

**PROPOSAL  
FOR CONSTRUCTION OF  
INSTALLATION OF FIBER OPTIC CABLE**

**FROM: STA. 358+00  
TO: STA. 1780+00**

**SECTIONS 1-6**

**CONTRACT 03598-SWP-00-CN-IT**

**FOR THE  
CHISHOLM TRAIL PARKWAY  
IN TARRANT AND JOHNSON COUNTIES**

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**NORTH TEXAS TOLLWAY AUTHORITY**

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**NORTH TEXAS TOLLWAY AUTHORITY  
NOTICE TO THE BIDDERS  
"PRE-BID MEETING AND BID OPENING"**

**Contract No.:** 03598-SWP-00-CN-IT  
**Highway:** Chisholm Trail Parkway **Sections:** 1-6  
**County:** Tarrant and Johnson Counties

The bidder's attention is called to the following information regarding the pre-bid meeting and the bid opening. The bidder must attend any mandatory meeting and/or workshop in order to submit a Proposal for this Project.

**NON-MANDATORY PRE-BID MEETING:**

DATE: May 14, 2013

TIME\*: 10:00 a.m. CST

**BID OPENING:**

DATE: June 4, 2013

TIME\*: 3:00 p.m. CST

**PLACE:** North Texas Tollway Authority (NTTA)  
5900 West Plano Parkway, Suite 100  
Plano, Texas 75093

\* Note: CST = Central Standard Time; CDST = Central Daylight Saving Time

Official plans and specifications are available for viewing, purchasing, and downloading online at <http://www.thomasrepro.com/dfs/ntta> for this procurement. Vendors wishing to view, purchase, and download plans and specifications online must first register with Thomas Reprographics.

Written requests or questions received before or on May 17, 2013 will be formally responded to via Bid Document Clarifications by the Letting Official. E-mail the written requests or questions to NTTA's Director of Procurement Services at [bidpurchasing@ntta.org](mailto:bidpurchasing@ntta.org). Questions not submitted in this manner may not be answered.

It shall be the responsibility of each bidder to deliver its proposal to the Director of Procurement Services/NTTA Letting Official at the above listed address before or by the time listed above for its bid to be considered. The mailing envelope or outermost envelope should clearly state the bid or response name and number and be addressed to the attention of the Director of Procurement Services/NTTA Letting Official. The NTTA customer receptionist will stamp the date and time on the proposal envelope upon receipt and this will serve as the official date and time used for the bid opening purpose. Any

discrepancies between the official time and any other time keeping devices will not be the responsibility of the Authority. Faxed, oral, or telephoned bids will not be accepted. Bids received after the Bid Opening date and time will be returned unopened.

Each bidder must ensure that its proposal is executed in the correct spaces provided, as required in the proposal, that its bid is completely filled in, that its proposal guaranty is included, and that it supplies proper affidavits from its board of directors, partners, managers, or other applicable governing authority that has the power to authorize the execution, delivery, and performance under this proposal, certifying that the person executing the proposal has the proper authority to do so. Proposals that are not properly executed or do not contain all required affidavits and other attachments will not be read, will be rejected, and will be returned to the bidder. When there are minor errors or omissions in the bid proposal, the Director of Procurement Services/NTTA Letting Official, in his sole discretion, may provide waivers that are in the best interest of the Authority and to the extent are not inconsistent with the Authority's procurement policy or applicable law.

**NORTH TEXAS TOLLWAY AUTHORITY  
NOTICE TO THE BIDDERS  
"PREQUALIFICATION REQUIREMENTS"**

**Contract No.:** 03598-SWP-00-CN-IT  
**Highway:** Chisholm Trail Parkway, **Sections:** 1-6  
**County:** Tarrant and Johnson Counties

The checked box below indicates the type of qualification requirements for this project:

- FULL PREQUALIFICATION**
- NTTA APPLICATION FOR QUALIFICATION (AFQ)**
- BIDDER'S QUESTIONNAIRE**
- NO PREQUALIFICATION REQUIREMENTS**

Qualification statements must be on file with TxDOT at least ten (10) days prior to the date of the bid opening. NTTA AFQs are due on or before the bid opening at NTTA's general administrative offices.

**FULL PREQUALIFICATION**

Bidder must be a Prequalified Contractor under "Confidential Questionnaire" with the Texas Department of Transportation.

**NTTA APPLICATION FOR QUALIFICATION (AFQ)**

Bidder must complete a NTTA AFQ and submit per the requirements of NTTA's SP-0.25.0.

**BIDDER'S QUESTIONNAIRE**

Bidder must be a Prequalified Contractor under "Bidder's Questionnaire" with the Texas Department of Transportation.

Any Bidder meeting the requirements of "Full Prequalification" automatically meets this requirement.

**NO PREQUALIFICATION REQUIREMENTS**

There are no prequalification requirements.



**PROPOSAL  
TO THE NORTH TEXAS TOLLWAY AUTHORITY  
FOR THE CONSTRUCTION OF  
INSTALLATION OF FIBER OPTIC CABLE  
FOR THE CHISHOLM TRAIL PARKWAY  
A TOLLWAY PROJECT OF THE  
NORTH TEXAS TOLLWAY AUTHORITY  
SPECIAL PROJECTS SYSTEM**

From: STA. 358+00  
To: STA. 1780+00  
Sections: 1-6

The terms “bidder”, “Contractor”, “Authority”, “proposal”, “contract”, “payment bond”, “performance bond”, “warranty bond”, “retainage bond”, “work”, “project”, “substantial completion”, “final completion”, “Special Provisions”, “Special Specifications”, “General Notes and Specification Data”, “Texas Standard Specifications”, “Standard Specifications”, “Letting Official”, and other terms used herein or elsewhere in the contract that are defined in Item 1 of the Texas Standard Specifications, as amended by Special Provision to Item 1, “Definition of Terms”; which is set forth below in this contract, shall have the meanings indicated in said Item 1, as amended by said Special Provision to Item 1.

The undersigned, as bidder, certifies that the only person or parties having an interest in this proposal as principals are those named herein; that this proposal is made without collusion with any other person, firm or corporation; that none of the persons or parties having an interest in this proposal has any connection, official or otherwise, with the Authority, its agents, directors, employees, consultants or fiduciaries; that in submitting this proposal it is not acting as agent for any agent, director, employee,

**PROPOSAL**  
(Continue)

consultant or fiduciary of the Authority; that it has carefully examined the form of the contract attached hereto, the forms of payment bond, performance bond, retainage bond, and warranty bond attached hereto, the Texas Standard Specification, the General Notes and Specification Data attached hereto, the Special Provisions attached hereto, the Special Specifications attached hereto, the forms of Disclosure, Statement, Certification, Contractor's Assurance, Affidavit, and similar provisions attached hereto, and all addenda thereto, together with the conditions of this proposal; and that it has carefully examined the location for the work and the conditions, classes and availability of materials for the work and agrees that it will provide all the necessary labor, machinery, tools, supplies, equipment, transportation and other facilities, apparatuses, and other means of construction and will do all the work and furnish all the materials called for in the contract, in the manner prescribed therein and according to the requirements of the Executive Director of the Authority and shall perform all other obligations imposed by the contract, for the prices named in the Unit Description and Bid Price Schedule attached hereto.

It is understood that the quantities of work to be done and materials to be furnished as shown in this proposal are approximate only, and are intended principally to serve as a guide in preparing bids.

It shall be the duty of each bidder to ensure that its proposal is delivered to the proper place and by the proper time prescribed herein.

It is further agreed that the quantities of work to be done and materials to be furnished may be increased or diminished as may be considered necessary in the opinion of the Engineer to complete the work fully as planned and contemplated, and that all quantities of work, whether increased or decreased, are to be performed at the unit prices set forth in this proposal, except as may be otherwise expressly provided for



**PROPOSAL**  
(Continue)

in the General Notes and Specification Data, the Special Specifications, and the Standard Specifications.

The work to be performed under this contract shall reach substantial completion and final completion in accordance with the schedule set forth in the Special Provision SP-0.03, Important Notice to Contractors - "Mandatory Construction Schedule".

Accompanying this proposal is a proposal guaranty in the form of a cashier's check, or teller's check (as such terms are defined in Section 3.104 of the Texas Business and Commerce Code), or a bank money order, or a bid bond for NINETY-FIVE THOUSAND AND NO/100 DOLLARS (\$95,000.00). A proposal guaranty in the form of a cashier's check, teller's check, or bank money order shall in all cases be issued by and drawn on a State or National Bank, or a State or National Savings and Loan Association, or a State or Federally Chartered Credit Union, or a State or Federal Savings Bank, payable to the order of the Authority. A proposal guaranty in the form of a bid bond must be on the bid bond form provided by the Authority, have powers of attorney attached, bear the impressed seal of the surety, and be signed by the bidder and an authorized individual of the surety. A bid bond will be accepted only from a surety authorized to execute the bond under and in accordance with state law.

The proposal guaranty check accompanying this proposal shall be returned to bidder except the apparent low bidder and second low bidder. Bid bonds will be retained by the Authority, unless upon the acceptance of the proposal, the bidder fails to meet a specified goal or fails to execute and file the Contract, in which case the proposal guaranty shall become the property of the Authority and shall be considered as the Authority's remedy and relief, and as liquidated damages, for damages due to delay and other inconveniences suffered by the Authority on account of the bidder's failure to execute and deliver the contract, bonds, acceptable evidence of insurance,

**PROPOSAL**  
(Continue)

Subcontractor information, and any other required information specified below in the contract.

Acceptance of this proposal by the Authority shall be made in writing and shall be deemed effective as of the date that notice of the Authority's acceptance is deposited in the United States mail, postage prepaid, addressed to the bidder at the address set forth below. It is understood that the Authority reserves the right to reject any or all bids.

In the event that this proposal is accepted by the Authority, the bidder shall procure payment and performance bonds if required by the contract for the full amount of the contract so as to secure proper compliance with the terms and provisions of the contract, to insure and guarantee the work until the Authority makes final payment of the full amount earned by the Contractor pursuant to Article 9.8 of Special Provision to Item 9, "Measurement and Payment," and to guarantee payment of all lawful claims for labor performed and materials furnished in the fulfillment of the contract.

The bidder shall procure a warranty bond in the amount of twenty five percent (25%) of the value shown in the Total Bid Amount for a period of two (2) years to insure and guarantee the repair and/or replacement of any items furnished by the Contractor in this contract discovered to be defective in materials and/or workmanship following the date of final acceptance.

The bidder shall procure a retainage bond in the amount of ten percent (10%) of the value shown in the Total Bid Amount of the Contract to guarantee the protection of any claimants and the Authority for overpayments, liquidated damages, and other deductions or damages owed by the Contractor in connection with the Contract.

The work shall be accepted when fully completed and finished to the entire satisfaction of the Authority.

**PROPOSAL**  
(Continue)

The undersigned, *under penalty of perjury under the laws of the State of Texas*, (a) certifies that the bid prices contained in this proposal have been carefully checked and are submitted as correct and final and (b) affirms the truth and accuracy of the certifications contained herein and made by signing this proposal.

The project is a portion of controlled access toll project, and delay in completion of the work will cause disruption in the operation of currently constructed or planned portions of the project and will cause losses to the Authority, including, but not limited to, lost revenue, additional interest on monies borrowed, increased administrative, legal and engineering costs, and other tangible and intangible losses.

The liquidated damages, if any, set forth in the Special Provision SP-0.03, Important Notice to Contractors - "Mandatory Construction Schedule" is to partially cover such losses and expenses. The Contractor unconditionally and irrevocably acknowledges and agrees that the actual amount of said losses and expenses would be extremely difficult to determine and that the specified liquidated damages (if any) constitute a fair and reasonable estimate by the parties of the amount of said losses and expenses and in no event shall constitute or be construed as a penalty. Further, the Contractor irrevocably and unconditionally acknowledges that the time limits set forth the Special Provision SP-0.03, Important Notice to Contractors - "Mandatory Construction Schedule" constitute an essential benefit for the Authority and an essential element of the contract. The Authority shall recover said liquidated damages (if any) by deducting the amount thereof from any monies due or that may become due the Contractor, and if said monies are insufficient to cover said damages, then the Contractor or its Surety shall pay the amount due and the Authority shall be entitled to any and all rights and remedies available to it in law or equity to recover same.

**PROPOSAL**  
(Continue)

In conformity with Article 8.5, "Failure to Complete Work on Time", of the Texas Standard Specifications, as modified by the Special Provisions and Special Specifications, the charge that the Contractor shall pay for each calendar day that it is in default on time to complete the work shall be FIVE-THOUSAND AND NO/100 DOLLARS (\$5,000.00) per calendar day.

By submitting a Proposal, the bidder agrees to comply with the NTTA's Disadvantaged, Minority, Women-Owned and Small Business Enterprises Policy (Diversity Policy), Revolving Door Policy, and Vendor Policing of Employee Ethics. Without limiting its obligations stipulated by the Diversity Policy, the bidder awarded the Contract expressly agrees to make good-faith efforts to achieve the NTTA's D/M/WBE contract-specific goal defined in this bid document, provide documentation demonstrating those efforts, report any changes in D/M/W/SBE firms providing services, and make good-faith efforts to replace D/M/W/SBE firms unable to perform with other D/M/W/SBE firms at comparable levels of participation. Failure or refusal to comply with the applicable Diversity Policy requirements shall constitute a material breach of Contract.

**PROPOSAL**  
(Continue)

Bidder:

The Bidder's Name: \_\_\_\_\_

\*Signed: \_\_\_\_\_

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\*Note: Signatures must comply with Article 2.6 of the Texas Standard Specifications, as amended by Special Provision to Item 2.

Please return the proposal guaranty to:

Name \_\_\_\_\_

Address \_\_\_\_\_

Address \_\_\_\_\_



**NORTH TEXAS TOLLWAY AUTHORITY**  
**“BID BOND”**

KNOW ALL PERSONS BY THESE PRESENTS,

That we, (Bidder Name) \_\_\_\_\_  
hereinafter called the Principal, and (Surety Name) \_\_\_\_\_

\_\_\_\_\_, a  
corporation or firm duly authorized to transact surety business in the State of Texas,  
hereinafter called the Surety, are held and firmly bound unto the North Texas Tollway  
Authority, hereinafter called the Obligee, in the sum of \_\_\_\_\_ and  
No/100 Dollars (\$ \_\_\_\_\_.00), the payment of which sum will be well and truly, made,  
and the said Principal and the said Surety, bind ourselves, our heirs, executors,  
administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the principal has submitted a proposal to perform work for the following  
project of the Obligee, identified as: \_\_\_\_\_

NOW, THEREFORE, if the Obligee shall award the Contract for the foregoing project to  
the Principal, and the Principal shall satisfy all requirements and conditions required for  
the execution of the Contract and shall enter into the Contract in writing with the Obligee  
in accordance with the terms of such proposal, then this bond shall be null and void. If  
the Principal fails to execute such Contract in accordance with the terms of such  
proposal or fails to satisfy all requirements and conditions required for the execution of  
the Contract in accordance with the proposal, this bond shall become the property of the  
Obligee, without recourse of the Principal and/or Surety, not as a penalty but as  
liquidated damages.

Signed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

By: \_\_\_\_\_  
(Principal Name)

\_\_\_\_\_  
(Signature and Title of Principal)

\*By: \_\_\_\_\_  
(Surety Name)

\_\_\_\_\_  
(Signature of Attorney-in-Fact)

Impressed  
Surety Seal  
Only

\*Attach Power of Attorney (Surety) for Attorney-in-Fact





**NORTH TEXAS TOLLWAY AUTHORITY**  
**NOTICE TO THE BIDDER**  
**“TOTAL BID AMOUNT”**

**Contract No.:** 03598-SWP-00-CN-IT  
**Highway:** Chisholm Trail Parkway, **Sections:** 1-6  
**County:** Tarrant and Johnson Counties

In the space provided below, please enter your total bid amount for this project. Only this figure will be read publicly by the North Texas Tollway Authority (the Authority) at the bid opening.

It is understood and agreed by the bidder in signing this proposal that the total bid amount entered below is not binding on either the bidder or the Authority. It is further agreed that **the official total bid amount for this proposal will be determined by multiplying the unit bid prices for each pay item by the respective estimated quantities shown in this proposal and then totaling all of the extended amounts.**

\$ \_\_\_\_\_  
**Total Bid Amount**



**NORTH TEXAS TOLLWAY AUTHORITY**  
**“CERTIFICATION OF INTEREST IN OTHER BID PROPOSALS**  
**FOR THIS WORK”**

**Contract No.:** 03598-SWP-00-CN-IT

**Highway:** Chisholm Trail Parkway, **Sections:** 1-6

**County:** Tarrant and Johnson Counties

By signing this proposal, the bidder and the signer each certifies that the following information is true, accurate, and complete.

- A. Quotation(s) have been issued in this firm's name to other firm(s) interested in this work for consideration by performing a portion of this work.

\_\_\_\_\_ Yes

\_\_\_\_\_ No

- B. If this proposal is the low bid, the bidder agrees to provide the following information prior to award of the contract.

1. Identify firm which bid as a prime contractor and from which the bidder received quotations for work on this project.

2. Identify all the firms which bid as a prime contractor to which the bidder gave quotations for work on this project.



**NORTH TEXAS TOLLWAY AUTHORITY**  
**“AFFIDAVIT - CONFLICT OF INTEREST”**

**Contract No.:** 03598-SWP-00-CN-IT  
**Highway:** Chisholm Trail Parkway, **Sections:** 1-6  
**Project:** Installation of Fiber Optic Cable

Each bidder, offeror, or respondent (hereinafter also referred to as “you”) to a NTTA (also referred to as “Authority”) procurement are required to complete **Conflict of Interest Questionnaire (the attached CIQ Form)** below pursuant to state law and Section 4 of the NTTA Procurement Policy. The statement below is required by NTTA policies. Accordingly, you are advised of the following:

A member of the Board, an employee, or agent of the Authority may not accept or solicit any gift, favor, or service that might reasonably tend to influence that Board member, employee, or agent in the making of procurement decisions or that the Board member, employee, or agent knows or should have known is being offered with the intent to influence the Board member's, employee's, or agent's making of procurement decisions; or accept other compensation that could reasonably be expected to impair the Board member's, employee's, or agent's independence of judgment in the making of procurement decisions.

No bidder, offeror, or respondent shall offer any interest, gift, favor, service, or compensation described in the preceding sentence, and any such offer may disqualify the bidder, offeror, or respondent from consideration for the applicable procurement.

A bidder, offeror, or respondent shall be required to complete a Conflict of Interest Questionnaire for each local governmental officer disclosing whether there is any business or familial relationships with Board members, employees, or agents of the Authority. Such relationship may disqualify the bidder, offeror, or respondent from consideration for the applicable procurement.

If applicable, please describe below any business or familial relationship that your officers, employees, agents, or board members may have with a board member, employee, or agent of the Authority:

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\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title



# CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor or other person doing business with local governmental entity

### OFFICE USE ONLY

Date Received

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.

A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

**1** Name of person who has a business relationship with local governmental entity.

**2**  Check this box if you are filing an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

**3** Name of local government officer with whom filer has employment or business relationship.

\_\_\_\_\_  
Name of Officer

This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?

Yes       No

B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

Yes       No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

Yes       No

D. Describe each employment or business relationship with the local government officer named in this section.

**4**

\_\_\_\_\_  
Signature of person doing business with the governmental entity

\_\_\_\_\_  
Date

Adopted 06/29/2007









**NORTH TEXAS TOLLWAY AUTHORITY**  
**“CERTIFICATION OF DEBARMENT”**

**Contract No.:** 03598-SWP-00-CN-IT

**Highway:** Chisholm Trail Parkway, **Sections:** 1-6

**Project:** Installation of Fiber Optic Cable

The bidder certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal Department, State, or the North Texas Tollway Authority (NTTA);
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction or contract under a public transaction; violation of Federal, State, or the NTTA antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity such as Federal, State, or the NTTA with commission of any of the offenses enumerated in paragraph (2) of this certification; and,
4. Have not within a three-year period preceding this application/proposal had one or more public transactions terminated for cause or default.

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Signature of Certifying Bidder

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Title

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Date



**NORTH TEXAS TOLLWAY AUTHORITY  
“DISADVANTAGED, MINORITY, WOMEN-OWNED, AND SMALL BUSINESS  
ENTERPRISE PROGRAM”**

**Professional Services, Consulting and Goods/Services Contracts, and Special  
Provision for Construction and Maintenance related projects**

**1. General**

The North Texas Tollway Authority (the Authority) is committed to providing contracting opportunities for disadvantaged, minority, women-owned, and small business enterprises (D/M/WBE). In this regard, the Authority maintains DBE, M/WBE, and SBE programs in order to facilitate contracting opportunities for these businesses.

The programs are implemented in accordance with the NTTA’s Disadvantage, Minority, Women-Owned and Small Business Enterprises Policy (Diversity Policy), originally adopted by the NTTA Board of Directors under Resolution No. 10-19 on January 20, 2010, and any revisions thereafter.

The following document outlines:

- Criteria regarding commercially useful function
- Factors to determine good faith efforts
- Contractor responsibilities
- Monthly reporting and compliance requirements
- Noncompliance enforcement

The Business Diversity Department Contracting and Compliance Manual (CCM) outlines the procedures, provisions and compliance requirements to support and comply with the Authority’s Diversity Policy. The CCM is approved and incorporated into the contract by reference for all purposes by the Authority.

The CCM and the Diversity Policy may be obtained online at the NTTA website at <http://www.ntta.org/procurement/busdiv/bestpractices/Pages/default.aspx> or by contacting the Business Diversity Department at (214) 461-2007.

**2. Commercially useful function criteria**

A commercially useful function (CUF) is when the D/M/WBE is responsible for the performance, management and supervision of a distinct element of work, in accordance with normal industry practice. The criteria utilized to determine a commercially useful function is set forth in the CCM (page 18).

**3. Factors to determine good faith efforts**

All prime contractors are required to demonstrate a good faith effort toward achieving a D/M/WBE goal. A good faith effort can be demonstrated by actions which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to, either individually or collectively, achieve the goal.

If a prime contractor does not meet the designated goal, it shall nevertheless be eligible for award of the contract if it can demonstrate to the NTTA that it has made a good faith effort to meet the goal. The factors that determine if a good faith effort has been met are set forth in the CCM (page 23).

#### **4. Contractor's responsibilities**

All responding firms, including D/M/WBE certified firms, must submit documentation regarding all subcontractor utilization and how they will meet or exceed the established goal using certified D/M/WBE firms for this project on the Commitment Agreement Form (Form 4906) provided.

Commitment Agreement Form (Form 4906), good faith effort documentation and supporting information must be submitted to the Business Diversity Department for all contracting opportunities in accordance to the CCM. Form 4906 must be submitted to the Authority with the proposal.

#### ***Information for construction and maintenance related projects***

*For all construction and maintenance related projects, Form 4906 must be submitted to the Authority no later than 5:00 pm on the 14<sup>th</sup> day after written notification of the conditional award of the contract.*

Additional questions and/or clarification can be obtained by contacting the Director of Business Diversity at [businessdiversity@ntta.org](mailto:businessdiversity@ntta.org). Please copy the Procurement Services Department at [bidpurchasing@ntta.org](mailto:bidpurchasing@ntta.org) on all correspondence. Form 4906 must include a brief description of the type of work to be performed and the dollar value or percentage of utilization of work that will be assigned to the subcontractors including D/M/WBEs and must be signed by both the prime contractor and subcontractor.

All compliance forms may be obtained online at the NTTA website at <http://www.ntta.org/procurement/busdiv/bestpractices/Pages/default.aspx>

#### **5. Monthly reporting and compliance requirements**

Prime contractors must submit monthly reports, no later than the 15<sup>th</sup> day of each month, using the Monthly Subcontractor Progress Report (Form 4907) throughout the term of the contract, and submit the Subcontractor Final Report (Form 4908) upon completion of the Contract, in accordance with the CCM.

Prime contractors are also required to electronically submit their respective Form 4907 information into the business diversity contract compliance tracking system by the 15<sup>th</sup> day of each month. Prime contractors will have a designated User ID & password to login to the contract compliance tracking system via the following link: <https://pro.prismcompliance.com>

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

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

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

**Contract No:** 03598-SWP-00-CN-IT  
**Project:** Installation of Fiber Optic Cable

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

DBE 12 % of total contract amount

M/WBE \_\_\_\_\_ % of total contract amount

**Total D/M/WBE Goal** 12 % of total contract amount

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

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











**NORTH TEXAS TOLLWAY AUTHORITY  
MONTHLY SUBCONTRACTOR PROGRESS REPORT**

<b>Contract No.:</b>	<b>number</b>	<b>County:</b>	<b>Name</b>
<b>SA/WA/ETC#:</b>	<b>number</b>	<b>Reporting Period (M/D/Yr to M/D/Yr)</b>	<b>date to date</b>
<b>Contractor:</b>	<b>Name</b>	<b>Original Contract Amount:</b>	<b>\$ -</b>
<b>D/M/WBE Goal:</b>	<b>0.00%</b>	<b>Current Contract Amount:</b>	<b>\$ -</b>
<b>D/M/WBE Goal Attained to Date:</b>	<b>0.0%</b>	<b>D/M/WBE Goal Dollars:</b>	<b>\$ -</b>
		<b>Current Year to date D/M/WBE Dollars paid (Beginning January 1st - December 31st)</b>	<b>\$ -</b>

Name of Subcontractor/Supplier	Type of Work/Service performed	Amount Paid This Period to Subcontractor	Amount Paid To Date to Subcontractor
<b>D/M/WBE Certified Firms:</b>			
		\$ -	\$ -
		\$ -	\$ -
		\$ -	\$ -
		\$ -	\$ -
		\$ -	\$ -
		\$ -	\$ -
		\$ -	\$ -
<b>D/M/WBE Firm Totals:</b>		<b>\$ -</b>	<b>\$ -</b>
<b>SBE Firms:</b>			
		\$ -	\$ -
		\$ -	\$ -
		\$ -	\$ -
		\$ -	\$ -
		\$ -	\$ -
<b>SBE Firm Totals:</b>		<b>\$ -</b>	<b>\$ -</b>
<b>Non-Minority Firms:</b>			
		\$ -	\$ -
		\$ -	\$ -
		\$ -	\$ -
		\$ -	\$ -
		\$ -	\$ -
<b>Non-Minority Firm Totals:</b>		<b>\$ -</b>	<b>\$ -</b>

Include payments to all certified DBEs, WBEs, MBEs, SBE's and all Non-Minority firms during the period noted above.

If using a non-minority hauling firm that leases from D/M/WBE truck owner-operators, payments made to each owner-operator must be reported.

Any changes to the original commitments previously approved by the department must be reported to the NTTA's stakeholder and the Business Diversity Department.

For projects with assigned D/M/WBE Goals, submission of this report for periods of negative D/M/WBE activity is required. This report is required until all subcontracting or material supply activity is completed. ***This report must be submitted to the NTTA or Construction Manager each month with your monthly invoices.***

I hereby certify that the above is a true and correct statement of the amounts paid to all the firms listed above.

Signature: \_\_\_\_\_

Authorized Company Official

Date

The NTTA maintains the information collected through this form. With few exceptions, upon request you may be informed of the information that is collected about you. Under Sections 552.021 and 552.023 of the Texas Government Code, you are permitted to receive and review the information. Under Section 559.004 of the Texas Government Code, you are also permitted to have the NTTA correct information about you that it is incorrect.





**NORTH TEXAS TOLLWAY AUTHORITY  
SUBCONTRACTOR FINAL REPORT**

Form NTTA 4908

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

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

\* Include payments to all **NON-MINORITY** and certified DBEs, WBEs, MBEs and SBEs.  
 This is to certify that **0.0%** of the work was completed by D/M/WBE firms, as stated above.  
 IF THE GOAL WAS NOT ATTAINED, THEN ATTACH DOCUMENTATION THAT EXPLAINS THE REASONING.  
 Signature of General Contractor: \_\_\_\_\_ Date: \_\_\_\_\_

AFFIX NOTARY STAMP/SEAL ABOVE

Sworn to and subscribed before me, by the said \_\_\_\_\_, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, to certify which, witness my hand and seal of office.

Signature of Notary Public: \_\_\_\_\_ Printed Name of Notary Public: \_\_\_\_\_

The NTTA maintains the information collected through this form. With few exceptions, upon request you may be informed of the information that is collected about you. Under Sections 552.021 and 552.023 of the Texas Government Code, you are permitted to receive and review the information. Under Section 559.004 of the Texas Government Code, you are also permitted to have the NTTA correct information about you that it is incorrect.



# DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

Approved by OMB

0348-0046

(See reverse for public burden disclosure.)

<b>1. Type of Federal Action:</b> <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	<b>2. Status of Federal Action:</b> <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	<b>3. Report Type:</b> <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change <b>For Material Change Only:</b> year _____ quarter _____ date of last report _____
<b>4. Name and Address of Reporting Entity:</b> <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known:  Congressional District, if known: 4c	<b>5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:</b>  Congressional District, if known:	
<b>6. Federal Department/Agency:</b>	<b>7. Federal Program Name/Description:</b>  CFDA Number, if applicable: _____	
<b>8. Federal Action Number, if known:</b>	<b>9. Award Amount, if known:</b> \$ _____	
<b>10. a. Name and Address of Lobbying Registrant</b> <i>(if individual, last name, first name, MI):</i>	<b>b. Individuals Performing Services</b> <i>(including address if different from No. 10a)</i> <i>(last name, first name, MI):</i>	
<b>11.</b> Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
<b>Federal Use Only:</b>		Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.



## **CHILD SUPPORT STATEMENT**

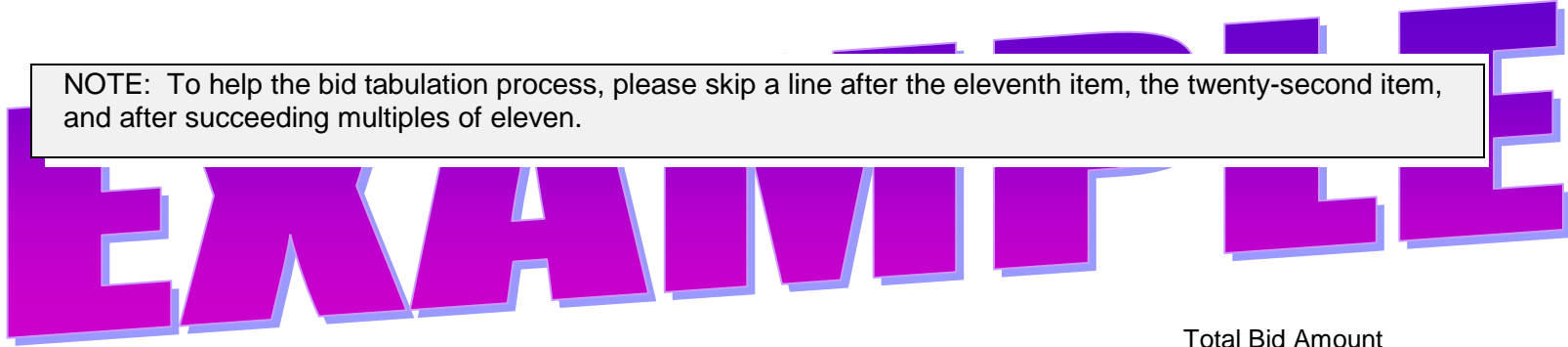
**Under Section 231.006, Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.**



CONTRACT: 03598-SWP-00-CN-IT  
HIGHWAY: Chisholm Trail Parkway, SECTIONS: 1-6  
COUNTY: Tarrant and Johnson Counties

Alt. No.	Item			Bid Item Description	Unit of Measure	Approx. Quantities	Unit Bid Price	Amount	Item Sequence No.
	Item No.	Item Code	S.P. No.						
100	2002			PREPARING ROW	STA	73.00	\$ 3,750.00	\$273,750.00	1
162	2002			BLOCK SODDING	SY	4,593.00	\$ 2.25	\$ 10,334.25	2

NOTE: To help the bid tabulation process, please skip a line after the eleventh item, the twenty-second item, and after succeeding multiples of eleven.



Total Bid Amount \_\_\_\_\_

(YOUR FIRM'S NAME) certifies that the unit prices shown on this complete computer print-out for all of the bid items and the alternates contained in this proposal are the unit prices intended and that its bid will be tabulated using these unit prices and no other information from this print-out.

(YOUR FIRM'S NAME) acknowledges and agrees that the total bid amount shown will be read as its total bid and further agrees that the official total bid amount will be determined by multiplying the unit bid prices shown in this print-out by the respective estimated quantities shown in the proposal and then totaling all of the extended amounts.

Signed: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Additional Signature for Joint Venture:  
Signed: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXAMPLE OF BID PRICES SUBMITTED BY COMPUTER PRINTOUT**



**NORTH TEXAS TOLLWAY AUTHORITY**  
**"UNIT DESCRIPTION AND BID PRICE SCHEDULE"**

**Contract:** 03598-SWP-00-CN-IT

**Highway:** Chisholm Trail Parkway, Sections: 1-6

**County:** Tarrant and Johnson Counties

ITEM			UNIT BID PRICE ONLY - WRITTEN IN WORDS	UNIT	APPROX. QUANTITIES	AMOUNT	DEPT USE ONLY
ITEM NO.	ITEM CODE	S.P. NO.					
0500	2001	11	MOBILIZATION _____ Dollars and _____ Cents	LS	1	\$ _____	1
0502	2001	33	BARRICADES, SIGNS AND TRAFFIC HANDLING _____ Dollars and _____ Cents	MO	1	\$ _____	2
6014	2010	6014.0	FIBER OPTIC CBL (SNGLE MODE)(6 FIBER) _____ Dollars and _____ Cents	LF	52,656	\$ _____	3
6014	2011	6014.0	FIBER OPTIC CBL (SNGLE-MODE) (12 FIBER) _____ Dollars and _____ Cents	LF	16,184	\$ _____	4
6014	2020	6014.0	FIBER OPTIC SPLICE ENCLOSURE _____ Dollars and _____ Cents	EA	24	\$ _____	5
6014	2024	6014.0	FIBER OPTIC CABLE ROAD MARKER _____ Dollars and _____ Cents	EA	290	\$ _____	6
6014	2034	6014.0	FIBER OPTIC PATCH PANEL (12 POSITION) _____ Dollars and _____ Cents	EA	12	\$ _____	7
6014	2043	6014.0	FIBER OPTIC PATCH PANEL (6 POSITION) _____ Dollars and _____ Cents	EA	44	\$ _____	8
6014	7001	6014.0	FIBER OPTIC CBL(SNGLE-MODE)(288 FIBER) _____ Dollars and _____ Cents	LF	157,492	\$ _____	9
6014	7002	6014.0	FIBER OPTIC CABLE TEST STATION _____ Dollars and _____ Cents	EA	50	\$ _____	10
6014	7005	6014.0	FIBER OPTIC PATCH PANEL (24 POSITION) _____ Dollars and _____ Cents	EA	10	\$ _____	11
6014	7006	6014.0	FIBER OPTIC PATCH PANEL (36 POSITION) _____ Dollars and _____ Cents	EA	10	\$ _____	12
6014	7008	6014.0	FIBER OPTIC PATCH PANEL (288 POSITION) _____ Dollars and _____ Cents	EA	19	\$ _____	13
6014	7009	6014.0	FIBER OPTIC TERMINATION _____ Dollars and _____ Cents	EA	4,362	\$ _____	14



**NORTH TEXAS TOLLWAY AUTHORITY**  
**"UNIT DESCRIPTION AND BID PRICE SCHEDULE"**

**Contract:** 03598-SWP-00-CN-IT

**Highway:** Chisholm Trail Parkway, Sections: 1-6

**County:** Tarrant and Johnson Counties

ITEM			UNIT BID PRICE ONLY - WRITTEN IN WORDS	UNIT	APPROX. QUANTITIES	AMOUNT	DEPT USE ONLY
ITEM NO.	ITEM CODE	S.P. NO.					
6014	7010	6014.0	FIBER OPTIC SPLICE _____ Dollars and _____ Cents	EA	2,184	\$ _____	15
6014	7011	6014.0	FIBER OPTIC CBL (SNGLE-MODE)(6 FIBER)(FURNISH ONLY) _____ Dollars and _____ Cents	LF	6,000	\$ _____	16
6014	7012	6014.0	FIBER OPTIC CBL (SNGLE-MODE)(12 FIBER)(FURNISH ONLY) _____ Dollars and _____ Cents	LF	6,000	\$ _____	17
6014	7013	6014.0	FIBER OPTIC CBL (SNGLE-MODE)(288 FIBER)(FURNISH ONLY) _____ Dollars and _____ Cents	LF	28,000	\$ _____	18
6014	7014	6014.0	FIBER OPTIC SPLICE ENCLOSURE (FURNISH ONLY) _____ Dollars and _____ Cents	EA	2	\$ _____	19
6014	7015	6014.0	FIBER OPTIC PATCH PANEL (6 POSITION)(FURNISH ONLY) _____ Dollars and _____ Cents	EA	4	\$ _____	20
6014	7016	6014.0	FIBER OPTIC PATCH PANEL (12 POSITION)(FURNISH ONLY) _____ Dollars and _____ Cents	EA	2	\$ _____	21
6014	7017	6014.0	FIBER OPTIC PATCH PANEL (24 POSITION)(FURNISH ONLY) _____ Dollars and _____ Cents	EA	2	\$ _____	22
6014	7018	6014.0	FIBER OPTIC PATCH PANEL (36 POSITION)(FURNISH ONLY) _____ Dollars and _____ Cents	EA	2	\$ _____	23
6014	7019	6014.0	FIBER OPTIC PATCH PANEL (48 POSITION)(FURNISH ONLY) _____ Dollars and _____ Cents	EA	2	\$ _____	24

**TOTAL BID \$ \_\_\_\_\_**





**REQUIRED CONTRACT PROVISIONS  
FEDERAL-AID CONSTRUCTION CONTRACTS**

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XI. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion .....	6
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**ATTACHMENTS**

- A. Employment Preference for Appalachian Contracts  
(included in Appalachian contracts only)

**I. GENERAL**

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.

