

**CONSTRUCTION AGREEMENT
BETWEEN
FORT BEND COUNTY, TEXAS, as Owner
AND
MILLIS DEVELOPMENT AND CONSTRUCTION, INC., as Contractor**

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AGREEMENT FOR CONSTRUCTION SERVICES

THIS AGREEMENT, entered into on this day by and between Fort Bend County, Texas, by and through its Commissioners Court, hereinafter referred to as ("Owner") and Millis Development and Construction, Inc., hereinafter referred to as the ("Contractor") and effective on the date executed by the Owner.

W I T N E S S E T H:

In consideration of the mutual covenants set forth herein, the parties hereto agree as follows:

ARTICLE I AGREEMENT DOCUMENTS

This Agreement consists of this Agreement and Exhibits A through I which are attached hereto and which are made a part hereof as though set forth in full herein.

The above-referenced Exhibits are as follows:

Exhibit A – General Description of Work
Exhibit B – General Terms and Conditions
Exhibit C – Site Plan
Exhibit D – Compensation
Exhibit E – Warranty and Indemnity
Exhibit F – Insurance Requirements, Bonds
Exhibit G – Payment Application
Exhibit H – Contractor Affidavit, Lien Waiver and Release (Partial)
Exhibit I – Contractor's Response to RFP 11-060.

ARTICLE II DEFINITIONS

All terms defined in any part of this Agreement shall have the same meaning when used in any other part of this Agreement. When used in this Agreement, the following terms shall have the meanings set forth opposite such terms, respectively:

"Act of Defaults" - As defined in Exhibits B.9

"Permits" - As defined in Exhibit B.7.

"Agreement" - This Agreement and Exhibits A through I attached hereto.

"Applications for Payment" - As defined in Exhibit D.2.1.

"Architect" - The entity engaged by the Owner for design the Project. The term "Architect" includes engineers, surveyors, designers and the other consultants retained by Owner. The

Architect is not an employee of Owner, but is engaged or retained for the purpose of performing design services for the Project. The Architect designated by the Owner for purposes of this Agreement is Pate Engineers, Inc.

“Cash Flow Schedule” - The forecasted progress payments of the Contract Lump Sum, including the portions of the Contract Lump Sum listed in the Schedule of Values, attached as Schedule 1 to Exhibit D.

“Change Orders” - As defined in Exhibit B.8

“Change Order Notices” - As defined in Exhibit B.8

“Contract Documents” - The Contract Documents for the Project shall consist of this Agreement, the Contractor’s Response to RFP 11-060, Construction Documents, Construction Document Change Orders, and any other Change Order thereto that together form the entire integrated Agreement between Owner and Contractor. Owner’s instructions to proposers, the Contractor’s proposal, project manual, general requirements, general conditions, and supplementary conditions, addenda, the specifications, the drawings, and the notice of acceptance of the said proposal together with this Agreement form the Agreement, and they are as fully a part of the Agreement as if hereto attached or herein repeated.

“Construction Documents” - The final stage of the detailed architectural and engineering documents setting forth the design for the Project prepared by Architect on behalf of Owner as the Architect or Engineer of Record. Construction Documents consist of working drawings and specifications setting forth and describing: (1) the construction work to be done; (2) the materials, workmanship, finishes, and equipment required for the architectural, civil, electrical, structural, mechanical, plumbing and all other systems and their components, and (3) the necessary proposal information and the Agreement, Supplementary Conditions, and Special Conditions, if any, of the contract.

“Construction Site” - The tract of land described in Exhibit C.

“Construction Work” - As defined in Exhibit A.2.

“Contract Lump Sum” \$1,237,900.00 or as such may be adjusted from time to time pursuant to Exhibit B.8.

“Critical Milestone” - The milestones set forth in the Critical Path Schedule.

“Critical Path Schedule” - The document which shall be prepared by Contractor using a critical path method scheduling system setting forth a weekly three (3) week look-ahead schedule with respect to the Work and each major segment of the Work the time schedule for causing the tasks involved to be performed including the estimated dates for commencement and completion. Upon Owner's approval, from time to time the Critical Path Schedule may be amended. Contractor shall submit an updated Critical Path Schedule with each monthly pay application.

“Contractor” – The entity engaged by the Owner for construction of the Project. Contractor shall, in accordance with this Agreement, complete the Project and control scheduling of the

construction of the Project, including components thereof.

“Contractor’s Project Manager” – Contractor shall, in accordance with this Agreement, include as a part of its business organization or in its employ or under contract a project manager with the competency, skills and all required licenses in the State of Texas to manage the Project in accordance with the Contract Documents. Contractor’s Project Manager shall be the primary point-of-contact for the Contractor. Owner, Owner’s Representative, Program Manager, and Owner’s Construction Inspector may rely upon written consents and approvals signed by Contractor’s Project Manager, as the consent and approval of Contractor.

“Days” – Calendar days unless otherwise stated herein.

“Defect” – A fault in the Work or a failure of the Work or any part thereof to be in compliance with the Drawings and Specifications (as refined and modified in compliance with Exhibit B.8, B.3.4.4 and A.1.).

“Defect Period(s)” - That period commencing on the effective date of this Agreement and ending on the first anniversary of the Final Completion Date.

“Drawings and Specifications” - The Preliminary Drawings and Specifications, as amended and refined from time to time pursuant to Exhibit B.8.

“Final Completion Date” - The date certified by the Owner Representative and Contractor in a final completion certificate as being the date upon which, to the best of Owner Representative’s and Contractor’s knowledge and belief, the Work is complete in accordance with the Contract Documents and that all the Punchlist Items have been finished. Warranties required by the Contract Documents shall commence on the date of issuance of Certificate of Occupancy. If the Certificate of Occupancy is withheld due to Owner furnished services, then warranties will commence on the date of Substantial Completion.

“Governmental Authority” - Any and all jurisdictions, entities, courts, boards, agencies, commissions, offices, divisions, subdivisions, departments, bodies or authorities of any nature whatsoever of any governmental unit (federal, state, county, district, municipality, city or otherwise) whether now or hereafter in existence, with authority over the Work.

“Indemnified Parties” - Owner and all officers, directors, agents, employees, representatives, successors and assigns of such parties, their respective affiliates, parent corporations and subsidiary corporations.

“Laws and Regulations” - The laws, rules, regulations, and orders (both civil and military) of the United States of America and any other Governmental Authority having jurisdiction over the Work or any part thereof, the funding of the Work, any site where any part of the Work is performed, or any transportation routes or methods between such sites, whether such now exist or hereafter come into effect.

“Notice to Proceed” – A written document issued by Owner instructing Contractor to begin performance of the Work as specified in such document and in compliance with this Agreement.

“Owner” – Fort Bend County, Texas, the address of which for notices (unless changed by written notice to Contractor) is County Judge, 301 Jackson, 7th Floor, Richmond, Texas 77469, with a copy to Paulette Shelton, Director, Public Transportation Department, 12550 Emily Court, Suite 400, Sugar Land, Texas 77478.

“Owner Representative” - Paulette Shelton, Director, Public Transportation Department, 12550 Emily Court, Suite 400, Sugar Land, Texas 77478, or such other person as selected by the Owner and written notice of such selection is given by Owner to Contractor.

“Preconstruction Work” - As defined in Exhibit A.1.

“Preliminary Schedule of Values” - The preliminary schedule of values prepared by Contractor and submitted to the Owner Representative.

“Program Manager” - The Program Manager is retained by the Owner in accordance with a contract executed between the Program Manager and the Owner for the purposes of (i) peer review of the design documents provided by the Contractor for the Project, and (ii) review of elements of architectural or engineering administration of the Work (including change orders) under the Contract Documents. The term “Program Manager” includes engineers, surveyors, designers and the other consultants retained by the Program Manager. The Program Manager is not an employee of the Owner, but is engaged or retained by it for the purpose of performing design and construction administration services for the Project. The Program Manager designated by the Owner for purposes of this Agreement is Claunch & Miller, Inc.

“Project” - The construction of the facility to be constructed under this Agreement described as

“Project Construction Program” - As defined in Exhibit A.1.1.

“Proposed Change Order” - As defined in Exhibit B.8.

“Punchlist Items” - Details of construction, mechanical adjustment or incidental repairs and decoration for the Project, the noncompletion of which does not materially interfere with Owner's access to or use of the Project as determined solely by the Owner.

“Records” - As defined in Exhibit B.4.3.

“Schedule of Values” - A schedule listing of the amount of value (expressed in terms of dollars) agreed upon by Contractor and the Owner Representative to be attributable to the portions of the Construction Work. This Schedule of Values shall be agreed upon and identified by Contractor and the Owner Representative pursuant to Schedule 1 Exhibit D.

“Scheduled Substantial Completion Date” – As included in the Critical Path Schedule.

“Substantial Completion Date” – The date certified by Owner Representative and Contractor as being the date Work has been completed such that all systems are operational as designed and the Project has received a Certificate of Occupancy for its intended use with the only remaining Work to be completed being Punchlist Items. If the Final Certificate of Occupancy is withheld due to Owner furnished services, then the Certificate of Substantial Completion will be issued,

provided all other requirements of Substantial Completion are completed.

“Transfer Date” - As defined in Exhibit B.12.2.

“Work” – The Construction Work together with all other obligations of Contractor under this Agreement.

“Work Commencement Conditions” - As defined in Exhibit B.1.1.

ARTICLE III WORK

Except as otherwise provided for in this Agreement, Contractor shall perform the Work, and in connection therewith shall furnish (or cause to be furnished) all personnel, materials, supplies, equipment, tools, labor, supervision, utilities, transportation, and other materials, facilities, and services as and when required to perform the Work and all matters incidental thereto. The Work shall be completed as specified in the Critical Path Schedule and shall be completed within one hundred and twenty (120) days from the Notice to Proceed from Owner.

ARTICLE IV COMPLETION OF WORK

Subject to delays caused by a failure of the Work Commencement Conditions or other delays beyond the control of the Contractor, Contractor shall commence, perform and complete the Work in accordance with the Contract Documents.

ARTICLE V COMPENSATION

As consideration for the performance of the Work, Owner shall pay to Contractor the compensation provided for in Exhibit D. Subject to the terms of Article III hereof and of Exhibit B.8, the compensation provided for in Exhibit D covers and includes all the compensation, payment and remuneration whatsoever that Owner is obligated to pay Contractor in connection with or growing out of this Agreement or the performance by Contractor of its obligations under this Agreement.

ARTICLE VI DEFAULT BY CONTRACTOR

If Contractor, including any part of its business organization or its employ or under contract pursuant to this Agreement shall default or shall fail or neglect to carry out the Work in accordance with the Contract Documents or the Construction Documents or shall fail to otherwise fully comply with its obligations under this Agreement, the Contractor agrees that the Owner may, after giving the Contractor seven (7) days written notice, during which period the Contractor fails to commence and diligently pursue the cure of such default or failure, without prejudice to any other remedy, make good such deficiencies and may deduct the cost thereof from payment due the Contractor or at Owner's option and without invalidating the performance bond, Owner may terminate this Agreement and take possession of the site and of all materials,

equipment, tools and construction equipment and machinery thereon owned by the Contractor and finish the Work by whatever method Owner shall deem expedient. If the expense incurred by Owner in finishing the Work exceeds the unpaid balance of the Contract Lump Sum, Contractor shall be liable for such deficiency and Contractor shall, immediately upon demand, pay such amount to Owner. If the expense incurred by Owner in finishing the Work does not exceed the unpaid balance of the Contract Lump Sum, the remaining unpaid balance of the Contract Lump Sum shall be paid to Contractor.

ARTICLE VII FEDERAL CLAUSES

7.1 No Government Obligation to Third Parties. Owner and Contractor 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 Owner, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract. Contractor 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.

7.2 Program Fraud and False or Fraudulent Statement and Related Acts. Contractor 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, Contractor 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, Contractor 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 Contractor to the extent the Federal Government deems appropriate.

Contractor 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 Contractor, to the extent the Federal Government deems appropriate.

Contractor 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.

7.3 Access to Records and Reports. Contractor agrees to provide Owner, 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 Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and

transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor'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. Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than five (5) 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 Contractor agrees to maintain same until Owner, 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.

7.4 Federal Changes. Contractor 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 Owner and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

7.5 Civil Rights Requirements. The following requirements apply to the underlying contract:

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, Contractor 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, Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

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, Contractor 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. Contractor 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, Contractor agrees to comply with any implementing requirements FTA may issue.

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, Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, Contractor 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, Contractor agrees to comply with any implementing requirements FTA may issue.

Contractor 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.

7.6 Disadvantaged Business Enterprise (DBE). 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 contract goal of 3% has been established for this procurement.

Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Owner deems appropriate. Each subcontract Contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).

The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

Contractor is required to pay its subcontractors performing work related to this Contract for satisfactory performance of that work no later than 30 days after Contractor's receipt of payment for that work from Owner. In addition, Contractor 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.

Contractor must promptly notify Owner 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. Contractor 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 Owner.

7.7 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. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Owner requests which would cause Owner to be in violation of the FTA terms and conditions.

7.8 Government-Wide Debarment and Suspension (Non-Procurement). This contract is a covered transaction for purposes of 49 CFR Part 29. As such, Contractor is required to verify that none of Contractor, 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.

Contractor 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.

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 Owner. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to Owner, 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.

7.9 Buy America. Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors. The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661.5.

7.10 Lobbying. Contractors 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.

7.11 Clean Air. Contractor 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. Contractor 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.

Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

7.12 Clean Water. Contractor 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. Contractor 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.

Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

7.13 Cargo Preference. Contractor agrees:

(1) to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;

(2) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through Contractor in the case of a subcontractor's bill-of-lading.)

(3) to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

7.14 Fly America. Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and sub-recipients of Federal funds and their contractors are

required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

7.15 Contract Work Hours and Safety Standards.

Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (1) of this section Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

Withholding for unpaid wages and liquidated damages - Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

Subcontracts - Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

7.16 Davis-Bacon and Copeland Anti-Kickback Acts.

a. Minimum wages

- i. All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act

of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided that Contractor's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (a)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

ii.

1. The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
 - a. Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - b. The classification is utilized in the area by the construction industry; and
 - c. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

- d. With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.
 2. If Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
 3. In the event Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
 4. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(ii) (2) or (3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- iii. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
 - iv. If Contractor does not make payments to a trustee or other third person, Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
- v.
 1. The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in

conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- a. The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - b. The classification is utilized in the area by the construction industry; and
 - c. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
 2. If Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
 3. In the event Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
 4. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(v) (2) or (3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- b. Withholding – Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from Contractor under this contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic,

including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, Owner may, after written notice to Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

c. Payrolls and basic records

i. Payrolls and basic records relating thereto shall be maintained by Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

ii.

1. Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to Owner for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.
2. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by Contractor or subcontractor or his or her

agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

- a. That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;
 - b. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
 - c. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
3. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.
 4. The falsification of any of the above certifications may subject Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- iii. Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.
- d. Apprentices and trainees
 - i. Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of

Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- ii. Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding

journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- iii. Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.
- e. Compliance with Copeland Act requirements - Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
- f. Subcontracts - Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
- g. Contract termination: debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.
- h. Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
- i. Disputes concerning labor standards - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
- j. Certification of eligibility
 - i. By entering into this contract, Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - ii. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

- iii. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

7.17 Seismic Safety. Contractor 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. Contractor 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.

7.18 Energy Conservation Requirements. Contractor 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.

7.19 Recycled Products. Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

7.20 Access for Individuals with Disabilities. Contractor 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. Contractor 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, Contractor agrees to comply with applicable implementing Federal regulations and directives and any subsequent amendments thereto, as follows:

- (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
- (2) 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;
- (3) 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;
- (4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;

- (5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- (6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- (7) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (8) 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
- (9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194;
- (10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and
- (11) Federal civil rights and nondiscrimination directives implementing the foregoing regulations, except to the extent the Federal Government determines otherwise in writing.

7.21 Contractor must provide owner with Contractor's Data Universal Numbering System (DUNS) number.

ARTICLE VIII REPORTING

Fort Bend County has adopted an internal ethics and compliance program designed to detect and prevent violations of the law, including regulations, and ethical standards applicable to Fort Bend County or its officers or employees. Please report any suspected noncompliance with this program to the Fort Bend County Attorney's Office or appropriate law enforcement officer.

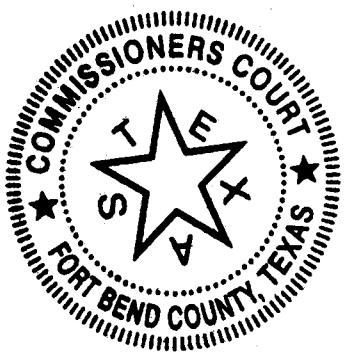
ARTICLE IX AUDITOR'S CERTIFICATION

This Article IX shall prevail over any other provision of this Agreement which might be interpreted to the contrary. Owner shall not be required by this Agreement to expend sums in excess of the amounts certified by the Fort Bend County Auditor as available for paying the obligations of Owner under this Agreement. Obligations of Owner under this Agreement are limited to the sum certified as available in the Auditor's Certificate attached hereto below plus such other sums as may be specifically certified by the Fort Bend County Auditor as available to pay obligations hereunder, and no Change Order requiring the Owner to expend funds in excess of funds previously certified as available by the County Auditor shall be effective unless and until, in addition to any other requirements for the effectiveness of such Change Order, the County Auditor has certified the availability of funds to pay the Owner's obligations thereunder.

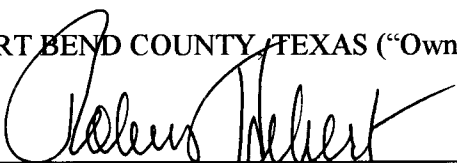
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ARTICLE X
EXECUTION

This Agreement shall become effective on the date executed by Owner.



FORT BEND COUNTY, TEXAS ("Owner")

By: 

ROBERT E. HEBERT,
County Judge

Date: July 5, 2011

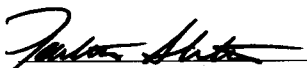
ATTEST:



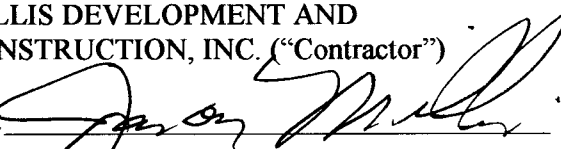
Dianne Wilson, County Clerk

APPROVED:

By:


Paulette Shelton, Director
Public Transportation Department

MILLIS DEVELOPMENT AND
CONSTRUCTION, INC. ("Contractor")

By: 

Date: _____

ATTEST:

AUDITOR'S CERTIFICATE

I hereby certify that funds in the amount of \$ 1,237,900.⁰⁰ are available to pay the obligations of Fort Bend County under the foregoing Agreement.


Ed Sturdivant, County Auditor

EXHIBIT A

GENERAL DESCRIPTION OF WORK

A.1. **PRECONSTRUCTION WORK**. Contractor shall do the following as "**Preconstruction Work**":

A.1.1. Prepare, and amend from time to time, a broad scale program for the implementation and completion of the Work (the "**Project Construction Program**"). The Project Construction Program shall be in such detail and shall cover such matters as may be required by Owner, and (without limiting the generality of the foregoing) shall be comprised of the following: (a) the Critical Path Schedule and (b) the Critical Milestones, and the other segments of the Work for which Contractor will be entitled to receive progressive payments of the Contract Lump Sum pursuant to the Cash Flow Schedule attached to **Exhibit D**. Contractor shall be paid as provided in D.2.1.

A.1.2. Within ten (10) business days of receipt of a Notice to Proceed from Owner, Contractor shall provide a project schedule for Owner Representative's approval. The project schedule shall utilize the critical path method (CPM) with activities broken down to be no more than two (2) weeks in duration including critical milestones necessary to complete the Project on time. The Project Schedule shall include, but not be limited to the following (a) Owner furnished item requirements; (b) long lead item and significant procurement milestones; and (c) commissioning and closeout activities.

A.1.3. On an as needed basis as determined by Owner Representative, cause Contractor's personnel and Contractor's Project Manager to meet with Owner Representative and Program Manager, and the representatives of the Architect to discuss the status of the Work.

A.1.4. Carefully and diligently study and compare all drawings, specifications, and instructions and shall at once report to the Architect and Owner any error, inconsistency, or omission which Contractor may discover. It is understood that Contractor's review of drawings and specifications is for the purpose of executing the Work.

A.1.5. Complete the process of obtaining the Owner's permits pursuant to **Exhibit B.7**.

A.2. **CONSTRUCTION WORK**. Contractor shall do the following as "Construction Work":

A.2.1. Perform all preparatory work at the Construction Site required for compliance with all laws and regulations as to actions to be taken by contractors before construction begins.

A.2.2. Construct and install the Project on the Construction Site in accordance with the Contract Documents.

A.2.3. Furnish all materials, supplies, equipment, tools, labor, supervision, utilities, transportation and other materials and services as and when required to perform the portion of the Construction Work described in **Exhibit A.2**.

A.2.4. Continue the progress meetings described in **Exhibit A.1.3**.

A.2.5. Schedule and comply with Owner's contracted Materials Testing requirements necessary for the Construction Work as approved by the Owner Representative and this Agreement; the frequency of testing shall be approved by the Owner Representative.

