

COST SHARING AGREEMENT
FOR DITCH H REHABILITATION PROJECT

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

This Cost Sharing Agreement for Ditch H Rehabilitation Project ("Agreement") is made and entered into as of the last date signed by the parties hereto, by and among Fort Bend County Levee Improvement District No. 2 , a political subdivision of the State of Texas ("LID 2"); Fort Bend County Drainage District, a political subdivision of the State of Texas ("FBCDD"); and Fort Bend County Levee Improvement District No. 17, a political subdivision of the State of Texas ("LID 17") (collectively, the "Parties").

RECITALS

WHEREAS, Ditch H is a major outfall drainage channel that begins near the intersection of Highway 90A and State Highway 6 and serves property within the boundaries of LID 2, LID 17, the City of Sugar Land (the "City"), and certain unincorporated areas within Fort Bend County ("Ditch H");

WHEREAS, LID 2 constructed and financed the original improvements to Ditch H;

WHEREAS, LID 17 was created after initial construction of Ditch H to provide drainage protection for the developed property within its boundaries;

WHEREAS, LID 17 determined it would be most cost effective to utilize Ditch H to provide outfall drainage for property within LID 17;

WHEREAS, in 2002, LID 2, FBCDD, and the City commissioned a study regarding the drainage capacity in Ditch H;

WHEREAS, based on that study, LID 2, FBCDD, and the City determined that it was necessary to undertake additional excavation to expand the drainage capacity in Ditch H and to reconstruct the existing drop structure in Ditch H and to install erosion protection near such drop structure;

WHEREAS, the Parties and the City entered into a Cost Sharing Agreement For Ditch H Expansion and Improvements to jointly finance the improvements to Ditch H to

serve the developed property in LID 17 and to better serve property within LID 2 and certain unincorporated areas within the County and the City (the "Expansion Project");

WHEREAS, since completion of the Expansion Project, erosion has occurred in certain locations behind the vertical walls of the concrete drop structure in Ditch H; and

WHEREAS, the Parties have determined that it is necessary to carry out work to restore the areas behind the vertical walls of the concrete drop structure in Ditch H to maintain its structural integrity; NOW, THEREFORE:

AGREEMENT

For and in consideration of the mutual promises, covenants, obligations and benefits in this Agreement, LID 2, FBCDD, and LID 17 contract and agree as follows:

Recitals. The recitations and recitals set forth above are declared true and correct and are hereby incorporated as part of this Agreement.

Definitions. Throughout this Agreement, the following terms and expressions as used in this Agreement shall have meanings as follows.

"City" means the City of Sugar Land, Texas.

"FBCDD" means the Fort Bend County Drainage District.

"LID 2" means Fort Bend County Levee Improvement District No. 2.

"LID 17" means Fort Bend County Levee Improvement District No. 17.

"Party" or "Parties" according to the context, means one or more of LID 2, LID 17, and FBCDD.

"Project Design" means the design of the Rehab Project.

"Project Costs" means costs incurred by LID 2 in procuring and carrying out the work necessary for the completion of the Rehab Project.

"Rehab Project" means the improvements to restore the areas behind the vertical walls of the concrete drop structure in Ditch H to maintain its structural integrity, as shown on **Exhibit A** attached hereto.

Rehab Project Administration and Scope of Work

Project Manager. The Parties hereby designate LID 2 as project manager for purposes of (1) procuring and overseeing performance of services necessary for the completion of the Rehab Project; (2) coordinating the collection of amounts owed pursuant to the terms and provisions of this Agreement; (3) administering this Agreement; and (4) such other actions as may be reasonably necessary to implement the provisions and purposes of this Agreement. LID 2 agrees to use its best efforts and due diligence to cause the Rehab Project to be completed in accordance with and subject to the terms of this Agreement. It is the intention of the Parties that all common expenses incurred by LID 2 in carrying out the Rehab Project and under this Agreement shall be shared by the Parties in accordance with this Agreement. LID 2 shall preserve the books, records, charges, and other records relating to all such costs and make them available during reasonable business hours in order for any Party to inspect to the extent necessary to verify their accuracy. If any such inspection reveals any inaccuracy in such billings heretofore made, the necessary adjustment shall be promptly made by LID 2.

