



## Growing practice



Team members of Dunaway's Austin office work together to provide the perfect outcome for their clients.

Founded in 1956 and based out of Fort Worth, TX, **Dunaway** is a Texas-based multi-discipline design and engineering firm. Now, celebrating its 65th year in business, Dunaway is on its fourth generation of ownership with offices in Fort Worth, Farmersville, Midland, Dallas, San Antonio and Austin.

In 2015, Dunaway acquired **Ross Eubanks** along with his structural engineering team merged it into Dunaway to establish Dunaway's Austin office and brought structural engineering to the firm, a service the company did not offer before their arrival.

"I had known Dunaway for many years," says Eubanks. "We worked together on various projects in the Fort Worth area. As a client, Dunaway gave us projects

requiring structural engineering and we already had two employees subleasing space in their Fort Worth office."

As Eubanks recalls, "I was at a point where my team was looking for ways to grow in the Fort Worth area. Dunaway wanted to add structural engineering to their line of business, so it seemed like a logical partnership."

Having worked with Dunaway for almost seven years, Eubanks knew Dunaway well and had developed great relationships along the way. When talks emerged to join forces, the decision was easy.

When the team merged, Eubanks brought approximately 10 employees solely focused on structural engineering.

*continued on Page 14*

## Welding a new path



Day One Welding and Fabrication Inc.'s Michael Miller with his award-winning sculpture "Adoration."

**Michael Miller** wears many hats. He's the President and Lead Fabricator at **Day One Welding and Fabrication Inc.** He is a C.E. Welding Instructor at Austin Community College and Adjunct Professor at ACC's Elgin campus. He's also an award-winning metal sculptor.

However, Miller explains that he's able to wear these many hats today because he once wore a prison uniform.

"I had made a lot of bad life choices and ended up doing some time with the Texas Department of Criminal Justice," he says. "About 14 years ago, I walked out of prison with about \$125 in my pocket. I was a double felon and didn't have a lot of options. I got into a good 12-step program and got introduced to a guy who had a

welding shop in Elgin. I started painting his fence for \$40 a day. That was exactly what I needed at the time, something to keep me busy and around good people."

Before prison, another job exposed him to welding and, while he enjoyed it, it wasn't a career path he considered. His attitude post-prison was different.

"When you walk out of prison, you have a choice: Do I go back to doing the things I was doing, which 90% of the people in prison do?" he says. "It was a life change. I had a moment of clarity coming home on that bus; a voice in my head said, 'You can't do this anymore.' Taking this \$40-a-day job didn't have anything to do with welding, but it was something for me to be doing."

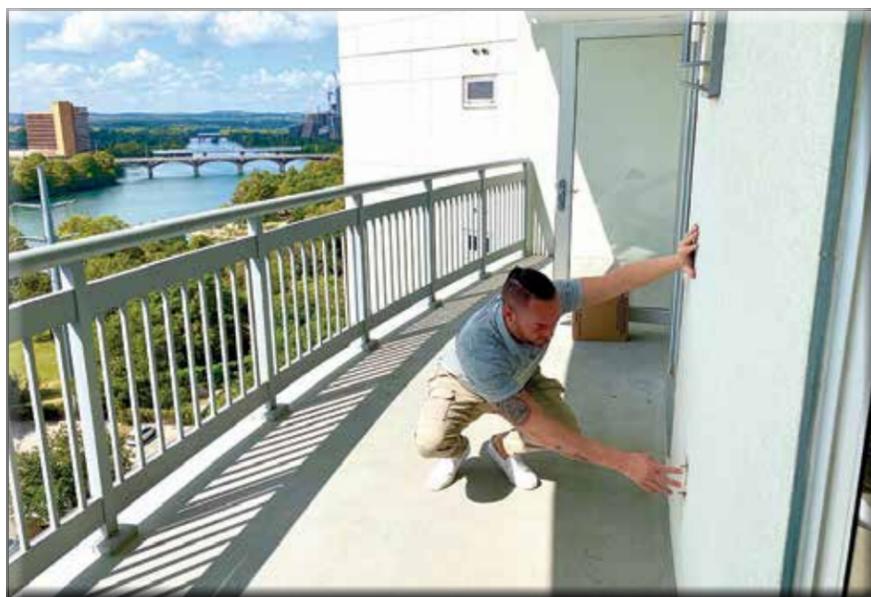
*continued on Page 14*

## Breaking off the Main

**Ron Page** does what his clients want him to do, even if it means creating a second entity, **MainStream Construction Services LLC**, to operate alongside his first company, MainStream Painting and Construction.

"MainStream Painting was founded in 2014 and is still in play as of today. This new business, MainStream Construction Services LLC, was actually founded in January 2019 but it really wasn't launched until last summer," Page explains. "It was our clients' recommendation that we either change company names or start a new entity."

The clients pushed for the change because the 'and Construction' part of the first company's name (added later in very small letters to the logo) was causing them grief with their board members. After all, why was a painting company performing masonry work and installing electrical?



MainStream Construction Services LLC's Founder, Franchisor and CEO RonPage

"It was a little confusing for them," Page chuckles. "So, a lot of our clientele on the property management side kept asking us if we could change our name to something that conveyed the general idea of construction, since it was hard for them to explain to their clients. And it wasn't just one firm asking us, it was many."

With the help of Senior Business Development Manager **Joe McLaughlin** and Business Development Manager **Veronica Landin**, Page created the second entity, MainStream Construction Services LLC.

"It's more of a full construction company, not a painting company that does added services, so that's the difference between the two of them" Page says. "We do anything that has to do with the ground up. We do renovating and remodeling, whether it's plumbing,

*continued on Page 14*

# All in against falling



TAS Commercial Concrete Construction LLC partnered with Safewaze for National Safety Stand-Down Week.

According to the Occupational Safety and Health Administration (OSHA), fatalities caused by falls from elevation are the leading cause of death for construction workers. Of the 1,061 construction fatalities recorded in 2019, 401 deaths were fall-related, and OSHA insists those deaths were preventable.

To bring attention to this issue, the theme of OSHA's National Safety Stand-Down Week May 3-7 was fall hazard awareness. To assist with this effort, OSHA partnered with key groups including the National Institute for Occupational Safety and Health (NIOSH), the National Occupational Research Agenda (NORA), and the Center for Construction Research and Training (CPWR).

During a Safety Stand-Down, work on a construction site is stopped in order to bring all workers together to learn about how to keep everyone safe from jobsite hazards. Companies are encouraged to have a "toolbox talk" during the break or to plan activities, such as conducting safety inspections, developing rescue plans, or discussing job hazards. On OSHA's

website, employers can access resources to plan their stand-downs or find stand-down-related events in their area.

Anyone who wants to prevent workplace hazards can participate in National Safety Stand-Down Week. Commercial construction companies of all sizes, residential construction contractors, subcontractors and independent contractors, and highway construction companies are some of the entities who have participated in years past. This year, several Austin area construction companies participated in the stand-down. **TAS Commercial Concrete Construction LLC** partnered with fall protection company Safewaze to educate workers about fall hazards during Safety Stand Down Week. In a stand-down at University of Texas' Villas Student Housing project, FallTech taught nearly 200 Rogers-O'Brien workers correct fall protection equipment usage.

After employers complete the stand-down, a certificate of completion can be downloaded from the OSHA website and feedback about their experience can be shared. -mjm

# Time flies!



The Schuler family L-R: John Schuler, Rachel Schuler, Lauren Schuler, Michelle Schuler and Jennifer Schuler

**Time Insurance Agency** was founded in 1961 by **John P. Schuler**, a retired Navy pilot, with the idea of serving the needs of the aviation industry and governmental institutions in various school systems, The University of Texas and more. He started issuing courthouse bonds out the company's first office in downtown Austin across from the courthouse. Over time, John's son, **John William Schuler**, who had always been interested in construction, surrendered his passion and joined the family business with his wife and right hand, **Rachel Schuler** by his side, only to find a niche within the construction industry after his father passed away. From there the company has continued to grow.

As the company celebrates 60 years in business this year, a third generation of Schulers are in line to continue what John P. Schuler started. In 2018, after spending five years doing sales in New York, **Lau-**

**ren Schuler** moved back to Texas to join the family business. She and her sisters **Michelle Schuler** and **Jennifer Schuler** are actively involved in areas that accentuate their personalities. Lauren, obviously with her background in sales, is Vice-President of Sales. The creative nature and keen sense for marketing line up perfectly for Jennifer as Director of Marketing. The business ingenuity, coupled with Michelle's strong foundation in human resources, bridges perfectly as Vice-President of Insurance which encompasses operations and human resources.

Lauren recalls her father telling stories of old and how just something as simple as mail has changed over the company's 60 years in business. "Dad would tell stories of how mail would come literally in buckets to Time Insurance. Now it is pretty much an online game."

As the sisters take a more active role in the day-to-day operations, Lauren says everything is all about relationships. "No matter how much technology we have, we still love to have those relationships with our clients and see them face to face."

Being among the third generation, Lauren is amazed at the company's three generations of clients as well. "It's not just three generations of Schuler making up Time Insurance. It's three generations of clients. We love servicing all of them and hearing their stories."

In 2010, Time Insurance opened a second location in San Antonio. The company kicked off their 60th year in business by opening a third office in Dallas.

Time Insurance specializes in a vast variety of services from personal to commercial, from life insurance to surety bonds. Individual options include umbrella coverage auto, home, flood, motorcycle, boat, RV and pet. Commercially, Time Insurance offers property, general liability, auto, worker's compensation and professional liability. "We do a lot of surety bonding for subcontracting, utilities and GCs," says Lauren. "Construction in general, we do a lot of surety."

Time Insurance will be introducing a new logo to incorporate the company's 60 years in addition to a new pay system. "We are really proud to integrate, for our clients, the ability for paying online and some text-forward ideas to make us stand out in the industry," says Lauren. Plans for a celebratory party are underway for the fall.

*Time Insurance Agency is a family-owned surety and bonding company in Dallas, San Antonio and Austin. -cmw*

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### Something to crawl about!



