



AGENDA

City of Lucas City Council Meeting October 19, 2017

7:00 PM

**City Hall – Council Chambers
665 Country Club Road – Lucas, Texas**

Notice is hereby given that a City of Lucas meeting of the City Council will be held on Thursday, October 19, 2017 at 7:00 pm at Lucas City Hall, 665 Country Club Road, Lucas, Texas, 75002-7651 at which time the following agenda will be discussed. As authorized by Section 551.071 of the Texas Government Code, the City Council may convene into closed Executive Session for the purpose of seeking confidential legal advice from the City Attorney on any item on the agenda at any time during the meeting.

Call to Order

- Roll Call
- Determination of Quorum
- Reminder to turn off or silence cell phones
- Pledge of Allegiance

Citizen Input

The Citizens' Input portion of the agenda is an opportunity for the public to address the City Council on any subject. By completing a "Request to Speak" form and submitting it to the City Secretary, citizens have an opportunity to speak at the City Council meeting. However, in accordance with the Texas Open Meetings Act, the City Council cannot discuss issues raised or make any decisions but may refer items to City Staff for research and possible inclusion on a future agenda.

1. Citizen Input (Mayor Jim Olk)

Community Interest

Pursuant to Section 551.0415 of the Texas Government Code, the City Council may report on the following items: 1) expression of thanks, congratulations or condolences; 2) information about holiday schedules; 3) recognition of individuals; 4) reminders about upcoming City Council events; 5) information about community events; and 6) announcements involving imminent threat to public health and safety.

2. Community Interest. (Mayor Jim Olk, Fire Chief Ted Stephens)

- A. Presentation of Proclamation declaring November 4, 2017 as Arbor Day.
- B. Presentation by Fire Chief Ted Stephens regarding Lucas Fire-Rescue deployment to Fulton, Texas.

Consent Agenda

All items listed under the consent agenda are considered routine and are recommended to the City Council for a single vote approval. If discussion is desired, an item may be removed from the consent agenda for a separate vote.

3. Consent Agenda.
 - A. Approval of the minutes of the September 21, 2017 City Council meeting. **(City Secretary Stacy Henderson)**
 - B. Consider authorizing the City Manager to enter into a contract with R&M Services for fire hydrant and valve maintenance utilizing an interlocal with the City of Garland, Texas in the amount not to exceed \$116,365. **(Public Works Director/City Engineer Stanton Foerster)**

Regular Agenda

4. Consider giving direction to the City Manager regarding the future use of the McGarity Road right-of-way between 2190 McGarity Lane and Ingram Lane. **(Public Works Director/City Engineer Stanton Foerster)**
5. Consider authorizing the City Manager to enter into a professional services contract with Birkhoff, Hendricks & Carter, LLP in the amount of \$215,850 for the design of the Winningkoff Road Middle Section Project using funds from FY 17-18 account 21-8210-491-127. **(Public Works Director/City Engineer Stanton Foerster)**
6. Consider authorizing the City Manager to enter into a construction agreement with GRod Construction, LLC for the construction of the Winningkoff Road Reverse Curve Paving and Drainage Improvements in an amount not to exceed \$502,410.90 plus 20% contingency in the amount of \$100,480 using funds in account 21-8210-491-123. **(Public Works Director/City Engineer Stanton Foerster)**
7. Discuss project scheduling related to Public Works projects pertaining to street maintenance and improvements and the north pump station improvements. **(Public Works Director/City Engineer Stanton Foerster)**
8. Discuss the opportunity 1) to add a fourth approach from 995 W. Lucas Road to the Country Club Road/W. Lucas Road intersection; 2) make improvements to the northwest corner of the same intersection; and 3) provide the City Manager with direction on the same. **(Public Works Director/City Engineer Stanton Foerster)**
9. Consider giving direction to the City Manager 1) to make repairs to various roadways as determined in the June 15, 2017, City Council meeting and 2) enter into a contract with APAC/Oldcastle in an amount not to exceed \$258,234.56 plus any additional roadways needing repairs as part of the Street Maintenance for Summer 2018 or amending the FY 17-18 Budget by using reserve funds to fund street maintenance work. **(Public Works Director/City Engineer Stanton Foerster)**
10. Discuss nominations for the 2017 Service Tree Award Program. **(City Secretary Stacy Henderson)**
11. Consider the City Council meetings schedule for November and December 2017. **(Mayor Jim Olk)**

Executive Session

12. Executive Session: An Executive Session is not scheduled for this meeting.
13. Adjournment.

Certification

I hereby certify that the above notice was posted in accordance with the Texas Open Meetings Act on the bulletin board at Lucas City Hall, 665 Country Club Road, Lucas, TX 75002 and on the City's website at www.lucastexas.us on or before 5:00 p.m. on October 13, 2017.

Stacy Henderson, City Secretary

In compliance with the American with Disabilities Act, the City of Lucas will provide for reasonable accommodations for persons attending public meetings at City Hall. Requests for accommodations or interpretive services should be directed to Stacy Henderson at 972.912.1211 or by email at shenderson@lucastexas.us at least 48 hours prior to the meeting.



City of Lucas City Council Agenda Request October 19, 2017

Item No. 01

Requester: Mayor Jim Olk

Agenda Item:

Citizens' Input

Background Information:

NA

Attachments/Supporting Documentation:

NA

Budget/Financial Impact:

NA

Recommendation:

NA

Motion:

NA



City of Lucas Council Agenda Request October 19, 2017

Item No. 02

Requester: Mayor Jim Olk

Agenda Item:

2. Items of Community Interest.

- A. Presentation of Proclamation declaring November 4, 2017 as Arbor Day.
- B. Presentation by Fire Chief Ted Stephens regarding Lucas Fire-Rescue deployment to Fulton, Texas.

Background Information:

Agenda Item 2B:

Lucas Fire-Rescue is part of the Texas Intrastate Fire Mutual Aid System and was deployed with Strike Team 112 with Engines from the cities of Princeton, Prosper, Plano, Greenville, and Denton. Lucas Fire-Rescue sent 11 firefighters over a 3-week period in Booster 862 and provided 911 coverage, search and rescue, debris removal, and general support to the citizens of Fulton.

Attachments/Supporting Documentation:

- 1. Arbor Day Proclamation

Budget/Financial Impact:

NA

Recommendation:

NA

Motion:

NA



PROCLAMATION

- *Arbor Day* -

WHEREAS, In 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees, and

WHEREAS, this holiday, called Arbor Day, was first observed with the planting of more than a million trees in Nebraska, and

WHEREAS, Arbor Day is now observed throughout the nation and the world, and

WHEREAS, trees can reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce life-giving oxygen, and provide habitat for wildlife, and

WHEREAS, trees are a renewable resource giving us paper, wood for our homes, fuel for our fires and countless other wood products, and

WHEREAS, trees in our city increase property values, enhance the economic vitality of business areas, and beautify our community, and

WHEREAS, trees, wherever they are planted, are a source of joy and spiritual renewal.

NOW, THEREFORE I, Jim Olk, Mayor of the City of Lucas do hereby proclaim the 4th day of November 2017 as

- *Arbor Day* -

In the City of Lucas, and I urge all citizens to celebrate Arbor Day and to support efforts to protect our trees and woodlands, and I urge all citizens to plant trees to promote the well-being of this and future generations.

PROCLAIMED, this 19th day of October 2017.

Jim Olk, Mayor

Stacy Henderson, City Secretary



City of Lucas Council Agenda Request October 19, 2017

Item No. 03

Requester: City Secretary Stacy Henderson; Public Works Director/City Engineer Stanton Foerster

Consent Agenda Item:

3. Consent Agenda:

- A. Approval of the minutes of the September 21, 2017 City Council meeting.
- B. Consider authorizing the City Manager to enter into a contract with R&M Services for fire hydrant and valve maintenance utilizing an interlocal with the City of Garland, Texas in the amount not to exceed \$116,365.

Background Information:

Agenda Item 3B:

The City is required to perform maintenance and open/close each fire hydrant within the Lucas Waterworks. This activity takes place as Public Works staff works in specific areas along with various duties. This contract will enable the City to catch up on this required maintenance work.

This activity was specifically budgeted for during the mid-year FY 16-17 budget adjustments. There is \$150,000 in 51-4600-233 Repairs and Maintenance of Water Facilities. R&M did not start on the project until late July 2017. R&M was able to complete \$33,635 of the contracted amount. No funds were budgeted in the FY 17-18 budget for this work. The FY 17-18 budget will need to be amended by \$116,365 from reserves to fund the continuation of this project.

Attachments/Supporting Documentation:

- 1. Minutes of the September 21, 2017 City Council meeting.
- 2. R&M Services Contract

Budget/Financial Impact:

NA

Recommendation:

City Staff recommends approval of the Consent Agenda.

Motion:

I make a motion to approve/deny the Consent Agenda as presented.



**City of Lucas
City Council Meeting
September 21, 2017
7:05 P.M.**

(or immediately following the Lucas Fire Control, Prevention and EMS District Board Meeting)

City Hall - 665 Country Club Road – Lucas Texas

Minutes

Call to Order

Mayor Olk called the meeting to order at 7:02 p.m.

City Councilmembers Present:

Mayor Jim Olk
Mayor Pro Tem Kathleen Peele
Councilmember Tim Baney
Councilmember Steve Duke
Councilmember Debbie Fisher
Councilmember Wayne Millsap
Councilmember Philip Lawrence

Staff Present:

City Manager Joni Clarke
City Attorney Joe Gorfida
City Secretary Stacy Henderson
Development Services Director Joe Hilbourn
Public Works Director/City Engineer Stanton Foerster
Finance Director Liz Exum
Fire Chief Ted Stephens
Assistant Fire Chief Lance Gant

Mayor Olk determined that a quorum was present. Everyone was reminded to silence their cell phones and the Pledge of Allegiance was recited.

Citizen Input

1. Citizen Input.

Scott Jones, 606 Pool Lane, President of the Edgewood Estates Homeowners Association asked to speak regarding agenda Item No. 12. Mr. Jones expressed his concerns on behalf of a group of homeowners that did not want to be annexed into the City stating concerns related to increased costs associated with refuse services and no longer offering curbside recycling.

Community Interest

2. Community Interest.

Mayor Olk presented the following Proclamations and Recognitions:

- A. Recognition of Eela Arvin, Joanna Morgan, and Katie Iacona for performing CPR and saving a life.
- B. A Proclamation to Patrick Nichols, Jennifer Sorrell, and Karen Koons of Murphy USA for their support during the fuel shortage created from the aftermath of Hurricane Harvey.

- C. Presentation to the City of Lucas Finance Department for receiving the 2016 Certificate of Achievement for Excellence in Financial Reporting Award from the Government Finance Officers Association.
- D. Presentation to the City of Lucas Finance Department for receiving the Transparency Star Award in the area of Traditional Finances from the Texas State Comptroller's office.

Mayor Olk announced that the City Council had been invited to the Saddlebrook Community for their National Night Out event.

Fire Chief Ted Stephens announced that Lucas Fire-Rescue had received seven invitations for the Fire-Rescue Department to attend neighborhood events taking part in National Night Out. Chief Stephens invited the City Council to attend those meetings with Fire-Rescue as well. Councilmember Fisher and Mayor Pro Tem Peele stated they would ride along with the Fire-Rescue Department to their National Night Out events.

Mayor Olk announced that a reception was taking place at the Lucas Walmart for their Manager Training Academy on September 26, 2017 at 7:30 am and asked that City Council members attend if able.

Chief Stephens thanked the City Council for allowing Fire-Rescue staff to deploy three teams to Fulton, Texas to assist in the cleanup efforts from Hurricane Harvey.

Mayor Olk announced that the City Council meeting for October 5, 2017 had been cancelled due to a lack of quorum.

Consent Agenda

3. Consent Agenda.

- A. Approval of the minutes of the September 7, 2017 City Council meeting.
- B. Consider adopting Ordinance 2017-09-00867 approving the request by Pennington Partners LTD, on behalf of Legacy Alliance Holdings, LLC, for a specific use permit request for a drive-thru restaurant located at the southeast corner of Angel Parkway and Lake Travis Drive.
- C. Consider authorizing the Mayor to enter into Amendment No. 10 of an Interlocal Agreement between the City of Lucas and Collin County for Animal Control Services for a period of one year ending September 30, 2018 in the amount of \$19,030.00.
- D. Consider authorizing the Mayor to enter into Amendment No. 10 of an Interlocal Agreement between the City of Lucas and Collin County for the use of Animal Shelter Facilities for a period of one year ending September 30, 2018 in the amount of \$14,970.00.

- E. Consider adopting Ordinance 2017-09-00870 approving the Lucas Design Manual for the installation of Network Nodes and Node Support Poles.

MOTION: A motion was made by Councilmember Fisher, seconded by Councilmember Millsap to approve the Consent Agenda as presented. The motion passed unanimously by a 7 to 0 vote.

Regular Agenda

- 4. **Consider the request by Pennington Partners LTD, on behalf of Legacy Alliance Holdings, LLC, for site plan approval for a shell building for the property located at the southeast corner of Angel Parkway and Lake Travis Drive.**

Development Services Director Joe Hilbourn gave a presentation explaining that the applicant proposed a shell building, approximately 5,800 square feet, with 37 parking spaces, and an additional nine parking spaces provided for stacking as part of the drive-thru. Mr. Hilbourn stated that the proposed site plan complies with the Dark Sky ordinance and there was no flood plain located on site.

Councilmember Fisher asked if the retention pond area would be constructed of concrete.

Mr. Hilbourn explained that the back wall would be constructed of concrete and the remainder would be grass.

MOTION: A motion was made by Councilmember Millsap, seconded by Councilmember Duke to approve the request by Pennington Partners LTD, on behalf of Legacy Alliance Holdings, LLC, for site plan approval of a shell building located at the southeast corner of Angel Parkway and Lake Travis Drive. The motion passed by a 6 to 1 vote with Councilmember Lawrence voting in opposition to the request.

- 5. **Consider adopting Ordinance 2017-09-00868 approving the budget for fiscal year beginning October 1, 2017 and ending September 30, 2018.**

MOTION: A motion was made by Mayor Olk, seconded by Councilmember Millsap to adopt Ordinance 2017-09-00868 approving the budget for the fiscal year beginning October 1, 2017 and ending September 30, 2018. The motion passed unanimously 7 to 0, with the following record vote:

| | |
|-------------------------|-----|
| Councilmember Fisher: | Yes |
| Councilmember Baney: | Yes |
| Councilmember Duke: | Yes |
| Mayor Olk: | Yes |
| Mayor Pro Tem Peele: | Yes |
| Councilmember Lawrence: | Yes |
| Councilmember Millsap: | Yes |

MOTION: A motion was made by Mayor Olk, seconded by Councilmember Millsap to ratify the property tax revenue increase reflected in the fiscal year 2017-2018 adopted budget. The motion passed unanimously 7 to 0, with the following record vote:

| | |
|-------------------------|-----|
| Councilmember Fisher: | Yes |
| Councilmember Baney: | Yes |
| Councilmember Duke: | Yes |
| Mayor Olk: | Yes |
| Mayor Pro Tem Peele: | Yes |
| Councilmember Lawrence: | Yes |
| Councilmember Millsap: | Yes |

- 6. Consider adopting Ordinance 2017-09-00869 of the City of Lucas, Texas, levying Ad Valorem Taxes for the Tax Year 2017 (Fiscal Year 2017-2018) at a rate of \$0.317948 per one hundred (\$100) assessed valuation on all taxable property within the corporate limits of the City of Lucas as of January 1, 2017.**

MOTION: A motion was made by Mayor Olk, seconded by Mayor Pro Tem Peele, to adopt Ordinance 2017-09-00869 levying ad valorem taxes for the 2017 tax year, and that the property tax rate was increased by the adoption of a tax rate of \$0.317948, an approximate 6.9 percent increase in the tax rate. The motion passed unanimously 7 to 0, with the following record vote:

| | |
|-------------------------|-----|
| Councilmember Fisher: | Yes |
| Councilmember Baney: | Yes |
| Councilmember Duke: | Yes |
| Mayor Olk: | Yes |
| Mayor Pro Tem Peele: | Yes |
| Councilmember Lawrence: | Yes |
| Councilmember Millsap: | Yes |

- 7. Consider adopting Resolution 2017-09-00466 of the City Council of the City of Lucas, Texas, supporting 1) a limited access roadway within the north-south corridor generally concurrent with FM 546 and/or FM 982; 2) north-south transportation improvements within and near the City of Lucas; and 3) operational improvements to the US 75 corridor; and 4) providing for an effective date.**

Mayor Olk stated that the Regional Transportation Council of the North Central Texas Council of Governments has requested from the City of Lucas support for a north/south limited access roadway proposed along the peninsula on the other side of Lake Lavon and to submit operational roadway improvements proposed within the City of Lucas that could be considered as possible future projects.

Mr. Foerster reviewed with the City Council the proposed north/south operational transportation improvements and proposed intersection improvements throughout the City. The following list of proposed transportation improvements was agreed to:

- Angel Parkway (Estates Parkway to Parker Road)
Six-lane, concrete, divided, and curb/gutter
- Rock Ridge Road/Allison Lane Realignment (Country Club Road to W. Lucas Road)
Rock Ridge Road – four-lane, concrete, divided, and curb/gutter
Allison Lane – two-lane, concrete, undivided, and ditches
- McGarity Lane (Angel Parkway to Allison Lane)
Four-lane, divided, and curb/gutter
- Ingram Lane (Estates Parkway to W. Lucas Road)
Twenty-four feet (24-foot) concrete, undivided, and ditches
- Lewis Lane (W. Lucas Road/Ingram Lane Intersection to Parker Road/McCreary Road Intersection)
Four-lane, concrete, divided, and ditches
- Country Club Road/W. Lucas Road/Southview Drive (Rock Ridge Road to Parker Road)
Two-lane, concrete, divided with turn lanes, and ditches
- Stinson Road (W. Lucas Road to Parker Road)
Two-lane, concrete, undivided with turn lanes, and ditches including the extension from Edgewood Drive to Stinson Road.
- New Roadway – (Inspiration Connection Via Brockdale Park Road to E. Lucas Road)
North End of the Inspiration Neighborhood to E. Lucas Road/Daytona Ave intersection

Intersection improvements agreed to were as follows:

- Angel Parkway/Estates Parkway Intersection
Provide dual lefts, dual rights, and maintain through lanes at each intersection
- Angel Parkway/McGarity Lane Intersection
Provide dual lefts, dual rights, and maintain through lanes at each intersection
- Angel Parkway/W. Lucas Road Intersection
Provide dual lefts, dual rights, and maintain through lanes at each intersection
- Rock Ridge Road/Estates Parkway Intersection
Realign Rock Ridge Road to the east improve intersection geometry and add left and right turn lanes to Rock Ridge Road
- Rock Ridge Road/Allison Lane at Estates Parkway
Realign Rock Ridge Road to the east to line up with Allison Lane. New intersecting will need to be midway between Angle Parkway and the western driveway into Lovejoy High School.

- Estates Parkway/Ingram Lane Intersection
Add northbound left and right turn lanes, add eastbound right turn lane, add westbound left turn lane, maintain all through lanes on Estates Parkway
- Ingram Lane/Lewis Lane at W. Lucas Road
Realign Ingram Lane and Lewis Lane at W. Lucas Road to eliminate the off-set intersections
- W. Lucas Road/Ingram Lane Intersection
Add southbound left and right turn lanes, add eastbound left turn lane, add westbound right turn lane, maintain all through lanes on W. Lucas Road
- W. Lucas Road/Lewis Lane Intersection
Add northbound left and right turn lanes, add eastbound right turn lane, add westbound left turn lane, maintain all through lanes on W. Lucas Road
- Country Club Road/W. Lucas Road Intersection
Provide dual lefts, dual rights, and maintain through lanes at each roadway
- W. Lucas Road/Stinson Road Intersection
Provide dual northbound lefts, dual northbound rights, eastbound right, westbound left, and maintain through lanes on W. Lucas Road
- W. Lucas Road/Edgewood Drive Intersection
Provide dual northbound lefts, dual northbound rights, eastbound right, westbound left, and maintain through lanes on W. Lucas Road
- Parker Road/Stinson Road Intersection
Add southbound left and right turn lanes, add eastbound left turn lane, add westbound right turn lane, maintain all through lanes on Parker Road
- Lucas Road/Southview Drive Intersection
Realign the intersection to a “T” so that Lucas Road is the top of the T and Southview Drive is the stem of the T. The W. Lucas Road approach would be two through lanes with a dual right turn. The E. Lucas Road approach would be two through lanes with a dual left turn. The Southview Drive approach would be a dual left and dual right. Divide the intersection for safety.
- Country Club Road/Estates Parkway Intersection
Provide for dual lefts, dual rights, and maintain through lanes at each intersection.
- E. Lucas Road/Winningkoff Road Intersection
Provide dual southbound lefts, dual southbound rights, eastbound left, westbound right, and maintain through lanes on E. Lucas Road
- Southview Drive (FM 1378)/Parker Road (FM 2514) Intersection
Provide dual lefts, dual rights, and maintain through lanes at each approach

- Country Club Road/Rock Ridge Road Intersection
Realign to improve intersection geometry, provide dual lefts and dual rights, maintain all through lanes

MOTION: A motion was made by Councilmember Lawrence, seconded by Councilmember Duke to approve Resolution 2017-09-00466 supporting a limited access roadway within the north-south corridor generally concurrent with FM 546 and/or FM 982; north-south transportation improvements within and near the City of Lucas; operational improvements to the US 75 corridor; and including City of Lucas operational street alignments and intersection improvements as outlined above and attached as Exhibit B to said Resolution. The motion passed unanimously by a 7 to 0 vote.

- 8. Authorize the City Manager to enter into a professional services contract with Birkhoff, Hendricks & Carter, LLP in the amount of \$82,700 for the design of the Estates Parkway/Country Club Road Intersection Project using funds from FY 17-18 account 21-8210-491-126.**

Councilmember Fisher requested a timeline for the completion of the project and stated that \$350,000 was budgeted for the project; however, the engineer's design stated \$750,000.

Mr. Foerster clarified that the engineer's design included TxDOT work as well, not just the City of Lucas portion, and the timeline was included as Exhibit B of the contract, with each portion of the project outlined.

MOTION: A motion was made by Councilmember Lawrence, seconded by Councilmember Millsap to authorize the City Manager to enter into a professional services contract with Birkhoff, Hendricks and Carter LLP in the amount of \$82,700 for the design of the Estates Parkway/Country Club Road Intersection project using funds from FY 17-18 account 21-8210-491-126. The motion passed unanimously by a 7 to 0 vote.

- 9. Authorize the City Manager to enter into a professional services contract with Lakes Engineering, Inc. in the amount of \$115,315 for the design of the Blondy Jhune Road Middle and East Sections Project using funds from FY 17-18 account 21-8210-491-129.**

MOTION: A motion was made by Councilmember Lawrence, seconded by Councilmember Millsap to authorize the City Manager to enter into a professional services contract with Lakes Engineering in the amount of \$115,315 for the design of the Blondy Jhune Road Middle and East Sections Project using funds from FY 17-18 account 21-8210-491-129. The motion passed unanimously by a 7 to 0 vote.