Scope of Work for the Rehab Project. The Parties agree that the scope of work for the Rehab Project shall be the scope of work outlined in the proposal from Beyer Construction, LLC (the "Contractor") attached hereto as **Exhibit B** (the "Proposal").

Construction of the Rehab Project. The Parties hereby agree to proceed with the construction of the Rehab Project and have determined that the Proposal provides the most advantageous manner and schedule for doing so. The Parties agree that LID 2 shall enter into a contract with the Contractor for construction of the Rehab Project in accordance with the Proposal.

Financing

Project Design Costs. Each Party's proportionate share for the Project Costs is as follows:

LID 2	=	25%
LID 17	=	25%
FBCDD	=	50%

Reimbursement for Project Design Costs. The Parties agree that LID 2 shall directly pay all Project Costs to the Contractor and shall invoice FBCDD and LID 17 for their proportionate shares of such costs as they are incurred, with supporting documentation on the work completed through the date of such invoice. Currently, total Project Costs are not anticipated to exceed \$40,000, with each of LID 2's and LID 17's

proportionate share not to exceed \$10,000, and FBCDD's proportionate share not to exceed \$20,000. Project Costs exceeding \$40,000 must be approved by the Parties in writing if LID 2 requests additional funds from FBCDD or LID 17.

Miscellaneous Provisions

Force Majeure. If any Party is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, other than the payment of money, then the obligations of such Party, to the extent affected by such force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused to the extent provided but for no longer period. Such cause, as far as possible, shall be remedied with reasonable diligence. The term "force majeure", as used herein, shall include, but not be limited to acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of the Government of the United States or any agency, department or branch thereof, or the State of Texas or any agency, department, branch or political subdivision thereof, or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, which are not within the control of the Party claiming such inability, and which such Party could not have avoided by the exercise of due diligence and care.

Assignability. This Agreement shall not be assignable, in whole or in part, without first obtaining the written consent of the other Parties, which consent shall not be unreasonably withheld.

Successors and Assigns. This Agreement shall apply to all permitted successors and assigns of the Parties.

Regulatory Agencies. This Agreement shall be subject to all present and future valid laws, orders, rules and regulations of the United States of America, the State of Texas, and of any regulatory body having jurisdiction.

No Additional Waiver Implied. The failure of any Party hereto to insist, in any one or more instances, upon performance of any of the terms, covenants or conditions of this Agreement, shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant, or condition by any other Party hereto, but the obligation of such other Party with respect to such future performance shall continue in full force and effect.

Modification. Except as otherwise provided in this Agreement, this Agreement shall be subject to change or modification only with the written mutual consent of the Parties hereto.

Parties in Interest. This Agreement shall be for the sole and exclusive benefit of the Parties and their permitted successors and assigns and shall not be construed to confer any rights upon any third party.

Severability. The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement to other persons or circumstances shall not be affected thereby.

Merger. This Agreement embodies the entire understanding between the Parties with respect to the Rehab Project, and there are no prior effective representations, warranties, or agreements between the Parties with respect to the Rehab Project.

Construction of Agreement. This Agreement shall not be construed in favor of or against any Party on the basis that the Party did or did not author this Agreement.

Notices. Notices required or permitted to be given by any Party to the other hereunder, including bills, shall be deemed to have been received by the Party or entity to whom they are sent, within five (5) days after their deposit in the United States Mail, properly stamped and addressed. The Parties shall have the right from time to time to change their respective address and each shall have the right to specify as its address any other address by at least fifteen (15) days written notice to the Parties. Notices shall be in writing and shall be mailed to the Parties at the following address:

If to LID 2, to:

Fort Bend County Levee Improvement District No. 2
c/o Allen Boone Humphries LLP
3200 Southwest Freeway, Suite 2600
Houston, Texas 77027
Attn: David Oliver

If to LID 17, to:

Fort Bend County Levee Improvement District No. 17
c/o Allen Boone Humphries LLP
3200 Southwest Freeway, Suite 2600
Houston, Texas 77027
Attn: Suewan Johnson

If to FBCDD, to:

Fort Bend County Drainage District
P.O. Box 1028
1004 Blume Road
Rosenberg, Texas 77471
Attention: Mark Vogler

Default. In the event of default by any Party, any Party may employ attorneys to pursue its legal rights; and the prevailing Party shall be entitled to payment by the other Party(ies) of all reasonable attorneys' fees incurred.