**Falkenberg Construction's** Central Texas office cooked up some crawfish to celebrate Assistant Project Manager **Carson Wallace's** graduation! Wallace (third from left) earned his bachelor's degree in Construction Science and Management from Texas State University. -mjm

### United and excited

**United Rentals** celebrated its new Cedar Park location with a grand opening celebration on May 20. About 80 guests visited the new branch, located at 609 N. Bell Rd, and enjoyed lunch and prizes as they toured the new facility. A special event highlight was the opportunity to meet NASCAR Truck Series Driver Austin Hill and see the #16 United Rentals Toyota up close before Hill traveled to Circuit of the Americas for his next race. -mjm



Guests had the chance to meet NASCAR driver Austin Hill and see his #16 Toyota up close.

### Receptionist recognition



National Receptionists' Day on May 12 is dedicated to all of those who juggle it all, whether it involves welcoming visitors, answering always-ringing phones, or tracking piles of paperwork. **S. Watts Group's Carmen Hooper** is one of these superstars. -mjm



Dwayne Hancock shares a sweet congrats.



Nearly 80 guests attended the grand opening.



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**Sheldon Kramer**  
**Owner**  
**Corridor Electric**  
**San Marcos, TX**

In a strange way, one could say Sheldon Kramer's electrical career began because he fell off before he could begin a roofing career. He was obviously spared for great things: Since 1995, Kramer has owned Corridor Electric, which serves San Marcos for 25 proud years. Kramer is glad it all worked out for the best; he's able to work with family, enjoys a flexible schedule, and is looking forward to leaving a legacy behind in two years ... or maybe later than that.

**Share about your background.**

I was born in Calistoga, CA in 1959. My mother and father were beauticians; they met in beauty school in 1958. My dad got out of the Air Force in San Francisco, saw a bunch of girls at a beauty school that was right there and decided he would become a beautician. He met my mother, fell in love and had me. I had an ideal childhood in Calistoga, which is the Napa Valley, although it wasn't known as that then. It was very low-key and a great place to grow up; we had 32 kids in our class, and everybody knew everybody.

When my parents divorced in 1973,



Sheldon Kramer just celebrated 25 years as Owner of Corridor Electric and is pondering his next steps.

my three siblings and I moved to Shreveport, LA with my mom when she remarried. It was crushing to leave Calistoga at 14 years old, but I realize now that the chaos of the divorce molded me to do the things that I needed to do.

Ninth grade was challenging, and I went back to CA my junior year to live with my dad, then moved back to Louisiana after things didn't work out. I had a smart mouth, and he had remarried, and I understand why I needed to leave. It was all to make me tougher because the world is not going to be nice to me. I was going to live with my mom and her husband again, but she was going to move to Florida to be with another man. I was not going to move to Florida! I lived with the family of a friend of mine for a while. We lived in a cabin on Lake Bistineau, Camp Joy and had a great senior year. I shouldn't have graduated because I missed 45 days of first period due to fishing and having fun.

**How were you introduced to construction?**

You don't think high school is going to end until it does, and then you think, "What am I going to do now? I wasn't cut out for college, so after high school, I found a job roofing houses with some bikers. I roofed houses in the morning and in the afternoon. A builder they were doing roofs for noticed my work ethic and said I should become a carpenter's helper. I started hauling plywood to the roofers who deck it, but I wanted to get on the roof and roll the felt. I rolled out the peak, and I forgot to stop. I fell off backwards from a story and a half and as I was going down, my feet somehow got stuck in the walls Styrofoam and I slid to the ground. It's one of those moments a person is spared, I believe. The father of my girlfriend at the time heard about it and offered to let me become an electrical helper for Brown and Root in Houston, since her family was moving there. They were going to let me live with them for a month while I worked at Brown and Root and saved enough money to get my own place. I did okay there, probably not as well as I should have, but I stuck it out until I was hired on at a cement plant in New Braunfels and had a fantastic time working four tens.

**How did your construction career evolve?**

I worked for Aubin Electric, Ted Breihan and Ricky Cowan. I was not happy wiring homes, so I got hired on at the school doing commercial work, then went to Austin and worked with the same company. I worked for DeBusk Electric as a project manager and after two months there we decided to part ways. I called up my buddy Enoch, who worked for K&J Woodworks that do all of the cabinets for Whole Foods. They were going to turn this fertilizer plant into a cabinet shop. He wanted us to do a joint venture on it. We did it, and I ended up with \$15,000. With \$5000 of that, a station wagon, a 6ft.



When he's not running Corridor Electric, Sheldon Kramer is running his race car.

ladder and a truck, I went to Martindale to a subdivision. There were six homes being built, and one home needed an electrician. We did that home, the builder came down, liked our work and we ended up doing the rest of the subdivision. I hired more people, and that is how Corridor Electric began in 1995. I got my masters license in 1998.

**You've been in business 25 years. Has the journey been what you thought it would be?**

We service mainly San Marcos, and five main entities who call us to do their electrical work. They don't ask us how much it's going to be. If they do need to know, we let them know, but a lot of what we're asked to do is unknown.

I get up and go to work and do electrical. It's never been, "I'm going to get up and make \$2500 today. We're going to do what these people need us to do, and the result is money. If you do a good job, you make good money. I don't worry about if we're going to get something done or if we're going to have enough work. Twenty-five years has proven that we know what we're doing.

**What do you enjoy most about your work?**

Right now, I have my daughters and my son-in-law working in the company. My oldest daughter, Kristen, does the bookwork and taxes from San Antonio. My second oldest daughter, Kaylen, does the day-by-day billing and helping with materials. My son-in-law, Ethan White, started two years ago. I enjoy sharing with them the possibility of carrying on the freedom of doing things our way. That's pretty special. We've slowly built up with three more guys that have fit in very well.

**What do you enjoy doing when**

**you aren't working?**

I enjoy playing pickle ball and racing my Miata. It's local racing at a local track. It's a two-mile road course, with a 150ft. of elevation changes and 10 turns. Oh, it's so fun. They have a race series, called The Challenge Series, where everyone has a 1990 or 1991 Miata with a stock engine, stock ignition – everything is stock. We race 20 races a year and the last four years, I have been fourth three times and seventh once. I missed the podium by one point – twice! I can get really into racing, so this has made me ask myself, "Why am I racing?" I'm here to have fun, so when things don't go well, I need to have fun. That in its own has been a learning curve of why I race. Life has taught me that I'm here to have fun, so I need to make that the number one priority.

**Do you think you will be running Corridor Electric until the day you die?**

No. The goal is two years. I'm 62 now, I qualify for retirement in September, if I wait a couple of years, I'll get a little bit more. I need to have a little bit firmer foundation, to where I can leave for a month and it will be okay; I can go away for a couple of weeks now and it's fine.

The wife and I are at a crossroads. We're both 62, we have a big house and we need to downsize. How do you do that in today's times? We're really just better staying where we are and paying the taxes.

**What plans do you have for the future of the company?**

That's going to be up to them. I'm doing a lot of things based on what I wanted when I was their age. I'm setting it up like that, but I need to talk to them and see if this is what they want to do for sure.

Corridor Electric is in San Marcos. –mjm

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## Counting the rings



84 Lumber, 65 years strong.

If 84 Lumber were a tree, one might count 65 rings amidst its trunk. Since the company is not a tree, one can just appreciate the company's 65 years of growing success.

**Joe Hardy**, accompanied by his two brothers, **Norman** and **Bob Hardy**, and family friends **Ed Ryan** and **Jack Kunkle**, started 84 Lumber in Eighty Four, PA in 1956 after purchasing land and buildings for a new "cash and carry" lumberyard. The Hardy brothers became the sole owners of the company during the '60s, entering into a new phase of expansion.

Throughout the '70s, 84 Lumber continued to expand, opening 229 more stores. The company continued its growth pattern through the '80s and began remodeling and renovation stores around the mid-80s. As the company continued to grow, it was named at the top of ProSales' "Dealer 100" list in 1991. In 1992, Joe Hardy appointed his daughter **Maggie Hardy Knox** as president and owner of 84 Lumber and she continues to run the company to this day.

Under Knox's leadership, 84 Lumber continued to expand and reached \$1 billion in sales for the first time in 1993. She successfully led the company through the 2008 housing crisis, and in 2020, the company hit \$4 billion in sales for the first time. Today, 84 Lumber Company is the nation's largest privately-held supplier of building materials,

manufactured components and industry-leading services for single- and multi-family residences and commercial buildings.

The company operates more than 250 stores with nearly 6,000 associates, component manufacturing plants, custom door shops, custom millwork shops and engineered wood product centers in more than 30 states. 84 Lumber also offers turnkey installation services for a variety of products, including framing, insulation, siding, windows, roofing, decking and drywall.

The company has two locations in San Antonio and one location in Georgetown. 84 Lumber is continuing to expand into new and existing markets this year. New markets are opening soon in Stockton, CA; Detroit, MI and Boise, ID.

In the meantime, 84 Lumber is continuing to focus on providing the best products and service to their current markets.

"84 Lumber is committed to the local communities where we live and work," says Knox. "Whether it's exceptional customer service, collaboration with various charities, involvement with business or trade groups, or investment in associates, 84 Lumber's priorities is what has kept the company strong for 65 years and counting."

84 Lumber is a building material supply company. -cmw

## An annual tra-fish-ion

**Embree Group** welcomed employees, friends and family to its first official gathering in over a year: Its annual Fish Fry and Crawfish Boil. The event, held May 14 at Embree's Austin office, was the perfect way to celebrate everyone's health post-pandemic and a hopeful return to normalcy. -mjm



Embree Group hosted its annual Fish Fry and Crawfish Boil May 14.



President Frank Krenek welcomed employees, friends and family to the event.



Pulling from a pool o' craws

# The Resource Guide

Associations & Education ★ General Contractors ★ Subcontractors ★ Service Providers ★ Subcontractors ★ Supplies ★ Truck & Equip Dealers

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# ACCOUNTING



## Being deemed essential doesn't preclude ERTC eligibility

By **Brandon Jones**  
Tax Partner  
**RSM US LLP**  
San Antonio, TX

**Despite receipt of PPP loans, construction firms may be eligible**

The construction ecosystem has not been immune to the COVID-19 pandemic. In March 2020, as world leaders were trying to figure out how to prevent the continued spread of COVID-19, many states and local governments deemed some forms of construction to be an essential service that could continue with appropriate protections in place. However, several states and municipalities took a conservative approach to shut down construction sites altogether until more was known about the spread of the virus, affecting many businesses in those states and municipalities.

