, after termination, it is determined for any reason whatsoever that Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the District in accordance with Section 6.1 above.

6.3 If District terminates this Agreement as provided in this Section, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to Contractor.

#### **Article VII. Insurance**

7.1 Prior to commencement of the Services, Contractor shall furnish District with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to District. Contractor shall provide certified copies of insurance endorsements and/or policies if requested by District. Contractor shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. Contractor shall obtain such insurance written on an Occurrence form from such companies having Bests rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

7.1.1 Workers' Compensation insurance in accordance with the laws of the State of Texas. Substitutes to genuine Workers' Compensation Insurance will not be allowed. Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.

7.1.2 Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.

7.1.3 Business Automobile Liability insurance with a combined Bodily Injury/Property Damage limit of not less than \$1,000,000 each accident. The policy shall cover liability arising from the operation of licensed vehicles by policyholder.

7.2 District and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation. All Liability policies written

on behalf of Contractor shall contain a waiver of subrogation in favor of District and members of Commissioners Court.

7.3 If required coverage is written on a claims-made basis, Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time that work under the Agreement is completed.

#### **Article VIII. Indemnity**

**CONTRACTOR SHALL SAVE HARMLESS DISTRICT FROM AND AGAINST ALL CLAIMS, LIABILITY, AND EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ACTIVITIES OF CONTRACTOR, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF CONTRACTOR OR ANY OF CONTRACTOR'S AGENTS, SERVANTS OR EMPLOYEES.**

#### **Article IX. Independent Contractor**

9.1 In the performance of work or services hereunder, Contractor shall be deemed an independent contractor, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of contractor or, where permitted, of its subcontractors.

9.2 Contractor and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of District and shall not be entitled to any of the privileges or benefits of District employment.

#### **Article X. Contract Administration**

10.1 All written notices, demands, and other papers or documents to be delivered to District under this Agreement shall be delivered to the Fort Bend County Drainage District, 1004 Blume Road, Rosenberg, Texas 77471, or at such other place or places as it may from time to time designate by written notice delivered to Contractor. For purposes of notice under this Agreement, a copy of any notice or communication hereunder shall also be forwarded to the following address: Fort Bend County, 301 Jackson Street, Suite 719, Richmond, Texas 77469, Attention: County Judge.

10.2 All written notices, demands, and other papers or documents to be delivered to Contractor under this Agreement shall be delivered to Hi-Way Equipment Company LLC, 6203 Long Drive, Houston, Texas 77087, or such other place or places as Contractor may designate by written notice delivered to District.

**Article XI. Compliance with Laws**

Contractor shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required, Contractor shall furnish District with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

**Article XII. Warranty**

Contractor warrants to District that the Trailer will materially conform to all requirements and specifications contained in the attached Exhibit A.

**Article XIII. Assignment**

Neither party may assign or transfer its rights or obligations under this Agreement without the prior written consent of the other party.

**Article XIV. Applicable Law**

This Agreement shall be construed under and in accordance with the laws of the State of Texas. The parties hereto acknowledge that venue is proper in Fort Bend District Drainage District, Texas, for all disputes arising hereunder and waive the right to sue or be sued elsewhere.

**Article XV. Successors and Assigns**

District and Contractor bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of the other party, in respect to all covenants of this Agreement.

**Article XVI. Conflict**

In the event there is a conflict between this Agreement and the attached exhibit, this Agreement shall control.

IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the \_\_\_\_ day of \_\_\_\_\_, 2011.

FORT BEND COUNTY DRAINAGE DISTRICT

*Robert E. Hebert*

Robert E. Hebert, County Judge  
May 24, 2011

Hi-Way  
HIGHWAY EQUIPMENT COMPANY LLC  
DSB

*[Signature]*

Authorized Agent- Signature

*Daniel Glade*

Authorized Agent- Printed Name

*VP*

Title

*5/12/11*

Date

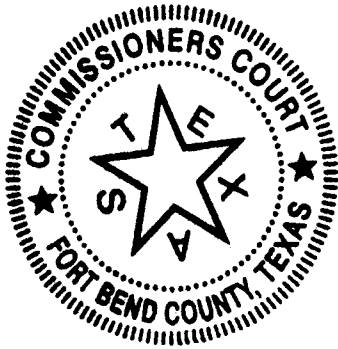
ATTEST:

*[Signature]*

Dianne Wilson, County Clerk

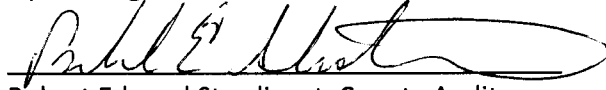
APPROVED:

{Department Head}



**AUDITOR'S CERTIFICATE**

I hereby certify that funds are available in the amount of \$ 62,746.<sup>00</sup> to accomplish and pay the obligation of the Fort Bend County Drainage District under this contract.



