# DEPARTMENT OF TRANSPORTATION AND INFRASTRUCTURE Province of Prince Edward Island

## TENDER FORM AND AGREEMENT Revision 0

**THIS AGREEMENT** made by and between ....., herein called the Contractor, the Party of the First Part and The Government of Prince Edward Island as represented by the Minister of the Department of Transportation and Infrastructure, herein called the Minister, the Party of the Second Part.

#### **WITNESS, AS FOLLOWS:**

#### 1. Definitions

The definition of terms used in this Tender Form and Agreement shall conform in all respects to the definition of terms contained in the document entitled "General Provisions and Contract Specifications for Highway Construction," published by the Department of Transportation and Infrastructure of the Province of Prince Edward Island as amended on the date of closing of Tenders pursuant to this Agreement.

#### 2. General Covenant

The Contractor hereby covenants and agrees with the Minister as herein provided in connection with the following work, namely:

#### Route 2 – Greenvale/Hunter River 2023

Section 00211, Station 8+900 – 12+100 Westbound Lane Section 00211, Station 8+900 – 11+200 Eastbound Lane

For a distance of 3.20 kilometres

The work begins approximately 365 metres west of the intersection of Route 2 and Little Bungay Road and proceeds west on Route 2 for approximately 3,200 metres.

**The work includes**: Cold planing the eastbound and westbound through lanes only (45 mm), placing asphalt seal B (45 mm) in cold planed area, and all other work necessary to complete the Contract.

TENDER CLOSES: 2:00 p.m., Thursday, August 24<sup>th</sup>, 2023

Queens County Highway Depot, 355 Brackley Point Road, Charlottetown, PEI

#### 3. No Implied Contract

It is hereby understood and agreed between the parties hereto that no implied Contract of any kind whatsoever, by, or on behalf, of the Minister shall arise or be implied from anything contained in this Contract, or from any position or situation of the parties at any time, and that this Contract made by the Minister is, and shall be, the only Contract upon which any rights against the Minister are to be founded.

### 4. How Party of the First Part is Read

Whenever this Contract is entered into by more than one party or parties of the first part, the word "Contractor" shall be read "Contractors," and pronouns in the Contract referring to the Contractors shall be read as plural and whenever a corporation is the Party of the First Part, the said pronouns shall be read accordingly.

#### 5. Consideration of Clauses as Covenants

Wherever it is stipulated that anything shall be done or performed by either of the Parties hereto, it shall have the same effect and be constructed as if such Party had entered into a covenant with the other Party to do or perform the same, and as if such covenant had been expressly made on the part of the Contractor, not only on the Contractor's own behalf, but also on the behalf of the Contractor's legal representative, successors or assigns; and as if any such covenant on the part of the Minister has been made on behalf of the Minister, and the Minister's successors in office.

#### 6. Contractors Submission Respecting the Agreement

The Contractor shall, as part of the Contractor's submission respecting this Contract, complete the attached Schedule B, Identification of Principles; Schedule C, Schedule of Tendered Unit Prices; Schedule D, Schedule of Equipment to be used on the work; and Schedule E, Schedule of Sub-Contractors.

The Contract including all appended schedules shall be completed in complete conformity with the instructions to bidders contained in the document entitled "General Provisions and Contract Specification for Highway Construction".

In presenting the Contractor's submission for consideration by the Minister, the Contractor understands that until, and unless, the Contract is endorsed by the Minister, no Contract between the parties shall exist and the Minister shall not be bound to endorse any Contract.

### 7. Performance by Contractor

The Contractor, at the Contractor's own expense, shall, except as herein otherwise specifically provided, furnish and provide all and every kind of labour and superintendence, services, tools, implements, machinery, plant materials, articles and whatsoever is necessary for the due execution of the work. The Contractor shall fully construct and erect the work in the most thorough, professional and substantial manner, in every respect to the satisfaction and approval of the Engineer. The Contractor shall complete the work within the time specified herein and deliver it to the Minister in the manner and upon the terms and conditions of the Contract.

