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ARF-3031

REGULAR SESSION AGENDA

Date: 02/22/2011

CC-2-22-2011ProfessionalServicesAgreementSOQ 07-082

Submitted For:

Paulette Shelton

Submitted By:Dalia Sister, Public
TransportationDepartment:

Public Transportation

Type of Item:

Discussion Item

Renewal Agreement/

No

Appointment:Reviewed by County

Yes

Attorney's Office:Multiple OriginalsY/N?:

Information**SUMMARY OF ITEM**

Take all appropriate action to authorize County Judge to execute an Agreement between Fort Bend County and Claunch & Miller, Inc. to render professional services related to construction management services of the Hwy 36 Park and Ride.

SPECIAL HANDLING

Ret. to Cheryl at Purchasing

AttachmentsLink: [CC-2-22-2011ProfessionalServicesAgreementSOQ 07-082.pdf](#)

AGENDA ITEM

29K

3/1/11

3 originals returned to Cheryl at Purchasing

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

**PROFESSIONAL SERVICES AGREEMENT
SOQ 07-082**

THIS AGREEMENT is made and entered into by and between FORT BEND COUNTY, TEXAS, a public body corporate and politic of the State of Texas acting by and through the Fort Bend County Commissioners Court (hereinafter referred to as "County") and Claunch & Miller, Inc., (hereinafter referred to as "Consultant,") a company authorized to conduct business in the State of Texas.

WITNESSETH

WHEREAS, County requests construction management and administration services related to Phase II of the construction of a park and ride facility on State Highway 36 at State Highway 59 South, hereinafter referred to as the "Project;" and,

WHEREAS, County desires to enter into this Agreement for the performance by Consultant of professional services related to the Project; and,

WHEREAS, County has determined that this Agreement is for personal or professional services and therefore exempt from competitive bidding under Chapter 262, TEXAS LOCAL GOVERNMENT CODE; and

WHEREAS, County has determined that this Agreement serves a public purpose.

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

AGREEMENT

SECTION 1
SCOPE OF AGREEMENT

- 1.01 Consultant shall render professional services to County related to the Project as described in the attached Exhibit A.
- 1.02 Consultant shall use professional skill and best efforts to perform all professional services agreed hereunder, in keeping with the professional standard of care provided by consultants in similar projects of similar size and nature in the vicinity of this Project. Consultant shall use its professional skill and best efforts to provide that all services hereunder shall be suitable for their intended use. Consultant shall perform its services to meet the agreed upon scope of services herein.
- 1.03 Consultant shall use professional skill and best efforts and measures to implement its responsibilities under this Agreement to safeguard County against defects and deficiencies in the

completed services provided under this Agreement. Consultant will promptly inform County to the extent defects and deficiencies in the completed service are observed, or when any observed actions or omissions are undertaken which are not in the best interest of County and the Project. At the request of County, Consultant shall provide appropriate personnel for conferences at its offices, or attend conferences at the various offices of County, or at the site of the Project, or at area funding agency sites and shall permit inspections of its offices by County, or others when requested by County.

- 1.04 All work provided under this agreement shall conform to and be in the format required by federal and state funding agencies. Guidelines and requirements of the Federal Transit Administration, The Federal Highways Administration, The Environmental Protection Agency, The Texas Commission on Environmental Quality and The Texas Department of Transportation are applicable to these projects. Other federal and local funding sources may impose additional and/or differing requirements.

SECTION 2 THE CONSULTANT'S COMPENSATION

- 2.01 For and in consideration of the services rendered by Consultant, and subject to the limit of appropriation under Section XV, County shall pay to Consultant an amount not to exceed one hundred and twenty-nine thousand four hundred and eighty-seven dollars and no/100 dollars (\$129,487.00) including all reimbursable expenses.
- 2.02 Progress payments for authorized work detailed in the attached Exhibit A will be made when Consultant has attained a level of completion equal to or greater than agreed upon milestones of completion, as mutually agreed upon by the parties.
- 2.03 Consultant shall submit invoices to County as detailed in Exhibit A and County shall pay each invoice within thirty (30) days after the County Project Manager's written approval provided however, that the approval or payment of any invoice shall not be considered to be conclusive evidence of performance by the Consultant to the point indicated by such invoice or of receipt or acceptance by the County of the services covered by such invoice. County shall reserve the right to withhold any payment pending verification of satisfactory work performed. County shall process all uncontested invoices within thirty (30) calendar days. In the event of a disputed or contested billing, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. County will exercise reasonableness in contesting any billing or portion thereof.