3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.

4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:

- Section I, paragraph 2;
- Section IV, paragraphs 1, 2, 3, 4, and 7;
- Section V, paragraphs 1 and 2a through 2g.

5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.

6. **Selection of Labor:** During the performance of this contract, the contractor shall not:

- a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or
- b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

**II. NONDISCRIMINATION**

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more)

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630 and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

- a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.
- b. The contractor will accept as his operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, preapprenticeship, and/or on-the-job training."

2. **EEO Officer:** The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.

3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

- a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.
- b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.
- c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.
- d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
- e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed

in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)

c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.

**5. Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

#### **6. Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for

minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.

**8. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.

b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.

c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.

**9. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number of minority and non-minority group members and women EEO employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and

(4) The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.

b. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data.

### III. NONSEGREGATED FACILITIES

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more)

a. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

b. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

c. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

### IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

#### 1. General:

a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1 (b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.

b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1.3, and 5 are herein incorporated by reference in this contract.

#### 2. Classification:

a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.

b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:

(1) the work to be performed by the additional classification requested is not performed by a classification in the wage determination;

(2) the additional classification is utilized in the area by the construction industry;

(3) the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) with respect to helpers, when such a classification prevails in the area in which the work is performed.

c. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. Said Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

#### 3. Payment of Fringe Benefits:

a. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor or subcontractors, as appropriate, shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly case equivalent thereof.

b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

#### **4. Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:**

##### **a. Apprentices:**

(1) Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate listed in the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor or subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

(3) Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(4) In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

##### **b. Trainees:**

(1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration.

(2) The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(3) Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour

Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.

(4) In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

##### **c. Helpers:**

Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under an approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

#### **5. Apprentices and Trainees (Programs of the U.S. DOT):**

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

#### **6. Withholding:**

The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, as much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the SHA contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

#### **7. Overtime Requirements:**

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

#### **8. Violation:**

Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

## 9. Withholding for Unpaid Wages and Liquidated Damages:

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

## V. STATEMENTS AND PAYROLLS

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

### 1. Compliance with Copeland Regulations (29 CFR 3):

The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

### 2. Payrolls and Payroll Records:

a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.

b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1 (b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1 (b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.

c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;

(2) that such laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 3;

(3) that each laborer or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalent for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

e. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.

f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

## VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beatification contracts, and contracts for which the total final construction cost for roadway and bridge is less than \$1,000,000 (23 CFR 635) the contractor shall:

a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.

b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.

c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.

2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

## VII. SUBLETTING OR ASSIGNING THE CONTRACT

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635).

a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

### VIII. SAFETY: ACCIDENT PREVENTION

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SHA contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

### IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

#### NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

18 U.S.C. 1020 reads as follows:

***"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality,***

***quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or***

***Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or***

***Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;***

***Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both."***

### X. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$100,000 or more)

By submission of this bid or the execution of this contract, or subcontract, as appropriate, the bidder, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.

3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

### XI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

#### 1. Instructions for Certification - Primary Covered Transactions:

(Applicable to all Federal-aid contracts - 49 CFR 29)

a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.

f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, or unless authorized by the department or agency entering into this transaction.

g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

## **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Primary Covered Transactions**

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and

d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

## **2. Instructions for Certification - Lower Tier Covered Transactions:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more - 49 CFR 29)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, or unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions:**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 - 49 CFR 20)

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.



**ATTACHMENT A - EMPLOYMENT PREFERENCE FOR  
APPALACHIAN CONTRACTS**  
(Applicable to Appalachian contracts only)

1. During the performance of this contract, the contractor under taking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph 1 c shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph 4 below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification,

(c) The date on which he estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, he shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within 1 week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph 1c above.

5. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.



## **CONTRACTOR'S ASSURANCE (Subcontracts – Federal Aid Projects)**

**By signing this Contract, the Contractor is giving assurances that all subcontract agreements of \$10,000 or more on this project will incorporate the following provisions:**

- ✓ **Special Provision**      **“Certification of Nondiscrimination in Employment”**
  
- ✓ **Special Provision**      **“Disadvantaged Business Enterprise in Federal-Aid Construction”**
  
- ✓ **Special Provision**      **“Measurement and Payment” (Article 9.2)**
  
- ✓ **Special Provision**      **“Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity” (Executive Order 11246)**
  
- ✓ **Special Provision**      **“Standard Federal Equal Employment Opportunity Construction Contract Specifications” (Executive Order 11246)**
  
- ✓ **Form FHWA 1273**      **“Required Contract Provisions Federal-aid Construction Contracts” (Form FHWA 1273 must also be physically attached to subcontracts and purchase orders of \$10,000 or more)**
  
- ✓ **Applicable “Wage Determination Decision”**

Revised 11-04



**NORTH TEXAS TOLLWAY AUTHORITY  
CHISHOLM TRAIL PARKWAY  
SECTIONS 1-6  
“INSTALLATION OF FIBER OPTIC CABLE”**

The referenced Texas Department of Transportation standard specifications, special provisions, and special specifications and accompanying North Texas Tollway Authority general notes and specification data, special provisions, and special specifications in this document have been selected by me, or under my responsible supervision, as being applicable to this project.



The seal appearing on this document was authorized by:

**Mark Bouma, P.E.  
P.E. NO. 72174**

on: 4-12-2013

**Note: Alteration of a sealed document without proper notification to the responsible Engineer is an offense under the Texas Engineering Practice Act.**



## WAGE RATES highway

The wage rates listed are those predetermined by the Secretary of Labor and State Statute to be the minimum wages paid. To determine the applicable wage rate zone, a list entitled "TEXAS COUNTIES IDENTIFIED BY WAGE RATE ZONES" is provided in the contract. Any wage rate that is not listed must be submitted to the Engineer for approval. **IMPORTANT NOTICE FOR STATE PROJECTS;** only the controlling wage rate zone applies to the contract. **Effective 03-12-2010**

Index#	Classification	Zone 27	Zone 28	Zone 29	Zone 30	Zone 31	Zone 41	Zone 43	Zone 45	Zone 46	Zone 118	Zone 119	Zone 120	Zone 125
		3/12/10 TX08-27	3/12/10 TX08-28	3/12/10 TX08-29	3/12/10 TX08-30	3/12/10 TX08-31	3/12/10 TX08-41	3/12/10 TX08-43	3/12/10 TX08-45	3/12/10 TX08-46	3/12/10 TX08-118	3/12/10 TX08-119	3/12/10 TX08-120	3/12/10 TX08-125
100	Air Tool Operator						16.00	10.06	9.98				9.05	
103	Asphalt Heater Operator		11.27											
106	Asphalt Raker	8.99	9.51	8.49	8.58	9.11	9.96	11.01	9.30	11.13	9.36	9.58	9.53	10.63
109	Asphalt Shoveler			9.35	9.09		10.56	8.80	8.28	9.14			7.33	9.23
112	Batching Plant Weigher							14.15	17.11				11.15	
115	Batterboard Setter													
118	Carpenter	10.39	12.61	10.73	12.59	10.52	12.25	12.80	11.73	12.49	10.71	10.54	10.10	11.70
124	Concrete Finisher (Paving)	10.76	13.26	11.04	12.46	10.32	10.53	12.85	11.70	11.38	12.18	10.65	11.25	11.64
130	Concrete Finisher (Structures)		11.20	10.23	10.40	10.23	10.95	13.27	11.27	10.80	11.16	11.91	10.03	10.23
136	Concrete Rubber			10.00			10.88	10.61	9.49	9.00	10.50	11.75		9.00
139	Electrician		17.00		15.00	17.83	24.11	18.12	17.22	21.79			19.00	
148	Fireman													
150	Flagger	7.84		7.79	7.61		9.49	8.43	8.06	9.42	7.25	8.89	7.29	8.60
151	Form Builder/Setter, Structures		9.26	9.70	9.57	9.73	10.88	11.63	11.21	10.50	11.47	9.90	10.01	10.51
157	Form Liner (Paving & Curb)								8.00	11.75				
160	Form Setter (Paving & Curb)	9.32	9.82	10.50			9.89	11.83	10.63	10.51	9.65		9.43	9.48
172	Laborer (Common)	8.15	8.51	8.10	8.86	8.25	9.34	9.18	8.69	9.15	8.35	8.14	8.25	8.91
175	Laborer (Utility)	9.61	10.46	9.45	11.39	9.72	10.12	10.65	10.57	9.81	9.09	9.55	9.62	9.21
178	Lineperson													
181	Groundperson													
184	Manhole Builder									9.00				
187	Mechanic		16.85	12.22	13.53	12.82	14.74	16.97	14.79	13.72	13.17	12.16	14.05	12.18
193	Oiler						14.71	14.98	12.50	12.12			10.67	
194	Servicer	9.64	8.98	9.49	10.00	10.03	11.41	12.32	11.43	10.96	10.75	9.70	8.22	11.18
196	Painter (Structures)						11.00	13.17		15.54			11.00	
202	Piledriverman								11.00	12.22				
205	Pipelayer			9.05		9.83	10.49	11.04	10.85	9.49	9.00	8.85		9.71
211	Pneumatic Motor Operator													
214	Blaster													
300	Asphalt Distributor Operator	10.28	9.25	10.30	11.74	9.78	12.09	13.99	11.45	10.94	12.42	10.95	10.46	12.57
303	Asphalt Paving Machine Opr.	10.77	11.16	10.42	10.49	11.41	11.82	12.78	11.82	12.01	11.57	10.62	9.38	11.60
305	Broom or Sweeper Operator	8.92	8.57	8.26	8.47		9.74	9.88	9.09	11.19		8.44	8.01	9.32
306	Bulldozer Operator		9.76	10.13	11.97	10.60	11.04	13.22	11.80	11.81	10.90	10.13	10.88	11.69
315	Conc. Pav. Curbing Machine Opr.						14.00	12.00		10.00				
318	Conc. Pav. Finishing Mach. Opr.					11.23	12.00	13.63		13.07				
321	Conc. Pav. Form Grader Opr.													
324	Conc. Pav. Gang Vibrator Opr.													
326	Conc. Pav. Grinder Opr.													
327	Conc. Pav. Joint Machine Opr.													
329	Conc. Pav. Joint Sealer Opr.							12.50		11.00				
330	Conc. Pav. Float Opr.													
333	Conc. Pav. Saw Opr.	12.09			12.13			13.56	12.30	12.75			15.00	
336	Conc. Pav. Spreader							14.50		10.44				
339	Conc. Pav. Sub-Grader Opr.													
340	Reinf. Steel Machine Operator													
341	Slip-Form Machine Operator		13.64				15.17	12.33		11.07				
342	Crane, Clamshell, Backhoe Derrick, Dragline, Shovel	10.95	11.00	11.35	12.14	11.50	13.66	14.12	12.50	12.71	12.55	11.34	10.94	12.00
351	Crusher or Screen Plant Opr.	9.28								11.29			9.00	
354	Elevating Grader													
357	Form Loader													
360	Foundation Drill Opr.Crawler Mt.							13.67		15.00				
363	Foundation Drill Opr.Truck Mt.			13.78			15.00	16.30	16.00	12.73	15.32		18.00	14.58
369	Front End Loader	9.68	10.52	9.44	10.78	9.83	11.36	12.62	10.83	10.65	10.05	9.64	10.04	10.62
375	Hoist (Double Drum & Less)													
378	Hoist (Over 2 Drums)													
380	Milling Machine Opr.(Fine Grd)							11.83	10.25	13.17			12.20	
381	Mixer Operator						10.83	11.58	10.09	10.33				
387	Mixer Opr.(Concrete Paving)						15.25							
390	Motor Grader Opr. Fine Grade	14.67	13.50	12.86	13.35	14.18	15.26	15.20	14.29	11.67	13.78	13.53	13.24	15.15
393	Motor Grader Operator, Rough	18.00	11.75	12.45	13.34	15.00	12.96	14.50	13.11	13.13	15.00	12.72	14.36	12.95

continued on the next page

Index#	Classification	Zone 27	Zone 28	Zone 29	Zone 30	Zone 31	Zone 41	Zone 43	Zone 45	Zone 46	Zone 118	Zone 119	Zone 120	Zone 125
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396	Pavement Marking Machine	9.11			10.56		11.52	10.04	11.17	8.18		11.48	9.26	13.32
397	Planer Operator	17.50	13.36				17.45						17.50	
399	Pump Crete Roller Opr.,Stl.Wheel(Plant Mix Pav)													
402	Roller Opr.,Stl.Wheel(Flat Whl/Tamp)	8.92	7.50	8.77	9.75	9.35	10.24	11.28	9.70	11.07	9.49	9.27	9.81	10.59
405	Roller Opr.,Pneumatic (Self-Propell)	8.76	8.06	8.03	9.23	8.49	9.60	10.92	8.75	10.43	8.57	8.57	8.66	9.30
408	Scraper Operator	8.14	7.67	7.88	8.39	8.55	9.34	11.07	8.87	9.91	8.57	8.44	7.55	8.90
411	Self-Propelled Hammer Opr.	9.76	8.50	8.98	9.50	8.68	9.93	11.42	10.29	9.92	9.67	8.88	7.78	9.85
417	Side Boom													
419	Tractor Operator(Crawler Type)	10.87					11.10	12.60	12.00	13.00				
422	Tractor Operator (Pneumatic)		12.00	9.51	11.00			12.91	11.57	10.07		10.02	8.58	
428	Traveling Mixer Operator	10.33	12.00	9.40	10.05		10.04	12.03	10.07	11.00		9.93	9.71	12.67
434	Trenching Machine, Light													
437	Trenching Machine, Heavy						14.22							
442	Tunneling Machine Operator													
443	Wagon Drill, Boring Machine, Post Hole Driller Operator	10.25					14.65	14.00					8.86	
500	Reinforcing Steel Setter (Pav.)						15.50	14.86	13.48	15.14			9.50	
503	Reinforcing Steel Setter (Str.)						14.00	16.29	15.52	13.87			11.85	
509	Reinforcing Steel Setter (Str.&Pa Structural Steel Worker	10.94		10.67	12.52	10.29		13.41			12.13	14.00		
513	Sign Erector													
515	Spreader Box Operator				13.12		10.39	10.92	10.39	11.12		11.01	10.07	13.00
518	Swamper													
520	Work Zone Barricade Servicer	9.50	8.28	8.84	7.85		11.15	10.09	9.52	9.94	8.97	9.32	8.64	9.63
522	Sign Installer (PGM)						14.85			8.54				
600	Truck Driver Single Axle, Light	10.03	8.08	9.40	9.62	9.58	9.98	10.91	10.24	10.07	9.00	9.79	7.55	10.85
603	Truck Driver Single Axle, Heavy	9.16	8.50	9.95	13.13	9.60	11.88	11.47	10.56	10.65	11.39	10.67	11.00	10.87
606	Truck Driver(Tandem Axle/ Sem	9.29	8.66	8.84	10.51	9.50	10.95	11.75	10.33	10.25	9.39	9.14	9.02	10.05
609	Truck Driver Lowboy-Float		12.67	11.81	10.50		15.30	14.93	11.64	13.16	14.15	12.65	11.42	13.70
612	Truck Driver Transit-Mix							12.08						
615	Truck Driver Winch													
700	Vibrator Operator (Hand Type)													
703	Weigher (Truck Scales)													
706	Welder		15.25	11.74		12.08	14.26	13.57			18.00		9.75	
707	Slurry Seal Machine Operator													
708	Micro-Surfacing Machine Opr.													

Any worker employed on this project shall be paid at the rate of one and one half (1-1/2) times the regular rate for every hour worked in excess of forty (40) hour per week

Apprentice Schedule/Period and Rate\*

<u>Power equipment Operators:</u>	<u>1000 Hrs</u>	<u>6th</u>	<u>7th</u>	<u>8th</u>
Heavy Duty Mechanic	" "	85	90	95
Boom Equipment	" "	95		
Motor Grader	" "	95		
Tractor & Scrapers, Pneumatic and Crawler	" "	95		

\*The apprentice rate is by percentage of the journeyman's rate; no wages shall be less than the rate for "Laborer (Common)".



## TEXAS COUNTIES IDENTIFIED BY WAGE RATE ZONES: 27, 28, 29, 30, 31, 41, 43, 45, 46, 118, 119, 120, 125

County Name	ZONE	County Name	ZONE	County Name	ZONE	County Name	ZONE
Anderson	45	Donley	120	Karnes	125	Reagan	120
Andrews	120	Duval	119	Kaufman	43	Real	120
Angelina	45	Eastland	120	Kendall	125	Red River	45
Aransas	125	Ector	28	Kenedy	119	Reeves	27
Archer	120	Edwards	27	Kent	120	Refugio	125
Armstrong	120	Ellis	43	Kerr	125	Roberts	120
Atascosa	125	El Paso	31	Kimble	120	Robertson	45
Austin	125	Erath	45	King	120	Rockwall	43
Bailey	120	Falls	45	Kinney	27	Runnels	120
Bandera	125	Fannin	45	Kleberg	125	Rusk	45
Bastrop	125	Fayette	125	Knox	120	Sabine	45
Baylor	120	Fisher	120	Lamar	45	San Augustine	45
Bee	125	Floyd	120	Lamb	120	San Jacinto	45
Bell	41	Foard	120	Lampasas	120	San Patricio	118
Bexar	41	Fort Bend	46	LaSalle	119	San Saba	120
Blanco	125	Franklin	45	Lavaca	125	Schleicher	120
Borden	120	Freestone	45	Lee	125	Scurry	120
Bosque	45	Frio	125	Leon	45	Shackelford	120
Bowie	30	Gaines	120	Liberty	46	Shelby	45
Brazoria	46	Galveston	46	Limestone	45	Sherman	120
Brazos	41	Garza	120	Lipscomb	120	Smith	30
Brewster	27	Gillespie	125	Live Oak	125	Somervell	45
Briscoe	120	Glasscock	120	Llano	125	Starr	119
Brooks	119	Goliad	125	Loving	120	Stephens	120
Brown	120	Gonzales	125	Lubbock	28	Sterling	120
Burleson	45	Gray	120	Lynn	120	Stonewall	120
Burnet	125	Grayson	43	Madison	45	Sutton	27
Caldwell	125	Gregg	30	Marion	45	Swisher	120
Calhoun	125	Grimes	45	Martin	120	Tarrant	43
Callahan	120	Guadalupe	41	Mason	125	Taylor	28
Cameron	29	Hale	120	Matagorda	125	Terrell	27
Camp	45	Hall	120	Maverick	119	Terry	120
Carson	120	Hamilton	45	McCulloch	120	Throckmorton	120
Cass	45	Hansford	120	McLennan	41	Titus	45
Castro	120	Hardeman	120	McMullen	119	Tom Green	28
Chambers	46	Hardin	46	Medina	125	Travis	41
Cherokee	45	Harris	46	Menard	120	Trinity	45
Childress	120	Harrison	30	Midland	28	Tyler	45
Clay	120	Hartley	120	Milam	45	Upshur	45
Cochran	120	Haskell	120	Mills	120	Upton	120
Coke	120	Hays	41	Mitchell	120	Uvalde	119
Coleman	120	Hemphill	120	Montague	120	Vai Verde	27
Collin	43	Henderson	45	Montgomery	46	Van Zandt	45
Collingsworth	120	Hidalgo	29	Moore	120	Victoria	118
Colorado	125	Hill	45	Morris	45	Walker	45
Cornal	41	Hockley	120	Motley	120	Waller	46
Cornanche	120	Hood	45	Nacogdoches	45	Ward	120
Concho	120	Hopkins	45	Navarro	45	Washington	45
Cooke	120	Houston	45	Newton	45	Webb	29
Coryell	41	Howard	120	Nolan	120	Wharton	125
Cottle	120	Hudspeth	27	Nueces	118	Wheeler	120
Crane	120	Hunt	45	Ochiltree	120	Wichita	43
Crockett	27	Hutchinson	120	Oldham	120	Wilbarger	120
Crosby	120	Irion	120	Orange	46	Willacy	119
Culberson	27	Jack	45	Palo Pinto	45	Williamson	41
Dallam	120	Jackson	125	Panola	45	Wilson	125
Dallas	43	Jasper	45	Parker	43	Winkler	120
Dawson	120	Jeff Davis	27	Parmer	120	Wise	45
Deaf Smith	120	Jefferson	46	Pecos	27	Wood	45
Delta	45	Jim Hogg	119	Polk	45	Yoakum	120
Denton	43	Jim Wells	125	Potter	28	Young	120
DeWitt	125	Johnson	43	Presidio	27	Zapata	119
Dickens	120	Jones	120	Rains	45	Zavala	119
Dimmit	119			Randall	28		



**NORTH TEXAS TOLLWAY AUTHORITY  
CHISHOLM TRAIL PARKWAY  
SECTIONS 1-6  
INDEX OF  
GOVERNING SPECIFICATIONS, SPECIAL PROVISIONS  
AND SPECIAL SPECIFICATIONS**

Note: For the purpose of construing this proposal and the contract, the Standard Specifications for Construction of Highways, Streets and Bridges, as adopted by the Texas Department of Transportation on June 1, 2004 (referred to herein as the “Standard Specifications” or the “Texas Standard Specifications”) are approved and incorporated into the contract by reference for all purposes by the Authority as official specifications, together with, and as modified by, Special Provisions and Special Specifications as are listed below, and by the General Notes and Specification Data. The Standard Specifications may be accessed and downloaded on the Department’s website at:

<http://www.txdot.gov/inside-txdot/forms-publications/publications/construction.html#8>.

General. The Standard Specifications applicable to this project are identified as, but not limited to, the following. Whether or not listed, any of the Standard Specifications which are pertinent to work performed on this project are applicable and shall be observed.

**STANDARD SPECIFICATIONS:**

Items 1 thru 9 Inclusive General Requirements and Covenants

Item 500 Mobilization

Item 502 Barricades, Signs and Traffic Handling

**SPECIAL PROVISIONS:** Special Provisions and General Notes and Specification Data will govern and take precedence over the Special Specifications and the Standard Specifications, wherever in conflict therewith.

**TxDOT Special Provisions unless otherwise noted:**

Special Provision	Notice to All Bidders	(SP000-003)
Special Provision	Notice of Requirement of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)	(SP000-004)
Special Provision	Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)	(SP000-006)

Special Provision	Certification of Nondiscrimination in Employment	(SP000-009)
Special Provision	Department Division Mailing and Physical Addresses	(SP000-011)
Special Provision	Notice of Changes to U.S. Department of Labor Required Payroll Information	(SP000-1483)
Special Provision	On-the-Job Training Program	(SP000-1676)
Special Provision	Disadvantaged Business Enterprise in Federal Aid Construction Contracts	(SP000-1966)
Special Provision	Partnering	(SP000-2329)
Special Provision	Nondiscrimination	(SP000-2607)
NTTA Special Provision	Important Notice to Contractors, "R.O.W. and Utility Relocations by Others"	(SP-0.02.1)
NTTA Special Provision	Important Notice to Contractors, "Mandatory Construction Schedule"	(SP-0.03.4)
NTTA Special Provision	Important Notice to Contractors, "Sales and Use Tax Exemption"	(SP-0.04.0)
NTTA Special Provision	Important Notice to Contractors, "Existing Utilities"	(SP-0.05.0)
NTTA Special Provision	Important Notice to Contractors, "Value Engineering Proposals"	(SP-0.17.0)
NTTA Special Provision	Important Notice to Contractors, "Correction of Defects"	(SP-0.18.0)
NTTA Special Provision	Important Notice to Contractors, "NTTA Enterprise Project Delivery System"	(SP-0.19.1)
NTTA Special Provision	Important Notice to Contractors, "NTTA Business Diversity Prism Contract Compliance Tracking Software"	(SP-0.20.2)
NTTA Special Provision to Item 1	Definition of Terms	(SP-1.5)
NTTA Special Provision to Item 2	Instructions to Bidders	(SP-2.4)
NTTA Special Provision to Item 3	Award and Execution of Contract	(SP-3.6)
NTTA Special Provision to Item 4	Scope of Work	(SP-4.2)
NTTA Special Provision to Item 5	Control of the Work	(SP-5.1)
NTTA Special Provision to Item 6	Control of Materials	(SP-6.2)
NTTA Special Provision to Item 7	Legal Relations and Responsibilities	(SP-7.13)
NTTA Special Provision to Item 8	Prosecution and Progress	(SP-8.9)
NTTA Special Provision to Item 9	Measurement and Payment	(SP-9.4)
Special Provision to Item 500	Mobilization	(500-011)

Special Provision to Item 502	Barricades, Signs, and Traffic Handling	(SP 502-033)
NTTA Special Provision to Item 6014	Fiber Optic Cable	(SP-6014.0)

**TxDOT Special Specifications Unless Otherwise Noted:**  
Item 6014 Fiber Optic Cable

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, the General Notes and Specification Data, the other provisions of this contract, and the Standard Specifications (as the same are modified herein) constitute the complete specifications for this project.



**SPECIAL PROVISION**

**000---003**

**Notice to All Bidders**

To report bid rigging activities call:

1-800-424-9071

The U.S. Department of Transportation (DOT) operates the above toll-free “hotline” Monday through Friday, 8:00 a.m. to 5:00 p.m., eastern time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the “hotline” to report such activities.

The “hotline” is part of the DOT's continuing effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the DOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.





## SPECIAL PROVISION

000---004

### Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)

1. **General.** In addition to the affirmative action requirements of the Special Provision titled "Standard Federal Equal Employment Opportunity Construction Contract Specifications" as set forth elsewhere in this proposal, the Bidder's attention is directed to the specific requirements for utilization of minorities and females as set forth below.

2. **Goals.**

- a. Goals for minority and female participation are hereby established in accordance with 41 CFR 60-4.
- b. The goals for minority and female participation expressed in percentage terms for the Contractor's aggregate work force in each trade on all construction work in the covered area, are as follows:

<b>Goals for minority participation in each trade (percent)</b>	<b>Goals for female participation in each trade (percent)</b>
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See Table 1

6.9

- c. These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction. The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Standard Federal Equal Employment Opportunity Construction Contract Specifications Special Provision and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority and female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

- d. A contractor or subcontractor will be considered in compliance with these provisions by participation in the Texas Highway-Heavy Branch, AGC, Statewide Training and Affirmative Action Plan. Provided that each contractor or subcontractor participating in this plan must individually comply with the equal opportunity clause set forth in 41 CFR 60-1.4 and must make a good faith effort to achieve the goals set forth for each participating trade in the plan in which it has employees. The overall good performance of other contractors and subcontractors toward a goal in an approved plan does not excuse any covered contractor's or subcontractor's failure to make good faith efforts to achieve the goals contained in these provisions. Contractors or subcontractors participating in the plan must be able to demonstrate their participation and document their compliance with the provisions of this Plan.
3. **Subcontracting.** The Contractor shall provide written notification to the Department within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation pending concurrence of the Department in the award. The notification shall list the names, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.
4. **Covered Area.** As used in this special provision, and in the contract resulting from this solicitation, the geographical area covered by these goals for female participation is the State of Texas. The geographical area covered by these goals for other minorities are the counties in the State of Texas as indicated in Table 1.
5. **Reports.** The Contractor is hereby notified that he may be subject to the Office of Federal Contract Compliance Programs (OFCCP) reporting and record keeping requirements as provided for under Executive Order 11246 as amended. OFCCP will provide direct notice to the Contractor as to the specific reporting requirements that he will be expected to fulfill.

**Table 1**

<b>County</b>	<b>Goals for Minority Participation</b>	<b>County</b>	<b>Goals for Minority Participation</b>
Anderson	22.5	Concho	20.0
Andrews	18.9	Cooke	17.2
Angelina	22.5	Coryell	16.4
Aransas	44.2	Cottle	11.0
Archer	11.0	Crane	18.9
Armstrong	11.0	Crockett	20.0
Atascosa	49.4	Crosby	19.5
Austin	27.4	Culberson	49.0
Bailey	19.5	Dallam	11.0
Bandera	49.4	Dallas	18.2
Bastrop	24.2	Dawson	19.5
Baylor	11.0	Deaf Smith	11.0
Bee	44.2	Delta	17.2
Bell	16.4	Denton	18.2
Bexar	47.8	DeWitt	27.4
Blanco	24.2	Dickens	19.5
Borden	19.5	Dimmit	49.4
Bosque	18.6	Donley	11.0
Bowie	19.7	Duval	44.2
Brazoria	27.3	Eastland	10.9
Brazos	23.7	Ector	15.1
Brewster	49.0	Edwards	49.4
Briscoe	11.0	Ellis	18.2
Brooks	44.2	El Paso	57.8
Brown	10.9	Erath	17.2
Burleson	27.4	Falls	18.6
Burnet	24.2	Fannin	17.2
Caldwell	24.2	Fayette	27.4
Calhoun	27.4	Fisher	10.9
Callahan	11.6	Floyd	19.5
Cameron	71.0	Foard	11.0
Camp	20.2	Fort Bend	27.3
Carson	11.0	Franklin	17.2
Cass	20.2	Freestone	18.6
Castro	11.0	Frio	49.4
Chambers	27.4	Gaines	19.5
Cherokee	22.5	Galveston	28.9
Childress	11.0	Garza	19.5
Clay	12.4	Gillespie	49.4
Cochran	19.5	Glasscock	18.9
Coke	20.0	Goliad	27.4
Coleman	10.9	Gonzales	49.4
Collin	18.2	Gray	11.0
Collingsworth	11.0	Grayson	9.4
Colorado	27.4	Gregg	22.8
Comal	47.8	Grimes	27.4
Comanche	10.9	Guadalupe	47.8

<b>County</b>	<b>Goals for Minority Participation</b>	<b>County</b>	<b>Goals for Minority Participation</b>
Hale	19.5	Lavaca	27.4
Hall	11.0	Lee	24.2
Hamilton	18.6	Leon	27.4
Hansford	11.0	Liberty	27.3
Hardeman	11.0	Limestone	18.6
Hardin	22.6	Lipscomb	11.0
Harris	27.3	Live Oak	44.2
Harrison	22.8	Llano	24.2
Hartley	11.0	Loving	18.9
Haskell	10.9	Lubbock	19.6
Hays	24.1	Lynn	19.5
Hemphill	11.0	Madison	27.4
Henderson	22.5	Marion	22.5
Hidalgo	72.8	Martin	18.9
Hill	18.6	Mason	20.0
Hockley	19.5	Matagorda	27.4
Hood	18.2	Maverick	49.4
Hopkins	17.2	McCulloch	20.0
Houston	22.5	McLennan	20.7
Howard	18.9	McMullen	49.4
Hudspeth	49.0	Medina	49.4
Hunt	17.2	Menard	20.0
Hutchinson	11.0	Midland	19.1
Irion	20.0	Milam	18.6
Jack	17.2	Mills	18.6
Jackson	27.4	Mitchell	10.9
Jasper	22.6	Montague	17.2
Jeff Davis	49.0	Montgomery	27.3
Jefferson	22.6	Moore	11.0
Jim Hogg	49.4	Morris	20.2
Jim Wells	44.2	Motley	19.5
Johnson	18.2	Nacogdoches	22.5
Jones	11.6	Navarro	17.2
Karnes	49.4	Newton	22.6
Kaufman	18.2	Nolan	10.9
Kendall	49.4	Nueces	41.7
Kenedy	44.2	Ochiltree	11.0
Kent	10.9	Oldham	11.0
Kerr	49.4	Orange	22.6
Kimble	20.0	Palo Pinto	17.2
King	19.5	Panola	22.5
Kinney	49.4	Parker	18.2
Kleberg	44.2	Parmer	11.0
Knox	10.9	Pecos	18.9
Lamar	20.2	Polk	27.4
Lamb	19.5	Potter	9.3
Lampasas	18.6	Presidio	49.0
LaSalle	49.4	Rains	17.2

<b>County</b>	<b>Goals for Minority Participation</b>	<b>County</b>	<b>Goals for Minority Participation</b>
Randall	9.3	Webb	87.3
Reagan	20.0	Wharton	27.4
Real	49.4	Wheeler	11.0
Red River	20.2	Wichita	12.4
Reeves	18.9	Wilbarger	11.0
Refugio	44.2	Willacy	72.9
Roberts	11.0	Williamson	24.1
Robertson	27.4	Wilson	49.4
Rockwall	18.2	Winkler	18.9
Runnels	20.0	Wise	18.2
Rusk	22.5	Wood	22.5
Sabine	22.6	Yoakum	19.5
San Augustine	22.5	Young	11.0
San Jacinto	27.4	Zapata	49.4
San Patricio	41.7	Zavala	49.4
San Saba	20.0		
Schleicher	20.0		
Scurry	10.9		
Shackelford	10.9		
Shelby	22.5		
Sherman	11.0		
Smith	23.5		
Somervell	17.2		
Starr	72.9		
Stephens	10.9		
Sterling	20.0		
Stonewall	10.9		
Sutton	20.0		
Swisher	11.0		
Tarrant	18.2		
Taylor	11.6		
Terrell	20.0		
Terry	19.5		
Throckmorton	10.9		
Titus	20.2		
Tom Green	19.2		
Travis	24.1		
Trinity	27.4		
Tyler	22.6		
Upshur	22.5		
Upton	18.9		
Uvalde	49.4		
Val Verde	49.4		
Van Zandt	17.2		
Victoria	27.4		
Walker	27.4		
Waller	27.3		
Ward	18.9		
Washington	27.4		



## **SPECIAL PROVISION**

**000---006**

### **Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)**

- 1.** As used in these specifications:
  - a.** "Covered area" means the geographical area described in the solicitation from which this contract resulted;
  - b.** "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
  - c.** "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
  - d.** "Minority" includes:
    - (i)** Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
    - (ii)** Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
    - (iii)** Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);  
and
    - (iv)** American Indian or Alaskan Native (all persons having origins in any of the original peoples of North American and maintaining identifiable tribal affiliations through membership and participation or community identification).
- 2.** Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
- 3.** If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its

obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing contracts in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the contract is being performed. Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any Office of Federal Contract Compliance Programs office or any Federal procurement contracting officer. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.
5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
  - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
  - b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.



- c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
- d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral Process has impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and Collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of

applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

- j.** Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.
  - k.** Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
  - l.** Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
  - m.** Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
  - n.** Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
  - o.** Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
  - p.** Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
- 8.** Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
- 9.** A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both

minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. Nondiscrimination programs require that Federal-aid recipients, subrecipients, and contractors prevent discrimination and ensure nondiscrimination in all of their programs and activities, whether those programs and activities are federally funded or not. The factors prohibited from serving as a basis for action or inaction which discriminates include race, color, national origin, sex, age, and handicap/disability. The efforts to prevent discrimination must address, but not be limited to a program's impacts, access, benefits, participation, treatment, services, contracting opportunities, training opportunities, investigations of complaints, allocations of funds, prioritization of projects, and the functions of right-of-way, research, planning, and design.
11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

- 16.** In addition to the reporting requirements set forth elsewhere in this contract, the Contractor and the subcontractors holding subcontracts, not including material suppliers, of \$10,000 or more, shall submit for every month of July during which work is per-formed, employment data as contained under Form PR 1391 (Appendix C to 23 CFR, Part 230), and in accordance with the instructions included thereon.