#### 8. Bid and Performance Security

The Contractor hereby and herewith deposits with and delivers to the Minister, as security of the due fulfilment of the Contract, one of the following, which shall remain in effect for a minimum of 30 days after tender closing:

- a) a certified cheque equal to or greater than the amount stipulated in Schedule A –
   Schedule of Special Provisions, or
- b) a bank draft equal to or greater than the amount stipulated in Schedule A Schedule of Special Provisions, *or*
- c) a bid format irrevocable standby letter of credit on a government approved form equal to or greater than the amount stipulated in Schedule A Schedule of Special Provisions, or
- d) a bid bond equal to or greater than the amount stipulated in Schedule A Schedule of Special Provisions. The bond shall be from a surety company authorized to carry on business in Canada guaranteeing to supply a performance bond equal to 50% of the Contract value, excluding HST and a labour and material bond equal to 25% of the Contract value, excluding HST.

Performance security must be filed with the Department before work on the project commences. This security shall be held and retained by the Minister for the due and faithful performance, observance and fulfilment by the Contractor of all the covenants, provisos, agreements, conditions and reservations in this Contract contained on the part of the Contractors to be observed, performed and complied with shall be in the form of:

- e) a certified cheque in the minimum amount of ten percent (10%) of the Contract value, excluding HST, which shall be retained until the warranty period (one (1) year after substantial completion) has elapsed, *or*
- f) a bank draft in the minimum amount of ten percent (10%) of the Contract value, excluding HST, which shall be retained until the warranty period (one (1) year substantial completion) has elapsed, *or*
- g) a performance format irrevocable standby letter of credit on a government approved form in the minimum amount of ten percent (10%) of the Contract value, excluding HST, which shall be retained until the warranty period (one (1) year after substantial completion) has elapsed. A performance standby letter of credit must have an automatic renewal clause within the body of the agreement, *or*
- h) a performance bond equal to 50% of the Contract value, excluding HST and a labour and materials bond equal to 25% of the Contract value, excluding HST both of which shall be retained until the warranty period (one (1) year after substantial completion) has elapsed.

All performance security which has an expiry date which precedes the end of warranty date must be renewed prior to the time that the security would expire. The bidder will forfeit security to the Minister if the bidder fails to enter into or carry out the Contract when called upon to do so.

It is understood and agreed that the Contractor assumes risk and must bear any loss in respect to the performance security as aforesaid, occasioned by the failure or insolvency of the banks on which any cheque was drawn or in which any deposit was made in connection with the security aforesaid.

If at any time hereafter the said Contractor should make default under the said Contract, or if the Minister acting under the powers reserved in the said Contract shall determine that the said works, or any portion thereof remaining to be done, should be taken out of the hands of the Contractor and be completed in any manner or way whatsoever than by the Contractor, or if the Contractor refuses or neglects to pay for work done or materials supplied by any person in

### Route 2 – Greenvale/Hunter River 2023 Page 4 of 16 Rev. 0

connection with the said work, the Minister may, in either case dispose of said security for the carrying out of the construction and completion of the work of the Contract or for paying any salaries or wages for work done, or any accounts for materials supplied for the said works that may be left unpaid by the said Contractor.

In the event of any breach, default or non-performance being made or suffered by the Contractor in or in respect of any of the terms and conditions, covenants, provisions, agreements, or restrictions herein contained, which on the part of the said Contractor should be observed, performed or complied with, the said security so delivered to or deposited with the Minister or by the Minister received in respect thereof, shall by the Contractor, be forfeited absolutely to the Minister.

Upon the due and faithful performance, observance and fulfilment by the Contractor of all the terms, provisions, covenants, agreements, conditions, reservations, hereinbefore contained, on the part of the Contractor to be observed, performed and complied with, the Minister shall surrender the performance security.

### 9. Minister Covenants to Pay

In consideration of the faithful performance by the Contractor of all and singular covenants, agreements and provisions of the Contract, the Minister hereby covenants and agrees with the Contractor that, on the full completion by the Contractor of all the work as specified in the Contract, within the time specified and limited for the final completion thereof, and to the entire satisfaction of the Engineer to be evidenced by the certificate of the Engineer in writing, the said Minister will well and truly pay, or cause to be paid, to the said Contractor the amount of the Contract price, representing the actual quantities in the several items in the Schedule of Prices, identified as Schedule C to this Contract, at the unit prices or lump sum prices quoted by the Contractor. This amount paid to the Contractor as above, shall include all and every kind of work, labour, superintendence, services, tools, implements, machinery, plant materials, articles and things whatsoever necessary for the full execution and completion of the work to the entire satisfaction of the Engineer.