SECTION 3 TIME OF PERFORMANCE

- 3.01 This Agreement shall become effective upon execution of the last party and shall terminate twelve (12) months from the date of execution by the last party.
- 3.02 Services described in the attached Exhibit A shall be completed in accordance with the schedule provided or within such additional time as may be extended in writing by the County.
- 3.03 Any services provided by Consultant or any costs incurred by Consultant before issuance of notice to proceed or after the expiration of this Agreement shall be ineligible for payment or reimbursement.

SECTION 4 TERMINATION

- 4.01 County may terminate this Agreement, in whole or in part, for convenience at any time by providing thirty (30) days written notice to Consultant.
- 4.02 Upon receipt of termination notice issued by County or Consultant, Consultant shall discontinue all services in connection with the performance of this Agreement and shall proceed to cancel promptly all existing orders and contracts insofar as such orders or contracts are chargeable to this Agreement.
- 4.03 Within thirty (30) days after receipt of notice of termination issued by County or Consultant, Consultant shall submit a statement, describing in detail the services performed under this Agreement to the date of termination.
- 4.04 County shall then pay Consultant that proportion of the services actually performed under this Agreement, less such payments on account of charges as have been previously made.
- 4.05 Copies of all completed or partially completed designs, drawings, electronic data files and specifications and reports of any kind prepared under this Agreement shall be delivered to the County when and if this Agreement is terminated in the manner and for the purposes provided in this Agreement.
- 4.06 Either party may terminate this Agreement for cause if either party fails substantially to perform through no fault of the other and does not commence correction of such non-performance within five (5) days of written notice and diligently complete the correction thereafter.

SECTION 5 OWNERSHIP AND REUSE OF DOCUMENTS

- 5.01 Upon payment of all amounts rightfully owed by the County to the Consultant all documents, including original drawings, electronic files, correspondence, estimates, specifications, field notes, and data created, produced, developed or prepared by Consultant or its approved outside advisory or support contractors (collectively, the "Documents") with the exception of those standard details and specifications regularly used by the Consultant in its normal course of business shall be the property of County.
- 5.02 County shall not be entitled to any Documents not deemed "final" by the Consultant until termination of this Agreement.
- 5.03 Consultant shall deliver all Documents to County within thirty (30) days of the termination of this Agreement and may retain a set of reproducible record copies of the documents, provided that Consultant has received full compensation due pursuant to the terms of this Agreement. County shall use the Documents solely in connection with the Project and for no other purposes, except with the express written consent of Consultant, which consent will not be unreasonably withheld. Any use of the Documents without the express written consent of Consultant will be at the County's sole risk and without liability or legal exposure to Consultant.
- 5.04 County shall also be the owner of all intellectual property rights of the services rendered hereunder upon payment of all amounts rightfully owed by the County to the Consultant hereunder, including all rights of copyright therein.
- 5.05 Any trademarks, trade names, service marks, logos, or copyrighted materials of County are permitted only for use in connection with the services and shall not be used without County's consent and shall remain in the sole and exclusive properties of County.

SECTION 6
PERSONNEL, EQUIPMENT, AND MATERIAL

- 6.01 Consultant represents that it presently has, or is able to obtain, adequate qualified personnel in its employment or through subcontract for the timely performance of the professional services required under this Agreement. Consultant shall furnish and maintain, at its own expense, adequate and sufficient personnel and equipment to perform the professional services when and as required and without delays.
- 6.02 Save and except in instances in which the employment and/or independent contractor relationship is terminated with Consultant, the Fort Bend County Public Transportation Department Director or his/her designee will approve assignment and release of all key personnel with regards to the Project and Consultant shall submit written notification of all key personnel changes for Transportation Director's approval prior to the implementation of such changes. Such approval and release shall not be unreasonably withheld.
- 6.03 All personnel assigned to the Project shall have such knowledge and experience as will enable them to perform the duties assigned to them to the standard stated in this Agreement. Any personnel who, in the opinion of the Transportation Director, is incompetent or by his conduct becomes detrimental to the Project shall, upon request of the Transportation Director, immediately be removed from association with the Project.
- 6.04 Except as otherwise specified herein, Consultant shall furnish all equipment, transportation, supplies, and materials required to provide all services subject to this Agreement.