- 10. Authorize the City Manager to enter into a professional services contract with KCI Technology, Inc. in the amount of \$264,910 for the design of the Stinson Road Southern Section Project using funds from FY 17-18 account 21-8210-491-128.**

Public Works Director/City Engineer Stanton Foerster discussed with the City Council the circular intersection improvements associated with this project. The Council discussed the various design standards associated with circular intersections, and how they could be used as a traffic calming technique to slow traffic. The City Council was in agreement that the circular intersection be designed to accommodate trailers.

Councilmember Fisher asked for a timeline associated with this project.

City Attorney Joe Gorfida stated that a timeline would be incorporated into the contract as part of the exhibit.

MOTION: A motion was made by Councilmember Millsap, seconded by Councilmember Duke to authorize the City Manager to enter into and negotiate a professional services contract with KCI Technology, Inc. in the amount of \$264,910 for the design of the Stinson Road Southern Section Project using funds from FY 17-18 account 21-8210-491-128. The motion passed unanimously by a 7 to 0 vote.

- 11. Discuss the opportunity 1) to add a fourth approach from 995 W. Lucas Road to the Country Club Road/W. Lucas Road intersection; 2) make improvements to the northwest corner of the same intersection; and 3) provide the City Manager with direction on the same.**

The City Council was in agreement to move forward with staff speaking with the affected property owners regarding intersection improvements and easement acquisition, as well as beginning discussions with TxDOT regarding intersection improvements.

- 12. Consider annexation of all remaining lots located outside the city limits of Lucas in Claremont Springs Estates Phase 1, Edgewood Estates, and Cimarron Estates subdivisions.**

Development Services Director Joe Hilbourn stated that the subdivisions of Claremont Springs Estates Phase 1, Edgewood Estates, and Cimarron Estates are encapsulated within the city limits of Lucas; however, these developments still have lots that have not been annexed. Mr. Hilbourn stated that Claremont Springs has 23 lots remaining outside the city limits, Cimarron Estates has 25 lots and Edgewood Estates has 50 lots that remain outside the city limits. Mr. Hilbourn stated that the City of Lucas provides city services to these lots that include law enforcement, fire suppression, emergency medical, water and building-related services including code enforcement. Mr. Hilbourn stated that State law was changing as of January 1 and unilateral annexation would no longer be permitted.

Councilmember Lawrence stated that he objected to requiring a homeowner to be annexed into the city, knowing that when they purchased their property they were within the City's ETJ area.

Mayor Pro Tem Peele discussed her concerns related to drainage issues within the Claremont Springs neighborhood that may require attention, as well as potential maintenance of the ponds that were located within the Edgewood Estates neighborhood.

Alan Topchik, 611 Pool Lane, living within the Cimarron neighborhood, stated that he was in favor of being annexed. He would like to be part of the community, have the right to vote, volunteer at events, and felt that it was the right thing to do given the amenities he used being in the city.

The City Council discussed the city services that homeowners receive in the ETJ areas, and whether these properties should be annexed.

MOTION: A motion was made by Councilmember Baney, seconded by Councilmember Duke to approve proceeding with public hearings for annexation of all remaining lots located outside the city limits of Lucas in Claremont Springs Estates Phase 1, Edgewood Estates, and Cimarron Estates subdivisions. The motion passed by a 5 to 2 vote with Councilmember Fisher and Councilmember Lawrence voting in opposition.

- 13. Consider Ordinance No. 2017-09-00865 amending Chapter 1, Section 1.09 Titled Parks and Recreation by adding Section 1.09.063 titled “Reservation of Lucas Community Center” specifically outlining that reservation of the Community Center is limited to residents only and a Facility Use Agreement shall be completed with the Development Services Department.**

MOTION: A motion was made by Councilmember Millsap, seconded by Councilmember Lawrence to adopt Ordinance No. 2017-09-00865 amending Chapter 1, Section 1.09 Titled Parks and Recreation by adding Section 1.09.063 titled “Reservation of Lucas Community Center” specifically outlining that reservation of the Community Center is limited to residents only and a Facility Use Agreement shall be completed with the Development Services Department. The motion passed unanimously by a 7 to 0 vote.

- 14. Consider Ordinance No. 2017-09-00871 approving amendments to the City’s Code of Ordinances, Appendix C, Master Fee Schedule by adding under Article 6.000 Miscellaneous Permits, Subsection (21) establishing a permit fee related to the construction of a Riding Arena; and by deleting under Article 21.000 Parks and Recreation, Subsection D, fees for Community Center rentals.**

MOTION: A motion was made by Mayor Pro Tem Peele, seconded by Councilmember Lawrence to adopt Ordinance No. 2017-09-00871 approving amendments to the City’s Code of Ordinances, Appendix C, Master Fee Schedule by adding under Article 6.000 Miscellaneous Permits, Subsection (21) establishing a permit fee related to the construction of a Riding Arena; and by deleting under Article 21.000 Parks and Recreation, Subsection D, fees for Community Center rentals. The motion passed unanimously by a 7 to 0 vote.

- 15. Discuss Board/Commission appointment process, including conducting interviews and updating procedures if needed.**

The City Council agreed to the following schedule for the Board/Commission interview and appointment process:

| | |
|--------------------------------------|----------------------------|
| Application deadline: | November 10 |
| Discussion at City Council Meeting: | November 16 |
| Conduct Interviews and Appointments: | December 7 and December 17 |

Executive Session

- 16. Executive Session: An Executive Session is not scheduled for this meeting.**

The City Council did not hold an Executive Session during this meeting.

17. Adjournment.

MOTION: A motion was made by Councilmember Millsap, seconded by Mayor Pro Tem Peele to adjourn the meeting at 9:41 pm. The motion passed unanimously by a 7 to 0 vote.

APPROVED:

ATTEST:

Jim Olk, Mayor

Stacy Henderson, City Secretary

CITY OF LUCAS, TEXAS

PUBLIC WORKS CONSTRUCTION PROJECT

Water Valve & Fire Hydrant Maintenance

Via an Interlocal with the City of Garland, Texas,

R&M Services Solutions

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City of Lucas, Texas

This Agreement is made by and between the City of Lucas, Texas, a home-rule municipality (hereinafter referred to as the "City") and *R&M Services Solutions*, (hereinafter referred to as the "Contractor") for construction of *Water Valve & Fire Hydrant Maintenance*, (hereinafter referred to as the "Project"), the City and the Contractor hereby agreeing as follows:

ARTICLE I

THE CONTRACT AND THE CONTRACT DOCUMENTS

1.1 THE CONTRACT

1.1.1 The contract between the City and the Contractor, of which this agreement (sometimes referred to herein as the "Contract") is a part, consists of the Contract Documents. It shall be effective on the date this Agreement is executed by the last party to execute it.

1.2 THE CONTRACT DOCUMENTS

1.2.1 The Contract Documents consist of this agreement, the General Conditions, the Special Conditions, the Invitation to Bid, Requirements and Instructions to Bidders, the Specifications, the Drawings, the Shop Drawings, the Project Manual, all Change Orders and Field Orders issued hereafter, the addenda, exhibits and attachments thereto, any other amendments hereto executed by the parties hereafter, together with the following (if any):

1) City of Garland Bid Tabs 0347-17 Addendum 3 (three pages) and 2) City of Garland Blanket Order BL 06723 (two pages).

1.3 ENTIRE AGREEMENT

1.3.1 This Contract, together with the Contractor's performance and payment bonds for the Project, all General Conditions, Special Conditions, Plans and Specifications, and Addenda attached thereto, constitute the entire and exclusive agreement between the City and the Contractor with reference to the Project. Specifically, but without limitation, this Contract supersedes any bid documents and all prior written or oral communications, representations and negotiations, if any, between the City and Contractor not expressly made a part hereof.

1.4 NO PRIVACY WITH OTHERS

1.4.1 Nothing contained in this Contract shall create, or be interpreted to create, privity or any other contractual agreement between the City and any person or entity other than the Contractor.

1.5 INTENT AND INTERPRETATION

1.5.1 The intent of this Contract is to require complete, correct and timely execution of the Work. Any Work that may be required, implied or inferred by the Contract Documents, or any one or more of them, as necessary to produce the intended result shall be provided by the Contractor for the Contract Price.

1.5.2 This Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.

1.5.3 When a word, term or phrase is used in this Contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.

1.5.4 The word "City" includes the City of Lucas, Texas, a municipal corporation, and its public officials, officers, employees, agents and employees. The word "Contractor" includes the Contractor and its officers, employees, agents and representatives. The word "include", "includes", or "including", as used in this subparagraph and in this Contract, shall be deemed to be followed by the phrase, "without limitation".

1.5.5 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.

1.5.6 Words or terms used as nouns in this Contract shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.

1.5.7 The Contractor shall have a continuing duty to read, carefully study and compare each of the Contract Documents, the Shop Drawings, the Product Data, and any Plans and Specifications, and shall give written notice to the City of any inconsistency, ambiguity, error or omission which the Contractor may discover with respect to these documents before proceeding with the affected Work. The issuance, or the express or implied approval by the City or the Engineer of the Contract Documents, Shop Drawings or Product Data, shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such approval be evidence of the Contractor's compliance with this Contract. The City has requested the Engineer to only prepare documents for the Project, including the Drawings, Plans and Specifications for the Project, which are accurate, adequate, consistent, coordinated and sufficient for construction. **HOWEVER, THE CITY MAKES NO REPRESENTATION OR WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS. THE CONTRACTOR ASSUMES ALL RISK OF ERRORS, AMBIGUITIES AND INACCURACIES.** By the execution hereof, the Contractor acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representation or warranties by the City concerning such documents as no such representation or warranties have been or are hereby made. Further, the Contractor represents and warrants that it has had a sufficient opportunity to inspect the Project site and assumes any and all responsibility for inadequacies or ambiguities in the plans, drawings or specifications as well as for latent conditions of the site where the work is to be performed.

1.5.8 As between numbers and scaled measurements on the Drawings and in the Design, the numbers shall govern, as between larger scale and smaller scale drawings, the larger scale shall govern.

1.5.9 Neither the organization of any of the Contract Documents into divisions, sections, paragraphs, articles, (or other categories), nor the organization or arrangement of the Design, shall control the Contractor in dividing the Work or in establishing the extent or scope of the Work to be performed by Subcontractors.

1.6 OWNERSHIP OF CONTRACT DOCUMENTS

1.6.1 The Contract Documents, and each of them individually and collectively, shall remain the property of the City. The Contractor shall have the right to keep one record set of the Contract Documents upon completion of the Project; provided, however, that in no event shall Contractor use, or permit to be used, any or all of such Contract Documents on other projects without the City's prior written authorization.

ARTICLE II

THE WORK

2.1 The Contractor shall perform all of the Work required, implied or reasonably inferable from this Contract.

2.2 WORK

2.2.1 The term "Work" shall mean whatever is done by or required of the Contractor to perform and complete its duties under this Contract, including the following: construction of the whole or a designated part of the Project; furnishing of any required surety bonds and insurance, and the provision or furnishing of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, permits and licenses required of the Contractor, power, water, fuel, heat, light, cooling and all other utilities as required by this Contract. The Work to be performed by the Contractor is generally described as follows:

Approximate quantities for Water Valve & Fire Hydrant Maintenance includes procedures outlined in AWWA Manual M17 and M44; and other miscellaneous improvements as shown on the plans and in accordance with the specifications.

2.2.2 The Contractor shall be responsible for paying for and procuring all materials and labor and furnishing all services necessary or appropriate for the full performance of the Work and the for the full completion of the Project. All materials shall be new and materials and workmanship shall be of good quality. Upon request, the Contractor shall furnish satisfactory proof of the type, kind, and quality of materials.

ARTICLE III

CONTRACT TIME

3.1 SUBSTANTIAL COMPLETION

3.1.1 "Substantial Completion" shall mean that stage in the progression of the Work when the Work is sufficiently complete in accordance with this Contract that the City can enjoy beneficial use or occupancy of the Work and can utilize the Work for its intended purpose, even though minor miscellaneous work and/or adjustment may be required.

3.2 TIME

3.2.1 The Contractor shall commence the Work within 10 days of receipt of a written Notice to Proceed, and shall achieve Substantial Completion of the Work no later than September 30, 2017 ~~calendar days from the date specified in the Notice to Proceed. The term "calendar days" shall mean any and all days of the week or month, no days being excepted. The number of calendar days from the date on which the Work is permitted to proceed, through the date set forth for Substantial Completion, shall constitute the Contract Time~~ and the "scheduled completion date." The execution of this Contract by the Contractor constitutes an agreement that adequate time has been allotted for this Contract, given the Contract Price.

3.2.2 Work may proceed on any day of the week, including weekends, and at any time of the day. However, work shall not occur on such days or at such times as, in the City's or Engineer's discretion, may be a violation of noise or environmental regulations or ordinances, or when the presence of workers, equipment or materials may create an abnormally hazardous condition.

3.2.3 The Contractor shall submit and comply with construction schedules establishing completion timelines and deadlines for each component of the Project. Construction schedules shall be submitted to and approved by the Engineer and the City on a regular basis as required by the Contract Documents. If no reference is made to construction schedules in the Contract Documents, then construction schedules shall be submitted with each Application for Payment.

3.3 TIME IS OF THE ESSENCE

3.3.1 The scheduled completion date is based on public necessity. The scheduled completion date is factored into and is a material component of the Contract Price. All limitations of time set forth in the Contract Documents are of the essence of this Contract.

3.3.2 TIME IS OF THE ESSENCE IN THE PERFORMANCE OF THE WORK AND THE COMPLETION OF THE PROJECT ON OR BEFORE THE SCHEDULED COMPLETION DATE. THE SCHEDULED COMPLETION DATE IS A DEADLINE. THE CITY EMPLOYS A ZERO-TOLERANCE POLICY REGARDING THE TIME FOR COMPLETION. The time for completion is an essential and material term of this Contract and the Contractor's failure to achieve substantial completion on the date stated herein, to comply with work schedules, or achieve milestones in approved construction schedules, shall be a material breach and default of this Contract.

3.3.3 The City will assess liquidated damages for late or untimely performance and may, at the City's sole option, elect to allow Contractor to continue with the Work, or may declare Contractor to be in breach and default of the Contract and order Contractor to remove all equipment and personnel from the work site. All remedies for Contractor's late performance shall be nonexclusive and cumulative without waiver of any other, and the City's election of one shall not preclude the City from pursuing any other.

3.3.4 It is contemplated by the parties that the progress of the Work may be delayed by certain conditions beyond the control of the parties; these delays have been contemplated by the parties and considered in the time allotted for performance specified herein and in the contract price and includes, but is not limited to delays occasioned on account of adverse weather, temporary unavailability of materials, shipment delays, and the presence and potential interference of other contractors or of utilities that may be performing work at the Project site unrelated to this Contract. These delays have been considered and included in the determination of the scheduled completion date and the Contract Price.

3.4 LIQUIDATED DAMAGES; EARLY COMPLETION BONUS

~~3.4.1 The Contractor shall pay the City the sum of \$ _____ [ENTER DAILY LIQUIDATED DAMAGE AMOUNT] per day for each and every calendar day of unexcused delay in achieving Substantial Completion beyond the date set forth herein for Substantial Completion of the Work. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the City, estimated at or before the time of executing this Contract. When the City reasonably believes that Substantial Completion will be inexcusably delayed, the City shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the City to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving Substantial Completion, or any part thereof, for which the City has withheld payment, the City shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages. If the Contractor has submitted a Statement of Delay with the appropriate Application for Payment as required by Subparagraph 5.2.3, and/or has complied with the notice and Change Order requirements of this Contract, the Engineer shall have sole discretion to determine whether a delay is excused or unexcused and the Engineer's determination thereof shall be final and binding on the parties.~~

~~3.4.2 In the event that the Contractor achieves certification by the Engineer of Final Completion prior to _____ [ENTER DATE FOR EARLY COMPLETION BONUS] Calendar days from the date specified in the Notice to Proceed, the City shall pay to the Contractor the sum of \$ _____ [ENTER DAILY AMOUNT OF INCENTIVE] per day for each calendar day that Final Completion is certified in advance of the scheduled Final Completion date, as that date may be modified by written change order. However, early completion bonuses shall not, in the aggregate, exceed the total sum of \$ _____ [ENTER MAXIMUM AMOUNT OF EARLY COMPLETION BONUS]. Any reduction in the scope of work, evidenced by written change order, shall commensurately reduce the Contract Time.~~

3.5 NO DAMAGES FOR DELAY; NO BACK-CHARGES; DAMAGE WAIVER

3.5.1 No claim shall be made by the Contractor to the City, and no damages, costs or extra compensation shall be allowed or paid by the City to the Contractor for any delay or hindrance from any cause in the progress or completion of the Work or this Contract. The Contractor's sole remedy in the event of any delay or hindrance, regardless of cause, shall be to request time extensions by written change orders as provided for hereinafter. The failure to seek or obtain a change order for time

extension shall be deemed a waiver thereof and Contractor shall be regarded as having made a determination that the delay will not affect the completion of the Work. Should the Contractor be delayed by an act of the City, or should the City order a stoppage of the Work for sufficient cause unrelated to any act or omission of the Contractor, an extension of time shall be granted by the City by Change Order upon written application, which extension shall not be unreasonably denied, to compensate for the delay.

3.5.2 The City shall have the authority to suspend the Work wholly or in part for such period or periods of time as it may deem appropriate due to unsuitable conditions considered unfavorable for the proper prosecution of the Work or for the failure of the Contractor to carry out instructions from the City or City's representative. During any period in which the Work is stopped or during which any of the Work is not actively in progress for any reason, Contractor shall properly protect the site and the Work from damage, loss or harm. The Contractor shall not be compensated for periods of delay caused by a suspension of the work by the City. If work is suspended due to unsuitable conditions through no fault of the Contractor, an extension of time shall be granted by the City by Change Order upon written application, which extension shall not be unreasonably denied, to compensate for the delay.

3.5.3 The Contractor shall not have or assert any claim against the City for damages or back-charges of any kind for any reason, including but not limited to claims for Extra Work, damages, economic loss, additional costs, unknown latent site conditions, and refusals by the City to grant extensions of time, unless supported and authorized by a written Change Order or separate agreement signed by all parties. The Contractor, in entering into this Contract, hereby waives, releases, quitclaims, discharges and holds harmless the City from and against any and all claims, damages, liabilities and losses, save and except those arising under Paragraph 12.1 of this Contract.

ARTICLE IV

CONTRACT PRICE

4.1 THE CONTRACT PRICE

4.1.1 The City shall pay, and the Contractor shall accept, as full and complete payment for all of the Work required herein, the fixed sum of

\$116,365 Total Contract Amount

- 1. \$35.50 per 8-Inch (or smaller) Valve with GPS**
- 2. \$40.50 per 10- to 12-Inch Valve with GPS**
- 3. \$95.50 per 14-Inch (or larger) Valve with GPS**
- 4. \$30.50 per Fire Hydrant with GPS**

There will be no compensation for valves and hydrants that cannot be found.

The sum set forth in this Paragraph 4.1 shall constitute the Contract Price which shall not be modified except by written Change Order as provided in this Contract, or the assessment of liquidated damages or the award of an early completion bonus.

ARTICLE V

PAYMENT OF THE CONTRACT PRICE

5.1 SCHEDULE OF VALUES

5.1.1 The Schedule of Values, submitted to and accepted by the City and Engineer at the time of the Contractor's bid, allocates the Contract Price to the various portions of the Work. The Contractor's Schedule of Values shall have been prepared, or at the City's or Engineer's request shall be amended prior to the commencement of construction, in such form, with such detail, and supported by such data as the Engineer or the City may require to substantiate its accuracy. The

Contractor shall not imbalance its Schedule of Values nor artificially inflate any element thereof. The violation of this provision by the Contractor shall constitute a material breach of this Contract. The Schedule of Values shall be used only as a basis for the Contractor's Applications for Payment and shall only constitute such basis after it has been acknowledged and accepted in writing by the Engineer and the City.

5.2 PAYMENT PROCEDURE

5.2.1 The City shall pay the Contract Price to the Contractor as provided below.

5.2.2 **PROGRESS PAYMENTS** - Based upon the Contractor's Applications for Payment submitted to the Engineer and upon Certificates for Payment subsequently issued to the City by the Engineer, the City shall make progress payments to the Contractor on account of the Contract Price.

5.2.3 **APPLICATION FOR PAYMENT** - On or before the 25th day of each month after commencement of the Work, the Contractor shall submit an Application for Payment for the period ending the 15th day of the month to the Engineer in such form and manner, and with such supporting data and content, as the City or the Engineer may require. The Contractor may request payment for that portion of the Contract Price properly allocable to Contract requirements properly provided and to labor, materials and equipment properly incorporated in the Work, less retainage and less the total amount of previous payments received from the City. Such Application for Payment shall be signed by the Contractor and shall constitute the Contractor's representation that the Work has progressed to the level for which payment is requested in accordance with the Schedule of Values, that the Work has been properly installed or performed in full compliance with this Contract, and that the Contractor knows of no reason why payment should not be made as requested. Thereafter, the Engineer will review the Application for Payment and may also review the Work at the Project site or elsewhere to determine whether the quantity and quality of the Work is as represented in the Application for Payment and is as required by this Contract. The Engineer shall determine and certify to the City the amount properly owing to the Contractor. The City shall make partial payments on account of the Contract Price to the Contractor within thirty (30) days following the Engineer's receipt and approval of each Application for Payment. The amount of each partial payment shall be the amount certified for payment by the Engineer less such amounts, if any, otherwise owing by the Contractor to the City or which the City shall have the right to withhold as authorized by this Contract. The Engineer's certification of the Contractor's Application for Payment shall not preclude the City from the exercise of any of its rights as set forth in Paragraph 5.3 hereinbelow.

5.2.4 **STATEMENT OF DELAY** - Each Application for Payment shall include a Statement of Delay showing the number of days lost due to inclement weather, conflicts with other City contractors, utilities, or design specifications, or other proper reasons. The failure to submit the Statement of Delay shall be a waiver of any claim for additional days or extensions of the scheduled completion date.

5.2.5 **RETAINAGE** - If the Contract Price set forth in Subparagraph 4.1.1 exceeds \$400,000, the City shall withhold retainage of ten (10) percent from each progress payment to secure performance of the Contract and shall deposit in an interest-bearing account that portion of the retainage withheld that exceeds five (5) percent of the progress payment. If a different percentage is set forth in the Invitation to Bid, then that percentage shall apply.

5.2.6 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the City when installed at the Project site, regardless of the time of payment. The Contractor further warrants that upon submittal of an Application for Payment, all Work for which payments have been received from the City shall be free and clear of liens, claims, security interest or other encumbrances in favor of the Contractor or any other person or entity whatsoever.

5.2.7 The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor on account of such Subcontractor's Work, the amount to which such Subcontractor is entitled. In the event the City becomes informed that the Contractor has not paid a Subcontractor as herein provided, the City shall have the right, but not the duty, to issue future checks in payment to the Contractor of amounts otherwise due hereunder naming the Contractor and such Subcontractor as joint payees. Such joint check procedure, if employed by the City, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the City to repeat the procedure in the future.

5.2.8 No progress payment, nor any use or occupancy of the Project by the City, shall be interpreted to constitute an acceptance of any Work not in strict compliance with this Contract.