## **SPECIAL PROVISION**

**000---009**

### **Certification of Nondiscrimination in Employment**

By signing this proposal, the bidder certifies that he has participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Orders 10925, 11114, or 11246, or if he has not participated in a previous contract of this type, or if he has had previous contract or subcontracts and has not filed, he will file with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

**Note:** The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1)), and must be submitted by bidders and proposed subcontractors only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally only contracts or subcontracts of \$10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

Proposed prime contractors and subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U. S. Department of Labor.



**SPECIAL PROVISION**

**000---011**

**Department Division Mailing and Physical Addresses**

For this project, Item 000, “Department Division Mailing and Physical Addresses,” 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.

Use the information in Table 1 to contact the Department Divisions referenced in the Standard Specifications or Special Provisions and Special Specifications in the Contract. This listing is for the purposes of providing addresses for transmission of information in accordance with the specifications. Unless otherwise stated in the specifications, address all correspondence and transmission of information to the Engineer responsible for the oversight of construction. Submit bidding documents to the location shown in the official advertisement. Address changes will be posted on the Department’s Internet site at <http://www.txdot.gov/>.

**Table 1  
Department Division Mailing and Physical Addresses**

<b>Division/Section Name</b>	<b>U.S. Post Office Address</b>	<b>Physical Address</b>
<b>Bridge Division</b>	Texas Department of Transportation Bridge Division 125 E 11 <sup>th</sup> Street Austin TX 78701-2483	Bridge Division Fabrication Branch 118 E. Riverside Dr. Austin, Texas 78704 (512) 416-2187
<b>Construction Division</b> Construction Section	Texas Department of Transportation Construction Division Construction Section 125 E.11 <sup>th</sup> St. Austin TX 78701-2483	Construction Division 200 E. Riverside Dr. Austin, TX 78704 (512) 416-2500
Materials & Pavements Section	Texas Department of Transportation Construction Division Materials & Pavements Section 125 E 11 <sup>th</sup> Street Austin TX 78701-2483	Construction Division Materials & Pavements Cedar Park Campus, Bldg. 51 9500 Lake Creek Parkway Austin, TX 78717 512-506-5800

<b>Division/Section Name</b>	<b>U.S. Post Office Address</b>	<b>Physical Address</b>
<b>Maintenance Division</b>		
Maintenance Section	Texas Department of Transportation Maintenance Division Maintenance Section 125 E 11 <sup>th</sup> Street Austin, TX 78701	Maintenance Division Maintenance Section 150 East Riverside Drive Fourth Floor, North Tower Austin, TX 78704 (512) 416-3185
Vegetation Management Section	Texas Department of Transportation Maintenance Division Vegetation Management Section 125 E 11 <sup>th</sup> Street Austin, TX 78701	Maintenance Division Vegetation Management Section 150 East Riverside Drive Fourth Floor, North Tower Austin, TX 78704 (512) 416-3093
<b>Traffic Operations Division</b>		
Traffic Operations Division	Texas Department of Transportation Traffic Operations Division 125 E 11 <sup>th</sup> Street Austin TX 78701	Texas Department of Transportation Traffic Operations Division 200 E. Riverside Bldg. 118 Austin, Texas 78704 512-416-3200
Traffic Engineering	Texas Department of Transportation Traffic Operations Division Traffic Engineering Section 125 E 11 <sup>th</sup> Street Austin TX 78701	Texas Department of Transportation Traffic Operations Division Traffic Engineering Section 200 E. Riverside Bldg. 118 Austin, Texas 78704 (512) 416-3118
Traffic Management-ITS Branch	Texas Department of Transportation Traffic Operations Division Traffic Management Section 125 E 11 <sup>th</sup> Street Austin TX 78701	Texas Department of Transportation Traffic Operations Division Traffic Management Section Cedar Park Campus, Bldg. 51 9500 Lake Creek Parkway Austin, TX 78717 512-506-5100
Traffic Management- Signal/Radio Branch	Texas Department of Transportation Traffic Operations Division Traffic Management Section- Signal/Radio Branch 125 E 11 <sup>th</sup> Street Austin TX 78701	Texas Department of Transportation Traffic Operations Division Traffic Management Section- Signal/Radio Branch Cedar Park Campus, Bldg. 51 9500 Lake Creek Parkway Austin, TX 78717 512-506-5100



**SPECIAL PROVISION**

**000--1483**

**Notice of Changes to  
U.S. Department of Labor Required Payroll Information**

Do not include employee addresses and social security numbers on the payroll submissions to the department. In lieu of the social security number, include an individually identifying number for each employee (Example: last four digits of the individual's social security number).

Maintain the full social security number and current address of each covered employee in files for 3 years after project completion and make the information available upon the Department's request.

Form FHWA 1273 and optional form WH-347 will be revised in the future to reflect these changes.



## **SPECIAL PROVISION**

**000--1676**

### **On-the-Job Training Program**

- 1. Description.** The primary objective of this Special Provision is the training and advancement of minorities, women and economically disadvantaged persons toward journeyworker status. Accordingly, make every effort to enroll minority, women and economically disadvantaged persons to the extent that such persons are available within a reasonable area of recruitment. This training commitment is not intended, and shall not be used to discriminate against any applicant for training, whether or not he/she is a member of a minority group.
- 2. Trainee Assignment.** Training assignments are determined based on the past contract volume of federal-aid work performed with the Department. Contractors meeting the selection criteria will be notified of their training assignment at the beginning of the reporting year by the Department's Office of Civil Rights.
- 3. Program Requirements.** Fulfill all of the requirements of the On-the-Job Training Program including the maintenance of records and submittal of periodic reports documenting program performance. Trainees shall be paid at least 60% of the appropriate minimum journeyworker's rate specified in the contract for the first half of the training period, 75% for the third quarter and 90% for the last quarter, respectively. Contractors may be reimbursed \$0.80 per training hour at no additional cost to the Department.
- 4. Compliance.** The Contractor will have fulfilled the contractual responsibilities by having provided acceptable training to the number of trainees specified in their goal assignment. Noncompliance may be cause for corrective and appropriate measures pursuant to Article 8.6., "Abandonment of Work or Default of Contract," which may be used to comply with the sanctions for noncompliance pursuant to 23 CFR Part 230.



## **SPECIAL PROVISION**

**000--1966**

### **Disadvantaged Business Enterprise in Federal Aid Contracts**

- 1. Description.** The purpose of this Special Provision is to carry out the U. S. Department of Transportation's (DOT) policy of ensuring nondiscrimination in the award and administration of DOT assisted contracts and creating a level playing field on which firms owned and controlled by individuals who are determined to be socially and economically disadvantaged can compete fairly for DOT assisted contracts. If the Disadvantaged Business Enterprise (DBE) goal is greater than zero, Article A, "Disadvantaged Business Enterprise in Federal Aid Contracts", of this Special Provision shall apply to this contract. If there is no DBE goal, Article B, "Race-Neutral DBE Participation", of this Special Provision shall apply to this contract. The percentage goal for DBE participation in the work to be performed under this contract will be shown on the proposal.

#### **A. Article A. Disadvantaged Business Enterprise in Federal Aid Contracts.**

- 1. Policy.** It is the policy of the DOT and the Texas Department of Transportation (henceforth the "Department") that DBEs, as defined in 49 CFR Part 26, Subpart A and the Department's DBE Program, shall have the opportunity to participate in the performance of contracts financed in whole or in part with Federal funds. The DBE requirements of 49 CFR Part 26, and the Department's DBE Program, apply to this contract as follows:
  - a.** The Contractor will solicit DBEs through reasonable and available means, as defined in 49 CFR Part 26, Appendix A and the Department's DBE Program, or show a good faith effort to meet the DBE goal for this contract.
  - b.** The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.
  - c.** The requirements of this Special Provision shall be physically included in any subcontract.
  - d.** By signing the contract proposal, the Bidder is certifying that the DBE goal as stated in the proposal will be met by obtaining commitments from eligible DBEs or that the Bidder will provide acceptable evidence of good faith effort to meet the commitment. The Department will determine the adequacy of a Contractor's efforts to meet the contract goal, within 10 business days,

excluding national holidays, from receipt of the information outlined in this Special Provision under Section 1.A.3, "Contractor's Responsibilities." If the requirements of Section 1.A.3 are met, the conditional situation will be removed and the contract will be forwarded to the Contractor for execution.

## **2. Definitions.**

- a.** "Broker" is an intermediary or middleman that does not take possession of a commodity or act as a regular dealer selling to the public.
- b.** "Disadvantaged Business Enterprise" or "DBE" is defined in the standard specifications, Article 1, Definition of Terms.
- c.** "DBE Joint Venture" means an association of a DBE firm and 1 or more other firm(s) to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.
- d.** "DOT" means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).
- e.** "Federal Aid Contract" is any contract between the Texas Department of Transportation and a Contractor which is paid for in whole or in part with DOT financial assistance.
- f.** "Good Faith Effort" means efforts to achieve a DBE goal or other requirement of this Special Provision which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.
- g.** "Manufacturer" is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications."
- h.** "Race-conscious" means a measure or program that is focused specifically on assisting only DBEs, including women-owned businesses.
- i.** "Race-neutral DBE Participation" means any participation by a DBE through customary competitive procurement procedures.
- j.** "Regular Dealer" is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages in, as its principal business and under its own name, the purchase and sale or lease of the products in question.

A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns and operates distribution equipment for the products. Any supplementing of regular dealers own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. Brokers, packagers, manufacturers' representatives, or other persons who arrange or expedite transactions shall not be regarded as a regular dealer.

- k. "Texas Unified Certification Program" or "TUCP" provides one-stop shopping to applicants for certification, such that applicants are required to apply only once for a DBE certification that will be honored by all recipients of federal funds in the state. The TUCP by Memorandum of Agreement established six member entities to serve as certifying agents for Texas in specified regions.

**3. Contractor's Responsibilities.** These requirements must be satisfied by the Contractor.

- a. After conditional award of the contract, the Contractor shall submit a completed Form SMS.4901 "DBE Commitment Agreement", Form SMS 4901-T "DBE Trucking Commitment Agreement", or Form SMS.4901-MS "DBE Material & Supplier Commitment Agreement" for each DBE he/she intends to use to satisfy the DBE goal or a good faith effort to explain why the goal could not be reached, so as to arrive in the Department's Office of Civil Rights (OCR) in Austin, Texas not later than 5:00 p.m. on the 10<sup>th</sup> business day, excluding national holidays, after the conditional award of the contract. When requested, additional time, not to exceed 7 business days, excluding national holidays, may be granted based on documentation submitted by the Contractor.
- b. DBE prime Contractors may receive credit toward the DBE goal for work performed by his/her own forces and work subcontracted to DBEs. A DBE prime must make a good faith effort to meet the goals. In the event a DBE prime subcontracts to a non-DBE, that information must be reported on Form SMS.4902.
- c. A Contractor who cannot meet the contract goal, in whole or in part, shall make adequate good faith efforts to obtain DBE participation as so stated and defined in 49 CFR Part 26, Appendix A. The following is a list of the types of action that may be considered as good faith efforts. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.
  - Soliciting through all reasonable and available means (e.g. attendance at prebid meetings, advertising, and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The solicitation must be done within sufficient time to allow the DBEs to respond to it. Appropriate steps must be taken to follow up initial solicitations to determine, with certainty, if the DBEs are interested.

- Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the Contractor might otherwise prefer to perform the work items with its own forces.
- Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- Negotiating in good faith with interested DBEs to make a portion of the work available to DBE subcontractors and suppliers and select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiations includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
- A Bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional cost involved in finding and using DBEs is not in itself sufficient reason for a bidders failure to meet the Contract DBE goal as long as such cost are reasonable. Also, the ability or desire of the Contractor to perform the work of the Contract with its own organization does not relieve the Bidder of the responsibility to make good faith effort. Contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
- Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The Contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate cause for the rejection or non-solicitation of bids and the Contractors efforts to meet the project goal.
- Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or Contractor.
- Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- Effectively using the services of available minority/women community organizations; minority/women Contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.



- If the Program Manager of the OCR determines that the Contractor has failed to meet the good faith effort requirements, the Contractor will be given an opportunity for reconsideration by the Director of the OCR.
- d. Should the bidder to whom the contract is conditionally awarded refuse, neglect or fail to meet the DBE goal or comply with good faith effort requirements, the proposal guaranty filed with the bid shall become the property of the state, not as a penalty, but as liquidated damages to the Department.
- e. The preceding information shall be submitted directly to the Office of Civil Rights, Texas Department of Transportation, 125 E. 11th Street, Austin, Texas 78701-2483.
- f. The Contractor shall not terminate for convenience a DBE subcontractor named in the commitment submitted under Section 1.A.3.a, of this Special Provision. Prior to terminating or removing a DBE subcontractor named in the commitment, the Contractor must have a written consent of the Department.
- g. The Contractor shall also make a good faith effort to replace a DBE subcontractor that is unable to perform successfully with another DBE, to the extent needed to meet the contract goal. The Contractor shall submit a completed Form 4901 “DBE Commitment Agreement”, Form SMS 4901-T “DBE Trucking Commitment Agreement”, or Form SMS.4901-MS “DBE Material & Supplier Commitment Agreement” for the substitute DBE firm(s). Any substitution of DBEs shall be subject to approval by the Department. Prior to approving the substitution, the Department will request a statement from the DBE concerning it being replaced.
- h. The Contractor shall designate a DBE liaison officer who will administer the Contractor’s DBE program and who will be responsible for maintenance of records of efforts and contacts made to subcontract with DBEs.
- i. Contractors are encouraged to investigate the services offered by banks owned and controlled by disadvantaged individuals and to make use of these banks where feasible.

**4. Eligibility of DBEs.**

- a. The member entities of the TUCP certify the eligibility of DBEs and DBE joint ventures to perform DBE subcontract work on DOT financially assisted contracts.
- b. The Department maintains the Texas Unified Certification Program DBE Directory containing the names of firms that have been certified to be eligible to participate as DBE’s on DOT financially assisted contracts. This Directory is available from the Department’s OCR. An update of the Directory can be found on the Internet at <http://www.dot.state.tx.us/business/tucp/default.htm>.

- c. Only DBE firms certified at the time commitments are submitted are eligible to be used in the information furnished by the Contractor as required under Section 1.A.3.a. and 3.g. above. For purposes of the DBE goal on this project, DBEs will only be allowed to perform work in the categories of work for which they are certified.
  - d. Only DBE firms certified at the time of execution of a contract/subcontract/purchase order, are eligible for DBE goal participation.
5. **Determination of DBE Participation.** When a DBE participates in a contract, only the values of the work actually performed by the DBE, as referenced below, shall be counted by the prime contractor toward DBE goals:
- a. The total amount paid to the DBE for work performed with his/her own forces is counted toward the DBE goal. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.
  - b. A Contractor may count toward its DBE goal a portion of the total value of the contract amount paid to a DBE joint venture equal to the distinct, clearly defined portion of the work of the contract performed by the DBE.
    - (1) A Contractor may count toward its DBE goal only expenditures to DBEs that perform a commercially useful function (CUF) in the work of a contract or purchase order. A DBE is considered to perform a CUF when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.

In accordance with 49 CFR Part 26, Appendix A, guidance concerning Good Faith Efforts, contractors may make efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services. Contractors may not however, negotiate the price of materials or supplies used on the contract by the DBE, nor may they determine quality and quantity, order the materials themselves, nor install the materials (where applicable), or pay for the material themselves. Contractors however, may share the quotations they receive from the material supplier with the DBE firm, so that the DBE firm may negotiate a reasonable price with the material supplier.

**In all cases, prime or other non-DBE subcontractor assistance will not be credited toward the DBE goal.**

- (2) A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.

Consistent with industry practices and the DOT/Department's DBE program, a DBE subcontractor may enter into second-tier subcontracts, amounting up to 70% of their contract. Work subcontracted to a non-DBE does not count towards DBE goals. If a DBE does not perform or exercise responsibility for at least 30% of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that the DBE is not performing a CUF

- (3) A DBE trucking firm (including an owner operator who is certified as a DBE is considered to be performing a CUF when the DBE is responsible for the management and supervision of the entire trucking operation on a particular contract and the DBE itself owns and operates at least 1 fully licensed, insured, and operational truck used on the contract.
- (a) The Contractor receives credit for the total value of the transportation services the DBE provides on a contract using trucks it owns, insures, and operates using drivers it employs.
  - (b) The DBE may lease trucks from another DBE firm, including an owner operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Contract.
  - (c) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by the DBE-owned trucks on the contract. Additional participation by non-DBE lessees receive credit only for the fee or commission it receives as result of the lease arrangement
  - (d) A lease must indicate that the DBE has exclusive use of and control over the trucks giving the DBE absolute priority for use of the leased trucks. Leased trucks must display the name and identification number of the DBE.
- (4) When a DBE is presumed not to be performing a CUF the DBE may present evidence to rebut this presumption.
- (5) Project materials or supplies acquired from an affiliate of the prime contractor can not directly or indirectly (2<sup>nd</sup> or lower tier subcontractor) be used for DBE goal credit.

c. A Contractor may count toward its DBE goals expenditures for materials and supplies obtained from a DBE manufacturer, provided that the DBE assumes the actual and contractual responsibility for the materials and supplies. Count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:

- (1) If the materials or supplies are obtained from a DBE manufacturer, count 100% of the cost of the materials or supplies toward DBE goals. (Definition of a DBE manufacturer found at 1A.c.(1) of this provision.)

For purposes of this Section (1.A.c.(1)), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

- (2) If the materials or supplies are purchased from a DBE regular dealer, count 60% of the cost of the materials or supplies toward DBE goals.

For purposes of this Section (1.A.5.c.(2)), a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business:

- (A) To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
- (B) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating, or maintaining a place of business as provided in the first paragraph under Section 1.A.5.c.(2), if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.
- (C) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of Section 1.A.5.c.(2).

- (3) With respect to materials or supplies purchased from DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services.

Do not count any portion of the cost of the materials and supplies themselves toward DBE goals.

- (4) Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

- d. If the Contractor chooses to assist a DBE firm, other than a manufacturing material supplier or regular dealer, and the DBE firm accepts the assistance, the Contractor may act solely as a guarantor by use of a two-party check for payment of materials to be used on the project by the DBE. The material supplier must invoice the DBE who will present the invoice to the Contractor. The Contractor may issue a joint check to the DBE and the material supplier and the DBE firm must issue the remittance to the material supplier. No funds shall go directly from the Contractor to the material supplier. The DBE firm may accept or reject this joint checking arrangement.

The Contractor must obtain approval from the Department prior to implementing the use of joint check arrangements with the DBE. Submit to the Department, Joint Check Approval Form 2178 for requesting approval. Provide copies of cancelled joint checks upon request. No DBE goal credit will be allowed for the cost of DBE materials that are paid by the Contractor directly to the material supplier.

- e. No DBE goal credit will be allowed for supplies and equipment the DBE subcontractor leases from the contractor or its affiliates.
- f. No DBE goal credit will be allowed for the period of time determined by the Department that the DBE was not performing a CUF. The denial period of time may occur before or after a determination has been made by the department. In case of the denial of credit for non-performance of a CUF of a DBE, the Contractor will be required to provide a substitute DBE to meet the contract goal or provide an adequate good faith effort when applicable.

## **6. Records and Reports.**

- a. The Contractor shall submit monthly reports, after work begins, on DBE payments to meet the DBE goal and for DBE or HUB race-neutral participation. Report payments made to non-DBE HUBs. The monthly report is to be sent to the Area Engineer. These reports will be due within 15 days after the end of a calendar month. These reports will be required until all DBE subcontracting or material supply activity is completed. Form SMS.4903, "DBE Progress Report," is to be used for monthly reporting. Form SMS.4904, "DBE Final Report," is to be used as a final summary of DBE payments submitted upon completion of the project.

The original final report must be submitted to the OCR and a copy must be submitted to the Area Engineer. These forms may be obtained from the Department or may be reproduced by the Contractor. The Department may verify the amounts being reported as paid to DBEs by requesting copies of cancelled checks paid to DBEs on a random basis. Cancelled checks and invoices should reference the Department's project number.

- b. DBE subcontractors and/or material suppliers should be identified on the monthly report by Vendor Number, name, and the amount of actual payment made to each during the monthly period. Negative reports are required when no activity has occurred in a monthly period.
- c. All such records must be retained for a period of 3 years following completion of the contract work, and shall be available at reasonable times and places for inspection by authorized representatives of the Department or the DOT. Provide copies of subcontracts or agreements and other documentation upon request.
- d. Prior to receiving final payment, the Contractor shall submit Form SMS.4904, "DBE Final Report". If the DBE goal requirement is not met, documentation supporting Good Faith Efforts, as outlined in Section 1.A.3.c of this Special Provision, must be submitted with the "DBE Final Report."
- e. Provide a certification of prompt payment in accordance with the Department's prompt payment procedure to certify that all subcontractors and suppliers were paid from the previous months payments and retainage was released for those whose work is complete. Submit the completed form each month and the month following the month when final acceptance occurred at the end of the project.

7. **Compliance of Contractor.** To ensure that DBE requirements of this DOT assisted contract are complied with, the Department will monitor the Contractor's efforts to involve DBEs during the performance of this contract. This will be accomplished by a review of monthly reports submitted to the Area Engineer by the Contractor indicating his progress in achieving the DBE contract goal, and by compliance reviews conducted on the project site by the Department.

The Contractor shall receive credit toward the DBE goal based on actual payments to the DBE subcontractor. The Contractor shall notify the Area Engineer if he/she withholds or reduces payment to any DBE subcontractor. The Contractor shall submit an affidavit detailing the DBE subcontract payments prior to receiving final payment for the contract.

Contractors' requests for substitutions of DBE subcontractors shall be accompanied by a detailed explanation which should substantiate the need for a substitution. The Contractor may not be allowed to count work on those items being substituted toward the DBE goal prior to approval of the substitution from the Department.

The prime Contractor is prohibited from providing work crews and equipment to DBEs. DBE Goal credit for the DBE subcontractors leasing of equipment or purchasing of supplies from the prime contractor or its affiliates is not allowed.

When a DBE subcontractor named in the commitment under Section 1.A.3.a. of this Special Provision, is terminated or fails to complete its work on the contract for any reason, the prime contractor is required to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal.

A Contractor's failure to comply with the requirements of this Special Provision shall constitute a material breach of this contract. In such a case, the Department reserves the right to terminate the contract; to deduct the amount of DBE goal not accomplished by DBEs from the money due or to become due the Contractor, or to secure a refund, not as a penalty but as liquidated damages to the Department or such other remedy or remedies as the Department deems appropriate.

Forward Form 2371, "DBE Trucking Credit Worksheet," completed by the DBE trucker every month DBE credit is used.

- B. Article B. Race-Neutral Disadvantaged Business Enterprise Participation.** It is the policy of the DOT that Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 26 Subpart A, be given the opportunity to compete fairly for contracts and subcontracts financed in whole or in part with Federal funds and that a maximum feasible portion of the Department's overall DBE goal be met using race-neutral means. Consequently, if there is no DBE goal, the DBE requirements of 49 CFR Part 26, apply to this contract as follows:

The Contractor will offer DBEs as defined in 49 CFR Part 26, Subpart A, the opportunity to compete fairly for contracts and subcontractors financed in whole or in part with Federal funds. Race-Neutral DBE and non-DBE HUB participation on projects with no DBE goal shall be reported on Form SMS.4903, "DBE or HUB Progress Report" and submitted to the Area Engineer each month and at project completion. Payments to DBEs reported on Form SMS.4903 are subject to the requirements of Section 1.A.5, "Determination of DBE Participation."

The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.





## SPECIAL PROVISION

000--2329

### Partnering

**1. General.** It is the intent of this provision to promote an environment of trust, mutual respect, integrity, and fair-dealing between the Department and the Contractor.

**2. Definitions.**

**A. Informal Partnering.** Partnering that does not make use of a facilitator.

**B. Formal Partnering.** Partnering where the services of a facilitator (internal or external) are utilized.

**3. Procedures for Partnering Meetings and Format.** Informal Partnering is required for this project, unless Formal Partnering is mutually agreed to in lieu of the Informal Partnering.

**Facilitators.** The facilitator is to act as a neutral party seeking to initiate cooperative working relationships. This individual must have the technical knowledge and ability to lead and guide discussions. Choose either an internal or external facilitator. The facilitator must be acceptable to the Engineer.

- (1) **Internal Facilitators.** A Department or Contractor internal (staff) facilitator may be selected as the facilitator at no additional cost to either party.
- (2) **External Facilitators.** A private firm or individual that is independent of the Contractor and the Department may be selected as the facilitator. Submit the facilitator's name and estimated fees for approval prior to contracting with the facilitator.

**Meetings and Arrangements.** Coordinate with the Engineer for meeting dates and times, locations including third party facilities, and other needs and appurtenances including but not limited to audio/visual equipment. Make all meeting arrangements for Formal Partnering. Use Department facilities or facilities in the vicinity of the project if available. Submit the estimated meeting costs for approval prior to finalizing arrangements.

Coordinate facilitator discussions prior to the partnering meeting to allow the facilitator time to prepare an appropriate agenda. Prepare a list of attendees with job titles and include critical contractor, subcontractor, and supplier staff in the list. Provide the facilitator the list of attendees and invite the attendees listed.

The Department will invite and provide a list of attendees that includes but is not limited to Department, City, County, law enforcement, railroad, and utility representatives.

Participate in additional partnering meetings as mutually agreed.

**4. Payment.** Expenses for employee time, contractor equipment, or overhead will not be allowed. Markups will not be allowed.

Informal Partnering will be conducted with each party responsible for their own costs.

For Formal Partnering using internal facilitators, the Contractor will be responsible for arrangements and for expenses incurred by its internal facilitator, including but not limited to meals, travel, and lodging. Department facilitators may be used at no additional cost.

For Formal Partnering using external facilitators, submit an invoice to the Engineer for reimbursement. The Department will reimburse the Contractor for half of the eligible expenses as approved. For external facilitators not approved by the Department but used at the Contractor's option, the Contractor will be responsible for all costs of the external facilitator.

For meeting facilities and appurtenances, submit an invoice to the Engineer for reimbursement. The Department will reimburse the Contractor for half of the eligible expenses as approved.

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## **SPECIAL PROVISION**

**000---2607**

### **Nondiscrimination**

**Description.** All recipients of federal financial assistance are required to comply with various nondiscrimination laws including Title VI of the Civil Rights Act of 1964, as amended, (Title VI). Title VI forbids discrimination against anyone in the United States on the grounds of race, color, or national origin by any agency receiving federal funds.

Texas Department of Transportation, as a recipient of Federal financial assistance, and under Title VI and related statutes, ensures that no person shall on the grounds of race, religion (where the primary objective of the financial assistance is to provide employment per 42 U.S.S. § 2000d-3), color, national origin, sex, age or disability be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any Department programs or activities.

**Definition of Terms.** Where the term “contractor” appears in the following six nondiscrimination clauses, the term “contractor” is understood to include all parties to contracts or agreements with the Texas Department of Transportation.

**Nondiscrimination Provisions.** During the performance of this contract, the contractor agrees as follows:

**(1) Compliance with Regulations:** The Contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, “DOT”) Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

**(2) Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

**(3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

**(4) Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Texas Department of Transportation to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the Recipient, or the Texas Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

**(5) Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Recipient shall impose such contract sanctions as it or the Texas Department of Transportation may determine to be appropriate, including, but not limited to:

- (a) withholding of payments to the contractor under the contract until the contractor complies, and/or
- (b) cancellation, termination or suspension of the contract, in whole or in part.

**(6) Incorporation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Recipient or the Texas Department of Transportation may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Recipient to enter into such litigation to protect the interests of the Recipient, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

**NORTH TEXAS TOLLWAY AUTHORITY  
SPECIAL PROVISION  
IMPORTANT NOTICE TO CONTRACTORS  
"R.O.W. AND UTILITY RELOCATIONS BY OTHERS"**

**Contract No.:** 03598-SWP-00-CN-IT  
**Highway:** Chisholm Trail Parkway, **Sections:** 1-6  
**County:** Tarrant and Johnson Counties

The Authority anticipates the acquisition and/or access to right-of-way and removal and relocation of improvements, utilities, and obstructions to the construction provided for in this contract in accordance with the schedule set forth below.

The following is a list of known outstanding right-of-way and easements to be acquired, if any, description of improvements which have not been removed, and a list of utilities that have not been removed, adjusted, and/or relocated as of March, 2013.

**Outstanding Right-Of-Way to Be Acquired**

PARCEL NUMBER	OWNER	TARGET DATE OF POSSESSION
N/A	N/A	N/A

**Utilities to be removed, adjusted, and/or relocated**

The facilities improvements, utilities, and obstructions listed below will either be removed by others, remain in place, or will be accommodated in this Contract as noted below.

EXPECTED OWNER	UTILITY AND LOCATION	TARGET DATE OF ADJUSTMENT
N/A	N/A	N/A

The Contractor understands and agrees that the dates listed above are estimates only, are not guaranteed, and do not bind the Authority.





**NORTH TEXAS TOLLWAY AUTHORITY**  
**SPECIAL PROVISION**  
**IMPORTANT NOTICE TO CONTRACTORS**  
**"MANDATORY CONSTRUCTION SCHEDULE"**

**Contract No.:** 03598-SWP-00-CN-IT  
**Highway:** Chisholm Trail Parkway, **Sections:** 1-6  
**County:** Tarrant and Johnson Counties

**Fiber Optic Cable Installation Substantial Completion Schedule.** The Contractor shall schedule the work in a manner to ensure that the portions of the project pertaining to the installation of fiber optic cable will reach substantial completion no later than April 25, 2014.

Fiber Optic Cable Installation Substantial Completion is defined as the completion of the installation, splicing termination and testing of all fiber optic cable within the project limits required by the plans, General Notes and Specification Data, and Specifications.

A delay in substantial completion beyond the date specified above will cause delay in the incremental opening to traffic of the project and other complete and incomplete portions of the Chisholm Trail Parkway and will cause losses to the Authority, including, but not limited to, lost revenue, interest on monies borrowed, increased administrative, legal, and engineering costs, damage to the Authority's reputation, and other tangible and intangible losses.

Failure to achieve substantial completion within the specified time limits will cause the Authority hardship and financial loss, and automatically shall activate the applicable liquidated damages provisions specified in this "Mandatory Construction Schedule". The liquidated damages for this contract shall be FIVE THOUSAND AND NO/100 DOLLARS (\$5,000.00) per day for each calendar day that elapses after the time limit specified for Fiber Optic Cable Installation Substantial Completion as stated above, until expedited completion has been achieved. The Contractor unconditionally and irrevocably acknowledges and agrees that the actual amount of said losses and expenses would be extremely difficult to determine and that the specified liquidated damages constitute a fair and reasonable estimate by the parties of the amount of said losses and expenses and in no event shall constitute or be construed as a penalty. Further, the Contractor irrevocably and unconditionally acknowledges that the time limits set forth herein constitute an essential benefit for the Authority and an essential element of the contract.

**Final Completion Schedule.** The Contractor shall schedule the work in a manner that the project will reach final completion (as defined in the Special Provision to Item 1) **no later** than May 30, 2014. The Engineer **shall be the sole judge as to whether final completion has been achieved.**

A delay in final completion of the entire project beyond the date for final completion specified above will cause delay in the incremental opening to traffic of other complete and incomplete portions of the Chisholm Trail Parkway and will cause losses to the Authority, including, but not limited to, lost revenue, interest on monies borrowed, increased administrative, legal, and engineering costs, damage to the Authority's reputation, and other tangible and intangible losses.

Failure to achieve final completion within the specified time limits will cause the Authority hardship and financial loss, and automatically shall activate the applicable liquidated damages provisions specified in this "Mandatory Construction Schedule". The liquidated damages for this contract shall be TWO THOUSAND, FIVE HUNDRED and NO/100 DOLLARS (\$2,500.00) per day for each calendar day that elapses after the time limit specified for final completion as stated above, until final completion has been achieved in accordance with the requirements of the Special Provision to Item 8. The Contractor unconditionally and irrevocably acknowledges and agrees that the actual amount of said losses and expenses would be extremely difficult to determine and that the specified liquidated damages constitute a fair and reasonable estimate by the parties of the amount of said losses and expenses and in no event shall constitute or be construed as a penalty. Further, the Contractor irrevocably and unconditionally acknowledges that the time limits set forth herein constitute an essential benefit for the Authority and an essential element of the contract.

The Authority shall recover liquidated damages by deducting the amount thereof from any monies due or that may become due the Contractor, and if said monies be insufficient to cover said damages, then the Contractor or its Surety shall pay the amount due and the Authority shall be entitled to any and all rights and remedies available to it in law or equity to recover same.

In the event a court or other authority having jurisdiction to do so determines that this liquidated damages provision is unenforceable for any reason, the Contractor agrees that it shall be liable to the Authority for actual damages for the Contractor's delays in achieving substantial and/or final completion, as applicable, within the time required by the Contract.

**NORTH TEXAS TOLLWAY AUTHORITY  
SPECIAL PROVISION  
IMPORTANT NOTICE TO CONTRACTORS  
"SALES AND USE TAX EXEMPTION"**

The Contractor shall be responsible for the payment of all federal, state, local, and other taxes, impositions, and assessments imposed in connection with this contract (if any), including without limitation all taxes imposed on property, services, and other items required in connection with Contractor's performance of this contract. The amount of payments to be made by the Authority to the Contractor as stated in this contract shall not be increased to cover any taxes, impositions, or assessments payable by the Contractor in connection with this contract.

The Authority is a tax-exempt entity under Section 151.309 of the Texas Tax Code. The Contractor is solely responsible for determining if under the Texas Tax Code, the Texas Administrative Code, or any other legal authority, any property or service purchased by the Contractor in connection with its performance of this contract is exempt from taxation.



**NORTH TEXAS TOLLWAY AUTHORITY**  
**SPECIAL PROVISION**  
**IMPORTANT NOTICE TO CONTRACTORS**  
**"EXISTING UTILITIES"**

Contractor is hereby notified that there are existing public and private utility entities which the Authority believes have structures in or adjacent to the limits of the work. A list indicates the entity owning and controlling the utility, and the person to be contacted, if there is any, is provided in the General Notes and Specification Data and the locations of known existing utilities are shown on the plans. However, the Authority does not guarantee the accuracy of the information concerning the existing utility structures, including their size, location, depth, or length. The Contractor is responsible for making its own investigation as to the whereabouts of utilities prior to beginning work in any location. Prior to any excavation or drilling, the Contractor shall obtain from the owners the location of any existing utilities (whether or not shown on the plans) and shall become cognizant of and cooperate with any necessary adjustments, which may have to be made by the owners. Additionally, before commencing construction, the Contractor shall verify by test pits the location of all utilities. By submitting its bid, the Contractor warrants and understands that notwithstanding anything to the contrary contained in the contract, it is its responsibility to verify all information concerning utility structures, including the information listed in the General Notes and Specification Data and the information contained in the plans, that it has made all investigations essential to a full understanding of the difficulties that may be encountered in performing the work as it relates to utility structures, and that it assumes full and complete responsibility and risk for completing the work for the compensation and within the time provided in the contract.

Regardless of whether existing utility structures will eventually be relocated, it shall be the Contractor's responsibility to protect all such lines in the course of performing work under the contract. Any structures damaged by the Contractor's operations shall be promptly repaired at the Contractor's expense and to the complete satisfaction of the utility owner and the Engineer.

Because of the imminent danger of working in the vicinity of the utilities, the Contractor shall utilize heavy timber mats, compacted earth embankment surfaced with flexible base, or other working platforms, where, in the sole judgment of the Engineer to protect the existing utilities, facilities might be damaged by the Contractor's operations. Prior to beginning operations, the Contractor shall submit to the Engineer for approval, a plan outlining its methods of operation and details of supporting heavy equipment in locations where utilities might be damaged. Submittals shall conform to the requirements of Item 5 of the Standard Specifications and the Special Provision to Item 5, "Control of the Work".

February, 2005

After completion of operations in the vicinity of utilities, the Contractor shall restore the area to its condition at the time of entry unless otherwise instructed by the utility owner and the Engineer.

No specific measurement or payment will be made for work to be done, or for equipment and materials to be furnished, as a result of the requirements in this Special Provision. All costs shall be considered subsidiary to and included in the bid for the various Items required by the plans and the contract.