By mid-May, most states and municipalities had reopened their construction sites, but the impact was felt by the industry with declines in total construction employment of 14% in April 2020 and declines in total construction spend of 5% in May 2020, both of which rebounded throughout the summer. One of the leading factors of the rebound was the provisions within the CARES (Coronavirus Aid, Relief and Economic Security) Act, in particular, the PPP (Paycheck Protection Program). The construction industry was the third-largest sector to utilize the PPP from the initial round of funding, accounting for 12.38% of total PPP loans as of June 30, 2020. Construction companies considered the Employee Retention Credit, also known as the employee retention tax credit or ERTC; however, in accordance with the CARES Act, PPP loan recipients were ineligible for the ERTC, limiting availability of use.

This changed in December 2020, as Congress passed the CAA (Consolidated Appropriations Act), expanding ERC benefits to more employers retroactively to 2020 and extending the benefits of these provisions into the first two quarters of 2021. Congress has subsequently extended the credit again through Dec. 31, 2021, in the ARP (American Rescue Plan) passed earlier in March.

One of the main provisions was the retroactive ERTC eligibility for employers who had received PPP loans in 2020. Employers with qualified wages paid beyond those required for PPP forgiveness or certain other credits are eligible to apply those wages to the retention credit retroactively for the 2020 tax year, expanding the use cases for the ERTC and the construction industry.

### Eligibility requirements for the ERTC

To meet the eligibility qualifications for the ERTC, an employer must show either:

- (1) An employer fully or partially closed or was otherwise more than nominally affected as a result of government orders or mandates.
- (2) An employer suffered a 50% or 20% decline in gross receipts for a quarter(s) in 2020 or 2021, respectively, as compared to the same quarter(s) in 2019.

Under the governmental order qualifications, an employer must be able to show that a governmental order at the federal, state or local level affected the operation of the employer's trade or business by limiting commerce, travel or group meetings. Any construction employer forced to close, reduce or cancel operations by jurisdictional order that is a normal source of business may meet this requirement if they also paid some of the furloughed employees' health benefits, or if they paid employees for hours in which they could not work because of closures, reductions, etc. Those construction companies that were deemed essential that voluntarily closed, or that were otherwise not forced to close under orders have a higher burden to prove the applicability of governmental orders on their businesses, but may still be able to

qualify for the ERTC. It is important to note that a mere reduction in business due to the overall economy is not sufficient to meet the requirement.

Each employer's situation will likely vary as a result of businesses' location, jurisdictional orders affecting the construction job sites and economic impacts in the relevant periods. As governmental orders varied from jurisdiction to jurisdiction, employers need to consider the eligibility requirements in light of the facts and circumstances in place for each period, location and their organization as a whole.

Alternatively, an employer can also qualify for the ERTC by showing a reduction in gross receipts for a quarter in any of the eligible periods as compared to 2019 levels. If an employer can show the aggregated gross receipts for a quarter in 2020 and/or 2021, are 50% or less and 20% or less, respectively, than the same quarter in 2019 (for 2021 gross receipts, an employer can elect to use the previous quarter), they are eligible for the ERTC.

Based on the current status of the industry and many construction companies being able to proceed with work, as well as historic backlogs heading into the pandemic, most construction companies have been eligible under the governmental order guidelines identified above, rather than the gross receipts eligibility guidelines. While this may not be the case for all construction companies as those servicing certain industries (like hospitality or retail) may have seen declines in gross receipts, it is likely that most companies in the industry have not seen significant enough declines to be able to qualify under the gross receipts threshold.

It should also be noted that in determining the eligible employer for the gross receipts test and total employee number for the determination of qualified wages, an employer must aggregate all related companies.

### Other considerations

Beyond the ERTC, employers may want to consider a number of additional factors before claiming the credit, such as mechanisms to maximize qualified eligible wages. An employer cannot use the same wages for the ERTC as used for the PPP loan forgiveness or certain other credits, such as the work opportunity credit (WOTC). An employer should review potential eligible periods and wages for ERTC, PPP and other credits to develop a method that results in the best use of wages for each eligible period. These companies may also consider health care expenses. Ultimately, if the employer finds the above analysis still yields insufficient wages, PPP full dollar forgiveness would often be more attractive than a partial retention credit for the wages in question.

One final note for an employer considering retroactive application of the ERTC is that 2020 income tax returns may require an extension for the necessary

*continued on Page 13*

# INSURANCE



## Builder Beware: The Ramifications of the Continuous and Progressive Exclusion

**Douglas Lynch**, Senior Vice President  
**Brookstone Insurance Group**  
Addison, TX

The Continuous and Progressive exclusion is a recent exclusion that significantly limits the scope for long-tail allegations. It has been upheld by courts in many states over the past for or so years. The most vigorous defense is to ensure that it is not used in the policy. So, what is that exactly and why?

MY #3 pick for most harmful exclusion added to the CGL is the Continuous and Progressive IN SHORT, the inclusion of continuous or progressive injuries or loss exclusion could have IMPACTS ON LONG-TERM COVERAGE

1. IF any of a policyholder's policies in the series in place when an instance of continuous or progressive property damage occurred had a continuous or progressive injury or damage exclusion, only one policy—the one in effect when the property damage first began—would cover it. In comparison, with standard CGL policies that do not include the exclusion, all the consequences are the same.

2. AND it may exclude the insurance company's obligation to defend and protect as the exclusion only includes an allegation that the loss occurred prior to the policy's effective date. This opens the door for insurance providers to refuse defense coverage, even though the obligation to defend is otherwise broad.

3. Because of the increased use of this exclusion in recent years, it is likely that the insurance specification portion of construction contract documents should expressly prohibit its use. Even so, owners and general contractors would only know if their subcontractors followed the ban if they read every policy, since certificates of insurance are unlikely to state the coverage.

**Own Property exclusions typically omit coverage for "property damage" to:**

*The property you own, rent, or occupy, including any costs or expenses incurred by you or any other person, organization, or entity, for repair, supersession, enhancement, renovation, or maintenance of such property for any reason.*

This omission engenders unique issues for developers and spec builders. This is because the developer/builder "owns" the property throughout development, potentially precluding coverage for many instances of property damage. Builders should still purchase CGL policies to cover those instances in which coverage applies (and should supplementally purchase Builder's Risk Indemnification, which provides more expansive property coverage for first party claims arising during construction).

**How will CGL policies will affect builders and developers? Good question....**

BUILDER BEWARE: Builders and developers need to be vigilant of a relatively incipient omission in CGL policies which insurers are now endeavoring to wield to limit the scope of coverage further. This exclusion, which is my #3 PICK for MOST HARMFUL Exclusion in the CGL, found in successive CGL policies, is called the "Continuous or Progressive" damage exclusion. It broadly omits coverage for damage that occurs after the builder/developer no longer owns the property, if the damage was caused by or alleged to have been caused by conditions (such as work performed) prior to the policy period. Prevalent language in a Continuous or Progressive exclusion omits coverage for property damage:

- If the damage first subsisted, or was alleged to have first subsisted, before the policy period; or

- If the damages were, or was alleged to be, taking place before the policy period, even if genuine or alleged damage perpetrated during the policy period; or

- Was caused by, or was alleged to have been caused by, conditions that subsisted prior to the policy period, resulting in damage taking place during the policy period.

BUILDER BEWARE: Under this exclusion, insurers are taking the position that property damage that occurs after the project domicile has been sold to a buyer will not be covered under a later policy, even though the damage occurred during the policy period, because the condition which allegedly caused the damage subsisted prior to the policy period. Verbalized differently, insurers argue that the Continuous and Progressive exclusion works to omit coverage under a successive CGL policy for property damage that occurs during the policy period but arises from work performed prior to the policy period.

### Liability of CGL policies

Builder Beware: Continuous and progressive may be viewed as a continuation and expansion of the Own Property and Your Work exclusions. Insurers are endeavoring to utilize these two exclusions together to exclude the majority of property damage for which a builder or developer may become liable. Of course, proximately all damages for which a builder or developer may become liable will arise either during ownership of the property (excluded by Own Property exclusion) at a later date due to property damage resulting from defective workmanship or materials antecedently provided (excluded by the Continuous and Progressive damage exclusion).

Builders, developers, and Insurance agents, need to be cognizant of how insurers are endeavoring to utilize these two exclusions to narrow the scope of coverage under CGL policies. Otherwise, builders and developers may be left holding the bag for property damage despite the ostensibly broad coverage conferred by their indemnification policies.

If you are a builder/developer concerned about the scope of your commercial general liability insurance coverage, or if you have received a letter from an insurer that they are including the Continuous and Progressive contact your agent as there are varying degrees of this harmful exclusion and they need to be made clear.

If you do not understand this exclusion or know if you have it, you can contact me for a full review of your current insurance. All that I need from you is the FORMS LIST of your CGL. This is a free service offered for all who ask It is a honest 3<sup>rd</sup> party analysis of what you were sold, and point out detrimental exclusions that you will want to ask your agent / carrier to remove.

## LEGAL



### Texas Construction Contracts: Frequently Asked Questions

**J.D. Holzhauser**  
Senior Associate  
**Peckar & Abramson, P.C.**  
Austin, TX

Without getting philosophical, contracts make the world go around. Whether the contract is as small as using a ride-share service or as large as a multi-billion-dollar business transaction, strings and webs of contracts are at play.

Complexity of contracts notwithstanding, there are commonly asked contract questions that are the subject of this article – and contractors, I’ve written this piece with you in mind.

*Note that answers discussed below are general responses to some most frequently asked contract questions. No answer is an absolute because even the slightest alteration to underlying facts can impact the answer. The intent is to focus on specific issues and helpful information, rather than a comprehensive legal discussion.*

#### What’s in the Contract?

Contracts may include general conditions, special conditions, plans, and specifications. They should explain what’s included—beware the contract that doesn’t!

In a perfect world, all contract documents would have consistent terms. But often they don’t. Be on the lookout for conflicting terms and make sure the contract is clear as to which terms prevail.

Pay particular attention to contract documents that describe scope. Are they complete and comprehensive? Are exclusions clear? And look for general contract language that attempts to shift risk or responsibility and may conflict with scope and/or exclusions.

The contract may also “incorporate” other documents that aren’t physically attached. Incorporation by reference is honored by courts, so be careful to consider the contents of those other documents. Most subcontracts incorporate the terms of the prime contract. But did the subcontractor read those terms? They should.