SECTION 7
ITEMS TO BE FURNISHED TO CONSULTANT BY THE COUNTY

County shall provide to Consultant reasonable assistance in the coordination with all public and governmental entities.

SECTION 8
CONSULTANT'S INSURANCE REQUIREMENTS

- 8.01 Prior to commencement of the Services, Consultant shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. Consultant shall provide certified copies of insurance endorsements and/or policies if requested by County. Consultant shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. Consultant shall obtain such insurance written on an Occurrence form (professional liability will be a claims made form) from such companies having Bests rating of A/VII or better, licensed or approved to provide insurance in the State of Texas, and shall obtain such insurance of the following types and minimum limits:
- A. Workers' Compensation insurance in accordance with the laws of the State of Texas. Substitutes to genuine Workers' Compensation Insurance will not be allowed.

- B. Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.
 - C. Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.
 - D. Business Automobile Liability insurance with a combined Bodily Injury/Property Damage limit of not less than \$1,000,000 each accident. The policy shall cover liability arising from the operation of licensed vehicles by policyholder.
 - E. Professional Liability insurance with limits not less than \$1,000,000 per claim.
- 8.03 All Liability insurance policies with the exception of the Professional Liability Policy and Workers' Compensation Policy shall name County as an additional insured. Furthermore, the Workers Compensation and Liability Insurance (except Professional Liability Insurance carriers) carriers shall grant a waiver of subrogation in County's favor.
- 8.04 If required coverage is written on a claims-made basis, Consultant represents that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time that work under the Agreement is completed.

SECTION 9 INDEMNIFICATION

- 9.01 CONSULTANT SHALL INDEMNIFY AND HOLD COUNTY HARMLESS FROM EACH AND EVERY CLAIM, DEMAND, SUIT, ACTION, PROCEEDING, LIEN OR JUDGMENT TO THE EXTENT CAUSED BY OR ARISING OUT OF, OR IN CONNECTION WITH THE NEGLIGENT ACTS AND OMISSIONS OF CONSULTANT PURSUANT TO THIS AGREEMENT.
- 9.02 Consultant shall timely report all such matters to County and shall, upon the receipt of any such claim, demand, suit, action, proceeding, lien or judgment, not later than the fifteenth day of each month, provide County with a written report on each such matter covered by this paragraph and by Section 9.03 below, setting forth the status of each matter, the schedule or planned proceedings with respect to each matter and the cooperation or assistance, if any, of County required by Consultant in the defense of each matter.
- 9.03 County shall timely forward to Consultant copies of any and all claims, demands, suits, actions, proceedings, or judgments which it may receive and which it may contend is covered by this section. Thereafter, County shall fully cooperate with Consultant in its defense of each such matter.
- 9.04 CONSULTANT'S DUTY TO DEFEND INDEMNIFY AND HOLD COUNTY HARMLESS SHALL BE ABSOLUTE. IT SHALL NOT ABATE OR END BY REASON OF THE EXPIRATION OR TERMINATION OF THIS AGREEMENT UNLESS OTHERWISE AGREED BY COUNTY IN WRITING. THE PROVISIONS OF THIS SECTION SHALL

SURVIVE THE TERMINATION OF THE AGREEMENT AND SHALL REMAIN IN FULL FORCE AND EFFECT WITH RESPECT TO ALL SUCH MATTERS NO MATTER WHEN THEY ARISE.