EXHIBIT B

GENERAL TERMS AND CONDITIONS

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EXHIBIT B

GENERAL TERMS AND CONDITIONS

B.1. COMMENCEMENT AND COMPLETION OF WORK; SITE ACCESS.

B.1.1. Commencement of Construction Work. Contractor shall not be obligated to commence performance of the Construction Work and the commencement of the time period for determining the Scheduled Substantial Completion Date shall not commence until the issuance of a Notice to Proceed from Owner, which shall not be issued until at least the following conditions are satisfied:

(a) Written approval by Owner Representative of the Project Construction Program as defined in Exhibit A.1.1 and approval by the Owner Representative of the Preliminary Schedule of Values; and

(a) Required building permits are available to Contractor.

B.1.2. Schedule of Value. On or before the expiration of 15 days after the effective date of this Agreement, Contractor shall prepare or cause to be prepared and Contractor shall deliver the Preliminary Schedule of Values to the Owner Representative. Owner Representative and Contractor shall review and refine the Preliminary Schedule of Values and when the parties have refined such schedule and upon approval of the Owner Representative, it shall become the Schedule of Values.

B.1.2. Completion of Work. Subject to adjustments to the Scheduled Substantial Completion Date due to delays beyond the control of Contractor or delays caused by Owner, Contractor shall pay the sum of \$500 for each day after the date required for Substantial Completion that Substantial Completion is not achieved. Owner and Contractor recognize the difficulty, inconvenience and uncertainty of ascertaining the actual damages that could be sustained by Owner as a consequence of delays in the occurrence of the Substantial Completion Date, and the parties agree that the monetary damages owed by Contractor as a consequence of any such delay in the Substantial Completion Date shall be limited to the liquidated damages described in the preceding sentence; while these liquidated damages shall be Contractor's sole and complete liability to Owner for any and all damage claims based on or arising from delays in the Substantial Completion Date, the foregoing limitation shall not be construed to prevent Owner from exercising its remedies under Exhibit B.9.2. or from obtaining injunctive relief or other equitable relief or remedies.

B.1.3. Site Access. Prior to the Transfer Date, Owner and Contractor shall have uninterrupted access to the Construction Site. Subsequent to the Transfer Date, Owner will permit Contractor and Architect and their representatives and subcontractors to enter upon the Project at times reasonably necessary to complete the Punchlist Items.

B.2. RELATIONSHIP OF PARTIES.

B.2.1. Independent Contractor and Fiduciary Role. Contractor shall be an independent contractor and any provisions of this Agreement that may appear to give Owner or the Owner Representative the right to direct Contractor as to the details of the manner of doing the Work shall be deemed to mean that Contractor shall follow the desires of Owner or the Owner Representative in the results of the Work only and not in the means whereby the Work is to be accomplished. Contractor shall be responsible as to the details of doing the Work. Neither the agents, representatives, nor employees of Contractor and its subcontractors shall be deemed to be the agents, representatives, or employees of Owner. Contractor further represents that it accepts a fiduciary role and responsibility with respect to Owner and shall, to its best abilities, act in the best interests of Owner and the timely completion of the Work. Contractor agrees and understands that neither it nor any of its agents or employees may act in the name of Owner except and unless specifically authorized in writing by Owner to do so. Contractor shall furnish construction administration and management services and use Contractor's best efforts to perform the Project in an expeditious and economical manner consistent with the interests of Owner.

B.2.2. Contractor's Project Manager. Owner recognizes and agrees that Contractor will perform the Work under the direction of Contractor's Project Manager.

B.2.3 Familiarity with Project. Contractor represents and accepts that it has: (a) visited the property, (b) taken such other steps as may be necessary to ascertain the nature and location of the Project and the visible general and local conditions which affect the Project or the cost thereof, (c) investigated the labor situation in regards to the Project, (d) examined the property, the obstacles which may be encountered and all other visually observable conditions having a bearing upon the performance of the Project, the superintendence of the Project, the time of completion and all other relevant matters, and (e) reported to Owner the results of all of the foregoing.

B.3. OBLIGATIONS OF OWNER.

B.3.1. Title to Construction Site. Owner is the owner in fee simple of the Construction Site.

B.3.1.1. Owner shall be responsible for providing surveys to Contractor upon execution of the Agreement. The surveys and legal information shall include grades and lines of streets, alleys, pavements, and adjoining property and structures; adjacent drainage; right-of-ways, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade. All of the information in the survey shall be referenced to a Project benchmark. Owner shall provide the results and reports of prior tests, inspections or investigations conducted, if any, for the Project involving chemical, air and water pollution, hazardous materials or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site. Owner shall furnish the services of geotechnical engineers for subsoil and water conditions. Such services may include test borings, test pits, determinations of soil bearing values, percolation tests, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other

consultants shall include preparation and submission of all appropriate reports and professional recommendations. Upon request, Owner shall promptly obtain easements, zoning variances, and legal authorizations regarding site utilization where essential to the execution of the Owner's program. Contractor shall be entitled to rely upon the accuracy and completeness of the services, information, surveys and reports required to be provided by the Owner.

B.3.2. Owner Representative. The Owner Representative is authorized to act on behalf of Owner under this Agreement in the administration of the Work, the granting of all consents and approvals of Owner under this Agreement (including, without limitation, the approval of changes in the Work and Proposed Change Orders pursuant to Exhibit B.8), and the processing and approval of the Applications for Payment of the Contract Lump Sum pursuant to Exhibit D. The Owner Representative's review or approval of or agreement to the performance of Work or any portion thereof shall, subject to the terms of this Agreement, in no way relieve Contractor of full responsibility for the performance of the Work. All matters requiring approval or consent by Owner under this Agreement (including, without limitation, Proposed Change Orders) shall be considered to be submitted to Owner when the same are received by the Owner Representative. Copies of this Agreement shall be furnished by Owner to the Owner Representative. The Owner Representative shall have free access to any portion of the Construction Site where any portion of the Work is being performed. Contractor acknowledges that any change orders and/or any budgetary matters require approval from the Fort Bend County Commissioners Court.

B.3.3. Project Completion Coordination. Owner shall cause the Owner Representative and other members of the staff of the Owner Representative, and/or Program Manager to be available to coordinate with all agencies and departments of Owner and all other governmental authorities required in the prosecution of the Work and required for the compliance of the Work and the completed Project with all applicable laws and regulations. Owner shall also cause the Owner Representative and the authorized employees and staff members of the Owner Representative to (a) promptly review all elements of the Project Construction Program in order to promptly advise Contractor of those elements that are acceptable or objectionable to Owner, (b) attend the progress meetings described in Exhibits A.1.3 and A.2.4, (c) review any Proposed Change Orders and (if required) the final working drawings and specifications, (d) review the Applications for Payment submitted to Owner for progress payments of the Contract Lump Sum pursuant to Exhibit D, (e) review the progress of the Work to the extent necessary to determine the Substantial Completion Date for the Project and (f) review any aspects of the Project requiring review and approval by Owner prior to the final payment of the Contract Lump Sum pursuant to Exhibit D.2.3.

B.3.4. Standards for Owner's Review and Approval.

B.3.4.1. Owner acknowledges that in order to meet the deadlines established by the Project Construction Program for the performance of the Work, and in order to accomplish the efficient performance of the Work, Contractor may submit matters to Owner in stages for approval or consent. Upon receipt of any matter submitted by Contractor for review and approval, whether a Proposed Change Order described in Exhibit B.8, a change to the final Drawings and Specifications or otherwise, Owner shall review the same and shall diligently and promptly within 14 calendar days for any such matter other than a Proposed Change Order, and within 28 calendar days for a Proposed Change Order, give Contractor notice of Owner's approval or disapproval, setting forth in detail reasons for any disapproval. Owner's right to disapprove any

such matter submitted (other than a Proposed Change Order) shall be limited to the elements thereof (a) which do not conform substantially to matters previously approved, (b) which are new elements not previously presented and approved and Contractor is unable to demonstrate that such new element is reasonably necessary for performance of the Work, or (c) which depict matters that are violations of this Agreement or applicable laws and regulations.

B.3.4.2. If Owner disapproves of a particular matter or Proposed Change Order, Contractor shall have the right to resubmit such matter or Proposed Change Order to Owner, altered to satisfy Owner's basis for disapproval. Any resubmission shall be subject to review and approval by Owner in accordance with the procedures described in Exhibit B.3.4.1.

B.3.4.3. Owner and Contractor shall attempt in good faith to resolve any disputes concerning the approval of any aspect of the Work expeditiously, so as not to delay the performance of the Work in accordance with this Agreement.

B.3.5. Expedited Approvals. Owner recognizes the importance of expeditious action upon all matters submitted to Owner (or Owner's Representative) for review and approval and of expeditious response to those aspects of the Work requiring approval by governmental authorities having jurisdiction thereover. Owner agrees to exercise its rights of review and approval hereunder with due diligence, reasonableness, and good faith. Owner shall use its reasonable efforts to expedite any required review of the Project or other matters by any Governmental Authority.

B.4. OBLIGATIONS OF CONTRACTOR

B.4.1. Laws and Regulations. Contractor shall in its performance of the Work comply with all applicable laws and regulations. Any delays in the prosecution of the Work caused by any changes in the laws and regulations may entitle Contractor to an extension of time if such delay affected the Critical Path Schedule.

B.4.2. Project Construction Program. Contractor shall deliver to Owner periodically, but at least once each month, a schedule showing the status of the Work with reference to the Project Construction Program, as amended, and showing the then expected schedule for completion of the Work and showing any delays in the Work and the party responsible for such delays. Contractor shall promptly inform Owner by means of a Proposed Change Order (as provided for in Exhibit B.8.2) of any anticipated or actual delays or accelerations that may cause the Work to be completed before or after the Scheduled Substantial Completion Date.

B.4.3. Records. Contractor agrees to maintain and preserve for a period of at least five (5) years after the earlier of the expiration of the Defect Period(s) or termination of this Agreement, accurate and complete records relating to the performance of the Work. Contractor agrees to, upon request, provide Owner with such records.

B.4.4. Record Drawings and Specifications. Within thirty (30) days after the Substantial Completion Date, Contractor shall furnish Owner with a full set of As-Built marked-up Drawings and Specifications for the Project as actually constructed. On the Final Completion Date, Contractor shall furnish Owner with copies of all subcontractors' and suppliers' warranties

and all operating manuals. Such Drawings and Specifications shall be marked to show all approved changes and modifications that have been incorporated into the Work as performed.

B.4.5. Record Copy of Contract Documents. Contractor shall maintain at the site one (1) up-to-date record copy of all contracts, drawings, specifications, addenda, Change Orders or other modifications, in good order and marked currently to record all changes and selections made during construction, and in addition, approved Shop Drawings, product data, samples and similar required submittals, and requests for information ("RFIs"). These items shall be available to Owner, Architect and Contractor, and will be delivered to Owner upon completion of the Project.

B.4.6. Staffing Plan and Prevailing Wage Rates. Contractor shall develop a proposed supervisory staffing plan for approval by Owner. In accordance with Chapter 2258 of the TEXAS LOCAL GOVERNMENT CODE, all persons employed by the Contractor shall be compensated at not less than the rates shown in Schedule 1 to Exhibit B. Contractor shall keep detailed records of each of its workers and said records shall be made available to Owner for inspection at all reasonable times in accordance with Section 2258.024 of the TEXAS GOVERNMENT CODE.

B.5. CONDUCT OF THE WORK.

B.5.1. Familiarity, Rights and Obligations. Contractor represents that it is familiar with all phases of the Work and the matters that may affect the Work or its prosecution under this Agreement. Neither any oral representation by or oral agreement with any officer, agent, or employee of Owner or Contractor, either before or after the execution of this Agreement, nor any written representation by or written agreement with any officer, agent, or employee of Owner or Contractor before execution of this Agreement shall affect or modify any of parties' rights or obligations hereunder.

B.5.2. Standard of Performance. Contractor shall prosecute the Work in accordance with the best efforts for the construction and development of projects similar to the Project in the State of Texas, using qualified, careful, and efficient contractors and workers and in conformity with the provisions of this Agreement. If the law imposes an obligation upon Contractor to perform the Work in a "good and workmanlike manner," the parties agree that such term shall be synonymous with the standard of care specified in this Exhibit B.5.2 and Exhibit B.2.1.

B.5.2.1. Warranty of Contractor. Contractor warrants to Owner that: (i) the Contractor possesses the skill and knowledge ordinarily possessed by well-informed members of its trade or profession and Contractor will use its best efforts to ensure that the services provided under this Agreement will be performed, delivered, and conducted in accordance with the best professional standards and in accordance with industry standards, and (ii) Contractor is fully experienced and properly qualified to perform the class of Work provided for herein, and that it is properly equipped, organized and financed to perform such Work, and (iii) following the date of acceptance of this Agreement, the services provided by Contractor to Owner will conform to the representations contained in this Agreement, including all attachments, schedules and exhibits. All warranties provided by Contractor in this Agreement shall be cumulative, shall be deemed consistent and not in conflict, are intended to be given full force and effect and to be interpreted expansively to give the broadest warranty protection to Owner.

B.5.2.2. Contractor shall provide, during construction, continuous on-site construction observation, to familiarize itself with the progress and quality of the completed work, and to determine if the work is proceeding in such a way as when it is complete it will be in accordance with the Contract Documents. Field Reports shall be prepared daily by Contractor and submitted to Owner Representative. Contractor shall submit a report which shall constitute a representation by Contractor to Owner, based on observations at the site that to the best of Contractor's knowledge, information and belief, the quality of the completed work is in accordance with the Contract Documents.

B.5.2.3. Contractor shall use all best efforts and measures to implement its responsibilities under this Agreement to safeguard Owner against defects and deficiencies in the completed work of the Trade Contractors. Contractor shall be responsible for the construction means, methods, techniques, sequences of procedures, and for the safety precautions and programs employed in connection with the work. However, Contractor will promptly inform the Owner's Representative in writing whenever defects and deficiencies in the completed Work are observed and whenever any defects or discrepancies are observed within the Contract Documents, or when any observed actions or omissions are undertaken by the Trade Contractors that are not in the best interest of Owner and the Project.

B.5.3. Document Delivery. During the progress of the Work, Contractor shall provide Owner with both hard copy (one original and two copies) and electronic format any design, engineering, procurement and construction documents produced by Contractor.

B.5.4. Ownership of Documents. Drawings, specifications, and other documents, including those in electronic form, prepared by the Architect and furnished to Contractor are Instruments of Service. All design and instruments of service under this Agreement, including, but not limited to, tracings, drawings, estimates, specifications, studies and other documents, completed or partially completed, shall be the property of Owner. Contractor specifically waives and releases any proprietary rights or ownership claims therein. Contractor may retain a reproducible copy of all Instruments of Service; however, Owner reserves the right, so long as such instruments of service exist, to obtain copies, reproducible or otherwise, from Contractor at Owner's expense, but without any additional fee or charge by Contractor.

B.5.4.1. Contractor shall be liable to Owner for any loss or damage to any such documents while they are in the possession of, or while being worked upon, by the Contractor or anyone connected with Contractor, including agents, employees, consultants or subcontractors. All documents damaged shall be replaced or restored by Contractor without cost to the Owner.

B.5.5. Contractor's Personnel. Contractor shall employ only competent, skilled personnel for the Work. Prior to the Final Completion Date, Contractor shall maintain Chad Millis as the Contractor's "Contractor's Project Manager" who shall be authorized to act on behalf of Contractor and with whom Owner may consult at all reasonable times. Contractor's Project Manager shall not be transferred from the Work without Owner's consent (which shall not be unreasonably withheld or delayed); provided, however, Contractor's Project Manager shall not be assigned solely to the Work and shall be entitled to spend reasonable time working on matters unrelated to the Work or the Project so long as such work on other matters does not render Contractor's Project Manager unavailable to the Work or unavailable to Owner's Representative. However, such obligation to furnish Contractor's Project Manager and such staff personnel shall

not be construed (a) to preclude the promotion within Contractor's organization of any person assigned to the Work or (b) to give rise to any liability of Contractor if any person assigned to the Work (including, without limitation, Contractor's Project Manager) leaves Contractor's employment. If Contractor's Project Manager is transferred from the Work, Owner shall have the right to approve any replacement (which approval will not be unreasonably withheld or delayed). Contractor and Contractor's subcontractors shall comply with all applicable health, safety, and loss prevention rules of applicable Governmental Authorities. Contractor shall, at its own expense, remove from the Work any person who fails to comply with such rules and instructions. Contractor shall at all times enforce strict discipline and good order among its employees and shall not employ on the Work any unfit person or anyone not skilled in the work assigned to him. Owner may, upon written notice to the Contractor, require Contractor to remove an individual immediately from providing services for the following reasons: violation of the terms and conditions of this Agreement; violation of the Owner's or Contractor's work rules and regulations; criminal activity; or violation of state, federal, or municipal statutes. Owner may, upon thirty (30) days written notice to Contractor, require the removal of any individual from providing services without cause.

B.5.6. Inspection. The Work and all parts thereof shall be subject to inspection from time to time by inspectors designated by the Owner Representative and Architect. No such inspections shall relieve Contractor of any of its obligations hereunder. Neither failure to inspect nor failure to discover or reject any of the Work as not in accordance with the Drawings and Specifications or any provision of this Agreement shall be construed to imply an acceptance of such Work or to relieve Contractor of any of its obligations hereunder. Owner agrees that its right of inspection shall be used reasonably and in a timely manner so as not to delay orderly completion of the Work.

B.5.7. Protection Against Risks. Contractor shall take all precautions which are necessary and adequate, against conditions created during the progress of the Work which involve a risk of bodily harm to persons or a risk of damage or loss to any property. Contractor shall regularly inspect all Work, materials and equipment for the purpose of discovering and determining any such conditions and shall be responsible for correction of any such conditions. Contractor shall comply with all federal, state and local occupational hazard and safety standards, codes and regulations applicable in the jurisdiction where the Work is being performed. Contractor shall include the substance of this clause in its entirety in all subcontracts for any work to be performed at the Construction Site.

B.5.8. Claims. Claims made by any party must be submitted in writing within twenty-one (21) days after occurrence of the event giving rise to such claim or within twenty-one (21) days after the claimant first recognized the condition giving rise to the claim, whichever is later.

B.5.9. Correlation and Intent of the Contract Documents. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

B.5.9.1. The most recently issued document takes precedence over previously issued forms of the same document. Figures given on drawings govern scale measurement, and large scale details govern smaller scale drawings. If an item is shown one place in the drawings, but not on another, or called for in a schedule or the specifications but not shown on the drawings, it is to be included. Existing conditions take precedence over Drawings and Specifications for dimensions and shall be verified by Contractor. The order of precedence is as follows with the highest authority listed first:

- A. The Agreement
- B. Addendum
- C. Supplemental Conditions
- D. General Conditions
- E. Specifications and
- F. Drawings

B.5.9.2. In the event of discovered inconsistencies, if any, within or between parts of the Contract Documents Contractor shall (1) provide the better quality or greater quantity of Work or (2) comply with the more stringent requirement, either or both in accordance with Architect's interpretation. The terms and conditions of this section, however, shall not relieve Contractor of any other obligations of this Agreement.

B.6. EQUIPMENT AND MATERIALS.

B.6.1. Equipment. Except as expressly provided herein to the contrary, Contractor shall furnish all construction, transportation, installation, tools, and other equipment and facilities required for the performance of the Work within the times specified herein. Such equipment and facilities shall be serviceable and kept fit for the uses intended. Defective items shall be removed from the Construction Site promptly and at Contractor's cost. Contractor shall schedule (or cause to be scheduled) its other operations so as to not interfere with its duty to timely furnish the necessary equipment and facilities and personnel to operate the same at the times necessary for the orderly completion of the Work within the times allotted in the Project Construction Program.

B.6.2. Materials. Except as may be specifically provided otherwise in the Agreement or approved in advance by Owner, Contractor shall provide the Owner Representative with copies of material testing reports and to cause all materials, equipment, and fabricated items incorporated in the Project to be new and of a suitable grade of their respective kinds for their intended use.

B.6.3. Procurement Procedures. Procurement requisition, purchase order, inspection and expediting reports shall follow Contractor's standard reporting format whenever such standard reporting format exists, and if no such format exists, Contractor shall devise a format with the Owner's Representative and/or Program Manager.

B.7. PERMITS.

B.7.1. Contractor Permits. Contractor shall obtain all permits, licenses, governmental consents and approvals which may be necessary for the lawful performance of the Work on or before the date when such permits, licenses, Texas Department of Licensing and Regulation requirements,

governmental consents or approvals are required by law or are necessary for the lawful performance of the Work. Owner shall provide any required easements.

B.7.2. Permits Generally. Each party shall cooperate with the other in obtaining all permits required to be obtained as provided in this Agreement.

B.8. CHANGES.

B.8.1. General. Owner may make changes in the Work by altering, adding to, or deducting from the Work. All changes in the Work which (a) require an adjustment in the Contract Lump Sum or an adjustment in the Scheduled Substantial Completion Date or (b) involve a material change in the overall scope or function of the Project shall be requested and authorized before commencing such changes by use of written Change Order Notices, Proposed Change Orders and Change Orders, as described in Exhibit B.8.2, which Change Order procedure shall be the exclusive means to effect such changes in the Work. There shall be a presumption against the need for Change Orders that increase the Contract Lump Sum.