Just as important is what’s not in your contract. Did you request or offer specific concessions or commitments in negotiations in exchange for a price adjustment? Make sure those terms are written into the final signed contract. Courts view signed contracts as the full agreement between the parties unless there is an obvious gap or omission. Don’t expect to enforce agreements made before signing unless they are written into the document.

#### Are Original Signatures on a Written Contract Required or Will Scanned Versions Received via Email Be Enforceable?

Generally, in Texas, original or “wet ink” signatures are no longer required in order for contracts to be enforceable; scanned copies are usually acceptable. *But*, county clerks may have their own standards. Some counties or clerks may require documents for recording to be “wet ink” originals.

Best practices to avoid this problem would be including a section in the contract affirmatively stating that electronic signatures are acceptable. Additionally, Texas’ Uniform Electronic Transaction Act provides for legal enforceability of electronic signatures. While implications of this Act exceed the scope of this FAQ, in general the Act “establishes the legal equivalence of electronic records and signatures with paper writings and manually-signed signatures, removing barriers to electronic commerce.”

#### What are Venue and Choice of Law?

These terms attempt to define where disputes will be resolved and under what state’s law.

Venue describes the proper place for trial of a lawsuit. In Texas, each county is a different venue. Venue can be either mandatory or general, depending on the

nature of the case and the agreement of parties to the contract. For example, a Texas client recently declined to accept a provision stating arbitration would be in London, England.

Choice of law describes which jurisdiction’s law applies to the case at issue. Most construction contracts include provisions where parties agree to choice of law; however, a Texas statute provides that if a construction contract contains a provision making the contract or any conflict arising under the contract, subject to another state’s law, or providing it will be resolved in litigation or arbitration in another state, the party against whom the provision is being imposed may opt out of that provision in favor of Texas law. TEX. BUS. & COM. CODE ANN. § 272.001

#### Is an Unsigned Contract Binding in Texas?

Sometimes. It is preferable for contracts to be fully executed; however, contracts are sometimes enforceable even when not fully executed. The ultimate question is one of intent.

As long as parties give their consent to the contract terms, and there is no evidence of intent to require both signatures as a condition to the contract becoming effective, signatures are not required to create a valid contract. A good example is acceptance of a contract by performance.

Imagine that a party receives a complete contract—in other words it includes all the important terms: price, scope of work, how to get paid, and time of completion, to name a few. Ordinarily we’d expect the receiving party to sign it, signaling agreement to the deal. But if that party begins performance of its duties under that contract, that performance may signify assent. Its signature may not be needed. This is called “acceptance by performance” and performance may manifest consent to the contract, thereby making it enforceable.

Once again, this isn’t a best practice. Are both parties sure the performing party agrees to all terms? Might the performing party later seek to negotiate other terms “before signing” the agreement?

#### What Happens if One Party Signs a Contract and the Other Party Returns a Signed Version with Changes to the Contract?

There is no valid, enforceable contract. The signed revised version indicates a counteroffer. Contract formation requires two basic events: an offer and acceptance of that offer. The signed contract was an offer to accept the terms of the contract. A returned original with a signature indicates acceptance. (So does beginning performance, as already noted.) If the other party returns a signed but revised contract, acceptance has not occurred. The parties are still negotiating.

The party receiving the proposed changes has at least two options. One would be to deem the new terms acceptable and accept the offer by signing and returning the revised document. The other option would be to reject the new terms. This is best done in writing, to ensure the revising party understands its revisions are not accepted.

#### Conclusion

Think of contracting as an opportunity—an opportunity to express exactly what each party expects to do and what they expect from the other. By seizing

*continued on Page 14 bottom*

## OSHA



### Powered Industrial Truck Operator Training

**Joann Natarajan**  
Compliance Assistance Specialist  
**OSHA**  
Austin, TX

OSHA requires employers to develop and implement a training program based on the general principles of safe truck operation, the types of vehicles being used in the workplace, the hazards of the workplace created by the use of the vehicle, and the general safety requirements of the OSHA law. Trained forklift operators must know how to do the job properly and do it safely as demonstrated by workplace evaluation. Employers must also certify that each operator has received the training and evaluate each operator at least once every three years. Prior to operating the truck in the workplace, the employer must evaluate the operator’s performance and determine the operator to be competent to operate a powered industrial truck safely. Refresher training is needed whenever an operator demonstrates a deficiency in the safe operation of the truck. Training shall consist of a combination of formal instruction (e.g., lecture, discussion, interactive computer learning, video tape, written material), practical training (demonstrations performed by the trainer and practical exercises performed by the trainee), and evaluation of the operator’s performance in the workplace.

Truck-related topics including operating instructions, warnings, and precautions for the types of truck the operator will be authorized to operate. Additionally, operators will be trained on the differences between the truck and the automobile, and on the truck controls and instrumentation including where they are located, what they do, and how they work. Other truck related topics to be covered are engine or motor operation, steering and maneuvering, visibility (in-

cluding restrictions due to loading), fork and attachment adaptation, operation, and use limitations, vehicle capacity, vehicle stability, and any vehicle inspection and maintenance that the operator will be required to perform. Operators must also be informed of procedures for refueling and/or charging and recharging of batteries and any operating limitations.

Workplace-related topics include surface conditions where the vehicle will be operated, composition of loads to be carried and load stability, load manipulation, stacking, and unstacking, and expected pedestrian traffic in areas where the vehicle will be operated. Additional topics include narrow aisles or other restricted places where the vehicle will be operated, hazardous locations where the vehicle will be operated, ramps and other sloped surfaces that could affect vehicle stability, and closed environments where insufficient ventilation or poor vehicle maintenance could cause a buildup of carbon monoxide.

Trainees may operate a truck only under the direct supervision of persons who have the knowledge, training, and experience to train operators and evaluate their competence and where such operation does not endanger the trainee or other employees.

The employer is required keep written records of the training that include the operator’s name, the training and evaluation dates, and the name of person(s) performing the training or evaluation.

natarajan.joann@dol.gov  
512-374-0271 x232

Happy Fathers Day  
Sunday, June 20

### BBQ, then back to it!



**George D. Alan Company** recently provided barbecue for an entire jobsite at the Eastside Memorial High School project in Austin. Everyone returned to their tasks well-fed and ready to work! –mjm



# The Great Outdoors



## Outlook – Summertime Trout Action

by Capt. Steve Schultz

Sponsored by:

Waypoint Marine/Waypoint Customs, Shoalwater Boats, Mercury Marine, Fishing Tackle Unlimited, Shimano Reels, E-Z Bel Construction, Costa Sunglasses, Simms Fishing, ForEverlast Fishing Products, PowerPro, Interstate Batteries, MirrOlure, JL Marines Power-Pole, AFW and AFTCO Clothing

By now, most of my clients that fish with me multiple times throughout the year have experienced the effects of the devastating freeze this past February. I know you are probably getting tired of reading my column with me constantly mentioning the disturbing effects of what happened to the trout populations in the Laguna Madre during the freeze. Believe me, I'm tired of living it. Trout fishing has been non-existent for the most part up until now. We have had several days where the conditions have been right to target our specks; however, the catch rate remains down from the years past. All we can do now is try and conserve what is left in our bay system and let them replenish themselves.

Looking forward into June and the summer months, I would really like to start testing the open waters of Corpus Christi Bay, Nueces Bay and the beachfront surf of St. Joe Island and Padre Island for some trout action. These areas have much deeper water and didn't suffer the mortality on trout that we've seen

south of the JFK Causeway. As of mid-May, we have not been able to access some of these deeper bay systems because of the high winds we've been experiencing. Sooner or later these, winds will diminish, and the search will be on for summertime speckled trout. If my instincts are correct, we should see at the least a few trout that might make me think we have a better outlook sooner than expected for our future.

Another conservation solution to our trout situation is the elimination of tournaments that target these species. Soon after the freeze, I was approached by a couple of friends who put on large tournaments and we all agreed they should be cancelled at least for this year or until we had a good perspective on what we had to work with. Two of the biggest tournaments have made major changes to conserve what remaining trout we have. Both CCA (S.T.A.R. Tournament) and Babes of the Bay will not have a trout division in their format. This is a huge step because both of the venues draw such a large group. We still have organizations that will go forward

with their format and most of these are kill tournaments and have trout and redfish stringers in all divisions. These folks have no regard to conservation efforts and only want to make money on these tournaments. It's up to us not to participate in these events and maybe they will realize that the conservation minded folks are more interested in getting our bay system back to healthy again. We all have to do our part, so let's get together and make a commitment.

My fishing calendar is getting full fairly quickly, so don't hesitate in booking your next fishing outing. Here are some dates in the next couple of months I'd like to fill. June 22nd and July 12,16,19. To schedule your next bay fishing trip or hunting trip, give Capt. Steve Schultz a call at 361-813-3716 or e-mail me at [SteveSchultzOutdoors@gmail.com](mailto:SteveSchultzOutdoors@gmail.com). Follow me on Facebook and Instagram @Steve\_Schultz\_Outdoors. Good Luck and Good Fishing.

Here are some of the ladies that work with EZ-Bel Construction in San Antonio.



L-R: Yaneiza and Lisa both fought redfish most of the morning and never gave up. Here are a couple of the reds they caught on a recent outing with Steve Schultz Outdoors.

Denise Bendele, RSM, in San Antonio has been a longtime client with Steve Schultz. She made it look pretty easy fighting this 27-inch red to the boat.



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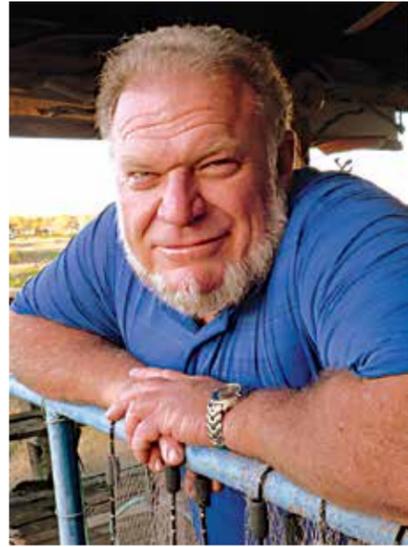
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# The Great Outdoors



## Ken Milam's Fishing Line

Since 1981, Ken Milam has been guiding fishing trips for striped bass on Lake Buchanan in the Texas Hill Country. You can hear Ken on the radio as follows:  
**The Great Outdoors: 5-8 am Saturday on 1300, The Zone, Austin and The Great Outdoors: 5-7 am Saturday on 1200 WOAI San Antonio**  
**The Sunday Sportsman: 6-8 am Sunday on 1300, The Zone, Austin**  
**All on iHeart Radio**

### Spring Fishing!

How we love this time of year! The temperature is just right, not too cold or too hot. The wind is finally slowing down a bit and we are seeing some rain replenishing our creeks and rivers and refreshing our lakes before the hot and dry part of summer gets here. Things are real good right now and the fish know it!