- 9.05 In the event of any dispute between the parties as to whether a claim, demand, suit, action, proceeding, lien or judgment appears to have been caused by or appears to have arisen out of or in connection with negligent acts or omissions of Consultant, Consultant shall never-the-less fully defend such claim, demand, suit, action, proceeding, lien or judgment until and unless there is a determination by a court of competent jurisdiction that the acts and omissions of Consultant are not at issue in the matter. In such event, County shall promptly reimburse Consultant for its costs of defense.
- 9.06 In the event that any such matter being so defended by Consultant also involves any claim of negligence or wrongful action by County, County shall have the obligation to participate in the defense of the matter through separate counsel at the County's expense.
- 9.07 Consultant shall have full authority to resolve all matters being defended by it providing such settlement(s) shall not involve any findings adverse to County and shall not involve or require any payments or contributions by County.
- 9.08 In the event of any final judicial determination or award of any matter covered by this section, County shall be responsible to third parties, pro rata, for any negligence determined to have been caused by County.
- 9.09 The provision by Consultant of insurance shall not limit the liability of Consultant under this Agreement.
- 9.10 Consultant shall cause all contractors and subcontractors who may have a contract to perform construction or installation work in the area where work will be performed under this Agreement, to agree to indemnify County and to hold County harmless from all claims for bodily injury and property damage that may arise from said contractor or subcontractor's operations. Such provisions shall be in form satisfactory to County.
- 9.11 County shall be exempt from, and in no way liable, for, any sums of money which may represent a deductible in any insurance policy. The payment of deductibles shall be the sole responsibility of Consultant providing such insurance.

SECTION 10 DISPUTE RESOLUTION

- 10.01 In the event of a dispute related to the breach of this Agreement that cannot be settled through negotiation, County and Consultant agree to submit the dispute to mediation.
- 10.02 In the event County or Consultant desire to mediate any dispute, that party shall notify the other party in writing of the dispute desired to be mediated. If the parties are unable to resolve their differences within 10 days of the receipt of such notice, such dispute shall be submitted for mediation.
- 10.03 All expenses associated with mediation shall be shared 50 percent (50%) by each party.
- 10.04 The requirement to seek mediation shall be a condition required before filing an action at law or in equity, unless to do so would prevent either party from seeking relief in a court of law or in equity under any applicable statutes of limitation.

SECTION 11
NOTICE

- 11.01 Any notice required to be given under the provisions of this Agreement shall be in writing and shall be duly served when it shall have been deposited, delivered via reputable overnight courier, enclosed in a wrapper with the proper postage prepaid thereon, and duly registered or certified, return receipt requested, in a United States Post Office, addressed to County or Consultant at the addresses set forth below.
- 11.02 If mailed, any notice or communication shall be deemed to be received three days after the date of deposit in the United States Mail.
- 11.03 Unless otherwise provided in this Agreement, all notices shall be delivered to the following addresses:

A. If to Consultant:

Claunch & Miller, Inc.
ATTN: James B. Andrews, P.E. _____
4635 Southwest Freeway
Suite 1000
Houston, Texas 77027

B. If to County notice must be sent to the County Project Manager and County:

Paulette Shelton, CCTM
Director, Public Transportation Department
Fort Bend County
12550 Emily Court, Suite 400
Sugar Land, Texas 77478

Fort Bend County
Attention: County Judge
301 Jackson, Suite 719
Richmond, Texas 77469

11.04 Either party may designate a different address by giving the other party ten (10) days written notice.

SECTION 12
REPORTS OF ACCIDENTS

- 12.01 Within 24 hours after the occurrence of any accident or other event which results in, or might result in, injury to the person or property of any third person (other than an employee of Consultant), Consultant shall send a written report of such accident or other event to County, setting forth a full and concise statement of the facts pertaining thereto.
- 12.02 Consultant shall also immediately send County a copy of any summons, subpoena, notice, or other documents served upon Consultant, its agents, employees, or representatives, or received by it or them, in connection with any matter before any court arising in any manner from Consultant's performance of work under this Agreement.

SECTION 13 LIMITATIONS

Notwithstanding anything herein to the contrary, all covenants and obligations of County under this Agreement shall be deemed to be valid covenants and obligations only to extent authorized by the Act creating County and permitted by the laws and the Constitution of the State of Texas. This Agreement shall be governed by the laws of the State of Texas, and no officer, director, or employee of County shall have any personal obligation hereunder.