B.8.2. Change Order Procedure.

B.8.2.1. Owner Initiated Change Orders: If at any time Owner desires to make any change in the Work requiring the issuance of a Change Order pursuant to Exhibit B.8.1, Owner shall so advise Contractor in writing by delivery to Contractor of a written notice (the "Change Order Notice"), describing the change. Upon receipt of a Change Order Notice initiated by Owner, Contractor shall within fourteen (14) calendar days advise Owner of Contractor's proposal for the adjustments, if any, in the Contract Lump Sum, the Project Construction Program, the Schedule of Values and the Scheduled Substantial Completion Date attributable to such change by delivering a written notice thereof (the "Proposed Change Order") to Owner. Such Proposed Change Order shall contain a description of the proposed change and shall set forth Contractor's estimate of the increase or decrease, if any, in the Contract Lump Sum and the change, if any, in the Project Construction Program, the Schedule of Values and the Scheduled Substantial Completion Date attributable to such change.

B.8.2.2. Contractor Initiated Change Orders: If Contractor desires to make a change in the Work requiring the issuance of a Change Order or if Contractor receives any drawings, specifications, interpretations or instructions from Owner or Architect which are inconsistent with the Contract Documents, or encounters unanticipated conditions which may result in a change in cost, scope or Substantial Completion Date, Contractor shall deliver to Owner a Proposed Change Order and shall not proceed with the affected work until further written instructions are received from Owner. Upon execution by the Owner Representative on behalf of Owner (and the approval of Fort Bend County Commissioner's Court), a Proposed Change Order shall constitute (and be defined herein as) a "Change Order" for purposes of this Agreement. Contractor shall forthwith perform the Work as changed in accordance with such Change Order. All Work performed pursuant to a Change Order shall be performed in accordance with the terms of this Agreement. All Proposed Change Orders shall be submitted for approval by Owner (through the Owner Representative) in compliance with Exhibit B.3.4. No action, acquiescence or inaction by Owner or any representative of the Owner shall be construed to be a waiver of requirements set forth in this Agreement in regard to Change Orders or ratification of a violation of such requirements, and all acts in violation of this provision shall be considered void.

B.8.3. Change Order Authorization. Each Change Order shall be signed by the Owner Representative and an authorized representative of Contractor.

B.8.4. Contract Lump Sum Adjustments. The Contract Lump Sum and the Schedule of Values shall be adjusted only as a result of a Change Order requiring such adjustment. Any extra work performed without a proper Change Order shall be considered voluntary and not subject to additional compensation. Contractor shall not be entitled to an adjustment in the Contract Lump Sum (or a Change Order permitting such adjustment) or to damages as a result of any delays in the Work caused by the acts or omissions of Owner, provided that such delays do not delay the Critical Path nor fall outside of any time limits established under this Agreement. This sentence is not applicable to delays that constitute more than 90 days in any 365-day period or cause the Work to be interrupted for a continuous period of 90 days through no fault of Contractor.

B.8.4.1. When Owner and Contractor agree upon the adjustments in the Contract Lump Sum, the Project Construction Program, the Schedule of Values and the Scheduled Substantial Completion Date attributable to such adjustment, such agreement will be documented by preparation and if approved by the Fort Bend County Commissioners Court, execution of an appropriate Change Order and effective thereafter in accordance with Section B.8.2 above.

B.9. DEFAULT AND TERMINATION

B.9.1. Default by Owner.

B.9.1.1. Each of the following shall be an "Act of Default" by Owner and a material breach of this Agreement:

- (a) Owner's failure to disburse installments of the Contract Lump Sum to Contractor as required under this Agreement;
- (b) If Owner materially defaults under this Agreement (other than a default described in clause (a) of this Exhibit B.9.1.1) and Owner fails to remedy such default within 30 days after written notice from Contractor or, if such default is of a nature that it cannot be remedied within 30 days, if Owner fails to initiate action within 30 days after such notice and thereafter to proceed diligently and continuously to remedy same; or
- (c) If repeated suspensions, delays or interruptions of the Work by Owner constitute in the aggregate more than 90 days in any 365-day period or cause the Work to be interrupted for a continuous period of 45 days, both through no act or fault of Contractor.

B.9.1.2. If any Act of Default by Owner shall occur, Contractor shall have the right to deliver a written notice at any time prior to the curing of such Act of Default which terminates Contractor's duty to complete the Work, and upon any such termination, Owner shall pay to Contractor the portion of the Contract Lump Sum owed to Contractor for Work completed as of the date of termination by Contractor in accordance with the approved Schedule of Values, and

additional compensation for demobilization and other costs and expenses incurred by Contractor as a consequence of the termination, including reasonable overhead, profit and damages.

B.9.2. Default by Contractor.

B.9.2.1. Each of the following shall be an "Act of Default" by Contractor and a material breach of this Agreement:

(a) If Contractor materially defaults under this Agreement and Contractor fails to remedy such default within 15 days after written notice from Owner or, if such default is of a nature that it cannot be remedied within 15 days, if Contractor fails to initiate action within 15 days after such notice and thereafter to proceed diligently and continuously to remedy same; or

(b) If Contractor shall (i) file or consent to any petition for bankruptcy or insolvency or similar remedy; (ii) fail to cause any bankruptcy, insolvency, or similar proceeding to be stayed or dismissed within 90 days after the filing thereof; (iii) be adjudged a bankrupt or make a general assignment for the benefit of creditors; or (iv) seek, consent to or acquiesce in the appointment of a trustee, conservator, custodian, liquidator or receiver of a significant portion of Contractor's assets.

B.9.2.2. If any Act of Default by Contractor shall occur, Owner shall have the right to deliver written notice at any time prior to the curing of such Act of Default which terminates Contractor's right to proceed with the Work and Owner shall have no obligation to make any further payments to Contractor except for the portion of the unpaid Contract Lump Sum, if any, that exceeds Owner's cost of completion and other damages recoverable hereunder and such unpaid Contract Lump Sum shall become due once all remaining expenses associated with the Work have been incurred and paid. In the event of such termination, Owner may finish the Work by whatever means it may deem expedient, including (without limitation) the hiring of any Contractor or Contractors under such form of contract as Owner may deem desirable, and Owner shall have the right but not the obligation, for the purposes of completing the Work, to take over and assume the rights and obligations of the Contractor under any or all subcontracts and purchase orders. Contractor and Contractor's performance bond surety shall be responsible for all damages recoverable under this Agreement arising from Contractor's breach.

B.9.2.3 Any failure to comply with applicable Laws and Regulations will be deemed a material default under this Agreement.

B.9.3. Officers and Employees. None of the officers, directors, constituent partners, members, employees, elected officials, agents or affiliates of Owner or Contractor shall ever be personally liable for, or obligated to pay, or to satisfy any judgment for, any damages or any other monetary obligation whatsoever under any theory of action or recovery, on account of an Act of Default by Owner or Contractor under this Agreement or otherwise.

B.10. PAYMENT OF BILLS AND LIENS.

B.10.1. Payment of Bills. Contractor shall promptly pay when due all amounts owed by Contractor to all subcontractors performing portions of the Work pursuant to a direct contract with Contractor (but expressly excluding any subcontractors not directly contracting with

Contractor). Contractor shall indemnify and hold Owner harmless from and against all liens, costs, claims, suits, actions, debts and damages (including, without limitation, reasonable attorneys' fees) arising as a consequence of Contractor's failure to comply with this Exhibit B.10.1 so long as Owner makes payment to Contractor as required by this Agreement.

B.10.2. Liens. Contractor shall indemnify and hold harmless the Indemnified Parties from all liens and other encumbrances against the portions of the Work and any claims or actions on account of debts or claims with respect to the Work alleged to be performed by Contractor or its subcontractors or suppliers to any person, and will defend any claim or litigation in connection therewith.

B.11. TAXES.

B.11.1. Unemployment Taxes. Contractor shall, and shall require its subcontractors to, pay any and all taxes and contributions for sickness and unemployment insurance, retirement benefits, life pensions, annuities, and similar benefits which may now or hereafter be imposed by law or agreement with respect to persons employed by Contractor or any of its subcontractors for performance of the Work. Contractor shall comply with all Laws and Regulations applicable to the compensation paid to its employees.

B.11.2. Corporate and Income Taxes. Notwithstanding anything else herein to the contrary, it is not intended that Owner be liable to Contractor for the reimbursement of any corporate franchise taxes or any taxes levied directly or indirectly on or measured by income or chargeable gains.

B.11.3. Sales and Use Taxes. Contractor shall pay any and all sales or use taxes imposed by the State of Texas or any municipality or other entity incorporated thereunder or created thereby; provided, however, Owner agrees to reasonably assist in obtaining the appropriate certificates from the appropriate Governmental Authorities reflecting the exemption of the Project from all sales and use taxes.

B.12. COMPLETION, TRANSFER AND ACCEPTANCE.

B.12.1. Substantial Completion. Upon the occurrence of the Substantial Completion Date, the Punchlist Items shall be promptly commenced and thereafter completed within thirty (30) days after Substantial Completion by Contractor.

B.12.2. Transfer and Acceptance. Upon the occurrence of Substantial Completion, care, custody and control of the Project shall pass to Owner. As referenced herein, the "Transfer Date" shall mean the date on which the care, custody and control of the Project passes to the Owner pursuant to this Exhibit B.12.2. Subsequent to the Transfer Date all risk of loss with respect to the Project shall be by Owner and Contractor shall not be thereafter obligated to cover the Project with the Builder's Risk Insurance described in the Exhibit F.

B.12.3. Partial Occupancy. Owner may obtain beneficial use and occupancy of any completed or partially completed portion of the Work at any stage, provided such use and occupancy is authorized by public authorities having jurisdiction over the Work.

B.12.3.1. **Inspection.** Immediately prior to such partial use and occupancy, Owner and Contractor shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

B.12.3.2 **Effect.** Partial use and occupancy of a portion or portions of the Work shall not constitute acceptance of Work not complying with requirements of the Contract Documents.

B.13. GUARANTEES, WARRANTIES AND INSURANCE.

B.13.1. **General.** Generally, all guarantees, warranties and insurance coverage to be provided by Contractor to Owner are set forth in Exhibits E and F.

B.13.2. **Supervision of Warranty Work.** Contractor shall, without any compensation in addition to the Contract Lump Sum, coordinate and supervise the completion of the corrective Work in the manner required for the original Work as a result of a Defect in the Work or the failure of the Work or the Project to meet the standards designated in Exhibit E.

B.14. SUBCONTRACTS, ASSIGNMENTS AND OTHER AGREEMENTS.

B.14.1. **Subcontracts.** When used in this Agreement, the terms "subcontract" and "subcontractor" shall mean and include both subcontracts and purchase orders and both subcontractors and purchase order vendors, respectively. Contractor shall be entitled to enter into subcontracts with subcontractors as required by Contractor to perform the Work. Except as expressly provided herein to the contrary, Contractor shall remain responsible for performance of all Work subcontracted by Contractor. Contractor shall be responsible for inspecting subcontractors' work, for measuring progress and maintaining schedules, and for notifying Owner of subcontract awards and status. Contractor shall manage, schedule and coordinate the work of its subcontractors at whatever tier so as to meet the Scheduled Substantial Completion Date. Contractor shall include in each subcontract provisions (a) recognizing that the subcontract does not bind Owner, and (b) permitting Owner, Owner's Representatives and their designees to conduct the inspections permitted herein.

B.14.2. **Assignment.** Contractor may not assign this Agreement or any portion hereof except with the prior written consent of Owner; provided, however, this Exhibit B.14.2 shall not be construed to prohibit Contractor from entering into subcontracts in order to perform the Work.

B.15. INDEMNIFICATION.

B.15.1. **Bodily Injury and Property Damage Liability.** As set forth in Exhibit E, Contractor is obligated to defend, indemnify and hold harmless the Indemnified Parties from any and all claims, damages, liabilities and expenses (including, without limitation attorneys' fees) for injury to or death of any person or for damage to or destruction of any property resulting directly or indirectly from any and all acts or omissions of Contractor, its officers, agents and employees, any of Contractor's subcontractors' subcontractors, their officers, agents and employees or anyone employed by any of them or anyone for whose acts any of them may be liable.

B.15.2. **Protection of Work.** As set forth in Exhibit E, Contractor shall be responsible for all risk of loss to all materials delivered to the Construction Site and all materials and equipment

incorporated into the Work prior to the Transfer Date unless the loss occurs after Substantial Completion and is solely caused by Owner or its separate contractors. Contractor shall, prior to the Transfer Date, provide continuous and adequate protection of the Work performed and of Owner's and Contractor's property located at the Construction Site. Contractor shall be obligated to replace or repair any materials, equipment or supplies which are (or are to become) a permanent part of the Work or any temporary or existing facilities at the site.

B.15.3. Limitations. Contractor shall have no obligation to Owner or any other party with respect to any damage or loss to the Work or property on the Construction Site (including loss of use) caused by the perils of war, insurrection, revolution, or nuclear reaction.

B.16. FORCE MAJEURE.

B.16.1. Force Majeure as applicable to Contractor. If Contractor shall be unable to perform or shall be delayed in the performance of any of the terms and provisions of this Agreement as a result of (i) governmental preemption of materials in connection with a national emergency declared by the President of the United States; (ii) riot, insurrection, or other civil disorder affecting performance of the Work; (iii) power or other utility failure preventing the performance of the Work or substantial portions of same; (iv) fire or other unavoidable casualty; or (v) unusual and extreme weather conditions, then, and in any such event, such inability or delay shall be excused, and the time for completing the affected portions of the Project (and the entire Project, if applicable) shall be extended for such reasonable period of time as the delay has affected the performance of the Work hereunder. Contractor shall take all reasonable actions to minimize the delay caused by any of the above factors, and shall notify Owner in writing of any event allowing for excuse or delay not later than seven (7) days after the event Contractor first becomes aware of the event; or may have become aware, of the event; otherwise Contractor will be deemed to have waived the excuse or delay.

B.16.2. Force Majeure as applicable to Owner. If Owner shall be unable to comply or shall be delayed in the compliance of any of the terms and provisions of this Agreement as a result of (i) governmental preemption of materials in connection with a national emergency declared by the President of the United States; (ii) riot, insurrection, or other civil disorder; (iii) power or other utility failure; (iv) fire or other unavoidable casualty; or (v) unusual and extreme weather conditions, then, and in any such event, such inability or delay shall be excused, and the time for compliance with the Agreement shall be extended for a reasonable period of time. Owner shall take all reasonable actions to minimize the delay caused by any of the above factors, and shall notify Contractor in writing of any event allowing for excuse or delay not later than seven (7) days after the event Owner first becomes aware of the event; or may have become aware, of the event; otherwise Owner will be deemed to have waived the excuse or delay.

B.16.3. Excluded Events. Contractor understands that delays occasioned by the events and occurrences set forth below are not included in Exhibit B.16.1, do not constitute reason for extending the date for Substantial Completion and that it is Contractor's responsibility to make adequate provision in scheduling the Work for the following:

B.16.3.1. Late Deliveries. Late deliveries of materials and/or equipment for any cause other than those specified in Exhibit B.16.1. No claim will be approved if materials and equipment are delayed due to Contractor's tardy procurement or expediting.

B.16.2. Additional Grounds. The provisions of this Exhibit B.16.1 are in addition to other grounds for extension of time as set forth in the Contract Documents.

B.17. APPLICABLE LAW. This Agreement shall be construed and enforced in accordance with the laws of the State of Texas. Venue for all actions regarding this Agreement shall be in Fort Bend County, Texas.

B.18. CERTAIN THIRD PARTIES BENEFITED. This Agreement shall be for the sole benefit of Owner and Contractor and not for any other third party.

B. 19. NOTICES. All notices, requests, directions, or other communications permitted or required hereunder (collectively "notices"), other than routine Work related communications, shall be in writing and shall be delivered in person or by certified mail, return receipt requested to the appropriate party at the address specified below, with copies to such other parties as specified below, unless a different address for notice or copy thereof is changed by notice. Notice sent by personal delivery to the authorized representative designated by a party shall be effective on the date the authorized representative actually receives such delivery. Notice sent by properly addressed mail, certified or registered with return receipt requested, and postage prepaid shall be effective three days after being deposited in the mail. Notice sent by telegraph, telex, telecopy, or cable, charges prepaid and confirmed by copy thereof sent by registered or certified mail shall be effective upon the date of such telegraph, telex, telecopy, or cable. Notice sent in any other manner shall be effective only if and when received by the parties.

To Owner:

Fort Bend County Commissioners Court
301 Jackson St., Suite 719
Richmond, Texas 77469
Attn: County Judge

Copy to:

Facilities Management and Planning Department
Don Brady, Director
1402 Band Road, Suite 100
Rosenberg, Texas 77471

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

To Contractor:

Millis Development and Construction, Inc.
Chad Millis
4610 Sweetwater Boulevard, Suite 200
Sugar Land, Texas 77479

To Engineer:

Pate Contractors, Inc.
Jeff E. Ross
13333 Northwest Freeway, Suite 300
Houston, Texas 77040

Copy to Program Manager:

Claunch & Miller
Brock R. Crenek, P.E.
4635 Southwest Freeway, Suite 1000
Houston, Texas 77027

B.20. CONSENTS. Without limiting the generality of Exhibits B.3.4 and B.3.5, in each and every instance where Owner or Contractor is required in this Agreement to obtain, or Owner or Contractor has elected to obtain, the consent or approval of the other party to any act or circumstance, such consent or approval shall not be unreasonably withheld, delayed or conditioned, unless otherwise expressly permitted in this Agreement.

B.21. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties hereto with respect to the matters covered hereby. All prior negotiations, representations, and agreements with respect thereto and unincorporated herein are hereby cancelled. Except as otherwise provided in this Agreement, this Agreement may be modified or amended only by a document duly executed on behalf of the parties hereto.

B.22. NON-WAIVER. No waiver or waivers by either party hereto of any breach or default of any provision hereunder shall be deemed a waiver of any other provision hereof or a waiver of any subsequent breach or default. No payment made under this Agreement (a) shall be, or be construed to be, final acceptance or approval of that part of the Work to which such payment relates or any other part of the Work, (b) shall relieve Contractor of any of its obligations hereunder with respect thereto, or (c) shall constitute a waiver of or otherwise affect the covenants and warranties of Contractor.

B.23. CAPTIONS. The captions used in this Agreement are for convenience only and shall in no way define, limit, or describe the scope or intent of this Agreement or any part thereof.

B.24. SEVERABILITY. If any provision of this Agreement or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, but the extent of the invalidity or unenforceability does not destroy or render ineffective the basis of the bargain between the parties hereto, the remainder of this Agreement and the application of the provision to the other persons or circumstances shall not be affected thereby but rather shall be enforced to the greatest extent permitted by law.

B.25. CLAIMS FOR CONSEQUENTIAL DAMAGES. Contractor and Owner waive claims against each other for consequential damages arising out of or relating to this Agreement. This mutual waiver includes:

(a) damages incurred by 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

(b) damages incurred by Contractor 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.

B.21.1 This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with the terms of this Agreement. Nothing contained in this Exhibit B.24 shall be deemed to preclude an award of liquidated damages pursuant to Exhibit B.1.3 hereof.

B.26. CLAIMS FOR CONCEALED OR UNKNOWN CONDITIONS. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or reports furnished by Owner to Contractor or (2) unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then the observing party shall give notice to the other party promptly before conditions are disturbed and in no event later than ten (10) days after first observance of the conditions. Owner shall promptly investigate such conditions and, if they differ materially and cause an increase or decrease in Contractor's cost of, or time required for, performance of any part of the Work, shall negotiate with Contractor an equitable adjustment in the Contract Lump Sum or Substantial Completion Date, or both. If Owner determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of this Agreement is justified, Owner shall so notify Contractor in writing, stating the reasons. Claims by Contractor in opposition to such determination must be made within five (5) days after Owner has given notice of the decision.

**SCHEDULE 1 TO EXHIBIT B
STAFF PREVAILING WAGE RATES**

The following prevailing wage rates shall be utilized by Contractor's staffing of the Project during the course of the Work. Contractor shall be responsible for payment of not less than the wages detailed below for the duration of the Project.

General Decision Number: TX100046 03/12/2010 TX46

Superseded General Decision Number: TX20080046

State: Texas

Construction Types: Highway

Counties: Brazoria, Chambers, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange and Waller Counties in Texas.

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest areas, projects, and railroad construction: bascule, suspension & spandrel arch bridges; bridge designed for commercial navigation; bridges involving marine construction; other major bridges).