We have had to surrender some trips to bad weather this spring, but the trips that we are running are seeing good steady catches of stripers and hybrids. The thing we are really happy to see is that our fish seem to be running larger this year! It could be because all the fish that we didn't get to catch last year because of the pandemic worries got to get in some more growing time. It also indicates that our bait to fish population ratio is good. Our fish are getting plenty to eat so they can grow.

This is not always the case. Except for Lake Texoma, all the stripers and hybrids in Texas have to be stocked. They do not reproduce naturally in most places so our population numbers can vary from year to year. If you add in the droughts and floods that impact their habitat and that of the bait fish they eat, some years are better than others. It is just a balancing act that is affected by weather more than anything else.

Temperature is especially important in all this. The water temperature tells the fish when to get schooling and feed and spawn. This year we have had lots of wind



and clouds and cooler weather, so the water temperature is trending cooler too. Most species on the lake seem to be run-

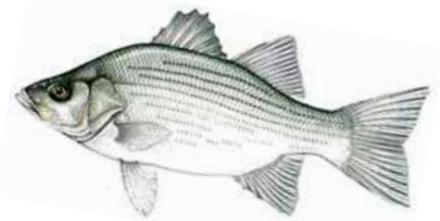
ning about a month behind where they are in these cycles usually. If you caught lots of fish in May last year, but this year they acted more like March fish, just notice the parallels in the weather. Fish don't operate on a schedule. They don't have calendars.

Stripers and hybrids follow their temperature cues to spawn in the spring. They feed like crazy and try to spawn be-

cause nobody told them they can't reproduce here. The hottest part of summer (which we hope will be slow in coming this year), will slow them down as they try to seek out cooler deeper water to survive in. Then fall comes and the water cools. The stripers and hybrids have not fed well in weeks so they go right back to eating everything they can so they can get fat and sassy to spawn in spring.

It is kind of funny, but as a charter fisherman, we often run by the fish's calendar as much as the one on our wall. When in the lake, you do as the fish do! Busy, busy, busy while fishing is good and get some rest while they wait for the worst of the summer heat to pass.

Right now we are loving the bite we are on!





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 12252280



## Fish line up for ladies

During the last week of April, several ladies from the **SERVPRO** team headed out to Port O’Conner, TX, for the company’s annual “Girls’ Fishing Trip.” Owners **Darby** and **Tammy Wright** offer employees that have been with SERVPRO of San Marcos/New Braunfels for at least a year an opportunity to participate in this time-honored tradition. There are two separate trips: One with only women and another one just for the men. There is a friendly competition between the two groups to see which group catches the most fish – just to keep things a little more interesting.

For the second year in a row, the women reign victorious as the champions! The ladies had quite an impressive haul of fish and a wonderful time on their expedition. –mjm



L-R: Sandra Lesa, Tammy Dorsett and Ines Picazo



Tammy Wright, Sandra Lesa, Tammy Dorsett, Demi Hebert and Inez Picazo



Ines Picazo reels it in.



L-R: Ines Picazo, Tammy Wright, Tammy Dorsett, Demi Hebert and Sandra Lesa



Tammy Dorsett and the charter boat guide show off a catch.

## Funny business



Look for the logo as it loops the track! **Century Materials** is once again sponsoring two-time NHRA Funny Car Champion Cruz Pedregon (pictured) at this year’s Mopar Express Lane Spring Nationals at Houston Raceway Park. –mjm

## Marsh fellow



On a recent Louisiana bayou swamp tour, **Construction News** Editor **Melissa Jones-Meyer** and her family encountered Blinky, the swamp’s largest alligator. Even with only one eye, Blinky never missed a marshmallow tossed its way. –mjm



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# Association Calendar

Content submitted by Associations to Construction News

## ABC

### Associated Builders & Contractors

**Jun. 1-4:** OSHA 30 in Spanish, ABC Central Texas Office, 2600 Longhorn Blvd. #105, 8am-5pm.

**Jun. 10:** Safety Forum, 11:30am-1pm.

**Jun. 17:** EKG Social Event

**Jun. 23:** Construction Executive Breakfast Group, 7:30-9am.

**Jun. 24:** Women Building Austin, Butler Pitch and Putt, 201 Lee Barton Dr., 4:30-6:30pm. For more info, contact Jodi Bunyard at 512-719-5263 or email jlbunyard@abccentraltexas.org

## ACEA

### Greater Austin Contractors & Engineers Assn.

**Jun. 4:** Volunteer Workday at the Community First Village, Mobile Loaves & Fishes

**Jun. 10:** Monthly Membership Luncheon – Annual Membership Meeting, Norris Conference Center, 2525 W. Anderson Ln. #365, 11:30am-1pm. \$35 Member, \$40 On-site Member, \$50 Non-member. For info, call Silvia Pendleton at 512-893-7067

## AGC

### Associated General Contractors

**Jun. 10:** CLC Happy Hour, Location TBD. For info, contact Toni Osberry at 512-442-7887

## ASCE

### American Society of Civil Engineers

**Jun. 15:** ASCE Virtual General Meeting via Zoom. For more info, go to [www.texasce.org](http://www.texasce.org) or contact Jenni Peters at 512-910-2272 or [jpeters@texasce.org](mailto:jpeters@texasce.org)

## CENTEX IEC

### Central Texas Chapter Independent Electrical Contractors

**Jun. 3:** IEC Wire-Off and Power Show (Open House), CenTex IEC Chapter Offices, 8868 Research Blvd. #502, 12-5pm. For more info, contact David Johnson at 512-832-1333 or email [djohnson@centexiec.com](mailto:djohnson@centexiec.com).

## I-LinCP

### Institute for Leadership in Capital Projects

**Jun. 2:** I-LinCP Appreciation Event, Alamo Beer Company, 415 Burnet St., 4-8pm,

Members Free, Non-member \$10.

**Jun. 8:** Envisioning the Future: The San Antonio Airport Strategic Dev. Plan, Via Zoom, Members Free, Non-Members \$25.

**Jun. 15:** Expert Webinar Series: Reimagine the Possibilities of Mass Timber in the Built Environment, Viz Zoom, 12pm. Members Free, Non-Members \$25.

**Jun. 29:** Expert Webinar Series: Industry it Texan by Nature, Via Zoom, 12pm, Members Free, Non-Member \$25. For more info, contact Carla Bingaman at 512-263-5521 or email [Carla.bingaman@i-lincp.org](mailto:Carla.bingaman@i-lincp.org)

## NARI

### National Assn. of the Remodeling Industry

**Jun. 18:** NARI Golf Tournament, Teravista Golf Club, 4333 Teravista Club Dr., \$150 Per Player, \$500 Per Team, \$50 Dinner Only. For information, contact Kayvon Leath at 512-375-2601 or email [kayvon@austinnari.org](mailto:kayvon@austinnari.org)

## NAWIC

### National Assn. of Women in Construction

**Jun. 9:** Chapter Meeting, B.D. Riley's Irish Pub at Mueller, 1905 Aldrich St. #130, 5:30-8pm. For more info, contact Danielle Dlugosh at 225-274-6122 or email [ddlugosh@henselhelps.com](mailto:ddlugosh@henselhelps.com)

## SEAot

### Structural Engineers Assn. of Texas

**Jun. 24:** Virtual Chapter Meeting. For more info, call 512-301-2744

## TXAPA

### Texas Asphalt Pavement Assn.

**Jun. 3-4:** TxDOT Letting

**Jun. 10:** TXAPA Live - Your Job Matters: Certification, Chain of Custody, and Reporting Results, 3-4pm

**Jun. 17:** TXAPA Live - Testing Equipment and Procedures: Shear Test and Methylene Blue Updates, 3-4pm

**Jun. 24:** TXAPA Live - Asphalt Pavement Fundamentals | Certification Success, 3-4pm

**Jun. 24:** Women of Asphalt Texas Launch Party, 3-6pm. For more info, contact Lauren Selvik at 512-521-0655 or email [lselwick@texasasphalt.org](mailto:lselwick@texasasphalt.org)

## Submitted to Construction News

# Round-Up

**Aaron Prinz** joins the design team at **Matt Fajkus Architecture**.

Prinz brings a range of professional experience, from small-scale residential work to large government projects. In his new role, Prinz will collaborate on design concepts and support drawing, specification, and presentation production. He previously served as a designer at one of the nation's oldest multi-disciplinary architecture and engineering firms. –mjm



**Shaun Mahan** joined **Rosendin Electric** as a Division Manager in the company's Pflugerville office.

In his new role, Mahan will oversee operations in Austin, Corpus Christi and San Antonio. With nearly 20 years of experience, Mahan has worked on large aviation and mission-critical jobs. Mahan previously served as Division Manager for Walker Engineering and was educated at New Mexico State University in Las Cruces. –mjm



**Steven W. Smith** PE was named CEO at national engineering and geomatics firm **Kim & Creed Inc.**

Smith's career began at transportation and geomatics firm Chas. H. Sells Inc., where he was promoted to President and focused on company growth. After the company's acquisition by WSP, Smith became president of WSP USA's transportation business. He recently managed WSP UK's Transport & Infrastructure business. –mjm



**Mike Beasley** has been promoted to Project Manager at **Gage Multi-family Services**.

Beasley began his construction career at his father's residential company, transitioning to the multi-family industry in 1989, and has managed multi-million dollar projects. Beasley is a licensed estimator and supervisor in asbestos abatement and environmental site assessments. In his new role, he will oversee quality, costs, and schedules. –mjm



# May day! May day!

The month of May had some busy days and fun events for the National Association of Women in Construction's (NAWIC) Austin Chapter.

The members were off to the races May 5 for the association's 2021 Derby Day hosted at (and sponsored by) Cherry Coatings. Dressed up in their derby finery, members placed their bets on which stick horse and jockeys would win as they raced down a green mat. Proceeds from the event raised money for the NEF Certification Fund.