Robert Edward Sturdivant, County Auditor

# EXHIBIT A

**TITLE PAGE**

**RFP Subject: 60 Ton Trailer**

**Proposer: Hi-Way Equipment Company LLC**  
**6203 Long Drive**  
**Houston, TX 77087**  
**Phone: 713-649-0940**  
**Fax: 713-649-5571**  
**Email: [jjones@hiwavequip.com](mailto:jjones@hiwavequip.com)**



*Vice President*

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**Authorized Signature**

*David J. Blake*

**Title**

**Vendor Information**

*Hi-Way Equipment Co. LLC*

Legal Name of Contracting Company

*2*

Federal ID Number (Company or Corporation) or Social Security Number (Individual)

*713 649 0940*  
~~*26*~~

*713-649-5571*

Telephone Number

Facsimile Number

*6203 Long Drive*

Complete Mailing Address (for Correspondence)

*Houston, TX 77087*

City, State and Zip Code

Complete Remittance Address (if different from above)

City, State and Zip Code

*Dan Blad VP*

Authorized Representative and Title (printed)

*DBLAD@HIWAYEQUIP.COM*

Authorized Representative's Email Address

 *Daniel J. Blad*

Signature of Authorized Representative

**1.0 OBJECTIVE:**

Fort Bend County, herein requests proposals for 60 ton trailer.

**2.0 PRE-RFP MEETING:**

There is no Pre-RFP meeting for this project.

**3.0 PROPOSAL SUBMISSION:**

**3.1 Questions:**

Questions concerning this RFP must be submitted in writing to Ms Debbie Kaminski, CPPB, County Purchasing Agent, 4520 Reading Road, Rosenberg Texas 77471, [kaminsk@d@co.fort-bend.tx.us](mailto:kaminskd@co.fort-bend.tx.us). Responses to questions will be issued in writing only, verbal questions and responses will not be considered. Deadline for submission of questions and/or clarification is Thursday, February 17, 2011 at 5:00 p.m. (CST). Requests received after the deadline will not be responded to due to the time constraints of this Proposal process.

**3.2 When submitting a proposal in response to this request the following are required:**

- 3.2.1 One (1) original, three (3) copies and one (1) electronic response on CD. CD must contain only one (1) file in PDF format and must match written response identically. Failure to provide proper CD is cause for disqualification.
- 3.2.2 Insure that this RFP is included in your proposal and that all the information requested on the cover of this RFP is completed.
- 3.2.3 Provide a title page showing the RFP subject, name of proposer, address, telephone number, fax number and email address. The title page must be signed by an officer of the firm.
- 3.2.4 Provide all required elements as stated in solicitation.
- 3.2.5 Provide detailed pricing.

**3.3 Proprietary Information:**

If a proposal includes any proprietary data or information that the respondent does not want disclosed to the public, such data or information must be clearly identified on every page on which it is found. Data or information so identified will be used by Fort Bend County officials and representatives solely for the purpose of evaluating proposals and conducting contract negotiations.

**3.4 Cost of Proposal Preparation:**

The cost of preparing a response to this RFP is not reimbursable to respondent or selected provider.

**3.5 Modification or Withdrawal of Proposals:**

Any proposal may be withdrawn or modified by written request of the respondent prior to the deadline for submission. Modifications received after the submission deadline will not be considered. No proposal may be withdrawn for a period of 60 calendar days after opening without permission of Fort Bend County. Respondents will be accorded fair and equal treatment with respect to any opportunity for discussion and revision. Revisions will be permitted after submission and before final contract award for the purpose of obtaining the best and final offer.

**3.6 Preparation of Proposal:**

Proposals must be in correct format and complete. Respondents are expected to address all items in as much detail as necessary for Fort Bend County representatives to make a fair evaluation of the company and the proposal.

**3.7 Confidentiality of Proposals:**

Proposals will be opened on the date specified on the cover page and kept secret during the process of negotiations. Only the names of the respondents will be made public at time of opening. All proposals that have been submitted shall be open for public inspection only after final contract award, subject to the requirements of the Public Information Act.

**3.8 Contract Award:**

Award of contract will be made by Fort Bend County Commissioners Court to the responsible company(s) who has been determined to be the best evaluated offer resulting from negotiations. Fort Bend County reserves the right to reject any or all proposals and is not obligated to award a contract pursuant to this request for proposals. Final contract may be awarded to one (1) firm or multiple firms.

**3.9 Exceptions RFP:**

Any and all exceptions, conditions or qualifications to the provisions contained herein must be clearly identified as such together with reasons for taking exception, and inserted in the proposal along with associated costs.

3.10 Name Brands:

Specifications may reference name brands and model numbers. It is not the intent of Fort Bend County to restrict these bids in such cases, but to establish a desired quality level of merchandise or to meet a pre-established standard due to like existing items. Bidders may offer items of equal stature and the burden of proof of such stature rests with them. Fort Bend County shall act as sole judge in determining equality and acceptability of products offered.

4.0 SPECIFICATIONS:

- 4.1 **Make and Model:** Must be new, 60 ton trailer that meets all specifications. Holden mechanical folding neck low box or equal (see section 3.10).