Human Trafficking. BY ACCEPTANCE OF AGREEMENT, LID 2 AND LID 17 ACKNOWLEDGE THAT FBCDD IS OPPOSED TO HUMAN TRAFFICKING AND THAT NO FBCDD FUNDS WILL BE USED IN SUPPORT OF SERVICES OR ACTIVITIES THAT VIOLATE HUMAN TRAFFICKING LAWS.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement in multiple copies, each of equal dignity, as of the date and year first herein.

[EXECUTION PAGES FOLLOW]



HOUSTON
3200 Southwest Freeway,
Suite 2600
Houston, TX 77027
(713) 860-6400

Direct Line: (713) 860-6430
Direct Fax: (713) 860-6630

jcherne@abhr.com

Justine M. Cherne
Legal Assistant

May 4, 2023

Via Messenger Delivery

Mr. Jacob Clayton
Fort Bend County Drainage District
1124 Blume Rd.
Rosenberg, TX 77471

Re: Fort Bend County Levee Improvement District No. 2

Dear Mr. Clayton:

Enclosed please find a Cost Sharing Agreement for Ditch H Rehabilitation Project originally executed by Fort Bend County Levee Improvement District Nos. 2 and 17. After approval by Fort Bend County Commissioners Court, please return two signature pages originally executed by Fort Bend County Drainage District to me for the districts' files.

Thank you for your assistance with this matter.

Sincerely,

Justine M. Cherne
Legal Assistant

Enclosure

FORT BEND COUNTY LEVEE
IMPROVEMENT DISTRICT NO. 2

By: Rashid W. Makh

Name: Rashid Khokhar

Title: President

Date: March 22, 2023

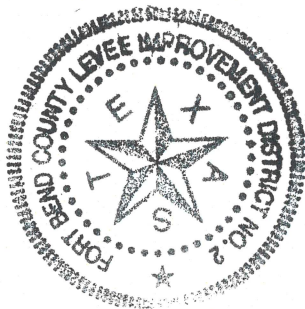
ATTEST:

By: Mike Swierka

Name: Mike Swierka

Title: Secretary

(SEAL)



FORT BEND LEVEE IMPROVEMENT
DISTRICT NO. 17

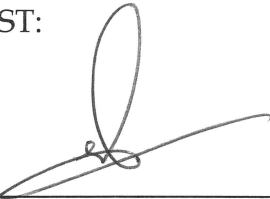
By: 

Name: David Gornet

Title: President

Date: 4/13/2023

ATTEST:

By: 

Name: Francis Ming

Title: Secretary

(SEAL)



FORT BEND COUNTY DRAINAGE DISTRICT

By: _____

Name: _____

Title: _____

Date: _____

ATTEST:

By: _____

Name: _____

Title: _____

(SEAL)

AUDITOR'S CERTIFICATE

I hereby certify that funds in the amount of \$_____ are available to pay the obligation of the Fort Bend County Drainage District within the foregoing Agreement.

Robert Ed Sturdivant, County Auditor

FORT BEND COUNTY DRAINAGE DISTRICT

By: _____

Name: _____

Title: _____

Date: _____

ATTEST:

By: _____

Name: _____

Title: _____

(SEAL)

AUDITOR'S CERTIFICATE

I hereby certify that funds in the amount of \$_____ are available to pay the obligation of the Fort Bend County Drainage District within the foregoing Agreement.

Robert Ed Sturdivant, County Auditor

FORT BEND COUNTY DRAINAGE DISTRICT

By: _____

Name: _____

Title: _____

Date: _____

ATTEST:

By: _____

Name: _____

Title: _____

(SEAL)

AUDITOR'S CERTIFICATE

I hereby certify that funds in the amount of \$_____ are available to pay the obligation of the Fort Bend County Drainage District within the foregoing Agreement.