Special care must be exercised during all phases of construction operations in the vicinity of these structures.

It shall be the Contractor's responsibility to familiarize itself and at all times comply with the operational requirements of all utility owners relevant to the work.

**NORTH TEXAS TOLLWAY AUTHORITY**  
**SPECIAL PROVISION**  
**IMPORTANT NOTICE TO CONTRACTORS**  
**"VALUE ENGINEERING PROPOSALS"**

**Contract No.:** 03598-SWP-00-CN-IT  
**Highway:** Chisholm Trail Parkway, **Sections:** 1-6  
**County:** Tarrant and Johnson Counties

The Contractor is encouraged to develop, prepare, and submit for the Authority's consideration proposals for Contract changes that result in a reduction of the estimated cost of the Work without impairing essential functions or characteristics of the Project, including service life, economy of operation, ease of maintenance, desirability and safety, as determined by the Authority in its sole discretion. Such changes may not be based solely upon a change in quantities, performance, accuracy or reliability, or a relaxation of the requirements contained in the Contract Documents. If the Authority determines that the proposal warrants a change to the Contract, the change shall be documented by a change order under which a portion of the estimated net savings to the Authority shall be shared with the Contractor on terms acceptable to the Authority and the Contractor. The Contractor acknowledges and agrees that the Authority shall have no obligation to accept or implement any proposal submitted by the Contractor.





**NORTH TEXAS TOLLWAY AUTHORITY**  
**SPECIAL PROVISION**  
**IMPORTANT NOTICE TO CONTRACTORS**  
**"CORRECTION OF DEFECTS"**

**Contract No.:** 03598-SWP-00-CN-IT  
**Highway:** Chisholm Trail Parkway, **Sections:** 1-6  
**County:** Tarrant and Johnson Counties

Unless otherwise specifically provided in the Contract, all equipment, material and articles incorporated into the Work covered by the Contract shall be new and of the most suitable grade for the purposes intended.

The Contractor warrants that Work performed under this Contract shall conform to the Contract requirements. The Contractor shall, without charge, replace or correct Work found by the Authority not to conform to Contract Plans, Standard Specifications, Special Specifications, or other requirements, terms, or conditions of the Contract.

With respect to all equipment, materials and designs furnished or workmanship performed by the Contractor or any subcontractor or supplier of Contractor at any tier, the Contractor warrants that the Work is free of defects, and the Contractor covenants to correct at the Contractor's expense any defects in equipment, materials, and designs furnished or workmanship performed by the Contractor or any subcontractor or supplier of Contractor at any tier.

In addition, the Contractor shall remedy at the Contractor's expense any damage to real or personal property owned or controlled by the Authority, when the damage is the result of the Contractor's failure to conform to the Contract requirements or any defect of equipment, material, workmanship, or design furnished.



**NORTH TEXAS TOLLWAY AUTHORITY**  
**SPECIAL PROVISION**  
**IMPORTANT NOTICE TO CONTRACTORS**  
**“NTTA ENTERPRISE PROJECT DELIVERY SYSTEM”**

**1. Introduction**

The NTTA Enterprise Project Delivery System (the EPDS) is the Authority’s web-based computer system that provides management applications such as, notices, field and office management, and file management including, but not limited to, forms, workflows, administrative applications, and reports. The EPDS serves as a record repository by tracking and storing project records such as contract documents, correspondences, plans and shop drawing submittals, requests for information (RFIs), nonconformance reports (NCRs), corrective action requests (CARs), prevention action reports (PARs), and other construction submittals from the execution to the close out of a contract. The EPDS produces various types of reports based on the data stored in the system to help the Authority monitor the progress of the project. The EPDS utilizes workflows which correspond with the NTTA Quality Management System (QMS) Manual which provides procedures and requirements to achieve the standards and quality set forth by the Authority. The project information within the EPDS may be accessed over the internet 24 hours a day, seven days a week.

**2. Contractor’s Obligations**

The Contractor, and its designated representatives, shall utilize the EPDS for all transmittals, submittals, RFIs, and other tasks requested by the Engineer. All project related documents shall be processed in accordance with the applicable workflows shown in the EPDS including, but not limited to, records of correspondence, schedules, progress reports, inspection reports, requests for information, meeting agendas, meeting minutes, shop drawing submittals, plan revision submittals, change orders, NCRs, CARs, PARs, progress payments, etc. The EPDS is an official record of all communications between the Contractor and the Authority.

The Contractor and designated representatives shall understand the procedures and workflows listed in the following sections of the NTTA QMS Manual which can be found at the NTTA website at [ntta.org](http://ntta.org) under “Working With Us”, and “NTTA QMS Manual and Forms”:

**A. Section 3, “Program Development Process”, Sub-section 6, “Construction”**

- 1. RFI Review Process (CON-01).** CON-01 defines the process by which an RFI is reviewed, response developed, finalized, and returned to the prime contractor.
- 2. Submittal Review Process (CON-02).** CON-02 defines the process by which a construction submittal is reviewed and approved.
- 3. Change Order (CO) Process (CON-03).** CON-03 defines the process by

which a contract change order is requested and approved.

4. **Construction Administration (CON-04).** CON-04 documents the processes by which a construction contract is administered, monitored, and managed.
5. **Construction Contract Closeout (CON-06).** CON-06 defines the process for closeout of a construction contract to ensure that all specified work has been completed in accordance with requirements of the contract, that all documents of record have been received, and that all financial aspects of the contract are addressed and resolved.

**B. Section 4, “Program Administration and Support”, Sub-section 2, “Document Management”**

1. **Document Control (DM-01).** DM-01 defines the procedure for approval, distribution, filing and control of NTTA Global project and Corridor specific documents.

**C. Section 4, “Program Administration and Support”, Sub-section 4, “Quality Management”**

1. **Quality Audit (QM-08).** QM-08 defines the procedure by which the Authority will schedule, conduct, and report results of quality audits conducted against the NTTA established processes.
2. **Control of Nonconforming Items – Construction (QM-09).** QM-09 defines the procedure for controlling nonconforming items in construction including identification, segregation, resolution, and re-inspection as necessary.
3. **Corrective & Preventive Action (QM-10).** QM-10 defines the procedure for processing requests for corrective or preventive actions as a result of customer complaints, an identified process nonconformance or a potential nonconformance either resulting from an audit or other awareness of process failings or nonconformance.

**D. Section 4, “Program Administration and Support”, Sub-section 5, “Environmental Management”**

1. **Storm Water Management (ENV-01).** ENV-01 defines the monitoring process to ensure compliance with the Construction General Permit (CGP) issued by the Texas Commission on Environmental Quality (TCEQ) under its Texas Pollutant Discharge Elimination System (TPDES) permitting program for construction activities.
2. **Environmental Documentation Submittal Process (ENV-02).** ENV-02 defines the process by which all environmental documents shall be prepared and submitted.
3. **Control of Environmental Nonconformance (ENV-03).** ENV-03 defines the procedure for processing environmental compliance nonconformance including identification, resolution, implementation of solution, re-inspection, and closure.

Within 7 days after the Contract is awarded by the NTTA Board, or when notified by the

Engineer, the Contractor shall submit a list containing the name, company, role/title, telephone number, and e-mail address of individuals who will attend the training sessions for the use of the EPDS, which will be provided by the Authority at no cost. All EPDS users shall complete the training prior to receiving access to the EPDS; no exceptions will be granted. The Contractor and its designated representatives shall agree to comply with all terms and conditions associated with its use of the EPDS. Any time during the construction, the Contractor may request for additional EPDS training as a refresher course for existing EPDS users or to add new individuals who will require use of the EPDS.

### **3. Equipment**

The Contractor shall obtain the necessary computer equipment, at its own expense, to access the EPDS.

Computer equipment and software requirements are listed in the General Notes and Specification Data of the project.

In the event that the EPDS becomes inoperable or unavailable to the Contractor, the Contractor shall contact the Authority's EPDS helpdesk to have the software repaired and contact the Engineer for directions of processing documentation until the EPDS is operational. Any expenses incurred for extra work will be subsidiary to various items in the Contract. Once the EPDS is in operation again, the Contractor shall upload the required documentation and submit the requests through the EPDS.

### **4. Documentation**

All project documents that are uploaded and transmitted via the EPDS must comply with the following electronic formats:

- A.** Documents generated by Microstation or AutoCAD shall be printed to Portable Document Format (PDF) files using Adobe Acrobat software.
- B.** Manually marked-up documents such as drawings, sketches, correspondence, etc. or documents with non-electronic signatures shall be scanned to Tagged Image Format (TIF) or PDF files with a minimum resolution of 300 dpi using CCITT Group 4 (2d Fax) compression.
- C.** Documents generated by software programs such as Microsoft Office and graphic designing software shall be printed to PDF files using Adobe Acrobat software. No scanning will be permitted.
- D.** Electronic photographs shall be uploaded in Joint Photographic Experts Group (JPEG) or (JPG) files, sized at a minimum resolution of 1024x768 pixels.
- E.** Grayscale or color photo images that are scanned shall be saved to JPEG or JPG files with medium to low quality compression at a minimum resolution of 300 dpi.
- F.** Product data in PDF files available for download from the Manufacturer's website may be used.

October, 2009

**5. Nonconformance of Work.** The Engineer will issue a CAR/PAR and correction shall be made in accordance with the CAR/PAR processes if the Contractor fails to:

- A. participate in the EPDS training,
- B. use the EPDS to process project documentation,
- C. follow the procedures and workflows set forth in the NTTA QMS Manual,
- D. provide equipment, or
- E. provide documentation in the format set forth in this Special Provision.

**6. Measurement and Payment.** The work performed, materials furnished, equipment, labor, tools, and incidentals will not be measured or paid for directly, but will be subsidiary to various bid Items.

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

**1. Introduction**

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

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

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

**2. Contractor’s Obligations**

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

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

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

Within 14 days after the Contract is awarded, the Contractor shall submit a list containing the name, company, role/title, telephone number, and e-mail address of individuals who will attend the training sessions for the use of the NTTA PRISM system. Training will be provided by the Authority at no cost. All the NTTA PRISM system users shall complete the training prior to receiving access to the NTTA PRISM system; no exceptions will be granted. The Contractor shall agree to comply with all terms and conditions associated with its use of the NTTA PRISM system. At any time during the contract, the Contractor may request for additional NTTA PRISM system training as a refresher course for existing NTTA PRISM system users or to add new individuals who will require use of the NTTA PRISM system.

### **3. Equipment**

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

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

### **4. Documentation**

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

### **5. Noncompliance**

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

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

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



**NORTH TEXAS TOLLWAY AUTHORITY**  
**SPECIAL PROVISION TO ITEM 1**  
**“DEFINITION OF TERMS”**

For this Contract, the Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges, June 1, 2004 (the “Texas Standard Specifications”), all documents referenced therein, and all manuals, bulletins, supplements, specifications, and similar materials issued by the Texas Department of Transportation (“TxDOT”), or any predecessor or successor thereto, which are applicable to this Contract, are hereby modified with respect to the terms cited below and no others are changed hereby.

THE TERM “STATE,” “STATE HIGHWAY AGENCY,” “STATE HIGHWAY DEPARTMENT OF TEXAS,” “STATE DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION,” “TEXAS STATE DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION,” “TEXAS DEPARTMENT OF TRANSPORTATION,” “DEPARTMENT,” “TEXAS TURNPIKE AUTHORITY,” “STATE DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION COMMISSION,” “TEXAS DEPARTMENT OF TRANSPORTATION COMMISSION,” “TEXAS TRANSPORTATION COMMISSION,” “STATE HIGHWAY COMMISSION,” OR “COMMISSION” SHALL, IN THE USE OF THE TEXAS STANDARD SPECIFICATIONS, SPECIAL PROVISIONS AND SPECIAL SPECIFICATIONS AND GENERAL NOTES AND SPECIFICATION DATA PERTAINING THERETO, AND REQUIRED CONTRACT PROVISIONS FOR FEDERAL-AID CONSTRUCTION CONTRACTS, FOR ALL WORK IN CONNECTION WITH THE NORTH TEXAS TOLLWAY AUTHORITY SYSTEM, NORTH TEXAS TOLLWAY AUTHORITY SPECIAL PROJECTS SYSTEM, AND ALL EXTENSIONS, ENLARGEMENTS, EXPANSIONS, IMPROVEMENTS, AND REHABILITATIONS THERETO, BE DEEMED TO MEAN THE NORTH TEXAS TOLLWAY AUTHORITY, UNLESS THE CONTEXT CLEARLY INDICATES A CONTRARY MEANING. ANY REFERENCE IN THE TEXAS STANDARD SPECIFICATIONS TO THE STATE OF TEXAS, OR TO ITS OFFICIALS, EMPLOYEES, OR AGENTS, SHALL BE DEEMED TO MEAN THE NORTH TEXAS TOLLWAY AUTHORITY, ITS OFFICIALS, EMPLOYEES, OR AGENTS.

For this Contract, Item 1 of the Texas Standard Specifications is hereby modified with respect to the clauses cited below and no other clause or requirement of this Item is waived or changed hereby.

Article 1.2, “**Abbreviations**,” is hereby supplemented by the following:

NPDES	National Pollution Discharge Elimination System
DBE	Disadvantaged Business Enterprise

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SBE	Small Business Enterprise
MBE	Minority Business Enterprise
WBE	Women Business Enterprise
D/M/W/SBE	Disadvantaged, Minority, Women-Owned and Small Business Enterprise

Article 1.28, “**Commission**,” is hereby deleted and replaced by the following:

**1.28. Commission.** The North Texas Tollway Authority, a regional tollway authority and a political subdivision of the State of Texas authorized and existing pursuant to Chapter 366 of the Texas Transportation Code, unless the context clearly indicates a contrary intent and meaning.

Article 1.33, “**Contract**,” is hereby deleted and replaced by the following:

**1.33. Contract.** The agreement between the Authority and the Contractor establishing the obligations of the parties for furnishing of materials and performance of the work prescribed in the Contract Documents.

Article 1.34, “**Contract Documents**,” is hereby deleted and replaced by the following:

**1.34. Contract Documents.** Elements of the Contract including, but not limited to, the plans, the form of Contract attached hereto, the Texas Standard Specifications, the General Notes and Specification Data attached hereto, the Special Provisions attached hereto, the Special Specifications attached hereto, the forms of Disclosure Statement, Certification, Affidavit, Contractor’s Assurance, contract bonds and similar provisions attached hereto, and all addenda thereto and all change orders and supplemental agreements thereto, together with the conditions of the Proposal and all applicable provisions of the Procurement Policy.

Article 1.45, “**Debar (Debarment)**,” is hereby deleted and replaced by the following:

**1.45. Debar (Debarment).** Action taken by the Authority, Texas Department of Transportation, or federal government pursuant to regulations that prohibit a person or company from entering into a Contract, or from participating as a subcontractor, or supplier of materials or equipment used in a project of the Authority or in a highway improvement Contract as defined in Transportation Code, Chapter 223, Subchapter A.

Article 1.47, “**Department**,” is hereby deleted and replaced by the following:

**1.47. Department.** The North Texas Tollway Authority, a regional tollway authority and a political subdivision of the State of Texas authorized and existing pursuant to Chapter 366 of the Texas Transportation Code, unless the context clearly indicates a contrary intent and meaning.

Article 1.50, “**Disadvantaged Business Enterprise (DBE)**,” is hereby deleted and replaced by the definition set forth in the NTTA Business Diversity Department Contracting & Compliance Manual (CCM) and as supplemented in the front end document to the contract titled “Disadvantaged, Minority, Women-Owned and Small Business Enterprise Program”.

Article 1.53, “**Engineer**,” is hereby deleted and replaced by the following:

**1.53. Engineer.** The Director of Project Delivery or Director of Maintenance for the Authority, or his or her duly authorized representative acting within the scope of his or her authority.

Article 1.58, “**Hazardous Materials or Waste**,” is hereby deleted and replaced by the following:

**1.58. Hazardous Materials or Waste.** The term Hazardous Materials or Waste shall mean any hazardous or toxic substances, materials, or wastes including, but not limited to, a “hazardous substance” under 40 C.F.R. part 302, a “hazardous waste” under 40 C.F.R. part 261, asbestos, petroleum, polychlorinated biphenyls, lead-based paint, and any substance or waste regulated under state law by the Texas Commission on Environmental Quality or the Texas Railroad Commission.

Article 1.70, “**Letting Official**,” is hereby deleted and replaced by the following:

**1.70. Letting Official.** The employee of the Authority, empowered by the Executive Director of the Authority, will officially receive bids and close the receipt of bids at an advertised letting.

Article 1.75, “**Major Item**,” is hereby deleted and replaced by the following:

**1.75. Major Item.** Any item of work included in the Contract that has a total cost equal to or greater than the lesser of (1) 5% of the total Contract amount (i.e. the original Contract amount, as modified by all Change Orders), or (2) \$100,000.

Article 1.120, “**Special Provisions**,” is hereby supplemented by the addition of the following:

Special provisions include, but are not limited to, Important Notices to Contractors included with the proposal form.

Article 1.123, “**Small Business Enterprise (SBE)**,” is hereby deleted and replaced by the definition set forth in the NTTA Business Diversity Department Contracting & Compliance Manual (CCM) and as supplemented in the front end document to the contract titled “Disadvantaged, Minority, Women-Owned and Small Business Enterprise Program”.

Article 1.124, “**State**,” is hereby deleted and replaced by the following:

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**1.124. State.** The North Texas Tollway Authority, a regional tollway authority and a political subdivision of the State of Texas authorized and existing pursuant to Chapter 366 of the Texas Transportation Code, unless the context clearly indicates a contrary intent and meaning.

Article 1.128, "**Subcontractor**," is hereby deleted and replaced by the following:

**1.128. Subcontractor.** An individual, partnership, limited liability company, corporation, or any combination thereof to which the Contractor sublets, or proposes to sublet, any portion of a Contract, excluding a material supplier, a hauling firm hauling only from a commercial source to the project, truck owner-operator, wholly owned subsidiary, or specialty-type businesses such as security companies and rental companies.

Article 1.133, "**Supplemental Agreement**," is hereby amended by deleting the second sentence thereof, which is hereby replaced by the following:

A supplemental agreement will be used by the Authority whenever the modifications include: (1) assignment of this Contract from one entity to another, (2) a change in the name of the Contractor, (3) an agreement with the Surety to complete a defaulted contract, or (4) other cases desired by the Authority.

Article 1.146, "**Work Order**," is hereby supplemented by the addition of the following:

Work order also shall be defined as the "Notice to Proceed."

**Item 1** is hereby supplemented by the addition of the following Articles:

**1.148. Authority.** The North Texas Tollway Authority (NTTA), a regional tollway authority and a political subdivision of the State of Texas authorized and existing pursuant to Chapter 366 of the Texas Transportation Code.

**1.149. Bid.** The offer of the bidder for performing the work described in the plans and specifications including any changes made by addenda.

**1.150. Diversity Policy.** The Disadvantaged, Minority, Women-Owned and Small Business Enterprise Policy originally adopted by the NTTA Board of Directors under Resolution 10-19. The Diversity Policy Statement incorporates the policies, objectives, and requirements of state and federal laws relating to procurement and contracts, and outlines the specific programs established by the NTTA to ensure participation of disadvantaged, minority, women-owned, and small businesses in NTTA procurement opportunities.

**1.151. Construction Contract Closeout Process.** A process for closeout of construction contract to ensure that all specified work has been completed in accordance with requirements of the contract, that all documents of record have been received, and that all financial aspects of the contract are addressed and resolved.

**1.152. Construction Manager.** The consultant to the Authority, or its duly authorized representative, providing construction management, oversight, coordination, and liaison among contractors, the public, local governments, consultants, engineers, and the Authority. Unless otherwise designated by the Authority, the Construction Manager shall serve as the Engineer.

**1.153. Consulting Engineers.** The consultant to the Authority, with that term being further defined in the Trust Agreement, or its duly authorized representative. See General Notes and Specification Data for the assigned Consulting Engineers.

**1.154. Corridor Manager.** The consultant to the Authority, or its duly authorized representative, charged by the Authority with responsibility to manage and oversee the planning, design, and construction of all sections of an Authority project throughout the entire length of the project corridor.

**1.155. County.** A political subdivision of the State as stated under Article 9, "Counties," of the Texas Constitution.

**1.156. North Texas Tollway Authority System.** A grouping of the following Turnpike projects of the Authority: the Dallas North Tollway, the Addison Airport Toll Tunnel, the President George Bush Turnpike, the Eastern Extension of the President George Bush Turnpike, the Mountain Creek Lake Bridge, the Lewisville Lake Toll Bridge, and the Sam Rayburn Tollway, together with all present and future expansions, extensions, enlargements, improvements, and rehabilitations thereto, all of which being financed, constructed, operated and administered by the Authority as a single operating system.

**1.157. Design Section Engineer.** The consultant to the Authority charged by the Authority with responsibility to develop and manage the design of a roadway section of the project corridor. See General Notes and Specification Data for the assigned Design Section Engineer.

**1.158. Final Completion.** As defined in Article 8.5, "Failure to Complete Work on Time," which is set forth in the Special Provision to Item 8, "Prosecution and Progress."

**1.159. Procurement Policy.** The "Policy Regarding Procurement of Goods and Services and Disposition of Property by the North Texas Tollway Authority," adopted by the Authority under Authority Resolution 04-57, as amended from time to time.

**1.160. Project.** The construction improvement, expansion, and enlargement by the Authority of the North Texas Tollway Authority System, the North Texas Tollway Authority Special Projects System or any other turnpike project that the Authority is authorized by law to construct, improve, expand, or enlarge through the performance of the work, including the construction of turnpike main lanes, service roads, approach roadways, interchanges, intersections, ramps, toll facilities, bridges, buildings, and landscaping, and/or, where appropriate, the modification of existing structures and roadway, all in conformance with (a) the Contract, (b) the latest version of a Trust

Agreement, as supplemented from time to time by Supplemental Trust Agreements (collectively the "Trust Agreement"), establishing and governing the operation of both the North Texas Tollway Authority System and the North Texas Tollway Authority Special Projects System, and governing the revenue bonds from which the cost of constructing the project will be paid, (c) all other applicable documents governing additional sources of funding for the project (if any), and (d) the provisions of Chapter 366 of the Texas Transportation Code, as amended, hereinafter referred to as the "Turnpike Act."

**1.161. Substantial Completion.** As defined in Article 8.5, "Failure to Complete Work on Time", which is set forth in the Special Provision to Item 8, "Prosecution and Progress."

**1.162. Temporary Structures.** All temporary bridges, culverts, and structures required to maintain traffic during the construction of the work.

**1.163. North Texas Tollway Authority Special Projects System.** A grouping of the following Turnpike projects of the Authority: the Chisholm Trail Parkway and the President George Bush Turnpike Western Extension, together with all present and future expansions, extensions, enlargements, improvements, and rehabilitations thereto, all of which being financed, constructed, operated and administered by the Authority as a single operating system.

## NORTH TEXAS TOLLWAY AUTHORITY

### SPECIAL PROVISION TO ITEM 2

#### “INSTRUCTIONS TO BIDDERS”

For this Contract, Item 2 of the Texas Standard Specifications is hereby modified with respect to the clauses cited below and no other clause or requirement of this Item is waived or changed hereby.

Article 2.2, “**Eligibility of Bidders,**” is hereby deleted and replaced by the following:

**2.2. Eligibility of Bidders.** The Bidder must be capable of performing each of the various items of the work bid upon.

Unless otherwise noted in the proposal, at the time of bid submission the Bidder must be prequalified with TxDOT as a bidder of sufficient financial strength and competency to be considered for performing all aspects and meeting all requisites of this proposal, and the estimated cost of the proposed Contract must be within the Bidder’s available bidding capacity. The Authority reserves the right, at its sole option, to request a hard copy of the TxDOT prequalification from the low bidder as a proof of current eligibility prior to award of the contract.

Unless otherwise noted in the proposal, a firm not prequalified with TxDOT and/or not having a bidding capacity within the estimated cost of the proposed Contract shall not be eligible to bid, and any bid submitted by such a firm shall be rejected and shall not be considered by the Authority. In the case of a joint venture, unless otherwise noted in the proposal, all joint venture participants must be prequalified with TxDOT, and an equally divided portion of the estimated cost of the proposed Contract must be within each participant’s available bidding capacity.

Article 2.3, “**Issuing Proposal Forms,**” is hereby deleted and replaced by the following:

**2.3. Issuing Proposal Forms.**

**A. Requests for Proposal Forms.** A potential Bidder may view, purchase, and download the plans, specifications, and other related contract documents of a specific project online at <http://www.thomasrepro.com/dfs/ntta>. Vendors wishing to view, purchase, and download plans and specifications online must first register with Thomas Reprographics. A list of proposed construction procurements can be found at the Authority website ([www.ntta.org](http://www.ntta.org)).

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**B. Non-issuance of Proposal Forms for Construction Contracts.** A potential Bidder will not be eligible to submit its bid if one or more of the following apply:

1. For a proposed Contract involving federal funds, at the time of the bid opening, the Bidder is disqualified or debarred by an agency of the federal government as a participant in programs and activities involving federal assistance and benefits.
2. For any proposed Contract, at the time of the bid opening, the Bidder is suspended or debarred by the Texas Transportation Commission or the Authority, or is prohibited from rebidding a specific proposal because of bid error or failure to enter into a Contract of the first awarded bid.
3. For any proposed Contract, at the time of the bid opening, the Bidder or a subsidiary or affiliate of the Bidder has received compensation from the Authority to participate in the preparation of the plans or specifications on which the bid or Contract is based.

Article 2.5, “**Examining Documents and Work Locations,**” is hereby supplemented by the addition of the following:

The estimate of quantities shown on the plans or in the proposal, whether based on subsurface investigations or not, are in no way warranted to indicate the true quantities or distribution of quantities.

Make direct requests in writing to the Authority for clarification and/or explanation of the proposal, plans, special notices, Standard Specifications, Special Provisions to the Standard Specifications, Special Specifications, General Notes and Specification Data, or any other Contract Documents. Any response by the Authority to Bidders’ requests will be based upon such information and knowledge available to the Authority at the time of the request; however, the Authority does not warrant the accuracy of any such response.

Article 2.6, “**Preparing the Proposal,**” is hereby supplemented by the following:

Include, in a form prescribed by the Authority, a certification of eligibility status. The certification shall describe any suspension, debarment, voluntary exclusion, or ineligibility determination actions by an agency of the federal government, and any indictment, conviction or civil judgment involving fraud or official misconduct, each with respect to the Bidder or any person associated therewith in the capacity of owner, partner, director, officer, principal investor, project director/supervisor, manager, auditor or a position involving the administration of federal funds, and shall cover the three (3) year period immediately preceding the date of the proposal.

Information adverse to the Bidder as contained in the certification will be reviewed by the Authority and by the Federal Highway Administration (FHWA), and may result in rejection of the bid and disqualification of the Bidder.



Article 2.7, “**Nonresponsive Proposals,**” is hereby supplemented by the following:

Proposals may be rejected if they show any alteration of words or figures, additions not called for, conditional or uncalled for alternate bids, incomplete bids, any alteration of words or figures or erasures not initialed by the person or persons signing the proposal or irregularities of any kind.

Section 2.8.A. “**Guaranty Check,**” is hereby amended by replacing the reference to “Texas Transportation Commission” with “North Texas Tollway Authority”.

Article 2.9, “**Delivery of Proposal,**” is hereby deleted and replaced by the following:

**2.9. Delivery of Proposal.** Proposals shall be submitted to the location described in the official advertisement of the project. Place the completed proposal form, the certifications required under Article 2.6, the proposal guaranty, the total bid amount form, the bid price schedule, the affidavits, and other required documents as specified in the Proposal Book in a sealed envelope marked to indicate the contents. When submitting by mail, place the envelope in another sealed envelope and address as indicated in the official advertisement of the project. The mailing envelope or outermost envelope should clearly state the bid or response name and number and be addressed to the attention of the Director of Procurement Services/NTTA Letting Official. It is the Bidder’s responsibility to ensure that the sealed proposal arrives at the location described in the official advertisement on or before the hour and date set for the opening. The proposal must be in the hands of the Director of Procurement Services/NTTA Letting Official by that time, regardless of the method chosen for delivery, in order to be accepted.

Article 2.14.C, “**Rounding of Unit Prices,**” is hereby deleted and replaced by the following:

**C. Rounding of Unit Prices.** The Authority will round off all unit bids involving fractional parts of a cent to the nearest whole cent (\$0.00) 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-tenths of a cent or more will be rounded up to the next highest cent, while entries less than five-tenths of a cent will be rounded down to the next lowest cent.

Article 2.14.E, “**Consideration of Unit Prices,**” is hereby amended by deleting the first paragraph of that Article, which is hereby replaced by the following:

**E. 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 whole cent (\$0.01).

Article 2.14.F, “**Consideration of Alternate Items,**” is hereby amended by deleting the first paragraph of that Article, which is hereby replaced by the following:

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**F. Consideration of Alternate Items.** The Authority will make two calculations using one cent (\$0.01) for each item if:

Article 2.15, “**Consideration of Bid Errors,**” is hereby amended by deleting the last paragraph of that Article, which is hereby replaced by the following:

Acceptance of the bid error claim will, as determined solely by the Authority, result in either:

- rejection of all bids; or
- award of the Contract to the second lowest Bidder, provided that the second lowest Bidder’s unit bid prices are reasonable, as determined by the Executive Director, and the Executive Director recommends in writing the award of the Contract to the second lowest Bidder.

If the Authority elects to reject all bids, the erring Contractor will not be allowed to rebid the project when it is relet and may be subject to sanctions by the Authority.

**Item 2** is hereby supplemented by the addition of the following Articles:

**2.17. Child Support Order Compliance.** A child support obligor who is more than thirty (30) days delinquent in paying child support, and a business entity in which the obligor is a sole proprietor, partner, shareholder, member, or owner with an ownership interest of at least 25%, are not eligible to receive payments from state funds under a contract to provide property, materials or services, or receive a state-funded grant or loan.

If the project is funded in whole or in part with state funds or by a state-funded grant or loan, by signing the Contract, the Contractor shall be deemed to:

- certify, under penalty of perjury under the laws of the State of Texas, that the sole proprietor, partner, shareholder, member, or owner of the firm is not thirty (30) or more days delinquent in providing child support;
- acknowledge that the Authority is relying on the foregoing material representation of fact in entering into the Contract;
- agree that if it is later determined that the Contractor knowingly rendered an erroneous representation, then, in addition to other remedies available, the Authority may terminate the Contract for cause or default; and
- agree to provide immediate written notice to the Authority if at any time it learns that its representation was erroneous when submitted or has become erroneous by reason of changed circumstances.

**NORTH TEXAS TOLLWAY AUTHORITY**  
**SPECIAL PROVISION TO ITEM 3**  
**“AWARD AND EXECUTION OF CONTRACT”**

For this Contract, Item 3 of the Standard Specifications is hereby modified with respect to the clauses cited below and no other clause or requirement of this Item is waived or changed hereby.

Article 3.1, “**Award of Contract,**” is hereby deleted and replaced by the following:

**3.1. Award of Contract.** Within 100 days after the opening of proposals, the Authority or designated representative will award the Contract, reject all proposals, or defer awarding the Contract or rejecting all proposals for up to 210 days following the opening of proposals. The Authority reserves the right to reject any or all proposals and to waive technicalities, which waivers are in the best interest of the Authority.

The award of the Contract shall occur when the Authority’s Board of Directors (“Board”) or a designated representative duly authorized by the Board to award Contracts accepts a Contractor’s bid for a proposed Contract and authorizes the Authority to enter into the Contract.

**A. Award.** The Authority or designated representative will award the Contract to the lowest responsible Bidder as determined by Article 2.14, “Tabulating Bids.” The Authority may award a Contract to the second lowest responsible Bidder when all of the following requirements have been met:

1. The lowest responsible Bidder withdraws its bid, or the Authority determines the lowest Bidder materially fails to meet the Authority’s qualification requirements, or the Authority rejects the lowest bid under Article 3.1.B, “Rejection of Low Bid,” of this Special Provision.
2. The second lowest responsible Bidder’s unit bid prices are reasonable as determined by the Executive Director.
3. The Executive Director recommends in writing the award of the Contract to the second lowest responsible Bidder.

**B. Rejection of Low Bid.** The Authority will reject the low bid and, if the same or substantially the same Contract is relet, the Bidder will not be allowed to bid on such Contract, if either:

1. The low bid is mathematically and materially unbalanced; or
2. The low bid contains a bid error that satisfies the requirements and criteria in

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Article 2.15, "Consideration of Bid Errors."

**C. Rejection of All Bids.** The Authority will reject all proposals if any of the following exist:

1. Collusion may have existed among the Bidders. Collusion participants will not be allowed to bid future proposals for the same Contract.
2. The lowest bid is materially higher than the Authority's estimate and the Authority determines that re-advertising for bids is likely to result in a lower bid.
3. Rejection of the Contract is in the best interest of the Authority.

**D. Deferral.** The Authority may defer the award of the Contract or reject any or all proposals when deferral or rejection is in the best interest of the Authority.

Article 3.3, "**Disadvantaged Business Enterprise (DBE)/Small Business Enterprise (SBE)**," is hereby deleted and replaced by the following:

**3.3. Disadvantaged, Minority, Women-Owned and Small Business Enterprise (D/M/W/SBE).** Submit all subcontractor information in the timeframe specified when required by the proposal.

Article 3.4, "**Execution of Contract**," is hereby amended as follows:

### **3.4 Execution of Contract**

1. Delete the words "and Surety" in Article 3.4.A., "Contracts"; and
2. Add the following paragraphs to the end of Article 3.4.B., "Bonds," immediately after "Table 1" thereof:

If required under the proposal, submit within 15 days, after written notification of the award of the Contract, an executed warranty bond with powers of attorney in the amount specified in the proposal. Furnish the warranty bond as a guaranty for the Authority for the faithful performance of all warranty obligations regarding the work.

For all federally funded projects, submit within 15 days, after written notification of the award of the Contract, an executed retainage bond with powers of attorney in the amount of 10% of the full amount of the Contract price. The retainage bond is to be used as a guaranty for the protection of any claimants and the Authority for overpayments, liquidated damages, and other deductions or damages owed by the Contractor in connection with the Contract.

Article 3.5, "**Failure to Enter Contract**," is hereby deleted and replaced by the following:

### 3.5. Failure to Enter Contract.

- A. Forfeiture of Proposal Guaranty.** If the Contractor fails to comply with any of the requirements in Article 3.3, “Disadvantaged, Minority, Women-Owned and Small Business Enterprise (D/M/W/SBE)” or Article 3.4, “Execution of Contract” of this Special Provision, the proposal guaranty will become the property of the Authority, not as a penalty, but as liquidated damages. The Contractor by submitting a proposal, acknowledges and agrees that the actual amount of losses and expenses resulting from its failure to execute, file or furnish any of the foregoing items would be impossible or extremely difficult to determine, and that the liquidated damages amount represented by the proposal guaranty constitutes a fair and reasonable estimate by the parties of the amount of said losses and damages. A Bidder who forfeits its proposal guaranty in accordance with this Article 3.5, “Failure to Enter Contract” will not be considered in future proposals for the same work unless there has been a substantial change in the design of the project subsequent to the forfeiture of the proposal guaranty.
- B. Award to Second Lowest Bidder.** If the Contractor fails to comply with any of the requirements in Article 3.3 “Disadvantaged, Minority, Women-Owned and Small Business Enterprise (D/M/W/SBE)” or in Article 3.4, “Execution of Contract” of this Special Provision, the Authority may rescind the award to the lowest responsible bidder and subsequently award the Contract to the second lowest responsible Bidder when all of the following requirements have been met:
1. The second lowest responsible Bidder’s unit bid prices are reasonable, as determined by the Executive Director.
  2. The Executive Director recommends in writing the award of the Contract to the second lowest responsible Bidder.

If the Authority awards the Contract to the second lowest responsible bidder, the second lowest responsible bidder shall comply with all of the requirements of Article 3.3, “Disadvantaged, Minority, Women-Owned and Small Business Enterprise (D/M/W/SBE)” and Article 3.4, “Execution of Contract” of this Special Provision.