Holden HME 60

- 4.2 **Axles:** Triple 25,000 lb minimum, oil bath.
- 4.3 **Brakes:** 16-1/2" x 7" minimum with auto slack adjusters, ABS exempt.
- 4.4 **Tires:** 11R22.5 LR H tubeless radial.
- 4.5 **Wheels:** 22.5 x 8.25 10 hole disc.
- 4.6 **Suspension:** Air ride with manual over-ride.
- 4.7 **Deck length:** 22' well, ahead of axles.
- 4.8 **Deck width:** 9'.
- 4.9 **Decking:** Rough oak hardwood.
- 4.10 **Deck Height:** 26" with 8" ground clearance.
- 4.11 **D-Rings:** 15 pair.
- 4.12 **Wheel Covers:** 3/8" tread plate, top of tread plate not more than 20" above deck and the approach ramp 40.1" long.
- 4.13 **Boom Trough Cover:** Bolt on 3/8" tread plate for access to air brake and air ride system and a stop for a rear tool tray with drain holes..
- 4.14 **Outriggers:** Removable swing-out, 11 pair, extra heavy duty.
- 4.15 **Neck Lock:** Manual lock pins with storage racks and u-pin with retainer chain.

- 4.16 **Neck Deck:** Rough oak.
- 4.17 **Neck:** Reinforced for side load, current trailer has a 3/8" x 4" flat bar from the outside edge of the I-beam to the flange for added support.
- 4.18 **Swing Clearance:** 87", 18" king pin setting. King pin visible from haul truck cab.
- 4.19 **5<sup>th</sup> Wheel Height:** 50".
- 4.20 **5<sup>th</sup> Wheel Plate:** 5/8" minimum.
- 4.21 **Lights and Wiring:** ICC/DOT, sealed beam.
- 4.22 **Tool Trays:** 2 each, 1 at the front end of the deck and the second at the rear of the boom trough. Front tool tray must have a steel end cap over board ends level with the I-beam. Front tool tray is to be made of reinforced expanded metal.
- 4.23 **Operated by Winch Line.**
- 4.24 Proposal must include manufacturer literature and/or shop drawings of proposed trailer.

**5.0 UNIT PRICE:**

Unit price for one (1) 60 Ton Trailer meeting all specifications as specified herein, FOB Fort Bend County:

\$ 62,746<sup>00</sup>

**6.0 EVALUATION FACTORS:**

Contract award will be made to the responsible contractor, whose proposal is determined to be the best evaluated offer resulting from negotiations, taking into consideration the relative importance of price and other evaluation factors set forth in this RFP and in accordance with the requirements of the Texas Local Government Code.

- 50% **Understanding of Specifications:** Parties demonstrate their ability to meet the required specifications listed above.
- 50% **Price.**

**7.0 EVALUATION PROCESS:**

- 7.1 After the proposals are received, the evaluation team shall evaluate each proposal that was submitted on time, and the evaluation shall be based on the criteria listed in the proposal. Selection committee members will conduct a quantitative evaluation according to a numerical ranking system and a qualitative evaluation for over all proposal content and its conformance to requirements. The entire evaluation committee will then meet to discuss the strong and weak points of each proposal to assure that it has been evaluated fairly, impartially and comprehensively. Following this initial evaluation, the evaluation team may recommend contract award without further discussion with proposers, or the firms submitting the top rated proposals may be asked to make an oral presentation to the evaluation team for the propose of further clarification and evaluation of the proposals.
- 7.2 If oral presentations are scheduled, the representatives of the firm who will be directly assigned to the account must be present at the interview. During the interview portion of the meeting, the evaluation team shall advise the proposer of deficiencies in the proposal and shall allow the proposer to satisfy the requirements, questions, or concerns by submitting a final offer. The proposer may decide not to modify their proposal and may inform Fort Bend County that the offer is firm and final.
- 7.3 The evaluation team shall not disclose any information included in a firm's proposal to another firm during the RFP process and shall not disclose any information for the purpose of bringing one firm's proposal up to that of a competitor's proposal.
- 7.4 After final offers are received, the evaluation team shall reevaluate each of the final offers, including those deemed final at the interview. The final offers shall be evaluated on the same criteria used in the first evaluation.
- 7.5 Fort Bend County reserves the right to reject any and all proposals received for any reason that would be to the benefit of Fort Bend County.
- 7.6 All proposals submitted are to be valid for a period of ninety (90) days.

**8.0 AWARD:**

- 8.1 Proposals will be opened on the date specified on the cover page and kept secret until a final negotiated contract is awarded by the County Commissioners Court. Only the names of the respondents will be read aloud during the opening. All proposals that have been submitted shall be open to public inspection after the contract award.
- 8.2 Proposals submitted will be evaluated by an evaluation team comprised of County representatives including the County Purchasing Agent.

Fort Bend County RFP 11-042

**9.0 CONTRACTUAL OBLIGATIONS:**

This Request for Proposals, response and associated documentation, any negotiations and final contract, when properly accepted by Fort Bend County, shall constitute a contract equally binding between the contractor and Fort Bend County.

**10.0 W9 FORM:**

All vendors submitting are required to complete the attached W9 form and return with submission.

