

SECTION III
TERMINATION

- 3.01 County may terminate this Agreement at any time by providing ten (10) days written notice to the Contractor.
- 3.02 Upon receipt of such notice, the Contractor shall discontinue all services in connection with the performance of this Agreement and shall proceed to cancel promptly all existing orders and contracts insofar as such orders or contracts are chargeable to this Agreement.
- 3.03 Within thirty (30) days after receipt of notice of termination, the Contractor shall submit a statement, showing in detail the services performed under this Agreement to the date of termination.
- 3.04 County shall then pay the Contractor that proportion of the prescribed charges which the services actually performed under this Agreement bear to the total services called for under this Agreement, less such payments on account of charges as have been previously made.
- 3.05 Copies of all completed or partially completed designs, drawings, electronic data files and specifications prepared under this Agreement shall be delivered to the County when and if this Agreement is terminated in the manner and for the purposes provided in this Agreement.

SECTION IV
LIABILITY INSURANCE

Contractor shall, prior to performing billable services and for the duration of term of this Agreement, keep in full force and effect a policy of general liability insurance of not less than \$1,000,000.00 for each claim aggregate, which shall be approved by the Fort Bend County Risk Management Department prior to purchase. The policy shall contain a clause that the insurer will not cancel or change the insurance without first giving County ten (10) days prior written notice. The insurance shall be in a company acceptable to the Fort Bend County Risk Management Department and a copy of the policy or certification of insurance shall be delivered to the Fort Bend County Risk Management Department as soon as available.

SECTION V
NOTICE

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

Percheron Acquisitions, LLLC
P.O. Box 880
7920 FM 1489
Simonton, Texas 77476

B. If to County notice must be sent to both the Fort Bend County Purchasing Agent and County Project Manager:

Richard W. Stolleis, P.E.
County Engineer
1124-52 Blume Road
Rosenberg, Texas 77471

Fort Bend County Purchasing Department
Gilbert D. Jalomo, Jr., CPPB
301 Jackson
Richmond, Texas 77469

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

SECTION VI LIMIT OF APPROPRIATION

- 6.01 Prior to the execution of this Agreement, Contractor has been advised by County, and Contractor clearly understands and agrees, such understanding and agreement being of the absolute essence to this contract, that County shall have available the total maximum sum of \$121,000.00, specifically allocated to fully discharge any and all liabilities which may be incurred by County.
- 6.02 Contractor does further understand and agree, said understanding and agreement also being of the absolute essence of this contract, that the total maximum compensation that Contractor may become entitled to hereunder and the total maximum sum that County shall become liable to pay to Contractor hereunder shall not under any conditions, circumstances or interpretations thereof exceed the sum of \$121,000.00.

SECTION VII SUCCESSORS AND ASSIGNS

- 7.01 County and Contractor bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement.
- 7.02 Neither County nor Contractor shall assign, sublet or transfer its or his interest in this Agreement without the prior written consent of the other.
- 7.03 Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public and/or governmental body that may be a party hereto.

SECTION VIII PUBLIC CONTACT

- 8.01 Contact with the any media outlet, citizens of Fort Bend County or governmental agencies shall be the sole responsibility of County.

- 8.02 Under no circumstances, whatsoever, shall Contractor release any material or information developed or received in the performance of its services hereunder without the express written permission of County, except where required to do so by law.

SECTION IX
COMPLIANCE AND STANDARDS

Contractor shall render the services hereunder in accordance with generally accepted standards of Contractors practicing in Fort Bend County, Texas applicable thereto and shall use that customary degree of care and skill commensurate with the profession similar to the Project to comply with all applicable state, federal, and local laws, ordinances, rules and regulations relating to the services to be rendered hereunder, and Contractor's performance.

SECTION X
OWNERSHIP OF DOCUMENTS

- 10.01 County shall be the absolute and unqualified owner of all drawings, preliminary layouts, record drawings, sketches and other documents prepared pursuant to this Agreement by the Contractor and his Contractors (deliverables).
- 10.02 No reuse fees or royalty payments will be paid to the Contractor in connection with future reuse or adaptation of designs derived under this contract.
- 10.03 Copies of all complete or partially completed mylar reproducible, preliminary layouts, record drawings, digital files, sketches and other documents prepared pursuant to this Agreement shall be delivered to County when and if this Agreement is terminated or upon completion of this Agreement, whichever occurs first, as provided in this Agreement.
- 10.04 Contractor is expressly prohibited from selling, licensing or otherwise marketing or donating such documents, or using such documents in the preparation of other work for any other client, or from duplicating the appearance of the Project depicted in the deliverables for any without the prior express written permission of County.
- 10.05 The documents referenced in this Section are not intended or presented by the Contractor to be suitable for reuse by County or others on extensions of this Project or on other unrelated projects.
- 10.06 Any adaptation or use by County of such documents on extension of this Project or other unrelated projects shall be at County's sole risk.