The fun continued May 14-15, when members attended the 2021 NAWIC SCR Forum in Biloxi, MS. The event, which was themed "Under the C: Construct, Collaborate, Connect," was held at the Golden Nugget Hotel and Casino. Members enjoyed education, health and safety workshops, panel discussions, speakers and an "Under the Sea" Gala. –mjm

Luci Roberts, who has served NAWIC for 35 years, addresses guests at the 2021 NAWIC SCR Forum.



All bets were on for NAWIC's Derby Day.



Hats and horses ruled the Derby Day event.

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### continued from Page 7 — RSM US LLP - Accounting Column

due diligence to document eligible wages for ERC. The retroactive 2020 ERTC requires filing an amended Form 941-X. An employer should exclude any ERTC amount filed on the Forms 941 or 941-X from its wage deduction on the 2020

incometax return. Employers' likely need to extend the 2020 tax return to reflect a proper income tax filing either by waiting until calculating the final number or by filing a superseded return with the final number.

# ON THE SPOT What is your favorite ice cream flavor and why?

Cookies 'n Cream. It is just a perfect blend of chocolate and vanilla. Sometimes chocolate can be overbearing like Double Dutch Chocolate, it's just too much chocolate. Vanilla is too bland. To me, Cookies 'n Cream brings the two opposites together and it is just perfect. It's perfect in ice cream. It's perfect in shakes. You just can't beat it.

**Ross Eubanks,**  
**Dunaway Consultants**

That's so hard because I love ice cream! I love Blue Bell ice cream, since I pretty much grew up in Texas. Cookies 'n Cream, Rocky Road ... but Butter Crunch is probably one of my all-time favorites.

**Michael E. Miller,**  
**Day One Welding and Fabrication Inc.**

Butter Pecan is my favorite. For me, it is the roasted undertones along with the rich butter tastes.

**Alex Valladares,**  
**Fast Track Erectors**

I would say Chocolate Chip Cookie Dough. I grew up on a farm and chocolate chip cookies were like this thing from heaven. Every once in a while, my mom or grandmother would make it. If we were nearby, we would get a dabble of the cookie dough. Having chocolate chip cookie dough now is a way to dabble again. Of course, vanilla ice cream is good, too. I like a cone; either kind of cone is fine, but I usually get a waffle cone.

**Joe McLaughlin,**  
**MainStream Construction Services**

I like Birthday Cake ice cream with hot fudge all over it. I like it in a bowl, because it's messy, and I mix it all up together. It reminds me of my son's 14<sup>th</sup> birthday that

he celebrated in Port Aransas. I took him deep sea fishing out of Port A, but we were celebrating his birthday that same month. We were at a restaurant on the water and they brought him an ice cream birthday cake and he thought that was just the best thing since sliced bread. Ever since then, I've just kind of gotten hooked on it.

**Ron Page,**  
**MainStream Construction Services**

My favorite ice cream flavor is Red Velvet Cake. There was an ice cream shop that was attached to a dairy farm in Pennsylvania when I went to seminary. It was a little shack on the side of the road in the middle of nowhere, and it was the most mind-blowingly amazing, delicious ice cream. The woman there was an ice cream artisan. To this day, her Red Velvet Cake ice cream is bar none the best.

**Moses McPherson,**  
**Texas Traditions Roofing**

If I were to pick a flavor, I would say plain Vanilla with a whole bunch of milk. I know it sounds weird to eat it that way, but that's what I would pick. My grandparents would buy it; they could make it, but most of the time when we were there for the summer, they would buy a carton of ice cream, put a couple of scoops in these Tupperware-type cups that they would always have and throw some milk in and we'd just eat the ice cream and have a little bit of milk with it to drink in the end. It's good.

**Travis Powell,**  
**Liberty Signs**

Chocolate Chip. I guess it's not just vanilla; the chocolate chip makes for a better texture and more complex flavor.

**Frank Cheff,**  
**Chanvra Materials**

**continued from Page 1 — Dunaway**

They went on to acquire Urban Design Group (UDG) in 2018, adding civil engineering and surveying. As a result, Dunaway's Austin office quickly grew to 46 employees in five short years.

"I had aspirations of building a multi-discipline firm. Joining forces with

a firm like Dunaway, who is cut from the same cloth, was an easy fit for us," adds Eubanks.

*Dunaway is a multi-disciplined firm specializing in civil and structural engineering, planning and landscape architecture, environmental, survey and GIS services. -cmw*

**continued from Page 1 — Day One Welding and Fabrication Inc.**

His role morphed to include welding, and he discovered a new joy in it. He learned about MIG and stick welding and grinding, and that he had a knack for design by using the CNC plasma cutter and AutoCAD. He began earning 40% commission on welding custom gates, fences and handrails.

Miller eventually struck out on his own while apprenticing for another sheet metal worker to build dirt track cars, which introduced him to TIG welding. During this time, he met and married his wife, who helped him create a resume highlighting his talents. EVS Metal in Pflugerville hired him through a temp agency and in two years, Miller was the company's lead welder.

Wanting to learn more about his trade, Miller began taking classes at ACC. Impressed with his work, instructors hired him for small jobs and encouraged him to compete in Skills USA, where his abstract sculptures won first in state and nationals his first year, and first in state, second in nationals the following year. He graduated in 2019 with a 4.0 and an Associate's degree in Welding Technology Ornamental Metals with a specialization in Metal Sculpture. His instructors also encouraged him to return and teach at

ACC in 2020.

His father's poor health and COVID's impact delayed his start as a teacher, and he said a sad goodbye to EVS Metal. Undeterred, he refinanced his house, built a shop and founded Day One Welding and Fabrication Inc. last July. Through the company, he creates custom fabricated items to meet or exceed customer specifications, like the stainless steel sign he made for Ellison Spray Foam Insulation, and performs production welding. With restrictions now lifted, he also now teaches welding and farm and ranch shop skills four days a week at ACC.

"I love the opportunity to pass on what people have given to me, to see that light come on when people make a nice weld. It's been awesome," he says.

Miller says it has been "an incredible rollercoaster ride of things happening," but will always remember the moment he decided to strap in for the ride.

"Everything that I've ever done in my life has led me to be the person that I am now," he says. "I have a different perspective on freedom because, until you lose it, you don't appreciate it."

*Day One Welding and Fabrication Inc. is in Elgin. -mjm*

**continued from Page 1 — MainStream Construction Services LLC**

flooring, masonry, carpentry, roofing, painting, electrical – you name it. It's all of the above now. We're able to do these things and accommodate our clientele more on a general contracting level than just as a subcontractor.

With the first company's solid reputation paving the way for the second entity, offers to bid poured in.

"MainStream Construction Services is currently active in five states and 13 cities, but most of the work we are still doing is all out of Texas, because Texas is exploding," Page says. "As far as what we're doing in Texas now, we have so much on our plate because the marketing that we've done has really paid off. The people that we have on our team are top notch people. The number of requests for proposals that are coming in are just over the top right now – and that's just in this market. Austin's on fire right now."

Also working in their favor was the

holding pattern COVID brought with it.

"The pandemic gave us time to get our ducks in a row and launch this properly," Page says. "While the other entity was moving forward with multiple projects, the pandemic allowed us to get all of the property insurances in place, find the proper tradesman, and to tell our existing property managers in the other entity to find more tradesmen to do these other things. We're going to transition most of the old business into the new one. We still have both entities, but we want to get everyone more on board with the construction business."

"Joe, Veronica and I have really put in a lot of blood, sweat and tears into this company to get it going where it's at today," Page says. "We'd like to get into at least 10 states by 2025. That's the goal."

*MainStream Construction Services LLC and MainStream Painting and Construction are both in Austin. -mjm*



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MainStream Construction Services' Joe McLaughlin and Veronica Landin are helping Ron Page (not pictured) grow his new venture.

**continued from Page 8 — Peckar & Abramson - Legal Column**

that opportunity you can avoid unpleasant surprises later. Or if they do occur, you'll be the party who can point to the contract in support of your position.

*Construction Attorney Justin 'JD' Holzhauser is a senior associate in the*

*Austin office of Peckar & Abramson, P.C. He represents contractors, subcontractors, owners, developers, and suppliers on a diverse range of construction matters, including dispute resolution. He may be reached at: jholzhauser@pecklaw.com.*

## A tee-rific time

On May 14, **rand\* construction corporation's** Austin office hosted its first Team Building Golf Scramble at Lion's Golf Course. The Austin team, which has grown to include many new faces in the past year, spent the day together participating in friendly competitions. The event was the perfect opportunity to bring field and office staff together and celebrate their successes in the past year. Prizes were generously donated by **Edge Electric, Marek, Slater Painting Company, and Maars Living Walls**, and swag bags were sponsored by **Cherry Coatings** and **CBI Group**. –mjm

- 1st Place:** Nick Luyster and Jimmy Fanning
- 2nd Place:** Mackenzie Herron and Chris Carson
- 3rd Place:** Theo Doucet and Amity Lesko
- Marshmallow Putting Contest:** John Virgona
- Closest to Pin:** Amity Lesko
- Longest Drive:** John Virgona



L-R: Fred Noblett III, Zac Clardy with 1st Place winners Jimmy Fanning and Nick Luyster



L-R: Second place winners Chris Carson, Mackenzie Herron with 3rd Place winners Theo Doucet and Amity Lesko



Amity Lesko celebrates winning "Closest to the Pin"

## Industry FOLKS

**Moses McPherson**  
Commercial Account Manager  
**Texas Traditions Roofing**  
Georgetown, TX



If anyone lacks time for fitness, it's Moses McPherson. He pulls quadruple duty: He's a husband, a father of four young sons, a Rector at Pflugerville's Holy Protection Russian Orthodox Church, and a commercial account manager at Texas Traditions Roofing.

McPherson, however, makes the time, even though his days are full. He may start counseling parishioners on his phone during his commute, jump into an 8am work meeting, meet customers, do roof takeoffs, design roofs, and coordinate proposals. After work, he likely tackles church tasks before coming home, lifting weights, helping with the kids' evening routine, spending time with his wife and then sleeping. Oh, and he also oversees church services.

Yet McPherson says he has never felt worse than when he stopped physically working on roofs and started selling them from behind a desk. He gained 10lbs in eight months.

"I was still eating like a roofer, but I wasn't roofing," he says. "My body started feeling beat up from sitting at a desk, and I didn't like being overweight; it wasn't a good example to set for my sons. I decided I needed to do something about it and started exercising."