5.3 WITHHELD PAYMENT

5.3.1 The City may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to the Contractor, to protect the City from loss because of:

- (a) defective Work not remedied by the Contractor or, in the opinion of the City, likely to be remedied by the Contractor;
- (b) claims of third parties against the City or the City's property;
- (c) failure by the Contractor to pay Subcontractors or others in a prompt and proper fashion;
- (d) evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price,
- (e) evidence that the Work will not be completed in the time required for substantial or final completion (final completion meaning the full and final completion of all work called for by this Contract and final acceptance by the Engineer and the City);
- (f) persistent failure to carry out the Work in accordance with the Contract;
- (g) damage to the City or a third party to whom the City is, or may be, liable.
- (h) failure to submit an updated project schedule in accordance with Subparagraph 3.2.3.
- (i) failure to submit record drawings in accordance with Subparagraph 7.9.1.

In the event that the City makes written demand upon the Contractor for amounts previously paid by the City as contemplated in this Subparagraph 5.3.1, the Contractor shall promptly comply with such demand. The City shall have no duty to third parties to withhold payment to the Contractor and shall incur no liability for a failure to withhold funds.

5.4 UNEXCUSED FAILURE TO PAY

5.4.1 If within twenty (20) days after the date established herein for payment to the Contractor by the City, the City, without cause or basis hereunder, fails to pay the Contractor any amount then due and payable to the Contractor, then the Contractor may after ten (10) additional days' written notice to the City and the Engineer, and without prejudice to any other available rights or remedies it may have, stop the Work until payment of those amounts due from the City have been received. Late payments shall not accrue interest or other late charges.

5.5 CERTIFICATE OF SUBSTANTIAL COMPLETION

5.5.1 When the Contractor believes that the Work is substantially complete, the Contractor shall submit to the Engineer a list of items to be completed or corrected. When the Engineer and the City on the basis of an inspection determine that the Work is in fact substantially complete, the Engineer will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall state the responsibilities of the City and the Contractor for Project security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete the items listed therein. In no event, however, shall the date of Final Completion be delayed. Guarantees required by the Contract shall commence on the date of Substantial Completion of the Work; however, the maintenance bond required herein, and the assurances given thereunder, shall commence of and from the date of final acceptance of the work by the City. The Certificate of Substantial Completion shall be submitted to the City and the Contractor for their written acceptance of the responsibilities assigned to them in such certificate.

Upon Substantial Completion of the Work, and execution by both the City and the Contractor of the Certificate of Substantial Completion, the City shall pay the Contractor for all work completed to date, less retainage.

5.6 COMPLETION AND FINAL PAYMENT

5.6.1 When all of the Work is finally complete and the Contractor is ready for a final inspection, it shall notify the City and the Engineer thereof in writing. Thereupon, the Engineer will make final inspection of the Work and, if the Work is complete in full accordance with this Contract and this Contract has been fully performed, the Engineer will promptly issue a final Certificate for Payment certifying to the City that the Project is complete and the Contractor is entitled to the remainder of the unpaid Contract Price (including retainage and the interest accrued on the retainage in excess of five (5) percent if the Contract Price is in excess of \$400,000), plus an early completion bonus, if any, less any amount withheld pursuant to this Contract. If the Engineer is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s) which cost may be deducted by the City from the Contractor's final payment.

5.6.1.1 If the Contractor fails to achieve final completion within the time fixed therefor by the Engineer in its Certificate of Substantial Completion, the Contractor shall pay the City the sum set forth hereinabove as liquidated damages per day for each and every calendar day of unexcused delay in achieving final completion beyond the date set forth herein for final completion of the Work. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the City, estimated at or before the time of executing this Contract. When the City reasonably believes that final completion will be inexcusably delayed, the City shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the City to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving final completion, or any part thereof, for which the City has withheld payment, the City shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages. Liquidated damages shall be deducted first from any earned early completion bonus, then from any sums otherwise due to the Contractor.

5.6.2 The Contractor shall not be entitled to final payment unless and until it submits to the Engineer its affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the City, or the City's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of lien from all Subcontractors of the Contractor and of any and all other parties required by the Engineer or the City; consent of Surety, if any, to final payment. If any third party fails or refuses to provide a release of claim or waiver of lien as required by the City, the Contractor shall furnish a bond satisfactory to the City to discharge any such lien or indemnify the City from liability.

5.6.3 The City shall make final payment of all sums due the Contractor within thirty (30) days of the Engineer's execution of a final Certificate for Payment.

5.6.4 Acceptance of final payment shall constitute a waiver of all claims against the City by the Contractor except for those claims previously made in writing against the City by the Contractor, pending at the time of final payment, and identified in writing by the Contractor as unsettled at the time of its request for final payment.

5.6.5 Other than interest on retainage in excess of 5% under Paragraph 5.2.5, under no circumstances shall Contractor be entitled to receive interest on any payments or monies due Contractor by the City, whether the amount on which the interest may accrue is timely, late, wrongfully withheld, or an assessment of damages of any kind.

ARTICLE VI

THE CITY

**6.1 INFORMATION, SERVICES AND THINGS
REQUIRED FROM CITY**

6.1.1 The City shall furnish to the Contractor, at the time of executing this Contract, any and all written and tangible

material in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to the Contractor only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, the City does not represent, warrant, or guarantee its accuracy either in whole, in part, implicitly or explicitly, or at all, and shall have no liability therefor. The City shall also furnish surveys, legal limitations and utility locations (if known), and a legal description of the Project site.

6.1.2 Excluding permits and fees normally the responsibility of the Contractor, the City shall obtain all approvals, easements, and the like required for construction and shall pay for necessary assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

6.1.3 The City shall furnish the Contractor, free of charge, two copies of the Contract Documents for execution of the Work.

6.2 RIGHT TO STOP WORK

6.2.1 If the Contractor persistently fails or refuses to perform the Work in accordance with this Contract, if the Contractor fails to meet milestones set forth in approved construction schedules, if the City has sufficient reason to believe that the Contractor is not and will not complete the Project by the scheduled completion date, or if the best interests of the public health, safety or welfare so require, the City may order the Contractor to stop the Work, or any described portion thereof, until the cause for stoppage has been corrected, no longer exists, or the City orders that Work be resumed. In such event, the Contractor shall immediately obey such order.

6.3 CITY'S RIGHT TO PERFORM WORK

6.3.1 If the Contractor's Work is stopped by the City under Paragraph 6.2, and the Contractor fails within seven (7) days of such stoppage to provide adequate assurance to the City that the cause of such stoppage will be eliminated or corrected, then the City may, without prejudice to any other rights or remedies the City may have against the Contractor, proceed to carry out the subject Work. In such a situation, an appropriate Change Order shall be issued deducting from the Contract Price the cost of correcting the subject deficiencies, plus compensation for the Engineer's additional services and expenses necessitated thereby, if any. If the unpaid portion of the Contract Price is insufficient to cover the amount due the City, the Contractor shall pay the difference to the City.

ARTICLE VII

THE CONTRACTOR

7.1 MUST FOLLOW CONTRACT

7.1.1 The Contractor shall perform no part of the Work at any time without adequate Contract Documents or, as appropriate, approved Shop Drawings, Product Data or Samples for such portion of the Work. If the Contractor performs any of the Work knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Engineer, the Contractor shall bear responsibility for such performance and shall bear the cost of correction. The Contractor shall perform the Work strictly in accordance with this Contract

7.2 PROSECUTION OF WORK

7.3.1 The Contractor shall supervise and direct the Work using the Contractor's best skill, effort and attention. The Contractor shall be responsible to the City for any and all acts or omissions of the Contractor, its employees and others engaged in the Work on behalf of the Contractor.

7.3.2 The Contractor shall give adequate attention to the faithful prosecution of the Work and the timely completion of this Contract, with authority to determine the manner and means of performing such Work, so long as such methods insure timely completion and proper performance.

7.3.3 The Contractor shall exercise all appropriate means and measures to insure a safe and secure jobsite in order to avoid and prevent injury, damage or loss to persons or property.

7.3.4 The City will not interfere with the Contractor's manner and means of performing the Work. However, the City's insistence on strict compliance with the Contract shall not be regarded as an interference with the Contractor's manner and means. In the event that any part of the Work is not in strict compliance with the Contract, the Contractor is and shall be estopped from claiming any interference by the City or Engineer with the Contractor's manner and means of performing that part of the Work.

7.4 WARRANTY

7.4.1 The Contractor warrants to the City that all labor furnished to progress the Work under this Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality and new unless otherwise permitted by this Contract, and that the Work will be of good quality, free from faults and defects and in strict conformance with this Contract. All Work not conforming to these requirements may be considered defective. THE CONTRACTOR WARRANTS AND GUARANTIES THAT IT SHALL COMPLETE THE WORK AND ACHIEVE SUBSTANTIAL COMPLETION BY THE SCHEDULED COMPLETION DATE, STRICTLY IN ACCORDANCE WITH THIS CONTRACT. DEFECTIVE WORK OR MATERIALS SHALL BE FIXED, REPAIRED OR REPLACED FREE OF CHARGE OR COST TO THE CITY.

7.5 PERMITS; FEES; LICENSES

The Contractor shall obtain and pay for all permits, fees and licenses necessary and ordinary for the Work. The Contractor shall comply with all lawful requirements applicable to the Work and shall give and maintain any and all notices required by applicable law pertaining to the Work.

7.6 SUPERVISION

7.6.1 The Contractor shall employ and maintain at the Project site only competent supervisory personnel. Absent written instruction from the Contractor to the contrary, the superintendent shall be deemed the Contractor's authorized representative at the site and shall be authorized to receive and accept any and all communications from the City or the Engineer.

7.6.2 Key supervisory personnel assigned by the Contractor to this Project are as follows:

| NAME | FUNCTION |
|-------|----------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

So long as the individuals named above remain actively employed or retained by the Contractor, they shall perform the functions indicated next to their names unless the City agrees to the contrary in writing. In the event one or more individuals not listed above subsequently assume one or more of those functions listed above, the Contractor shall be bound by the provisions of this Subparagraph 7.6.2 as though such individuals had been listed above.

7.7 WORK SCHEDULE

7.7.1 At the pre-construction meeting, the Contractor shall submit to the City and the Engineer for their information, the Contractor's schedule for completing the Work (also referred to herein as the construction schedule). The Contractor's

schedule shall be revised no less frequently than monthly (unless the parties otherwise agree in writing) and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project. Each such revision shall be furnished to the City and the Engineer.

7.7.2 The Contractor's schedule for completing the Work and any revised schedules, shall demonstrate achievement of substantial completion by the scheduled completion date. Failure by the Contractor to strictly comply with the provisions of this Paragraph 7.7 shall constitute a default and a material breach of this Contract.

7.8 ON-SITE DRAWINGS

7.8.1 The Contractor shall continuously maintain at the site, for the benefit of the City and the Engineer, one record copy of this Contract marked to record on a current basis changes, selections and modifications made during construction. Additionally, the Contractor shall maintain at the site for the City and Engineer the approved Shop Drawings, Product Data, Samples and other similar required submittals. Upon final completion of the Work, all of these record documents shall be delivered to the City.

7.9 RECORD DRAWINGS/PLANS, AS-BUILT PLANS, SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

7.9.1 The Contractor shall submit, with each Application for Payment, As-Built plans for any and each part or portion of the Project that varies from the Engineer's plans and specifications and the Contract Documents.

7.9.2 Shop Drawings, Product Data, Samples and other submittals from the Contractor do not constitute Contract Documents. Their purpose is merely to demonstrate the manner in which the Contractor intends to implement the Work in conformance with information received from the Contract Documents.

7.9.3 The Contractor shall not perform any portion of the Work requiring submittal and review of Shop Drawings, Product Data or Samples unless and until such submittal shall have been approved by the Engineer. Approval by the Engineer, however, shall not be evidence that Work installed pursuant thereto conforms to the requirements of this Contract.

7.10 CLEANING THE SITE AND THE PROJECT

7.10.1 The Contractor shall keep the site reasonably clean during performance of the Work. The Contractor shall clean the site and the Project and remove all waste, rubbish, temporary structures, and other materials during construction and, upon completion of construction, shall clean the site and remove all such material together with all of the Contractor's property therefrom. Contractor shall dispose of all refuse at a landfill approved by the Texas Commission on Environmental Quality. The Contractor shall further restore all property damaged during the prosecution of the Work and shall leave the site in a clean and presentable condition. No additional payment shall be made by the City for this work, the compensation having been considered and included in the contract price.

7.11 ACCESS TO WORK AND INSPECTIONS

7.11.1 The City and the Engineer shall have access to the Work at all times from commencement of the Work through final completion. The Contractor shall take whatever steps necessary to provide access when requested. When reasonably requested by the City or the Engineer, the Contractor shall perform or cause to be performed such testing as may be necessary or appropriate to insure suitability of the jobsite or the Work's compliance with the Contract requirements.

7.12 INDEMNITY AND DISCLAIMER

7.12.1 CITY SHALL NOT BE LIABLE OR RESPONSIBLE FOR, AND SHALL BE INDEMNIFIED, DEFENDED, HELD HARMLESS AND RELEASED BY CONTRACTOR FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, LOSSES, DAMAGES, CLAIMS, OR LIABILITY OF ANY CHARACTER, TYPE, OR DESCRIPTION, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY OR DEATH TO ANY PERSON, INJURY OR LOSS TO ANY PROPERTY, OR ECONOMIC LOSS, RECEIVED OR SUSTAINED BY ANY

PERSON OR PERSONS, INCLUDING THE CONTRACTOR, OR PROPERTY, DIRECTLY OR INDIRECTLY ARISING OUT OF, OR OCCASIONED BY THE PERFORMANCE OF CONTRACTOR UNDER THIS CONTRACT, INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE OR IN PART FROM THE NEGLIGENCE OF CITY, WITHOUT WAIVING THE CITY'S GOVERNMENTAL, SOVEREIGN OR OTHER IMMUNITIES OR DEFENSES AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. IT IS THE EXPRESS INTENT OF THE PARTIES TO THIS CONTRACT THAT THE INDEMNITY PROVIDED FOR HEREIN IS AN INDEMNITY EXTENDED BY CONTRACTOR TO INDEMNIFY AND PROTECT CITY FROM THE CONSEQUENCES OF THE CONTRACTOR'S AS WELL AS THE CITY'S NEGLIGENCE, WHETHER SUCH NEGLIGENCE IS THE SOLE OR PARTIAL CAUSE OF ANY SUCH INJURY, DEATH, OR DAMAGE.

The provisions of this indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

7.12.2 The Contractor will secure and maintain contractual liability insurance to cover this indemnification agreement that will be primary and non-contributory as to any insurance maintained by the City for its own benefit, including self-insurance. In addition, Contractor shall obtain and file with City a standard form Certificate of Insurance evidencing the required coverage.

7.12.3 In claims against any person or entity indemnified under this Paragraph 7.12 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 7.12 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

7.13 NONDISCRIMINATION

7.13.1 The Contractor shall not discriminate in any way against any person, employee or job applicant on the basis of race, color, creed, national original, religion, age, sex, or disability where reasonable accommodations can be effected to enable the person to perform the essential functions of the job. The Contractor shall further insure that the foregoing nondiscrimination requirement shall be made a part and requirement of each subcontract on this Project.

7.14 PREVAILING WAGE RATES

7.14.1 The Contractor shall comply in all respects with all requirements imposed by any laws, ordinances or resolutions applicable to the Project with regard to the minimum prevailing wage rates for all classes of employees, laborers, subcontractors, mechanics, workmen and persons furnishing labor and services to the Project. The City has adopted a Prevailing Wage Rate Schedule, available to the Contractor by request (or attached to this contract as a part of the exhibits), which specifies the classes and wage rates to be paid to all persons. The Contractor shall pay not less than the minimum wage rates established thereby for each class, craft or type of labor, workman, or mechanic employed in the execution of this Contract. The failure of the Contractor to comply with this requirement shall result in the forfeiture to the City of a sum of not less than Sixty Dollars (\$60.00) for each person per day, or portion thereof, that such person is paid less than the prevailing rate. Upon request by the City, Contractor shall make available for inspection and copying its books and records, including but not limited to its payroll records, account information and other documents as may be required by the City to insure compliance with this provision.

7.15 JOB SITE SAFETY PRECAUTIONS

7.15.1 The Contractor shall at all times exercise reasonable precautions for the safety of its employees, laborers, subcontractors, mechanics, workmen and others on and near the jobsite and shall comply with all laws, ordinances, regulations, and standards of federal, state and local safety laws and regulations. The Contractor shall provide such machinery

guards, safe walk-ways, ladders, bridges, and other safety devices as may be necessary or appropriate to insure a safe and secure jobsite and shall require its subcontractors to comply with this requirement. The Contractor shall immediately comply with any and all safety requirements imposed by the Engineer during the progress of the Work.

7.16 WARNING DEVICES AND BARRICADES

7.16.1 The Contractor shall furnish and maintain such warning devices, barricades, lights, signs, pavement markings, and other devices as may be necessary or appropriate or required by the Engineer to protect persons or property in, near or adjacent to the jobsite. No separate compensation shall be paid to the Contractor for such measures. Where the Work is being conducted in, upon or near streets, alleys, sidewalks, or other rights-of-way, the Contractor shall insure the placement, maintenance and operation of any and all such warning devices as may be required by the City and shall do so until no longer required by the City. Such devices shall be in compliance with and conform to the manual and specifications for the uniform system of traffic control devices adopted by the Texas Department of Transportation.

7.17 PROTECTION OF UTILITIES AND OTHER CONTRACTORS

7.17.1 The Contractor shall use best efforts to leave undisturbed and uninterrupted all utilities and utility services provided to the jobsite or which presently exists at, above or beneath the location where the Work is to be performed. In the event that any utility or utility service is disturbed or damaged during the progress of the Work, the Contractor shall forthwith repair, remedy or restore the utility at Contractor’s sole expense. The Contractor shall coordinate any utility conflicts with the owner of the utility and no extension of time will be requested or given if adequate coordination is not provided by Contractor.

7.17.2 The Contractor understands and acknowledges that other contractors of the City or of other entities may be present at the jobsite performing other work unrelated to the Project. The Contractor shall use best efforts to work around other contractors without impeding the work of others while still adhering to the scheduled completion date. In the event that the Contractor’s work is or may be delayed by any other person, the Contractor shall immediately give notice thereof to the Engineer and shall request a written Change Order in accordance with the procedures set forth by this Contract. The Contractor’s failure to provide such notice and to request such Change Order shall constitute a waiver of any and all claims associated therewith.

ARTICLE VIII

CONTRACT ADMINISTRATION

8.1 THE ENGINEER

8.1.1 When used in this Contract the term “Engineer” does not necessarily denote a duly licensed, trained or certified engineer; as used herein, the term shall be used interchangeably and shall mean a designated Engineer, Engineer, or Contract Administrator (who may not be an architect or engineer) for the City, said person to be designated or re-designated by the City prior to or at any time during the Work hereunder. The Engineer may be an employee of the City or may be retained by the City as an independent contractor but, in either event, the Engineer’s duties and authority shall be as set forth hereinafter. The Contractor understands and agrees that it shall abide by the decisions and instructions of the Engineer notwithstanding the contractual relationship between the City and Engineer, the title of Contract Administrator, or the fact that the Engineer is an employee of the City.

In the event the City should find it necessary or convenient to replace the Engineer, the City shall retain a replacement Engineer and the status of the replacement Engineer shall be that of the former Engineer.

8.2 ENGINEER'S ADMINISTRATION

8.2.1 The Engineer, unless otherwise directed by the City in writing, will perform those duties and discharge those responsibilities allocated to the Engineer as set forth in this Contract. The Engineer shall be the City's representative from the effective date of this Contract until final payment has been made.

8.2.2 The City and the Contractor shall communicate with each other in the first instance through the Engineer.

8.2.3 The Engineer shall be the initial interpreter of the requirements of the drawings and specifications and the judge of the performance thereunder by the Contractor. The Engineer shall render written or graphic interpretations necessary for the proper execution or progress of the Work with reasonable promptness on request of the Contractor.

8.2.4 The Engineer will review the Contractor's Applications for Payment and will certify to the City for payment to the Contractor, those amounts then due the Contractor as provided in this Contract.

8.2.5 The Engineer shall have authority to reject Work which is defective or does not conform to the requirements of this Contract. If the Engineer deems it necessary or advisable, the Engineer shall have authority to require additional inspection or testing of the Work for compliance with Contract requirements.

8.2.6 The Engineer will review and approve, or take other appropriate action as necessary, concerning the Contractor's submittals including Shop Drawings, Product Data and Samples. Such review, approval or other action shall be for the sole purpose of determining conformance with the design concept and information given through the Contract Documents.

8.2.7 The Engineer will prepare Change Orders and may authorize minor changes in the Work by Field Order as provided elsewhere herein.

8.2.8 The Engineer shall, upon written request from the Contractor, conduct inspections to determine the date of Substantial Completion and the date of final completion, will receive and forward to the City for the City's review and records, written warranties and related documents required by this Contract and will issue a final Certificate for Payment upon compliance with the requirements of this Contract.

8.2.9 The Engineer's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of this Contract.

8.3 CLAIMS BY THE CONTRACTOR

8.3.1 The Engineer shall determine all claims and matters in dispute between the Contractor and City with regard to the execution, progress, or sufficiency of the Work or the interpretation of the Contract Documents, including but not limited to the plans and specifications. Any dispute shall be submitted in writing to the Engineer within seven (7) days of the event or occurrence or the first appearance of the condition giving rise to the claim or dispute and the Engineer shall render a written decision within a reasonable time thereafter. The Engineer's decisions shall be final and binding on the parties. In the event that either party objects to the Engineer's determination as to any submitted dispute, that party shall submit a written objection to the Engineer and the opposing party within ten (10) days of receipt of the Engineer's written determination in order to preserve the objection. Failure to so object shall constitute a waiver of the objection for all purposes.

8.3.2 Pending final resolution of any claim of the Contractor, the Contractor shall diligently proceed with performance of this Contract and the City shall continue to make payments to the Contractor in accordance with this Contract.

8.3.3 CLAIMS FOR CONCEALED, LATENT OR UNKNOWN CONDITIONS - The Contractor expressly represents that it has been provided with an adequate opportunity to inspect the Project site and thoroughly review the Contract Documents and plans and specifications prior to submission of its bid and the City's acceptance of the bid. Subject to the conditions hereof, Contractor assumes full responsibility and risk for any concealed, latent or unknown condition which may affect the Work. No claims for extra work or additional compensation shall be made by Contractor in connection with concealed, latent or unknown conditions except as expressly provided herein. Should concealed, latent or unknown conditions encountered in the performance of the Work (a) below the surface of the ground or (b) in an existing structure be at variance with the conditions indicated by this Contract, or should unknown conditions of an unusual nature differing materially from those ordinarily encountered in the area and generally recognized as inherent in Work of the character provided for in this Contract, be encountered, the Contract Price shall be equitably adjusted by Change Order upon the written notice and claim by either party made within seven (7) days after the first observance of the condition. As a condition precedent to the City having any liability to the Contractor for concealed or unknown conditions, the Contractor must give the City and the Engineer written notice of, and an opportunity to observe, the condition prior to disturbing it. The failure by the Contractor to make the written notice

and claim as provided in this Subparagraph shall constitute a waiver by the Contractor of any claim arising out of or relating to such concealed, latent or unknown condition and the Contractor thereby assumes all risks and additional costs associated therewith.