Article 3.6, “**Approval and Execution of Contract,**” is hereby deleted and replaced by the following:

**3.6. Award and Execution of Contract.** The Authority’s award and execution of this Contract will be made or withheld pursuant to the provisions of the Regional Tollway Authority Act and the Authority’s Procurement Policy. Until the Contract is fully executed, the award of the Contract confers no rights on the firm or person to whom the Contract is awarded. Without limiting the foregoing, if the Authority determines that termination of the procurement is in the best interest of the Authority or the public, then regardless of whether the award has been made, the Authority may terminate the procurement at any time before the Authority’s execution of the Contract. By submitting

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a bid, each Bidder waives any and all claims against the Authority for all loss, cost expense, liability, or other damages suffered by the Bidder due to the Authority's termination of the procurement before the full execution of the Contract.

Article 3.7, "**Return of Proposal Guaranty**," is hereby deleted and replaced with the following:

**3.7. Return of Proposal Guaranty.** The proposal guaranty check of the two lowest Bidders will be retained until after the Contract has been rejected or awarded and executed. Bid bonds will not be returned.

**Item 3** is hereby supplemented by the addition of the following Articles:

**3.11. Independent Contractor.** Operate entirely as an independent contractor in the performance of services rendered under this Contract. **TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW, INDEMNIFY AND SAVE HARMLESS THE AUTHORITY, ITS AGENTS, CONSULTANTS, DIRECTORS, OFFICERS, AND EMPLOYEES FROM ANY CLAIMS OR LIABILITIES ARISING IN ANY MANNER WHATSOEVER FROM THE CONTRACTOR'S NEGLIGENCE OR WRONGFUL ACTS IN PERFORMANCE OF THE CONTRACT, ALL AS MORE PARTICULARLY SET FORTH IN ITEM 7.** Confirm that all required rights of entry have been obtained and take all appropriate steps to ensure the safety of the Contractor's employees and of the public in connection with its pursuit of the services provided under this Contract. Not represent itself to any party as being an agent of the Authority, the Consulting Engineers, the Design Section Engineer, the Corridor Manager, or the Construction Manager. Nothing in this Contract is intended to create, nor shall be deemed or construed by the parties or by any third party as creating, (1) the relationship of principal and agent, partnership or joint venture between the Contractor and the Authority, the Consulting Engineers, the Design Section Engineer, the Corridor Manager, or the Construction Manager, or (2) a joint enterprise between the Contractor and the Authority, the Consulting Engineers, the Design Section Engineer, the Corridor Manager, the Construction Manager and/or any other party. Without limiting the foregoing, the purposes for which the Contractor and the Authority have entered into this Contract are separate and distinct, and there are no pecuniary interests, common purposes and/or equal rights of control among the parties hereto.

**3.12. Sole Benefit.** This Contract is entered into for the sole benefit of the Authority and the Contractor and, where permitted pursuant to Article 3.9, their respective successors and assigns. Nothing in this Contract or in any approval subsequently provided by either party hereto shall be construed as giving any benefits, rights, remedies or claims to any other person, firm, corporation or other entity, including, without limitation, the public in general or any member thereof, or to authorize anyone not a party to this Contract to maintain a suit for personal injuries, property damage or any other relief in law or equity in connection with this Contract.

**3.13. Interpretation.** No provision of this Contract shall be construed against or interpreted to the disadvantage of any party by any arbitrator or any court or other

governmental or judicial authority by reason of such party having or being deemed to have drafted, prepared, structured or dictated such provisions. The Authority and the Contractor are of equal bargaining position and have executed this Contract of their own free wills after consulting with competent legal counsel, and both parties are fully informed of and familiar with its terms.





**NORTH TEXAS TOLLWAY AUTHORITY**  
**SPECIAL PROVISION TO ITEM 4**  
**“SCOPE OF WORK”**

For this Contract, Item 4 of the Texas Standard Specifications is hereby modified with respect to the clauses cited below and no other clause or requirement of this Item is waived or changed hereby.

Article 4.2, “**Changes in the Work,**” is hereby modified by the addition of the following:

Under a Contract that is not a routine maintenance Contract, if a party requests an adjustment, the following tables will control contract adjustment when a major item of the Contract is increased in excess of 125% or decreased below 75%.

**Table 2**  
**Unit Price Reduction Table**

<b>% Increase</b>	<b>Factor</b>	<b>% Increase</b>	<b>Factor</b>
25-28	0.98	61	0.86
29-32	0.97	62	0.85
33-35	0.96	63	0.84
36-38	0.95	64	0.83
39-41	0.94	65	0.82
42-44	0.93	66	0.81
45-47	0.92	67	0.80
48-50	0.91	68	0.79
51-53	0.90	69	0.78
54-56	0.89	70	0.77
57-59	0.88	71	0.76
60	0.87	72 and over	0.75

**Table 3  
Unit Price Increase Table**

<b>% Decrease</b>	<b>Factor</b>	<b>% Decrease</b>	<b>Factor</b>
25-28	1.02	61	1.14
29-32	1.03	62	1.15
33-35	1.04	63	1.16
36-38	1.05	64	1.17
39-41	1.06	65	1.18
42-44	1.07	66	1.19
45-47	1.08	67	1.20
48-50	1.09	68	1.21
51-53	1.10	69	1.22
54-56	1.11	70	1.23
57-59	1.12	71	1.24
60	1.13	72 and over	1.25

Article 4.3, “**Differing Site Conditions**”, is amended by deleting the last sentence thereof, which is hereby replaced by the following:

No contract adjustment which results in a benefit to the Contractor will be allowed unless the Contractor has notified the Engineer in writing of its intentions to make a claim for additional compensation under this Article before beginning such work, and in all events, such notification should be made at once whenever the Contractor has (or should have) knowledge of the condition(s) providing the basis for such claim. An assessment of damages is not required, but is desirable. If such notice is not given and the Engineer is not provided an opportunity to keep an accurate account of the actual cost of the work in question, then the Contractor waives its right to file a claim for such work, unless the circumstances are such that the Contractor could not reasonably have knowledge of the additional cost prior to the performance of the work. Notice of claim by the Contractor and the documentation of the cost of the work by the Engineer shall not be construed as proof or substantiation of the validity of the said claim.

No contract adjustment will be allowed under this Article for any effects caused by unchanged work.

Article 4.4, “**Requests and Claims for Additional Compensation,**” is hereby deleted and replaced by the following:

**4.4 Extension of Time.** If the Work on any Critical Path item is delayed through no fault of the Contractor or its subcontractors or any entity for which it has responsibility and the Contractor has exercised reasonable efforts to recover from such delay, then the Contractor may be entitled to an extension of time within which to perform the Work. Notwithstanding anything to the contrary elsewhere in the Contract, the Contractor hereby acknowledges and agrees that in no event shall Contractor be entitled to increased costs or compensation of any kind as a result of any delay, inefficiency, disruption, hindrance, acceleration or other impediment. With respect to delays resulting from inclement weather, the Contractor shall anticipate average or usual number of inclement days when work cannot proceed and the same shall not be considered as warranting extensions of time under this Article 4.4. If, however, the Engineer determines that the Contractor is or has been delayed by conditions of weather, seasons, or flood conditions of such unusual severity as to have been unforeseeable and so as to have rendered the Contractor’s timely performance pursuant to the terms of the Contract impossible, the Engineer may grant an extension of time. A request for an extension of time under this article shall be made in accordance with Article 8.11, as set forth in the Special Provision to Item 8.

Article 4.5, “**Maintenance of Traffic,**” is hereby deleted and replaced by the following:

**4.5. Maintenance of Traffic.** Traffic must be routed over the project during construction. A suggested sequence of work is included in the plans. Unless otherwise specified in the plans, the Contractor is entirely responsible for the passage of traffic in comfort and safety at all times. This shall include, but not be limited to, the proper construction, maintenance, barricading, and delineation of detours. If needed, make lane closures in accordance with Article 7.9 and as further designated in the General Notes and Specification Data, the plans, or any other Contract Documents. Maintain the work in passable condition, including proper drainage, to accommodate traffic. Provide and maintain temporary approaches and crossings of intersecting highways and streets in a safe, smooth and passable condition. Construct and maintain necessary access to adjoining property as shown in the plans or as directed. Furnish, install, and maintain traffic control devices in accordance with the Contract. The cost of maintaining traffic will be paid for in accordance with the Contract. Where construction and maintenance of detours has been provided under another contract, take responsibility for any damage to such detours and barricades caused by Contractor’s own operations, and repair all such damage at its own cost and expense. Additionally, restore, at Contractor’s own cost and expense, any existing streets, roadways or other facilities for public travel, as well as any privately owned property, damaged by its operation.

The Engineer will notify the Contractor if, in the opinion of the Engineer, the above requirements are not met. The Authority may perform the work necessary for

compliance, but this does not change the legal responsibilities set forth in the Contract. The cost to the Authority will be deducted from money due or to become due to the Contractor.

Article 4.6, “**Final Clean Up,**” is hereby deleted and replaced by the following:

**4.6. Final Clean Up.** Upon completion of the work, remove litter, debris, objectionable material, temporary structures, excess materials, and equipment from the work locations. Clean and restore property damaged by the Contractor’s operations during the prosecution of the work. Leave the work locations in a neat and presentable condition free from any hazards which may have resulted from the Contractor’s activities. This work will not be paid for directly but will be considered subsidiary to Items of the Contract.

Except as otherwise provided in the General Notes with regard to temporary shoring material, remove from the right-of-way any cofferdams, construction buildings, material and fabrication plants, temporary structures, excess materials, and debris resulting from construction. Where work is in a stream, remove debris to the ground line of the bed of the stream. Leave stream channels and rights-of-way in a neat and presentable condition. Clean structures to the flow line or the elevation of the outfall channel, whichever is higher. Dispose of all excess material in accordance with federal, state, and local regulations.

If the Contractor’s operations have resulted in damage to sodded areas within the right-of-way, outside or beyond the work area, resod such areas at the Contractor’s expense in accordance with the applicable requirements of Item 162, “Sodding for Erosion Control.”

**Item 4** is hereby supplemented by the addition of the following Articles:

**4.7. Removal and Disposal of Structures and Obstructions.** Remove all fences, buildings, and structures of any character not necessary to the prosecution of the work or other obstructions upon or within the limits of the right-of-way and dispose of them as directed by the Engineer and in all events in accordance with all applicable laws. Unless otherwise provided in this Contract, perform the removal and disposal of such structures and obstructions at the Contractor’s own expense. Such removal and disposal shall be considered subsidiary to other items of this Contract.

**4.8. Work and Storage Areas.** The Contractor will be permitted to use the existing right-of-way as a work and storage area, provided such use does not interfere in any way with the prosecution of the project, the operations of other contractors, or the operation of any public thoroughfare. Obtain pre-approval by the Authority for any area the Contractor wishes to designate and use as a work and/or storage area. Restore any site utilized for Contractor’s operations, either on the right-of-way or on other public or private property, to the condition existing at the time work on the project began, at

Contractor's sole expense, prior to termination of this Contract. Secure a release from the owner of the private property so used before the final payment is made under this Contract.

**4.9. Work Under Separate Contracts.** During installation of the work, construction activities by several contractors and public utility companies may be under way within the limits of the project in which the Contractor shall perform the work under this Contract and/or areas adjacent thereto. These other contractors and public utility companies will be utilizing rights-of-way, easements, streets, and/or service roads through, in, and across the limits of this Contract. Conduct operations so as not to interfere with the work of the aforementioned parties. Coordination of efforts and cooperation among the various contractors performing work on the entire project is a requirement of the Contractor under this Contract. Should a difference of opinion arise as to the rights of the Contractor and of others working within the limits of, or adjacent to, the project, the Engineer will decide as to the respective rights of the various parties involved in order to assure the completion of the work, and his decision shall be final and binding upon the Contractor.



**NORTH TEXAS TOLLWAY AUTHORITY**  
**SPECIAL PROVISION TO ITEM 5**  
**“CONTROL OF THE WORK”**

For this Contract, Item 5 of the Texas Standard Specifications is hereby modified with respect to the clauses cited below and no other clause or requirement of this Item is waived or changed hereby.

Article 5.2, “**Plans and Working Drawings,**” is hereby supplemented by the addition of the following:

Working drawings, shop fabrication plans or drawings, and those other submittals required by each item of these specifications shall be submitted according to the following procedure:

**A. Initial Submission.** For the initial submittal, submit two (2) copies of the drawings or data to the Consulting Engineers for review.

**B. Returns for Corrections.** The Consulting Engineers will return one (1) copy of the drawings or data to the Contractor for corrections, if necessary.

**C. Resubmission.** Resubmit two (2) copies of the corrected drawings or data to the Consulting Engineers for further review.

**D. Repeat Until Approved** The above procedure will be repeated until the Contractor receives on (1) copy marked “Approved.”

**E. Additional Approved Copies.** Then send five (5) copies, plus those additional copies needed for Contractor’s own use, to the Consulting Engineers. These copies will be marked “Approved” and distributed. For drawings or data that affect outside fabrication, such as precast concrete and structural steel elements, 2 additional copies are required.

**F. Transmittal Letters to Authority.** Send a copy of each letter of transmittal to the Authority upon each submittal to the Consulting Engineers.

**G. Coordination and Timing of Submissions.** Prepare and transmit each submittal to the Consulting Engineers sufficiently in advance of performing related work or other applicable activities, so the construction will not be delayed or improperly sequenced by processing time, allowing for non-approval and resubmittal (if required). Coordinate each submittal with other activities. No extension of time will be authorized

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because of the Contractor's failure to transmit submittals to the Consulting Engineers sufficiently in advance of the work.

Working drawings shall be considered to be those plans required to fully inform the Engineer of construction methods the Contractor proposes to use in prosecution of the work. Shop fabrication plans or drawings or shop details shall be considered to be those plans necessary to facilitate the off-site casting of precast concrete elements or the shop fabrication, assembly, and erection of structural steel and other metalwork requiring shop fabrication before final construction. Prepare and submit shop fabrication plans or drawings and working drawings as required by the pertinent Items of the General Notes and Specification Data, Standard Specifications, Special Provisions, and Special Specifications.

In general, prepare working drawings for the retaining walls, temporary shoring of embankments, trench excavation protection, and for all features of construction for which the plans and the specifications permit a choice and selection by the Contractor. Design calculations are a requirement of this submittal.

Prepare all working drawings on standard sheets 11"x17". The margin at the left edge shall be 1 inch wide and all others 1/4 inch wide. Each sheet shall have a title in the lower right-hand corner and shall show the sheet numbering, name of the Contractor, the Authority's contract number, name(s) of the applicable County or Counties and name of supplier or subcontractor, if applicable.

The review and approval of shop drawings by the Consulting Engineers is limited to a determination of whether or not the shop drawings conform to the design concept and the requirements of this Contract, and does not extend to information not called for in this Contract.

For sub-structure and general construction, working drawings shall show in detail or by written description the methods and structures selected by the Contractor in sufficient detail so that their strengths, adequacies, and sufficiencies and conformity to the permanent structure in the plans and the specifications can be checked and verified. Design calculations are a requirement of this submittal.

For reinforcing steel, working drawings shall be complete diagrams to supplement the reinforcing details shown on the plans, including any special features or variations from details shown, or to serve the Contractor's convenience; and bar lists shall include diagrams for the bending of each bar not to be used straight. Only changes or supplements to plan details will require working drawing submittals.

Tracings of all working drawings and shop fabrication plans or drawings shall have a suitable enclosure block in which is indicated the approval date and also space for similar approval dates of any revisions. After approval of working drawings and shop fabrication plans or drawings by the Consulting Engineers, no changes shall be made



without resubmission, and all changes or revisions later made shall be clearly marked and dated, and prints of drawings shall not be issued for use until after the drawing has been approved and the date of approval is noted on the tracing as stated. No work shall be done until the drawings have been approved.

In addition to the above-described working drawings and shop fabrication plans or drawings, samples, material and product certifications, and catalog cuts and brochure submittals on material, equipment, and fixtures shall be furnished to the Consulting Engineers prior to the Contractor's placing firm orders for same. Submittals shall conform to the requirements of the various trade specifications. Submittals shall show dimensions, performance characteristics and capacities, wiring diagrams, controls, schedules, and other information pertinent to the performance, construction, and durability of the item.

Prior to making a submittal, check, and cause each fabricator/subcontractor to check, all working drawings, shop fabrication plans or drawings, and material, equipment, and fixture vendor submittals to satisfy Contractor and each such fabricator/subcontractor as to the appropriateness of their application and for conformance with the plans and the specifications. Any item submitted that differs from the plans and the specifications shall be so indicated by the Contractor. Obtain and distribute submittals, as necessary, after, as well as before, final approval.

Stamp, initial, and date, and cause such fabricator/subcontractor to stamp, initial and date, each document transmitted to indicate Contractor's and such fabricator's/subcontractor's approval of the submittal. Submittals which are incomplete or indicate no attempt at conformance with this Contract will not be reviewed. Samples of materials submitted will not be returned unless the Contractor makes special arrangements for transportation.

The review of catalog cuts, brochures, and other submittals by the Consulting Engineers shall not relieve the Contractor of the responsibility for any conflicts in this Contract, the plans or the specifications, unless the Contractor has, in writing, called the attention of the Consulting Engineers to such deviations at the time of the submission; nor shall it relieve the Contractor from responsibility for errors or omissions in such items that it submits for review. Review of the catalog cuts, brochures, and other submittals indicates only the acceptance of the manufacturer and product quality, and assumes that the specific requirements and arrangements are in compliance with the intent of the plans and the specifications. Furnish, install, and prove in operation all mechanical and electrical devices, with the associated controls for each, to be in conformance with the intent of these Specifications and to provide satisfactory operating systems.

The Authority will not be liable for any expense by the Contractor for materials purchased, labor performed or delay of the work prior to approval of required submittals.

When approval of a change to the fabrication and shop drawings, erection and other working drawings, samples, material and product certifications, and/or catalog cuts and brochure submittals is requested by the Contractor, obtain such approval from the Consulting Engineers in writing before proceeding with said change. Submit an adequate number of copies of the documentation pertaining to any such change to the Consulting Engineers.

Payment for all working drawings, shop drawings, and miscellaneous submittals, for revisions thereof, and for copies furnished shall be subsidiary to the related items of the proposal.

Article 5.3, “**Conformity with Plans, Specifications and Special Provisions**” is hereby deleted and replaced by the following:

**5.3. Conformity with Plans, Specifications, and Special Provisions.** Furnish materials and perform work in reasonably close conformity with the lines, grades, cross-sections, dimensions, details, gradations, physical and chemical characteristics of materials, and other requirements shown in the Contract (including additional plans for non-site-specific work). Reasonably close conformity limits will be as defined in the respective Items of the Contract or, if not defined, as determined by the Engineer. Obtain approval before deviating from the plans and approved working drawings. Do not perform work beyond the lines and grades shown on the plans or any extra work not included in the plans without the Engineer’s authority. Work performed beyond the lines and grades shown on the plans or any extra work performed without authority is considered unauthorized and excluded from pay consideration. The Authority will not pay for material rejected due to improper fabrication, excess quantity, or any other reasons within the Contractor’s control. When work fails to meet Contract requirements, remove and replace all defective work in an acceptable manner to the Engineer at no additional cost. The Engineer has the authority to correct or to remove and replace defective or unauthorized work. The cost may be deducted from any money due or to become due to the Contractor.

Article 5.4, “**Coordination of Plans, Specifications and Special Provisions,**” the first sentence is hereby deleted and replaced by the following:

The specifications, accompanying plans (including additional plans for non-site-specific work), Special Provisions, General Notes and Specification Data, Special Specifications, and supplemental agreements or change orders are intended to work together and be interpreted as a whole.

Article 5.5, “**Cooperation of Contractor,**” is hereby supplemented by the addition of the following:

**E. Removal of Superintendent.** The Engineer shall have the right to have the Superintendent furnished by the Contractor removed pursuant to this Article if, in the

Engineer's sole judgment, such Superintendent is not fulfilling his obligations under this Article and/or under this Contract, including but not limited to, said Superintendent's failure or inability to properly interpret and implement the plans and the specifications, to effectively expedite the work and supervise all employees utilized in connection therewith, to ensure adequate communication with, and a minimum inconvenience to, the public, or to cooperate with utilities, railroads, other contractors or agencies working on the project. Failure of the Contractor to replace its Superintendent when requested by the Engineer shall be cause for the Authority to withhold progress payments.

Article 5.6, "**Construction Surveying**," is hereby deleted and replaced by the following:

**5.6. Construction Surveying.** Construct the work to the position and elevations as set out on the plans and approved changes. Provide a qualified and experienced force, acceptable to the Engineer, to establish all lines and levels, to furnish and set all construction stakes, and to perform other required survey work.

The Engineer will furnish horizontal and vertical control points, such as baseline points of intersection and bench marks, as shown on the plans.

Establish all auxiliary survey control points necessary for construction.

If there is any discrepancy between the survey and the plans, notify the Engineer and do not proceed with work affected by such discrepancy until Contractor has received instructions from the Engineer.

Re-establish all survey control points and right-of-way monuments before completion of the project. The re-establishment of survey control points and right-of-way monuments shall be by a Texas registered professional land surveyor.

The Engineer may, at its option, make spot or complete checks on all construction alignment and grades to determine the accuracy of the Contractor's survey work. These checks, however, will not relieve the Contractor of its responsibility for constructing the work to the positions and elevations as shown on the plans.

Preserve all control points established by the Engineer and if, in the opinion of the Engineer, any of the stakes or bench marks have been carelessly or willfully destroyed or disturbed by the Contractor, replace the stakes or bench marks or the cost of replacement will be charged against the Contractor and deducted from any monies due or to become due the Contractor.

No specific payment shall be made for the work required in this Article or for any rework or restaking for whatever reason, and the cost of all labor, equipment, targets, towers, stakes, and other supplies necessary to perform the work shall be subsidiary to and included in the bid for the various items required by the plans and this Contract.



**NORTH TEXAS TOLLWAY AUTHORITY**  
**SPECIAL PROVISION TO ITEM 6**  
**“CONTROL OF MATERIALS”**

For this Contract, Item 6 of the Texas Standard Specifications is hereby modified with respect to the clauses cited below and no other clause or requirement of this Item is waived or changed hereby.

Article 6.2, “**Material Quality**,” is supplemented by the addition of the following:

If it is found that previously approved sources of supply do not produce uniform and/or otherwise satisfactory products, or if the product from any source proves unacceptable at any time, the Contractor shall furnish materials from other approved sources.

Article 6.4, “**Sampling, Testing, and Inspection**,” is hereby deleted and replaced by the following:

**6.4. Sampling, Testing, and Inspection.** Inspections and tests of equipment and materials to be incorporated in the work shall be required by the Authority from time to time during the progress of the work to assure that the equipment and materials meet specified requirements. In addition, certain tests may be required by codes, ordinances, or plan approval authorities or may be desired exclusively for the Contractor’s convenience.

All inspections and tests will be in accordance with pertinent codes and regulations and with selected standards of the American Society for Testing and Materials and TxDOT. The material requirements and standard test methods in effect at the time the proposed Contract is advertised govern.

Design, sampling, and testing, including professional quality control efforts in general, will be performed by engineering testing laboratories. Such services will be at the direction and expense of the Authority. As an exception to the above requirement, furnish a professional testing laboratory, other than that retained by the Authority, to develop all Portland cement concrete and hot mix asphaltic concrete designs, and prepare and analyze trial and hot bin batches of the different designs as appropriate, and as directed by the Engineer, entirely at the Contractor’s own cost and expense. When requested, furnish a complete written statement of the origin, composition, and/or manufacture of any or all materials to be used in the work.

Unless otherwise noted in the Contract, all testing must be performed within the United States and witnessed by the Engineer. If materials or processes require testing

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outside the contiguous 48 United States, reimburse the Authority for inspection expenses.

When tests are required, other than those made in the laboratory, for the purpose of control in the manufacture of a construction item, furnish such facilities and equipment as may be necessary to perform the tests and inspection and be responsible for calibration of all test equipment required.

Determine, by advance discussion with the Engineer, the time required for the engineering testing laboratory to perform Contractor's tests and to issue each of its findings. Allow time for such sampling and reporting activities within its construction schedule. When changes of construction schedules are necessary during construction, coordinate all such changes of schedule with the engineering testing laboratory, as required.

Representatives of engineering testing laboratories shall have access to the work and to all mixing plants, fabricating shops, and other locations where items proposed for the work are being prepared in order that the laboratories may properly perform their functions.

Do not allow or cause any work performed or installed to be covered up or enclosed prior to all required inspections, tests, and approvals. Should any work be enclosed or covered up before it has been approved, uncover all such work. After work has been completely inspected, tested, and approved, make all repairs necessary to restore the work to the condition in which it was found at the time of uncovering.

The engineering testing laboratories will provide all personnel and sampling equipment, take all samples and specimens, and deliver all samples and specimens to the laboratories for testing.

Promptly process and distribute all required copies of test reports and related instructions to ensure all necessary retesting and/or replacement of materials with the least possible delay to progress of the work.

The Authority will pay for all initial testing services requested by the Engineer. When Engineer-requested initial tests indicate noncompliance with this Contract, the costs of all subsequent retesting occasioned by the noncompliance will be deducted by the Authority from the sums due the Contractor. Inspections and tests required by codes or ordinances, or by a plan approval authority, shall be the responsibility of, and be paid for by, the Contractor unless otherwise provided for in this Contract. Inspections and tests for the Contractor's convenience shall be the sole responsibility of the Contractor.

Incorporate into the work only material that has been inspected and tested by or on behalf of the Authority and has been accepted by the Authority. Remove, at the

Contractor's expense, materials from the work locations that are used without prior testing and approval or written permission of the Engineer.

All materials used are subject to inspection or testing at any time during preparation or use. Material that has been tested and approved at a supply source or staging area may be reinspected or tested before or during incorporation into the work, and rejected if it does not meet Contract requirements. Copies of test results are available upon request. Do not use material that, after approval, becomes unfit for use.

Article 6.7, "**Department-furnished Material,**" is hereby deleted and replaced by the following:

**Article 6.7. Furnished Equipment and Materials.** The Authority and others will supply certain structural elements, items of equipment and materials as shown on the plans. The cost of handling and placing such items supplied by the Authority and others will not be paid for directly but is subsidiary to the Item in which or for which they are used. Assume responsibility for structural elements, equipment, and materials upon receipt.

All equipment and materials not provided by the Authority, or others, shall be new and the use of used or secondhand equipment and materials of any kind will not be permitted.

Article 6.8, "**Use of Materials Found on the Right of Way,**" is hereby deleted and replaced by the following:

**Article 6.8. Use of materials Found on the Right of Way.** With the approval of the Engineer, material found in the excavation areas and meeting the Authority's specifications may be used in the work. This material will be paid for at the Contract bid price for excavation and under the Item for which the material is used. Do not excavate or remove any material from within the right-of-way that is not within the limits of the excavation without written permission. If excavation is allowed within a right-of-way project-specified location (PSL), replace the removed material with suitable material at no cost to the Authority as directed.

Article 6.10, "**Hazardous Materials,**" is hereby deleted and replaced by the following:

**Article 6.10. Hazardous Materials.** All known areas containing Hazardous Materials are identified in the plans. The Contractor shall follow the procedures set forth in the Contract for all excavation activities. For hazardous materials found on sites owned or controlled by the Authority and designated in the plans, Contractor will be reimbursed in accordance with Contract bid items.

For hazardous materials found on sites, owned and controlled by the Authority and not designated in the plans, notify the Engineer immediately when a visual observation or odor indicates that Hazardous Materials may be present on property owned or controlled by the Authority. The Authority is responsible for testing and defining required procedures for removal of such Hazardous Materials not introduced by the Contractor. When the Contractor assumes responsibility for removal and disposal of the Hazardous Materials not identified in the plans and not resulting from Contractor's own release of hazardous materials, the Contractor shall be compensated in accordance with Article 9.5, "Force Account" for such removal and disposal. The Engineer may suspend the work wholly or in part during the testing, removal, or disposition of Hazardous Materials on sites owned or controlled by the Authority.

The testing, removal, and disposition of Hazardous Materials introduced onto work locations by the Contractor will be at the Contractor's sole expense. When Hazardous Materials are introduced onto work locations by the Contractor, working day charges will not be suspended and extensions of working days will not be granted.

Notwithstanding the foregoing, the Contractor shall remove and dispose of capacitors in any existing luminaries in the project area, in accordance with federal, state, and local regulations.

**Item 6** is hereby supplemented by the addition of the following Articles:

**6.12. Product Options.** Certain items of equipment and materials to be used in this project have been specified as the product of a manufacturer for convenience and to establish a standard of quality. When so specified, one of the following methods has been used:

**A. No Substitutions.** If a material is specified by the manufacturer's name, and no mention is made of "equal to" and no other manufacturer is mentioned, then no substitutions shall be considered or used.

**B. Multiple Manufacturers Named.** If a material is specified by the manufacturer's name and several manufacturers are listed, any of those mentioned shall be considered as acceptable. Space requirements and details are designed to fit with this product. It shall be the responsibility of the Contractor to verify that the product it proposes to use meets all space and detail requirements.

**C. "Equal to" Products.** If a material is specified stating "equal to" a manufacturer's product, then similar products of equal quality shall be considered. Submit proof, if required, of the alternate product's characteristics which substantiate its equivalency to the product specified.

**6.13. Substitutions.** Subject to Article 6.12, the use of alternate equipment and materials will be permitted, provided that the alternate items are equal to that specified



and the Engineer grants approval of such substitutions. Approval of alternate equipment and materials will not be given prior to award of this Contract. Approval by the Engineer of any specific item of equipment or material shall in no way relieve the Contractor of the responsibility for the satisfactory performance of equipment and materials meeting the intent of the specifications.



**NORTH TEXAS TOLLWAY AUTHORITY**  
**SPECIAL PROVISION TO ITEM 7**  
**“LEGAL RELATIONS AND RESPONSIBILITIES”**

**Contract No.:** 03598-SWP-00-CN-IT

**Highway:** Chisholm Trail Parkway      **Sections:** 1-6

**County:** Tarrant and Johnson Counties

For this Contract, Item 7 of the Texas Standard Specification is hereby modified with respect to the clauses cited below and no other clause or requirement of this Item is waived or changed hereby.

Article 7.1, “**Laws to be Observed**”, is hereby deleted and replaced by the following:

**7.1. Laws to be Observed.** Comply with all federal, state, and local laws, ordinances, and regulations applicable to the work. **INDEMNIFY AND SAVE HARMLESS THE AUTHORITY AND ITS REPRESENTATIVES AGAINST ANY CLAIM ARISING FROM VIOLATION BY THE CONTRACTOR OF ANY LAW, ORDINANCE, OR REGULATION APPLICABLE TO THE WORK.** This Contract is between the Authority and the Contractor only. No person or entity may claim third-party beneficiary status under this Contract or any of its provisions, nor may any non-party sue for personal injuries or property damage under this Contract.

Article 7.2, “**Permits, Licenses, and Taxes**”, is hereby deleted and replaced by the following:

**7.2. Permits, Licenses, and Taxes.** As required by applicable law, procure all permits and licenses and pay all charges, fees, and taxes pertaining to the work and give all notices necessary and incidental to the due and lawful prosecution of work, except for permits provided by the Authority and as specified in Article 7.19, “Preservation of Cultural and Natural Resources and the Environment.”

Article 7.4, “**Insurance and Bonds**”, is hereby deleted and replaced by the following:

**7.4. Insurance and Bonds.** Do not commence work under the Contract until furnishing the Authority with satisfactory proof that Contractor has provided insurance of such character and in such amounts as set forth below. Submit complete policies or certificates evidencing the policy coverages and stipulations. Certificate submittals shall be provided on forms adopted by the Association for Cooperative Research and Development (ACORD).

Purchase and maintain in full force and effect until completion of the work and the expiration of the applicable Texas statute of limitations such insurance as will cover the obligations and liabilities of Contractor and its agents, employees, and subcontractors which may arise from operations under this Contract. All such insurance shall be written with companies having an A.M. Best Financial Strength Rating of A- or better, and be in a Financial Size Category of X or greater. All policies shall be on Occurrence Forms. Claims Made Policy Forms are not acceptable. All companies must be acceptable to the Authority.

Each of the required policies (A), (B), and (C) listed below shall be endorsed to reflect a "Waiver of Subrogation" in favor of the Authority.

Until the expiration of the applicable Texas statute of limitations, secure and maintain, in Contractor's own name, the following:

**A. Workers' Compensation** in compliance with the laws of the State of Texas and Employer's Liability insurance with minimum limits of:

\$ <u>500,000</u>	Each Accident
\$ <u>500,000</u>	Disease Policy Limit
\$ <u>500,000</u>	Disease Each Employee

**B. Commercial General Liability Insurance** on a per project basis covering the Contractor with minimum limits of:

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

\$ <u>1,000,000</u>	General Aggregate
\$ <u>1,000,000</u>	Products and Completed Operations Aggregate
\$ <u>1,000,000</u>	Personal and Advertising Injury
\$ <u>1,000,000</u>	Each Occurrence
\$ <u>50,000</u>	Fire Damage

The policy must have Endorsement CG-25-03 (Amendment - Aggregate Limits of Insurance) making the General Aggregate Limits apply separately to each job site.

X Required for this Contract    \_\_\_ Not required for this Contract

The Commercial General Liability Insurance policies shall provide "X", "C", and "U" coverages. Verification of such coverage must be shown in the Remarks Article of the Certificate of Insurance.

Required for this Contract     Not required for this Contract

- C. Business Auto Liability Insurance** with minimum limits of \$ 500,000.00 Combined Single Limit for Bodily Injury and/or Property Damage, including Owned, Hired and Non-Ownership Liability Coverage. This policy shall not contain any limitation with respect to a radius of operation for any vehicle covered, and shall not exclude from the coverage of the policy any vehicle to be used in connection with the work.

Required for this Contract     Not required for this Contract

- D. Umbrella Liability** with minimum limits of \$ 1,000,000.00 per occurrence and in the aggregate annually, as applicable, within the underlying policies. The Umbrella Policy shall contain the provision that it will continue in force as an underlying insurance in the event of exhaustion of underlying aggregate policy limits.

Required for this Contract     Not required for this Contract

- E. Builders Risk Insurance** shall be secured and maintained by the Contractor, at the Contractor's expense, and kept in full effect until final acceptance by the NTTA. The Contractor shall be financially responsible for any deductible applied to losses under such Builder's Risk policy. Coverage shall include "all risks" including loss or damage by fire, lightning, windstorm, flood, earthquake, hail, explosion, riot, riot attending a strike, civil commotion, terrorism, aircraft, vehicles, smoke, vandalism, malicious mischief, theft, and other such risks as are now or hereafter included in the uniform standard extended coverage endorsement in common use or otherwise customarily insured for similar structures in the geographic area of the Project. The minimum amount of coverage to be carried shall be in an amount equal to **35 percent** of the full amount payable to the Contractor under the Contract, and shall be increased to reflect all change orders (if any) that increase the amount payable to the Contractor, but shall not be reduced as a result of any reductive change orders. Costs of repair for damage are not reimbursable by the Authority in accordance with this Special Provision.

Required for this Contract     Not required for this Contract

**F. Railroad Protective Liability.** If any of the work or any warranty work is within the limits of railroad right-of-way, the Contractor shall comply with the requirements of NORTH TEXAS TOLLWAY AUTHORITY - SPECIAL PROVISION - IMPORTANT NOTICE TO CONTRACTORS - "RAILROAD CONSTRUCTION AND INSURANCE REQUIREMENTS," which is a part of the contract, including, but not limited to, the insurance requirements thereof.

\_\_\_ Required for this Contract      X   Not required for this Contract

The **Authority, TxDOT, FHWA, City of Fort Worth, Design Section Engineer, Corridor Manager, Consulting Engineer, and Construction Manager** shall be included as Additional Insureds by endorsement to all policies issued required under this Article other than Workers' Compensation insurance policies.

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

1. **Option 1:** The Contractor shall secure and maintain, until the expiration of the applicable Texas statute of limitations, Certificates of Insurance from all subcontractors, evidencing the proper types of insurance coverages for the work to be performed by the Subcontractor. The Contractor shall also ensure that the Subcontractor's required insurance coverages are in amounts sufficient to cover the type of work assigned to the subcontractor; or
2. **Option 2:** The Contractor shall take responsibility for the subcontractor's insurance coverage by including the subcontractor as an additional insured under their required insurance coverages.

Insurance Certificates of subcontractors and sub-subcontractors will be maintained by the Contractor for the duration of the project.