Modification Number: 0 Publication Date: 03/12/2010

SUTX2005-005 11/09/2004

	Rates	Fringes
Asphalt Distributor Operator	\$ 10.94	0.00
Asphalt paving machine operator	\$ 12.01	0.00
Asphalt Raker	\$ 11.13	0.00
Asphalt Shoveler	\$ 9.14	0.00
Broom or Sweeper Operator	\$ 11.19	0.00
Bulldozer operator	\$ 11.81	0.00
Carpenter, Rough	\$ 12.49	0.00
Concrete Finisher, Paving	\$ 11.38	0.00
Concrete Finisher, Structures	\$ 10.80	0.00
Concrete Paving Curbing Machine Operator	\$ 10.00	0.00
Concrete Paving Finishing Machine Operator	\$ 13.07	0.00
Concrete Paving Joint Sealer Operator	\$ 11.00	0.00
Concrete Paving Saw Operator	\$ 12.75	0.00
Concrete Paving Spreader Operator	\$ 10.44	0.00
Concrete Rubber	\$ 9.00	0.00
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel Operator	\$ 12.71	0.00
Crusher and Screed Plant Operator	\$ 11.29	0.00
Electrician	\$ 21.79	0.00

Flagger	\$ 9.42	0.00
Form Builder/Setter. Structures	\$ 10.50	0.00
Form Liner. Paving & Curb	\$ 11.75	0.00
Form Setter. Paving & Curb	\$ 10.51	0.00
Foundation Drill Operator. Crawler Mounted	\$ 15.00	0.00
Foundation Drill Operator. Truck Mounted	\$ 12.73	0.00
Front End Loader Operator	\$ 10.65	0.00
Laborer. common	\$ 9.15	0.00
Laborer. Utility	\$ 9.81	0.00
Manhole Builder	\$ 9.00	0.00
Mechanic	\$ 13.72	0.00
Milling Machine Operator. Fine Grade	\$ 13.17	0.00
Mixer operator	\$ 10.33	0.00
Motor Grader Operator. Rough	\$ 13.13	0.00
Motor Grader Operator	\$ 11.67	0.00
Oiler	\$ 15.54	0.00
Pavement Marking Machine Operator	\$ 8.18	0.00
Piledriverman	\$ 12.22	0.00
Pipelayer	\$ 9.49	0.00
Reinforcing Steel Setter. Paving	\$ 15.14	0.00
Reinforcing Steel Setter. Structure	\$ 13.87	0.00
Roller Operator. Pneumatic. Self-Propelled	\$ 9.91	0.00
Roller Operator. Steel Wheel. Flat Wheel/Tamping	\$ 10.43	0.00
Roller Operator. Steel Wheel. Plant Mix Pavement	\$ 11.07	0.00
Scraper Operator	\$ 9.92	0.00
Servicer	\$ 10.96	0.00
Sign Installer (PGM)	\$ 8.54	0.00
Slip Form Machine Operator	\$ 11.07	0.00
Spreader Box operator	\$ 11.12	0.00
Structural Steel Worker	\$ 12.13	0.00
Tractor operator. Crawler Type	\$ 13.00	0.00
Tractor operator. Pneumatic	\$ 10.07	0.00
Traveling Mixer Operator	\$ 11.00	0.00
Truck driver. lowboy-Float	\$ 13.16	0.00
Truck driver. Single Axle. Heavy	\$ 10.65	0.00
Truck driver. Single Axle. Light	\$ 10.07	0.00
Truck Driver. Tandem Axle. Semi-Trailer	\$ 10.25	0.00
Work Zone Barricade Servicer	\$ 9.94	0.00

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

EXHIBIT C

SITE PLAN

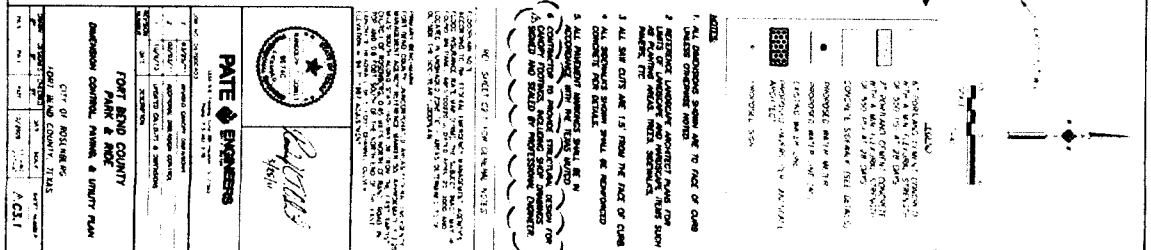


EXHIBIT D
COMPENSATION

D.1. CONTRACT LUMP SUM.

D.1.1. **Total Compensation.** As full and complete compensation for Contractor's performance of the Work in accordance with the terms and conditions of this Agreement, Owner shall pay to Contractor the Contract Lump Sum. The Contract Lump Sum constitutes the entire compensation due Contractor for all of the Work and all of Contractor's obligations under this Agreement regardless of difficulty, hours worked, or materials or equipment required and includes, but is not limited to, compensation for all applicable taxes (excluding sales and use taxes, as set forth in Exhibit B.11.3), fees, overhead, profit, mobilization and demobilization costs, overtime premiums and payments, and all other direct and indirect costs and expenses incurred or to be incurred by Contractor under this Agreement. The Contract Lump Sum shall be increased or decreased only in accordance with Change Orders issued pursuant to Exhibit B.8.

D.1.1.2. The Contract Lump Sum for this Agreement is \$1,237,900.00.

D.1.2. **Current Payments.** Contractor hereby warrants to and covenants with Owner that neither Contractor nor any of its subcontractors and suppliers have performed any of the Work at the Construction Site or delivered any material or supplies to the Construction Site or ordered any specially fabricated materials prior to the effective date of this Agreement, and that all of Contractor's rights hereunder are subject and subordinate to all liens, mortgages, assignments, and security interests granted by Owner in and to the Construction Site, all improvements, fixtures, equipment and personal property (including removables) now or hereafter constructed thereon or therein, securing any indebtedness or obligation of Owner now or hereafter existing, and all renewals, extensions and rearrangements thereof.

D.1.3. **Cash Flow Schedule.** The portions of the Contract Lump Sum will be broken down into amounts to be paid upon the achievement by Contractor of each Critical Milestone, or a portion thereof, as set forth in the Cash Flow Schedule for the Project to be agreed upon between the parties and to be attached as Schedule 1 to this Exhibit D once agreed. The Critical Milestones (or portions thereof) described in the Cash Flow Schedule will be further described in the Project Construction Program. If, in the process of the completion of the Work, the Critical Milestones are accomplished at a time before or after the dates contemplated under the Cash Flow Schedule, Contractor and Owner Representative shall adjust the Cash Flow Schedule (by written agreement executed by Contractor and the Owner Representative) to account for the acceleration or delay in the accomplishment of the Critical Milestones. The Cash Flow Schedule includes Contractor's current estimated payments for the portions of the Contract Lump Sum attributable to the Schedule of Values.

D.1.4. **Schedule of Values.** The Contract Lump Sum listed in the Schedule of Values will be paid for the Construction Work on a percentage of completion basis based upon the amounts set forth in the Schedule of Values as approved by Owner. The breakdown of the Schedule of Values is for the purpose of invoicing and progressive payment only. Owner shall be obligated to make progress payments of such amount invoiced by Contractor in accordance with Exhibit D.2.2; provided, however, in no event will Owner be obligated to pay to Contractor the amounts allocated to any line item of the Schedule of Values that exceeds the total of such Value.

D.2. METHOD OF PAYMENT.

D.2.1. Applications for Payment. Contractor shall submit all “Applications for Payment” (as herein defined) for installments of the Contract Lump Sum for approval and processing to Owner on a monthly basis in accordance with the Schedule of Values on or before the tenth (10th) day of each calendar month during the progress of the Work. Each Application for Payment shall be in a form acceptable to the Fort Bend County Auditor and shall reflect any amount representing the proportionate part of the Work performed during the previous month. As support for each Application for Payment, Contractor shall submit the following in a form acceptable to the County Auditor:

- (a) A statement in the form attached as Exhibit G executed by Contractor certifying that (i) the proportionate part of the Work described in such Application for Payment has been performed, (ii) Contractor’s amount included in the Application for Payment attributable to the Schedule of Values is due and owing, (iii) there are no known mechanics’ or materialmen’s liens outstanding as of the date of the Application for Payment or if such liens are known, such have been adequately bonded, (iv) all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current Application for Payment, and (v) except for such bills not paid but so included, there is no known basis for the filing of any mechanics’ or materialmen’s liens on the Work.
- (b) A partial lien waiver and release in the form attached as Exhibit H effective through the date of Contractor’s preceding Application for Payment, executed by Contractor with a statement certifying those matters set forth in clauses (i) through (v) of subparagraph (a) of this Exhibit D.2.1., certifying that waivers from all subcontractors and materialmen have been obtained in such form so as to constitute an effective waiver of liens under the laws of the State of Texas.
- (c) An affidavit executed by Contractor that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which Owner or might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, including unconditional waivers and releases upon final payment from all trade contractors, suppliers, material men, or other third parties that provided labor, services, equipment, or material to the Project, satisfying the requirements for such releases set forth the TEXAS PROPERTY CODE §53.085.
- (d) A fully updated Critical Path Schedule.

D.2.2. Progress Payments and Retainage. Within 30 days after receipt of each uncontested Application for Payment together with the supporting materials specified in Exhibit D.2.1., Owner shall advance to Contractor the uncontested amount requested in such uncontested Application for Payment except five percent (5%) of the amount requested in each Application for Payment shall be held by Owner.

D.2.2.1. The retainage withheld shall be released upon Final Completion of the entire Project upon the request for its release by Contractor, and certification by Architect that said Work is finally complete and satisfactory, unless grounds exist for withholding payment on account of other defaults by Contractor, including Work performed by its Trade Contractors.

D.2.3. Final Payment to Contractor. Payment, constituting the entire unpaid balance of the Contract Lump Sum, less 50 percent of the retainage then held by Owner and such amount as the Owner Representative determines is reasonably necessary for all incomplete Work (including, without limitation, the Punchlist Items) and for all unsettled claims, as provided in this Agreement, shall be advanced by Owner to

Contractor upon the Substantial Completion Date. Owner shall pay all outstanding and withheld portions of the Contract Lump Sum to Contractor upon the later to occur of (i) 30 days after the Final Completion Date or (ii) the date that Contractor causes all mechanics' and materialmen's liens filed against the Project to be removed. Owner shall have received from Contractor a lien waiver or an affidavit to the effect that it and all its Trade Contractors and suppliers of labor and materials have been paid in full (which lien waiver or affidavit must be in form and substance sufficient as a matter of law to dissolve all liens or claims of lien for labor or service performed or rendered and materials supplied or furnished, in connection with the construction and installation of the Project), and with respect to this Agreement, Contractor shall have provided to Owner the Final Certificate of Occupancy for the building.

D.2.3.1. Upon payment of the entire balance of the Contract Lump Sum and all other amounts withheld by Owner pursuant to this Exhibit D.2.3, Contractor shall execute and deliver to Owner a release discharging Owner from all liabilities, obligations and claims to pay the Contract Lump Sum pursuant to this Agreement.

SCHEDULE 1 TO EXHIBIT D
SCHEDULE OF VALUES AND CASH FLOW SCHEDULE

(TO BE DEVELOPED BY CONTRACTOR AND OWNER IN ACCORDANCE WITH EXHIBIT B.1.2
AND D.1.3)

THIS SCHEDULE OF VALUES WILL NOT BE PREPARED UNTIL AFTER EXECUTION OF THE
CONTRACT.

EXHIBIT E

WARRANTY AND INDEMNITY

E.1 MATERIALS AND EQUIPMENT.

E.1.1. Contractor shall, for the protection of Owner, obtain from all vendors and subcontractors guarantees with respect to the machinery, equipment, and materials, used and installed as a part of the Work, which guarantees shall be in form and content consistent with those prevailing in the applicable industry and which shall be made available to Owner to the full extent of the terms thereof. Contractor shall use its best efforts to obtain guarantees which extend to the expiration of the Defects Period or for such longer period of time as may be obtainable from such vendors and subcontractors and shall specify that same shall be enforceable by and for the benefit of Owner.

E.1.2. All materials and equipment are subject to inspection by Owner at all times. No inspection or other action by Owner shall release any vendor or subcontractor from its duty to conform to final specifications nor shall any inspection or other action or lack thereof release any vendor or subcontractor from any warranty or guarantee. The failure of Owner to inspect shall not constitute a waiver of the right to reject the material or equipment for defective workmanship or material.

E.2. WORKMANSHIP. Subject to the provisions of Exhibit E.6. herein below, Contractor guarantees that the Work will be free from any Defect in the workmanship of Contractor or any subcontractor or other party engaged by Contractor in connection with the Work. Provided Owner notifies Contractor of such a Defect prior to the end of the Defects Period, Contractor will promptly correct at no cost to Owner, any Defect in or damage to the Work or any part thereof arising or resulting, directly or indirectly, from any Defect in the workmanship of Contractor (or its subcontractors or suppliers) and Contractor shall itself correct or, as deemed feasible by Owner, have another correct any such Defect where such is attributable to any subcontractor or other party engaged by Contractor in connection with the Work.

E.3. POST CONSTRUCTION WORK; TRAINING. From and after the Transfer Date, Contractor shall provide or cause to be provided to Owner multiple copies of all training manuals for all equipment, systems and machinery installed by Contractor (or its subcontractors or suppliers) in the Project, and training services with respect to the operation and maintenance of the equipment, systems and machinery within the Project, to the extent the same has been installed by Contractor (or its subcontractors or suppliers) pursuant to the Agreement. Such services shall include, but not be limited to, training of maintenance personnel of Owner with respect to proper maintenance procedures for the initial startup and continued operation of the equipment, systems and machinery within the Project, training of operation personnel of Owner with respect to proper use, operation and maintenance of the equipment, machinery and systems within the Project and such other services as may be mutually agreed upon between Owner and Contractor after the date hereof.

E.4. EXCEPTIONS TO GUARANTEES. Contractor shall not be obligated to provide corrective or remedial services and shall have no other obligation for Defects in the Work which occur as a result of (a) improper maintenance or operation by Owner or (b) normal wear, tear, erosion, and corrosion after the Transfer Date.

E.5. DEFECTS AND REMEDIAL ACTION.

E.5.1. If, at any time during the prosecution of the Work, Contractor determines that there is an error,

omission or defect in the Drawings and Specifications, Contractor shall notify Architect and Owner of such error, omission or defect and Contractor shall suspend the portion of the Work that is based on the portion of the Drawings and Specifications containing such error, omission or defect. Contractor shall meet with Architect within three (3) days of such notice to discuss remedial action. When Owner, Contractor, and Architect have agreed upon the appropriate remedial action, Architect has corrected the error, omission or defect in the Drawings and Specifications, and Contractor has approved such curative action, Contractor shall proceed with the affected Work and any delay occasioned thereby may be subject to any additional compensation to Contractor, as approved by Owner.

E.5.2. With respect to replacement equipment and materials supplied and services reperformed in accordance with the provisions of this Agreement, the Defects Period shall automatically be extended to apply to the replacement equipment or material or the reperformed service for a period of twelve calendar months from the later of (i) the Transfer Date or (ii) the date Contractor notifies Owner of the completion of the installation of the replacement equipment or material or the reperformance of service.

E.5.3. Remedial Action.

E.5.3.1. Subject to the terms of Exhibit E.4, if, during the Defects Period, Owner determines that there is a Defect in a portion of the Work, Owner shall notify Contractor and Contractor shall take remedial action acceptable to Owner without delays.

E.5.3.2. If Contractor's remedial action is not commenced without delay or having so commenced is not prosecuted with all due dispatch to completion, Owner, after giving notice to Contractor, may proceed with another Contractor or contractors to perform such remedial action, in which case Contractor shall reimburse Owner upon demand for all costs incurred in performing such remedial action.

E.6. PERFORMANCE OF SUPPLIER'S OBLIGATIONS.

E.6.1. In the case of Defects in materials, machinery or equipment which arise from the failure of a supplier to Contractor of materials for the Project, or defects in services provided in a specialty or sole source subcontract with a subcontractor of Contractor (in this subparagraph any such subcontract of supply or service is herein called "subcontract" and the party providing such service is called "subcontractor"):

E.6.2. Contractor shall secure full performance of the supplier's or subcontractor's obligations under Agreements of supply or under subcontracts by repair, replacement or otherwise to the satisfaction of the Owner. Contractor, upon the request of the Owner, shall assign any of its rights under subcontracts or purchase agreements for machinery, equipment or material or under such Agreements of supply to the Owner and shall at such time be automatically relieved of the obligations relative to the matters covered by such contracts.

E.6.3. Contractor shall undertake such other or additional action as the Owner may require to achieve prompt correction of, or to overcome or offset, or to remedy or repair, the Defect.

E.7 PATENTS.

E.7.1. Contractor hereby indemnifies each of the Indemnified Parties against, and agrees to hold each of the Indemnified Parties harmless from, all claims, demands, liabilities, damages, losses, costs, and judgments arising from assertions by third parties that Contractor or any subcontractor (except any subcontractor selected by Owner to which Contractor objects) or all or any of the Indemnified Parties are

infringing upon any patent, copyright, trademark, or service mark or are misappropriating any proprietary information. If any action or proceeding relating to any such assertion is brought against any one or more of the Indemnified Parties, then, unless Owner directs otherwise, Contractor shall conduct in due diligence and in good faith, the defense of such action or proceeding, whether or not Contractor is joined therein; provided, however, Contractor shall not admit the validity or infringement of any patent, copyright, trademark, or service mark without the express written consent of Owner. In connection with Contractor's defense of any such action or proceeding, the Indemnified Parties shall render such assistance as Contractor may require in such defense. Without relieving Contractor of any of its obligations hereunder, any one or more of the Indemnified Parties, at its election, may participate in the defense of any such action or proceeding at its sole cost. Contractor shall pay all liabilities, damages, losses, fees (including but not limited to attorneys' fees), costs, settlement sums, judgments, and other expenses incurred by the Indemnified Parties in connection with any such assertions, actions, or proceedings. Contractor hereby warrants and represents to the Indemnified Parties that Contractor has no actual knowledge of any patent, copyright, trademark, service mark, or proprietary information that is or will be alleged to be infringed upon or misappropriated by the proposed activities under this Agreement or the maintenance, repair, use, or sale of the Project.

E.7.2. Contractor shall use its diligent, good faith efforts to obtain from all suppliers a patent indemnity in the form set forth in Exhibit E.7.1. If any prospective supplier refuses to grant such patent indemnity, Contractor shall promptly notify Owner and, unless authorized by Owner in writing, shall select an alternate supplier.

E.8. INDEMNIFICATION

E.8.1. CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE INDEMNIFIED PARTIES FROM ANY AND ALL CLAIMS, DAMAGES, LIABILITIES AND EXPENSES (INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES) FOR INJURY TO OR DEATH OF ANY PERSON OR FOR DAMAGE TO OR DESTRUCTION OF ANY PROPERTY RESULTING DIRECTLY OR INDIRECTLY FROM ANY AND ALL NEGLIGENT ACTS OR OMISSIONS OF CONTRACTOR, ITS OFFICERS, AGENTS AND EMPLOYEES, ANY OF CONTRACTOR'S SUBCONTRACTORS, ITS OFFICERS, AGENTS AND EMPLOYEES OR ANYONE DIRECTLY EMPLOYED BY ANY OF THEM. NOTWITHSTANDING THE FOREGOING PROVISIONS OF THIS EXHIBIT E.8.1, IF ANY SUCH CLAIM OR LIABILITY ARISES IN WHOLE OR IN PART FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNIFIED PARTY, THE LIABILITY OF CONTRACTOR UNDER THE FOREGOING INDEMNITY SHALL BE REDUCED ON A PRO RATA BASIS SUCH THAT IT WILL NOT INCLUDE THE PORTION OF HARM PROVEN TO ARISE FROM OR OTHERWISE ATTRIBUTABLE TO THE NEGLIGENCE OR WILLFUL MISCONDUCT OF SUCH INDEMNIFIED PARTY.

E.8.2. Contractor shall be responsible for all risk of loss to all materials delivered to the Construction Site and all materials and equipment incorporated into the Work prior to the Transfer Date. Contractor shall, prior to the Transfer Date, provide continuous and adequate protection of the Work, the property and adjacent property of Owner or Contractor constituting the Construction Site. Contractor shall be obligated to replace or repair any (a) materials, equipment or supplies which are, or are to become, a permanent part of the Work or temporary or existing facilities whether Contractor owned or leased or furnished by Contractor or Owner or (b) construction supplies and materials which are lost from the Construction Site, damaged or destroyed on the Construction Site prior to the Transfer Date, however such loss or damage may occur unless the same results from the negligence or willful misconduct of Owner or its officers, directors, employees or agents.

EXHIBIT F

INSURANCE REQUIREMENTS, BONDS

A. **INSURANCE COVERAGE**. Prior to commencement of the Services, Contractor 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. Contractor shall provide certified copies of insurance endorsements and/or policies if requested by County. Contractor shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. Contractor shall obtain such insurance written on an Occurrence form from such companies having Bests rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

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

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

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

4. Professional Liability insurance with limits not less than \$1,000,000.

5. County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation. All Liability policies written on behalf of Contractor shall contain a waiver of subrogation in favor of County and members of Commissioners Court. If required coverage is written on a claims-made basis, Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time that work under the Agreement is completed.

6. **Worker's Compensation Special Requirements**. In regard to Worker's Compensation Insurance the following special requirements shall apply. All parties working on the Project shall maintain Worker's Compensation as required by Texas law.