SECTION 14 LIMIT OF APPROPRIATION

- 14.01 Prior to the execution of this Agreement, Consultant has been advised by County, and Consultant clearly understands and agrees, such understanding and agreement being of the absolute essence to this Agreement, that County shall have available the total maximum sum of one hundred twenty-nine thousand four hundred and eighty-seven dollars and no/100 (\$129,487.00), including reimbursable expenses, if any, specifically allocated to fully discharge any and all liabilities which may be incurred by County.
- 14.02 Consultant does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Consultant may become entitled to hereunder and the total maximum sum that County shall become liable to pay to Consultant hereunder shall not under any conditions, circumstances or interpretations thereof exceed the sum of one hundred twenty-nine thousand four hundred and eighty-seven dollars and no/100 (\$129,487.00) for described scope of services.

SECTION 15 SUCCESSORS AND ASSIGNS

- 15.01 County and Consultant bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement.
- 15.02 Neither County nor Consultant shall assign, sublet or transfer its interest in this Agreement without the prior written consent of the other.

SECTION 16 PUBLIC CONTACT

- 16.01 Contact with any media, citizens of Fort Bend County or governmental agencies shall be subject to the approval of County.
- 16.02 Under no circumstances, whatsoever, shall Consultant release any material or information developed or received from County in the performance of its services hereunder without the express written permission of County, except where required to do so by law.

SECTION 17 MODIFICATIONS

This instrument contains the entire Agreement between the parties relating to the rights herein granted and obligations herein assumed. Any oral or written representations or modifications

concerning this instrument shall be of no force and effect excepting a subsequent written modification signed by both parties hereto.

SECTION 18 NO FEDERAL OBLIGATION TO THIRD PARTIES

County and Consultant acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to County, Consultant, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract. Consultant agrees to include this clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

SECTION 19 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENT AND RELATED ACTS

- 19.01 Consultant acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, Consultant certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, Consultant further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Consultant to the extent the Federal Government deems appropriate.
- 19.02 Consultant also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on Consultant, to the extent the Federal Government deems appropriate.
- 19.03 Consultant agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

SECTION 20 ACCESS TO RECORDS

- 20.01 Consultant agrees to provide County, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of Consultant which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Consultant also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO

Consultant access to Consultant's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. Consultant agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

- 20.02 Consultant agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Consultant agrees to maintain same until County, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

SECTION 21 FEDERAL CHANGES

Consultant shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between County and FTA, as they may be amended or promulgated from time to time during the term of this contract. Consultant's failure to so comply shall constitute a material breach of this contract.

SECTION 22 CIVIL RIGHTS REQUIREMENTS

- 22.01 The following requirements apply to the underlying contract:

- A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, Consultant agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, Consultant agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:
 - 1. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, Consultant agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any

applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. Consultant agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: 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. In addition, Consultant agrees to comply with any implementing requirements FTA may issue.

2. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, Consultant agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, Consultant agrees to comply with any implementing requirements FTA may issue.
3. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, Consultant agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, Consultant agrees to comply with any implementing requirements FTA may issue.

22.02 Consultant also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

SECTION 23 DISADVANTAGED BUSINESS ENTERPRISES

- 23.01 This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. A separate contract goal has not been established for this procurement.
- 23.02 Consultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by Consultant 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 County deems appropriate. Each subcontract Consultant signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).
- 23.03 The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- 23.04 Consultant is required to pay its subcontractors performing work related to this Contract for satisfactory performance of that work no later than 30 days after Consultant's receipt of payment for that work from County. In addition, Consultant is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this Contract is satisfactorily completed.

- 23.05 Consultant must promptly notify County whenever a DBE subcontractor performing work related to this Contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. Consultant may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without the prior written consent of County.

SECTION 24

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. Consultant shall not perform any act, fail to perform any act, or refuse to comply with any County requests which would cause County to be in violation of the FTA terms and conditions.