**H. Insurance During Warranty Period.** If one or more Warranty Bonds are required by this Contract, the Contractor shall secure and maintain, in its own name, proof of Workers' Compensation/Employer's Liability insurance, Commercial General Liability insurance, Business Auto Liability insurance, and Umbrella Liability insurance during the duration of all warranty work covered by such Warranty Bonds. The Contractor shall not commence any warranty work until it has furnished the Authority with satisfactory proof that it has provided insurance of such character and in such amounts as set forth below. The requirements for such liability insurance policies are same as stated above in paragraphs 7.4.A, 7.4.B, 7.4.C and 7.4.D except for the coverage amounts, which are as follows:

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

**1. Workers' Compensation/Employer's Liability Insurance** with minimum limits of:

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

**2. Commercial General Liability Insurance** with minimum limits of:

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

\$ 1,000,000 General Aggregate  
\$ 1,000,000 Products and Completed Operations Aggregate  
\$ 1,000,000 Personal and Advertising Injury  
\$ 1,000,000 Each Occurrence  
\$ 50,000 Fire Damage

The policy must have Endorsement CG-25-03 (Amendment - Aggregate Limits of Insurance) making the General Aggregate Limits apply separately to each job site.

**Required for this Contract**     **Not required for this Contract**

The Commercial General Liability Insurance policies shall provide "X", "C", and "U" coverage's. Verification of such coverage must be shown in the Remarks Article of the Certificate of Insurance.

**Required for this Contract**     **Not required for this Contract**

**3. Business Auto Liability Insurance** with minimum limits of \$500,000 .00 Combined Single Limit for Bodily Injury and/or Property Damage, including Owned, Hired and Non-Ownership Liability Coverage.

**Required for this Contract**     **Not required for this Contract**

4. **Umbrella Liability** with minimum limits of \$ 1,000,000.00 per occurrence and in the aggregate annually, as applicable, within the underlying policies. The Umbrella Policy shall contain the provision that it will continue in force as an underlying insurance in the event of exhaustion of underlying aggregate policy limits.

**Required for this Contract**     **Not required for this Contract**

Liability insurance coverages during warranty periods shall continue only during the period when the Contractor is performing warranty work.

**Additional Insured** during warranty period must name the same entities as listed in this Contract.

If the warranty work is within the limits of the railroad right-of-way, the insurance requirements of the railroad must also be provided during the period the Contractor is performing the warranty work.

**Required for this Contract**     **Not required for this Contract**

The insurance carrier shall include in each of the insurance policies required under this Article the following statements:

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

The Contractor shall be responsible for any deductible stated in any policy required under the Contract.

Carry the insurance specified above until all work required to be performed under the terms of this Contract is satisfactorily completed, as evidenced by the formal acceptance thereof and final payment of all amounts owed the Contractor by the Authority, or provide, prior to the end of coverage, a new Certificate of Insurance. If, for any reason, the required insurance coverage is not kept in force, stop all work until acceptable documentation is provided to the Authority. Notify the Authority, in writing, by certified mail or hand delivery of any material change in the insurance coverage of the Contractor or any subcontractor or sub-subcontractor within 10 days of such change.

On all policies, the insurer shall certify that the aggregate amount shown on



insurance limits is in full force and has not been diminished.

Neither the approval by the Authority of any insurance supplied by a Contractor nor the failure to disapprove that insurance shall relieve the Contractor from full responsibility for any liability as set forth herein.

No special payments shall be made for any insurance that the Contractor may be required to carry, but all costs thereof shall be included in the price bid for the various items included in the proposal. Bidders shall determine all the kinds and cost of insurance that may be required before submitting their bids and shall submit acceptable evidence of same to the Authority pursuant to the provisions of Article 3.4, "Execution of Contract".

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

Provide a substitute Surety on the Contract bonds in the original full Contract amount within 15 days of notification if the Surety is declared bankrupt or insolvent, the Surety's underwriting limitation drops below the Contract amount or the Surety's right to do business is terminated by the State. The substitute Surety must be authorized by the laws of the State and acceptable to the Authority. Work will be suspended until a substitute Surety is provided. Working day charges will be suspended for 15 days or until an acceptable Surety is provided, whichever is sooner.

Article 7.7, "**Public Safety and Convenience**", is hereby supplemented by the addition of the following:

Avoid to the greatest extent practicable the operation of heavy construction equipment over adjacent streets. If such operation is unavoidable, take care to prevent the creation of any nuisance, including, but not limited to, the tracking of dirt, the blowing of dust, and/or the dropping of debris from uncovered loads.

Article 7.12, “**Responsibility for Damage Claims**”, is hereby deleted and replaced by the addition of the following:

**7.12 Responsibility for Damage Claims. INDEMNIFY AND SAVE HARMLESS THE AUTHORITY AND ITS OFFICERS, DIRECTORS, AGENTS, CONSULTANTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, OR CLAIMS AND FROM ALL LIABILITY AND DAMAGES FOR ANY AND ALL INJURY OR DAMAGE TO ANY PERSON OR PROPERTY DUE TO THE CONTRACTOR’S NEGLIGENCE IN THE PERFORMANCE OF THE WORK, ONGOING OR COMPLETED, AND FROM ANY CLAIMS ARISING OR AMOUNTS RECOVERED UNDER ANY LAWS, INCLUDING, WITHOUT LIMITATION, WORKERS’ COMPENSATION AND THE TEXAS TORT CLAIMS ACT. INDEMNIFY AND SAVE HARMLESS THE AUTHORITY AND ITS OFFICERS, DIRECTORS, AGENTS, CONSULTANTS AND EMPLOYEES AND ASSUME RESPONSIBILITY FOR ALL DAMAGES AND INJURY TO PROPERTY OF ANY CHARACTER OCCURRING DURING THE PROSECUTION OF THE WORK RESULTING FROM ANY ACT, OMISSION, NEGLIGENCE, OR MISCONDUCT ON THE CONTRACTOR’S PART IN THE MANNER OR METHOD OF EXECUTING THE WORK; FROM FAILURE TO PROPERLY EXECUTE THE WORK; OR FROM DEFECTIVE WORK OR MATERIAL.**

**TO THE EXTENT A CLAIM ARISING OUT OF AN INJURY TO THE CONTRACTOR’S EMPLOYEE IS COVERED BY THE WORKER’S COMPENSATION AND/OR EMPLOYERS’ LIABILITY INSURANCE THAT THE CONTRACTOR IS REQUIRED TO CARRY UNDER THIS CONTRACT AND/OR APPLICABLE LAW (“CONTRACTOR’S EMPLOYEE INSURANCE”), OR IF CONTRACTOR DOES NOT ACTUALLY MAINTAIN CONTRACTOR’S EMPLOYEE INSURANCE, TO THE EXTENT THE CLAIM WOULD HAVE BEEN COVERED BY REQUIRED CONTRACTOR’S EMPLOYEE INSURANCE, THEN, TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW, THE CONTRACTOR’S INDEMNITY AGAINST A CLAIM ARISING, OR ALLEGED TO ARISE, OUT OF AN INJURY TO AN EMPLOYEE OF THE CONTRACTOR WILL NOT BE AFFECTED BY THE ACTIVE OR PASSIVE ORDINARY NEGLIGENCE OR SOLE, JOINT, CONCURRENT OR COMPARATIVE ORDINARY NEGLIGENCE OF THE AUTHORITY, WHETHER OR NOT LIABILITY WITHOUT FAULT OR STRICT LIABILITY IS IMPOSED OR SOUGHT TO BE IMPOSED ON THE AUTHORITY.**

**PIPELINES AND OTHER UNDERGROUND INSTALLATIONS THAT MAY OR MAY NOT BE SHOWN ON THE PLANS MAY BE LOCATED WITHIN THE RIGHT OF WAY. PRIOR TO COMMENCING THE WORK, CONDUCT AN INVESTIGATION FOR THE LOCATION OF UTILITIES. INDEMNIFY AND SAVE HARMLESS THE AUTHORITY AND ITS OFFICERS, DIRECTORS, AGENTS, CONSULTANTS AND EMPLOYEES FROM ANY SUITS OR CLAIMS RESULTING FROM DAMAGE BY THE CONTRACTOR’S OPERATIONS TO ANY PIPELINE OR UNDERGROUND INSTALLATION. AT THE PRECONSTRUCTION CONFERENCE, SUBMIT THE**

**SCHEDULED SEQUENCE OF WORK TO THE RESPECTIVE UTILITY OWNERS SO THAT THEY MAY COORDINATE AND SCHEDULE ADJUSTMENTS OF THEIR UTILITIES THAT CONFLICT WITH THE PROPOSED WORK.**

**IF THE CONTRACTOR ASSERTS ANY CLAIM OR BRINGS ANY TYPE OF LEGAL ACTION (INCLUDING AN ORIGINAL ACTION, THIRD-PARTY ACTION, OR CROSS-CLAIM) AGAINST ANY OFFICER, DIRECTOR, AGENT, CONSULTANT OR EMPLOYEE OF THE AUTHORITY FOR ANY CAUSE OF ACTION OR CLAIM FOR ALLEGED NEGLIGENCE ARISING FROM THE CONTRACT, THE CONTRACTOR WILL BE INELIGIBLE TO BID ON ANY PROPOSED CONTRACT WITH THE AUTHORITY DURING THE PENDENCY OF THE CLAIM OR LEGAL ACTION.**

**TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW, THE INDEMNIFICATION PROVIDED BY CONTRACTOR UNDER THIS ARTICLE 7.12 SHALL EXPRESSLY INCLUDE INDEMNIFICATION OF THE INDEMNIFIED PERSONS AGAINST THEIR OWN NEGLIGENCE WITH RESPECT TO ANY OF THE MATTERS COVERED HEREBY.**

Article 7.13, “**Responsibility for Hazardous Materials**”, is hereby deleted and replaced by the addition of the following:

**7.13. Responsibility for Hazardous Materials. INDEMNIFY AND SAVE HARMLESS THE AUTHORITY AND ITS OFFICERS, DIRECTORS, AGENTS, CONSULTANTS, AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, LIABILITIES, DEMANDS, LOSSES, DAMAGES, FORFEITURES, PENALTIES, FINES, COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEY FEES AND EXPENSES) (COLLECTIVELY, “LIABILITIES”), FOR ANY INJURY OR DAMAGE TO PERSONS OR PROPERTY WHICH ARISE FROM THE GENERATION, STORAGE, HANDLING, TREATMENT, TRANSPORTATION, OR DISPOSITION OF HAZARDOUS MATERIALS BY THE CONTRACTOR, INCLUDING, WITHOUT LIMITATION, ANY AND ALL LIABILITIES WHICH RESULT FROM THE INDEMNIFIED PERSON’S OWN NEGLIGENCE (WHETHER ACTIVE OR PASSIVE) AND/OR STRICT LIABILITY, TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW.**

For the purposes of the indemnity provisions hereof, any acts or omissions of Contractor, or by any employees, agents, assignees, consultants, or subcontractors of Contractor, or others acting for or on behalf of Contractor, shall, whether or not they are negligent, intentional, willful, or unlawful, be strictly attributable to Contractor.

Article 7.14, “**Contractor’s Responsibility for Work**”, is hereby deleted and replaced by the following:

**7.14 Contractor's Responsibility for Work.** Until final acceptance of the work under the Contract, have responsibility for the work, including responsibility for maintenance of the work, and the charge and care thereof, take every precaution against injury or damage to any part of the work by the action of the elements or by any other cause, whether arising from the execution or from the non-execution of the work or otherwise. Protect all materials to be used in the work at all times, including periods of suspension.

When any roadway or portion of the roadway is in suitable condition for travel, it may be opened to traffic as directed. Opening of the roadway to traffic does not constitute final acceptance or a waiver of any of the provisions of this Contract.

Until final acceptance of the work by the Engineer, maintain the project in good condition, including, but not limited to, the roadway. Repair damage to all work until final acceptance. Repair damage to existing facilities in accordance with the Contract or as directed by the Engineer. Costs of repair for damage to existing facilities or work caused by Contractor operations shall be at the Contractor's expense. Costs of repair for damage that was not due to the Contractor's operations (including, but not limited to, loss or damage by fire, lightning, windstorm, flood, earthquake, hail, hurricane, tornado, and other such cataclysmic phenomena of nature, explosion, riot, riot attending a strike, civil commotion, terrorism, aircraft, vehicles, smoke, vandalism, malicious mischief, theft, and other such risks) will not be paid for except as provided below. In the case of suspension of the work for any cause, be responsible for the preservation of all materials and construction previously performed by Contractor.

**A. Reimbursable Repair.** The Contractor will be reimbursed for its costs to repair damage:

- solely and directly caused by acts of the Authority or its contractors other than the Contractor; or
- to crash-cushion attenuators and guardrail end treatments.

**B. Appurtenances.** Except for crash-cushion attenuators and guardrail end treatments listed in Section 7.14.A, reimbursement will not be made for repair of damage to the following temporary appurtenances, regardless of cause:

- signs,
- barricades,
- changeable message signs, and
- other work zone traffic control devices.

**C. Roadways and Structures.** Until final acceptance, the Contractor will remain responsible for all work constructed under the Contract. The Authority will not reimburse the Contractor for repair work to new construction, unless the failure or damage is within the items listed in Section 7.14.A, "Reimbursable Repair."

The Authority will be responsible for the cost for repair of damage to existing roadways and structures not caused by the Contractor's operations. Existing roadways and structures do not include any work under the Contract.

- D. Detours.** The Contractor will be responsible for the cost of maintenance of detours constructed under the Contract, unless the failure or damage is within the items listed in Section 7.14.A, "Reimbursable Repair." The Engineer may consider failures beyond the Contractor's control when determining reimbursement for repairs to detours constructed. The Authority will be responsible for the cost of maintenance of existing streets and roadways used for detours or handling traffic.
- E. Relief from Maintenance.** The Engineer may relieve the Contractor from responsibility of maintenance as outlined in this Article. This relief does not release the Contractor from responsibility for defective materials or work or constitute final acceptance.
- 1. Isolated Work Locations.** For isolated work locations, when all work is completed, including work for Article 4.6, "Final Clean Up," the Engineer may relieve the Contractor from responsibility for maintenance.
  - 2. Work Except for Vegetative Establishment and Test Periods.** When all work for all or isolated work locations has been completed, including work for Article 4.6, "Final Clean Up," with the exception of vegetative establishment and maintenance periods and test and performance periods, the Engineer may relieve the Contractor from responsibility for maintenance of completed portions of work.
  - 3. Work Suspension.** When all work is suspended for an extended period of time, the Engineer may relieve the Contractor from responsibility for maintenance of completed portions of work during the period of suspension.
- F. Basis of Payment.** When reimbursement for repair work is allowed and performed, payment will be made in accordance with pertinent Items or Article 4.2, "Changes in the Work."

Article 7.15, **Electrical Requirements, Section A. Definitions, Section 3.**  
**Certified Person** is hereby deleted and replaced by the following:

**3. Certified Person.** A certified person is a person who has passed the test from the TxDOT course TRF450, "TxDOT Roadway Illumination and Electrical Installations" or other courses as approved by the Engineer. Submit a current and valid TRF certification upon request. On June 1, 2011, Texas Engineering

Extension Service (TEEX) certifications for “TxDOT Electrical Systems” course will no longer be accepted. All TRF 450 certifications that have been issued for “TxDOT Roadway Illumination and Electrical Installations” course that expire before June 1, 2011 will be accepted until June 1, 2011.

Article 7.15, **Electrical Requirements, Section A. Definitions, Section 4. Licensed Electrician** is hereby deleted and replaced by the following:

**4. Licensed Electrician.** A licensed electrician is a person with a current and valid unrestricted master electrical license, or unrestricted journeyman electrical license that is supervised or directed by an unrestricted master electrician. An unrestricted master electrician need not be on the work locations at all times electrical work is being done, but the unrestricted master electrician must approve work performed by the unrestricted journeyman. Licensed electrician requirements by city ordinances do not apply to on state system work.

The unrestricted journeyman and unrestricted master electrical licenses must be issued by the Texas Department of Licensing and Regulation or by a city in Texas with a population of 50,000 or greater that issues licenses based on passing a written test and demonstrating experience.

The Engineer may accept other states’ electrical licenses. Submit documentation of the requirements for obtaining that license. Acceptance of the license will be based on sufficient evidence that the license was issued based on:

- passing a test based on the NEC similar to that used by Texas licensing officials, and
- sufficient electrical experience commensurate with general standards for an unrestricted master and unrestricted journeyman electrician in the State of Texas.

Article 7.17, **“Personal Liability of Public Officials”**, is hereby deleted and replaced by the following:

**7.17. Personal Liability.** In carrying out the provisions of this Contract or in exercising any power or authority granted hereunder, there shall be no liability for the Engineer, Consulting Engineer, or the Construction Manager or their respective authorized assistants, either personally or otherwise, in their capacity as agents and representatives of the Authority, and there shall be no liability, either personal or otherwise, for any member of the Board of Directors of the Authority or any of the Authority’s officers, employees, agents or consultants.

Article 7.19, **“Preservation of Cultural and Natural Resources and the Environment”** is hereby amended by deleting Section F, “Project-Specific Locations” thereof, which is replaced by the following:

**F. Project-Specific Locations.** For all project-specific locations (PSLs) on or off the right of way (material sources, waste sites, parking areas, storage areas, field offices, staging areas, haul roads, etc.), signing the Contract certifies compliance by Contractor and all subcontractors and suppliers with all applicable laws, rules, and regulations pertaining to the preservation of cultural resources, natural resources, and the environment as issued by the following or other agencies:

- Occupational Safety and Health Administration,
- Texas Commission on Environmental Quality,
- Texas Department of Transportation,
- Texas Historical Commission,
- Texas Parks and Wildlife Department,
- Texas Railroad Commission,
- U.S. Army Corps of Engineers,
- U.S. Department of Energy
- U.S. Department of Transportation,
- U.S. Environmental Protection Agency,
- U.S. Federal Emergency Management Agency, and
- U.S. Fish and Wildlife Service.

All subcontractors must also comply with applicable environmental laws, rules, regulations, and requirements in the Contract. Maintain documentation of certification activities including environmental consultant reports, Contractor documentation on certification decisions and contacts, and correspondence with the resource agencies. Provide documentation upon request.

Obtain written approval from the Engineer for all PSLs in the right of way not specifically addressed in the plans. Prepare an SWP3 for all Contractor facilities, such as asphalt or concrete plants located within TxDOT right of way. Comply with all TCEQ permit requirements for portable facilities, such as concrete batch plants, rock crushers, asphalt plants, etc. Address all environmental issues, such as Article 404 permits, wetland delineation, endangered species consultation requirements, or archeological and historic site impacts. Obtain all permits and clearances in advance.

Article 7.19. “**Preservation of Cultural and Natural Resources and the Environment**” is further supplemented by the following:

**G. Asbestos Containing Material.** In Texas, the Department of State Health Services (DSHS), Asbestos Programs Branch, is responsible for administering the requirements of the National Emissions Standards for Hazardous Air Pollutants, 40 CFR, Subpart M (NESHAP) and the Texas Asbestos Health Protection Rules (TAHPR). Based on EPA guidance and regulatory background information, bridges are considered to be a regulated “facility” under NESHAP.

Therefore, federal standards for demolition and renovation apply.

Provide notice of demolition or renovation to the structures listed in the plans at least 30 calendar days prior to initiating demolition or renovation of each structure or load bearing member. Provide the scheduled start and completion date of structure demolition, renovation, or removal.

When demolition, renovation, or removal of load bearing members is planned for several phases, provide the start and completion dates identified by separate phases.

DSHS requires that notifications be postmarked at least 10 working days prior to initiating demolition or renovation. If the date of actual demolition, renovation, or removal is changed, the Authority will be required to notify DSHS at least 10 days in advance of the work. This notification is also required when a previously scheduled (notification sent to DSHS) demolition, renovation or removal is delayed. Therefore, if the date of actual demolition, renovation, or removal is changed, provide the Engineer, in writing, the revised dates in sufficient time to allow for the Authority's notification to DSHS to be postmarked at least 10 days in advance of the actual work.

Failure to provide the above information may require the temporary suspension of work under Article 8.4, "Temporary Suspension of Work or Working Day Charges," due to reasons under the control of the Contractor. The Authority retains the right to determine the actual advance notice needed for the change in date to address post office business days and staff availability.

**Item 7** is hereby supplemented by the addition of the following Articles:

**7.20. Contractor's Responsibility for Safety.** In accordance with generally accepted construction practices, be solely and completely responsible for conditions at the job site, including the safety of all persons and property during performance of the work. This requirement shall apply continuously and shall not be limited to normal working hours.

**7.21. Third Party Beneficiary.** It is specifically agreed between the parties hereto that it is not intended by any of the provisions of any part of this Contract to create in the public, or in any member thereof, any third party beneficiary rights hereunder, or to authorize anyone not a party to this Contract to maintain a suit for personal injuries, property damage or any other relief in law or equity pursuant to the terms and provisions of this Contract. The duties, obligations, and responsibilities of the parties to this Contract with respect to third parties shall remain as imposed by law, and no provision of this Contract is in any way intended to constitute a waiver by the



Authority of any immunities or other defenses from suit or from liability that the Authority may have by operation of law.

**7.22. Non-Waiver by the Authority.** Any failure by the Authority at any time, or from time to time, to enforce or require strict keeping and performance of any of the terms or conditions of this Contract shall not constitute a waiver of such terms or conditions or any breach and shall not affect or impair such terms or conditions in any way, or the right of the Authority to avail itself of such remedies as it may have for any breach or breaches of such terms or conditions.

**7.23. Agricultural Irrigation.** Regulate the sequence of work and make provisions as necessary to provide for agricultural irrigation or drainage during the work. Meet with the Irrigation District or land owner to determine the proper time and sequence when irrigation demands will permit shutting-off water flows to perform work.

Unless otherwise provided on the plans, the work required by these provisions will not be paid for directly but shall be considered as subsidiary work pertaining to the various bid items of this contract.



**NORTH TEXAS TOLLWAY AUTHORITY**  
**SPECIAL PROVISION TO ITEM 8**  
**“PROSECUTION AND PROGRESS”**

For this Contract, Item 8 of the Texas Standard Specifications is hereby modified with respect to the clauses cited below and no other clause or requirement of this Item is waived or changed hereby.

Article 8.1, “**Prosecution of Work**”, is hereby deleted and replaced by the following:

**8.1. Prosecution of Work.** Before starting work, schedule and attend a pre-construction conference with the Engineer. Failure to schedule and attend a pre-construction conference is not grounds for delaying the beginning of working day charges. Unless otherwise shown in this Contract, begin the work to be performed under this Contract within ten (10) days (seven (7) calendar days for routine maintenance contracts) after the authorization date to begin work pursuant to the provisions of Article 3.8, “Beginning of Work.” Prosecute the work continuously to completion within the working days specified. Unless otherwise shown on the plans, work may be prosecuted in concurrent phases if no changes are required in the traffic control plan or if a revised traffic control plan is approved. Notify the Engineer at least 24 hours before beginning any new operation. Do not start new operations to the detriment of work already begun. Minimize interference to traffic. When callout work is required, begin work in the right of way within the specified time and continuously prosecute the work until completion.

The commencement, sequencing, and prosecution of the work shall be governed by the orders of the Engineer.

There will be other contractors retained by the Authority operating within the limits of the project. Plan and prosecute the work in such a manner and sequence that there will be no interference, interruptions, or delays to the operations of other contractors.

Ensure that the work presents a neat and orderly appearance at all times; perform all cleanup necessitated by Contractor’s operations.

Complete all clean up and remove all construction machinery and equipment, surplus material, supplies, and debris from the project right-of-way prior to acceptance of the work by the Engineer.

Observance of these special provisions and requirements is considered an essential part of the work to be done under this Contract and any subsequent contracts.

No direct compensation will be allowed for fulfilling these requirements, as this work is considered subsidiary to the Items of this Contract.

In planning and executing the sequence of the work for this project, take into consideration the progress and state of completion of the other portions of the project, and of work being performed by any other contractors.

Article 8.2, “**Progress Schedules**”, is hereby deleted and replaced by the following:

## **8.2. Progress Schedules.**

**A. Routine Maintenance Contracts and Other Contracts Designated by the Engineer.** Before starting work on a routine maintenance contract, submit an outline of the proposed procedure for performing the work. Include a sequence of work and an estimated progress schedule if required. Submit revised progress schedules as requested. When shown on the plans, provide progress schedules meeting the requirements of Section 8.2.B., “Construction Contracts.” The Engineer may direct the Contractor to comply with this Article 8.2.A. (in lieu of Article 8.2.B.) with respect to any Contract.

**B. Construction Contracts.** Unless otherwise specified by the Engineer, the following shall apply to all Contracts, other than routine maintenance contracts:

### **1. General.**

Plan, schedule, and report the progress of the work to ensure timely completion of the work. To facilitate the planning and tracking of the work, use a dual level scheduling format (Baseline Schedule and Two-Week Look-Ahead Layout). Comply with the scheduling requirements described herein. Failure to comply with these requirements will constitute nonperformance under the terms of this Contract.

- a.** All float contained in the Baseline Schedule, as initially approved or generated thereafter, shall be considered a Project resource available to either party or Parties as needed to achieve schedule milestones, interim completion dates, and/or Completion Deadlines. All float shall be shown as such in the Baseline Schedule on each affected schedule path. Identification of (or failure to identify) float on the schedule shall be examined by the Engineer in determining whether to approve the Baseline Schedule. Once identified, Contractor shall monitor, account for, and maintain float in accordance with critical path methodology. In that regard, to the extent that the Baseline Schedule reflects a project completion date earlier than that specified in this Contract, it is understood and agreed by Contractor that the Authority disclaims any liability for Contractor’s failure to achieve such completion date regardless of the cause of such failure.
- b.** All schedules will be approved by the Authority only upon review and recommendation from the Engineer. Approved schedules will become a part of this Contract. The approval of a schedule by the Authority does

not relieve the Contractor of responsibility for the accuracy and feasibility of such schedule.

Maintain and submit the Baseline Schedule and Two-Week Look-Ahead Layout, respectively, incorporating the sequence of construction shown on the plans and/or outlined in the Special Provisions. If the Contractor desires to deviate from the Traffic Control Plans as shown in the plans, a written narrative explaining the need for said change and a descriptive definition of the change shall be given to the Construction Manager for approval. Approval of this change will not be authorized until the new sequencing is reviewed within the Baseline Schedule showing the desired changes. The schedules shall be based on the calendar date or calendar dates provided in this Contract.

Depending on the size of the Project, the Baseline Schedule will be provided as follows:

- a. Project with Contract amount under Five Million dollars and no cents (\$5,000,000): submit a Baseline Detailed Schedule, including logic relationships, using Microsoft Project or approved equal. The Engineer shall agree upon the details shown in this schedule. The Contractor must provide the name of the representative who will produce and maintain the schedule.
  - b. Project with contract amount equal to or greater than Five Million dollars and no cents (\$5,000,000): submit a Baseline CPM (Critical Path Method) Schedule, including logic relationships, using web-based version of Primavera that is compatible with the Authority's web-based version of Primavera. Contact the Engineer for proper version number. The Engineer shall agree upon the details shown in this schedule. If the work during the course of the project falls behind, the Engineer has the authority to direct the Contractor to add resources to the Baseline CPM Schedule to ensure the completion of the project in a timely manner. The Contractor must provide the name of the representative who will produce and maintain the schedule. The Contractor's representative shall have at least five (5) years of experience in CPM scheduling and in the use of the Primavera software.
- 2. Baseline Schedule.** The Baseline Schedule shall include the major construction activities for the Contract including each activity that may impact the start or completion of related construction activities.
- a. The Baseline Schedule will be used by the Contractor and the Engineer to track the progress of specific construction activities. It shall be a time-scaled network logic diagram, showing the work stages and operations for all activities required by this Contract. The diagram shall be in sufficient detail to allow day-to-day monitoring of the Contractor's operations. The diagram shall include milestone events as identified by this Contract.

- b. A Preliminary Baseline Schedule is due 14 days after the Notice-to-Proceed, and the Final Baseline Schedule is due 20 days after receipt of comments on the Preliminary Baseline Schedule. No payment will be processed until the Final Baseline Schedule is approved by the Engineer.
- c. The Baseline Schedule shall include a detailed network diagram acceptable to the Engineer with the following features:
  - (1) All reports shall include in this sequence: Activity ID, Activity Description, Original Duration, Remaining Duration, Percent Complete, Early Start and Finish Dates, Total Float, Budgeted Quantity and Unit of Measure, similar to the proposal.
  - (2) The schedule shall be time-scaled in calendar days. All activities shall be plotted on their early start and finish dates. Unless approved by the Engineer, activities shall not exceed 20 days in length.
  - (3) Each updated copy shall show the date of latest revision.
  - (4) The order and interdependence of activities and the sequence of work shall be clear and in chronological order.
  - (5) In addition to all construction activities, such tasks as mobilization, demobilization, submittal and approval of samples of materials, submittals and approval of shop drawings and forming designs, procurement of significant materials and equipment, fabrication of special items and their installation and testing, interfacing with other contracts, opening to traffic, and final clean up shall be depicted in the schedule and are subject to the same requirements as other construction activities.
  - (6) Activities shall be sufficiently detailed with clear definitions using "log record" if necessary so that a reviewer can follow the sequence.
  - (7) The diagram shall show, for each activity, the preceding and following event numbers or the activity number, the activity description, the total float, and the duration of the activity in calendar days.
  - (8) Activity descriptions shall be unique and specific with respect to the type of work and its location.
  - (9) All activities shall be tied into Activity Codes, i.e. type of work activities, area of work, phase of work, and bid item.

- (10) All settings within the Scheduling/Leveling dialog box shall remain default.
- (11) The only open-ended activities shall be the first activity and the last activity; no additional open-ended activities will be accepted.
- (12) Excessive predecessor/successor usage will not be accepted; 3 to 4 predecessors/successors to an activity.
- (13) All out-of-sequence activities shall be corrected prior to schedule submission.
- (14) No hammocks are to be used.
- (15) Any constraints to be utilized on the schedule other than the contract milestone dates must be authorized in advance by the Construction Manager.
- (16) Critical path shall be determined by the longest path and will be noted on the update in red.
- (17) Additional milestones other than contract milestones and the predecessor/successor logic used by the Contractor shall be approved by the Construction Manager.
- (18) When an activity within the schedule does not have work progressed within 30 days, the activity must be given a finish date and new logic added to a new activity detailing when work will resume on the area where progress was ceased. This information must be entered into the log as to the reason the activity was ceased and establish a new activity number where progress will resume.
- (19) If, in the opinion of the Engineer, the Baseline Schedule requires revision in whole or in part, he/she shall direct the Contractor to provide the needed revisions. In that case, submit the revised schedule within five (5) calendar days after the request.
- (20) Activity ID'S will be unique and cannot be altered or reused.
- (21) Activity descriptions are to be unique. Any change to the descriptions must be approved by the Engineer.

**3. Two-Week Look-Ahead Layout.** The Two-Week Look-Ahead Layout requires a higher level of detail than the Baseline Schedule. The Two-Week Look-Ahead Layout shall be submitted to the Engineer five (5) days before the first day of the two-week period it describes.

Submit three (3) hard copies and one (1) CD-ROM copy of the Two-Week Look-Ahead Layout. This Two-Week Look-Ahead Layout will consist of the daily activities such as forming, placing reinforcing steel, concrete pours, stripping forms, etc., on the calendar days they are scheduled to be performed. The Contractor is to use the Baseline Schedule to create the Two-Week Look-Ahead Layout. This schedule will be reviewed against the Baseline Schedule/Revised Baseline Schedule by the Engineer on a weekly basis. Information to be submitted on the Two-Week Look-Ahead Layout is: item number, activity description, and average daily crew size for the project. The format of the Two-Week Look-Ahead Layout will be approved by the Engineer prior to the start of construction. The Two-Week Look-Ahead Layout shall be generated by the same software as the Baseline Schedule/Revised Baseline Schedule.

- 4. Project Status Spreadsheet.** Submit the Project Status Spreadsheet in the format as shown in Attachment A of this item or as directed by the Engineer at no additional cost to the Authority. The Project Status Spreadsheet will summarize the monthly and cumulative status of the project, revenue, forecasted revenue, and approved change orders. The project status, revenue status, and forecasted revenue listed on the Project Status Spreadsheet shall be calculated based on the Baseline Schedule/Revised Baseline Schedule. The Project Status Spreadsheet shall be updated every time the Baseline Schedule is revised to reflect the changes shown in the Revised Baseline Schedule. The Engineer shall agree upon the details shown on the Project Status Spreadsheet.

**5. Change in Scope of Work**

- a.** When changes are added to the Contract, the Contractor shall submit to the Engineer a written time impact analysis, illustrating the influence of each asserted change on the current schedule. Each time impact analysis shall include a fragnet demonstrating how the Contractor proposes to incorporate the change into the Baseline Schedule.
- b.** Each analysis shall demonstrate the estimated time impact based on the events, the date the direction was given to the Contractor to perform the changed work, the status of construction at that point in time, and the computation of event item of all critical activities affected by the change. The event times and activity durations used in the analysis shall be those included in the latest revision and update of the Baseline Schedule at that point in time, or as adjusted for the events.
- c.** The Engineer will accept or reject the Contractor's time impact analysis within 20 working days after receipt thereof, unless subsequent meetings and negotiations are necessary.
- d.** Upon mutual agreement by both parties, fragnets illustrating the influence of extra work orders shall be incorporated into the Baseline



Schedule/Revised Baseline Schedule. The revised schedule shall be included in the next monthly submittal.

## **6. Schedule Delay**

- a.** If, at any time, the work on any critical path item is delayed for a period which exceeds 20 days, then the Contractor shall prepare and submit to the Engineer, for review and approval at the next monthly schedule submittal, a Recovery Schedule demonstrating Contractor's proposed plan to regain lost schedule progress and to achieve the original contractual milestones as stated in this Contract.
- b.** The Engineer shall notify the Contractor within 14 days after receipt of each Recovery Schedule whether the Recovery Schedule is deemed accepted or rejected. Within seven (7) days after the rejection, the Contractor shall resubmit a revised Recovery Schedule incorporating the Engineer's comments for review and approval. When the Engineer accepts the Contractor's Recovery Schedule, the Contractor shall incorporate and fully include such schedule into the Baseline Schedule/Revised Baseline Schedule. The revised schedule shall be included in the next monthly submittal.
- c.** All costs incurred by the Contractor in preparing, implementing, and achieving the Recovery Schedule shall be borne by the Contractor.
- d.** If Contractor fails to provide an acceptable Recovery Schedule as required herein, the Authority shall withhold an additional 10% of the current progress payment until the Contractor has prepared and the Engineer has approved such Recovery Schedule. Additional money withheld will be paid to the Contractor with the next scheduled monthly invoice following compliance.

## **7. Revised Baseline Schedule.** The Baseline Schedule shall be revised and submitted to the Engineer for approval when there is a:

- a.** change in scope of work
- b.** schedule delay, or
- c.** as directed by the Engineer

The cost of preparing the Revised Baseline Schedule will be considered as subsidiary to various items in the Contract. Execution of the work according to accepted schedule and programs of construction, or approved modifications thereto, shall be an obligation of the Contractor. The Authority's acceptance or approval of a revised schedule shall not cure any default by the Contractor under this Contract, nor waive any rights or remedies available to the Authority for a default by the Contractor under this Contract.

- 8. Schedule Updates and Reports.** If, in the opinion of the Engineer, the schedule requires revision in whole or in part, he shall direct the Contractor to provide a Recovery Schedule which is addressed in Section 8.2.B.6, "Schedule Delay".

The Schedule Updates and Reports shall be submitted monthly and shall:

- a. Show the activities or portion of activities completed during the one month report period, the activities completed on this Contract to date, show the actual start and finish dates for completed activities, and show a start date and percent complete for activities in progress.
- b. Provide a narrative description of job progress, problem areas, current and anticipated delaying factors and their anticipated effect, and any corrective actions proposed or taken. The narrative description shall also clearly identify the critical path, any departures from earlier schedules, including, but not limited to, changes in logical sequence or logical ties, constraints, changes in activity duration, and any other changes, additions, or departures. The reason for each departure must be included in the narrative description. Any additions, deletions, or changes to milestone events must be approved by the Engineer. Major activities to be worked on in the next 30 and 60 days, as well as any major activities that took place in the last 30 days.
- c. Contain a tabulation of the following data for each activity:
  - Preceding and following event numbers (numbers shall be selected and assigned so as to permit identification of the activities with bid items);
  - Activity description;
  - Activity duration;
  - Earliest start date;
  - Earliest finish date;
  - Latest start date;
  - Latest finish date;
  - Total float times; and
  - Responsibility for activity (e.g., Contractor, Subcontractor, supplier, etc.)
- d. List any problem areas that could cause a delay.
- e. Show number of days that the Contractor is behind schedule, and when required, show a detailed recovery plan of how the Contractor will bring the project back into compliance of the mandatory construction dates.