8.4 EXTRA WORK

8.4.1 The Contractor shall not claim, request or demand any sum from the City for Extra Work or for additional costs, and hereby waives all such claims, requests and demands and any right to assert same, unless the conditions of this subparagraph are strictly complied with. "Extra Work" is defined herein to mean any labor, service, materials, equipment, supplies or charges that are directly or indirectly related to the Work, the Project or the Project site, that is not necessarily or fairly required or implied by the Contract Documents.

8.4.2 The parties acknowledge and agree that there shall be no payment made by the City to the Contractor without a written agreement (either a separate contract or a written Change Order) signed by the parties. Should the Contractor perform Extra Work or be requested to perform Extra Work by the Engineer or City, it shall be the Contractor's obligation and duty to first apply for and obtain a written Change Order, approved by the Engineer and executed by the City. The Contractor's failure to obtain a written, signed Change Order prior to commencement of Extra Work shall constitute a complete and final waiver of any right for compensation for the Extra Work.

8.5 CLAIMS FOR ADDITIONAL COSTS OR TIME; CONTRACT PRICE INCREASE

8.5.1 If the Contractor wishes to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the City therefor, the Contractor shall give the Engineer written notice of such claim within seven (7) days after the occurrence of the event, or the first appearance of the condition, giving rise to such claim. Such notice shall be given by the Contractor before proceeding to execute any additional or changed Work. The failure by the Contractor to give such notice and to give such notice prior to executing the Work shall constitute a waiver of any right to or claim for additional compensation.

8.5.2 In connection with any claim by the Contractor against the City for compensation in excess of the Contract Price, any liability of the City for the Contractor's costs shall be strictly limited to direct costs incurred by the Contractor and shall in no event include indirect costs or consequential damages of the Contractor. The City shall not be liable to the Contractor for claims of third parties, including Subcontractors. The City shall not be liable to the Contractor for any claims based upon delay to the Contractor for any reason whatsoever including any act or neglect on the part of the City.

8.5.3 If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the City or someone acting in the City's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipated, fire or any causes beyond the Contractor's control, then the date for achieving Substantial Completion of the Work shall be extended upon the written notice and claim of the Contractor to the City and the Engineer, for such reasonable time as the Engineer may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than seven (7) days after the occurrence of the event or the first appearance of the condition giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Project. In the event the delay to the Contractor is a continuing one, only one notice and claim for additional time shall be necessary. If the Contractor fails to make such claim as required in this Subparagraph, any claim for an extension of time shall be waived. The procedures and remedies provided by this provision shall be the sole remedy of Contractor and Contractor shall not assert nor be entitled to any additional delays or damages associated therewith.

8.6 FIELD ORDERS

8.6.1 The Engineer shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and not inconsistent with the intent of the Contract. Such changes shall be effected by Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.

8.7 MEDIATION

8.7.1 In the event that a dispute arises under the terms of this Contract, following an adverse determination by the Engineer and proper preservation of the issue as required herein, the parties agree to submit to mediation. In such event, the parties shall agree to a designated person to serve as mediator and each party shall be responsible for payment of one-half of the total mediation fees. The parties shall submit the dispute to mediation as soon as practical and in no event later than one (1) year after the Engineer's written decision on the matter. At least one designated representative of each party must attend and participate in good faith in an effort to resolve the matters in dispute.

8.7.2 In no event shall the foregoing provision justify or authorize any delay in the progress of the Work; the parties shall abide by the decision of the Engineer in accomplishing the timely completion of the Project.

**ARTICLE IX
SUBCONTRACTORS**

9.1 DEFINITION

9.1.1 A Subcontractor is a person or entity that has a direct contract with the Contractor to perform a portion of the Work. No Subcontractor shall be in privity with the City.

9.2 AWARD OF SUBCONTRACTS

9.2.1 Upon execution of the Contract, the Contractor shall furnish the City, in writing, the names of persons or entities proposed by the Contractor to act as a Subcontractor on the Project. The City shall promptly reply to the Contractor, in writing, stating any objections the City may have to such proposed Subcontractor. The Contractor shall not enter into a subcontract with a proposed Subcontractor with reference to whom the City has made timely objection. The Contractor shall not be required to subcontract with any party to whom the Contractor has objection.

9.2.2 All subcontracts shall afford the Contractor rights against the Subcontractor which correspond to those rights afforded to the City against the Contractor herein, including those rights afforded to the City by Subparagraph 12.2.1 below. All subcontracts shall incorporate by reference the provisions hereof and shall provide that no claims, causes or demands shall be made by any Subcontractor against the City.

9.2.3 The Contractor shall indemnify, defend and hold harmless the City from and against any and all claims, demands, causes of action, damage, and liability asserted or made against the City by or on behalf of any Subcontractor.

**ARTICLE X
CHANGES IN THE WORK**

10.1 CHANGES PERMITTED

10.1.1 Changes in the Work within the general scope of this Contract, consisting of additions, deletions, revisions, or any combination thereof, may be ordered without invalidating this Contract, by Change Order or by Field Order.

10.1.2 Changes in the Work shall be performed under applicable provisions of this Contract and the Contractor shall proceed promptly with such changes.

10.2 CHANGE ORDER DEFINED

10.2.1 Change Order shall mean a written order to the Contractor executed by the City and the Engineer, issued after execution of this Contract, authorizing and directing a change in the Work or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The Contract Price and the Contract Time may be changed only by written Change Order.

10.3 CHANGES IN THE CONTRACT PRICE

10.3.1 Any change in the Contract Price resulting from a Change Order shall be determined as follows: (a) by mutual agreement between the City and the Contractor as evidenced by (1) the change in the Contract Price being set forth in the Change Order, (2) such change in the Contract Price, together with any conditions or requirements related thereto, being initialed by both parties, and (3) the Contractor's execution of the Change Order, or (b) if no mutual agreement occurs between the City and the Contractor, then, as provided in Subparagraph 10.3.2 below.

10.3.2 If no mutual agreement occurs between the City and the Contractor as contemplated in Subparagraph 10.3.1 above, the change in the Contract Price, if any, shall then be determined by the Engineer on the basis of the reasonable expenditures or savings of those performing, deleting or revising the Work attributable to the change, including, in the case of an increase or decrease in the Contract Price, a reasonable allowance for direct job site overhead and profit. In such case, the Contractor shall present, in such form and with such content as the City or the Engineer require, an itemized accounting of such expenditures or savings, plus appropriate supporting data for inclusion in a Change Order. Reasonable expenditures or savings shall be limited to the following: reasonable costs of materials, supplies, or equipment including delivery costs, reasonable costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance, reasonable rental costs of machinery and equipment exclusive of hand tools whether rented from the Contractor or others, reasonable costs of premiums for all bonds and insurance, permit fees, and sales, use or other taxes related to the Work, and reasonable cost of direct supervision and jobsite field office overhead directly attributable to the change. In no event shall any expenditure or savings associated with the Contractor's home office or other non-jobsite overhead expense be included in any change in the Contract Price. Pending final determination of reasonable expenditures or savings to the City, payments on account shall be made to the Contractor on the Engineer's Certificate for Payment.

10.3.3 If unit prices are provided in the Contract, and if the quantities contemplated are so changed in a proposed Change Order that application of such unit prices to the quantities of Work proposed will cause substantial inequity to the City or to the Contractor, the applicable unit prices shall be equitably adjusted.

10.4 MINOR CHANGES

10.4.1 The Engineer shall have authority to order minor changes in the Work not involving a change in the Contract Price or an extension of the Contract Time and not inconsistent with the intent of this Contract. Such minor changes shall be made by written Field Order, and shall be binding upon the City and the Contractor. The Contractor shall promptly carry out such written Field Orders.

10.5 EFFECT OF EXECUTED CHANGE ORDER

10.5.1 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work, this Contract as thus amended, the Contract Price and the Contract Time. The Contractor, by executing the Change Order, waives and forever releases any claim against the City for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.

10.6 NOTICE TO SURETY; CONSENT

10.6.1 The Contractor shall notify and obtain the consent and approval of the Contractor's surety with reference to all Change Orders if such notice, consent or approval are required by the Contractor's surety or by law. The Contractor's execution of the Change Order shall constitute the Contractor's warranty to the City that the surety has been notified of and

consents to, such Change Order and the surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.

ARTICLE XI

UNCOVERING AND CORRECTING WORK

11.1 UNCOVERING WORK

11.1.1 If any of the Work is covered contrary to the Engineer's request or to any provisions of this Contract, it shall, if required by the Engineer or the City, be uncovered for the Engineer's inspection and shall be properly replaced at the Contractor's expense without change in the Contract Time or Contract Price.

11.1.2 If any of the Work is covered in a manner consistent with the Engineer's request or the provisions of this Contract, it shall, if required by the Engineer or City, be uncovered for the Engineer's inspection. If such Work conforms strictly to this Contract, costs of uncovering and proper replacement shall by Change Order be charged to the City. If such Work does not strictly conform to this Contract, the Contractor shall pay the costs of uncovering and proper replacement.

11.2 CORRECTING WORK

11.2.1 The Contractor shall immediately proceed to correct Work rejected by the Engineer as defective or failing to conform to this Contract. The Contractor shall pay all costs and expenses associated with correcting such rejected Work, including any additional testing and inspections, and reimbursement to the City for the Engineer's services and expenses made necessary thereby.

11.2.2 If within four (4) years after Substantial Completion of the Work any of the Work is found to be defective or not in accordance with this Contract, the Contractor shall correct it promptly upon receipt of written notice from the City. This obligation shall survive final payment by the City and termination of this Contract. With respect to Work first performed and completed after Substantial Completion, this four year obligation to specifically correct defective and nonconforming Work shall be extended by the period of time which elapses between Substantial Completion and completion of the subject Work.

11.2.3 Nothing contained in this Paragraph 11.2 shall establish any period of limitation with respect to other obligations which the Contractor has under this Contract. Establishment of the four year time period in Subparagraph 11.2.2 relates only to the duty of the Contractor to specifically correct the Work.

11.3 CITY MAY ACCEPT DEFECTIVE OR NONCONFORMING WORK

11.3.1 If the City chooses to accept defective or nonconforming Work, the City may do so at its sole discretion. In such event, the Contract Price shall be reduced by the greater of (a) the reasonable cost of removing and correcting the defective or nonconforming Work, and (b) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming Work. If the remaining portion of the unpaid Contract Price, if any, is insufficient to compensate the City for its acceptance of defective or nonconforming Work, the Contractor shall, upon written demand from the City, pay the City such remaining compensation for accepting defective or nonconforming Work.

ARTICLE XII

CONTRACT DEFAULT AND TERMINATION

12.1 TERMINATION BY THE CONTRACTOR

12.1.1 If the Work is stopped for a period of ninety (90) days by an order of any court or other public authority, or as a result of an act of the Government, through no fault of the Contractor or any person or entity working directly or indirectly for the Contractor, the Contractor may, upon fifteen (15) days' written notice to the City and the Engineer, terminate performance under this Contract and recover from the City payment for the actual reasonable expenditures of the Contractor (as limited in Subparagraph 10.3.2 above) for all Work executed and for materials, equipment, tools, construction equipment and machinery actually purchased or rented solely for the Work, less any salvage value of any such items.

12.1.2 If the City shall persistently or repeatedly fail to perform any material obligation to the Contractor for a period of fifteen (15) days after receiving written notice from the Contractor of its intent to terminate hereunder, the City shall have fifteen (15) days to remedy its failure and if not so cured, the Contractor may terminate performance under this Contract by written notice to the Engineer and the City. In such event, the Contractor shall be entitled to recover from the City as though the City had terminated the Contractor's performance under this Contract for convenience pursuant to Subparagraph 12.2.1 hereunder.

12.2 TERMINATION BY THE CITY

12.2.1 FOR CONVENIENCE

12.2.1.1 The City may for any reason whatsoever terminate performance under this Contract by the Contractor for convenience. The City shall give written notice of such termination to the Contractor specifying when termination becomes effective.

12.2.1.2 The Contractor shall incur no further obligations in connection with the Work and the Contractor shall stop Work when such termination becomes effective. The Contractor shall also terminate outstanding orders and subcontracts. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The City may direct the Contractor to assign the Contractor's right, title and interest under terminated orders or subcontracts to the City or its designee.

12.2.1.3 The Contractor shall transfer title and deliver to the City such completed or partially completed Work and materials, equipment, parts, fixtures, information and Contract rights as the Contractor has.

12.2.1.4 (a) The Contractor shall submit a termination claim to the City and the Engineer specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the Engineer. If the Contractor fails to file a termination claim within one (1) year from the effective date of termination, the City shall pay the Contractor, an amount derived in accordance with subparagraph (c) below.

(b) The City and the Contractor may agree to the compensation, if any, due to the Contractor hereunder.

(c) Absent agreement to the amount due to the Contractor, the City shall pay the Contractor the following amounts:

(i) Contract prices for labor, materials, equipment and other services accepted under this Contract;

(ii) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the Work, and in terminating the Contractor's performance, plus a fair and reasonable allowance for overhead and profit thereon (such profit shall not include anticipated profit or consequential damages), provided however, that if it appears that the Contractor would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;

(iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph 12.2.1.2 of this Paragraph. These costs shall not include amounts paid in accordance with other provisions hereof.

12.2.1.5 The total sum to be paid the Contractor under this Subparagraph 12.2.1 shall not exceed the total Contract Price, as properly by amounts withheld by the City and reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

12.2.2 FOR CAUSE

12.2.2.1 The following constitute grounds for termination of this Contract by the City:

- (a) the Contractor's failure or refusal to prosecute the Work in a timely manner;
- (b) The Contractor abandons the jobsite and fails to resume work within five (5) days of written notice thereof by the City;
- (c) the Contractor fails to meet milestones or comply with approved construction schedules;
- (d) the Contractor fails to grant or allow access to the jobsite by the City or Engineer;
- (e) the Contractor fails to supply enough properly skilled workers, supervisory personnel or proper equipment or materials;
- (f) the Contractor fails to make prompt payment to Subcontractors or for materials or labor;
- (g) the Contractor persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction; or,
- (h) the Contractor is otherwise guilty of a violation of a material provision of this Contract.

In the event of the occurrence of any one or more of the above events, the City may by written notice to the Contractor, without prejudice to any other right or remedy, terminate the employment of the Contractor, exclude the Contractor from the job site, and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever methods it may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished.

12.2.2.2 If the unpaid balance of the Contract Price does not exceed the cost of finishing the work, including compensation for the Engineer's additional services and expenses made necessary thereby, such difference shall be paid by the Contractor to the City. This obligation for payment shall survive the termination of the Contract.

12.2.2.3 In the event the employment of the Contractor is terminated by the City for cause pursuant to Subparagraph 12.2.2 and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under Subparagraph 12.2.1 and the provisions of Subparagraph 12.2.1 shall apply.

12.3 USE OF THIRD-PARTY OVERSIGHT OR CONSTRUCTION MANAGER

12.3.1 Should the City allow the Contractor to continue its performance of Work notwithstanding an event of default specified in Subparagraph 12.2.2.1, or should there be an imminent potential of default, the City, at its sole option and within its sole discretion, may retain a third-party construction manager to document the events of default and oversee further progress of the Work. The use of a third-party construction manager shall not prevent the City from declaring the Contractor to be in default and the City may, at its sole option and within its sole discretion, terminate this Contract at any time. Should the City retain a third-party construction manager, the costs thereof shall be withheld from any amounts due Contractor upon termination. The City's exercise of this option shall be without prejudice to any other right or remedy available to the City by law or under this Contract.

ARTICLE XIII
INSURANCE

13.1 CONTRACTOR SHALL MAINTAIN INSURANCE

13.1.1 The Contractor at its own expense shall purchase, maintain and keep in force during the life of this contract, adequate insurance that will protect the Contractor and/or any Additional Insured from claims which may arise out of or result from operations under this Contract. The insurance required shall provide adequate protections from all claims, whether such operations be by the Contractor or by any Additional Insured or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone whose acts of any of them may be liable and from any special hazards, such as blasting, which may be encountered in the performance of this contract in the amounts as shown below in Paragraph 13.2.1.

13.1.2 The Contractor shall not commence work on any Contract in the City until the Contractor has obtained all the insurance required under this paragraph and such insurance has been approved by the City.

13.2 TYPES AND AMOUNTS OF CONTRACTOR’S INSURANCE

13.2.1. The Contractor shall furnish and maintain during the life of the contract adequate Worker's Compensation and Commercial General Liability (Public) Insurance in such amounts as follows:

| <u>Type of Insurance</u> | <u>Amount</u> |
|--|--|
| Worker's Compensation | As set forth in the Worker's Compensation Act. |
| Commercial General | \$1,000,000 Each Accident/Occurrence. |
| Liability (Public) | \$1,000,000 Aggregate \$1,000,000 Products & Completed Operations Aggregate. |
| City’s Protective Liability Insurance | \$600,000 per occurrence \$1,000,000 aggregate |
| Excess/Umbrella Liability | \$1,000,000 per occurrence w/drop down coverage |
| Endorsement CG 2503 | Amendment Aggregate Limit of Insurance per Project or City's and Contractor's Protective Liability Insurance for the Project. |
| Automobile Liability | \$500,000 Combined single limit per occurrence. |

13.3 ADDITIONAL INSURED

13.3.1 The City and the Engineer shall be named as an additional insured on the Commercial General Liability (Public), City’s Protective Liability, and Excess/Umbrella Liability Insurance Policies furnished by the Contractor.

13.4 WRITTEN NOTIFICATION

13.4.1 Each insurance policy shall contain a provision requiring that thirty (30) days prior to expiration, cancellation, non-renewal or any material change in coverage, a notice there of shall be given by certified mail to the City of Lucas, Attention: Stanton Foerster, 665 Country Club Road, Lucas, TX 75002-7561.

13.5 PREMIUMS AND ASSESSMENTS; SUBROGATION

13.5.1 Companies issuing the insurance policies shall have no recourse against the City for payment of any premiums or assessments for any deductibles which are at the sole responsibility and risk of the Contractor. Insurance Companies shall have no right of subrogation against the City or the Engineer.

13.6 CERTIFICATE OF INSURANCE

13.6.1 Proof that the insurance is in force shall be furnished to the City on Standard Certificate of Insurance Forms. In the event any insurance policy shown on the Certificate of Insurance has an expiration date that is prior to the completion and final acceptance of the project by the City, the contractor shall furnish the City proof of identical continued coverage no later than thirty(30) days prior to the expiration date shown on the Certificate of Insurance.

13.7 PRIMARY COVERAGE

13.7.1 The coverages provided herein shall be primary and noncontributory with any other insurance maintained by the City, for its benefit, including self-insurance.

13.8 WORKER'S COMPENSATION INSURANCE COVERAGE

13.8.1 The Contractor shall:

- (1) provide coverage for its employees providing services on a project, for the duration of the project based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements;
- (2) provide a certificate of coverage showing workers' compensation coverage to the governmental entity prior to beginning work on the project;
- (3) provide the governmental entity prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project;
- (4) obtain from each person providing services on a project, and provide to the governmental entity:
 - (A) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
 - (B) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
- (5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
- (6) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project;
- (7) post a notice on each project site informing all persons providing services on the project that they are required to be covered, and stating how a person may verify current coverage and report failure to provide coverage. This notice shall comply with the requirements established by the Division of Workers Compensation of the Texas Department of Insurance, or its successor agency.

and

- (8) contractually require each person with whom it contracts to provide services on a project, to:
 - (A) provide coverage based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements for all of its employees providing services on the project, for the duration of the project;
 - (B) provide a certificate of coverage to the contractor prior to that person beginning work on the project;
 - (C) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (D) obtain from each other person with whom it contracts, and provide to the Contractor:
 - (i) a certificate of coverage, prior to the other person beginning work on the project; and
 - (ii) prior to the end of the coverage period, a new certificate of coverage showing extension of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (E) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
 - (F) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
 - (G) contractually require each other person with whom it contracts, to perform as required by sub-paragraphs (A) - (G) of this paragraph, with the certificate of coverage to be provided to the person for whom they are providing services.

ARTICLE XIV

MISCELLANEOUS

14.1 LAWS AND ORDINANCES

14.1.1 The Contractor shall at all times and in all respects observe and comply with all federal, state and local laws, ordinances, and regulations applicable to the Project and Work. The Contractor shall further insure that all Subcontractors observe and comply with said laws, ordinances and regulations.

14.2 GOVERNING LAW

14.2.1 The Contract shall be governed by the laws of the State of Texas. Exclusive venue for any causes of action arising under the terms or provisions of this Contract or the Work to be performed hereunder shall be in the state courts of Collin County, Texas.

14.3 SUCCESSORS AND ASSIGNS

14.3.1 The City and Contractor bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Contract. The Contractor shall not assign this Contract without written consent of the City.

14.4 SURETY BONDS

14.4.1 The Contractor shall furnish separate performance and payment bonds to the City, according to the requirements set out in the bid documents and state statutes to guaranty full and faithful performance of the Contract by the Contractor and the full and final payment of all persons supplying labor or materials to the Project. Each bond required by the bid documents or state statute shall set forth a penal sum in an amount not less than the full Contract Price. Each bond furnished by the Contractor shall incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in such bonds. In the event the Contract Price is adjusted by Change Order executed by the Contractor, the penal sum of both the performance bond and the payment bond shall be deemed increased by like amount. The performance and payment bonds furnished by the Contractor shall be in form suitable to the City and shall be executed by a surety, or sureties, reasonably suitable to the City and authorized to do business in the State of Texas.

14.4.2 If the Contract Price exceeds the sum of \$25,000.00, the Contractor, upon execution of the Contract and prior to commencement of the Work, shall furnish to the City a two-year maintenance bond in the amount of one hundred percent (100%) of the Contract Price covering the guaranty and maintenance prescribed herein, written by an approved surety authorized and duly licensed to conduct business in the State of Texas. The cost of said maintenance bond shall be included in the Contractor's unit bid prices and shall be paid by the Contractor.

14.5 FORCE MAJEURE

14.5.1 As used herein, "force majeure" means an incident, situation, or act of a third party that is beyond a party's reasonable control such as an act of God, an act of the public enemy, strikes or other labor disturbances (other than strikes within such party's own labor force), hurricanes, earthquakes, fires, floods, epidemics, embargoes, war, and riots. The Contractor will not be liable or responsible for its failure to perform any obligation under this Contract because of an event of Force Majeure, provided, however, that the Contractor submits notice thereof to the City and Engineer within seven (7) days of such an event, obtains a written Change Order, signed by all parties, that allows an extension of the scheduled completion date, and identifies the specific causes and number of days in the Statement of Delay submitted with the next ensuing Application for Payment. Notwithstanding, if the Contractor's failure to perform continues for more than twenty (20) calendar days, the City may at its option terminate this Agreement immediately and pursue such rights and remedies as may be allowed under Subparagraph 12.2.2 of this Contract.

14.6 IMMUNITIES; DEFENSES

14.6.1 Nothing in this Contract shall be deemed to waive any immunity, sovereign, governmental, official, qualified or otherwise, from liability or suit, which the City may have or assert, except as may be provided by law, all such immunities being hereby expressly retained.

14.7 NO RIGHTS IN THIRD PARTIES

14.7.1 The indemnification provisions of this Contract and the rights and remedies afforded herein are solely for the benefit of the parties to this Contract. Nothing in this Contract is intended nor shall be construed to grant, create or confer any right, benefit, interest or cause of action in any person not a party to this Contract, or to the public in general.