(a) **Certificate of coverage ("certificate")**. A copy of a certificate of insurance, a certificate of authority to self insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

(b) **Duration of the project** - includes the time from the beginning of the Work on the project until the Contractor's work on the project has been completed and accepted by the Owner.

(c) Persons providing services on the project. ("Subcontractor" in section 406.096 of the TEXAS LABOR CODE) includes all persons or entities performing all or part of the services Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with Contractor and regardless of whether that person has employees. This includes, without limitation, independent General Contractors, Subcontractors, leasing companies, motor carriers, owner operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

(d) Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of TEXAS LABOR CODE, Section 401.011(44) for all employees of Contractor providing services on the project, for the duration of the project.

(e) Contractor must provide a certificate of coverage to Owner prior to the commencement of the Work.

(f) If the coverage period shown on Contractor's current certificate of coverage ends during the duration of the project, Contractor must, prior to the end of the coverage period, file a new certificate of coverage with Owner showing that coverage has been extended.

(g) Contractor shall obtain from each person providing services on a project, and provide to Owner:

(i) a certificate of coverage, prior to that person beginning work on the project, so Owner will have on file certificates of coverage showing coverage for all persons providing services on the project; and

(ii) no later than seven days after receipt by Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

(h) Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

(i) Contractor shall notify Owner in writing by certified mail or personal delivery, within 10 days after Contractor knows or should know, of any change that materially affect the provision of coverage of any person providing services on the project.

(j) Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage. (This notice must be printed with a title in at least 30 point bold type and text in at least 19 point normal type, and shall be in both English and Spanish and any other language common to the worker population.):

REQUIRED WORKER'S COMPENSATION COVERAGE

"The law requires that each person working on this site or providing services related to this construction project must be covered by workers' compensation insurance. This includes persons providing, hauling, or delivering equipment or materials, or providing labor or transportation or other service related to the project, regardless of the identity of their employer or status as an employee."

"Call the Texas Worker's Compensation Commission at 512-440-3789 to receive information on the legal requirement for coverage, to verify whether your employer has provided the required coverage, or to report an employer's failure to provide coverage."

(k) Contractor shall contractually require each person with whom it Agreements to provide services on a project, to:

(i) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of TEXAS LABOR CODE, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;

(ii) provide to Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;

(iii) provide to Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(iv) obtain from each other person with whom it contracts, and provide to Contractor:

1. a certificate of coverage, prior to the other person beginning work on the project; and

2. a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(v) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

(vi) notify Owner in writing by certified mail or personal delivery, within 10 days after the person knows or should know, of any change that materially affects the provision of coverage of any person providing services on the project; and

(vii) contractually require each person with whom it contracts, to perform as required by Section 6(a) through 6(j) hereof, with the certificates of coverage to be provided to the person for whom they are providing services.

(l) By signing this Agreement or providing or causing to be provided a certificate of coverage, Contractor is representing to Owner that all employees of Contractor who will provide

services on the Project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self Insurance Regulation. Providing false or misleading information may subject Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

(m) Contractor's failure to comply with any of these provisions is a breach of Agreement by Contractor which entitles Owner to declare the Agreement void if Contractor does not remedy the breach within ten days after receipt of notice of breach from Owner.

B. POLICIES. Every policy referred to in this Exhibit F shall (i) provide that no material change, cancellation or termination shall be effective until at least 30 days after written notice thereof has been received by Contractor and Owner; (ii) provide that such insurance shall not be invalidated by any act or negligence of Contractor or Owner, or any subcontractors or any person or entity having an interest in the Project, nor by any foreclosure or other proceedings or notices thereof relating to the Project, nor by any change in title to or ownership of the Project; and (iii) include a waiver of all rights of subrogation in favor of Contractor and Owner.

C. BUILDERS RISK INSURANCE. Contractor shall obtain and keep in full force and effect until the Transfer Date, Builders Risk Insurance, subject to policy terms and conditions, of direct physical loss or damage to property, materials, equipment and supplies which are to become an integral part of the Project, whether owned by Contractor, or subcontractors of every tier, and in which one or more of same has an insurable interest, while in transit, while at the Construction Site awaiting construction, during construction, and until the Transfer Date. Such insurance shall be maintained to cover, as nearly as practicable, the insurable value of such property, materials, equipment and supplies at risk, and shall contain a waiver of subrogation in favor of Contractor, Architect, subcontractors of any tier and Owner for loss or damage occurring during the Work and shall name Contractor as the named insured and Owner as additional insureds. All Builder's Risk Insurance proceeds shall be paid directly to the Contractor.

D. RESPONSIBLE COMPANIES. All insurance required by any provision of this Exhibit F shall be in such form and shall be issued by such responsible companies licensed and authorized to do business in the State of Texas as are acceptable to Contractor. Any insurance company rated at least "A" as to management and at least "Class XII" as to financial strength in the latest addition of Best's Insurance Guide, published by Alfred M. Best Co., Inc., 75 Fulton Street, New York, New York (or any successor publication of comparable standing) shall be deemed a responsible company and acceptable to Contractor.

E. COPIES. Prior to commencement of the Work, Contractor shall furnish insurance certificates evidencing the coverages required under this Exhibit F to Owner, which shall clearly indicate that the insurance required to be obtained hereunder has been obtained in the type, amount and classification as herein required. Owner shall have the right, upon prior notice and during business hours, to review certified true copies of the insurance policies maintained pursuant to this Exhibit F.

F. PERFORMANCE BOND AND PAYMENT BOND. Contractor shall furnish a payment bond with good and sufficient surety or sureties payable to Owner and intended for the use and protection of all Trade Contractors and all persons supplying labor, materials, machinery, and equipment in the prosecution of the Construction Work. Contractor shall also provide a performance bond with good and sufficient surety or sureties for the faithful performance of the Agreement and to indemnify Owner for damages occasioned by a failure to perform the Construction Work or for failure to perform the

Construction Work within the prescribed time. Such bond shall be payable to, in favor of, and for the protection of Owner.

1. The surety must be one that is licensed to do business in the State of Texas, and must be acceptable to Owner.

2. Performance Bonds. The performance bonds shall be in an amount equal to 100% of the Contract Lump Sum. Owner may require additional performance bond protection if the Contract Lump Sum is increased. The increase in protection shall equal 100% of the increase in Contract Lump Sum. Owner may secure additional protection by directing Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

3. Payment Bonds. The payment bonds shall equal: (1) 50 percent of the Contract Lump Sum if the Contract Lump Sum is not more than \$1 million; (2) 40 percent of the Contract Lump Sum if the Contract Lump Sum is more than \$1 million but not more than \$5 million; or (3) \$2.5 million if the Contract Lump Sum is more than \$5 million. If the original Contract Lump Sum is \$5 million or less, Owner may require additional payment bond protection if the Contract Lump Sum is increased.

4. Bond Requirements. The performance bond and payment bond shall identify the Principal (Contractor) and Surety with Owner. The Principal and Surety shall be identified by their full legal names, addresses, full telephone numbers, and legal status of the parties (i.e., sole proprietorship, general partnership, joint venture, unincorporated association, limited partnership, corporation (general or professional), etc.). The identification of Owner will be for informational purposes only. The Principal and the Surety must separately sign the bond. The parties executing the bond should indicate their companies, print their names and titles, and impress the corporate seals, if any. The bonds must be payable to Owner, and shall be delivered to the Owner's Representative within thirty (30) calendar days after execution of this Agreement. The performance bond must clearly and prominently display on the bond or on an attachment to the bond the name, mailing address, physical address, and telephone number, including the area code, of the surety company to which any notice of claim should be sent, or the toll-free telephone number maintained by the Texas Department of Insurance under §§521.051 - 521.056 of the TEXAS INSURANCE CODE, and a statement that the address of the surety company to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the toll-free telephone number.

5. Surety Companies. Any bond obtained hereunder must be executed by a duly authorized Surety company satisfactory to Owner, which in any event, must be a surety company listed in "Circular 570 Surety Companies Acceptable on Federal Bonds published in the Federal Register, U.S. Department of the Treasury" and authorized to do business in the State of Texas in accordance with Chapter 3503 of the TEXAS INSURANCE CODE. No surety will be accepted by Owner who is now in default or delinquent on any bonds or who is interested in any litigation against Owner. Each Surety shall designate an agent resident in the State of Texas to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship.

G. MAINTENANCE BONDS. Contractor shall, prior to the release of Final Payment, furnish separate maintenance bonds in a form acceptable to Owner written by the same Surety company that provides the performance and payment bonds. The maintenance bonds shall secure Contractor's obligation to replace or repair defective materials and faulty workmanship for the Defects Period and shall be written in an amount equal to one hundred percent of the Contract Lump Sum.

EXHIBIT G

PAYMENT APPLICATION

WORK PERFORMED TO DATE

In support of Periodical Estimate for Partial Payment No.

For the period from _____, through _____ inclusive.

Project No.

Name and location of Project

Contractor's Name and Address

WORK INCLUDED IN ORIGINAL CONTRACT

DETAILED ESTIMATE

WORK PERFORMED TO DATE

Item No. (1)	No. & Kind of Units (2)	Unit Price (3)	Estimated Cost (4)	No. of Units (5)	Amount Earned to Date (6)	Value of Incomplete Work (7)	Percent Complete (8)
A. Total Amount of original contract							
B. Plus or minus total previously approved C. O.'s Nos.-----incl.							
C. Plus or minus C. O.'s Nos.-----incl. approved during period covered by this est.-----							
D. Total Net Adjusted Amt.							

SUMMARY OF MATERIALS STORED

In support of Periodical Estimate for Partial Payment No.

Project No. _____ Period Ending: _____

Contractor:

ITEM NO.	NAME (Contractor or Trade Contractor)	TYPE OF MATERIAL	QUANTITY	AMOUNT (Dollars)
		TOTALS		

Prepared by _____ for _____
(Contractor)

Date _____, and certified by him to be a true and accurate statement.

Checked and concurred in:

By: Resident Engineer Inspector

Date:

CONTRACTOR & SUBCONTRACTOR AFFIDAVIT, LIEN WAIVER AND RELEASE
(PARTIAL)

Contractor/Subcontractor: _____
 Owner: Fort Bend County, Texas
 Owner Representative: Fort Bend County Director
 of Public Transportation
 Architect: _____
 Contractor: _____
 Project: _____
 Construction Agreement: Construction Agreement dated _____, _____,
 between Owner and Contractor
 Property: _____

1. Subcontractor has heretofore submitted to Contractor its Application for for labor and services performed and materials supplied to the Project pursuant to the Agreement through and including _____, 201_ (the "Application Date"). Subcontractor represents and certifies to Contractor and Owner that Subcontractor has received the amount stated to be due in the Application for Payment (exclusive of required retainage pursuant to Exhibit D.2.2 to the Agreement or such lesser amount as may have been approved by the Owner Representative in accordance with the terms of the Agreement). Subcontractor hereby forever waives and releases any and all liens and rights or claims of liens of every kind against the Property and the Project, including but not limited to all statutory or constitutional mechanic's liens or bond claims and all contractual or tort claims that Subcontractor may be entitled to and releases Contractor and Owner and their successors and assigns from any claim, liability, or debt by reason of labor and services performed and equipment and materials furnished by Subcontractor to or for the Project through the Application Date, but not otherwise. Notwithstanding the foregoing, this document shall not operate to discharge or release Subcontractor's right to receive payment of required retainage held pursuant to Exhibit D.2.2 to the Agreement.

H-1

3. For and in consideration of Ten and No/100 Dollars (\$10.00) and the payment of the sums due to Subcontractor as set forth above, Subcontractor hereby agrees to indemnify and hold harmless Contractor and Owner, their successors and assigns, from and against any and all losses, costs, liabilities, judgments, damages and expenses (including, without limitation, attorneys' fees) incurred as a result of any claim, demand, suit, action, proceeding or cause of action brought by or instituted on account of any party for sums due to such party on account of furnishing labor, services, equipment, rentals or materials to or for the Project and by, through or under Subcontractor through the Application Date, but not otherwise.

IN WITNESS WHEREOF, the Subcontractor has by its duly authorized representative set his hand and seal thereto this ____ day of _____, 201_.

By: _____
Name: _____
Title: _____

THE STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

This instrument was acknowledged before me on the ____ day of _____, 201_, by _____, _____ of _____, a _____ corporation, on behalf of such corporation.

[Stamp or Seal]

Notary Public in and for the State of Texas

EXHIBIT I

CONTRACTOR'S RESPONSE TO RFP 11-060

**FORT BEND COUNTY PAVING,
WATER, AND GRADING
IMPROVEMENTS**

RFP 11-060

SH36 PARK & RIDE

April 21, 2011

**MILLIS DEVELOPMENT & CONSTRUCTION, INC.
4610 SWEETWATER BLVD., SUITE 200
SUGAR LAND, TX 77479
281.240.6066 281.240.7730 FAX
www.millisdevelopment.com**

**millis
development &
construction, inc.**

4610 Sweetwater Blvd.

Suite 200

Sugar Land, TX 77479

Tel. 281.240.6066

Fax 281.240.7730

DATE: April 21, 2011
TO: Fort Bend County
Purchasing Department
RE: RFP 11-060
SH36 Park and Ride

TYPE DOCUMENT:

☒ TRANSMITTAL OF DOCUMENTS LISTED BELOW
☐ MEMORANDUM - SEE BELOW

PURPOSE:

☐ FOR PRICING	☐ APPROVED
☒ FOR REVIEW	☐ FOR YOUR APPROVAL
☐ FOR YOUR INFORMATION	☐ FOR REVISION
☐ FOR PERMIT	☐ PER YOUR REQUEST

Please see the enclosed qualifications and pricing for the above referenced bid.

Feel free to contact Chad Millis with any questions (281-240-6066).

MILLIS DEVELOPMENT & CONSTRUCTION, INC.

SENT VIA:

☐ PICKED UP
☐ FAX
☐ MAIL
☒ COURIER / DELIVERED

FROM: Julie Raley

mdc

www.millisdevelopment.com

EXECUTIVE SUMMARY

Mills Development & Construction Inc is pleased to present a price for the electrical, paving, landscaping, etc. work to be done for the Fort Bend County SH 36 Park and Ride project. We have visited the current site conditions, and feel confident in the work we can provide for the project.

If you have any questions regarding this proposal, please contact Chad Mills at 281-240-6066

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1 Company Information/Financials

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- Company Structure
- Operation/Incorporation Information
- Articles of Incorporation
- Annual Revenue
- Amount of Work in Progress
- Bonding Capacity
- Claims Against the Company
- Company Credit Information
- Bank References



mills development & construction, inc.
4610 Sweetwater Blvd., Suite 200
Sugar Land, TX 77479
(281) 240-6066
Fax: (281) 240-7730
www.millsdevelopment.com

Company Officers

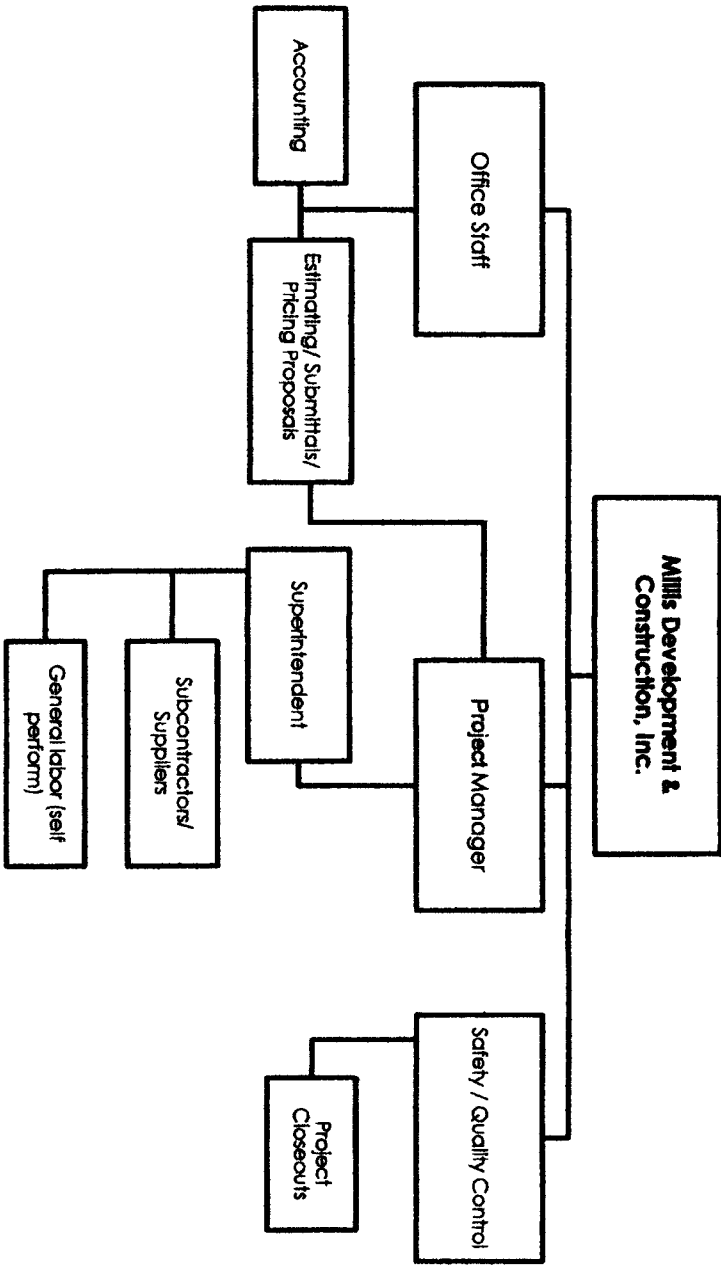
President: Jason Mills (28 years experience)

Vice President: Jason Mills

Secretary: Jason Mills

Treasurer: Ruby M. Miltenberger (17 years experience)

Company Structure



OPERATION INFORMATION

Date of Incorporation: 11/13/1980

Years in continuous operation: 30 years

Previous company names: N/A



STATE OF TEXAS
OFFICE OF THE SECRETARY OF STATE

AUSTIN, TEXAS 78711
NOV. 13, 1980

GEORGE W. STRAKE, JR.
SECRETARY OF STATE

PAUL D. LAWRENCE
711 FANNIN, STE. 800
HOUSTON, TX. 77002

RE: MILLIS DEVELOPMENT AND CONSTRUCTION, INC.
CHAPTER NUMBER 539255-0

DEAR SIR:

IT HAS BEEN OUR PLEASURE TO APPROVE AND PLACE ON RECORD THE ARTICLES OF INCORPORATION THAT CREATED YOUR CORPORATION. WE EXTEND OUR BEST WISHES FOR SUCCESS IN YOUR NEW VENTURE.

AS A CORPORATION, YOU ARE SUBJECT TO STATE TAX LAWS. SOME NON-PROFIT CORPORATIONS ARE EXEMPT FROM THE PAYMENT OF FRANCHISE TAXES AND MAY ALSO BE EXEMPT FROM THE PAYMENT OF SALES AND USE TAX ON THE PURCHASE OF TAXABLE ITEMS. IF YOU FEEL THAT UNDER THE LAW YOUR CORPORATION IS ENTITLED TO BE EXEMPT YOU MUST APPLY TO THE COMPTROLLER OF PUBLIC ACCOUNTS FOR THE EXEMPTION. THE SECRETARY OF STATE CANNOT MAKE SUCH DETERMINATION FOR YOUR CORPORATION.

IF WE CAN BE OF FURTHER SERVICE AT ANY TIME, PLEASE LET US KNOW.

VERY TRULY YOURS,
GEORGE W. STRAKE, JR.
SECRETARY OF STATE

BY: WILLIAM W. DIDLAKE, JR.
DIRECTOR, CORPORATION DIVISION

TELEX: 77-8484



The State of Texas
Secretary of State

CERTIFICATE OF INCORPORATION
OF
MILLIS DEVELOPMENT AND CONSTRUCTION, INC.
CHARTER NUMBER 539256

THE UNDERSIGNED, AS SECRETARY OF STATE OF THE STATE OF TEXAS,
HEREBY CERTIFIES THAT ARTICLES OF INCORPORATION FOR THE ABOVE
CORPORATION, DULY SIGNED AND VERIFIED HAVE BEEN RECEIVED IN THIS
OFFICE AND ARE FOUND TO CONFORM TO LAW.

ACCORDINGLY THE UNDERSIGNED, AS SUCH SECRETARY OF STATE, AND BY
VIRTUE OF THE AUTHORITY VESTED IN HIM BY LAW, HEREBY ISSUES THIS
CERTIFICATE OF INCORPORATION AND ATTACHES HERETO A COPY OF THE
ARTICLES OF INCORPORATION.

DATED NOV. 13, 1980




Secretary of State
DAE

ARTICLES OF INCORPORATION

OF

MILLIS DEVELOPMENT AND CONSTRUCTION, INC.

FILED
In the Office of the
Secretary of State
JUN 13 1980
CORPORATION DIVISION

I, the undersigned natural person of the age of twenty-one (21) years or more, a citizen of the State of Texas, acting as incorporator of a corporation under the Texas Business Corporation Act, do hereby adopt the following Articles of Incorporation for such corporation:

ARTICLE I.

The name of the corporation is MILLIS DEVELOPMENT AND CONSTRUCTION, INC.