Robert Ed Sturdivant, County Auditor

EXHIBIT A

Ditch H Drop Structure Repairs



FORT BEND COUNTY LEVEE IMPROVEMENT DISTRICT NO. 2

EXHIBIT

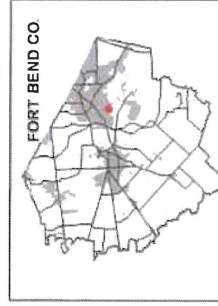
2022 DITCH H DROP STRUCTURE REPAIRS

LEGEND

- Fort Bend County LID 2 Levee
- Fort Bend County LID 14 Levee
- Levee (By Others)
- Stream (FEMA NFHL)



0 50 100 200 Feet



THIS PRODUCT IS FOR INFORMATIONAL PURPOSES AND MAY NOT HAVE BEEN PREPARED FOR OR BE SUITABLE FOR LEGAL REPRESENTATION. IT IS NOT A CONTRACT DOCUMENT AND DOES NOT REPRESENT AN OFFERING OF INSURANCE OR ANY OTHER FINANCIAL PRODUCT. IT IS THE PROPERTY OF LJA ENGINEERING AND LJA ENGINEERING ASSOCIATES, INC. ONLY THE APPROXIMATE RELATIVE LOCATION OF PROPERTY BOUNDARIES