14.8 SEVERABILITY

14.8.1 The provisions of this Contract are herein declared to be severable; in the event that any term, provision or part hereof is determined to be invalid, void or unenforceable, such determination shall not affect the validity or enforceability of the remaining terms, provisions and parts, and this Contract shall be read as if the invalid, void or unenforceable portion had not been included herein.

14.9 AMENDMENTS; NO WAIVER

14.9.1 This Contract may be amended by the parties only by a written agreement duly executed by both parties. The failure of the City to object to any nonperformance or nonconforming work or to enforce any provision hereof shall in no event be regarded as or construed to be a waiver, release or modification of any term or provision in this Contract, nor shall such

failure to object or enforce estop the City from insisting on strict compliance with this Contract or from recovering damages, costs or expenses arising as a result of such nonperformance or nonconforming work.

14.10 NOTICES

14.10.1 All notices required by this Contract shall be in writing and presumed received when deposited in the mail properly addressed to the other party or Engineer at the address set forth herein or set forth in a written designation of change of address delivered to all parties and the Engineer.

EXECUTED in single or multiple originals, this _____ day of _____, 2017.

CITY OF LUCAS, TEXAS

CONTRACTOR:

R&M Services Solutions

City Manager

(Signature)

(Type/Print Name and Title)

ATTEST:

(Street Address)

City Secretary (Rev. 03/14)

(City/State/Zip)

APPROVED TO FORM

City Attorney



City of Lucas

City Council Agenda Request

October 19, 2017

Item No. 04

Requester: Public Works Director/City Engineer Stanton Foerster

Agenda Item:

Consider giving direction to the City Manager regarding the future use of the McGarity Road right-of-way between 2190 McGarity Lane and Ingram Lane.

Background Information:

Along the northern edge of Travis Ranch Estates and a portion of the southern edge of Claremont Springs Addition Phase II, there is a 30-foot stipe of land dedicated to Collin County (19860409000201800) and a 15-foot strip right-of-way dedicated to the City of Lucas for the public use forever (19000101000979750).

The Collin County Thoroughfare plan shows McGarity Lane as a four lane, divided roadway from Angel Parkway to Ingram Lane.

The Claremont Springs HOA has contacted city staff about the possibility of selling the 45-foot strip of right-of-way and easement back to the adjacent property owners out of fear that Collin County will widen McGarity Lane.

Attachments/Supporting Documentation:

1. Travis Ranch Estates Plat
2. McGarity Easement

Budget/Financial Impact:

NA

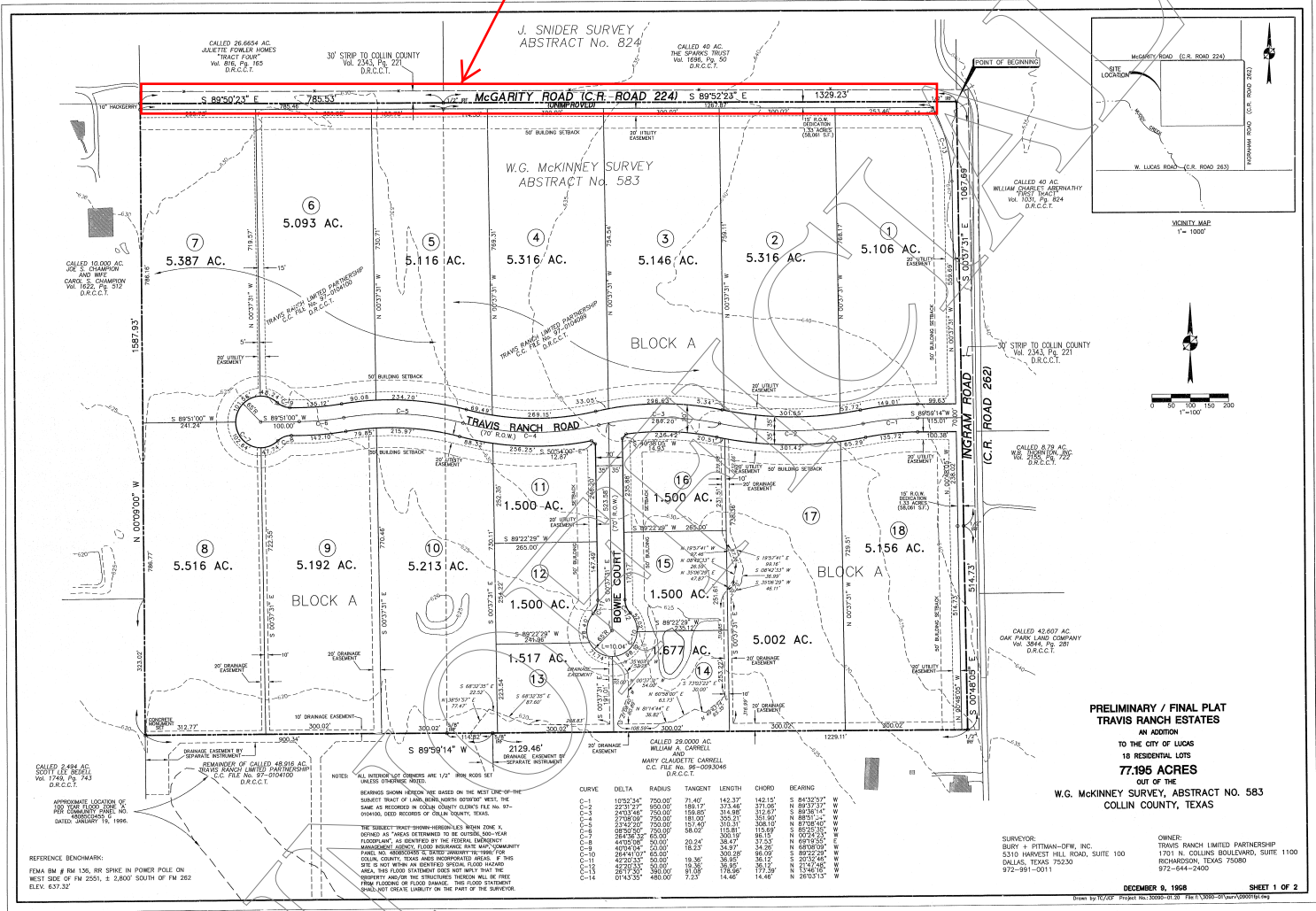
Recommendation:

Development Services Director Joe Hilbourn and Public Works Director/City Engineer Stanton Foerster do not recommend abandoning the 45-foot strip because of its potential use as part of the City of Lucas equestrian trail system.

Motion:

I make a motion to direct the City Manager to.....

Easement



STATE OF TEXAS
COUNTY OF COLLIN

OWNER'S CERTIFICATE

WHEREAS Travis Ranch Limited Partnership are the sole owner's of 77,195 acre tract of land situated in the W.G. McKinney Survey, Abstract No. 583, Collin County, Texas and being a portion of that called 48,579 acre tract of land described in Travis Ranch Limited Partnership by deed recorded in Collin County Clerk's File No. 97-070499, DRCCT; said 77,195 acre tract of land, being more particularly described as follows:

BEGINNING at a 1/2-inch iron rod found for the northeast corner of said 48,579 acre tract of land and being in the west line of a 30-foot strip of land (County Road No. 292 (Interim Road)) described to the County of Collin by deed recorded in Volume 2343, Page 221, DRCCT;

THENCE South 00°27'31" East along the common line of said 30-foot strip, and said 48,579 acre tract of land, a distance of 180.69 feet to a 1/2-inch iron rod found for corner;

THENCE South 00°48'05" East continuing along said common line, a distance of 514.73 feet to a 1/2-inch iron rod found for the southwest corner of said 48,579 acre tract of land, and the north line of that called 29,000 acre tract of land described to William A. Gilgoin and Jerry Conroy by deed recorded in Collin County Clerk's File No. 96-083906, DRCCT;

THENCE South 89°59'18" East along the common line of said 48,579 acre tract of land and said 29,000 acre tract of land, at a distance of 1228.11 feet to a 3/8-inch iron rod found for the northwest corner of said 29,000 acre tract of land same being a west-southwest corner of the aforementioned 48,916 acre tract of land, at a distance of 134.83 feet passing a 3/8-inch iron rod found for the southwest corner of said 48,916 acre tract of land same being a northeast corner of said 48,916 acre tract of land, continuing along for a long distance of 279.45 feet to a concrete monument set for corner in the west line of said 48,516 acre tract of land and being in the east line of that called 2,494 acre tract of land described to Scott T. Buehler by deed recorded in Volume 1740, Page 748, DRCCT;

THENCE North 00°09'04" West along the west line of said 48,516 acre tract of land and the west line at a distance of 323.02 feet along the northeast corner of said 2,494 acre tract of land, same being the southwest corner of that called 4,000 acre tract of land described to Joe D. Thompson and wife, Loree S. Thompson, by deed recorded in Volume 1022, Page 512, DRCCT; continuing along the corner line of said 48,516 acre tract of land and said 4,000 acre tract of land, at a total distance of 1587.93 feet to a 1/2-inch iron rod found for the northeast corner of said 48,516 acre tract of land, same being in the south line of a 30-foot strip of land (County Road No. 224 (Interim Road)) described to the County of Collin by deed recorded in Volume 2343, Page 221, DRCCT;

THENCE South 89°59'18" East along the south line of said 30-foot strip and same being the south line of said 48,516 acre tract of land, a distance of 785.53 feet to a 1/2-inch iron rod found for the northeast corner of said 48,516 acre tract of land, same being the northeast corner of the aforementioned 48,579 acre tract of land;

THENCE North 89°52'23" East continuing along the south line of said 30-foot strip, same being the north line of said 48,579 acre tract of land, a distance of 1329.53 feet to the POINT OF BEGINNING;

CONTAINING a computed area of 3,362,615 square feet or 77,195 acres of land.

DO HEREBY dedicate some to be known as TRAVIS RANCH ESTATES on addition to the City of Lucas, Collin County, Texas and dedicate to the public the streets, alleys, easements, parks and other open spaces as shown hereon.

EXECUTED this 21st day of JANUARY 1999

STATE OF TEXAS
COUNTY OF COLLIN

BEFORE ME, the undersigned authority, on this day personally appeared William A. Gilgoin, known to me to be the person whose name is subscribed to the above and foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein expressed, and in the capacity therein stated.

Given under my hand and seal of office this 21st day of JANUARY 1999

Notary Public, State of Texas

Recommended for Approval
18th January 1999
City Secretary
City of Lucas, Texas

Approved for Construction
18th January 1999
Mayor
City of Lucas, Texas

I, the undersigned, the City Secretary of the City of Lucas, Texas, hereby certify that the foregoing final plat of the TRAVIS RANCH ESTATES, Subdivision or Addition to the City of Lucas, Texas, submitted to the City Council on the 18th day of JANUARY 1999, and the District, by formal action, then and there accepted the dedication of streets, alleys, easements, parks, open spaces and other and open areas, as shown and set forth in and upon said plat. One said Council further authorizes the Mayor to take the compliance thereof for construction by signing his/her name as hereinabove subscribed.

Witness my hand this 21st day of JANUARY A.D., 1999
Brenda Compton
City Secretary
City of Lucas, Texas



STATE OF TEXAS
KNOW ALL MEN BY THESE PRESENTS

That I, David J. De Meiret, a registered professional land surveyor in the State of Texas, do hereby certify that I have prepared this plat from an actual on the ground survey of the tract, and the monuments shown thereon were found and/or placed under my personal supervision in accordance with the plotting rules and regulations of the City of Lucas, Texas.

David J. De Meiret
12-7-98
Registered Professional Land Surveyor no. 32066



STATE OF TEXAS
COUNTY OF COLLIN

Before me, the undersigned authority, on this day personally appeared David J. De Meiret, known to me to be the person whose name is subscribed to the above and foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations expressed and in the capacity therein stated.

Given under my hand and seal of office this 21st day of JANUARY 1999

Notary Public, State of Texas



PRELIMINARY / FINAL PLAT

TRAVIS RANCH ESTATES

AN ADDITION TO THE CITY OF LUCAS

18 ACRES

77.195 ACRES

OUT OF THE

W.G. MCKINNEY SURVEY, ABSTRACT NO. 583

COLLIN COUNTY, TEXAS

SURVEYOR:
DAVID J. DE MEIRET
3510 HARVEST HILL ROAD, SUITE 100
DALLAS, TEXAS 75230
972-991-0011

OWNER:
TRAVIS RANCH LIMITED PARTNERSHIP
1701 N. COLLINS BOULEVARD, SUITE 1100
RICHARDSON, TEXAS 75080
972-644-2400



THE STATE OF TEXAS
COUNTY OF COLLIN

KNOW ALL MEN BY THESE PRESENTS:

That Scherer and Koller, Inc. and Scherer and Koller, a Texas General Partnership

(hereinafter called "Grantor," whether one or more, masculine, feminine or neuter) for and in consideration of the sum of TEN and no/100 DOLLARS and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, paid by County of Collin and in consideration of the release by Grantee of all Grantee's right, title and cinterest in and to the lands conveyed to Grantee by Easement dated October 19, 1929 and recorded in Vol. 277, Page 417 and by Easement dated February 17, 1930 and recorded in Vol 277, (hereinafter called "Grantee," whether one or more, masculine, feminine or neuter), for which no lien is retained either express or implied, has Granted, Sold and Conveyed, and by these presents does Grant, Sell and Convey, unto the said Grantee all that certain real property located in Collin County, Texas and described as follows:

Being that certain property described in Exhibit "A" and Exhibit "A-1" afforded hereto and which is owned by Grantor situated in the W. G. McKinney Survey A-583, Collin County, Texas

*page 418 of the Land Records of Collin County, Texas.

together with all improvements thereon, if any, and all right, title and interest in and to adjacent sidewalks, streets, roads, alleys and rights-of-way.

This deed is executed and delivered subject to all easements, reservations, conditions, covenants and restrictive covenants as the same appear of record in the office of the County Clerk of the county aforesaid.

TO HAVE AND TO HOLD the above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging, unto the said Grantee, his, her or its successors, heirs and assigns, as the case may be, forever; and Grantor does hereby bind Grantor and Grantor's successors, heirs, executors and administrators, as the case may be, to Warrant and Forever Defend all and singular the said premises unto the said Grantee and Grantee's successors, heirs and assigns, as the case may be, against every person whomsoever lawfully claiming, or to claim the same, or any part thereof.

Executed this _____ day of December, A.D. 1985

SCHERER and KOLLER, a TEXAS
GENERAL PARTINERSHIP

SCHERER and KOLLER, INC.

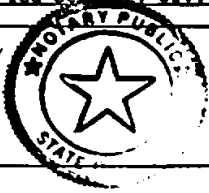
By: [Signature]
By: [Signature]
General Partner

By: [Signature]
Its President

ACKNOWLEDGMENT

STATE OF TEXAS
COUNTY OF DALLAS

This instrument was acknowledged before me on 11th day of December, 19 85
by Ted Scherer, Jr., general partner of Scherer and Koller



[Signature]
Notary Public, State of Texas
My commission expires: 12/24/86
Print name: DAVID B HENSELEY, JR

ACKNOWLEDGMENT

STATE OF TEXAS
COUNTY OF DALLAS

This instrument was acknowledged before me on 11th day of December, 19 85
by Siegmar Koller, general partner of Scherer and Koller



NOTARY PUBLIC
DAVID B. HENSELEY, JR.
1224 W. HICKORY ST.
DALLAS, TEXAS 75201

[Signature]
Notary Public, State of Texas
My commission expires: _____
Print name: _____

ACKNOWLEDGMENT

STATE OF TEXAS
COUNTY OF _____

This instrument was acknowledged before me on _____, 19 _____
by _____

Notary Public, State of Texas
My commission expires: _____
Print name: _____

CORPORATE ACKNOWLEDGMENT

STATE OF TEXAS
COUNTY OF DALLAS

This instrument was acknowledged before me on 11th day of December, 19 85
by _____
of Scherer and Koller, Inc.
a Texas corporation on behalf of said corporation.



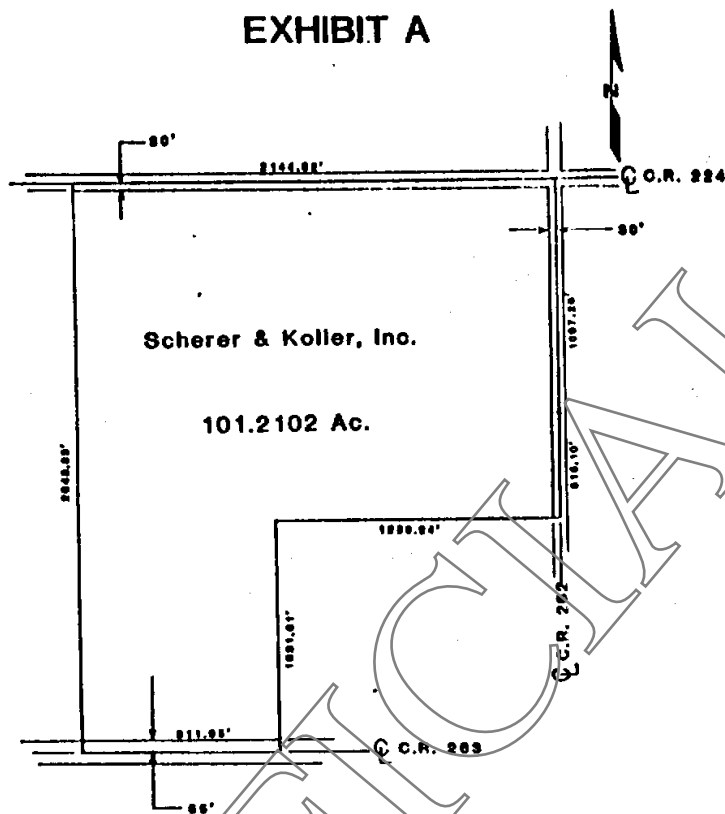
[Signature]
Notary Public, State of Texas
My commission expires: 12/24/86
Print name: DAVID B HENSELEY, JR

RETURN TO:

ADDRESS OF GRANTEE:

2943 223

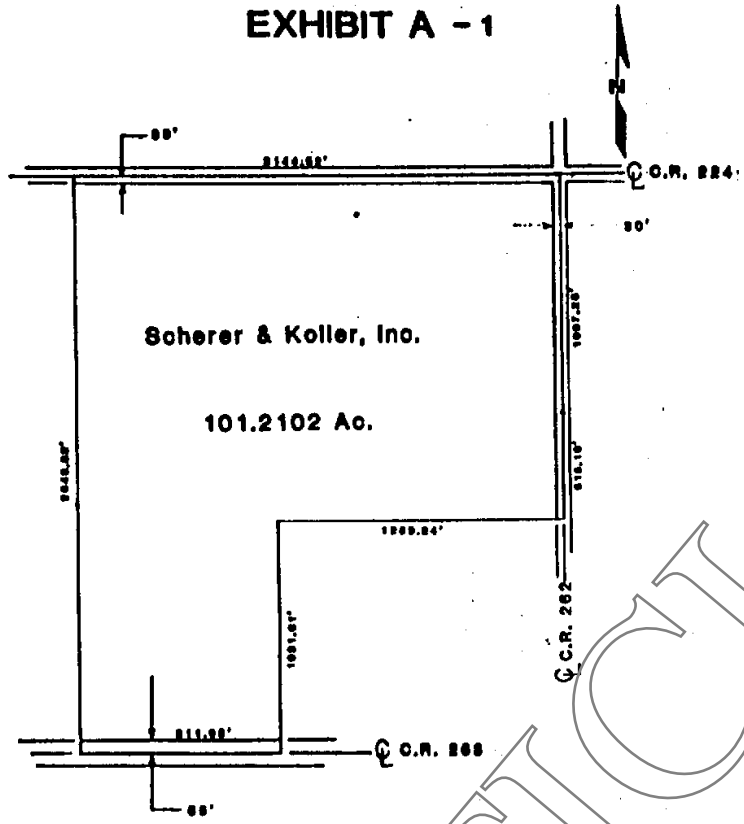
EXHIBIT A



SCHERER & KOLLER, INC.

Situated in Collin County, Texas, in the W.G. McKinney Survey, Abstract No. 583 and being more particularly described as follows: Being a 30 ft. wide strip of land and being 3756.87 ft. long, along and parallel to the centerline of County Road #224 and County Road #262 containing 2.58 acres of land and being the most northern and eastern portion of a 101.2102 acre tract of land conveyed to Scherer and Koller, Inc. by Agnes Pyno Davis, described in deed dated the 12th day of November, 1982, and recorded in Volume 1570, Page 828 in the Collin County Land Records.

2949 224
EXHIBIT A - 1



SCHERER & KOLLER, INC.

Situated in Collin County, Texas, in the W.G. McKinney Survey, Abstract No. 583 and being more particularly described as follows: Being a 55 ft. wide strip of land and being 911.95 ft. long, along and parallel to the centerline of County Road #263 containing 1.15 acres of land and being the most southern portion of a 101.2102 acre tract of land conveyed to Scherer and Koller, Inc. by Agnes Pyne Davis, described in deed dated the 12th day of November, 1982, and recorded in Volume 1570, Page 828 in the Collin County Land Records.

FILED FOR RECORD 9th DAY OF April A.D. 19 86 at 4:49 P.
 DULY RECORDED 10th DAY OF April A.D. 19 86
 BY: Carol Denny HELEN STARNES, County Clerk
 DEPUTY. Collin County, Texas



City of Lucas Council Agenda Request October 19, 2017

Requester: Public Works Director/City Engineer Stanton Foerster

Agenda Item:

Consider authorizing the City Manager to enter into a professional services contract with Birkhoff, Hendricks & Carter, LLP in the amount of \$215,850 for the design of the Winningkoff Road Middle Section Project using funds from FY 17-18 account 21-8210-491-127.

Background Information:

During several City Council and other public meetings, the need for Winningkoff Road to be engineered and reconstructed was discussed. A budget of \$1,400,000 was established as part of the \$9,000,000 Certificates of Obligation funded in July 2017.

Attachments/Supporting Documentation:

1. Birkhoff engagement letter dated September 22, 2017

Please note the proposed agreement is under legal review and may be revised accordingly.

Budget/Financial Impact:

This project is funded in the FY 17-18 budget in account 21-8210-491-127. Birkhoff estimates the design and construction budget to be \$1,630,000.

Recommendation:

Public Works Director/City Engineer Stanton Foerster recommends proceeding with engagement of Birkhoff for the design the Winningkoff Road Middle Section.

Motion:

I make a motion to authorize the City Manager to enter into a professional services contract with Birkhoff, Hendricks & Carter, LLP in the amount of \$215,850 for the design of the Winningkoff Road Middle Section Project using funds from FY 17-18 account 21-8210-491-127.

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

AGREEMENT FOR PROFESSIONAL SERVICES

This agreement (“Agreement”) is made by and between the City of Lucas, Texas (“City”) and Birkhoff, Hendricks & Carter, L.L.P., a Professional Engineering Firm (“Professional”) (each a “Party” and collectively the “Parties”), acting by and through their authorized representatives.