SECTION 25

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT)

- 25.01 This contract is a covered transaction for purposes of 49 CFR Part 29. As such, Consultant is required to verify that none of Consultant, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.
- 25.02 Consultant is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.
- 25.03 By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by County. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

SECTION 26

LOBBYING

Consultants who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C.

1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

SECTION 27 CLEAN AIR

Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq . Consultant agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. Consultant also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

SECTION 28 CLEAN WATER

Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq . Consultant agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. Consultant also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

SECTION 29 SEISMIC SAFETY REQUIREMENTS

Consultant agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. Consultant also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

SECTION 30 ENERGY CONSERVATION

Consultant agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

SECTION 31 ACCESS FOR INDIVIDUALS WITH DISABILITIES

31.01 Consultant agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. Consultant also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities, and any subsequent amendments to these laws. In addition, Consultant agrees to comply with applicable implementing Federal regulations and directives and any subsequent amendments thereto, as follows:

- A. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
- B. U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- C. Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
- D. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- E. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- F. U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- G. U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- H. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and
- I. U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194;
- J. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and
- K. Federal civil rights and nondiscrimination directives implementing the foregoing regulations, except to the extent the Federal Government determines otherwise in writing.

SECTION 32 MISCELLANEOUS

32.01 By entering into this Agreement, the parties do not intend to create any obligations, express or implied, other than those specifically set out in this Agreement.

32.02 Nothing contained in this Agreement shall create any rights or obligations in any party who is not a signatory to this Agreement.

CLAUNCH & MILLER, INC.


Authorized Representative, Title
VICE PRESIDENT

FEBRUARY 14, 2011
Date

- 32.03 Consultant agrees and understands that: by law, the Fort Bend County Attorney's Office may only advise or approve contracts or legal documents on behalf of its clients; the Fort Bend County Attorney's Office may not advise or approve a contract or other legal document on behalf of any other party not its client; the Fort Bend County Attorney's Office has reviewed this document solely from the legal perspective of its client; the approval of this document by the Fort Bend County Attorneys Office was offered solely to benefit its client; Consultant and other parties should not rely on this approval and should seek review and approval by their own respective legal counsel.
- 32.04 The captions of subtitle of the several sections and divisions of this Agreement constitute no part of the content hereof, but are only labels to assist in locating and reading the provisions hereof.
- 32.05 This Agreement shall be governed and construed in accordance with the laws of the State of Texas. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all disputes arising hereunder and waive the right to sue or be sued elsewhere.
- 32.06 Consultant shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required, Consultant shall furnish the County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

SECTION 33
APPENDICES

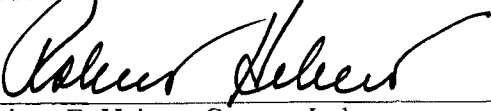
The Appendices attached to this Agreement, which consists of the following and are incorporated herein by reference as if set forth verbatim:

Attachment A Statement of Work

SECTION 34
EXECUTION

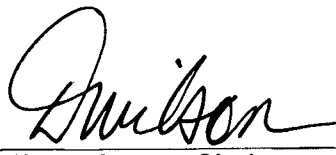
This Agreement shall not become effective until executed by all parties hereto.

FORT BEND COUNTY:


Robert E. Hebert, County Judge

2-22-2011
Date

Attest:


Dianne Wilson, County Clerk



AUDITOR'S CERTIFICATE

I hereby certify that funds are available and limited to the amount of \$ 129,487.⁰⁰
to accomplish and pay the obligation of Fort Bend County under the terms of this contract.



Ed Sturdivant, Fort Bend County Auditor

EXHIBIT A

SCOPE OF SERVICES

QA/QC Services (To be completed within 30 days of the contract execution)

- Complete a QA/QC review of the plans and specifications with markups to be submitted to the engineer of record for changes prior to advertising the project.
- Coordinate with Fort Bend County Purchasing in finalizing the project manual by appending the technical specifications prepared by the engineer of record with the County legal documentation including but not limited to insurance, bonding requirements and general conditions prior to advertising the project.
- Meet with Fort Bend County Drainage District, Fort Bend County, City of Rosenberg, FTA and TxDOT, as necessary to determine if all requirements have been met for permit applications.
- Establish DBE goals and plans for construction contractor per FTA requirements prior to advertising the project.