Critical activities shall be prominently distinguished on all reports. All extra work shall be shown on an updated schedule.

- 9. Monthly Submittals.** Submit the Monthly Schedule Updates, Project Status Spreadsheet, and other schedules when required on the same date as the invoice. The cut-off day shall be the 25th day of the month. If the schedules, layout, spreadsheet, and invoice are not received by the 5th of the month, the Contractor agrees that the Authority may withhold an additional 10% of the current progress payment until the Contractor is in compliance. Additional money withheld will be paid to the Contractor with the next scheduled monthly invoice following compliance.

All hard copy of the submittals will be printed on paper 8.5 inches in width x 11 inches in length, in a format acceptable by the Engineer.

Submit the following items with the invoice:

- a. Revised Baseline Schedule (when required) - Three (3) hard copies and one (1) CD-ROM copy.
- b. Schedule Updates and Reports – Three (3) hard copies and one (1) CD-ROM copy.
- c. Project Status Spreadsheet - Three (3) hard copies and one (1) CD-ROM copy.
- d. Recovery Schedule (when required) - Three (3) hard copies and one (1) CD-ROM copy.

Provide sufficient materials, equipment, and labor to guarantee the completion of the project in accordance with the plans and this Contract. Should prosecution of the work be discontinued for any reason, notify the Engineer and the Authority at least 24 hours in advance of resuming operations, and submit a revised progress schedule.

- C. Contracts with Multiple Work Orders.** For multiple work order Contracts, provide for each work order, as required by the Engineer, a schedule in accordance with Section 8.2.A, “Routine Maintenance Contracts and Other Contracts Designated by the Engineer,” or Section 8.2.B, “Construction Contracts.”

Article 8.3, “**Computation of Contract Time for Completion,**” is hereby deleted and replaced by the following:

**8.3. Computation of Contract Time for Completion.** Working day charges will begin 10 calendar days (7 calendar days for routine maintenance Contracts) after the date of the written authorization to begin work. Working day charges will continue in accordance with the Contract. The Engineer may consider increasing the number of working days under extraordinary circumstances.

- A. Working Day Charges.** Working days will be charged Sunday through Saturday, including all holidays, regardless of weather conditions, material availability, or other conditions not under the control of the Contractor. For

multiple work order Contracts, working days will be established in each work order on a separate basis.

- B. Restricted Work Hours.** Restrictions on Contractor work hours and the related definition for “working day charges” are as prescribed in this Article, unless otherwise shown on the plans.
- C. Nighttime Work.** Nighttime work is allowed only when shown on the plans or directed or allowed by the Engineer. Nighttime work is defined as work performed from 30 minutes after sunset to 30 minutes before sunrise.
- D. Time Statements.** The Engineer will furnish the Contractor a monthly time statement. Review the monthly time statement for correctness. Report protests in writing, no later than 30 calendar days after receipt of the time statement, providing a detailed explanation for each day protested. Failure to file a protest within 30 calendar days will indicate acceptance of the working day charges and future consideration of that statement will not be permitted.

Article 8.4, “**Temporary Suspension of Work or Working Day Charges,**” is hereby supplemented by the addition of the following:

Without limiting the ability of the Authority to suspend work pursuant to other provisions of this Contract, the Engineer may suspend the work and the “working day charges,” in accordance with this Article 8.4, on any holiday, on the day preceding the holiday, on the day following the holiday or on any day for which an unusual public event is scheduled in the region if the Engineer and the Contractor mutually agree the Contractor should not work. Such suspension shall be based upon, among other things, past experience as to the volume of holiday traffic that may be expected.

Article 8.5, “**Failure to Complete Work on Time,**” is hereby deleted and replaced by the following:

**8.5. Failure to Complete Work on Time.** If the Contractor fails to complete fully, entirely, and in conformity with the provisions of this Contract, the work and each and every part or appurtenance thereof within the time stated in this Contract, or a separate work order when specified in the Contract, or within such further time as may have been granted in accordance with the provisions of Special Provision Article 8.11, “Extension of Time,” pay the Authority for each and every calendar day (Saturdays, Sundays, and legal holidays included) that the Contractor is in default on time to complete the work, the amount or amounts specified in the Proposal and in the Special Provision – Important Notice to Contractors – Mandatory Construction Schedule, if included in this Contract, which said amount(s) per day is agreed upon by the parties hereto to be liquidated damages, not a penalty. Such amount(s) may be deducted from any money due or to become due to the Contractor.

The project, of which the work forms an essential part, is operated as a controlled access toll turnpike project, and delay in completion of the work will cause disruption

in the operation of currently constructed or planned portions of the project, and will cause losses to the Authority including, but not limited to, lost revenue, additional interest on monies borrowed, increased administrative, legal and engineering costs, and other tangible and intangible losses. The liquidated damages set forth in the proposal, and incorporated herein by reference, are to partially cover such losses and expenses.

The Contractor unconditionally and irrevocably acknowledges and agrees that the actual amount of said losses and expenses would be impossible or extremely difficult to determine, and that the liquidated damages set forth herein constitute a fair and reasonable estimate by the parties of the amount of said losses and expenses and in no event shall constitute or be construed as a penalty. The Contractor irrevocably and unconditionally acknowledges that the time limits set forth in the Contract constitute an essential benefit for the Authority and an essential element of the Contract.

The Authority shall recover said liquidated damages by deducting the amount thereof from any monies due or that may become due to the Contractor, and if said monies be insufficient to cover said damages, then the Contractor or its Surety shall pay the amount due and the Authority shall be entitled to any and all rights and remedies available to it in law or equity to recover same.

The Engineer, at its sole discretion and option, may waive the collection of liquidated damages if the work in its entirety, or if any portion of the work for which a date of completion is stipulated, has been substantially completed within the prescribed time of completion therefore.

“Substantial completion” shall mean that measure of completion of the work under this Contract that will ensure the following:

- A.** That there will be no delay in the opening of the applicable portion of the project for operation on the established date, nor in the operation of currently constructed portions of the project as a result of the failure of the Contractor to fully complete the work or any part or parts thereof within the prescribed times of completion; and
- B.** That there will be no delay in the reopening of any public or private streets, rights-of-way, or thoroughfares which, in connection with the project, have been either totally or partially closed, or from which public traffic has been diverted by detour as a result of the failure of the Contractor to fully complete the work or any part or parts thereof within the prescribed times of completion; and
- C.** That all other concurrent or subsequent work by other contractors can proceed on any incomplete or completed part or parts of the project on the dates set forth in the contracts for said other work; and
- D.** That the uncompleted work under the Contract will be performed in a sequence and manner that will not delay, impair the efficiency or safety of, nor increase the costs to, the public, other contractors, the Authority, or the Authority’s agents

and consultants, nor result in the loss of toll revenues that the Authority would otherwise collect if the work were completed by the stipulated date of final completion.

The Engineer shall be the sole judge as to whether substantial completion has been achieved as described above.

“Final completion” means the completion of the work, and each and every part or appurtenance thereof, fully, entirely, and in conformity with the provisions of this contract so that nothing remains to be done, including any corrective or “punchlist” items, as described in Article 9.8, “Final Payment”, set forth in Special Provision to Item 9, the issuance of certifications of completion and acceptance by the Consulting Engineers and, if required by the Engineer, the Construction Manager, and the Authority’s acceptance of said certifications of completion and acceptance, which acceptance shall be provided or withheld in the sole judgment of the Engineer.

If the Contractor fails to complete the work within the time fixed by this Contract, or extensions thereof, and if the Engineer shall, nevertheless, permit the Contractor to continue and complete the same, such permission shall neither modify nor waive any liability of the Contractor for damages arising from noncompletion of the work within the said time, but all such liabilities shall continue in full force and effect against the Contractor.

Article 8.6, “**Abandonment of Work or Default of Contract**”, is hereby deleted and replaced by the following:

**8.6. Abandonment of Work or Default of Contract.** The Engineer may declare the Contractor to be in default of the Contract if the Contractor:

- fails to begin the work within the number of days specified;
- fails to prosecute the work to assure completion within the number of days specified;
- fails to perform the work in accordance with the Contract requirements,
- neglects or refuses to remove and replace rejected materials or unacceptable work;
- discontinues the prosecution of the work without the Engineer’s approval;
- becomes insolvent, is declared bankrupt, commits an act of bankruptcy or insolvency, allows any final judgment to remain unsatisfied for a period of 10 days, or makes an unauthorized assignment for the benefit of any creditors;
- makes an unauthorized assignment;
- fails to resume work that has been discontinued within a reasonable number of days after notice to do so;
- is uncooperative, disruptive or threatening; or
- fails to conduct the work in an acceptable manner.

If any of these conditions occur, the Engineer may give notice, in writing to the Contractor and the Surety, of the intent to declare the Contractor in default. If the Contractor does not fully correct and cure such default within 10 days after the notice, the Authority may upon written notice declare the Contractor to be in default of the Contract. The Authority will also provide written notice of default to the Surety, if any. Working day charges will continue until completion of the Contract. The Contractor may also be subject to sanctions under the Texas Administrative Code.

The Authority will determine the method used for the completion of the remaining work as follows:

- The Authority may complete the work using any or all materials at the work locations that it deems suitable and acceptable. Any costs incurred by the Authority for the completion of the work under the Contract will be the responsibility of the Contractor and/or the Surety.
- The Authority may, without violating the Contract, demand that the Contractor's Surety complete the remaining work in accordance with the terms of the original Contract. A completing Contractor will be considered a subcontractor of the Surety. The Authority reserves the right to approve or reject proposed subcontractors. Work may resume after the Authority receives and approves certificates of insurance as required in Article 7.4, "Insurance and Bonds." Certificates of insurance may be issued in the name of the completing Contractor. The Surety is responsible for making every effort to expedite the resumption of work and completion of the Contract.

From the time of notification of the default until work resumes (either by the Surety or the Authority), the Authority will maintain traffic control devices and will do any other work it deems necessary, unless otherwise agreed upon by the Authority and the Surety. All costs associated with this work will be deducted from money due to the Contractor and/or the Surety.

The Authority will hold all money earned but not disbursed by the date of default. Upon resumption of the work after the default, all payments will be made to the Surety. All costs and charges incurred by the Authority as a result of the default, including the cost of completing the work under the Contract, costs of maintaining traffic control devices, costs for other work deemed necessary, and any applicable liquidated damages or disincentives will be deducted from money due to the Contractor for completed work. If these costs exceed the sum that would have been payable under the Contract, the Surety will be liable and pay the Authority the balance of these costs in excess of the Contract price. If the costs incurred by the Authority are less than the amount that would have been payable under the Contract if the work had been completed by the Contractor, the Authority will be entitled to retain the difference. If it is determined, after the Contractor is declared in default, that the Contractor was not in default, the Authority may, at its option, deem the rights and obligations of the parties to be the same as if a termination had been issued for the convenience of the public as provided in Article 8.7, "Termination of Contract."

December, 2012

Article 8.7, "**Termination of Contract**," is hereby supplemented by the addition of the following:

Termination of the Contract, as stated above, will not relieve the Contractor or the Surety of the responsibility of replacing defective work as required by the Contract.

Article 8.8, "**Subcontracting**," Section A, "**Construction Contracts and Federally Funded Routine Maintenance Contracts**," the first and second paragraphs are hereby deleted and replaced by the following:

**A. Construction Contracts and Federally Funded Routine Maintenance Contracts.** The Contractor must perform work with its own organization on at least 30% of the total contract cost, including the original contract amount and its change orders thereafter.

As stated in the NTTA Business Diversity Department Contracting & Compliance Manual, the Subcontractor must perform work with its own organization on at least 30% of the total contract cost, including the original contract amount and its change orders thereafter.

Article 8.8, "**Subcontracting**," is hereby supplemented by the addition of the following to Section A thereof:

In the case when the Contractor is found to be in default of the Contract, the requirement that 30% of the total Contract cost including the original contract amount and its change orders thereafter shall be performed by the Contractor with its own organization may be suspended by the Authority, but the Authority's approval of all Subcontractors continues to be required.

If the DBE goal amount for this project is greater than zero, submit a copy of the executed subcontract agreement with the request for subcontractor approval for all DBE subcontracts, including all tiered DBE subcontracts.

Item 8 is hereby supplemented by the addition of the following Articles:

**8.11. Extension of Time.** Throughout the progress of the work, areas in which construction can be performed may be limited until (1) additional rights-of-way are obtained, (2) utilities are adjusted, (3) other contractors and public utility companies have moved out of the way of the progress of construction, or (4) changes in the work have been issued.

A request for an extension of time that is timely and properly made pursuant to Article 4.3 or Article 4.4 may be granted by the Engineer notwithstanding that other work can be completed under the Contract. Also, the Engineer may respond to a request timely and properly made under Article 4.3 or Article 4.4 before substantial completion of the work. Otherwise, notwithstanding anything to the contrary contained herein, except for requests pursuant to Article 4.3 or Article 4.4, requests for time extensions based upon delays, disruptions, or hindrances arising from any of the above-referenced causes or any other cause will not be considered, nor will Contractor be entitled to any such time extensions, until all construction that can be



performed under the Contract has been completed in the sole judgment of the Engineer or halted by order of the Authority and any determination by the Engineer to grant an extension of time due to the conditions referenced in this Article 8.11 will not be made until after substantial completion of the work.

Unless otherwise provided herein, no extensions of time for any reason will be granted.

No extension of time will be considered unless written notice is given to the Engineer of such delay and of the Contractor's intention to request an extension of time within five (5) days after the beginning of such delay, and said notice shall give complete information as to the nature, cause, and probable extent of the delay.

The Authority's decision to grant an extension, or multiple extensions, of time to any other contractor involved in the project, or any other project for the Authority, for any reason whatsoever, shall not in any way affect the Contractor's obligations hereunder nor the Authority's right to insist on full and timely performance pursuant to the terms of the Contract.

**8.12. Time of the Essence.** Time is of the essence in the performance of all work to be done by the Contractor pursuant to this Contract.

**ATTACHMENT A - PROJECT STATUS SPREADSHEET #1**  
12/28/08

Contract No.: XXXXX-XXX-XX-CN-PM  
 Highway: President George Bush TurnPike  
 Contractor's Name: ABC Construction  
 Report Period: 11/26/2008 - 12/25/2008  
 Notice-to-Proceed Date: 5/14/2008  
 Estimated Completion Date: 11/20/2009  
 Original Contract Value: \$31,768,954.70  
 Total Approved Change Orders (including this month): \$ 794,742.80  
 Total Contract Value (This Month): \$32,563,697.50

Section: XX

# EXAMPLE

MONTHLY STATUS		Jan-08	Feb-08	Mar-08	Apr-08	May-08	PSS #1 Jun-08	PSS #2 Jul-08	PSS #3 Aug-08	PSS #4 Sep-08	PSS #5 Oct-08	PSS #6 Nov-08	PSS #7 Dec-08	
Schedules % Complete (monthly)	Project Status						5.0%	5.5%	6.5%	6.5%	7.0%	7.0%	5.5%	
Actual % Complete (monthly)							4.3%	6.2%	6.9%	6.5%	7.3%	5.9%	5.0%	
Scheduled \$ (monthly)	Revenue Status						\$ 3,000,000.00	\$ 1,700,000.00	\$ 1,700,000.00	\$ 2,000,000.00	\$ 2,000,000.00	\$ 1,300,000.00	\$ 1,000,000.00	
Actual \$ (monthly)							\$ 2,769,484.40	\$ 1,965,836.90	\$ 1,893,892.50	\$ 1,888,756.40	\$ 1,767,650.00	\$ 1,304,769.70	\$ 1,099,765.10	
Scheduled % Complete (monthly)								9.4%	5.4%	5.3%	6.3%	6.3%	4.0%	3.1%
Actual % Complete (monthly)								8.7%	6.2%	5.9%	5.9%	5.5%	4.0%	3.4%
Current Submittal (monthly)	Forecasted Revenue													
Previous Submittal (monthly)													\$ 1,200,000.00	
Variance (monthly)														
Approved Change Orders (monthly)	Approved Change Orders							\$ 225,807.80				\$ 568,935.00		

CUMULATIVE STATUS		Jan-08	Feb-08	Mar-08	Apr-08	May-08	Jun-08	Jul-08	Aug-08	Sep-08	Oct-08	Nov-08	Dec-08	
Schedules % Complete (cumulative)	Project Status						5.0%	10.5%	17.0%	23.5%	30.5%	37.5%	43.0%	
Actual % Complete (cumulative)								4.3%	10.5%	17.4%	23.9%	31.2%	37.1%	42.1%
Scheduled \$ (cumulative)	Revenue Status						\$ 3,000,000.00	\$ 4,700,000.00	\$ 6,400,000.00	\$ 8,400,000.00	\$ 10,400,000.00	\$ 11,700,000.00	\$ 12,700,000.00	
Actual \$ (cumulative)							\$ 2,769,484.40	\$ 4,735,321.30	\$ 6,629,213.80	\$ 8,517,970.20	\$ 10,285,620.20	\$ 11,590,389.90	\$ 12,690,155.00	
Scheduled % Complete (cumulative)								9.4%	14.8%	20.0%	26.3%	32.5%	35.9%	39.0%
Actual % Complete (cumulative)								8.7%	14.9%	20.7%	26.6%	32.1%	35.6%	39.0%
Current Submittal (cumulative)	Forecasted Revenue													
Previous Submittal (cumulative)													\$ 1,200,000.00	
Variance (cumulative)														
Approved Change Orders (cumulative)	Approved Change Orders						\$ -	\$ -	\$ 225,807.80	\$ 225,807.80	\$ 225,807.80	\$ 794,742.80	\$ 794,742.80	

Notes:		
Schedules % Complete (monthly)	Project Status	Enter the estimated percent complete for each month based on the Baseline Schedule.
Actual % Complete (monthly)		Enter the actual percent complete for each month based on the Baseline Schedule.
Scheduled \$ (monthly)	Revenue Status	Enter the estimated total dollar amount requested for each month based on the Baseline Schedule.
Actual \$ (monthly)		Enter the actual dollar amount shown on the monthly invoice
Scheduled % Complete (monthly)		Enter the calculated percent complete of estimated cost for each month over the total contract amount.
Actual % Complete (monthly)		Enter the calculated percent complete of actual dollar amount for each month over the total contract amount.
Current Submittal (monthly)	Forecasted Revenue	Enter the forecasted spending for next month and the remainder of the Contract.
Previous Submittal (monthly)		Enter the monthly forecasted spending submitted from the previous Progress Status Spreadsheet
Variance (monthly)		Enter the calculated monthly variance in percent using the following formula: [Previous Submittal (monthly)-Current Submittal (monthly)]/Current Submittal (monthly)
Approved Change Orders (monthly)	Approved Change Orders	Enter the approved change order amount.
Cumulative Status Table (contained formulas only)		The cumulative percent and dollar amounts shall be calculated from data shown in the Monthly Status Table.

**ATTACHMENT A - PROJECT STATUS SPREADSHEET #10**  
3/29/09

Contract No.: XXXXX-XXX-XX-CN-PM  
 Highway: President George Bush TurnPike  
 Contractor's Name: ABC Construction  
 Report Period: 2/26/2009 - 3/25/2009  
 Notice-to-Proceed Date: 5/14/2008  
 Estimated Completion Date: 11/20/2009  
 Original Contract Value: \$31,768,954.70  
 Total Approved Change Orders (including this month): \$ 1,062,241.20  
 Total Contract Value (This Month): \$32,831,195.90

Section: XX

# EXAMPLE

MONTHLY STATUS		PSS #8	PSS #9	PSS #10	PSS #11	PSS #12	PSS #13	PSS #14	PSS #15	PSS #16	PSS #17	PSS #18	
Month		Jan-09	Feb-09	Mar-09	Apr-09	May-09	Jun-09	Jul-09	Aug-09	Sep-09	Oct-09	Nov-09	Dec-09
Schedules % Complete (monthly)	Project Status	5.0%	5.0%	5.5%	6.5%	7.5%	7.5%	8.0%	8.0%	1.5%	1.5%	1.0%	
Actual % Complete (monthly)		5.6%	5.4%	7.1%									
Scheduled \$ (monthly)	Revenue Status	\$ 1,200,000.00	\$ 1,500,000.00	\$ 1,750,000.00	\$ 2,200,000.00	\$ 2,500,000.00	\$ 2,500,000.00	\$ 2,500,000.00	\$ 2,800,000.00	\$ 1,700,000.00	\$ 1,050,000.00	\$ 431,195.90	
Actual \$ (monthly)		\$ 1,167,306.90	\$ 1,376,985.30	\$ 1,879,543.10									
Scheduled % Complete (monthly)	Revenue Status	3.7%	4.6%	5.3%	6.7%	7.6%	7.6%	7.6%	8.5%	5.2%	3.2%	1.3%	
Actual % Complete (monthly)		3.6%	4.2%	5.7%									
Current Submittal (monthly)	Forecasted Revenue				\$ 2,250,000.00	\$ 2,500,000.00	\$ 2,700,000.00	\$ 2,500,000.00	\$ 2,800,000.00	\$ 1,500,000.00	\$ 1,050,000.00	\$ 417,205.60	
Previous Submittal (monthly)				\$ 1,900,000.00	\$ 2,200,000.00	\$ 2,400,000.00	\$ 2,500,000.00	\$ 2,500,000.00	\$ 2,500,000.00	\$ 900,000.00	\$ 650,000.00	\$ 167,205.60	
Variance (monthly)	Forecasted Revenue				-2.2%	-4.0%	-7.4%	0.0%	-10.7%	-40.0%	-38.1%	-59.9%	
Approved Change Orders (monthly)	Approved Change Orders			\$ 267,498.40									

CUMULATIVE STATUS		Jan-09	Feb-09	Mar-09	Apr-09	May-09	Jun-09	Jul-09	Aug-09	Sep-09	Oct-09	Nov-09	Dec-09
Schedules % Complete (cumulative)	Project Status	48.0%	53.0%	58.5%	65.0%	72.5%	80.0%	88.0%	96.0%	97.5%	99.0%	100.0%	
Actual % Complete (cumulative)		47.7%	53.1%	60.2%									
Scheduled \$ (cumulative)	Revenue Status	\$ 13,900,000.00	\$ 15,400,000.00	\$ 17,150,000.00	\$ 19,350,000.00	\$ 21,850,000.00	\$ 24,350,000.00	\$ 26,850,000.00	\$ 29,650,000.00	\$ 31,350,000.00	\$ 32,400,000.00	\$ 32,831,195.90	
Actual \$ (cumulative)		\$ 13,857,461.90	\$ 15,234,447.20	\$ 17,113,990.30									
Scheduled % Complete (cumulative)	Revenue Status	42.7%	47.3%	52.2%	58.9%	66.6%	74.2%	81.8%	90.3%	95.5%	98.7%	100.0%	
Actual % Complete (cumulative)		42.6%	46.8%	52.1%									
Current Submittal (cumulative)	Forecasted Revenue	\$ -	\$ -	\$ -	\$ 2,250,000.00	\$ 4,750,000.00	\$ 7,450,000.00	\$ 9,950,000.00	\$ 12,750,000.00	\$ 14,250,000.00	\$ 15,300,000.00	\$ 15,717,205.60	
Previous Submittal (cumulative)	Forecasted Revenue	\$ -	\$ -	\$ 1,900,000.00	\$ 4,100,000.00	\$ 6,500,000.00	\$ 9,000,000.00	\$ 11,500,000.00	\$ 14,000,000.00	\$ 14,900,000.00	\$ 15,550,000.00	\$ 15,717,205.60	
Approved Change Orders (cumulative)	Approved Change Orders	\$ 794,742.80	\$ 794,742.80	\$ 1,062,241.20	\$ 1,062,241.20	\$ 1,062,241.20	\$ 1,062,241.20	\$ 1,062,241.20	\$ 1,062,241.20	\$ 1,062,241.20	\$ 1,062,241.20	\$ 1,062,241.20	

Notes:		
Schedules % Complete (monthly)	Project Status	Enter the estimated percent complete for each month based on the Baseline Schedule.
Actual % Complete (monthly)		Enter the actual percent complete for each month based on the Baseline Schedule.
Scheduled \$ (monthly)	Revenue Status	Enter the estimated total dollar amount requested for each month based on the Baseline Schedule.
Actual \$ (monthly)		Enter the actual dollar amount shown on the monthly invoice
Scheduled % Complete (monthly)	Revenue Status	Enter the calculated percent complete of estimated cost for each month over the total contract amount.
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Current Submittal (monthly)	Forecasted Revenue	Enter the forecasted spending for next month and the remainder of the Contract.
Previous Submittal (monthly)		Enter the monthly forecasted spending submitted from the previous Progress Status Spreadsheet
Variance (monthly)	Forecasted Revenue	Enter the calculated monthly variance in percent using the following formula: [Previous Submittal (monthly)-Current Submittal (monthly)]/Current Submittal (monthly)
Approved Change Orders (monthly)	Approved Change Orders	Enter the approved change order amount.
Cumulative Status Table (contained formulas only)		The cumulative percent and dollar amounts shall be calculated from data shown in the Monthly Status Table.



**NORTH TEXAS TOLLWAY AUTHORITY**  
**SPECIAL PROVISION TO ITEM 9**  
**“MEASUREMENT AND PAYMENT”**

For this Contract, Item 9 of the Texas Standard Specification is hereby modified with respect to the clauses cited below and no other clause or requirement of this Item is waived or changed hereby.

Article 9.3, “**Scope of Payment,**” is hereby deleted and replaced by the following:

**9.3. Scope of Payment.** Notwithstanding anything to the contrary contained herein, except claims pursuant to Article 4.3, “Differing Site Conditions,” and to the fullest extent permitted by law, the Authority will not be liable and the Contractor hereby waives any claim for any loss or damage incurred by the Contractor, whether direct or indirect or whether related to efforts by the Contractor to accelerate the work, on account of any delay, disruption, hindrance or any other impediment whatsoever, no matter by what or by whom caused, including, but not limited to, by reason of the Engineer’s acts in giving directions, in temporarily suspending the work or, in rejecting materials or methods or workmanship; or by seasons, weather or stream fluctuations; or by the acts or failure to act of utility owners, railroads, governmental or quasi-governmental agencies or authorities; or by the non-completion of work to be performed by the Authority, by other contractors, by utility owners, railroads or by others. Rather, the amounts provided in this Contract for payment for the work are understood and agreed to include and cover all expenses or costs due to delays, disruptions, hindrances or any other impediment regardless of their cause. The Contractor shall accept the compensation, as provided in this Contract, as full payment for furnishing all materials, supplies, labor, tools, and equipment necessary to complete the work under this Contract; for any loss or damage which may arise from the nature of the work, or from the action of the elements, until the final acceptance of the work by the Engineer; for any infringement of patent, trademark or copyright; and for completing the work according to the plans and the specifications. The payment of any current or partial estimate shall in no way affect the obligation of the Contractor at its expense to repair or renew any defective parts of the construction or to replace any defective materials used in the construction and to be responsible for all damages due to such defects if such defects or damages are discovered on or before the final inspection and acceptance of the work.

Article 9.5, “**Force Account,**” is hereby amended as follows: (1) the last sentence of Section E, “Subcontracting,” is deleted and not replaced; (2) Section F, “Law Enforcement,” is deleted in its entirety and not replaced; and (3) the following two new Sections I and J are added to the end of Article 9.5., “Force Account”:

**I. Prior Agreement of Authority Required.** Work performed on a “Force Account” basis must be agreed upon by the Authority. The Authority will not be liable for the

cost of work allegedly performed on a “Force Account” basis unless agreed upon in writing by the Authority prior to the commencement of such work.

**J. Full Compensation.** The compensation, as herein provided for, shall be received by the Contractor as payment in full for extra work completed on the “force account” basis and will include, but not be limited to, use of small tools, overhead expense and profit.

Article 9.6, “**Progress Payments,**” **Section A, “Retainage,” Section 1, “Routine Maintenance Contracts”** is voided and replaced by the following:

**1. Routine Maintenance Contracts.**

NTTA Maintenance Contracts will be subject to retainage as set forth in Articles 9.6.A.2.a, “Contracts without Recycled Materials” through 9.6.A.2.d, “Final Retainage Release”, and as supplemented in this Special Provision.

Article 9.6, “**Progress Payments,**” **Section A, “Retainage,” Section 2, “Construction Contracts”** is supplemented by the addition of the following immediately after the sub-title of Section 2, “Construction Contracts”:

**2. Construction Contracts.**

For federally funded projects, a retainage bond will be required to guarantee the protection of any claimants and the Authority for overpayments, liquidated damages, and other deductions or damages owed by the Contractor in connection with the Contract; therefore, for projects in which a retainage bond is supplied, Articles 9.6.A.2.a, “Contracts without Recycled Materials” through 9.6.A.2.d, “Final Retainage Release” listed in this Item will not be applied.

For non-federally funded projects or any project for which a retainage bond is not supplied, the retainage will be withheld in accordance with the requirements set forth in Articles 9.6.A.2.a, “Contracts without Recycled Materials” through 9.6.A.2.d, “Final Retainage Release.”

Article 9.6, “**Progress Payments,**” **Section B, “Payment Provisions for Subcontractors,”** is voided and replaced by the following:

**B. Payment Provisions for Subcontractors.** For the purposes of this Article only, the term subcontractor includes suppliers and the term work includes materials provided by suppliers at a location approved by the Authority. Pay the subcontractors for work performed within 10 days after receiving payment for the work performed by the subcontractor. Also, pay any retainage on a subcontractor’s work within 10 days after satisfactory completion of all of the subcontractor’s work. Completed subcontractor work includes vegetative establishment, test, maintenance, performance, and other similar periods that are the responsibility of the subcontractor.

For the purpose of this Section, satisfactory completion is accomplished when:

- the subcontractor has fulfilled the Contract requirements of both the Authority and the subcontract for the subcontracted work, including the submittal of all information required by the specifications and the Authority; and
- the work done by the subcontractor has been inspected, approved, and paid for by the Authority.

The inspection and approval of a subcontractor's work does not eliminate the Contractor's responsibilities for all the work as defined in Article 7.14, "Contractor's Responsibility for Work."

The Authority may pursue actions against the Contractor, including withholding of estimates and suspending the work, for noncompliance with the subcontract requirements of this Section upon receipt of written notice with sufficient details showing the subcontractor has complied with contractual obligations as described in this Article.

These requirements apply to all tiers of subcontractors. Incorporate the provisions of this Article into all subcontract or material purchase agreements.

Article 9.8, "**Final Payment**," is hereby deleted and replaced by the following:

**9.8. Final Payment.** When the work has been completed by the Contractor and all parts of the work have been reviewed and certified by the Engineer that the work has been completed in full and in conformance with the plans, specifications, and other components of this Contract, the Authority will pay to the Contractor the full amount of compensation earned by the Contractor based upon the latest available quantity measurements, less the retainage provided for herein. This estimate will be known as the semifinal estimate and shall have deducted from it (if any) the monies paid in all previous payments.

Subsequent to the date of the semifinal estimate and at such time as all work has been completed, the construction contract closeout process shall be completed and approved by the Authority to ensure that all specified work has been completed in accordance with the requirements of the contract, that all documents of record have been received, and that all financial covenants and requirements pertaining to the contract are satisfied, the Authority will pay to the Contractor the full amount of the compensation earned by the Contractor less any sums previously paid under this Contract, provided, however, that before making final payment of the full amount earned by the Contractor, the Authority may require the Contractor to furnish satisfactory evidence that the Contractor has paid all payrolls, bills, expenses, and costs of every type and nature whatsoever connected with the performance of the work under this Contract.

December, 2012

The acceptance by the Contractor of final payment shall release the Authority from all claims and liabilities of every type and nature owing to the Contractor in connection with performance of the work under this Contract.

Nothing in this Item concerning payment shall be construed to prevent the Authority from withholding or deducting from the final payment to the Contractor the total amount of any claims of any type or nature whatsoever, including, but not limited to, liquidated damages, which the Authority shall have against the Contractor, nor shall the preceding paragraph be construed as preventing the Authority from requiring bond from the Contractor to cover claims which may have been filed with the Authority against the Contractor by others.



## **SPECIAL PROVISION**

### **500---011**

#### **Mobilization**

For this project, Item 500, “Mobilization,” 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 500.1. Description** is supplemented by the following:

Work for this Item includes submissions required by the Contract.

**Article 500.3. Payment, Section A** is voided and replaced by the following:

**A.** Payment will be made upon presentation of a paid invoice for the payment or performance bonds and required insurance. The combined payment for bonds and insurance will be no more than 10% of the mobilization lump sum or 1% of the total Contract amount, whichever is less. However, payment will be made for the actual cost of the paid invoice when the combined payment for bonds and insurance exceeds 10% of the mobilization lump sum or 1% of the total Contract amount, whichever is less.

**Article 500.3. Payment, Section F** is voided and replaced by the following:

**F.** Upon final acceptance, 97% of the mobilization lump sum bid will be paid. Previous payments under this Item will be deducted from this amount.

**Article 500.3. Payment** is supplemented by the following:

**G.** Payment for the remainder of the lump sum bid for “Mobilization” will be made after all submittals are received, final quantities have been determined and when any separate vegetative establishment and maintenance, test and performance periods provided for in the Contract have been successfully completed.



**SPECIAL PROVISION**

**502---033**

**Barricades, Signs, and Traffic Handling**

For this project, Item 502, “Barricades, Signs, and Traffic Handling,” 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 502.4. Payment, Section C. Maximum Total Payment Prior to Acceptance** is voided and replaced by the following:

**C. Maximum Total Payment Prior to Acceptance.** The total payment for this Item will not exceed 10% of the total Contract amount before final acceptance in accordance with Article 5.8, “Final Acceptance.” The remaining balance will be paid in accordance with Section 502.4.E, “Balance Due.”



**NORTH TEXAS TOLLWAY AUTHORITY**  
**SPECIAL PROVISION TO ITEM 6014**  
**“FIBER OPTIC CABLE”**

For this project, Item 6014, “Fiber Optic Cable” of the Special 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 6014.8 Measurement** is voided and replaced by the following:

This Item will be measured as follows:

- A. Fiber Optic Cable.** By the linear foot of cable furnished, installed and tested. This is a plans quantity measurement Item. The quantity to be paid is the quantity shown in the proposal, unless modified by Article 9.2, “Plans Quantity Measurement.” Additional measurements or calculations will be made if adjustments of quantities are required.
- B. Furnish Fiber Optic Cable.** By the foot of cable furnished and tested.
- C. Fiber Optic Splice Enclosure.** By each fiber optic splice enclosure furnished, installed, connected and tested.
- D. Furnish Fiber Optic Splice Enclosure.** By each fiber optic splice enclosure furnished and tested.
- E. Fiber Optic Cable Road Marker.** By each fiber optic cable road marker furnished and installed.
- F. Fiber Optic Cable Test Station.** By each fiber optic cable test station furnished, installed, connected and tested.
- G. Fiber Optic Patch Panel.** By each fiber optic patch panel furnished, installed, connected and tested.
- H. Furnish Fiber Optic Patch Panel.** By each fiber optic patch panel furnished and tested.
- I. Fiber Optic Termination.** By each fiber optic termination connected and tested. This is a plans quantity measurement Item. The quantity to be paid is the quantity shown in the proposal, unless modified by Article 9.2, “Plans Quantity Measurement.” Additional measurements or calculations will be made if adjustments of quantities are required.
- J. Fiber Optic Splice.** By each fiber optic splice connected and tested. This is a plans quantity measurement Item. The quantity to be paid is the quantity shown in the proposal, unless modified by Article 9.2, “Plans Quantity Measurement.” Additional measurements or calculations will be made if adjustments of quantities are required.