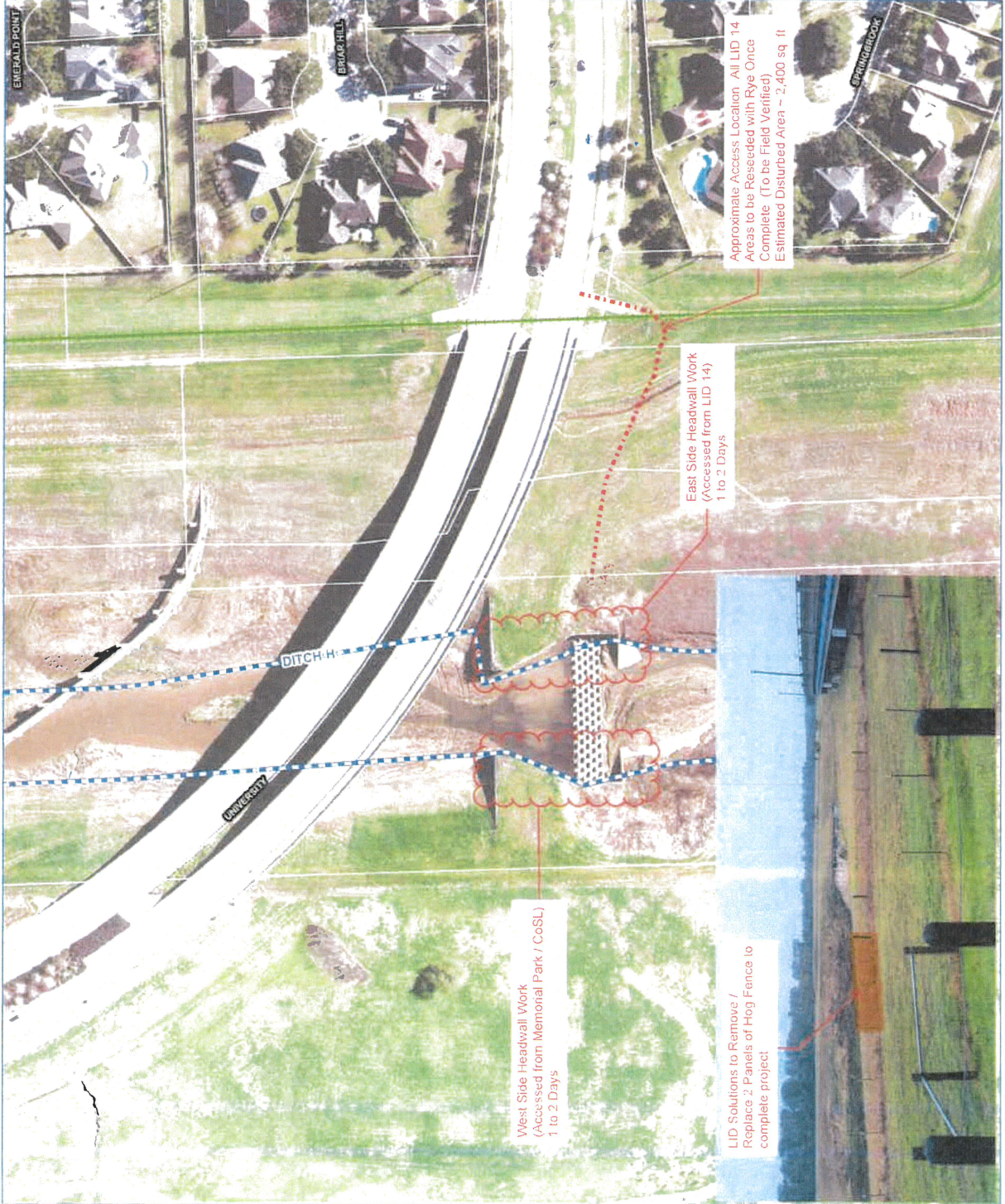


EXHIBIT B

Proposal



Proposal by Beyer Construction, LLC
(the "Company")

Date of Proposal: 11/4/22

Proposal To: Lid Solutions - Jason Klump

(the "Customer")

To Serve: Ditch H Drop Structure Foam Rehab

(the "Site")

Acceptance: The Customer may accept this Proposal either by a) signing where indicated or b) asking the Company to begin work. In the event of either form of acceptance, this Proposal will become the contract between the Customer and the Company (the "Agreement"). This Proposal is valid for 120 days after the Date of Proposal above, but may, at the Company's sole option, be withdrawn or revised at any time before acceptance by the Customer.

Scope: The Company will provide consultative, construction, and/or field services regarding the Customer's construction project, construction punchlist, or other infrastructure rehabilitation project (collectively, the "Project"). The parties agree that these services are labor and materials on behalf of the Customer and may or may not occur during the construction phase. In addition, the Company may:

- Facilitate the Customer's obtaining permit authorization to perform the Project;
- Prepare, modify, and/or maintain the Customer's construction documents including plans, specifications, certificates, or other documents required by the Customer's Project (collectively, the "Construction Documents");
- Provide inspections, testing, walk-throughs, and/or records concerning the Company's observations of site conditions;
- Provide debris removal, grading, or other handwork;
- Construct amenities, structures, appurtenances, water quality features, drainage features, or concrete paving;
- Provide training, educational material, public notices, or consultation; or
- Recommend best management practices for the Customer's use and implementation.

The scope of work performed by the Company is referred to as the "Work." Upon installation, any materials shall become the Customer's property.

Item	Scope / Description of Work:	Qty	UM	Unit Price:	Total Price:
1	Remove and replace barbed wire fence for access	1	EA	\$ 500.00	\$ 500.00
2	Anchor existing handrail to concrete drop structure	2	EA	\$ 2,266.00	\$ 4,532.00
3	Provide labor, equipment, and materials to inject a polyurethane hydrophobic foam to fill voids behind the vertical joints of an existing ditch concrete drop structure	1	LS	\$ 29,900.00	\$ 29,900.00
4	Additional polyurethane > 1200 LBS	0	LB	\$ 10.00	\$ -
Proposed Punchlist Items Total =					\$ 34,932.00

Schedule: The Company may provide schedules suggesting when Work may be done in the future and/or a general plan for frequency of work. Customer understands that schedules are subject to change, based on weather and other factors. Customer agrees to make no claim against the Company for work not being performed according to any schedule.