RECITALS:

WHEREAS, the City desires in connection with the Winningkoff Road Paving and Drainage Improvements Project (the “Project”) to engage the services of the Professional as an independent contractor, and not as an employee, to provide the services described in Exhibit “A” (the “Scope of Services”) on the terms and conditions set forth in this Agreement; and

WHEREAS, the Professional desires to render professional services for the City on the terms and conditions set forth in this Agreement;

NOW THEREFORE, in exchange for the mutual covenants set forth herein, and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

**Article I
Term**

1.1 This Agreement shall commence on the last date of execution hereof (“Effective Date”) and continue until completion of the services, unless sooner terminated as provided herein.

1.2 Either Party may terminate this Agreement by giving thirty (30) days prior written notice to the other Party. In the event of such termination the Professional shall deliver to City all finished and unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items prepared by the Professional in connection with this Agreement. Professional shall be entitled to compensation for any services completed to the reasonable satisfaction of the City in accordance with this Agreement prior to such termination.

**Article II
Scope of Service**

2.1 The Professional shall perform the services in connection with the Project as set forth in Exhibit “A”, Scope of Services.

2.2 The City shall, prior to commencement of services, provide the Professional with the information set forth in Exhibit “D”, if any.

2.3 The Parties acknowledge and agree that any and all opinions provided by the Professional in connection with the Scope of Services represent the professional judgment of the Professional, in accordance with the professional standard of care applicable by law to the services performed hereunder.

2.4 Upon execution of this Agreement the City has the right to use the Professional's instruments of service for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the City substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The City's Project Contractor, Construction Manager, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the City's consultants and separate contractors, may reproduce applicable portions of the instruments of service for use in performing services or construction for the Project. Upon payment of all amounts due Professional hereunder, all materials and reports prepared by the Professional in connection with this Agreement shall become the property of the City. The City shall have the right to publish, disclose, distribute and otherwise use such materials and reports only for those purposes for which they were intended. Subject to the foregoing, Professional shall upon completion of the services, or earlier termination, provide the City with reproductions of all drawings, materials, specifications, reports, maps, and exhibits prepared by Professional pursuant to the Scope of Services. The reproductions shall include a compact disc containing all construction plan sheets in a ".dwg" format and a scanned 24" x 36" black & white "Tiff" images at 400 dpi resolution and in electronic format as requested by the City or required in Exhibit "A".

Article III Schedule of Work

The Professional agrees to complete the required services in accordance with the Project Schedule outlined in Exhibit "B".

Article IV Compensation and Method of Payment

4.1 Professional will be compensated in accordance with the payment schedule and amounts set forth in Exhibit "C" (the "Compensation Schedule"). Unless otherwise provided herein, payment to the Professional shall be monthly based on the Professional's monthly progress report and detailed monthly itemized statement for services that shows the names of the Professional's employees, agents, contractors performing the services, the time worked, the actual services performed the rates charges for such service, reimbursable expenses, the total amount of fee earned to date and the amount due and payable as of the current statement, in a form reasonably acceptable to the City. Monthly statements shall include authorized non-salary expenses with supporting itemized invoices and documentation. The City shall pay such monthly statements within thirty (30) days after receipt and City verification of the services and expenses unless otherwise provided herein. The final payment of the compensation shall be made after satisfactory completion of the services following the City acceptance of the design, and the submittal of "AS BUILT" drawings", or record drawings as applicable.

4.2 Unless otherwise provided in Exhibit “C” the Professional shall be responsible for all expenses related to the services provided pursuant to this Agreement including, but not limited to, travel, copying and facsimile charges, telephone, internet and email charges.

Article V
Devotion of Time; Personnel; and Equipment

5.1 The Professional shall devote such time as reasonably necessary for the satisfactory performance of the services under this Agreement. Should the City require additional services not included under this Agreement, the Professional shall make reasonable effort to provide such additional services within the time schedule without decreasing the effectiveness of the performance of services required under this Agreement, and shall be compensated for such additional services on a time and materials basis, in accordance with Professional’s standard hourly rate schedule, or as otherwise agreed between the Parties.

5.2 To the extent reasonably necessary for the Professional to perform the services under this Agreement, the Professional shall be authorized to engage the services of any agents, assistants, persons, or corporations that the Professional may deem proper to aid or assist in the performance of the services under this Agreement. The Professional shall provide written notice to and approval from the City prior to engaging services not referenced in Exhibits “A” or “C”. The cost of such personnel and assistance shall be included as part of the total compensation to be paid Professional hereunder, and shall not otherwise be reimbursed by the City unless provided differently herein.

5.3 The Professional shall furnish the facilities, equipment and personnel necessary to perform the services required under this Agreement unless otherwise provided herein.

5.4 The Professional shall submit monthly progress reports and attend monthly progress meetings scheduled by the City or more frequently as may be required by the City from time to time based upon Project demands. Each progress report shall detail the work accomplished and special problems or delays experienced on the Project during the previous report period, and the planned work activities and special problems or delays anticipated for the next report period.

Article VI
Miscellaneous

6.1 Entire Agreement. This Agreement constitutes the sole and only agreement between the Parties and supersedes any prior understandings written or oral agreements between the Parties with respect to this subject matter.

6.2 Assignment. The Professional may not assign this Agreement without the prior written consent of City. In the event of an assignment by the Professional to which the City has

consented, the assignee shall agree in writing with the City to personally assume, perform, and be bound by all the covenants, and obligations contained in this Agreement.

6.3 Successors and Assigns. Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors and assigns.

6.4 Governing Law. The laws of the State of Texas shall govern this Agreement without regard to any conflict of law rules; and venue for any action concerning this Agreement shall be in the State District Court of Collin County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

6.5 Amendments. This Agreement may be amended by the mutual written agreement of the Parties.

6.6 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

6.7 Independent Contractor. It is understood and agreed by and between the Parties that the Professional in satisfying the conditions of this Agreement, is acting independently, and that the City assumes no responsibility or liabilities to any third party in connection with these actions. All services to be performed by Professional pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of the City. Professional shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Agreement.

6.8 Right-of-Access. The Professional shall not enter onto private property without lawful right-of-access to perform the required surveys, or other necessary investigations. The Professional will take reasonable precautions to minimize damage to the private and public property in the performance of such surveys and investigations. Any right-of-access to public or private property shall be obtained in accordance with the Scope of Services.

6.9 Notice. Any notice required or permitted to be delivered hereunder may be sent by first class mail, overnight courier or by confirmed telefax or facsimile to the address specified below, or to such other Party or address as either Party may designate in writing, and shall be deemed received three (3) days after delivery set forth herein:

If intended for City:

Attn: Joni Clarke
City Manager
City of Lucas, Texas
665 Country Club Road
Lucas, Texas 75002
Telephone: 972-727-8999

With Copy to:

Joseph J. Gorfida, Jr.
Nichols, Jackson, Dillard,
Hager & Smith, LLP
1800 Ross Tower
500 North Akard
Dallas, Texas 75201
Telephone: 214.965.9900

If intended for Professional:

Attn: Joseph T. Grajewski, P.E.
Birkhoff, Hendricks & Carter, L.L.P.
11910 Greenville Ave., Ste. #600
Dallas, Texas 75243
Telephone: 214-361-7900

6.10 Insurance.

- (a) Professional shall during the term hereof maintain in full force and effect the following insurance: (i) a comprehensive general liability policy of insurance for bodily injury, death and property damage insuring against all claims, demands or actions relating to the Professional's performance of services pursuant to this Agreement with a minimum combined single limit of not less than \$1,000,000.00 per occurrence for injury to persons (including death), and for property damage; (ii) policy of automobile liability insurance covering any vehicles owned and/or operated by Professional, its officers, agents, and employees, and used in the performance of this Agreement with policy limits of not less than \$500,000.00 combined single limit and aggregate for bodily injury and property damage; (iii) statutory Worker's Compensation Insurance at the statutory limits and Employers Liability covering all of Professional's employees involved in the provision of services under this Agreement with policy limit of not less than \$500,000.00; and (iv) Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limit of not less than \$2,000,000.00 per claim and \$2,000,000.00 in the aggregate.
- (b) All policies of insurance shall be endorsed and contain the following provisions: (1) name the City, its officers, and employees as additional insureds as to all applicable coverage with the exception of Workers Compensation Insurance and Professional Liability; and (2) provide for at least thirty (30) days prior written notice to the City for cancellation of the insurance; (3) provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance, except

for Professional Liability Insurance. The Professional shall provide written notice to the City of any material change of or to the insurance required herein.

- (c) All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least “A” by AM Best or other equivalent rating service.
- (d) A certificate of insurance and copies of the policy endorsements evidencing the required insurance shall be submitted prior to commencement of services and upon request by the City.

6.11 Indemnification. CITY SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE SERVICES OF THE PROFESSIONAL PURSUANT TO THIS AGREEMENT. PROFESSIONAL HEREBY WAIVES ALL CLAIMS AGAINST CITY, ITS OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO IN THIS SECTION AS “CITY”) FOR DAMAGE TO ANY PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON TO THE EXTENT ARISING AT ANY TIME AND FROM ANY CAUSE OTHER THAN THE NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY OR BREACH OF CITY’S OBLIGATIONS HEREUNDER. PROFESSIONAL AGREES TO INDEMNIFY AND SAVE HARMLESS CITY FROM AND AGAINST LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, REASONABLE ATTORNEYS’ FEES AND COSTS OF INVESTIGATION) AND ACTIONS OF ANY KIND BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY TO THE EXTENT CAUSED BY THE PROFESSIONAL’S NEGLIGENT PERFORMANCE OF SERVICES UNDER THIS AGREEMENT OR BY REASON OF ANY NEGLIGENT ACT OR OMISSION ON THE PART OF PROFESSIONAL, ITS OFFICERS, DIRECTORS, SERVANTS, EMPLOYEES, REPRESENTATIVES, CONSULTANTS, LICENSEES, SUCCESSORS OR PERMITTED ASSIGNS (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO NEGLIGENCE OF THE CITY, IN WHOLE OR IN PART, IN WHICH CASE PROFESSIONAL SHALL INDEMNIFY CITY ONLY TO THE EXTENT OR PROPORTION OF NEGLIGENCE ATTRIBUTED TO PROFESSIONAL AS DETERMINED BY A COURT OR OTHER FORUM OF COMPETENT JURISDICTION). THE PROFESSIONAL’S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY PROFESSIONAL UNDER THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

6.12 Counterparts. This Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist

of any number of copies hereof each signed by less than all, but together signed by all of the Parties hereto.

6.13 Exhibits. The exhibits attached hereto are incorporated herein and made a part hereof for all purposes.

Exhibit “A” – Scope of Services

Exhibit “B” – Project Schedule

Exhibit “C” – Compensation Schedule

Exhibit “D” – Information to be provided to professional

Exhibit “E” – Project Location Map

Exhibit “F” – Typical Section

(Signature Page to Follow)

EXECUTED this _____ day of _____, 20__.

City of Lucas, Texas

By: _____
Joni Clarke
City Manager

Approved as to form:

By: _____
Joseph J. Gorfida, Jr., City Attorney
(01-20-15/69878)

EXECUTED this 22nd day of September, 2017.

(Professional)


By: 
Name: Joseph T. Grajewski, P.E.
Title: Partner

Exhibit “A”
Scope of Services

WINNINGKOFF ROAD PAVING & DRAINAGE IMPROVEMENTS PROJECT

General Project Scope:

This project includes paving and drainage improvements to Winningkoff Road from Forestview Drive to Snider Lane. Exhibit “E” contains a project location map. The existing pavement will be reconstructed with reinforced concrete. Exhibit “F” contains a typical section for the roadway from the Winninkoff Road Pavement Section Recommendations Report dated January 14, 2016.

The final design will include field surveys to tie the existing road and driveways, drainage features, inlets, utilities and other topographic items. We will then prepare construction plans, specifications, bidding and contract documents for the roadway reconstruction. The existing drainage basins will be delineated and drainage calculations will be calculated for the 100-year storm event. Drainage improvements will be recommended if the existing infrastructure is under capacity.

Part I: Final Design Phase

- A. Coordinate Dig-Tess to locate utility lines along the project.
- B. Create property base map based on property information obtained through the Central Appraisal District. Property base map will be best fit based on property monument located during field surveys.
- C. Prepare construction plan and profile sheets for the horizontal and vertical layout of the roadway reconstruction including any drainage improvements. Cross sections and driveway profiles will be included in the plans.
- D. Delineate the drainage basins and calculate the 100-year storm water flow rates. Analyze existing drainage infrastructure and include improvements required to convey the design storm (100-year) maintaining 2-feet of freeboard for the road.
- E. Create HEC-HMS model to calculate the flow for the White Rock Creek East Tributary 2 and perform scenarios to match existing downstream flow conditions. This will not include the preparation of a Flood Study or a FEMA Letter of Map Revision (LOMR).
- F. Prepare culvert plan and profile sheets
- G. Prepare a removal & relocation plan

- H. Prepare pavement striping & signage plan
- I. Prepare Erosion Control Plan
- J. Prepare Standard & Special Details
- K. Prepare Cover Sheet, Location Map and Sheet Index
- L. Submit construction plans to franchise utility companies and incorporate comments received.
- M. Complete quantity take-off and prepare Opinion of Probable Construction Cost
- N. Preparation of Proposal and Bid Schedule, Contract Documents and Specifications.
- O. Submit three (3) copies of the Preliminary Bidding document book and Preliminary Plans on 11-inch x 17-inch sheets for review by the City.
- P. Revise plans based on City comments and respond to each comment not incorporated in revised plans or bidding book.
- Q. Submit three (3) sets of Final Specifications and Bidding Documents and Final Plans on 11-inch x 17-inch sheets.

Part II: Bidding Phase

- A. Assist the City staff in advertising for bids. This will include consultant e-mailing “Notice to Contractors” to contractors experienced in this type of construction. Engineer to provide City with Notice to Contractors to publish in the local newspaper.
- B. Sell bidding documents to potential bidders and their suppliers and other parties.
- C. Respond to plan holder questions as necessary.
- D. Prepare and issue bidding document addenda as required.
- E. Attend project bid opening.
- F. Provide bid tabulation to City and contractors who submitted bids.
- G. Obtain experience record and references from lowest bidder. Formulate opinion from information received and provide the City a summary of the opinion for their use in selection and award of construction contract.
- H. Facilitate execution of five (5) sets of the contract documents
- I. Provide City with three (3) copies of the Final Plans on 11-inch x 17-inch plan sheets and three (3) copies of the Proposal, Bid Schedule and Specifications on 8.5-inch x 11-inch sheets.

Part III: Construction Phase

- A. Assist City in obtaining services for construction materials testing.
- B. Conduct a Pre-Construction Conference including the preparation of an agenda.
- C. Review shop drawings and other submittal information which the contractor submits. This review is for the benefit of the Owner and covers only general conformance with information given by the Contract Documents. The Contractor is to review and stamp their approval on submittals prior to submitting to the Engineer. Review by the Engineer does not relieve the Contractor of any responsibilities, safety measures or the necessity to construct a complete and workable facility in accordance with the Contract Documents.
- D. Provide responses to requests for information or clarification to City or Contractor.
- E. Prepare monthly pay requests based on submittal by contractor of work completed each month. Coordinate with City inspector to confirm quantities of work submitted by contractor.
- F. Prepare and process routine change orders for this project as they pertain to the original scope of work.
- G. Review Construction Materials Testing lab reports prepared by testing lab for general conformance with the construction plans and specifications.
- H. Accompany the City during final inspection of the project.
- I. Prepare record drawings utilizing information from the City's on-site representative and the Contractor.

Part IV: Additional Services

- A. Design, Property and Construction Surveys
- B. Prepare Flood Study for White Rock Creek East Tributary 2 shown as a Zone 'A' Floodplain on the FEMA FIRM. Flood Study shall include hydrologic and hydraulic analysis and preparation of a final report. This Flood Study does not include submittals to FEMA for a Conditional Letter of Map Revision (CLOMR) or a Letter of Map Revision (LOMR).

- C. Preliminary Jurisdictional Determination (PJD)
- D. Nationwide Permit (NWP) 14 – Linear Transportation Project Preconstruction Notification (PCN)
- E. Conduct post-construction surveys at the White Rock Creek East Tributary 2 crossing and complete the necessary application forms for a Letter of Map Revision (LOMR). Provide two (2) complete sets of the LOMR application to the City to forward to FEMA for review and approval. The FEMA review fee is included as a separate additional service. Follow-up on the application by providing interpretation and technical assistance and minor revisions as required for two rounds of FEMA reviews.
- F. Letter of Map Revision (LOMR) Application Fee
- G. Preparation of Plat and Field Note Descriptions for expected right-of-way or easement acquisitions required for the project. Eight (8) right-of-way or easement descriptions are included for the purpose of establishing a budget for this phase of work.
- H. Plotting & Reproduction

Part VI: Exclusions

The intent of this scope of services is to include only the services specifically listed herein and none others. Services specifically excluded from this scope of services include, but are not necessarily limited to the following:

- A. Certification that work is in accordance with plans and specifications
- B. Consulting services by others not included in proposal
- C. Environmental impact statements or assessments
- D. Fees for permits or advertising
- E. Fiduciary Responsibility to the City
- F. On-site safety precautions, programs and responsibility
- G. Phasing of Contractor's work
- H. Preparation of the Contractor's Storm Water Prevention Pollution Plan (SW3P)
- I. Providing an on-site representative
- J. Quality control and testing services
- K. Revisions and/or change orders as a result of revisions after completion of original design (unless to correct error on plans)
- L. Texas Accessibility Standards (TAS) submittals, coordination with the Texas Department of Licensing and Registration (TDLR) or Registered Accessibility Specialist (RAS) Inspection
- M. Title searches
- N. Traffic engineering report or study
- O. Trench safety designs

Exhibit "B"
Project Schedule

WINNINGKOFF ROAD PAVING & DRAINAGE IMPROVEMENTS PROJECT

| | |
|---|----------------------------------|
| Complete Field Surveys | 4 Weeks after Notice to Proceed |
| Review 30% Plans with the City | 10 Weeks after Notice to Proceed |
| Submit 60% Plans to the City for Review | 18 Weeks after Notice to Proceed |
| Submit 90% Plans to the City for Review | 26 Weeks after Notice to Proceed |
| Complete Final Plans | 30 Weeks after Notice to Proceed |

*** Right-of-Way Acquisition by the City of Lucas ***

| | |
|---|-----------------------------|
| Begin Advertising Project | Upon ROW Acquisition |
| Bid Opening | 2 weeks later |
| Award Recommendation Letter | 1.5 weeks after Bid Opening |
| Council Award Construction Contract | Next Council Meeting |
| Pre-Construction Conference & Issue Notice to Proceed | 3 weeks after Council Mtg |
| Contract Time Begins | 10 days after Pre-Con |
| Contract Time Ends (120 Calendar Days) | 120 days later |

**Exhibit “C”
Compensation Schedule**

WINNINGKOFF ROAD PAVING & DRAINAGE IMPROVEMENTS PROJECT

Payment for the Scope of Services described under Exhibit “A” Parts I - IV shall be compensated on an hourly basis following the 2017 Fee Schedule provided below. Expenses will be billed at actual invoice cost times 1.15. Automobile mileage will be invoiced at the IRS limit. On this basis, each Part of the Scope of Services is summarized below with the following budget amounts:

| | |
|---|----------|
| Part I: Final Design Phase..... | \$79,140 |
| Part II: Bidding Phase | \$4,820 |
| Part III: Construction Phase | \$12,020 |
| Part IV: Additional Services | |
| A. Design & Construction Surveys | \$12,600 |
| B. Flood Study | \$22,170 |
| C. Preliminary Jurisdictional Determination (PJD) | \$11,120 |
| D. Nationwide Permit (NWP) 14 | \$22,340 |
| E. Letter of Map Revisions (LOMR) Application | \$12,740 |
| F. Letter of Map Revisions (LOMR) Application Fee | \$9,500 |
| G. Preparation of Right-of-Way Plat & Field Notes (8 Parcels) | \$28,000 |
| H. Plotting & Reproduction | \$1,400 |

A maximum fee of **\$215,850** for time, expenses and mileage shall not be exceeded without written authorization from the City, based on increased scope of services. Payments are to be made on a monthly basis based on the actual hourly expenditures.

The maximum fee is conditional upon the Professional receiving a written Notice to Proceed from the City no later than December 31, 2017. Should the Professional receive Notice to Proceed at a date later than stipulated, the City hereby agrees that Professional may revise and resubmit the total project budget and re-negotiate the engineering services fee amounts shown.

2017 FEE SCHEDULE

| Staff: | <u>Hourly Rate</u> |
|--|---------------------------|
| ▪ Project Manager | \$224.00 |
| ▪ Design Engineer | \$160.00 |
| ▪ Electrical | \$175.00 |
| ▪ Engineer-in-Training | \$102.00 |
| ▪ AutoCAD III (Sr. Designer) | \$157.00 |
| ▪ AutoCAD II | \$128.00 |
| ▪ AutoCAD I | \$121.00 |
| ▪ Word Processor II (Sr. Processor) | \$121.50 |
| ▪ Word Processor I | \$68.00 |
| ▪ Survey Crew * | \$155.00 |
| ▪ Registered Professional Land Surveyor II | \$242.00 |
| ▪ Registered Professional Land Surveyor I | \$152.50 |
| Copies and Expenses | Invoice Cost x 1.15 |
| Mileage | IRS Rate |
| Modeling Software | \$125.00 /week |
| ▪ (Water, Sewer, AutoTURN) | \$350.00 /month |

* Plus Auto Mileage

Exhibit “D”
Information to be provided to professional

WINNINGKOFF ROAD PAVING & DRAINAGE IMPROVEMENTS PROJECT

1. Water System Maps
2. Wastewater System Maps
3. Construction Record Drawings for public utilities in project area
4. Permission to survey on private property along project route
5. Title Searches, as required

Exhibit "F" Typical Section

WINNINGKOFF ROAD PAVING & DRAINAGE IMPROVEMENTS PROJECT

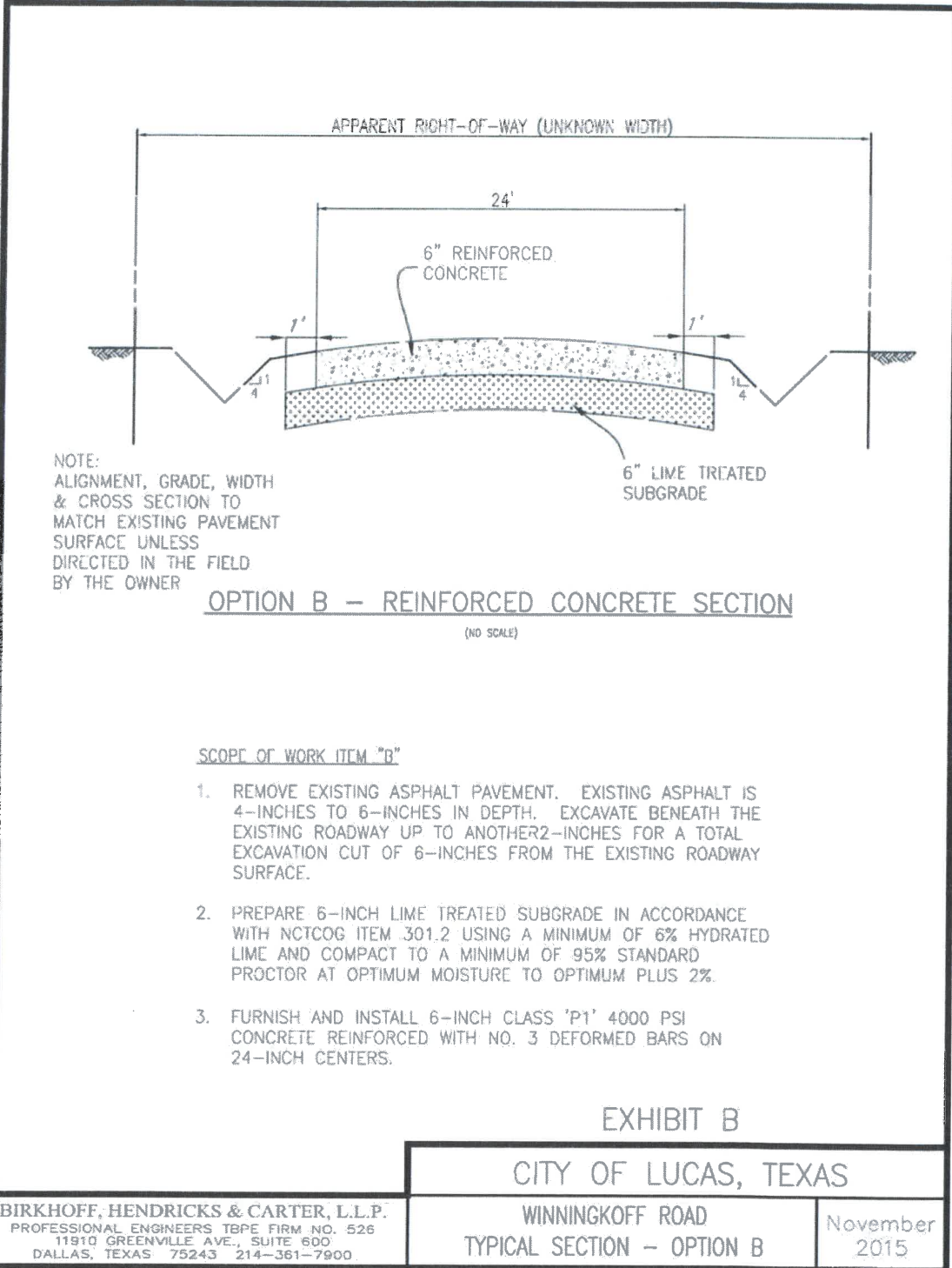


Exhibit "E"
Project Location Map

WINNINGKOFF ROAD PAVING & DRAINAGE IMPROVEMENTS PROJECT





City of Lucas

City Council Agenda Request

October 19, 2017

Item No. 06

Requester: Public Works Director/City Engineer Stanton Foerster

Agenda Item:

Consider authorizing the City Manager to enter into a construction agreement with GRod Construction, LLC for the construction of the Winningkoff Road Reverse Curve Paving and Drainage Improvements in an amount not to exceed \$502,410.90 plus 20% contingency in the amount of \$100,480 using funds in account 21-8210-491-123.