"I have a program set up," he continues. "It has all of my numbers and it tells me what I need to do. I don't have to make decisions; I just have to lift the weights. By the time I lift the weights, I feel better and refreshed."

McPherson, who considers roofing "the backdrop of being able to serve people," is grateful that he gets "to work with a lot of integrity and sell a very good product." Even with a job he loves, he understands why he has to balance work with fitness. Weightlifting has made all of the difference in how he feels at the day's end.

"I would describe myself as a dog that needs to be walked. I'm just a working dog, and if I don't get my exercise, I'll eat the furniture," he chuckles. "It's better for me and it's better for everybody."

Canadian-born, California-raised McPherson says he wasn't a jock in his youth, but he did compete in rock climbing before transitioning to weightlifting 15 years ago. Today, his best bench press is 365lbs and his deadlift is 500lbs.

"I would love to deadlift 600 and bench press 400, but it just depends on how busy life is," he says. "I'm very competitive; I've been in the mindset before that my sports goals are super-high, and every other goal is secondary. Now, feeding my family is my real goal, and weightlifting is part of what I do."

His boys watch Dad's weightlifting in awe but are still too young. They're starting their own healthy journey through their daily gymnastics and classes and outside play. –mjm

# Construction Recycling Required

Recycle or donate at least 50% of project generated construction material

## Who needs to comply:

All multifamily and commercial projects with a demolition permit **AND**

Any project with a building permit over 5,000 square feet

Submit an online Construction Recycling Report at the time of final inspection at:

[AustinTexas.gov/cd](http://AustinTexas.gov/cd)



# P • R • O • J • E • C • T

## Porsche Dealership – South Austin

Structural steel erection firm **Fast Track Erectors LLC** is fast gaining a reputation for not just getting the job done, but for getting other steel erectors' jobs done. A general contractor recently hired Fast Track Erectors LLC to complete the steel erection on Porsche's dealership, which another steel erector could not finish.

"This is our third project this year that we have taken over and completed due to the fact that another erector couldn't complete their scope," Fast Track Erectors LLC Owner and President **Alex Valladares** explains. "Because I believe that we all must maintain a working relationship between subcontractors – especially those in the same industry – I won't talk negatively about the steel erection company we replaced. But, we were tasked with the challenge of taking over a Porsche Dealership in South Austin where our client, Ridgemont Commercial, had commitments to the owner on completing its scope in a certain time frame."

Fast Track Erectors LLC, which has completed projects between 5,000sf and 500,000sf in size, was ready to tackle any challenges they would find on the 30,000sf Porsche dealership project.

"Given that this is a high-profile building with plenty of foot traffic, we were asked if we could assist in paying close attention to the details in the showroom and other areas of the building," Alex says. "We first addressed the critical areas still yet to be complete and then we focused on passing inspection in areas that have previously failed inspection. We then tracked down missing material and addressed installing those pieces of steel in areas that required them. Challenges included fixing all of the steel discrepancies set forth in the inspection reports given from the third-party inspection company."



Fast Track Erectors LLC was hired by Ridgemont Commercial to take over an unfinished steel erection at a south Austin Porsche dealership.



Challenges finishing the 30,000sf dealership included passing inspection on areas that previously failed.



Fifty-plus hour work weeks and two crews helped Fast Track Erectors LLC finish the unfinished steel erection.

Alex says the company has "been blessed and fortunate to have built a team of reliable and experienced individuals that have helped us grow into one of the largest minority-owned steel erection firms in the U.S. Robert Edge handles projects out of state and oversees our Eastern Division. Pete Mireles handles our field operations in the State of Texas. Charles Wolmack handles our estimating and pre-construction department. This particular project had our 'do it all' Project Manager, **Maria Valladares**, who is known for handling very critical and detailed projects with strict deadline requirements. She is very articulate and has earned the respect of all of our field crew members. I give that credit [for this project's success] to Maria, who was able to comb through the inspection reports and basically address each discrepancy with an immediate fix and/or an RFI in order to properly get the proper response in order to proceed with the correct fix."

Fast Track Erectors LLC has the distinction of being named #7 in the 2021 Top Metal Builders by Square Footage list and #4 on the 2021 Top Metal Builders by Tonnage list. Thanks to the company's experience and expertise, the once-unfinished steel erection will be finished.

"I am proud to say that after several weeks of continuous 50-plus hour work weeks with two crews, we are nearing the final completion date set forth by our client," Alex says.

*Fast Track Erectors LLC is in Georgetown.*  
-mjm

Fast Track Erectors LLC  
Georgetown, TX

## Eastlake at Tillery



Two three-story buildings feature 34,000sf of storefront glass, 1,300sf of curtain wall and 500sf of heavy glass entrance.



Eastlake at Tillery was the first project fabricated out of Dynamic Glass' new shop

Eastlake at Tillery boasts two sleek three-story office buildings in rapidly-growing east Austin. Glass and glazing contractor **Dynamic Glass** partnered with general contractor **Harvey-Cleary Builders** on the recently completed project, which features 34,000sf of storefront glass, 1,300sf of curtain wall and 500sf of heavy glass entrance.

According to project manager **Jerry Roberts**, the pandemic was the project's most challenging aspect. Because the project began in the middle of the pandemic, changes had to be quickly and suddenly made, and flexibility and creative solutions were key. The Dynamic Glass team closely coordinated with other trades, made needed changes and communicated to make sure the project was successfully executed. For example, communicating with the field team about supply availability and working with them as glass was delivered proved helpful.

The project served as momentum for Dynamic Glass' new Austin division – the office, shop and field staff members – to work together to overcome each



Dynamic Glass' recent project is Eastlake at Tillery in east Austin.

challenge that the project presented. This unification will serve to benefit future projects taken on by the team.

Eastlake Tillery is the first project that Dynamic Glass fabricated out of its new shop, which was still being set up as fabrication was beginning. Also, many new employees were learning how to work together on a project of this size. To accomplish this, field employees helped in the shop and closely collaborated with shop employees as fabrication positions were still being filled.

The project was successfully completed, and the team has new projects to undertake. Interestingly, Dynamic Glass has a similar project that shares a property line with Eastlake at Tillery, with Harvey-Cleary again serving as the general contractor.

*Dynamic Glass is in Buda, Dallas and Houston.* -mjm

Dynamic Glass  
Buda, TX

# S • H • O • W • C • A • S • E

## Trails at 620 signage



Liberty Signs Production Manager Travis Powell inspects the Trails at 620 sign.



Because Liberty Signs both fabricated illuminated signs and installed them, they were perfect choice for the project collaboration.



Liberty Signs fabricated the 10 signs in its new shop.

One of Liberty Signs' specialties is partnering with other sign companies nationwide and **Bill Holloway**, Vice-President of Business Development, has partnered with several new Project Managers from sign fabricator Innovative Environments. Recently, Innovative Environments wanted to team up with Liberty to create signage for Trails at 620 in Austin. Innovative Environments needed 10 signs, made of aluminum, aluminum sheeting and acrylic, with the two signs for the front entrance measuring at 12ft by 13ft.

"Innovative Environments fabricates, but they mainly fabricate non-illuminated signage," Liberty Signs Production Manager **Travis Powell** explains. "They wanted to partner with a sign company who specializes in electrical illuminated signs and an install service as well. We were that company to provide both. They came to

see our facility, meet us, and discuss who we are, what we do and what we can do. I quoted them a price and from there, we started the process."

It was a process that, from the very beginning, challenged the team to work hard (and fast) and offer creative solutions.

"These are very custom signs," Powell says. "When I was looking at these for the first time I thought, 'This might be a bit of a challenge, but I think it will go together pretty simple.' But no, that wasn't the case! There were a lot more challenges than I thought there were for sure."

During the production process, Powell says night renderings showing the signs' illumination specifications weren't factored into the quote. Operating with the integrity that is the cornerstone of his company, he immediately promised that Liberty Signs would cover any cost discrepancy.

Also challenging were setbacks on tenant panels and tenant graphics; waiting for tenants to submit their designs meant a rush on the Liberty's production end.

"To get these signs finished on time, I basically worked 30 hours straight from Thursday into Friday, and we were still working on these Friday morning to make sure that they got out," Powell says. As soon as he was finished with a sign, the guys loaded it and took it to install.

Unfortunately, the installation hit a snag as well. The signs were to be installed over pre-existing pipes on the site, and careful surveys and measurements were taken to ensure the signs' pole pockets accommodated the pipes. One pocket, however, was an inch off and had to be cut out. Powell reinforced the sign with fasteners to ensure the sign's structural stability.

The two entrance signs are installed,

and the remaining eight signs are scheduled for installation the first week of June.

"It was a real race to the end to make sure these signs get done, but that's just the way that we operate. If we promise to get it done, we're going to accomplish that promise and do what we say we're going to do. That's the way that I feel that we should be, even with delays and everything that presented themselves, we still accomplished the goals that we were going to do."

"The client is totally on board with everything, loves everything and is excited to see the other eight signs being installed. They're very pleased, and I am too."

*Sign fabricator and installer Liberty Signs is in Round Rock. —mjm*

Liberty Signs  
Round Rock, TX

## Minka

**Minka**, a Japanese word, is defined as "house of the people." *Minka* were the dwellings of farmers, artisans and merchants, which were the three non-samurai castes in Japan. They are characterized by their basic structure and their roof's structure and shape, influenced by local building techniques and built with local materials.

**Chad Burnell**, President of **Earth in Motion (EIM) Inc.**, was hired to erect a *Minka* on his client's ranch property, that had been shipped from Japan. Even though the *Minka* was to be used as a sort of second residence, it was imperative that as much tradition be incorporated into the as possible.

Burnell explains that all materials involved in the project, with the exception of locally-sourced concrete, were shipped. The nearly 350-year-old hand-hewn structure traveled well, thanks to their tough patina. A traditional Japanese framing crew of nine carpenters and one master carpenter was then flown in to reconstruct and complete



EIM's Chad Burnell (right) oversees the erection of a traditional Japanese *Minka* on his client's ranch property.

the *Minka's* framework to match its original state. Hempitecture's Mattie Mead, a hempcrete contractor from Idaho, brought his crew to construct the walls out of hemp. Plasterer Brad King concocted a plaster mix using cactus juice and horsehair from the ranch with locally-sourced lime and crushed stone. High-performance materials including Gutex by 475 Building Supply were used in the Hempwool-insulated roof system.