Pricing of Services: The Company has offered pricing at rates as shown in this Agreement for the items of work that are agreed to be performed. This pricing is shown with subtotals based on estimated quantities for the Customer's information. However, the Company will invoice and the Customer will pay the unit prices for Work based on actual quantities performed. All services and materials will be charged sales tax unless a valid Texas Sales and Use Tax Resale Certificate/Exemption Certificate is furnished.

Changes: This is a unit price contract and includes only items for which the Company and the Customer have agreed on the work described in the agreed line items. No claim shall be made against the Company for any variance between estimated quantities and the quantities actually requested or performed under the Agreement. The parties anticipate that the actual Work will involve performance of quantities that may differ from the estimated quantities, and the Customer will pay for actual quantities performed and invoiced as part of this Agreement. Work for which there is no line item is not in the scope of the Agreement, and will be added to this Agreement only if the Company and the Customer agree in writing on the scope and price of that additional work and the Customer indicates its agreement by signature or other express agreement.

The Customer's Responsibility: The Company cannot guarantee, assure, nor warrant the Customer's compliance with its permit authorization to perform the Project nor its compliance with Local, State, and/or Federal requirements. The Company is only advising the Customer on the site conditions and requirements, and the Customer has primary responsibility to perform the work recommended by the Company and stated in the permit authorization to perform the Project. The Customer therefore agrees that Customer's performance of certain work is a condition precedent to the Company's obligation and/or ability to perform work, and further agrees that Customer will perform at least the following work:

- Obtain permit authorization to perform the Project;
- Maintain and enforce good housekeeping practices;
- Maintain and enforce the best management practices described in the Customer's permit authorization to the maximum extent practicable, including routine maintenance and/or repair/replacement of pollution prevention devices or erosion and sedimentation controls;
- Manage the Customer's contractors, sub-contractors and suppliers at every tier, and all other visitors and deliveries to the site to make sure they are maintaining best management practices;
- Notify the Company of the start and completion of any construction, the termination of any permit authorization, the transfer of any parcels, of lot take-down schedules, or of any transfer of operational control to another operator or operators;
- Notify the Company of any responsibilities assigned to other agents, designers, consultants, trades, contractors, subcontractors and/or suppliers at any tier;
- Provide access to the areas in which the Company will provide services;
- Allow periodic inspections by the Company by any reasonable means, technology, or methodology;
- Implement best management practices as the Company recommends and/or suggests to the maximum extent practicable; and
- Comply promptly with the requirements of any permit authorization to perform the Project and with the requirements of Local, State, and Federal authorities.

Term: The Agreement will continue as long as the Customer requests services from the Company. However when the Customer accepts a project as completed, the Company will cease service in that area and will no longer be responsible for providing services for that area.

Termination: Either party may terminate this agreement upon 7 days written notice to the other. If the Customer terminates the Agreement, the Company will immediately be due payment for services performed up to and resulting from termination, including demobilization, and after the date of termination, the Company will not be responsible for maintenance or storage of any records of services performed during this Agreement. If the Company terminates the agreement, the Company will immediately be due payment for services performed up to termination, and after the date of termination, the Company will not be responsible for maintenance or storage of any records of services performed during this Agreement.

Invoicing: The Company will invoice by the end of each month for services performed, based on actual quantities of the Work performed.

Payment: Payment is due in full upon receipt, without retainage or withholding. Amounts unpaid after 180 days will bear interest from seven days after the invoice date at 1 1/2% interest per month.

The Company Rights Upon Non-Payment: If payment is not received timely, the Company may, at its sole discretion, suspend any or all work for the Customer. In addition, the Company will be under no obligation to maintain records that it has kept for the Customer on any job for which payment is late. **NOTWITHSTANDING ANYTHING ELSE IN THIS DOCUMENT, CUSTOMER AGREES TO INDEMNIFY THE COMPANY FOR ANY DAMAGES INCURRED BY CUSTOMER ARISING OUT OF OR RELATED TO OR RESULTING FROM RECORDS THAT THE COMPANY DOES NOT MAINTAIN WHILE CUSTOMER'S ACCOUNT IS DELINQUENT.**

Limitation of Responsibility / Liability: The Company will be responsible for damages incurred by the Customer only to the extent that such damages are directly caused by the Company's actions or omissions. The Customer agrees that the Company is not liable for the Customer's failure to perform the Customer's responsibilities under this agreement, including following the recommendations and suggestions of the Company and maintaining best management practices. The Customer agrees that the Company's total liability for any year of services provided under this Agreement for this Project will not exceed 50% of the amount billed to the Customer for this Project during that year. Under no circumstances will the Company be liable for damages due to the Customer's failure to perform any of its responsibilities outlined above, or damages caused by the actions or inactions of any of the Customer's employees, agents, designers, consultants, trades, contractors, subcontractors and/or suppliers at any tier.