SECTION XI
INDEMNIFICATION

- 11.01 **CONTRACTOR SHALL SAVE HARMLESS COUNTY FROM AND AGAINST ALL CLAIMS, LIABILITY, AND EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ACTIVITIES OF THE CONTRACTOR, ITS AGENTS, CONTRACTORS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF THE CONTRACTOR OR ANY OF CONTRACTOR'S AGENTS, SERVANTS OR EMPLOYEES.**
- 11.02 **CONTRACTOR SHALL ALSO SAVE HARMLESS COUNTY FROM AND AGAINST ANY AND ALL EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES WHICH MIGHT BE INCURRED BY COUNTY, IN LITIGATION OR OTHERWISE RESISTING SAID CLAIMS OR LIABILITIES THAT MIGHT BE IMPOSED ON COUNTY AS THE RESULT OF SUCH**

ACTIVITIES BY THE CONTRACTOR, ITS AGENTS, CONTRACTORS OR EMPLOYEES.

SECTION XII
MODIFICATIONS

This instrument contains the entire Agreement between the parties relating to the rights herein granted and obligations herein assumed. Any oral or written representations or modifications concerning this instrument shall be of no force and effect excepting a subsequent written modification signed by both parties hereto.

SECTION XIII
MISCELLANEOUS

- 13.01 By entering into this Agreement, the parties do not intend to create any obligations, express or implied, other than those specifically set out in this Agreement.
- 13.02 Nothing in this Agreement shall create any rights or obligations in any party who is not a signatory to this Agreement.
- 13.03 Contractor agrees and understands that: by law, the Fort Bend County Attorney's Office may only advise or approve contracts or legal documents on behalf of its clients; the Fort Bend County Attorney's Office may not advise or approve a contract or other legal document on behalf of any other party not its client; the Fort Bend County Attorney's Office has reviewed this document solely from the legal perspective of its client; the approval of this document by the Fort Bend County Attorneys Office was offered solely to benefit its client; Contractor and other parties should not rely on this approval and should seek review and approval by their own respective legal counsel.
- 13.04 If there is a conflict between this Agreement and Exhibit A, the provisions of this Agreement shall prevail.

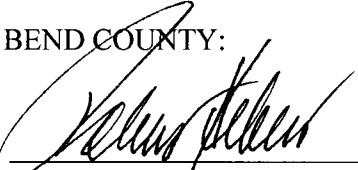
EXECUTION PAGE TO FOLLOW

SECTION XIV
EXECUTION

This Agreement shall become effective upon executed by County.

FORT BEND COUNTY:


By:

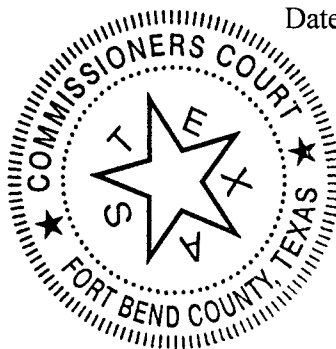

Robert E. Hebert, County Judge

Date

9-25-2012

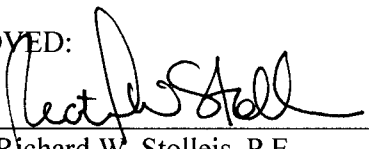
ATTEST:


Dianne Wilson, County Clerk



APPROVED:

By:


Richard W. Stolleis, P.E.
County Engineer

Date

9/25/12

CONTRACTOR: PERCHERON ACQUISITIONS, LLC.

Signature

Printed Name:

Title:



Ana Rausch

Senior Vice President

Date

9/20/12

MER:Percheron.Churchill Fulshear League.2012

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$121,000.00 to accomplish and pay the obligation of the Fort Bend County under this contract.


Ed Sturdivant, Fort Bend County Auditor

Exhibit A: Proposal by Contractor dated September 13, 2012

Exhibit A



September 13, 2012

Richard W. Stolleis, PE
Fort Bend County Engineer
Fort Bend County
1124 Blume Rd
Rosenberg, TX 77471

Re: Cane Island Proposal

Dear Richard,

Percheron proposes the following scope of services for the Cane Island Project:

- Phase I: Acquire property at Willow Bend at FM 1463 **\$6,000**
- Provide market data of recent sales of similar property in the immediate area
 - Negotiate with listing agent for the 1.119 ac. Tract
 - Process all paperwork and coordinate closing for the parcel
- Phase II: Acquire remaining parcels for Cane Island **\$75,000**
- Prepare 30 Year Limited Title Certificate on 6 parcels
 - Negotiate right of way necessary for Cane Island along 6 parcels
 - Prepare all necessary documents, such as offer letters, right of way agreements, relocation calculations, final offer letters and closing documentation
 - Possible relocation of one residential tract on Willow Bend Drive
 - Relocation of personal property of a barn
 - Provide status reports throughout the project
- Phase III: Coordinate adjustment or relocation of 10 pipelines **\$40,000**
- Research ownership of each of the pipelines within the easement
 - Contact each pipeline company to notify them about the road and determine what requirements are needed by the DOT to maintain safety standards.
 - Coordinate with engineering and the pipeline companies to facilitate any adjustments to the pipelines as necessary
 - Provide status reports throughout the project

Thank you for the opportunity and please feel free to call me if you have any questions.
Sincerely,

Ana B. Rausch
Senior Vice President

www.percheronacq.com

18000 Barkers Point Lane, Suite 250
Houston TX 77079

P 832 300 8400
F 832 300 8404