Solicitation Phase Services

- Assist the County in obtaining proposals for the Project by contacting potential contractors.
- Assist the Purchasing Department in conducting a pre-RFP conference for potential bidders between 2nd and 3rd advertisements. Claunch & Miller, Inc. will attend the conference along with the Purchasing Department to address technical questions or issues should they arise.
- Assist Purchasing in developing answers to questions from potential proposers concerning the project's construction documents. Services to include coordination with Pate Engineers regarding engineering design questions. Prepare draft response for submission to the Purchasing Department and revise as directed. Prepare draft addenda for approval and issuance by the Purchasing Department as appropriate to clarify, correct or change the solicitation documents.
- Attend evaluation committee meeting. Provide answers to technical questions and other information requested by committee members regarding proposal submissions.

Construction Administration

- Act as the County's Project representative during the construction phase.

- Act as County's liaison with adjacent Municipalities, outside Agencies, Right of Way Managers and Private Utility Companies, and the Construction Contractor
- Coordinate scheduling and resolution of unforeseen utility conflicts
- Review and respond accordingly to all submittals as required by the contract specifications.
 - Construction Schedule
 - Sub-Contractors
 - TCEQ Filings
 - Tree Protection/Preservation plans and schedules
 - Pre-construction Photographs
 - Trench safety systems
 - Manufacturer's data on materials used in the project
 - Meet or exceed federal requirements\
- Conduct a pre-construction conference with the Contractor, County staff, and Private Utility Company Representatives to discuss schedules, notifications, conflict resolutions and other construction concerns.
- Coordinate scheduling and review laboratory test results for Construction Material Testing throughout the construction phase:
 - Field density testing and moisture testing on backfill and subgrade
 - Lime stabilized subgrade gradation tests
 - Lime stabilized subgrade depth checks
 - Concrete monitoring and testing for paving
 - Related laboratory testing services
 - Tests for pressure and/or leakage on piping systems
- Notify Contractor and County of failing Construction Material Testing results and necessary further action upon receiving a failure notification from the testing laboratory.
- Conduct bi-weekly progress meetings throughout the construction process to discuss construction progress, problems and scheduling of work
- Monitor and confirm DBE requirements are met by the contractor. Contractor to provide records and/or documentation verifying that requirements are met.
- Monitor and confirm "Buy America" requirements are met by the contractor. Contractor to provide records and/or documentation verifying that requirements are met.
- Monitor site for any environmental concerns and notify contractor and county of any finding and necessary action.

- Review the contractor's pay estimates, evaluate the completion of work and make payment recommendations to the County.
 - Compare the Contractor application to our Site Representative's daily report
 - Compare quantities to the construction plans
 - Perform site visits to observe status and condition of work
 - Prepare recommendation for payment of Contractor's application
- Provide engineering and technical office personnel support throughout construction to include:
 - Process and file data compiled by the Site Representative such as daily reports, construction photographs, notes and sketches, material receipt such as lime for subgrade stabilization, cement stabilized sand, concrete and asphalt
 - Compare material receipt quantities for pay items to confirm design parameters are met
 - Provide written documentation when the Site Representative does not receive full cooperation from the Contractor's Superintendent regarding adherence to the construction contract documents
 - Provide support to the on-site representative(s) through supervisory and administrative services through answering questions about plans, contacting agencies as needed and addressing engineering questions and issues in the field with engineer of record.
- Address contractor requested clarifications and interpretations of the Contract Documents with County.
- Prepare any required change orders for processing and approval by the County.
- Visit the site and meet with the Contractor and Site Representative at intervals appropriate to the various stages of construction to observe the progress and quality of executed work and to determine in general if such work is proceeding in accordance with the Contract Documents.
- Claunch & Miller, Inc. will not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the Contractor(s) or the safety precautions and programs incident to the work of the Contractor(s). Claunch & Miller, Inc. efforts will be directed toward providing a greater degree of confidence for the County that the completed work of Contractor(s) will conform to the Contract Documents, but Claunch & Miller, Inc. will not be responsible for the failure of Contractor(s) to perform the work in accordance with the Contract Documents.
- Provide one set of Record Drawings prepared by the Contractor to the City and to Fort Bend County.
 - Check the contractor's as-built drawings with the notes, sketches and photographs compiled by the site representative throughout the project
 - Incorporate any field change drawings made during construction

- Prepare CAD Record Drawings based on the Contractor's and Site Representative's data and submit to Ft. Bend County for record file.