#### 10. Final Payment

It is hereby agreed by the parties hereto that the payment of the final amount due under the Contract, and the adjustment and payment of any bills that may be rendered for work done, in accordance with any alteration in or addition to the same, shall release the Minister from any and all claims or liability on account of work performed under the said Contract or any alteration in or addition to the same.

#### 11. No Waiver

It is hereby agreed that no condoning, excusing, or overlooking by the Minister, or any person acting on the Minister's behalf on previous occasions of breaches or defaults similar to that for which any action is taken or power is exercised, or forfeiture is claimed or enforced against the Contractor, shall be taken as a waiver of any provisions of the Contract, or as defeating, affecting or prejudicing in any way the right of the Minister under the Contract.

#### 12. Components of the Contract

Any and all plans or drawings prepared by the Department, the document titled "General Provisions and Contract Specifications for Highway Construction", the advertisement, the Tender Form and Agreement together with Schedule A, Schedule of Special Provisions; Schedule B, Identification of Principals; Schedule C, Schedule of Tendered Unit Prices; Schedule D, Schedule of Equipment; and Schedule E, Schedule of Sub-Contractors, as well as any addenda which may be issued by the Department pursuant to this Contract shall hereby be a part of this Contract as fully and to the same effect as if the same had been set forth at length in the body of the Contract.

#### 13. Completion of Work

The Contractor agrees to complete the work on, or before October 27, 2023.

#### 14. FOIPP Clause

- 1. By submitting your bid, you agree to disclosure of the information supplied, subject to the provisions of the Freedom of Information and Protection of Privacy Act (FOIPP).
- Anything submitted in your bid that you consider to be "confidential information" because
  of its proprietary nature should be marked as "confidential" and will be subject to
  appropriate consideration under the Freedom of Information and Protection of Privacy
  Act.
- 3. During the delivery and installation of goods and/or services, you may have access to confidential or personal information. Should this occur, you must ensure that such information is not released to any third party or unauthorized individual.
- 4. Any information provided on this Contract may be subject to release under the Freedom of Information and Protection of Privacy Act. You will be consulted prior to the release of any information.

#### 15. Work Conditions

The Contractor agrees to accept sole responsibility to comply with all federal, provincial and municipal legislation which may have application to the Work and agrees to comply with all provincial and federal legislation affecting conditions of work and wage rates including the Employment Standards Act R.S.P.E.I. 1988, Cap. E-6.2, the Workers Compensation Act R.S.P.E.I. 1988, Cap. W-7.1, or any other laws that impose obligations in the nature of employers' obligations. The Contractor agrees to follow the Public Service Commission Human Resource Policies 9.05 Violence in the Workplace Policy; 9.08 Drug, Alcohol, and Medication Policy, and 11.01 Policy for the Prevention and Resolution of Harassment in the Workplace while working on Government sites, in Government vehicles or alongside Government staff.

https://psc.gpei.ca/sites/psc.gpei.ca/files/HRPolicy/HRManual\_9.05.pdf https://psc.gpei.ca/sites/psc.gpei.ca/files/9.08%20DrugAlcoholAndMedicationPolicy.pdf https://psc.gpei.ca/files/PDF%20Files/hrp-manual/hrppm 11.01.pdf

The Contractor agrees to accept the full cost of doing those things required under this paragraph and will not charge or seek reimbursement from the Owner in any way, such costs having been taken into consideration and included in the rates of payment stipulated in this Agreement.

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**IN WITNESS WHEREOF** the parties hereto have hereby caused these presents to be signed and sealed on the dates stated.

SIGNED, SEALED AND DELIVERED by the Contractor on the [ ] day of [ ], 20[ ].	SIGNED, SEALED AND DELIVERED by the Minister on the [ ] day of [ ], 20[ ].
CONTRACTOR	MINISTER
(Authorized Signing Officer)	
In the presence of:	In the presence of:
(Witness Signature)	(Witness Signature)

# SCHEDULE A SCHEDULE OF SPECIAL PROVISIONS

#### 1. SECTION 100 - GENERAL PROVISION

The 2023 PEIDTI General Provisions and Contract Specifications for Highway Construction shall apply to this contract and is available online at:

https://www.princeedwardisland.ca/en/publication/general-provisions-and-contract-specifications-for-highway-construction

#### 2. INSTRUCTIONS TO BIDDERS

The stipulated bid security amount shall be a minimum of \$70,000.00. Upon award, the successful Contractor shall replace the Bid Security with the Performance Security.