Mell Laurence Architects, Belgian Designer Axel Vervoordt and Architect Tatsuro Miki (Mood Architecture) from Japan teamed up to create Japanese design crossed with local Texas cedars from the ranch. Burnell calls Vervoordt's designs "unparalleled with an unreal caliber of design intent." Honoring that caliber proved one of the greatest challenges for Burnell, who had to substitute Zoom meetings for his usual in-person consultations due to the

pandemic. Fortunately, Project Manager Jim Corbett served as an invaluable link between Burnell and the Vervoordt.

Learning the traditional Japanese methods of *Minka* building also proved to be both educational, and sometimes challenging, for Burnell.

"As far as obstacles, one particular thing about this style of building, they say it's so close to the earth that you're building from the ground up. Everything is built on stones; the columns are landed on stones, there are handpicked stones throughout the entire building. To include the ones that were shipped from Belgium and Japan, we locally sourced all of the missing stones from the ranch. We handpicked all of the stones and set the columns on those stones. That was a major hurdle. We're talking tons of rock that we hand-carried to the project; every stone was hand-touched,

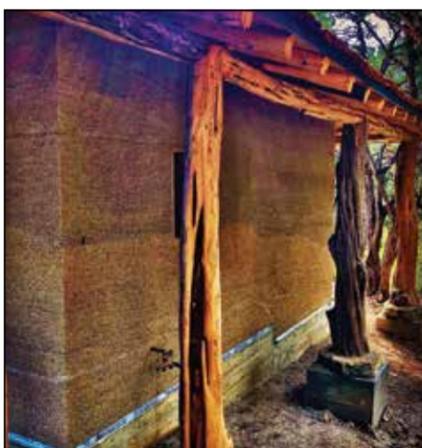
hand-worked and hand-sourced.

"There is a traditional Japanese process of burning lumber, *shou suigi ban*. In Japan, you burn all of any lumber that will meet the exterior. Then you take the top off with a handbrush. It is traditionally used in Japan to fight the exterior elements and bugs. We had to hand-burn thousands of square feet of any exposed lumber that was not in the original structure. That was something I had to learn. It took a lot of lumber and a lot of mishaps to figure that out."

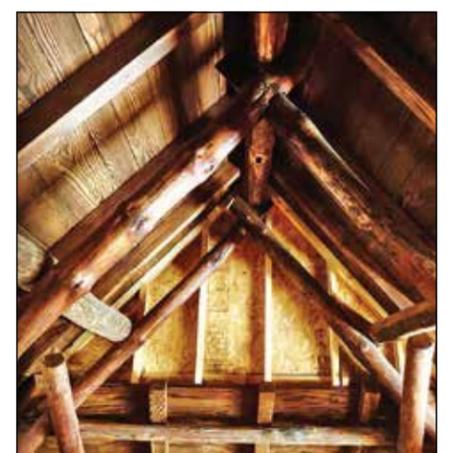
Despite the challenges required by the project, Burnell and the client couldn't be more pleased with the outcome. In fact, in two months, Burnell, the client and the designers are reuniting on another project: they will bring in two large early 18th century barns from Belgium to the ranch and building an envelope around it.

*EIM Inc. is in Liberty Hill. —mjm*

Earth in Motion (EIM) Inc.  
Liberty Hill



Per Japanese tradition, the beams must be burned and hand-brushed to keep bugs out of the structure.



The *Minka* was imported from Japan and consists of 18th century hand-hewn beams.

# They came out swinging

The Greater Austin Contractors & Engineers Association (ACEA) held its first-ever Spring Swing Golf Tournament May 10. Hosted at Falconhead Golf Club, cash prizes were given for first, second and third place, Closest to the Pin and Longest Drive. The event also included raffles and games: at the Membership Committee's hole, members rolled large dice for an advantage and to enter a gift basket drawing sponsored by Accurate Pavement Striping. -mjm



1st Place, 1st Flight: BGE Inc. team



1st Place, 2nd Flight: Texas Concrete team

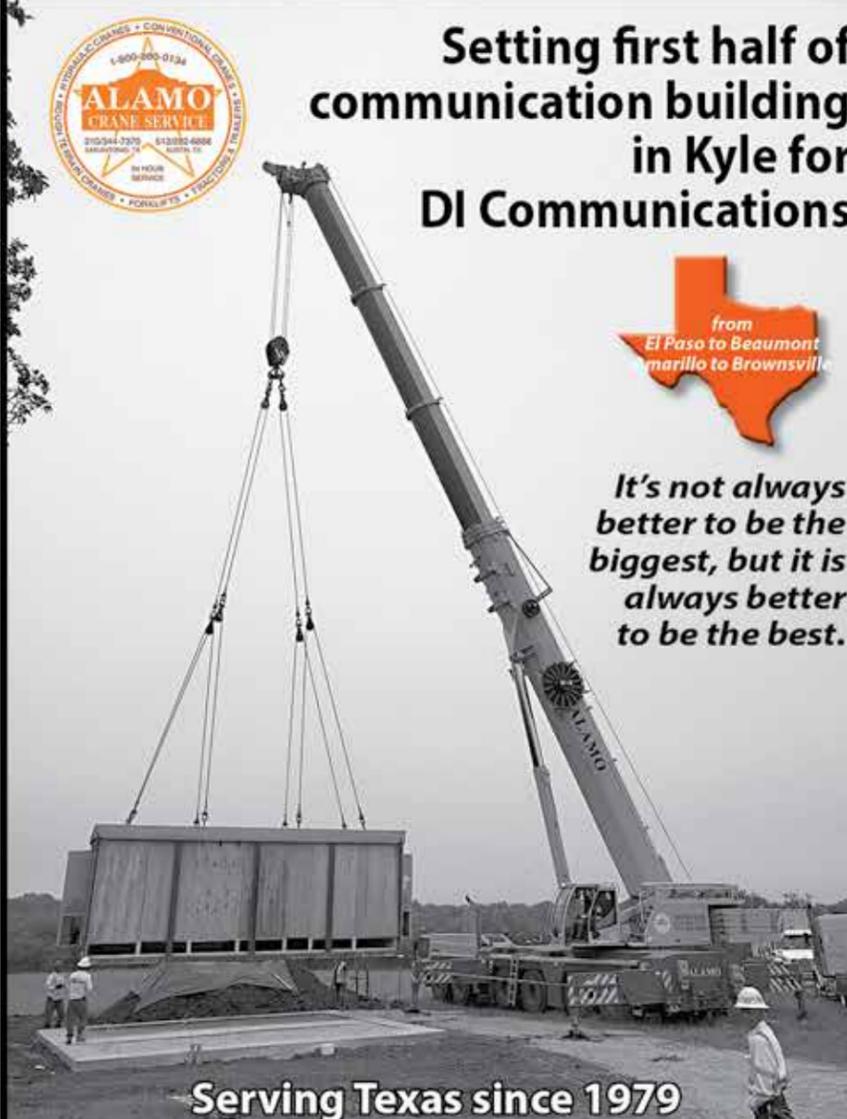


Longest Drive: Brandon Pappas, Central Texas Stone & Aggregate

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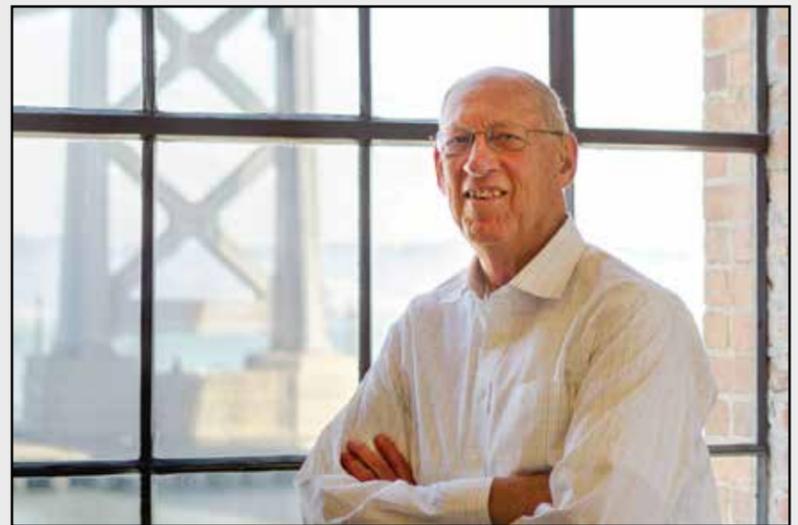


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L-R: Accurate Pavement Striping's Nicole Gee and Shannon McCleery presented gift baskets to the Ergon Asphalt & Emulsion team from the Membership Committee hole drawing.

## In memoriam



**Millard Arthur "Art" Gensler Jr.**, founder of **Gensler**, the world's largest architecture firm, passed away at age 85 on May 10.

Born in Brooklyn in 1935 and raised in West Hartford, CT, Gensler graduated from Cornell University's College of Architecture, Art, and Planning. He married his wife, Drue, in 2017 and had four sons, including David and Douglas, who both had careers at the firm.

Although he already had a part-time job for architect William Wurster, Gensler founded M. Arthur Gensler Jr. & Associates Inc. in San Francisco in 1965. He started out with \$200 in the bank and two associates: His wife Drue and a draftsman. His initial goal was to top out at six employees and focus on garage remodels, but he eventually came to focus on corporate interiors, and designed spaces for clients including Facebook, Adobe, Oracle, Airbnb, the New York Times and Washington Post, Gap, Old Navy,

and Banana Republic. Gensler, as the firm was renamed, also designed the first 100 Apple stores, and Shanghai Tower, Terminal 2 at Seoul's Incheon Airport. The firm now operates in 50 countries (including Texas offices in Austin, Dallas, Houston, and San Antonio), employs more than 6,000 designers and staff and generates an annual revenue of \$1.5 billion. Gensler stepped down as CEO of the firm in 2005 and as chairman in 2010 but served as an adviser until his death.

Gensler was predeceased by his wife of nearly 60 years, Drucilla "Drue" Cortell Gensler, sons David, Robert, Douglas and Kenneth, ten grandchildren and one great-grandchild.

In lieu of flowers, a request has been made for donations to be directed to diversity scholarships for California College of the Arts students through the Gensler Family Foundation. -mjm



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