Background Information:

During several City Council and other public meetings, the need for Winningkoff Road to be engineered and reconstructed was discussed. A budget of \$964,000 was established as part of General Fund and the \$9,000,000 Certificates of Obligation funded in July 2017.

Attachments/Supporting Documentation:

1. Bid #010-17 Bid Tabulations
2. GRod Construction Agreement

Budget/Financial Impact:

Balance in Account 21-8210-491-123 is \$964,000.

Recommendation:

Public Works Director/City Engineer Stanton Foerster recommends entering into a construction agreement with GRod Construction, LLC.

Motion:

I make a motion to authorize the City Manager to enter into a construction agreement with GRod Construction, LLC for the construction of the Winningkoff Road Reverse Curve Paving and Drainage Improvements (Bid #010-17) in an amount not to exceed \$502,410.90 plus 20% contingency in the amount of \$100,480 using funds in account 21-8210-491-123.

CITY OF LUCAS, TEXAS
Winningkoff Road Reverse Curve Paving & Drainage Improvements

BID SUMMARY

Bids Received at 2:00 p.m., Wednesday, September 13, 2017

| <u>Contractor</u> | <u>Total Amount Bid</u> |
|---|--------------------------------|
| 1. GRod Construction, LLC 1204 Old Base Road Aurora, Texas 76078 | \$ 502,410.90 |
| 2. XIT Paving & Construction 3934 S. Hwy 287 Waxahachie, Texas 75765 | \$ 627,510.25 |
| 3. Raymond Construction 323 PR 5991 Yantis, Texas 75497 | \$ 667,721.00 |
| 4. Rebcon, Inc. 1868 W. Northwest Hwy. Dallas, Texas 75220 | \$ 680,733.50 |
| 5. Pavecon Public Works, LP 3022 Roy Orr Blvd. Grand Prairie, Texas 75050 | \$ 691,644.75 |

TABULATION OF BIDS

Date: September 13, 2017

Project: CITY OF LUCAS, TEXAS
Winningkoff Road Reverse Curve
Paving & Drainage Improvements

BIRKHOFF, HENDRICKS & CARTER, L.L.P.
 PROFESSIONAL ENGINEERS
 Dallas, Texas

BID OF

 GRod Construction, LLC
 1204 Old Base Road
 Aurora, Texas 76078

BID OF

 XIT Paving & Construction
 3934 S. Hwy 287
 Waxahachie, Texas 75765

BID OF

 Raymond Construction
 323 PR 5991
 Yantis, Texas 75497

BID OF

 Rebcon, Inc.
 1868 W. Northwest Hwy.
 Dallas, Texas 75220

| Item No. | Approximate Quantities | Unit | Description | BID OF GRod Construction, LLC | | BID OF XIT Paving & Construction | | BID OF Raymond Construction | | BID OF Rebcon, Inc. | |
|----------|------------------------|------|---|-------------------------------|---------------|----------------------------------|---------------|-----------------------------|---------------|---------------------|---------------|
| | | | | Unit Bid Price | Extension | Unit Bid Price | Extension | Unit Bid Price | Extension | Unit Bid Price | Extension |
| 101 | 13 | Sta | Prepare Right-of-Way, Insurance, Bonds and Mobilization | \$3,000.00 | \$ 39,000.00 | \$4,600.00 | \$ 59,800.00 | \$10,000.00 | \$ 130,000.00 | \$4,000.00 | \$ 52,000.00 |
| 102 | 520 | S.Y. | Sawcut, Remove & Dispose of Concrete Pavement | \$16.00 | \$ 8,320.00 | \$35.00 | \$ 18,200.00 | \$14.00 | \$ 7,280.00 | \$12.00 | \$ 6,240.00 |
| 103 | 2,495 | S.Y. | Sawcut, Remove & Dispose of Asphalt Pavement | \$7.50 | \$ 18,712.50 | \$8.00 | \$ 19,960.00 | \$9.00 | \$ 22,455.00 | \$7.00 | \$ 17,465.00 |
| 104 | 60 | S.Y. | Remove, Salvage & Stockpile Rock Rip-Rap | \$34.00 | \$ 2,040.00 | \$50.00 | \$ 3,000.00 | \$40.00 | \$ 2,400.00 | \$10.00 | \$ 600.00 |
| 105 | 36 | L.F. | Remove & Dispose of 36-Inch CMP | \$26.00 | \$ 936.00 | \$100.00 | \$ 3,600.00 | \$35.00 | \$ 1,260.00 | \$15.00 | \$ 540.00 |
| 106 | 43 | L.F. | Remove & Dispose of 24-Inch CMP and Safety End Treatments | \$26.00 | \$ 1,118.00 | \$40.00 | \$ 1,720.00 | \$27.00 | \$ 1,161.00 | \$35.00 | \$ 1,505.00 |
| 107 | 41 | L.F. | Remove & Dispose of 12-Inch RCP | \$26.00 | \$ 1,066.00 | \$35.00 | \$ 1,435.00 | \$22.00 | \$ 902.00 | \$10.00 | \$ 410.00 |
| 108 | 24 | L.F. | Remove & Dispose of 8-Inch PVC Pipe | \$26.00 | \$ 624.00 | \$30.00 | \$ 720.00 | \$25.00 | \$ 600.00 | \$10.00 | \$ 240.00 |
| 109 | 3 | Ea. | Remove Existing Trees | \$400.00 | \$ 1,200.00 | \$2,000.00 | \$ 6,000.00 | \$800.00 | \$ 2,400.00 | \$750.00 | \$ 2,250.00 |
| 110 | 1 | L.S. | Remove Bick Sign & Salvage "Huntwick" Plaque | \$1,500.00 | \$ 1,500.00 | \$7,500.00 | \$ 7,500.00 | \$1,500.00 | \$ 1,500.00 | \$1,000.00 | \$ 1,000.00 |
| 111 | 2 | Ea. | Remove Existing Sign | \$400.00 | \$ 800.00 | \$100.00 | \$ 200.00 | \$350.00 | \$ 700.00 | \$350.00 | \$ 700.00 |
| 112 | 1 | L.S. | Relocate Existing Fire Hydrant and Valve | \$4,000.00 | \$ 4,000.00 | \$4,000.00 | \$ 4,000.00 | \$6,500.00 | \$ 6,500.00 | \$8,800.00 | \$ 8,800.00 |
| 113 | 1 | L.S. | Relocate Existing Water Meter and Irrigation Control Valves | \$1,500.00 | \$ 1,500.00 | \$1,600.00 | \$ 1,600.00 | \$2,550.00 | \$ 2,550.00 | \$7,150.00 | \$ 7,150.00 |
| 114 | 1 | L.S. | Remove Brick Mailbox & Set Temporary Mailbox | \$1,000.00 | \$ 1,000.00 | \$1,000.00 | \$ 1,000.00 | \$2,400.00 | \$ 2,400.00 | \$750.00 | \$ 750.00 |
| 115 | 6 | Ea. | Remove & Re-Set Mailbox | \$750.00 | \$ 4,500.00 | \$150.00 | \$ 900.00 | \$500.00 | \$ 3,000.00 | \$75.00 | \$ 450.00 |
| 116 | 1,265 | C.Y. | Unclassified Excavation | \$32.00 | \$ 40,480.00 | \$40.00 | \$ 50,600.00 | \$35.00 | \$ 44,275.00 | \$34.00 | \$ 43,010.00 |
| 117 | 3,227 | S.Y. | Furnish & Install 6-Inch Thick 4000 psi Reinforced Concrete Pavement | \$53.00 | \$ 171,031.00 | \$55.00 | \$ 177,485.00 | \$65.00 | \$ 209,755.00 | \$75.00 | \$ 242,025.00 |
| 118 | 3,894 | S.Y. | Construct 6-Inch Lime Treated Subgrade (6% Lime) | \$7.60 | \$ 29,594.40 | \$8.00 | \$ 31,152.00 | \$5.00 | \$ 19,470.00 | \$6.50 | \$ 25,311.00 |
| 119 | 53 | Tons | Furnish Hydrated Lime (27 lb/SY) | \$167.50 | \$ 8,877.50 | \$180.00 | \$ 9,540.00 | \$175.00 | \$ 9,275.00 | \$161.00 | \$ 8,533.00 |
| 120 | 394 | S.Y. | Furnish & Install 6-Inch Thick 3600 psi Reinforced Concrete Driveway, Including Connection to Existing Pavement | \$63.00 | \$ 24,822.00 | \$65.00 | \$ 25,610.00 | \$70.00 | \$ 27,580.00 | \$99.00 | \$ 39,006.00 |
| 121 | 24 | L.F. | Furnish & Install Longitudinal Butt Joint | \$23.00 | \$ 552.00 | \$10.00 | \$ 240.00 | \$40.00 | \$ 960.00 | \$15.00 | \$ 360.00 |
| 122 | 120 | L.F. | Remove & Replace Hog Wire Fence | \$10.00 | \$ 1,200.00 | \$28.00 | \$ 3,360.00 | \$25.00 | \$ 3,000.00 | \$44.00 | \$ 5,280.00 |
| 123 | 100 | L.F. | Remove & Replace Pipe Rail Fence | \$35.00 | \$ 3,500.00 | \$47.00 | \$ 4,700.00 | \$37.50 | \$ 3,750.00 | \$55.00 | \$ 5,500.00 |
| 124 | 181 | L.F. | Remove & Replace White Vinyl Fence | \$20.00 | \$ 3,620.00 | \$30.00 | \$ 5,430.00 | \$45.00 | \$ 8,145.00 | \$105.00 | \$ 19,005.00 |
| 125 | 1 | L.S. | Abandon Existing Culvert and Cap Ends | \$2,000.00 | \$ 2,000.00 | \$2,000.00 | \$ 2,000.00 | \$1,250.00 | \$ 1,250.00 | \$1,000.00 | \$ 1,000.00 |
| 126 | 87 | L.F. | Furnish & Install 18-Inch Reinforced Concrete Pipe Including Embedment | \$100.00 | \$ 8,700.00 | \$85.00 | \$ 7,395.00 | \$60.00 | \$ 5,220.00 | \$65.00 | \$ 5,655.00 |

TABULATION OF BIDS

Date: September 13, 2017

Project: CITY OF LUCAS, TEXAS
Winningkoff Road Reverse Curve
Paving & Drainage Improvements

BIRKHOFF, HENDRICKS & CARTER, L.L.P.
 PROFESSIONAL ENGINEERS
 Dallas, Texas

BID OF

GRod Construction, LLC
 1204 Old Base Road
 Aurora, Texas 76078

BID OF

XIT Paving & Construction
 3934 S. Hwy 287
 Waxahachie, Texas 75765

BID OF

Raymond Construction
 323 PR 5991
 Yantis, Texas 75497

BID OF

Rebcon, Inc.
 1868 W. Northwest Hwy.
 Dallas, Texas 75220

| Item No. | Approximate Quantities | Unit | Description | BID OF GRod Construction, LLC | | BID OF XIT Paving & Construction | | BID OF Raymond Construction | | BID OF Rebcon, Inc. | |
|---|------------------------|------|--|-------------------------------|----------------------|----------------------------------|----------------------|-----------------------------|----------------------|---------------------|----------------------|
| | | | | Unit Bid Price | Extension | Unit Bid Price | Extension | Unit Bid Price | Extension | Unit Bid Price | Extension |
| 127 | 61 | L.F. | Furnish & Install 24-Inch Reinforced Concrete Pipe Including Embedment | \$140.00 | \$ 8,540.00 | \$100.00 | \$ 6,100.00 | \$87.50 | \$ 5,337.50 | \$138.00 | \$ 8,418.00 |
| 128 | 52 | L.F. | Furnish & Install 36-Inch Reinforced Concrete Pipe Including Embedment | \$200.00 | \$ 10,400.00 | \$175.00 | \$ 9,100.00 | \$110.00 | \$ 5,720.00 | \$160.00 | \$ 8,320.00 |
| 129 | 1 | Ea. | Furnish & Install 3'x3' Wye Inlet | \$3,500.00 | \$ 3,500.00 | \$3,500.00 | \$ 3,500.00 | \$4,250.00 | \$ 4,250.00 | \$5,800.00 | \$ 5,800.00 |
| 130 | 2 | Ea. | Furnish & Intall 24-Inch Safety End Treatment | \$2,350.00 | \$ 4,700.00 | \$3,000.00 | \$ 6,000.00 | \$2,400.00 | \$ 4,800.00 | \$2,500.00 | \$ 5,000.00 |
| 131 | 1 | Ea. | Furnish & Install 18-Inch CH-FW-0 Reinforced Concrete Headwall | \$2,800.00 | \$ 2,800.00 | \$3,000.00 | \$ 3,000.00 | \$3,100.00 | \$ 3,100.00 | \$3,800.00 | \$ 3,800.00 |
| 132 | 1 | Ea. | Furnish & Install 2-24-Inch CH-FW-15 Reinforced Concrete Headwall | \$2,800.00 | \$ 2,800.00 | \$5,000.00 | \$ 5,000.00 | \$10,250.00 | \$ 10,250.00 | \$4,950.00 | \$ 4,950.00 |
| 133 | 2 | Ea. | Furnish & Install 36-Inch CH-PW-S Reinforced Concrete Headwall | \$11,000.00 | \$ 22,000.00 | \$15,000.00 | \$ 30,000.00 | \$8,250.00 | \$ 16,500.00 | \$15,000.00 | \$ 30,000.00 |
| 134 | 1 | L.S. | Connect to Existing 18-Inch CMP | \$1,550.00 | \$ 1,550.00 | \$750.00 | \$ 750.00 | \$1,000.00 | \$ 1,000.00 | \$500.00 | \$ 500.00 |
| 135 | 1 | L.S. | Connect to Existing 2-24-Inch RCP Including Removal of Existing Headwall | \$1,550.00 | \$ 1,550.00 | \$10,000.00 | \$ 10,000.00 | \$2,650.00 | \$ 2,650.00 | \$1,500.00 | \$ 1,500.00 |
| 136 | 80 | S.Y. | Furnish & Install 12-Inch Thick Grouted Rock Rip-Rap | \$132.00 | \$ 10,560.00 | \$200.00 | \$ 16,000.00 | \$150.00 | \$ 12,000.00 | \$100.00 | \$ 8,000.00 |
| 137 | 10 | Ea. | Furnish & Install 10 Gallon Container Grown Photinias | \$150.00 | \$ 1,500.00 | \$300.00 | \$ 3,000.00 | \$300.00 | \$ 3,000.00 | \$415.00 | \$ 4,150.00 |
| 138 | 3 | Ea. | Furnish & Intall R1-1 and R1-4 Sign Combination Including Sign Mounting Hardware | \$550.00 | \$ 1,650.00 | \$555.00 | \$ 1,665.00 | \$603.00 | \$ 1,809.00 | \$700.00 | \$ 2,100.00 |
| 139 | 1 | Ea. | Furnish & Intall W3-1 Sign Including Sign Mounting Hardware | \$550.00 | \$ 550.00 | \$522.00 | \$ 522.00 | \$603.00 | \$ 603.00 | \$600.00 | \$ 600.00 |
| 140 | 1 | Ea. | Furnish & Intall W1-10 Sign Including Sign Mounting Hardware | \$550.00 | \$ 550.00 | \$555.00 | \$ 555.00 | \$603.00 | \$ 603.00 | \$600.00 | \$ 600.00 |
| 141 | 5 | Ea. | Furnish & Intall W1-8L Sign Including Sign Mounting Hardware | \$550.00 | \$ 2,750.00 | \$522.00 | \$ 2,610.00 | \$603.00 | \$ 3,015.00 | \$550.00 | \$ 2,750.00 |
| 142 | 1 | Ea. | Furnish & Intall W1-1L & W13-1 Sign Combination including Sign Mounting Hardware | \$550.00 | \$ 550.00 | \$555.00 | \$ 555.00 | \$603.00 | \$ 603.00 | \$700.00 | \$ 700.00 |
| 143 | 1,025 | L.F. | Furnish & Install Double 4-Inch Yellow Thermoplastic Stripe | \$3.50 | \$ 3,587.50 | \$2.25 | \$ 2,306.25 | \$2.50 | \$ 2,562.50 | \$2.30 | \$ 2,357.50 |
| 144 | 170 | L.F. | Furnish & Install Single 4-Inch Dashed Yellow Thermoplastic Stripe | \$2.00 | \$ 340.00 | \$1.25 | \$ 212.50 | \$2.00 | \$ 340.00 | \$1.20 | \$ 204.00 |
| 145 | 2,070 | L.F. | Furnish & Install Single 4-Inch White Thermoplastic Stripe | \$2.00 | \$ 4,140.00 | \$1.25 | \$ 2,587.50 | \$2.00 | \$ 4,140.00 | \$1.20 | \$ 2,484.00 |
| 146 | 2,800 | S.Y. | Furnish, Install & Maintain Solid Block Sod | \$6.50 | \$ 18,200.00 | \$10.50 | \$ 29,400.00 | \$7.00 | \$ 19,600.00 | \$6.00 | \$ 16,800.00 |
| 147 | 1 | L.S. | Furnish, Install, Maintain & Remove Erosion Control Devices | \$6,000.00 | \$ 6,000.00 | \$15,000.00 | \$ 15,000.00 | \$6,700.00 | \$ 6,700.00 | \$25,000.00 | \$ 25,000.00 |
| 148 | 1 | L.S. | Furnish, Stormwater Pollution Prevention Plan (SW3P) | \$2,200.00 | \$ 2,200.00 | \$5,000.00 | \$ 5,000.00 | \$3,500.00 | \$ 3,500.00 | \$715.00 | \$ 715.00 |
| 149 | 1 | L.S. | Furnish, Install, Maintain & Remove Traffic Control Devices | \$9,500.00 | \$ 9,500.00 | \$25,000.00 | \$ 25,000.00 | \$36,000.00 | \$ 36,000.00 | \$50,000.00 | \$ 50,000.00 |
| 150 | 1 | L.S. | Furnish Trench Safety Plan | \$600.00 | \$ 600.00 | \$1,500.00 | \$ 1,500.00 | \$650.00 | \$ 650.00 | \$1,000.00 | \$ 1,000.00 |
| 151 | 200 | L.F. | Install & Implement Trench Safety Plan | \$6.00 | \$ 1,200.00 | \$5.00 | \$ 1,000.00 | \$6.00 | \$ 1,200.00 | \$1.00 | \$ 200.00 |
| TOTAL AMOUNT BID (Items 101 Through 151) | | | | | \$ 502,410.90 | | \$ 627,510.25 | | \$ 667,721.00 | | \$ 680,733.50 |

TABULATION OF BIDS

Date: September 13, 2017

BID OF

Project: CITY OF LUCAS, TEXAS
Winningkoff Road Reverse Curve
Paving & Drainage Improvements