A mandatory preconstruction meeting between the successful Contractor and the Department shall be held in advance of construction startup, location to be determined.

#### 3. SECTION 102.13 - SCHEDULING OF THE WORK

The number of working days stipulated for this Contract is **10**. These working days shall be consecutive. The Contractor is not required to submit a schedule for this project. Liquidated damages will be assessed beyond the number of working days specified above as well as the completion date as noted in this tender form and agreement. The Contractor must advise both the Project Manager and Materials Testing Lab no later than 3:00pm the previous day from when work on a project is to start, or when the work plan changes where Department staff are required. Failure to do this may result in the work for that day not being permitted

#### 4. SECTION 501 - ASPHALT CEMENT

#### (Item 50101 - Asphalt Cement)

Contractors shall note that for bidding purposes an artificial rack price of \$1200 per tonne shall replace the Government's posted Monthly Average Asphalt Binder Rack Price table for this Contract. The artificial rack price of \$1200 per tonne shall be used as the price index when calculating the liquid asphalt cement price adjustment.

#### 5. SECTION 501 - ASPHALT CEMENT

#### (Item 50109 - Surcharge for Polymer Liquid Asphalt)

Performance Graded Asphalt Cement (PGAC) on this contract shall comply with AASHTO M332 for the surface mix and shall be graded as PG 58-28H. Additionally the PGAC shall meet the elastic recovery requirements detailed in Appendix X1 of AASHTO M332. Note, when ordering the PGAC to include reference to the specification, grade with designation and the appendix (e.g., M332, PG 58-28H, Appendix X1).

The unit bid price for the above listed item shall be full compensation for supply, haul, storage, and use of this product in lieu of PG 58-28. No additional compensation shall be provided.

#### 6. SECTION 603.15 - HOT MIX ASPHALTIC CONCRETE - SMOOTHNESS

Section 603.15 shall not apply to this Contract.

#### 7. SECTION 716 - COLD PLANE AND STOCKPILE

#### (Item 71601 - Cold Plane and Stockpile)

This item shall be for the cold planing of the existing asphalt surface in the eastbound and westbound through lanes only (45mm).

RAP material shall be hauled to a location determined by the Department and stockpiled. The cold planing of asphaltic concrete shall be paid for at the unit bid price per square metre and this shall be full compensation for cold planing, loading, transporting, stockpiling, equipment, tools, labour, and incidentals necessary to complete the work.

Open haul rates shall apply to this item. A price adjustment shall apply based on the haul distance to the designated site and will be calculated using PEI DTI's Standard Negotiated Rates.

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8. SECTION 907 - VEHICLE CONFIGURATIONS AND RESTRICTIONS The SADT on this project shall be understood to be 13,689.

# SCHEDULE B IDENTIFICATION OF PRINCIPALS

Name of Contractor:	
Mailing Address:	
Telephone:	
Email:	
Principal's Name:	
Title:	
Mailing Address:	
If Contractor is a corp	poration in which province of Canada is the corporation registered:

Project Number: 6473

RTE 2 - GREENVALE/HUNTE

## Department of Transportation and Infrastructure Province of Prince Edward Island

-21349

Estimate: 5221 Length: 3.200 kı

Schedule C

Page 1 of 2 31 Jul 2023

3.200 ki schedule of item for tender

Item Description	and Price			Est	imated Quantity	Contractor Total Price
ASPHALT CEMENT						
Section: 501	Item: 50101					
				PER Tonnes		
		\$		PER Tonnes	150.00 \$	
			100			
SURCHARGE FOR P	OLYMER LIQUID	ASPHAL1				
Section: 501	Item: 50109					
				PER Tonnes		
		\$		PER Tonnes	150.00 \$	
			100			
TACK COAT						
Section: 601	Item: 60101					
				PER Square Metr	ı	
		\$		PER M2	21,500.00 \$	
			100		_	
ASPHALT SEAL: B						
Section: 603	Item: 60350					
				PER Tonnes		
		\$		PER Tonnes	2,350.00 \$	
			100		_	
COLD PLANE CONS	T. JOINT					
Section: 705	Item: 70501					
				PER Square Metr	l	
		\$		PER M2	150.00 \$	
			100		_	
COLD PLANE AND S	TOCKPILE					
Section: 716	Item: 71601					
				PER Square Metr		
		\$		PER M2	21,500.00 \$	
			100			
				Total Carrie	ed Forward \$	
				From Previ		
				Total Carrie	ed Forward \$ _	