ARTICLE II.

The period of its duration is perpetual.

ARTICLE III.

The purpose of the corporation is to engage in the business and operation of construction, building and development and to sell and deal in personal property, real property and services, subject to Part Four of the Texas Miscellaneous Corporation Laws Act.

ARTICLE IV.

The aggregate number of shares which the corporation shall have authority to issue is TEN THOUSAND (10,000) shares, with no par value.

ARTICLE V.

The corporation will not commence business until it has received for the issuance of its shares consideration of the value of ONE THOUSAND (\$1,000.00) DOLLARS, consisting of money, labor done, or property actually received, which sum is not less than ONE THOUSAND (\$1,000.00) DOLLARS.

ARTICLE VI.

The post office address of the initial registered office of the corporation is 1125 Village Bend Lane, Houston, Texas. The name of its initial registered agent at such address is Jason Millis.

ARTICLE VII.

The following provisions are subject to the corporation remaining a close corporation as defined by the Texas Business Corporation Act:

The corporation is a close corporation; no shares and no securities evidencing the right to acquire shares shall be issued by means of public offering, solicitation or advertisement. All such shares and securities shall be subject to restrictions on transfer as permitted by Articles 2.22 or 2.30-2 of such Act. All issued shares, excluding treasury shares, and all issued securities evidencing the right to acquire shares of the corporation shall be held of record by no more than thirty-five persons in the aggregate.

ARTICLE VIII.

(a) The number of Directors constituting the initial Board of Directors is one, and the name and address of the person who is to serve as Director until the first annual meeting of the shareholders or until their successor is elected and qualified is:

JASON MILLIS
1125 Village Bend Lane

(b) The number of Directors of the corporation set forth in clause (a) of this Article VIII. shall constitute the authorized number of Directors until changed by an amendment of a Bylaw fully adopted by the vote or written consent of the holders of a majority of the then outstanding shares of stock of the corporation.

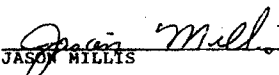
ARTICLE IX.

The incorporator stated herein include all initial subscribers, in accordance with Article 2.30-1D of the Texas Business Corporation Act.

The name and address of the incorporator is:

Jason Millis
1125 Village Bend Land

WITNESS MY HAND on the date of my acknowledgement.


JASON MILLIS

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared JASON MILLIS, who being by me duly sworn, on oath states that he is the person who signed the foregoing document as incorporator, and that the statements therein made are true and correct.

GIVEN UNDER MY HAND AND SEAL of office on this 11th day of November, 1980.

Brenda Brown
NOTARY PUBLIC IN AND FOR
HARRIS COUNTY, TEXAS

My Commission Expires 2/2/84

ANNUAL REVENUE

<u>Year</u>	<u>Volume of work complete</u>
2010	\$14,597,018
2009	\$10,273,696
2008	\$19,377,461

AMOUNT OF WORK IN PROGRESS

Number of Contracts 14

\$ 11,031,331

BONDING CAPACITY

Total Bonding Capacity: 20 million

Current unencumbered bonding capacity: 16 million

Surety Agent

Elsey & Associates Surety/Insurance
21755 IH-45 North, Building #8
Spring, Texas 77388
Bruce DeHart
(281) 651-0002

CLAIMS

List of past or pending claims, lawsuits or arbitration within the last 5 years with dates and details

None

COMPANY CREDIT INFORMATION

Loans, Financing or Invoices more than 60 days past due: N/A

Outstanding liens on projects: N/A

BANK REFERENCES

Prosperity Bank
14060 Southwest Freeway
Sugar Land, Texas 77478
Joe H. DeKunder
(281) 269-7255

Frost Bank
3531 South Main
Stafford, Texas 77477
Lerleen Hawkins
(713) 388-1027

New South Federal Savings
1020 Bay Area Blvd. # 218
Houston, Texas 77058
Bob Kane
(281) 461-3232

First Community Bank
13135 Dairy Ashford Suite 250
Sugar Land, TX 77478
Tim Stubenrauch
(281) 242-2262

2 Company Experience

Table of Contents

- Percentage Breakdown of Construction Work
- Completed Project List
- Similar Project Experience - Project Profiles

Percent of Construction Work

Civil	20%
Office	10%
Recreational	50%
Retail	20%

COMPLETED WORK: RECREATION CENTERS /
PARKS / LANDSCAPING / SITEWORK

<u>PROJECT</u>	<u>DESCRIPTION</u>	<u>START</u>	<u>COMPLETION</u>	<u>CONTRACT AMOUNT</u>
SIENNA COMMUNITY CENTER 9600 Scanlin Trace Missouri City, Texas Jeff Anderson (281) 313-1383	5,600 SF One-story, wood frame stucco community center building	Jul-10	Dec-10	635,691
GODWIN PARK PHASE 2 5101 Rutherglenn Drive Houston, TX 77096 City of Houston Richard Odiozli (832) 393-8077	Complete renovation to existing 4,665SF brick building new tile flooring, stained concrete floors, glazed block walls, roof doors/windows, millwork, decorative iron work/fencing, terracotta exterior panel wall system	Jun-10	Dec-10	795,940
5th WARD MSC NEW PARKING LOT 3906 Stonewall Street, Houston, TX City of Houston Obloma Nwakanma (832) 393-8130	Demo., 28,000 SF addition to existing parking lot, striping, electrical, fencing, landscape	Jul-10	Oct-10	242,097
FIRST COLONY PARK IMPROVEMENTS 3232 Austin Parkway, Sugar Land, TX City of Sugar Land Gregg Nichols (281) 275-2454	Concession/Restroom Bldg. Site work, fencing, renovation of baseball fields, landscape, irrigation electrical, plumbing, air conditioning	Apr-10	Oct-10	1,030,855
TELFAIR SECT. 21 PARK, ENTRY & CUL DE SACS Meadowcroft Blvd. & McAllister Ave. Sugar Land, Texas Susan Cita (713) 439-0027	Steel Trellis, Water Features dirtwork, drainage, sidewalks ramps, brick columns, decorative iron fence, landscape, irrigation	May-10	Sep-10	221,454
FOUNTAIN AT WESTHEIMER 10777 Westheimer Houston, Texas WSC Westchase Investors V, LP	Fountain; including cast stone coping, plaster, electrical, equipment New sidewalks	May-10	Sep-10	350,000
EXEL BUILDING FIRE MODIFICATIONS 4501 Blalock Rd Houston, TX 77041 Susan Oevermann (713) 934-1246	Addition of stairs, dock door, electric roll up doors, smoke wall, painting	May-10	Jul-10	220,000
KATY MAIN STREET Katy, TX Chad Ferguson (713) 350-2751	Stone w/ aluminum identity signage, elect & lighting, concrete, fountain, landscape & irrigation	Mar-10	Aug-10	1,754,379

PROJECT	DESCRIPTION	START	COMPLETION	CONTRACT AMOUNT
FIRST COLONY SWEETWATER BLVD IMPROV Sweetwater Blvd. & Hwy 6 Intersection Sugar Land, Texas Steve Mercadal	Stone entry signage with lighting, electrical, landscaping	Mar-10	Aug-10	447,759
CLUB SIENNA IMPROVEMENTS 9600 Scanlin Trace Missouri City, Texas Jeff Anderson (281) 313-1383	parking lot, sidewalks, pavers, bollards, lighting & electrical, cool deck, handrail at ramp, fencing & gates, CMU dumpster enclosure	Mar-10	May-10	294,055
MUD 365 TRAIL PLAN CONT. PHASE III Harris County, Texas Michael Murr (281) 257-3375	asphalt trails, stained concrete flagstone paving, gravel paving, fencing, site furnishings, park signage, landscape & irrigation	Dec-09	May-10	419,876
WILEY PARK 1414 Gillette St. Houston, TX 77019 Duncan Elliott (832) 393-8044	Spray pad, sun deck site furnishings, fencing, lighting & electrical, pavilion	Jan-10	May-10	351,446
MISSION BEND MUD #2 - Magnolia Park Entry Trellis Mission Bell Road Houston, TX Susan Cita (713) 439-0027	steel paneled trellis w/ brick & stone columns	Jan-10	Apr-10	30,024
SIENNA N. RECREATION CENTER 7725 Camp Sienna Trail Missouri City, TX Susan Cita (713) 439-0027 *Project was put on hold for a few months due to the owner.	brick recreation building, brick slide tower, pool deck, shower tower, trellis, fencing, LED entry sign	Jul-08	Mar-10	1,139,783
MISSION BEND MUD #2 - Magnolia Park Improvements Mission Bell Road Houston, TX Susan Cita (713) 439-0027	demo concrete plaza, new stone mosaic plaza, installation of site furnishings, electrical & lighting	Jan-10	Mar-10	22,139
TELFAIR - PH 2 SECTION 14 MAIN LAKE 7115 1/2 Calvertson Place Sugar Land, TX 77478 Susan Cita (713) 439-0027	Pavers, sidewalks, brick column w/ armillary sundial, site furnishings, landscape/irrigation	Aug-09	Feb-10	304,264
TELFAIR - SECTION 15 Sugar Land, TX 77478 Owner: Newland Communities Keith Behrens (713) 575-9000 Architect: Susan Cita (713) 439-0027	sidewalks, brick walls w/ iron panels, concrete curb, stained concrete bands, handicap ramp	Dec-09	Feb-10	70,209

PROJECT	DESCRIPTION	START	COMPLETION	CONTRACT AMOUNT
ALIANA AMENITIES CENTER 17122 W Belfort Ave Richmond, TX 77407 Paul Cheng (214) 778-3888	14,000+ SF Recreation Center Stone, stucco, clay roof tile	Oct-08	Oct-09	2,774,933
ALIANA PARKING LOT LIGHTS 17122 West Belfort Av. Richmond, TX 77407 Bret Blankenship (214) 778-3888	Site electrical, installation of parking lots, bollards	Aug-09	Dec-09	230,690
ALIANA HARDSCAPE 17122 West Belfort Av. Richmond, TX 77407 Bret Blankenship (214) 778-3888	Entry sign wall, directional sign, Electrical & lighting, Gazebo, Fencing	Aug-09	Dec-09	448,281
HOBART TAYLOR PARK 8100 Kerton St Houston, TX 77028 Duncan Elliot (832) 393-8044	Swimming pool, Hardscape, Paving, Landscape & Irrigation Interior Bldg Remodel-electrical, HVAC, painting, flooring	Apr-09	Sep-09	1,040,424
GREATER HOUSTON ROWING CLUB 15910 Creek Bend Drive Sugar Land, TX 77478 Les Newton (281) 242-2000	4800 SF Boathouse	Jul-09	Sep-09	299,242
FULSHEAR CREEK CROSSING 5005 Sugarberry Crescent Fulshear, TX 77441 David Lestage (713) 787-0719	Hardscape-Paving, Swimming pool, arch. concrete, steel structure, site lighting, Landscape & Irrigation	Apr-09	Nov-09	740,076
TELFAIR PH2 - MAIN LAKE 503 1/2 Floriencia Sugar Land, TX 77478 Architect: Susan Cita (713) 439-0027	Sidewalks, pavers	May-09	Jul-09	222,616
TELFAIR PH2 - MEADOWCROFT/REINHART 811 1/2 Reinhart Sugar Land, TX 77478 Architect: Susan Cita (713) 439-0027	Sidewalks, pavers, Brick walls & columns	Apr-09	Jul-09	199,573
TELFAIR PH2 - MEADOWCROFT/WESTCOTT 906 1/2 Westcott Ave. Sugar Land, TX 77478 Architect: Susan Cita (713) 439-0027	Sidewalks, Pavers, Brick seat wall & columns, Landscape & Irrigation	Apr-09	Jul-09	194,042
SAWYER EXTERIOR RENOVATIONS 602 Sawyer Houston, TX Architect: Susan Cita (713) 439-0027	Demolition, round stone veneer, seat wall, pavers, handrails, sidewalks, signage, lighting	Mar-09	Jun-09	201,825

<u>PROJECT</u>	<u>DESCRIPTION</u>	<u>START</u>	<u>COMPLETION</u>	<u>CONTRACT AMOUNT</u>
CROSS CREEK RANCH 6450 Cross Creek Bend Land Fulshear, TX Rob Barnford (281) 675-3207	Visitor Center, Fitness Center Pool Bldg, Fencing, Trellises, landscape & irrigation	Mar-08	Apr-09	7,300,000
PEGGY PARK 4101 Alameda St Houston, TX 77004 Mike Mauer (713) 722-8048	Complete renovation of City of Houston Park, Site Electrical, BB Pavilion, Playground Structure, Swings, Hardscape - walk & walls, Landscape & Irrigation	Sep-08	Apr-09	1,161,359
INTERSTATE MUD PHASE 1 700 Westgreen Blvd Katy, TX Will Jones (713) 439-0027	Stone veneer wall, Fountain in Detention pond, Asphalt trail Site furnishings, Landscape & Irrigation	Jan-08	Feb-09	1,020,297
RIVA ROW 2101 Riva Row The Woodlands, TX 77380 Larry Weppeler (713) 777-5337	Canoe House, Boardwalk, Landscape & Irrigation	Feb-08	Mar-09	1,560,000
STONE CREEK RECREATION CENTER 16215 Hargrove Road Hockley, TX Cary Duham (713) 936-9391	Rec. Center, Pool, Pool Deck, Trellis, Playground, Fencing	Mar-08	Dec-08	1,685,000
THE PARK AT PALM CENTER 5505 Griggs Rd Houston, TX 77021 Theola Petteway (713) 522-5154	New City of Houston Park Shade Pavilion & Trellis Play Structure, Spray Park & Fountain, Civil Drainage, Sanitary Sewer, Landscape & Irrigation	May-08	Dec-08	1,544,130
TELFAIR SECTION 18 Amhurst/New Territory Sugar Land, TX Susan Citta (713) 439-0027	Hardscape Construction for New Subdivision Entrance & Neighborhood Park	Aug-08	Dec-08	545,070
TELFAIR PHASE 2-SECTION 28 ENTRY PARK MEETING HOUSE #1 2510 Ralston Branch Way Sugar Land, TX Susan Citta (713) 439-0027	Meeting House (LEED Certified)	Jan-08	Jul-08	715,000
CITY PARK RENOVATION (BAKER FIELD) 201 7th Street Sugar Land, TX 77478 Ross Woodfin (713) 639-4502	Concession Stand Building	Feb-08	May-08	385,022

PROJECT	DESCRIPTION	START	COMPLETION	CONTRACT AMOUNT
RENAISSANCE VILLAGE 12951 Briar Forest Drive Houston, TX Richard Haddock (281) 496-3111	Demo, Entry Signage, Landscape	Apr-08	Aug-08	274,000
WALTER RASMUS PARK 3721 Jeannetta Houston, TX 77063 Chip Perry (713) 247-2640	Stucco Basketball Pavilion, Landscape, Site Furnishings	Jun-08	Oct-08	204,811
RICHMOND DEDICATION PARK 402 Morton St. Richmond, TX Stephanie (281) 646-1602	Pavers/Color Concrete Entrance, Landscape, Benches	Jul-08	Aug-08	13,535
TELFAIR SECTION 17 PARKS & COMMON AREAS 1119 1/2 Coleridge St Sugar Land, TX 77479 Lola (281) 494-1818	Pavers & Ramps Columns, Custom Handrails Electrical	Jul-08	Sep-08	111,751
TELFAIR BRIDGES Rakston Branch & Telfair Sugar Land, TX 77479		Jan-08	Apr-08	384,225
SILVER RANCH SECTION 1 HARDSCAPE IMPROVEMENT 26150 A Roesner Katy, TX Marvin Shapiro (713) 627-1015	Tot/Lap Pool, Splash pad surface, pool deck, parking lot, with striping, entry monument, site furnishing, electrical	Apr-07	Jan-08	836,661
WOODLAND WATERWAY ISLAND GARDEN The Woodlands Woodlands, TX Fred LeBlanc (281) 719-6121	Asian Garden & Koi Pond	Sep-07	Apr-08	1,332,953

SIMILAR PROJECT EXPERIENCE

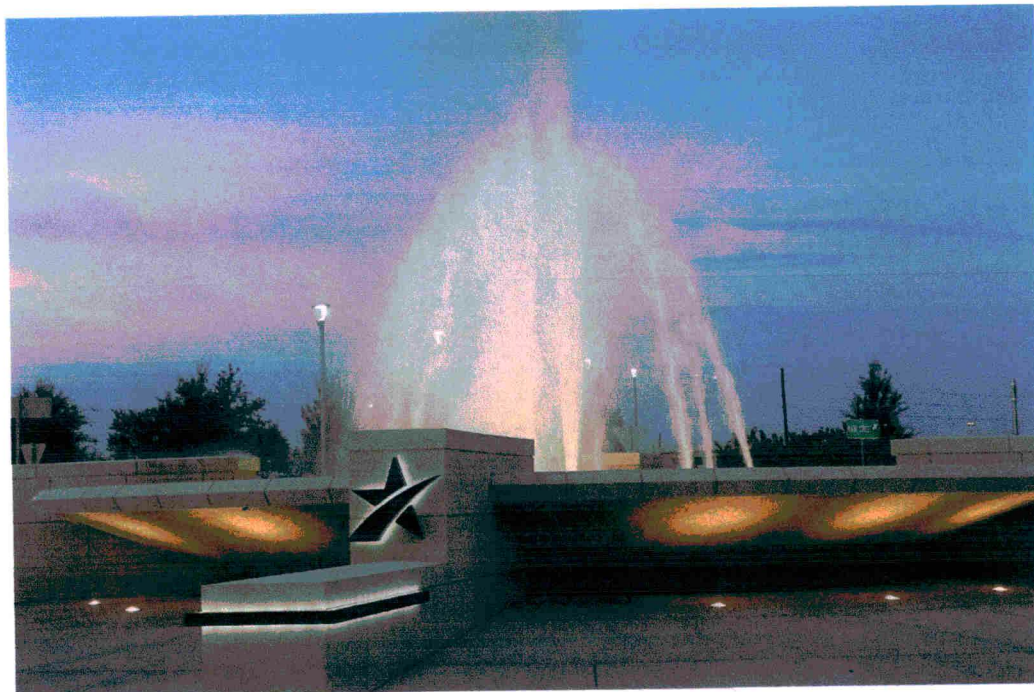
PROJECT	DESCRIPTION	INITIAL SCHEDULED DURATION	ACTUAL SCHEDULED DURATION	INITIAL CONTRACT AMOUNT	FINAL CONTRACT AMOUNT
5th WARD MSC NEW PARKING LOT 3906 Stonewall Street Houston, TX	Demo., 28,000 SF addition to existing parking lot, striping, electrical, fencing, landscape	90 days	80 days	\$242,097	\$253,435
<u>Owner:</u> City of Houston General Services Department (Obioma Nwakanma) 900 Bagby, 2nd floor Houston, TX 77002 (832) 393-8130		<u>DELIVERY METHOD:</u> Lump Sum			
<u>Architect:</u> Archi*Technic/3, Inc. (Craig Mitchell) 5555 West Loop South Suite 40 Bellaire, TX 77401 (214) 252-3830		<u>SUPERINTENDENT:</u> John Riley			
		<u>PROJECT MANAGER:</u> Chad Mills			
KATY MAIN STREET 25700 Nelson Way Katy, TX	Stone w/ aluminum identity signage, elect & lighting, concrete, fountain, landscape & irrigation	120 days	135 days	\$2,361,499	\$1,785,399
<u>Owner:</u> Fort Bend County Municipal Utility District No. 199 c/o Allen Boone Humphries Robinson L.L.P. (Chad Ferguson) 3200 Southwest Freeway, Suite 2600 Houston, TX 77027 (713) 517-3729		* Delayed due to approved rain delays and incomplete electrical plans			
<u>Architect:</u> Evergreen Design Group (Rodney McNabb) 519 East Interstate 30, Ste 123 Rock Wall, TX 75087 (972) 980-9277		<u>DELIVERY METHOD:</u> Lump Sum			
		<u>SUPERINTENDENT:</u> Jason Pierce			
		<u>PROJECT MANAGER:</u> Jason Mills			

<u>PROJECT</u>	<u>DESCRIPTION</u>	<u>INITIAL SCHEDULED DURATION</u>	<u>ACTUAL SCHEDULED DURATION</u>	<u>INITIAL CONTRACT AMOUNT</u>	<u>FINAL CONTRACT AMOUNT</u>
PEDESTRIAN CONNECTIVITY & IMPROVEMENTS TIRZ No. 5 Houston, TX 77024 <u>Owner:</u> Memorial Heights Redevelopment Authority <u>Owner Rep:</u> Gilbane Construction (George Conces) (832) 265-1189 <u>Architect:</u> SWA Group (James Vick) 1245 West 18th Street Houston, TX 77008 (713) 868-1676	Abutments, steel prefabricated pedestrian truss bridge with concrete columns & guardrail, lighting/electrical, concrete paving, site furnishings, landscape	345 days * 50 days approved for weather delays	415 days	\$4,748,528	\$4,767,815
		<u>DELIVERY METHOD:</u> Lump Sum			
		<u>SUPERINTENDENT:</u> Sonny Strain & Bill Bell			
		<u>PROJECT MANAGER:</u> Jack Christison & Jason Mills			