**Article 6014.9 Payment** is voided and replaced by the following:

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

- A. **"Fiber Optic Cable"** of the type, and number of fibers as applicable. This price is full compensation for furnishing and installing all cable; for relocating cables as required; for pulling through conduit or duct; testing; splicing; connecting; and for materials, equipment, labor, tools, documentation, warranty, training and incidentals.
- B. **"Fiber Optic Cable (FURNISH ONLY)"** of the type, and number of fibers as applicable. This price is full compensation for furnishing, testing, certifying, documentation, and incidentals.
- C. **"Fiber Optic Splice Enclosure"**. This price is full compensation for furnishing, installing, testing, materials, labor, tools, accessories, test equipment, documentation, and incidentals.
- D. **"Fiber Optic Splice Enclosure (FURNISH ONLY)"**. This price is full compensation for furnishing, testing, test equipment, documentation, and incidentals.
- E. **"Fiber Optic Cable Road Marker"**. This price is full compensation for furnishing, installing, excavation, materials, labor, tools, accessories, documentation, and incidentals.
- F. **"Fiber Optic Cable Test Station"**. This price is full compensation for furnishing, excavation, installing, testing, materials, labor, tools, accessories, test equipment, documentation, and incidentals.
- G. **"Fiber Optic Patch Panel"** of the position specified. This price is full compensation for furnishing, installing, testing, materials, labor, tools, accessories, test equipment, documentation, and incidentals.
- H. **"Fiber Optic Patch Panel (FURNISH ONLY)"** of the position specified. This price is full compensation for furnishing, testing, test equipment, documentation, and incidentals.
- I. **"Fiber Optic Termination"**. This price is full compensation for furnishing, installing, testing, materials, labor, tools, accessories, test equipment, documentation, and incidentals.
- J. **"Fiber Optic Splice"**. This price is full compensation for furnishing, installing, testing, materials, labor, tools, accessories, test equipment, documentation, and incidentals.

## SPECIAL SPECIFICATION

### 6014

#### Fiber Optic Cable

1. **Description.** Furnish, install, splice, field terminate, and test the fiber optic cables.

2. **Materials.**

**A. General Requirements.** Provide new corrosion resistant materials that comply with the details shown on the plans and the requirements of this Item.

Provide splicing kits, fiber optic cable caps, moisture/water sealants, terminators, splice trays, fiber distribution housings, fiber distribution unit, fiber interconnect housing, fiber optic jumpers, and accessories to complete the fiber optic cable system. Furnish equipment for installation, splicing, and testing.

**B. Cable Requirements.** Furnish fiber optic cable suitable for underground conduit environment. There are 2 fiber classifications: multimode and singlemode. Use multimode fiber optic cable for video, voice, and data communications between the building and the field cabinets. Use singlemode fiber optic cable for voice, data, and video communications between buildings.

Splice or terminate fiber optic cables in field cabinets and buildings that comply with the details shown in the plans, and the requirements of this Item.

Furnish two fiber optic cables; one composed of multimode dual window (graded index) glass fibers, the other composed of singlemode glass fibers. Use fiber optic glass from Corning, Lucent, or approved equal.

Provide fiber optic cable from the same manufacturer.

**C. Optical Requirements.**

**Table 1  
Optical Requirements**

	Singlemode	Multimode	Multimode
<b>Cable Configuration:</b>			
Core Diameter (microns)	8.3 ± 1	50 ± 3	62.5 ± 3
Cladding Diameter (microns)	125 ± 1	125 ± 2	125 ± 2
<b>Attenuation (dB/km):</b>			
850 nm	N/A	2.5	3.5 or less
1300/1310 nm	0.4 or less	0.8	1.0 or less
1550 nm	0.3 or less	0.6	0.3
<b>Bandwidth (MHz-km):</b>			
850 nm	N/A	600	160 or higher
1300 nm	N/A	1000	500 or higher
<b>Dispersion (ps/nm-km):</b>			

	Singlemode	Multimode	Multimode
1310 nm	3.2	N/A	N/A
1550 nm	17	N/A	N/A

1. **Cable Configuration.** Provide a core/cladding size in accordance with Table 1 “Optical Requirements.”
2. **Attenuation.** Provide attenuation in accordance with Table 1, “Optical Requirements.”
3. **Bandwidth and Dispersion.** Provide bandwidth and dispersion in accordance with Table 1, “Optical Requirements.”

#### D. Mechanical Requirements.

1. **Fibers.** Provide the number of fibers as shown on the plans.
2. **Core/Clad Concentricity.** Provide an offset between the center of the core and cladding less than 0.8 microns for singlemode cable and less than 3.0 microns for multimode cable.
3. **Primary Coating.** Provide fiber with a coating diameter of  $245 \pm 10$  microns.
4. **Tensile Strength.** Provide a cable withstanding a pulling tension of 2700 N (600 lbf) without changing optical fiber characteristics or as directed.
5. **Bend Radius.** Provide a cable withstanding a bending radius of 10 times its outer diameter during operation, and 20 times its outer diameter during installation without changing optical fiber characteristics.
6. **Buffering.** Use a buffering tube or jacket with an outer diameter of 1.0 to 3.0 mm containing 6 individual fiber strands.
7. **Color Coding.** Provide separate color codes for each fiber buffer tube and different color codes within unit tubes or sub-bundles. Use color codes in accordance with TIA/EIA-598.
8. **Cable Configuration.** Provide cables with a reverse oscillation or planetary stranding structure.

Group each cable in sub-bundles of 6 or 12. Jacket construction and group configuration should separate at splice points to cut and splice 1 set of fibers while the others remain continuous. Submit cable designs for approval.

Strand loose buffer tubes around a dielectric central anti-buckling strength member. Provide dielectric aramid and/or fiber glass yarn strength members with specified strength for the cable. Provide cable with a water-blocking material, which is non-hygroscopic, non-nutritive to fungus, non-conductive, non-toxic, and homogeneous. Apply a polyethylene inner jacket over the cable core, and enclose entire cable with a polyethylene outer jacket.



Demonstrate crush and abrasion resistance of final cable design, and conduit installation under tensile loads and multiple bends.

**9. Diameter.** Provide a maximum 19 mm outer diameter for each cable or as directed.

**10. Environmental Requirements.** Provide cable that functions in a temperature range from -40°F to 158°F, and when immersed in water for indefinite periods of time.

**3. Construction.** Install fiber optic cable without changing the optical and mechanical characteristics of the cables.

Utilize available machinery, jacking equipment, cable pulling machinery with appropriate tension monitors, splicing and testing equipment, and other miscellaneous tools to install cable, splice fibers, attach connectors and mount hardware in cabinets employed with the above “Mechanical Requirements.” Avoid jerking the cable during installation. Adhere to the maximum pulling tensions and bending radii as specified by the manufacturer.

Use installation techniques and fixtures that provide for ease of maintenance and easy access to all components for testing and measurements.

**A. Installation in Conduit.** Install fiber optic cable in conduits. If required, relocate existing cable to allow new fiber optic cable routing in conduits.

When pulling the cable, do not exceed the bending radius. Use rollers, wheels, or guides that have radii greater than the bending radius. Provide separate grooved rollers for each cable when simultaneously pulling multiple cables. Use a lubricating compound to minimize friction. Use fuse links and breaks. Measure the pulling tension. Do not exceed a pulling tension of 2700 N (600 lbf).

Seal conduits with a 2 part urethane after installation of cable.

**B. Cable Installation between Pull Boxes and Cabinets/Buildings.** Do not break or splice a second interconnect cable to complete a run when pulling the cable from the nearest ground box to a cabinet or building. Pull sufficient length of cable in the ground box to reach the designated cabinet or building. Pull the cable through the cabinet to coil, splice, or terminate the cable in the cabinet or building. Avoid bending the cable beyond its minimum bend radius.

Coil and tie cable inside cabinet, building, or boxes for future splicing or termination as shown in the plans. Coat the open end of the coiled cable with protective coating and provide a dust cap.

**C. Splicing Requirements.** Splice fibers as shown on the plans, in accordance with TIA/EIA-568, TIA/EIA-758, or as directed.

Use the fusion technique on all splices. Use fusion splicing equipment recommended by the cable manufacturer. Clean, calibrate, and adjust the fusion splicing equipment at the start of each shift. Use splice enclosures, organizers, cable end preparation tools, and procedures compatible with the cable furnished.

Package each spliced fiber in a protective sleeve or housing. Re-coat bare fiber with a protective 8 RTV, gel or similar substance, prior to application of the sleeve or housing.

Perform splices with losses no greater than 0.10 dB for singlemode cable and 0.30 dB for multimode cable. Use an Optical Time Domain Reflectometer (OTDR) to test splices in accordance with Article 5.A.1. Record splice losses on a tabular form and submit for approval.

- D. Termination Requirements.** Provide matching connectors with 900 micron buffer fiber pigtails of sufficient length and splice the corresponding optical fibers in cabinets where the optical fibers are to be connected to terminal equipment. Buffer, strengthen, and protect fiber pigtails with dielectric aramid yarn and outer PVC jacket to reduce mishandling that can damage the fiber or connection. Use epoxy style connectors and not the crimp on connectors. Terminate multimode fiber optic cable with ST connectors and singlemode fiber optic cable with FC connectors, unless otherwise shown on the plans.

The connector pigtail/splice loss for complete connection at the patch panel in front of the terminal equipment shall not exceed a mean of 0.4 dB mated pair with a maximum loss of 0.75 dB. Maintain this loss characteristic for a minimum of 500 disconnections and reconnections with periodic cleanings. Qualify and accept connectors by the connector-to-connector mating using similar fibers.

Connectors shall meet the TIA/EIA-568 fiber optic test procedures for multimode and singlemode specifications. Test connections at the patch panel and splices made between cables to pigtails with the OTDR to verify acceptable losses.

Remove 5 ft. of unused optical fibers at the ends of the system from the buffer tube(s) and place coiled fibers into a splice tray. Clean the water blocking compound from all fibers destined for splice tray usage.

**E. Fiber Optic Accessories.**

- 1. Rack Mount Splice Enclosures.** Provide a 19 in. rack mounted splice enclosure module to hold spliced fibers as shown in the plans.

Splice or terminate fibers inside rack mounted fiber optic splice enclosures. Provide an enclosed unit enclosure designed to support a minimum of 4 cables, with each cable having 36 fibers. Provide enclosures that support up to 72 fiber optic connectors in bulkheads.

Provide splice enclosures containing mounting brackets with 4 cable clamps. Install cable according to manufacturer standards for the cable distribution panel.

- 2. Fiber Distribution Housings.** Install the cables according to manufacturer standards for the rack mount splice enclosure, fiber distribution housing, and splice trays.

Coil and protect a maintenance loop of at least 5 ft. of buffer tube inside the rack mount, fiber distribution housing, or splice tray. Allow for future splices in the event of a damaged splice or pigtail.

- a. **Cabinet.** Terminate or splice fibers inside the compact and modular fiber distribution housing in the cabinet. Provide a 9 in. x 17 in. x 11 in. (h x w x l) housing, each housing having 4 snap-in simplex connector panel modules, each module having 6 fiber termination/connection capabilities. Use a pre-assembled compact modular unit snap-in simplex connector panel module, with a removable cover having 6 pre-connectorized fiber pigtails, interconnection sleeves, and dust caps installed by the manufacturer. Provide a 12 fusion splice tray capability housing, each tray holding 12 fusion splices as shown in the plans. Stack splice trays on a rack to permit access to individual trays without disturbing other trays. Locate the rack on a pull-out shelf. Protect the housing with doors capable of pivoting up or down and sliding into the unit. Document the function of each terminated/spliced fiber, along with the designation of each connector on labels and charts on the housing door. Provide each housing with strain relief. Terminate multimode fiber optic cable with ST connectors and singlemode fiber optic cable with FC connectors, unless otherwise shown on the plans.

Install the fiber distribution housing as an integral unit as shown in the plans.

- b. **Building.** Provide a fiber distribution unit with a modular design allowing interchangeability of connector panel module housing and splice housing within the rack, as shown on the plans.

Provide the number of multimode and singlemode fibers, connector panel module housings, and splice housings for the fiber distribution unit in the building as shown on the plans.

Provide a fiber distribution unit less than 7 ft. in height, capable of housing 8 connector panel module housings or 8 splice housings. Protect the housing with doors capable of pivoting up or down and sliding into the unit.

Provide 12 snap-in simplex connector panel modules with each connector panel module housing, each module having 6 fiber termination/connector capabilities. Use a pre-assembled compact modular unit with a removable cover for the snap-in simplex connector panel module having 6 pre-connectorized fiber pigtails, interconnection sleeves, and dust caps installed by the manufacturer. Provide each connector panel module housing with a jumper routing shelf, storing up to 5 ft. (minimum) of cable slack for each termination within the housing. Provide the fiber distribution unit with strain relief.

Provide splice enclosure with 24 fusion splice tray capabilities, each splice tray holding 12 fusion splices. Stack splice trays on a rack to permit access to individual trays without disturbing other trays. Locate the rack on a pull-out shelf.

Document the function of each terminated/spliced fiber, along with the designation of each connector on labels and charts on the housing door.

Allow terminations only in the fiber interconnect housings placed in the cabinets as shown in the plans or as directed.

3. **Splice Trays.** Use splice tray and fan-out tubing for handling each fiber. Provide a splice tray and 6 fan-out tubing with each housing for use with the 245 microns coated fiber. The fan-out will occur within the splice tray (no splicing of the fiber required). Allow each tube to fan out each fiber for ease of connectorization. Provide fan-out tubing with 3 layers of protection consisting of fluoropolymer inner tube, a dielectric strength member, and a 2.9 mm minimum outer protective PVC orange jacketing.
4. **Jumpers.** Provide fiber optic jumper cables to cross connect the cable distribution panel to the fiber optic transmission equipment as shown in the plans or as directed. Match the core size, type, and attenuation from jumper to the cable. Use orange jumpers for multimode fiber, and a yellow for singlemode fiber, provide strain relief on the connectors. Provide fiber with a 900 micron polymer buffer, Kevlar strength member, and a PVC jacket with an outer jacket of 2.4 mm in diameter.

Provide 10 ft. long jumpers, unless otherwise shown on the plans. One end of each jumper shall have an ST connector and the other end shall be a connector that is suitable to be connected to the fiber optic transmission equipment selected.

Provide each cabinet with eight, 1 ft. each, 62.5/125 multimode fiber jumpers with ST connectors for testing purposes. After test completion, the 1 ft. jumpers will remain property of the Department.

- F. **Electronic Components.** Provide electronic components in accordance with Special Specification, "Electronic Components."
- G. **Mechanical Components.** Provide stainless steel external screws, nuts and locking washers. Do not use self-tapping screws unless approved. Provide corrosion resistant material parts and materials resistant to fungus growth and moisture deterioration. Separate dissimilar metals with an inert dielectric material.

4. **Documentation Requirements.** Provide 10 complete sets of operation and maintenance manuals with the following:

- Complete and accurate schematic diagrams showing the fiber optic cable system.
  - Complete performance data of the cable system showing the losses at each splice joint and each terminal connector.
  - Installing, splicing, terminating and testing procedures.
  - Complete parts list including names of vendors.
  - Complete maintenance and trouble-shooting procedures.
- A. **Installation Practice.** Submit for approval 10 copies of the Contractors Installation Practices thirty working days prior to installation. Submit practices for approval, which includes practices, list of installation equipment and splicing and test equipment. Detail field quality control procedures and corrective action procedures.
  - B. **Manufacturer's Certification.** Accompany each reel of fiber optic cable with the manufacturer's test data showing the conformance to the requirements in this Item.

**5. Testing.** Perform tests in accordance with testing requirements in this Item.

**A. Test Methods.**

**1. Optical Time Domain Reflectometer (OTDR) Tests.** Use the OTDR to measure fiber optic cable for overall attenuation (signal loss dB/km), fiber cable length, and identify fiber optic cable anomalies such as breaks. Perform 4 OTDR tests. They are follows:

- Acceptance test
- Post installation test
- Post termination test
- Final end to end test

OTDR Settings:

- a. Use the file name of the fiber scan to indicate the location or direction the test was run from, as well as the fiber number being tested.
- b. Set the “A” cursor at the beginning of the fiber trace and set the “B” cursor at the end of the fiber trace. The distance to cursor “B” indicates the length of the fiber cable segment being measured.
- c. Match the index of refraction to the index of the factory report.
- d. Set the loss indicator to dB’s/km for the acceptance test.
- e. The reflectance is automatically set internally by the OTDR.
- f. Set the pulse width at a medium range. Change the pulse width to a slow pulse width when an anomaly occurs on the fiber trace so that it can be examined closely.
- g. Set the average at medium speed. Change the average to slow when an anomaly appears on the fiber trace to allow for closer examination of the anomaly.
- h. Set wavelength at 850 nm and then at 1300 nm for multimode cable, set at 1310 nm and 1550 nm for singlemode cable so the cable is tested at both windows for each type of cable.

Show all settings on test result fiber scans.

**2. Pre-installation Tests.** Test and record the fiber optic cable at the site storage area prior to installation.

Test each optical fiber in the cable from 1 end with an OTDR compatible with wavelength and fiber type. Check testing for length, point discontinuity, and approximate attenuation. Record each measurement by color, location, and type of fiber measured. Perform a measurement from the opposite end of that fiber in case a measurement cannot be made from 1 end. Wait for notification if loss per Km

exceeds manufacturer's test data by more than 0.5 dB/km or point discontinuity greater than 0.2 dB.

Perform this test within 3 days from receipt of the fiber optic cable. Test overall attenuation (dB/km), total cable length, anomalies, or cable problems. Test cable at both windows (850 nm and 1300 nm for multimode and 1310 nm and 1550 nm for singlemode cable).

Compare factory test results with test results and return if test results are not identical to factory test results. If identical, document the test results. Deliver documentation for future reference.

- 3. Post-installation Tests.** Re-test and re-record each optical fiber in the cable after installation, before termination, for loss characteristics. Test both directions of operations of the fiber.

Immediately perform the post installation test after the fiber optic cable has been installed. Test cable for overall attenuation, cable segment length, and damage with the OTDR in accordance within this Item. Replace any cable segment that is damaged during the test and document test results. Deliver test results for future reference.

Use the same OTDR settings for Post Installation Test as the Pre-Installation Test.

- 4. Subsystem Tests.** Perform Network Subsystem Tests after integration to the fiber optic network. Test the capability of the fiber optic cable to transmit video and digital information. Complete and submit approved data forms for review and rejection or acceptance.

Correct and substitute components in the subsystem if the Subsystem Tests fail and repeat the tests.

Prepare and submit a report if a component was modified as result of the Subsystem Test failure. Describe in the report the failure and action taken to remedy the situation.

- B. Test Procedures.** Submit test procedures and data forms for the pre-installation, post-installation, subsystem, and system integration test for approval. Test procedures will require approval before performing tests. Submit 1 copy data forms containing data and quantitative results, as well as an authorized signature. Submit a copy of the OTDR results as a hard or electronic copy; supply original software packages and PC for OTDR results interpretation.
- C. Post Termination Test.** Perform the post termination test as the cable is terminated or spliced, whether there is termination of fiber cable to fiber cable or fiber cable to fiber pigtail. Check attenuation, fusion or termination point problems, and overall fiber cable segment. Determine if the attenuation and quality of the termination meets the specification; if not, repeat the termination until it meets specification requirements. Test the fiber segment for attenuation and anomalies after termination acceptance. Document and submit test results as stated in this Item after fiber segment acceptance.

Test the splices at 1300 nm for multimode and 1310 nm for singlemode and provide printouts of the splice tests. Take tests in both directions and record the average.

Use a launch reel of the same type of fiber to test the fusion splices on pigtails.

Use the same OTDR settings for Post Termination Test as the Post Installation Test and Pre-Installation Test, except move the “B” cursor to the middle of the termination or splice point. After the termination, return “B” cursor to the end of the fiber segment and measure overall length and attenuation.

- D. Final End to End Test.** Perform Final End to End Test after fiber cable segments of the system are terminated. Use the OTDR test as specified in this Item.

Perform the Final End to End Test:

1. Measure the overall fiber cable system length.
2. Measure the overall system attenuation.
3. And check for anomalies.

Document and submit results as stated in this Item, after test acceptance.

6. **Training.** Perform training in accordance with Article 3, Special Specification, “Testing, Training, Documentation, Final Acceptance, and Warranty.” Include the following training material: code compliance, pulling and installation techniques, use of installation tools, splicing and terminating equipment and test instruments, and methods of recording installation and test data. Furnish 10 copies of training material 30 days before training begins for approval.
7. **Warranty.** Provide a warranty in accordance with Article 6, Special Specification, “Testing, Training, Documentation, Final Acceptance, and Warranty.”
8. **Measurement.** This Item will be measured by the foot of cable furnished, installed, spliced, connected, and tested.
9. **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 “Fiber Optic Cable System” of the type, and number of fibers as applicable. This price is full compensation for furnishing and installing all cable; for relocating cables as required; for pulling through conduit or duct; testing; splicing; connecting; and for materials, equipment, labor, tools, documentation, warranty, training and incidentals.





CONTRACT NO. 03598-SWP-00-CN-IT  
BOND NO. \_\_\_\_\_

IN THE STATE OF §  
TEXAS §  
§  
COUNTY OF §  
COLLIN §

**PAYMENT BOND**

**KNOW ALL PERSONS BY THESE PRESENTS:**

That we \_\_\_\_\_ as Principal, hereinafter referred to as "Principal" and \_\_\_\_\_, a corporate surety/sureties, duly authorized to do business in the State of Texas, hereinafter referred to as Surety (whether one or more), are held and firmly bound unto the North Texas Tollway Authority, a political subdivision of the State of Texas, hereinafter referred to as "the Authority" in the penal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), lawful money of the United States, to be paid in Plano, Collin County, Texas, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, administrators, executors, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain contract with the Authority, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, attached hereto and incorporated herein for all purposes as if fully set forth herein, to furnish all materials, equipment labor and other accessories as defined by law, in the prosecution of the work provided for in said contract.

NOW, THEREFORE, the condition of this obligation is such that if the said Principal, shall pay all sub-contractors, workmen, laborers, mechanics, furnishers of material and claimants (as defined in Chapter 2253 of the Texas Government Code, as amended) supplying labor and material to him or sub-contractor in the prosecution of the work provided for in said contract, all monies to them owing by Principal for sub-contracts, work, labor, and materials furnished for the construction of such improvements for the North Texas Tollway Authority, then this obligation shall be and become null and void, otherwise to remain in full force and effect.

PROVIDED FURTHER, that if any legal action be filed on this Bond, venue shall lie in Collin County, Texas.

AND, that said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work

performed thereunder, or the plans, specifications, drawings, etc. accompanying same shall in any way affect its obligation on this Bond; and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work to be performed hereunder.

This bond is executed in compliance with the provisions of Chapter 2253 of the Texas Government Code, as amended.

IN WITNESS WHEREOF, the Principal and Surety have signed and sealed this instrument by duly authorized agents and officers and affixed corporate seal hereto on this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Principal

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

Title \_\_\_\_\_

Surety (Print First Name and Seal)

Surety (Print First Name and Seal)

\*By: \_\_\_\_\_  
(Title)

\*By: \_\_\_\_\_  
(Title)

\_\_\_\_\_  
TEXAS RESIDENT AGENT

\_\_\_\_\_  
Address

\_\_\_\_\_  
City/State/Zip

\*Note: If signed by an officer of the Surety Company, there must be on file a certified extract from the by-laws showing that this person has authority to sign such obligation. If signed by an Attorney-in-Fact, we must have a copy of the power of attorney for our files.

CONTRACT NO. 03598-SWP-00-CN-IT  
BOND NO. \_\_\_\_\_

IN THE STATE OF §  
TEXAS §  
§  
§  
COUNTY OF §  
COLLIN §

**PERFORMANCE BOND**

**KNOW ALL PERSONS BY THESE PRESENTS:**

That we \_\_\_\_\_ as Principal, hereinafter referred to as "Principal" and \_\_\_\_\_, a corporate surety/sureties, duly authorized to do business in the State of Texas, hereinafter referred to as Surety (whether one or more), are held and firmly bound unto the North Texas Tollway Authority, a political subdivision of the State of Texas, hereinafter referred to as "the Authority" in the penal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), lawful money of the United States, to be paid in Plano, Collin County, Texas, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, administrators, executors, successors, and assigns, jointly and severally, firmly by these presents.

**WHEREAS**, the Principal has entered into a certain contract with the Authority, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, attached hereto and incorporated herein for all purposes as if fully set forth herein, to furnish all materials, equipment labor and other accessories as defined by law, in the prosecution of the work provided for in said contract.

**NOW THEREFORE**, the condition of this obligation is such that if the said Principal shall faithfully perform said contract and shall in all respects duly and faithfully observe and perform all and singular the covenants, conditions, and agreements in and by said contract, agreed and covenanted by the Principal to be observed and performed, and according to the true intent and meaning of said contract and the plans and specifications therein referred to, and as well during any period of extension of said contract that may be granted on the part of the Authority, as during the original terms of same, then this obligation shall be and become null and void, otherwise to remain in full force and effect.

**PROVIDED FURTHER**, that if any legal action be filed on this Bond, venue shall lie in Collin County, Texas.

**AND**, that said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work performed thereunder, or the plans, specifications, drawings, etc. accompanying same shall in any way affect its obligation on this Bond; and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder.

This bond is executed in compliance with the provisions of Chapter 2253 of the Texas Government Code as amended.

**IN WITNESS WHEREOF**, the principal and the surety have signed this instrument by duly authorized agents and officers and affixed corporate seals hereto on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Principal

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

Surety (Print First Name and Seal)

Surety (Print First Name and Seal)

\*By: \_\_\_\_\_  
(Title)

\*By: \_\_\_\_\_  
(Title)

\_\_\_\_\_  
TEXAS RESIDENT AGENT

\_\_\_\_\_  
Address

\_\_\_\_\_  
City/State/Zip

\*Note: If signed by an officer of the Surety Company, there must be on file a certified extract from the by-laws showing that this person has authority to sign such obligation. If signed by an Attorney-in-Fact, we must have a copy of the power of attorney for our files.

# NORTH TEXAS TOLLWAY AUTHORITY

## “RETAINAGE BOND”

KNOW ALL PERSONS BY THESE PRESENTS, that we, (Contractor Name) \_\_\_\_\_  
 \_\_\_\_\_, hereinafter called the Principal, and (Surety Name) \_\_\_\_\_  
 \_\_\_\_\_, a corporation or firm duly authorized to transact surety business in the State  
 of Texas, hereinafter called the Surety (whether one or more), are held and firmly bound unto the North  
 Texas Tollway Authority, hereinafter called the Obligee, in the sum of ten percent (10%) of the total  
 amount paid to the Principal under the contract between the Principal and the Obligee for the project  
 described below (the “Contract”), including any increases due to change orders, changes in quantities of  
 work or materials, new items of work, or other additions as the Obligee may pay under the Contract, the  
 payment of which sum will be well and truly made in lawful money of the United States, and the said  
 Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors, and  
 assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into the Contract with the Obligee for the following project of the  
 Obligee, identified as: \_\_\_\_\_.

WHEREAS, under the Contract, the Principal is required before commencing the work under the Contract  
 to submit a retainage bond in the above amount duly and properly executed and delivered by the  
 Principal and the Surety;

NOW, THEREFORE, the condition of this obligation is such that if the Principal and its heirs, successors,  
 executors, and administrators shall fully indemnify and save harmless the Obligee from all costs and  
 damage from valid claims filed within 90 days of notification of acceptance of the work under the Contract  
 by any person or entity against the contract funds and shall fully reimburse the Obligee for amounts owed  
 by the Principal to the Obligee with regard to the Contract after notification of acceptance of the work  
 (including, without limitation, amounts for overpayments, liquidated damages, and other deductions or  
 damages owed by the Principal to the Obligee in connection with the Contract), then this obligation shall  
 be null and void; otherwise it shall remain in full force and effect.

Provided further, that the said Surety for value received hereby stipulates and agrees that no change,  
 extension of time, alteration or addition to the terms of the Contract, or to the work to be performed  
 thereunder, or the Specifications accompanying the same, shall in any ways affect the Surety’s obligation  
 on this bond. The Surety does hereby waive notice of any such change, extension of time, alteration or  
 addition to the terms of the Contract or to the work or the Specifications.

Signed this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

By: \_\_\_\_\_  
 (Principal Name)

\_\_\_\_\_  
 (Signature and Title of Principal)

\*By: \_\_\_\_\_  
 (Surety Name)

\_\_\_\_\_  
 (Signature of Attorney-in-Fact)

Impressed  
 Surety Seal  
 Only

\*Attach Power of Attorney (Surety) for Attorney-in-Fact



CONTRACT NO. 03598-SWP-00-CN-IT  
BOND NO. \_\_\_\_\_

IN THE STATE OF §  
TEXAS §  
§  
§  
COUNTY OF §  
COLLIN §

**WARRANTY BOND**

**KNOW ALL PERSONS BY THESE PRESENTS:**

That we \_\_\_\_\_ as Principal, hereinafter referred to as "Principal" and \_\_\_\_\_, a corporate surety/sureties, duly authorized to do business in the State of Texas, hereinafter referred to as Surety (whether one or more), are held and firmly bound unto the North Texas Tollway Authority, a political subdivision of the State of Texas, hereinafter referred to as "the Authority" in the penal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), lawful money of the United States, to be paid in Plano, Collin County, Texas, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, administrators, executors, successors, and assigns, jointly and severally, firmly by these presents.

**WHEREAS**, the Principal has entered into a certain contract with the Authority, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, attached hereto and incorporated herein for all purposes as if fully set forth herein, to furnish all materials, equipment labor and other accessories as defined by law, in the prosecution of the work provided for in said contract.

**WHEREAS**, by furnishing this warranty bond, the Principal is obligated to protect the Authority against any defects in the portion of the work under said contract that is described below, expressly including, but not limited to, defects in materials and workmanship.

**THE OBLIGATION TO PAY SAME** is conditioned as follows:

The Principal shall repair or replace any defects in the work under said Contract that are discovered to be defective in materials and/or workmanship at any time within two (2) years from the date of final acceptance.

**NOW THEREFORE**, the condition of this obligation is such that if upon receiving written notice of a defect in the Warranty Work, the said Principal shall begin to correct the said defect and/or replace the defective Warranty Work within seven (7) days after the Authority gives the Principal such notice (or within such other time as may be stipulated by the Engineer in writing delivered to the Principal), and the said Principal shall

thereafter diligently and continuously prosecute such repair and/or replace such defective Warranty Work to a completion satisfactory to the Authority, then this obligation shall be and become null and void, otherwise to remain in full force and effect.

**PROVIDED, HOWEVER, IF**, the Principal shall fail so to correct and/or replace defective Warranty Work, it is agreed that the Authority may cause any and all such defective Warranty Work to be remedied and/or replaced, with all associated costs thereof being borne by the Principal and the Surety under this Warranty bond.

**AND PROVIDED FURTHER**, that if any legal action be filed on this Bond, venue shall lie in Collin County, Texas.

**AND PROVIDED FURTHER**, that this bond shall automatically be increased by the amount of any change order or supplemental agreement which increases the Contract price related to the Warranty Work or any component thereof, but in no event shall a change order or supplemental agreement which reduces the Contract price decrease the penal sum of this Bond.

**AND PROVIDED FURTHER**, that said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work performed thereunder, or the plans, specifications, drawings, etc. accompanying same shall in any way affect its obligation on this Bond; and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder.







## CONTRACT

This contract made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ and \_\_\_\_\_ between the North Texas Tollway Authority, a regional tollway authority and a political subdivision of the State of Texas authorized and existing pursuant to Chapter 366 of the Texas Transportation Code, hereinafter referred to as the "Authority," and \_\_\_\_\_

\_\_\_\_\_ ,a \_\_\_\_\_, whose address is \_\_\_\_\_, hereinafter referred to as the "Contractor".

WHEREAS, the Authority desires to enter into a contract for the Project construction as shown and described in the plans, the Texas Standard Specifications, the Special Provisions, the Special Specifications, and the General Notes and Specification Data, included herein and all addenda thereto, and

WHEREAS, the Contractor has been engaged in and now does such work and represents that it is fully equipped, competent, and capable of performing the desired and herein outlined work, and is ready and willing to perform such work in accordance with the prices in the proposal and the provisions of the herein included Texas Standard Specifications as amended by the Special Provisions and the Special Specifications, the Proposal, the Plans, and all the addenda thereto.

NOW THEREFORE, for and in consideration of the prices in the proposal, said proposal being made a part of this contract for all purposes, the Contractor agrees to do, at its own sole cost and expense, all the work necessary for the Project improvement shown and described in the plans and in accordance with the provisions of the Texas Standard Specifications, the Special Provisions, the Special Specifications, the General Notes And Specification Data, and the Proposal, and all the addenda thereto, such addenda being \_\_\_\_\_, all of which are a part of this contract, and to render all services, deliver all materials, and furnish all equipment and labor required for the performance of this contract.

The work to be constructed under this contract shall have reached (a) the substantial completion (as defined in the Special Provision to Item 1) no later than April 25, 2014, and (b) the final completion (as defined in the Special Provision to Item 1) no later than May 30, 2014.

The Authority, in consideration of the full and true performance of said work by the Contractor, hereby agrees and binds itself to pay the Contractor for the quantities of

work performed in compliance with this contract at the respective unit prices set forth in the proposal, subject to adjustment as herein provided.

The Contractor expressly warrants that (a) to the best of Contractor's knowledge, no member, employee, or agent of the Authority has any interest, direct or indirect, in this contract, and (b) it has employed no third person to solicit or obtain this contract on its behalf, or to cause or procure the same to be obtained upon compensation in any way contingent, in whole or in part, upon such procurement, or in compensation for services in connection therewith, any brokerage commission or percentage upon the amount receivable by it hereunder; and (c) in estimating the price demanded by it hereunder, it has not included any sum by reason of any such brokerage, contract, commission or percentage, and that all monies payable to it hereunder are free from all obligations of any other person for services rendered, or supposed to have been rendered, in the procurement of this contract. It further agrees that any breach of this warranty shall constitute adequate cause for the annulment of this contract by the Authority or for the deduction from any sums due or to become due thereunder an amount equal to any brokerage, contract value, commission, or percentage so paid or agreed to be paid or both.

The undersigned signatory for the Contractor hereby represents and warrants that he/she has complete authority to execute this contract on behalf of the Contractor. The above-stated representation and warranty is made for the purpose of inducing the Authority to execute this contract.

It is acknowledged and agreed by both parties hereto that this contract and the documents referenced herein constitute the entire agreement between such parties for the construction of the work contemplated herein.

Upon execution, this contract will supersede all prior discussions and agreements of the parties relating to the subject matter hereof, by and between the Authority and the Contractor. This contract (including the Plans, the General Notes and Specification Data, the Texas Standard Specifications, the Special Provisions, the Special Specifications, the Proposals, and the Contract Bonds, incorporated by reference herein, and all the addenda and change orders herein or exhibits, schedules, and other attachments hereto) constitutes the final, complete, and exclusive understanding between the parties with respect to its subject matter and supersedes all prior or contemporaneous agreements, whether oral or written, in regard thereto. This contract cannot be amended or waived except by an agreement in writing signed by authorized representatives of both parties and specifically referring to this contract.

This contract shall be binding upon and inure to the benefit of the Authority, the Contractor, and their respective heirs, executors, administrators, successors, and permitted assigns, including without limitation any successor agency to the Authority.

**Standard Provisions:**

**Governing Law; Venue.** This contract shall be governed and construed in accordance with the laws of the State of Texas. The parties hereto acknowledge that venue is proper in Collin County, Texas, for all disputes arising hereunder and waive the right to sue or be sued elsewhere.

**Counterparts.** This contract may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

**Severability.** If any provision of this contract shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of said provision and of this contract shall not be affected thereby, and each provision of this contract shall be valid and shall be enforced to the fullest extent provided by law, unless such provision or the application of such provision is, in the sole determination of the Authority, essential to its rights hereunder, in which event the Authority may terminate this contract in accordance with the optional termination provisions herein.

**Non-Discrimination Policy.** The Authority is an equal opportunity employer. In conducting business with or on behalf of the Authority, the Contractor shall not discriminate against any person because of race, age, color, religion, sex, sexual orientation, gender identity, disability, veteran status, ancestry, national origin or place of birth.

**Captions Not A Part Hereof.** The captions and headings of the several sections, paragraphs, and divisions of this contract are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of this Agreement or the scope or content of any of its sections, paragraphs, divisions, or other provisions.

IN WITNESS WHEREOF, the parties have caused this Agreement to become effective as of the date first set forth above.

ATTEST:

\_\_\_\_\_

Secretary

THE AUTHORITY:

North Texas Tollway Authority,

a regional tollway authority and a political  
subdivision of the State of Texas

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

Executive Director

Gerald Carrigan

ATTEST:

\_\_\_\_\_

Secretary

THE CONTRACTOR:

a \_\_\_\_\_

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