Waiver of Consequential Damages: The Company and the Customer waive any and all claims against each other for consequential damages arising out of or relating to this Agreement. This mutual waiver includes:

- Damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- Damages incurred by the Company for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

Assurance: The Customer agrees that, both at the beginning of the job and any other time at which the Company may request, the Customer will provide the Company assurance of the Customer's ability to pay for the Work, as well as a) if this is a private project, the information described in subparagraphs 1-5 of Texas Business & Commerce Code Section 56.054 (d), or b) if this is a public projects, the information described in subparagraphs 1-3 of Texas Business & Commerce Code Section 56.054 (e).

Limited Warranty: The Company will perform the Work in a manner consistent with the standard of care expected of a company performing such services in this geographical area at this time under these circumstances. The Company provides no other warranties, and the Customer agrees that all other warranties, express or implied, are excluded.

Disputes: The parties will attempt to resolve any disputes arising out of or relating to this Proposal or the resulting Agreement and/or the Work by a) direct discussions between the parties, followed by b) mediation. If disputes remain unresolved after mediation, they will be resolved by arbitration, with the award of the arbitrator(s) binding pursuant to Texas Civil Practices and remedies Code Ch. 171. Mediation and/or arbitration will be conducted by the American Arbitration Association ("AAA") under their Construction Industry Rules in effect at the time that the dispute is first submitted to the AAA.

Insurance: The Company will carry its standard insurance, including general liability, auto liability, workers' compensation, and professional liability coverage.

No Third Party Beneficiary: Notwithstanding any provision of the Agreement, no other person or entity besides the Company and the Customer, whether or not mentioned in this Agreement or in the Work, is intended to be or will be considered to be a third party beneficiary of or entitled to assert any rights under this Agreement.

MUTUAL INDEMNITY: THE COMPANY AND THE CUSTOMER AGREE THAT EACH WILL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE OTHER FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITIES, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEYS' FEES, OF EVERY KIND OR CHARACTER ("CLAIMS"), TO THE EXTENT THAT SUCH CLAIMS ARISE FROM DAMAGES CAUSED BY A) THE INDEMNIFYING PARTY, B) ANY OF THE INDEMNIFYING PARTY'S EMPLOYEES, REPRESENTATIVES, DESIGNERS, SUBCONTRACTORS, AND/OR SUPPLIERS AT ANY TIER, AND/OR C) ANY OTHER PARTY FOR WHOM THE INDEMNIFYING PARTY IS RESPONSIBLE.

THESE DUTIES EXTEND TO CLAIMS INCLUDING THOSE ARISING FROM PERSONAL INJURY, INCLUDING DEATH, EMOTIONAL DISTRESS, REAL AND PERSONAL PROPERTY DAMAGE, AND ECONOMIC LOSS.

THESE DUTIES EXTEND TO ALL CLAIMS THAT ARE BASED ON, IN CONNECTION WITH, RELATING TO, OR ARISING OUT OF WORK AND/OR THE AGREEMENT.

THESE DUTIES ARE NOT LIMITED BY OR TO THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR ANY PARTY UNDER WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS.

[signatures]

Lid Solutions - Jason Klump

(the "Customer")

[signature]

[printed name]

[title]

By: Beyer Construction, LLC (the "Company")

[signature]

[printed name]

[title]

YOUR ROAD – OUR REPUTATION

16110 Hollister Street • Houston, Texas 77066 • (281) 587-5900 • Fax: (281) 587-5948

www.beyerconstruction.com