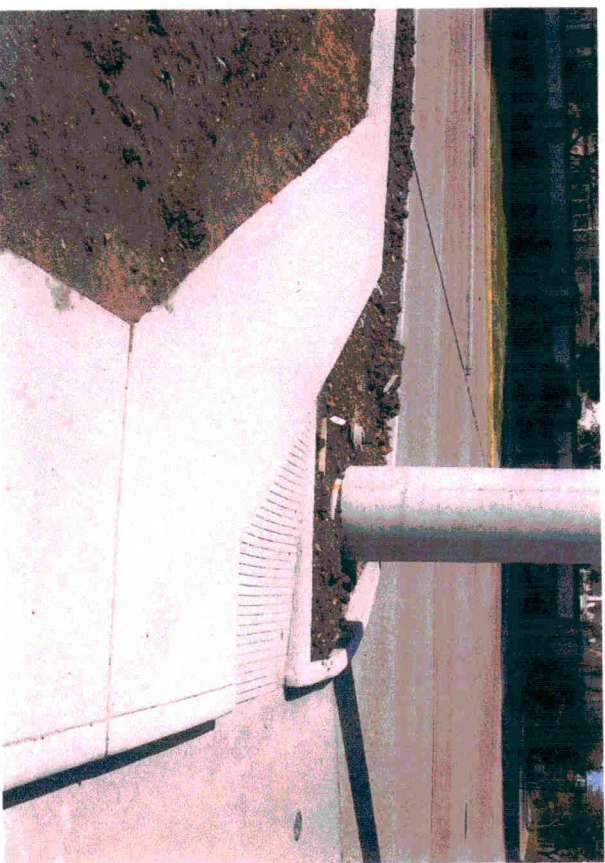
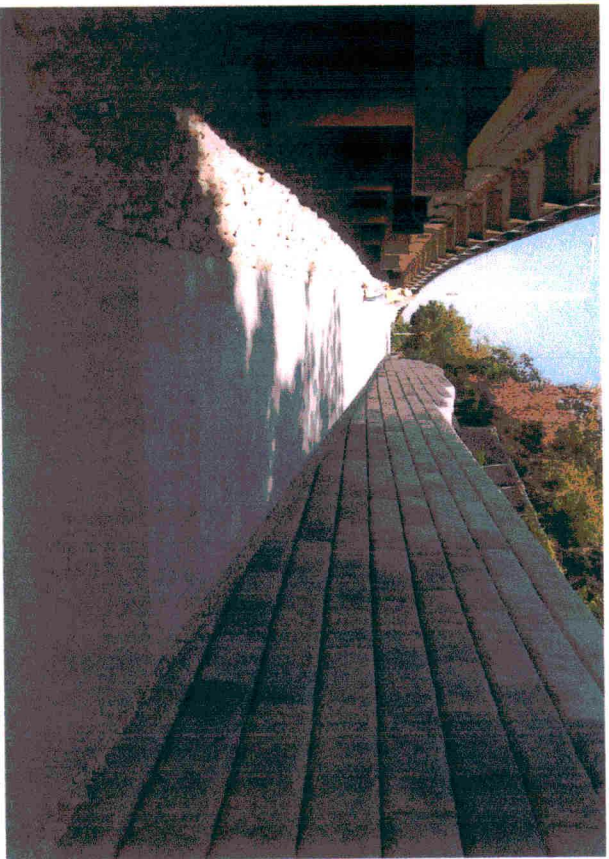
5th Ward MSC Parking Lot

3906 Stonewall Street
Houston, TX



Katy Main Street

25700 Nelson Way
Katy, TX



**Memorial Heights Pedestrian
Connectivity Improvements**
Houston, TX



3 Team Experience

Table of Contents

- Proposed Key Personnel
- Resumes of Key Personnel
- List of Proposed Subcontractors
- List of Proposed DBE Subcontractors
- MEP References

PROPOSED KEY PERSONNEL

See attached resumes

Project Managers

Jason Mills 281-240-6066

Chad Mills 832-524-6704

Reference

Mike Garcia, INsite Architecture 281-955-5504

Keith Behrens, Allana Development 713-202-0955

Project Responsibilities: Updating and keeping project on construction schedule, Managing all employees/subcontractors/suppliers on the project, Working with/managing the superintendents, Keeping the project in budget, Resolving problems when they arise

Superintendents

John Riley 713-454-4695

Chris Ward 281-240-6066

References

Andrew Sheehan, Curry Boudreaux Architects 713-523-8787

Shawn, Alpine Air 281-313-5055 / 281-733-9322 (cell)

Project Responsibilities: Keeping project on construction schedule, Scheduling & Managing all workers/subcontractors/suppliers
100% of the superintendent's time will be assigned to the project

Safety Director / Quality Control

Dawn Clark 281-797-0064

Reference

Brad Burton, Burton Construction 281-313-5055

Project Responsibilities: Assuring the jobsite is a safe environment for everyone by ensuring all OSHA regulations are being followed, inspecting work to provide a quality product



Jason H. Millis
President

Education

- **University of Houston** Business Degree/Major Accounting
Houston, TX

Experience

- **Millis Development & Construction, Inc.** (1980 – Present), President
Sugar Land, TX
- **Millis Custom Homes, LLC** (2005 – Present), President
Sugar Land, TX
- **Millis Equipment Rental, LLC** (2005 – Present), Vice President
Sugar Land, TX

Representative Project Experience

Rosemont Bridge & Trails
Houston, TX

Steel pedestrian bridge spanning Buffalo Bayou connecting Allen Parkway to Memorial Drive, and trails for joggers and bikers

Godwin Park Phase II
Houston, TX

Renovation to 3,000+ SF brick building – included stained concrete floors, interior glazed block walls, terra cotta exterior panels, and decorative exterior iron panels

Cross Creek Ranch
Fulshear, TX

Visitor's Center: 7500 SF building with a Café and full commercial kitchen facilities, and related site improvements. Included an 80' observation tower.
Fitness Center: 10,000 SF fitness center, with a multi-purpose room a full commercial kitchen for banquets.
Site Amenities: Lakeside amphitheater, multiple pavilions with seating, children's playground, landscape & irrigation

Aliana Recreation Center
Richmond, TX

10,000 SF Tuscan style clubhouse featuring 2 custom kitchens, large ballroom with rough timbers with meeting rooms, fitness center, outdoor poolside kitchen, pool house, and site improvements

Lakes of Bella Terra Recreation Center
Richmond, TX

7,000 SF Tuscan style clubhouse with fitness area, conference rooms, pool house, junior Olympic pool and water playground, tennis courts, and volleyball court

Jason Millis (cont.)

Lakewood Yacht Club Renovation Seabrook, TX	Renovation to existing commercial kitchen
Bay Colony Recreation Center Houston, TX	Clubhouse for residents of Centerfield and Centerfield Lakes in Bay Colony, pool, site amenities, and landscaping
Westover Park Recreation Center League City, TX	5-acre Recreation Complex including three swimming pools, cabana house with restrooms and dressing rooms, scenic lake Park, playground and a multi-purpose sports field, landscape & irrigation
Village of Reflection Bay Recreation Center Pearland, TX	Clubhouse with a lap pool, diving well, toddler pool, 2 volleyball courts, horseshoe pit, and picnic pavilion, landscape & irrigation
Skeeter's Mesquite Grill Restaurant Sugar Land, TX	Dine-in restaurant with commercial grade kitchen
Nigerian Mosque Houston, TX	13,000 SF 1-story, frame and brick building with metal roof
Brooks Street Bar-B-Q Sugar Land, TX	Dine-in restaurant with commercial grade kitchen, private party room, and smoke pi.
Halford Dental Sugar Land, TX	1-story 5,000 SF dental office and parking spaces
Greenway/Richmond Dental Houston, TX	1-story 5,000 SF dental office and parking spaces
Café Adobe #3 -110 & Silber Houston, TX	10,000 SF full service restaurant with indoor dining, outdoor patio dining, private party rooms, and large bar
Forty Acres Townhomes (6)	3 - story townhomes, with garage and attached Houston, TX balcony
Stanford Court Townhomes (12) Houston, TX	12 townhome project of 3 & 4 stories with garage and attached balcony
Holiday Inn Express Houston, TX	3-story building featuring 75 guest rooms, banquet and meeting rooms, exercise room, and all site work and landscaping
Long Meadow Farms Recreation Center Richmond, TX	1-story 3 buildings (8,500 SF) ranch style recreation center with fitness center, pool, water features, playground, and tennis courts
Bentwood Country Club Lake Conroe, TX	Club facilities with formal dining room, lounge, private meeting rooms, 12 tennis courts, and championship golf course



STAFF RESUMES

Jason Millis (cont.)

Telfair Pedestrian Bridges
Sugar Land, TX

Construction of three 80' X 8' pedestrian bridges with abutments, and one 130' X 10' pedestrian bridge with abutment

North Pointe Recreation Center
Tomball, TX

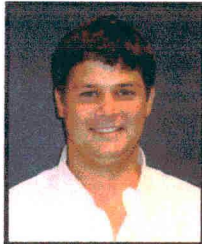
1-story clubhouse with tennis court, pool, water features, playground, and site improvements

Silver Ranch
Katy, TX

1-story clubhouse with six lane pool, splash pad, tennis courts, barbeque pavilion, playground, parking lot and all site improvements

Stone Creek
Hockley, TX

5,000 SF clubhouse with pool, playground, tennis courts, fountains, landscape and all site improvements



Chad Millis
Project Manager

Education

- **University of Texas at Austin – 3 year Graduate**
Austin, TX

Experience

- **Millis Development & Construction, Inc.** (2003-Present), Project Manager
Sugar Land, TX
- **Millis Equipment Rental, LLC** (2005-Present), President
Sugar Land, TX
- **Millis Custom Homes, LLC** (2005-Present), Vice President
Sugar Land, TX

Representative Project Experience

Hermann Brown Park
Houston, TX

Jogging trails, landscaping, irrigation, splash pad, and parking area

Harris County MUD 365
Cypress, TX

Trail plan continuation – Asphalt walk, fencing, wood arbors, landscape/irrigation, and site furnishings

Sienna Community Center Bldg.
Missouri City, TX

Construction of a 5,600 SF One-story, wood frame stucco building for community HOA

Telfair Recreation Facility
Sugar Land, TX

Construction of a neighborhood recreation facility including two pool buildings, parking lot, volleyball court 8,000 SF pool with slides and several water features, a spray park, playground landscaping, irrigation, and site utilities.

Interstate MUD
Katy TX

Site work in an existing detention pond to lower the pond 6 feet and add a clay liner to convert the pond to a wet pond. The project included 2600 lf of 8' asphalt walking trail site furnishings, site monuments and masonry, a 600 SF raised wood deck, landscaping and irrigation

Stumpf Plaza
Houston, TX

Construction of two curved granite "Water Walls" at the University of St. Thomas. The project included two underground pump systems in prefabricated vaults. The project also included removing the roadway intersection and replacing the concrete with concrete pavers, site furnishing, landscaping and irrigation

Firethorne Trail System
Katy, TX

Construction of a 70 Lf water fall between two existing lakes. The waterfall was powered by two 5 hp pumps set in a underground vault 180 feet away. The project also included a lake overlook with 6 ft tall stone retaining walls, decomposed granite trails, concrete sidewalks, Stone monument signs, landscaping, irrigation, placement of 700 tons of Boulders, site drainage, site furnishings, water fountains, drinking fountains, a 900 SF wood/Trex deck over the water and site utilities.

Riva Row Boathouse
The Woodlands, TX

Construction of a 2,200 SF below grade poured in place concrete wall building. The building features a curved, barrel vaulted copper roof and "spider web" designed structural steel system and is an architecturally amazing building. The project also included site civil work, a 175 LF Boardwalk and ¾ mile of colored and patterned concrete sidewalks.

Telfair Pedestrian Bridges
Sugar Land, TX

Construction of three 80' X 8' pedestrian bridges with abutments, and one 130' X 10' pedestrian bridge with abutment.

Sienna Sports Complex
Sugar Land, TX

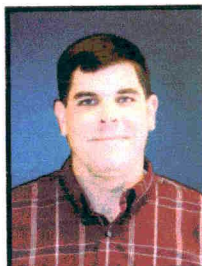
Construction of 8 Baseball fields, 7 soccer fields, all fields fencing, site dirt work, storm drainage, volleyball court, wood decks, basketball court, over 1 mile of decomposed granite trails, installation of fitness equipment, and completion of a concession building.

Sugar Land Pet Hospital
Sugar Land, TX

Construction of a 6,500 SF pet hospital including, all site / civil work, parking lot, and ground up construction of a wood framed building with a metal roof.

Sienna North Recreation Center
Sugar Land, TX

Construction of a 3,000 SF recreation building, including a 7,200 SF pool, a 38 foot tall CMU and brick façade slide tower with two recreational slides into the pool one of which goes through a tunnel underground. The project includes 3 - 15 foot tall wood and brick trellis, 15,000 SF of concrete pool deck, brick columns, 800 lf of wrought iron fencing, dumpster enclosure, and LED site monument sign.



John Riley
Superintendent

Education

- **Lamar University**
Beaumont, TX
- **Lamar Institute of Technology**
Beaumont, TX

Experience

2007 - Present

Millis Development & Construction, Inc., Sugar Land, TX
Superintendent

2006 - 2007

Gulf Coast Construction Group, Houston, TX
Superintendent

2004 - 2006

J.D.R. Construction, Orange, TX
Owner

2001 - 2004

Hallmark Construction, Orange, TX
Superintendent

Representative Project Experience

Hermann Brown Park
Houston, TX

Jogging trails, landscaping, irrigation, splash pad, and parking area

Harris County MUD 365
Cypress, TX

Trail plan continuation – Asphalt walk, fencing, wood arbors, landscape/irrigation, and site furnishings

Aliana Recreation Center
Richmond, TX

Tuscan style clubhouse featuring 2 custom state-of-the art kitchens, large ballroom, meeting rooms, fitness center, outdoor poolside kitchen, pool house, and site improvements.

North Pointe Recreation Center
Tomball, TX

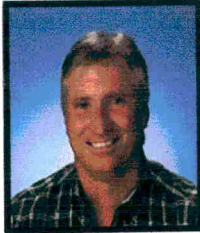
1-story clubhouse with tennis court, pool, water features, playground, and site improvements

Silver Ranch
Katy, TX

1-story clubhouse with six lane pool, splash pad, tennis courts, barbeque pavilion, playground, and all site improvements

Stone Creek
Hockley, TX

1-story clubhouse with pool, playground, tennis courts, fountains, and all site improvements



Chris Ward
Superintendent

Education & Certification

- **Butler High School** Graduate
Butler, OK
- **OSHA 30 Hr.**
- **CPR/First Aid**

Experience

- **Millis Development & Construction, Inc.,** Superintendent
Sugar Land, TX
- **Burton Construction, Inc.,** Superintendent
Sugar Land, TX
- **Steve Sherrill Construction, Inc.,** Superintendent
Southlake, TX
- **CW Construction, Inc.,** Superintendent
Sugar Land, TX

Representative Project Experience

- **Stuebner Airline Park** New City of Houston park consisting of jogging/biking trails, picnic areas with tables and grills, playground and splashpad.
- **City Centre - Building 7** 100 loft units with 32,484 SF ground level retail and second floor parking garage. Construction of the building consisted of poured in place on levels one and 2 and wood framing from levels three through five.
- **City Centre - Building 13** 150 loft units with 35,485 SF ground level retail, a poured in place podium deck at the second floor with wood framing from levels two through five.
- **Tyson Building Corporation** Addition of a 20,000 gallon and 5,000 gallon IWC tanks at Vaught Aircraft for the water treatment plant.
- **Residential Homes** Construction of over 600 homes utilizing both steel and wood framing with diverse architectural styles, incorporation exposed trusses, outdoor arbors, free-standing stair cases, domed ceilings, multi-pitched roofs into the design.



Dawn Clark
Safety Director

Education

- Texas A&M University (TEEX)
- OSHA Training Institute Southwest Education Center
- Houston Community College – 2 yrs. Sciences
- Spencer School of Real Estate

Certification/Training

- Certified Safety and Health Official (CSHO) – Construction Industry – Certification # 3571
- OSHA Construction Outreach Trainer – OSHA U.S. Department of Labor
- Instructor Medic First Aid International – Certification #49160
- Texas Real Estate License – Inactive Status

Experience

2008 - Present

Millis Development & Construction, Inc., Sugar Land, TX
Safety Director

2004 - 2008

Burton Construction Company, Sugar Land, TX
Safety Coordinator/Project Manager/Assistant to the president

1996 - 2004

E.E. Reed Construction Company, Sugar Land, TX
Administrative Assistant to 4 VP's

1986 - 1996

Houston Construction Company, Houston, TX
Executive Administrative Assistant to the president

Responsibilities

- Establishing, maintaining, and updating of company Safety & Hazard Communication Programs and procedures.
- Attending pre-construction meetings to relay company safety policy rules and expectations to subcontractors involved with the program.
- Defining, coordinating and enforcing company, client, and governmental safety rules and regulations as required per project specifications.
- Monitoring of new safety requirements and techniques.
- Update policies and procedures as necessary.
- Training of required company employees on OSHA and company safety regulations in conjunction with OSHA 10 & 30 hr. courses, and CPR/First Aid/AED.
- Performing of random jobsite audits.
- Performing accident investigations and injury management studies.
- Gathering of non-compliance data to create trend reports and establish new safety guidelines for areas where safety measures are needed or could be improved.
- Prepare site specific safety policies as required.
- Creating an environment that continually elevates safety awareness via new ideas, training, incentives, etc.

Representative Project Experience

Hermann Brown Park
Houston, TX

Jogging trails, landscaping, irrigation, splash pad, and parking area

Rosemont Bridge & Trails
Houston, TX

Steel pedestrian bridge spanning Buffalo Bayou connecting Allen Parkway to Memorial Drive, and trails for joggers and bikers

Harris County MUD 365
Cypress, TX

Trail plan continuation – Asphalt walk, fencing, wood arbors, landscape/irrigation, and site furnishings

Sienna Community Center Bldg.
Missouri City, TX

One-story frame and stucco building for community HOA

Godwin Park Phase II
Houston, TX

Renovation to 3,000+ SF brick building – included stained concrete floors, interior glazed block walls, terra cotta exterior panels, and decorative exterior iron panels

Cross Creek Ranch – Visitor's Center
Fulshear, TX

Four-story structural steel visitor's center with a Café and full commercial kitchen facilities, and related site improvements

Cross Creek Ranch – Fitness Center Fulshear, TX	One-story structural steel building, with a multi-purpose room and a full commercial kitchen for banquets and related site improvements
Cross Creek Site Amenities Fulshear, TX	Lakeside amphitheater, multiple pavilions with seating, children's playground, mailbox pavilion
Fulshear Creek Crossing Fulshear, TX	Site amenities, including a swimming pool, shade structure, fencing, fountain, landscaping and irrigation
Hobart Taylor Park Houston, TX	Polygon structure, pool renovation, restroom remodel, play structures, landscaping and irrigation
Hermann Park Lake Picnic Area Houston, TX	Gates, sidewalks, underground utilities, railroad crossing, landscaping
Pot Belly Sandwich Shop Sugar Land, TX	Dine-in restaurant and site improvements
Telfair Phase 2 Main Lake Pedestrian Bridge Sugar Land, TX	Structural steel bridge with piers spanning retention ditch
Aliana Recreation Center Richmond, TX	Tuscan style clubhouse featuring 2 custom state-of-the art kitchens, large ballroom, meeting rooms, fitness center, outdoor poolside kitchen, pool house, and site improvements
Granite Towers Sugar Land, TX	211,000 SF eight-story poured-in-place concrete, brick veneer, all interior improvements, three-story parking garage, all site parking, and landscaping four-story parking garage, and related site improvements
Landry's Office Building Houston, TX	112,000 SF eight-story office building with 2 level underground parking garage, all interior improvements, site parking, pond feature, irrigation and landscaping

PROPOSED SUBCONTRACTORS

Subcontractors with contracts over \$50,000

Diamond Electric, Inc.
11525 Bauman St.
Houston, TX 77076
713-695-0540

RG Concrete
PO Box 247
Rosenberg, TX 77471
281-450-2784

Mills Equipment Rental, LLC
4610 Sweetwater Blvd, Suite 200
Sugar Land, TX 77479
281-240-6066

Suppliers

M & M Lighting
5820 South Rice Ave
Houston, TX 77081
713-667-5611

PROPOSED TUCP CERTIFIED DBE'S

List to be emailed by 5pm, April 21, 2011



10/13/10

To Whom It May Concern:

Project References

Below please find the requested information:

Job name: HOBART TAYLOR PARK
General Contractor: Mills Development
Architect: M2L Associates Inc - (713) 722-8897

Job name: FULSHEAR CREEK CROSSING
General Contractor: Mills Development
Architect: SLA Studio Land, Inc - (713)-787-0719

Job name: TELFAIR PHASE 2 Park & Common Areas
General Contractor: Mills Development
Architect: TBG Partners - (713) 838-7965

Job name: STONE CREEK RANCH RECREATION CENTER
General Contractor: Mills Development
Architect: TBG Partners - (713) 838-7965