Construction Observation

- Provide on-site representative(s) to observe the progress and quality of the work by the Contractor(s). It is anticipated that the on-site representative(s) will be on site an average of 40 hours each week for the duration of the Project.
- The on-site representative(s) will provide daily reports on the status of the construction to include:
 - Weather conditions
 - Contractor's work force, equipment and manpower, hours worked
 - Laboratory testing activities
 - Performance testing of water and sewer lines
 - Construction activities at the site
 - Field measured pay item quantities
 - Noteworthy occurrences
 - Weekly observation to ensure that project complies with environmental (CE) recommendations
 - DBE
 - Buy America
- The on-site representative(s) will attend meetings such as pre-construction conference, progress meetings and other project related meetings. At a minimum, a bi-monthly progress meeting will be conducted with the County throughout the construction process to discuss construction progress, scheduling of work and any problems. County progress meetings can be part of or in conjunction with weekly progress meetings held with contractor.
- The on-site representative(s) will take pre-construction photographs and periodic photographs of the construction progress and of key items of concern.
- The on-site representative(s) will coordinate and schedule the activities of the testing laboratory.
- The on-site representative(s) will coordinate with the County and the Contractor for construction scheduling, resident notification and communication.
 - Scheduling water or sewer disruptions to minimize inconvenience to residents
 - Coordination of repairs of utilities accidentally impacted, notification of utility owner, fire and police department when applicable
 - Coordination of notification to impacted property owners and County staff for impending construction activities and access disruptions
- The on-site representative(s) will assist in the performance of a final inspection, the preparation of a punch list and subsequent follow up inspections. Final

inspection to include review of site with Contractor, County, Engineer and Construction Manager. An additional review of site after completion of punch list items will be performed to determine if all punch list items have been completed.

- The on-site representative(s) will assemble and maintain notes, comments, sketches, and supporting data related to the project to assist in the preparation of record drawings.
- The on-site representative(s) will be furnished in an effort to aid the process of observing the performance of work of the Contractor(s). Through more extensive on site observations of the work in progress, Claunch & Miller, Inc. shall endeavor to provide further protection for the County against defects and deficiencies in the work of the Contractor(s); but the furnishing of such on-site representative(s) will not make Claunch & Miller, Inc. responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions or programs, or for Contractors(s) failure to perform their work in accordance with the Contract Documents.

Construction Material Testing

- Field density testing and moisture testing on backfill and subgrade.
- Lime stabilized subgrade gradation tests.
- Lime stabilized subgrade depth checks.
- Concrete monitoring and testing for paving.
- Related laboratory testing services.

Fee Schedule

Claunch & Miller, Inc. will submit monthly progress invoices with status reports for all engineering work completed to invoice date. The invoices would be based on the following fee schedule:

QA/QC Services (Paid upon completion of tasks)	\$ 17,452
Bid Phase Services (Paid upon completion of tasks)	\$ 4,735
Construction Administration Services (25% paid at 25% completion of construction / 25% paid at 50% completion of construction / 25% paid at 75% completion of construction / 25% paid at 100% completion of construction):	\$ 19,704

Construction Observation Services (25% paid at 25% completion of construction/ 25% paid at 50% completion of construction / 25% paid at 75% completion of construction / 25% paid at 100% completion of construction):	\$ 64,096
Construction Material Testing (Paid as invoiced by subs)	\$ 20,000
Miscellaneous Expenses (Travel and Reproduction)(Paid as incurred)	\$ 3,500
TOTAL FEES:	<hr/> \$ 129,487

No additional services will be invoiced without prior approval from the County.