Project Number: 6473

**RTE 2 - GREENVALE/HUNTE** 

## Department of Transportation and Infrastructure Province of Prince Edward Island

-21349

Estimate: 5221 Length: 3.200 kı

Schedule C

Page 2 of 2 31 Jul 2023

schedule of item for tender

Item Descrip	tion and Price		Estimated Quantity	Contractor Total Price
SIGNALLERS				
Section: 901	Item: 90101			
		 PER hrs		
Twenty-Six Dollars a	ind 16 Cents	\$ 26.16 PER hrs	1,000.00 \$	26,160.00
		100	_	
TEMPORARY MA	RKING			
Section: 905	Item: 90501			
		 PER Metres		
		\$ PER M	30.00 \$	
		100	_	
RAISED TEMPOR	RARY MARKING			
Section: 905	Item: 90502			
		 PER unit		
		\$ PER unit	20.00 \$	
		100	_	
TRAFFIC CONTR	OL PLAN			
Section: 908	Item: 90802			
		 PER hrs		
Forty Dollars and 00	Cents	\$ 40.00 PER hrs	120.00 \$	4,800.00
		 100		

Total Carried Forward \$ From Previous Page	
Total Carried Forward \$	
HST\$	

**Grand Total\$** 

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# SCHEDULE D SCHEDULE OF EQUIPMENT TO BE USED ON THE WORK

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# SCHEDULE E SCHEDULE OF SUB-CONTRACTORS

# SCHEDULE F ADDITIONAL FUEL ADJUSTMENTS

#### Payment Adjustment for Fuel Cost

Compensation payable to the Department or the Contractor shall be based on the difference in the IRAC posted wholesale price of diesel 24 hours prior to tender closing of the Contract (Tender Fuel Price) and the IRAC posted wholesale price when the work was completed for the applicable item. This shall be calculated in accordance with the following:

The Department shall adjust payments to the Contractor under the applicable Item in the Contract Document based on the Island Regulatory and Appeals Commission (IRAC) historical Petroleum prices for Wholesale Diesel. The price is available on the IRAC website: https://irac.pe.ca/petrol/current-petroleum-prices/

The payment adjustment will be established for each IRAC approved adjustment during the time that Work is performed on any of the items in Table 1 and when the Wholesale Price (WP) differed from the Tender Fuel Price (TFP) by more than 5%.

The adjustments will be calculated using the Nominal Fuel Consumption Rates (NFCR) in Table 1 and the formulae shown below. The Department shall submit a statement to the Contractor identifying, by Item, the Fuel Adjustment (FA), the associated NFCA, and the Material Quantity (MQ) as identified on the previous Progress Estimate

Table 1
Nominal Fuel Consumption Rates (NFCRs) by Item

Item #	Description	NFCR
20306/20307	Excavation	1.0 L/m <sup>3</sup>
20601/20602/20603/20604	Borrow	0.5 L/t or 1.0 L/m <sup>3</sup>
20701	Aggregate Base/Subbase	0.6 L/t
60301/60326/60350/61003	Asphalt Base/Seal	5.0 L/t

The payment adjustment shall be calculated as follows, where:

FA = Fuel Adjustment

WP = Wholesale Price

TFP = Tender Fuel Price (posted price 24 hrs prior to tender closing)

NFCR = Nominal Fuel Consumption Rate

MQ = Material Quantity

When WP >1.05 TFP, the FA is an additional payment to the Contractor as follows:

 $FA = (WP - 1.05TFP) \times NFCR \times MQ$ 

When WP < 0.95 TFP, the FA is a deduction from payments due to the Contractor as follows:

 $FA = (WP- 0.95TFP) \times NFCR \times MQ$ 

#### **Examples:**

- A Contractor completes placement of 10,000 tonnes of select borrow and 5,000 tonnes of granular
   A. During the work period, IRAC approved four adjustments to the Wholesale diesel price which
   are as follows: \$1.11/L, \$1.15/L, \$1.23/L & \$1.26/L. The price of wholesale diesel 24 hours prior
   to the tender closing was \$0.90/L.
  - a) Within the first fuel adjustment IE. when the diesel price was \$1.11/L, 8,000 tonnes of borrow was placed and no granular was placed.
  - b) Within the second fuel adjustment IE. when the diesel price was \$1.15/L, 2,000 tonnes of borrow was placed and 1,500 tonnes of granular was placed.
  - c) Within the third adjustment IE. when the diesel price was \$1.23/L, 2,000 tonnes of granular was placed.
  - d) Within the final adjustment IE. when the diesel price was \$1.26/L, 1,500 tonnes of granular was placed.

#### Calculation

FA = Fuel Adjustment

NFCR = Nominal Fuel Consumption Rate, = 0.5l/t for borrow, = 0.6l/t for granular

#### MQ = Material Quantity

	Borrow	Granular
Work @ \$1.11 =	8,000t	0
Work @ \$1.15 =	2,000t	1,500t
Work @ \$1.23 =	0	2,000t
Work @ \$1.26 =	0	1,500t

TFP = Tender Fuel Price = \$0.90/L

WP is greater than 1.05\*TFP therefore FA = (WP – 1.05TFP) x NFCR x MQ

	[			NFCR		
		WP	(WP - 1.05TFP) (\$/I)	(I/t)	MQ (t)	Payment (\$)
Work @					•	
\$1.11	Borrow	\$1.11	\$0.17	0.5	8000	\$680.00
	Granular	\$1.11	\$0.17	0.6	0	\$0.00
Work @						
\$1.15	Borrow	\$1.15	\$0.21	0.5	2000	\$210.00
	Granular	\$1.15	\$0.21	0.6	1500	\$189.00
Work @						
\$1.23	Borrow	\$1.23	\$0.29	0.5	0	\$0.00
	Granular	\$1.23	\$0.29	0.6	2000	\$348.00
Work @						
\$1.26	Borrow	\$1.26	\$0.32	0.5	0	\$0.00
	Granular	\$1.26	\$0.32	0.6	1500	\$288.00

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- 2. A Contractor completes placement of 4,500 tonnes of asphalt. During the work period, IRAC approved four adjustments to the Wholesale diesel price which are as follows: \$0.80/L, \$0.82/L, \$0.88/L & \$0.80/L. The price of wholesale diesel 24 hours prior to tender closing was \$1.35/L.
  - a) Within the first adjustment IE. when the diesel price was \$0.80/L, 1,200 tonnes of asphalt was placed.
  - b) Within the second fuel adjustment IE. when the diesel price was \$0.82/L, 1,000 tonnes of asphalt was placed
  - c) Within the third fuel adjustment IE. when the diesel price was \$0.88/L, 900 tonnes of asphalt was placed.
  - d) Within the final fuel adjustment IE. when the diesel price was \$0.80L, 1,400 tonnes of asphalt was placed.

#### Calculation

FA = Fuel Adjustment

NFCR = Nominal Fuel Consumption Rate = 5 l/t for seal

MQ = Material Quantity

Work @ \$0.80 = 1,200t

Work @ \$0.82 = 1,000t

Work @ \$0.88 = 900t

Work @ \$0.80 = 1,400t

TFP = Tender Fuel Price = \$1.35/L

WP is less than 0.95\*TFP therefore FA = (WP - 0.95\*TFP) x NFCR x MQ

	WP	(WP-0.95*TFP) (\$/I)	NFCR (I/t)	MQ (t)	Payment (\$)
Work @ \$0.80	\$0.80	-\$0.48	5	1200	-\$2,880.00
Work @ \$0.82	\$0.82	-\$0.46	5	1000	-\$2,300.00
Work @ \$0.88	\$0.88	-\$0.40	5	900	-\$1,800.00
Work @ \$0.80	\$0.80	-\$0.48	5	1400	-\$3,360.00

-\$10,340.00 Deduction