Let me know if you need anything else,

Thanks

E Diamond Electric Inc

E DIAMOND ELECTRIC
11525 BAUMAN ST
HOUSTON, TX 77066

11525 BAUMAN ST, HOUSTON TX 77076 * T: 713-695-0540 * F: 713-695-3080 *
DIAMONDELECTRIC@GMAIL.COM

References for RG Concrete

1) Wurzel Builders

Contact – Ken Bauer

Phone - 512-468-7771

Email – ken.bauer@wurzelbuilders.com

Contract Name: Wal-mart

Richmond

Contract price: \$9,800

2) SLI

Contact – Joe

Phone – 713-465-7040

Contract Name: HFCU

Contract amount: \$29,000

3) Tower of Refuge

Contact – Pastor Sam Flores

Phone – 281-657-5785

Contract Name: New parking Rosenberg-

Contract price: \$89,000

4) RDT

Contact – Greg Harris

Phone – 832-462-9996

Contract Name: Inertia building

Contract price: \$120,000

**** RG Concrete has applied for MBE/WBE/SBE status. Application number 8504753**

PROJECT EXPERIENCE

Salvation Army

Description: Site utilities, 10,000 cy detention pond,
building pad, parking lot stabilization & site grading
Original Contract Amount: \$184,511
Completion: October 15, 2010

Project Engineer:
Halff Associates
3701 Kirby Dr. Ste 860
Houston, TX 77098

Owner:
Fretz Construction
6301 Long Dr.
Houston, TX 77087

MUD 365

Description: Installation of 45,360 s.f. asphalt jogging trail,
Culvert installation, in 'Cole's Crossing' neighborhood
Original Contract Amount: \$143,910
Completion: June 30, 2010

Project Engineer:
Murr Inc.
Michael Murr
11803 Grant Rd. Ste. 108
Cypress, TX 77429
713-825-0970
281-376-4833

Owner:
Harris County MUD 365
Cypress, TX

Interstate MUD, Phase 1 Detention Amenity and Trail System

Description: Excavation & shaping of amenity lake,
stabilization of asphalt jogging track
Original Contract Amount: \$336,643
Final Contract Amount: \$466,036
Notice to proceed: 1/30/2008
Completion: August 2008

Architect:
TBG Partners
3050 Post Oak Blvd
Houston, TX 77056
713-439-0027

Owner:
Interstate Municipal Utility District
3200 Southwest Freeway, Suite 2600
Houston, TX 77027
713-860-6400

Kendall Library

Description: Site work, underground detention pond
Contract Amount: \$178,722
Completion: February 2010

General Contractor:
Teal Construction Company
Mike Tancil
1335 Brittmoore Rd.
Houston TX 77043
(713)-465-8306

Millis Equipment

4610 Sweetwater Blvd.
Suite 200
Sugar Land, TX 77479
281.240.6066 office
281.240.7730 fax



www.millisequipment.com

Goddard School

Description: Site Work & utilities for a private school
Contract Amount: \$91,474
Completion: March 2009

General Contractor:
Embree Construction Group
4747 Williams Dr.
Georgetown, TX 78633
(512)-819-4700

ZT Business Center

Description: Site Work for office building
Contract Amount: \$146,500
Completion: February 2009

General Contractor:
Burton Construction
Landon Ehlinger
4660 Sweetwater Blvd Suite 200
Sugar Land TX 77479
(281) 313-5055

Altus Baytown Diagnostic Center

Description: Site work for office building
Contract Amount: \$126,061
Completion: March 2010

General Contractor:
Burton Construction
Brad Burton
4660 Sweetwater Blvd Suite 200
Sugar Land TX 77479
(281) 313-5055

Buckboard Park

Description: Site grading and storm drainage
Contract Amount: \$226,155
Completion: May 2008

General Contractor:
Robinson Landscape and Construction, LLC
PO Box 1901
Hurst, TX 76053
(817) 282-5252

Riva Row

Description: Removal of 10,000 CY of dirt and haul off site
around existing amenity pond/landscaping/block sodding
Contract Amount: \$224,650
Completion: July 2008

Owner:
The Woodlands Land Development Company, L.P.
24 Waterway Ave. Suite 1100
The Woodlands, TX 77380
(281) 719-6100

Cypress Forrest Lakes

Description: De-silting of 4 Amenity ponds, 40,000 CY
of removal and disposal off site
Contract Amount: \$347,758
Completion: August 2008

Owner/Engineer:
Jones & Carter, Inc.
6335 Gulton St. #100
Houston, TX 77081
(713) 777-5337

4 Project Controls and Performance

Table of Contents

- Scheduling Information
- Schedule Example
- Computerized Construction Management Information
- Example Submittal Log
- Company Safety Information
- Document Management
- Quality Control
- Cost Management
- Schedule Information

Critical Path Method Scheduling

The scope is of utmost importance. Staying on schedule is the task of the Project Manager. In order to stay on schedule the master schedule is derived at the beginning of the project. This allows MDC to see which items are critical to remain on schedule and to make sure that the work is kept on track, items are ordered in plenty of time, and everyone is aware of the dates that need to be met. Throughout the project, MDC will hold internal weekly meetings to review the schedule. Subcontractors will be invited to these meetings to update their current status. If a deficiency is noted in the meetings, the problems will be identified and a solution will be proposed. The trade will be notified they have until the next weekly meeting to remedy the deficiency. If the schedule is not caught up by the next meeting, MDC will take whatever actions needed to get the schedule on track. The schedule will be updated as necessary on a monthly basis. In the event the problem is outside the control of ourselves and our subcontractor, correct documentation will be presented to the owner to ensure everyone is aware of any project delays.

2010

[illegible]

Computerized Construction Management Systems

- Our accounting department utilizes a construction accounting software called Timberline to handle all costs associated with a project.
- Our estimating department creates submittal logs in Microsoft Excel for tracking the approval and ordering of all items submitted. Excel is also used to generate change orders, purchase orders, and RFIs. (See next page for an example of a submittal log used on a previous project)
- Project schedules are created using Microsoft Excel or Microsoft Project. (See previous page for an example of a previous job schedule)

6th Ward MSC Parking Lot
Submittal Log

Submittal #	Item	Subcontractor	Spec. Section	Architect Receipt	Architect Approval	Action Taken	Resubmittal Date	Resub Action Taken
1	Submittal Log	MDC						
2	Construction Schedule	MDC	01325					
3	Project Sign	Scanlin	01580					
4	Paving Layout	MDC						
5	Lime	MER	02336					
6	Stabilized Sand	Cherry Crushed	02321					
7	Concrete Mix Design	Southern Star	03315					
8	Rebar	CHB	03300					
9	Landscaping	HLS	02818					
10	Manhole	MER	02082, 02083					
11	RCP	MER	02811					
12	Inlets	MER	02832, 02833					
13	HDPE pipe	MER	02805					
14	Striping	Durham	02767					
15	Light Fixtures	M & M Lighting	18000					
16	Electrical	Diamond	18120					
17	Joint Sealant	Diamond Cuts	02752					
18	Fencing	Brazos Fence						

mdc **Mallin Development & Construction, Inc.**
 4610 Sweetwater Blvd., Suite 200
 Sugar Land, TX 77479
 (281) 240-8006; Fax: (281) 240-7730

Company Safety Information

1. Worker's Compensation Experience Modification Rating (EMR)

2010	<u>.73</u>
2009	<u>1.04</u>
2008	<u>1.23</u>

2. Matrix for the past three years, as obtained from OSHA No. 200 Log:

	2010	2009	2008
Number of injuries and illnesses	<u>0</u>	<u>0</u>	<u>0</u>
Number of lost time accidents	<u>0</u>	<u>0</u>	<u>0</u>
Number of recordable cases	<u>0</u>	<u>0</u>	<u>0</u>
Number of fatalities	<u>0</u>	<u>0</u>	<u>0</u>
Number of employee direct hire fixed hours worked	<u>0</u>	<u>0</u>	<u>0</u>

Document Management

Document control is a very important aspect to keep the project on schedule. MDC utilizes several different systems to keep control of all documentation entering and leaving the office and job site. The Superintendent handles all documentation on site, from shipping tickets to inspection receipts. All information is logged into a job specific log and recorded on site. This information is transferred to the Project Manager on a monthly basis for required back up to all billings. Our estimator logs in and out all submittals into a job specific submittal log, as well as all RFP's, RFI's, and change orders into a job specific document log. Generally this information is submitted in an excel format. An example of a project submittal log is attached.

Quality Control

Our program consists of three parts: Acceptance, Installation, and Verification. Acceptance is the first part of the program. The office staff, including the estimator and project manager, handles this part. This includes every step necessary to make sure all required items are submitted and accepted by the design team and owner. No items are ordered until written acceptance is in hand at our office. Once a written approval is received, our estimator will proceed in issuing a purchase order or directive to start work. All information is then passed to the site Superintendent. The Superintendent is then in charge of making sure the subcontractor/supplier installs/provides exactly what is on the written approved submittals. Once he confirms that this has been done, he turns the written approval over to the Quality Control representative. She then reviews the approval and inspects what has been installed to make sure that what is approved is what is installed in the field. She then inserts the written approval with her acceptance on it into the final close out documents.

Cost Management

Project Budget

The project budget is another responsibility of the Project manager. The project manager will set up an initial budget for each facet of work. Weekly, through our accounting system, he will review the costs accrued versus the budgetary amount. He will then review the amount of work completed versus the amount billed, anticipate the ensuing costs to come, and balance that against the budget amount. In the event there appears to be a cost overrun, the problems for this will be identified immediately, then the subcontractor and Superintendent will meet to discuss possible solutions to the overrun. In the event it is something outside of both the general contractor and the subcontractor, the design team and owner will be notified. We would lay out the situation, expose what led to the problem, and suggest possible solutions that best suit the owner. We then all work as a team to resolve the problem quickly and efficiently.

Cost Accounting

The accounting of the project is handled by our accounts payable department. When a cost comes into the office it is immediately given a cost code and entered into our construction accounting software (Timberline). The accounts payable department will make sure the cost in a specific code is not over the budget amount. If it is, the project manager will be notified immediately. On Wednesdays of each week the Superintendent looks at the cost for the week to approve the amount billed versus what is complete in the field. Then on Thursday, the PM reviews all costs and at that time approves the amount billed versus the contract and budget amounts.

Schedule

Mills Development & Construction, Inc. is confident it can make the County's schedule of having the facility substantially complete in 120 days.

5 Cost

Table of Contents

- Proposal Price
- Sample of Insurance Certificate

**millis
development &
construction, inc.**

4610 Sweetwater Blvd.

Suite 200

Sugar Land, TX 77479

Tel. 281.240.6066

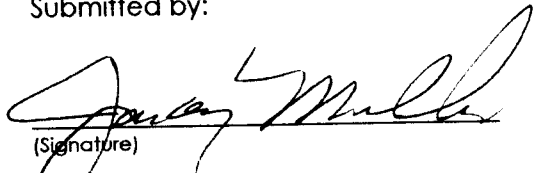
Fax 281.240.7730

Proposal Price

Millis Development & Construction, Inc. is pleased to present the following price for the construction of RFP11-060 SH36 Park and Ride:

Total Base Bid: \$1,140,400⁰⁰ —

Submitted by:


(Signature)

President
(Position)

4/21/11
(Date)



www.millisdevelopment.com



CERTIFICATE OF LIABILITY INSURANCE

OP ID CI

DATE (MM/DD/YYYY)

10/11/10

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Elsey & Associates 21755 IH-45 North Bldg 8 Spring TX 77388 Phone: 281-651-0002 Fax: 281-350-0281	CONTACT NAME: Cindy Chandler PHONE (A/C, No, Ext): 281-651-0002 FAX (A/C, No): 281-350-0281 E-MAIL ADDRESS: cchandler@elseyagency.com PRODUCER CUSTOMER ID #: MILLI21														
INSURED Millis Development & Construction, Inc.; Millis Equipment Rental, LLC 4610 Sweetwater Blvd #200 Sugar Land TX 77479	INSURER(S) AFFORDING COVERAGE <table border="1"><thead><tr><th>INSURER</th><th>NAIC #</th></tr></thead><tbody><tr><td>INSURER A: Mt. Hawley Insurance Company</td><td>37974</td></tr><tr><td>INSURER B: Travelers Ca & Surety Co of Am</td><td></td></tr><tr><td>INSURER C: Texas Mutual Insurance Co.</td><td>22945</td></tr><tr><td>INSURER D: Assurance Company of America</td><td>19305</td></tr><tr><td>INSURER E: Federal Insurance Company</td><td>20281</td></tr><tr><td>INSURER F:</td><td></td></tr></tbody></table>	INSURER	NAIC #	INSURER A: Mt. Hawley Insurance Company	37974	INSURER B: Travelers Ca & Surety Co of Am		INSURER C: Texas Mutual Insurance Co.	22945	INSURER D: Assurance Company of America	19305	INSURER E: Federal Insurance Company	20281	INSURER F:	
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INSURER E: Federal Insurance Company	20281														
INSURER F:															

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE		ADOL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS		
GENERAL LIABILITY							EACH OCCURRENCE	\$ 1000000	
A	X	COMMERCIAL GENERAL LIABILITY		MGL0169775	08/15/10	08/15/11	DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 50000	
		CLAIMS-MADE	X	OCCUR			MED EXP (Any one person)	\$ 5000	
							PERSONAL & ADV INJURY	\$ 1000000	
							GENERAL AGGREGATE	\$ 2000000	
							PRODUCTS - COM/POP AGG	\$ 2000000	
								\$	
GEN'L AGGREGATE LIMIT APPLIES PER:									
		POLICY	X	PRO-JECT		LOC			
AUTOMOBILE LIABILITY							COMBINED SINGLE LIMIT (Ea accident)	\$ 1000000	
		ANY AUTO					BODILY INJURY (Per person)	\$	
		ALL OWNED AUTOS					BODILY INJURY (Per accident)	\$	
B	X	SCHEDULED AUTOS		BA0669P76210	10/06/10	10/06/11	PROPERTY DAMAGE (Per accident)	\$	
B	X	HIRED AUTOS						\$	
B	X	NON-OWNED AUTOS						\$	
A		UMBRELLA LIAB	X	OCCUR	MXL0356280	08/15/10	08/15/11	EACH OCCURRENCE	\$ 4000000
		EXCESS LIAB		CLAIMS-MADE				AGGREGATE	\$ 4000000
		DEDUCTIBLE							\$
	X	RETENTION	\$	10000					\$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			TSF0001069369	04/22/10	04/22/11	X	WC STATUTORY LIMITS	OTHER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)		Y/N					E.L. EACH ACCIDENT	\$ 1000000
	If yes, describe under DESCRIPTION OF OPERATIONS below		N	N/A				E.L. DISEASE - EA EMPLOYEE	\$ 1000000
								E.L. DISEASE - POLICY LIMIT	\$ 1000000
E	Equipment Floater			45463456	08/15/10	08/15/11		Rentals	250000
D	Builders Risk/Inst			EC43648659	08/15/10	08/15/11		Per Job	500000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
*** SAMPLE CERTIFICATE - FOR BIDDING PURPOSES ONLY ***

CERTIFICATE HOLDER

CANCELLATION

SAMPLE	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE <i>Bruce C. DeHart</i>

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**Request for Taxpayer
Identification Number and Certification**

Give form to the
requester. Do not
send to the IRS.

Print or type
See Specific Instructions on page 2.

Name (as shown on your income tax return) **Millis Development + Construction, Inc.**

Business name, if different from above

Check appropriate box: ☐ Individual/Sole proprietor ☒ Corporation ☐ Partnership
☐ Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶
☐ Other (see instructions) ▶

Address (number, street, and apt. or suite no.) **4610 Sweetwater Blvd, Suite 200**
City, state, and ZIP code **Sugar Land, TX 77479**

Requester's name and address (optional)

List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number

or

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

Sign
Here

Signature of
U.S. person ▶

Date ▶

4/21/11

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued).
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

**millis
development &
construction, inc.**

4610 Sweetwater Blvd.

Suite 200

Sugar Land, TX 77479

Tel. 281.240.6066

Fax 281.240.7730

RFP 11-060 SH36 PARK AND RIDE

PROPOSED TUCP CERTIFIED DBE'S

RG Concrete

PO Box 247

Rosenberg, TX 77471

281-450-2784

Contract Amount: approximately \$80,000 (6.5%)

Contractors Paving Supply Inc., LLP

13923 Stafford Road

Stafford, TX 77477

281-208-8839

Contract Amount: approximately \$35,000 (3%)



www.millisdevelopment.com

BID BOND

Travelers Casualty and Surety Company of America
One Tower Square 3PB, Hartford, CT 06183

Bond No. N/A

KNOW ALL MEN BY THESE PRESENTS,

That we, **Millis Development & Construction, Inc.**, as Principal, hereinafter called the Principal, and **Travelers Casualty and Surety Company of America**, of **One Tower Square 3PB, Hartford, CT 06183**, a corporation duly organized under the laws of the State of Connecticut, as Surety, hereinafter called the Surety, are held and firmly bound unto **Fort Bend County**, as Obligee, hereinafter called the Obligee, in the sum of **Five Percent of the Greatest Amount Bid** Dollars (**\$5% G.A.B.**), for the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

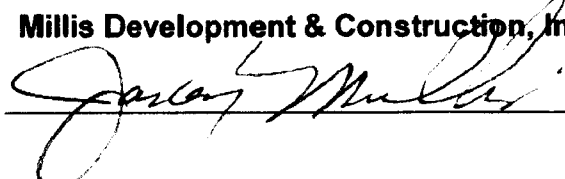
WHEREAS, the Principal has submitted a bid for **RFP 11-060-SH36 Park and Ride**.

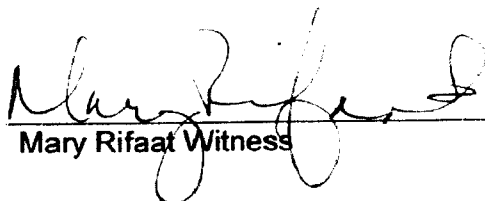
NOW, THEREFORE, if the Obligee shall accept the bid of the Principal and the Principal shall enter into a Contract with the Obligee in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the Obligee the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Obligee may in good faith contract with another party to perform the Work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this **21st** day of **April**, **2011**.



Witness

Millis Development & Construction, Inc.
By:  (Seal)
_____, Principal



Mary Rifaat Witness

Travelers Casualty and Surety Company of America
By:  (Seal)

Roxanne G. Hebert, Attorney-in-Fact

Printed in cooperation with the American Institute of Architects (AIA) by Travelers Casualty and Surety Company of America. The language in this document conforms exactly to the language used in AIA Document A310, February 1970 edition.

TRAVELERS**POWER OF ATTORNEY**

Farmington Casualty Company
 Fidelity and Guaranty Insurance Company
 Fidelity and Guaranty Insurance Underwriters, Inc.
 St. Paul Fire and Marine Insurance Company
 St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
 Travelers Casualty and Surety Company
 Travelers Casualty and Surety Company of America
 United States Fidelity and Guaranty Company

Attorney-In Fact No. 221881

Certificate No. 003357687

KNOW ALL MEN BY THESE PRESENTS: That St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company and St. Paul Mercury Insurance Company are corporations duly organized under the laws of the State of Minnesota, that Farmington Casualty Company, Travelers Casualty and Surety Company, and Travelers Casualty and Surety Company of America are corporations duly organized under the laws of the State of Connecticut, that United States Fidelity and Guaranty Company is a corporation duly organized under the laws of the State of Maryland, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc., is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Bruce C. DeHart, Edward L. Moore, David R. Groppell, Lori Ellis, Roxanne G. Hebert, Gary L. Timmons, Beverly A. Ireland, Mary M. Rifaat, and Sharen R. Groppell

of the City of Spring, State of Texas, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 23rd day of November, 2009.

Farmington Casualty Company
 Fidelity and Guaranty Insurance Company
 Fidelity and Guaranty Insurance Underwriters, Inc.
 St. Paul Fire and Marine Insurance Company
 St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
 Travelers Casualty and Surety Company
 Travelers Casualty and Surety Company of America
 United States Fidelity and Guaranty Company



State of Connecticut
 City of Hartford ss.

By: _____

George W. Thompson, Senior Vice President

On this the 23rd day of November, 2009, before me personally appeared George W. Thompson, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.
 My Commission expires the 30th day of June, 2011.



Marie C. Tetreault
 Marie C. Tetreault, Notary Public

IMPORTANT NOTICE

To obtain information or make a complaint:

You may call Travelers Casualty And Surety Company of America and its affiliates' toll-free telephone number for information or to make a complaint at:

1-800-328-2189

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at:

1-800-252-3439

You may write the Texas Department of Insurance:

P.O. Box 149104
Austin, TX 78714-9104
Fax: (512) 475-1771
Web: <http://www.tdi.state.tx.us>
E-mail: ConsumerProtection@tdi.state.tx.us

PREMIUM OR CLAIM DISPUTES:

Should you have a dispute concerning your premium or about a claim you should contact your Agent or Travelers first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

ATTACH THIS NOTICE TO YOUR BOND:

This notice is for information only and does not become a part or condition of the attached document and is given to comply with Texas legal and regulatory requirements.