BIRKHOFF, HENDRICKS & CARTER, L.L.P.
 PROFESSIONAL ENGINEERS
 Dallas, Texas

Pavecon Public Works, LP
 3022 Roy Orr Blvd.
 Grand Prairie, Texas 75050

| Item No. | Approximate Quantities | Unit | Description | Unit Bid Price | Extension |
|----------|------------------------|------|---|----------------|---------------|
| 101 | 13 | Sta | Prepare Right-of-Way, Insurance, Bonds and Mobilization | \$7,250.00 | \$ 94,250.00 |
| 102 | 520 | S.Y. | Sawcut, Remove & Dispose of Concrete Pavement | \$19.00 | \$ 9,880.00 |
| 103 | 2,495 | S.Y. | Sawcut, Remove & Dispose of Asphalt Pavement | \$9.00 | \$ 22,455.00 |
| 104 | 60 | S.Y. | Remove, Salvage & Stockpile Rock Rip-Rap | \$24.00 | \$ 1,440.00 |
| 105 | 36 | L.F. | Remove & Dispose of 36-Inch CMP | \$18.00 | \$ 648.00 |
| 106 | 43 | L.F. | Remove & Dispose of 24-Inch CMP and Safety End Treatments | \$18.00 | \$ 774.00 |
| 107 | 41 | L.F. | Remove & Dispose of 12-Inch RCP | \$18.00 | \$ 738.00 |
| 108 | 24 | L.F. | Remove & Dispose of 8-Inch PVC Pipe | \$18.00 | \$ 432.00 |
| 109 | 3 | Ea. | Remove Existing Trees | \$630.00 | \$ 1,890.00 |
| 110 | 1 | L.S. | Remove Bick Sign & Salvage "Huntwick" Plaque | \$1,300.00 | \$ 1,300.00 |
| 111 | 2 | Ea. | Remove Existing Sign | \$165.00 | \$ 330.00 |
| 112 | 1 | L.S. | Relocate Existing Fire Hydrant and Valve | \$3,610.00 | \$ 3,610.00 |
| 113 | 1 | L.S. | Relocate Existing Water Meter and Irrigation Control Valves | \$385.00 | \$ 385.00 |
| 114 | 1 | L.S. | Remove Brick Mailbox & Set Temporary Mailbox | \$1,710.00 | \$ 1,710.00 |
| 115 | 6 | Ea. | Remove & Re-Set Mailbox | \$335.00 | \$ 2,010.00 |
| 116 | 1,265 | C.Y. | Unclassified Excavation | \$35.00 | \$ 44,275.00 |
| 117 | 3,227 | S.Y. | Furnish & Install 6-Inch Thick 4000 psi Reinforced Concrete Pavement | \$83.50 | \$ 269,454.50 |
| 118 | 3,894 | S.Y. | Construct 6-Inch Lime Treated Subgrade (6% Lime) | \$7.00 | \$ 27,258.00 |
| 119 | 53 | Tons | Furnish Hydrated Lime (27 lb/SY) | \$162.00 | \$ 8,586.00 |
| 120 | 394 | S.Y. | Furnish & Install 6-Inch Thick 3600 psi Reinforced Concrete Driveway, Including Connection to Existing Pavement | \$67.00 | \$ 26,398.00 |
| 121 | 24 | L.F. | Furnish & Install Longitudinal Butt Joint | \$5.50 | \$ 132.00 |
| 122 | 120 | L.F. | Remove & Replace Hog Wire Fence | \$28.00 | \$ 3,360.00 |
| 123 | 100 | L.F. | Remove & Replace Pipe Rail Fence | \$48.00 | \$ 4,800.00 |
| 124 | 181 | L.F. | Remove & Replace White Vinyl Fence | \$31.00 | \$ 5,611.00 |
| 125 | 1 | L.S. | Abandon Existing Culvert and Cap Ends | \$395.00 | \$ 395.00 |
| 126 | 87 | L.F. | Furnish & Install 18-Inch Reinforced Concrete Pipe Including Embedment | \$106.00 | \$ 9,222.00 |

TABULATION OF BIDS

Date: September 13, 2017

BID OF

Project: CITY OF LUCAS, TEXAS
Winningkoff Road Reverse Curve
Paving & Drainage Improvements

BIRKHOFF, HENDRICKS & CARTER, L.L.P.
 PROFESSIONAL ENGINEERS
 Dallas, Texas

Pavecon Public Works, LP
 3022 Roy Orr Blvd.
 Grand Prairie, Texas 75050

| Item No. | Approximate Quantities | Unit | Description | Unit Bid Price | Extension |
|---|------------------------|------|--|----------------|----------------------|
| 127 | 61 | L.F. | Furnish & Install 24-Inch Reinforced Concrete Pipe Including Embedment | \$122.00 | \$ 7,442.00 |
| 128 | 52 | L.F. | Furnish & Install 36-Inch Reinforced Concrete Pipe Including Embedment | \$228.00 | \$ 11,856.00 |
| 129 | 1 | Ea. | Furnish & Install 3'x3' Wye Inlet | \$2,950.00 | \$ 2,950.00 |
| 130 | 2 | Ea. | Furnish & Intall 24-Inch Safety End Treatment | \$2,885.00 | \$ 5,770.00 |
| 131 | 1 | Ea. | Furnish & Install 18-Inch CH-FW-0 Reinforced Concrete Headwall | \$3,215.00 | \$ 3,215.00 |
| 132 | 1 | Ea. | Furnish & Install 2-24-Inch CH-FW-15 Reinforced Concrete Headwall | \$3,835.00 | \$ 3,835.00 |
| 133 | 2 | Ea. | Furnish & Install 36-Inch CH-PW-S Reinforced Concrete Headwall | \$18,365.00 | \$ 36,730.00 |
| 134 | 1 | L.S. | Connect to Existing 18-Inch CMP | \$1,428.00 | \$ 1,428.00 |
| 135 | 1 | L.S. | Connect to Existing 2-24-Inch RCP Including Removal of Existing Headwall | \$2,806.00 | \$ 2,806.00 |
| 136 | 80 | S.Y. | Furnish & Install 12-Inch Thick Grouted Rock Rip-Rap | \$141.00 | \$ 11,280.00 |
| 137 | 10 | Ea. | Furnish & Install 10 Gallon Container Grown Photinias | \$417.00 | \$ 4,170.00 |
| 138 | 3 | Ea. | Furnish & Intall R1-1 and R1-4 Sign Combination Including Sign Mounting Hardware | \$550.00 | \$ 1,650.00 |
| 139 | 1 | Ea. | Furnish & Intall W3-1 Sign Including Sign Mounting Hardware | \$517.00 | \$ 517.00 |
| 140 | 1 | Ea. | Furnish & Intall W1-10 Sign Including Sign Mounting Hardware | \$550.00 | \$ 550.00 |
| 141 | 5 | Ea. | Furnish & Intall W1-8L Sign Including Sign Mounting Hardware | \$517.00 | \$ 2,585.00 |
| 142 | 1 | Ea. | Furnish & Intall W1-1L & W13-1 Sign Combination including Sign Mounting Hardware | \$550.00 | \$ 550.00 |
| 143 | 1,025 | L.F. | Furnish & Install Double 4-Inch Yellow Thermoplastic Stripe | \$2.25 | \$ 2,306.25 |
| 144 | 170 | L.F. | Furnish & Install Single 4-Inch Dashed Yellow Thermoplastic Stripe | \$1.15 | \$ 195.50 |
| 145 | 2,070 | L.F. | Furnish & Install Single 4-Inch White Thermoplastic Stripe | \$1.15 | \$ 2,380.50 |
| 146 | 2,800 | S.Y. | Furnish, Install & Maintain Solid Block Sod | \$8.25 | \$ 23,100.00 |
| 147 | 1 | L.S. | Furnish, Install, Maintain & Remove Erosion Control Devices | \$8,200.00 | \$ 8,200.00 |
| 148 | 1 | L.S. | Furnish, Stormwater Pollution Prevention Plan (SW3P) | \$3,715.00 | \$ 3,715.00 |
| 149 | 1 | L.S. | Furnish, Install, Maintain & Remove Traffic Control Devices | \$12,035.00 | \$ 12,035.00 |
| 150 | 1 | L.S. | Furnish Trench Safety Plan | \$335.00 | \$ 335.00 |
| 151 | 200 | L.F. | Install & Implement Trench Safety Plan | \$3.50 | \$ 700.00 |
| TOTAL AMOUNT BID (Items 101 Through 151) | | | | | \$ 691,644.75 |

CITY OF LUCAS, TEXAS

PUBLIC WORKS CONSTRUCTION PROJECT

**Winningkoff Road Reverse Curve Paving and Drainage
Improvements**

Bid #010-17,

GRod Construction, LLC

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City of Lucas, Texas

This Agreement is made by and between the City of Lucas, Texas, a home-rule municipality (hereinafter referred to as the "City") and GRod Construction, LLC, (hereinafter referred to as the "Contractor") for construction of Winningkoff Road Reverse Curve Paving and Drainage Improvements (Bid #010-17), (hereinafter referred to as the "Project"), the City and the Contractor hereby agreeing as follows:

ARTICLE I

THE CONTRACT AND THE CONTRACT DOCUMENTS

1.1 THE CONTRACT

1.1.1 The contract between the City and the Contractor, of which this agreement (sometimes referred to herein as the "Contract") is a part, consists of the Contract Documents. It shall be effective on the date this Agreement is executed by the last party to execute it.

1.2 THE CONTRACT DOCUMENTS

1.2.1 The Contract Documents consist of this agreement, the General Conditions, the Special Conditions, the Invitation to Bid, Requirements and Instructions to Bidders, the Specifications, the Drawings, the Shop Drawings, the Project Manual, all Change Orders and Field Orders issued hereafter, the addenda, exhibits and attachments thereto, any other amendments hereto executed by the parties hereafter, together with the following (if any):

1.3 ENTIRE AGREEMENT

1.3.1 This Contract, together with the Contractor's performance and payment bonds for the Project, all General Conditions, Special Conditions, Plans and Specifications, and Addenda attached thereto, constitute the entire and exclusive agreement between the City and the Contractor with reference to the Project. Specifically, but without limitation, this Contract supersedes any bid documents and all prior written or oral communications, representations and negotiations, if any, between the City and Contractor not expressly made a part hereof.

1.4 NO PRIVACY WITH OTHERS

1.4.1 Nothing contained in this Contract shall create, or be interpreted to create, privity or any other contractual agreement between the City and any person or entity other than the Contractor.

1.5 INTENT AND INTERPRETATION

1.5.1 The intent of this Contract is to require complete, correct and timely execution of the Work. Any Work that may be required, implied or inferred by the Contract Documents, or any one or more of them, as necessary to produce the intended result shall be provided by the Contractor for the Contract Price.

1.5.2 This Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.

1.5.3 When a word, term or phrase is used in this Contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.

1.5.4 The word "City" includes the City of Lucas, Texas, a municipal corporation, and its public officials, officers, employees, agents and employees. The word "Contractor" includes the Contractor and its officers, employees, agents and representatives. The word "include", "includes", or "including", as used in this subparagraph and in this Contract, shall be deemed to be followed by the phrase, "without limitation".

1.5.5 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.

1.5.6 Words or terms used as nouns in this Contract shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.

1.5.7 The Contractor shall have a continuing duty to read, carefully study and compare each of the Contract Documents, the Shop Drawings, the Product Data, and any Plans and Specifications, and shall give written notice to the City of any inconsistency, ambiguity, error or omission which the Contractor may discover with respect to these documents before proceeding with the affected Work. The issuance, or the express or implied approval by the City or the Engineer of the Contract Documents, Shop Drawings or Product Data, shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such approval be evidence of the Contractor's compliance with this Contract. The City has requested the Engineer to only prepare documents for the Project, including the Drawings, Plans and Specifications for the Project, which are accurate, adequate, consistent, coordinated and sufficient for construction. HOWEVER, THE CITY MAKES NO REPRESENTATION OR WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS. THE CONTRACTOR ASSUMES ALL RISK OF ERRORS, AMBIGUITIES AND INACCURACIES. By the execution hereof, the Contractor acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representation or warranties by the City concerning such documents as no such representation or warranties have been or are hereby made. Further, the Contractor represents and warrants that it has had a sufficient opportunity to inspect the Project site and assumes any and all responsibility for inadequacies or ambiguities in the plans, drawings or specifications as well as for latent conditions of the site where the work is to be performed.

1.5.8 As between numbers and scaled measurements on the Drawings and in the Design, the numbers shall govern, as between larger scale and smaller scale drawings, the larger scale shall govern.

1.5.9 Neither the organization of any of the Contract Documents into divisions, sections, paragraphs, articles, (or other categories), nor the organization or arrangement of the Design, shall control the Contractor in dividing the Work or in establishing the extent or scope of the Work to be performed by Subcontractors.

1.6 OWNERSHIP OF CONTRACT DOCUMENTS

1.6.1 The Contract Documents, and each of them individually and collectively, shall remain the property of the City. The Contractor shall have the right to keep one record set of the Contract Documents upon completion of the Project; provided, however, that in no event shall Contractor use, or permit to be used, any or all of such Contract Documents on other projects without the City's prior written authorization.

ARTICLE II

THE WORK

2.1 The Contractor shall perform all of the Work required, implied or reasonably inferable from this Contract.

2.2 WORK

2.2.1 The term "Work" shall mean whatever is done by or required of the Contractor to perform and complete its duties under this Contract, including the following: construction of the whole or a designated part of the Project; furnishing of any required surety bonds and insurance, and the provision or furnishing of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, permits and licenses required of the Contractor, power, water, fuel, heat, light, cooling and all other utilities as required by this Contract. The Work to be performed by the Contractor is generally described as follows:

Approximate quantities for Winningkoff Road Reverse Curve Paving and Drainage Improvements (Bid #010-17) include paving, drainage; and other miscellaneous improvements as shown on the plans and in accordance with the specifications.

2.2.2 The Contractor shall be responsible for paying for and procuring all materials and labor and furnishing all services necessary or appropriate for the full performance of the Work and the for the full completion of the Project. All materials shall be new and materials and workmanship shall be of good quality. Upon request, the Contractor shall furnish satisfactory proof of the type, kind, and quality of materials.

ARTICLE III

CONTRACT TIME

3.1 SUBSTANTIAL COMPLETION

3.1.1 "Substantial Completion" shall mean that stage in the progression of the Work when the Work is sufficiently complete in accordance with this Contract that the City can enjoy beneficial use or occupancy of the Work and can utilize the Work for its intended purpose, even though minor miscellaneous work and/or adjustment may be required.

3.2 TIME

3.2.1 The Contractor shall commence the Work within 10 days of receipt of a written Notice to Proceed, and shall achieve Substantial Completion of the Work no later than **180 calendar days** from the date specified in the Notice to Proceed. The term "calendar days" shall mean any and all days of the week or month, no days being excepted. The number of calendar days from the date on which the Work is permitted to proceed, through the date set forth for Substantial Completion, shall constitute the Contract Time" and the "scheduled completion date." The execution of this Contract by the Contractor constitutes an agreement that adequate time has been allotted for this Contract, given the Contract Price.

3.2.2 Work may proceed on any day of the week, including weekends, and at any time of the day. However, work shall not occur on such days or at such times as, in the City's or Engineer's discretion, may be a violation of noise or environmental regulations or ordinances, or when the presence of workers, equipment or materials may create an abnormally hazardous condition.

3.2.3 The Contractor shall submit and comply with construction schedules establishing completion timelines and deadlines for each component of the Project. Construction schedules shall be submitted to and approved by the Engineer and the City on a regular basis as required by the Contract Documents. If no reference is made to construction schedules in the Contract Documents, then construction schedules shall be submitted with each Application for Payment.

3.3 TIME IS OF THE ESSENCE

3.3.1 The scheduled completion date is based on public necessity. The scheduled completion date is factored into and is a material component of the Contract Price. All limitations of time set forth in the Contract Documents are of the essence of this Contract.

3.3.2 TIME IS OF THE ESSENCE IN THE PERFORMANCE OF THE WORK AND THE COMPLETION OF THE PROJECT ON OR BEFORE THE SCHEDULED COMPLETION DATE. THE SCHEDULED COMPLETION DATE IS A DEADLINE. THE CITY EMPLOYS A ZERO-TOLERANCE POLICY REGARDING THE TIME FOR COMPLETION. The time for completion is an essential and material term of this Contract and the Contractor's failure to achieve substantial completion on the date stated herein, to comply with work schedules, or achieve milestones in approved construction schedules, shall be a material breach and default of this Contract.

3.3.3 The City will assess liquidated damages for late or untimely performance and may, at the City's sole option, elect to allow Contractor to continue with the Work, or may declare Contractor to be in breach and default of the Contract and order Contractor to remove all equipment and personnel from the work site. All remedies for Contractor's late performance shall be nonexclusive and cumulative without waiver of any other, and the City's election of one shall not preclude the City from pursuing any other.

3.3.4 It is contemplated by the parties that the progress of the Work may be delayed by certain conditions beyond the control of the parties; these delays have been contemplated by the parties and considered in the time allotted for performance specified herein and in the contract price and includes, but is not limited to delays occasioned on account of adverse weather, temporary unavailability of materials, shipment delays, and the presence and potential interference of other contractors or of utilities that may be performing work at the Project site unrelated to this Contract. These delays have been considered and included in the determination of the scheduled completion date and the Contract Price.

3.4 LIQUIDATED DAMAGES; EARLY COMPLETION BONUS

3.4.1 ~~The Contractor shall pay the City the sum of \$ _____ [ENTER DAILY LIQUIDATED DAMAGE AMOUNT] per day for each and every calendar day of unexcused delay in achieving Substantial Completion beyond the date set forth herein for Substantial Completion of the Work. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the City, estimated at or before the time of executing this Contract. When the City reasonably believes that Substantial Completion will be inexcusably delayed, the City shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the City to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving Substantial Completion, or any part thereof, for which the City has withheld payment, the City shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages. If the Contractor has submitted a Statement of Delay with the appropriate Application for Payment as required by Subparagraph 5.2.3, and/or has complied with the notice and Change Order requirements of this Contract, the Engineer shall have sole discretion to determine whether a delay is excused or unexcused and the Engineer's determination thereof shall be final and binding on the parties.~~

3.4.2 ~~In the event that the Contractor achieves certification by the Engineer of Final Completion prior to _____ [ENTER DATE FOR EARLY COMPLETION BONUS] Calendar days from the date specified in the Notice to Proceed, the City shall pay to the Contractor the sum of \$ _____ [ENTER DAILY AMOUNT OF INCENTIVE] per day for each calendar day that Final Completion is certified in advance of the scheduled Final Completion date, as that date may be modified by written change order. However, early completion bonuses shall not, in the aggregate, exceed the total sum of \$ _____ [ENTER MAXIMUM AMOUNT OF EARLY COMPLETION BONUS]. Any reduction in the scope of work, evidenced by written change order, shall commensurately reduce the Contract Time.~~

3.5 NO DAMAGES FOR DELAY; NO BACK-CHARGES; DAMAGE WAIVER

3.5.1 No claim shall be made by the Contractor to the City, and no damages, costs or extra compensation shall be allowed or paid by the City to the Contractor for any delay or hindrance from any cause in the progress or completion of the Work or this Contract. The Contractor's sole remedy in the event of any delay or hindrance, regardless of cause, shall be to request time extensions by written change orders as provided for hereinafter. The failure to seek or obtain a change order for time extension shall be deemed a waiver thereof and Contractor shall be regarded as having made a determination that the delay will not affect the completion of the Work. Should the Contractor be delayed by an act of the City, or should the City order a stoppage of the Work for sufficient cause unrelated to any act or omission of the Contractor, an extension of time shall be granted by the City by Change Order upon written application, which extension shall not be unreasonably denied, to compensate for the delay.

3.5.2 The City shall have the authority to suspend the Work wholly or in part for such period or periods of time as it may deem appropriate due to unsuitable conditions considered unfavorable for the proper prosecution of the Work or for the failure of the Contractor to carry out instructions from the City or City's representative. During any period in which the Work is stopped or during which any of the Work is not actively in progress for any reason, Contractor shall properly protect the site and the Work from damage, loss or harm. The Contractor shall not be compensated for periods of delay caused by a suspension of the work by the City. If work is suspended due to unsuitable conditions through no fault of the Contractor, an extension of time shall be granted by the City by Change Order upon written application, which extension shall not be unreasonably denied, to compensate for the delay.

3.5.3 The Contractor shall not have or assert any claim against the City for damages or back-charges of any kind for any reason, including but not limited to claims for Extra Work, damages, economic loss, additional costs, unknown latent site conditions, and refusals by the City to grant extensions of time, unless supported and authorized by a written Change Order or separate agreement signed by all parties. The Contractor, in entering into this Contract, hereby waives, releases, quitclaims, discharges and holds harmless the City from and against any and all claims, damages, liabilities and losses, save and except those arising under Paragraph 12.1 of this Contract.

ARTICLE IV

CONTRACT PRICE

4.1 THE CONTRACT PRICE

4.1.1 The City shall pay, and the Contractor shall accept, as full and complete payment for all of the Work required herein, the fixed sum of

\$502,410.90.

The sum set forth in this Paragraph 4.1 shall constitute the Contract Price which shall not be modified except by written Change Order as provided in this Contract, or the assessment of liquidated damages or the award of an early completion bonus.

ARTICLE V

PAYMENT OF THE CONTRACT PRICE

5.1 SCHEDULE OF VALUES

5.1.1 The Schedule of Values, submitted to and accepted by the City and Engineer at the time of the Contractor's bid, allocates the Contract Price to the various portions of the Work. The Contractor's Schedule of Values shall have been prepared, or at the City's or Engineer's request shall be amended prior to the commencement of construction, in such form, with such detail, and supported by such data as the Engineer or the City may require to substantiate its accuracy. The Contractor shall not imbalance its Schedule of Values nor artificially inflate any element thereof. The violation of this provision by the Contractor shall constitute a material breach of this Contract. The Schedule of Values

shall be used only as a basis for the Contractor's Applications for Payment and shall only constitute such basis after it has been acknowledged and accepted in writing by the Engineer and the City.

5.2 PAYMENT PROCEDURE

5.2.1 The City shall pay the Contract Price to the Contractor as provided below.

5.2.2 PROGRESS PAYMENTS - Based upon the Contractor's Applications for Payment submitted to the Engineer and upon Certificates for Payment subsequently issued to the City by the Engineer, the City shall make progress payments to the Contractor on account of the Contract Price.

5.2.3 APPLICATION FOR PAYMENT - On or before the 25th day of each month after commencement of the Work, the Contractor shall submit an Application for Payment for the period ending the 15th day of the month to the Engineer in such form and manner, and with such supporting data and content, as the City or the Engineer may require. The Contractor may request payment for that portion of the Contract Price properly allocable to Contract requirements properly provided and to labor, materials and equipment properly incorporated in the Work, less retainage and less the total amount of previous payments received from the City. Such Application for Payment shall be signed by the Contractor and shall constitute the Contractor's representation that the Work has progressed to the level for which payment is requested in accordance with the Schedule of Values, that the Work has been properly installed or performed in full compliance with this Contract, and that the Contractor knows of no reason why payment should not be made as requested. Thereafter, the Engineer will review the Application for Payment and may also review the Work at the Project site or elsewhere to determine whether the quantity and quality of the Work is as represented in the Application for Payment and is as required by this Contract. The Engineer shall determine and certify to the City the amount properly owing to the Contractor. The City shall make partial payments on account of the Contract Price to the Contractor within thirty (30) days following the Engineer's receipt and approval of each Application for Payment. The amount of each partial payment shall be the amount certified for payment by the Engineer less such amounts, if any, otherwise owing by the Contractor to the City or which the City shall have the right to withhold as authorized by this Contract. The Engineer's certification of the Contractor's Application for Payment shall not preclude the City from the exercise of any of its rights as set forth in Paragraph 5.3 hereinbelow.

5.2.4 STATEMENT OF DELAY - Each Application for Payment shall include a Statement of Delay showing the number of days lost due to inclement weather, conflicts with other City contractors, utilities, or design specifications, or other proper reasons. The failure to submit the Statement of Delay shall be a waiver of any claim for additional days or extensions of the scheduled completion date.

5.2.5 RETAINAGE - If the Contract Price set forth in Subparagraph 4.1.1 exceeds \$400,000, the City shall withhold retainage of ten (10) percent from each progress payment to secure performance of the Contract and shall deposit in an interest-bearing account that portion of the retainage withheld that exceeds five (5) percent of the progress payment. If a different percentage is set forth in the Invitation to Bid, then that percentage shall apply.

5.2.6 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the City when installed at the Project site, regardless of the time of payment. The Contractor further warrants that upon submittal of an Application for Payment, all Work for which payments have been received from the City shall be free and clear of liens, claims, security interest or other encumbrances in favor of the Contractor or any other person or entity whatsoever.

5.2.7 The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor on account of such Subcontractor's Work, the amount to which such Subcontractor is entitled. In the event the City becomes informed that the Contractor has not paid a Subcontractor as herein provided, the City shall have the right, but not the duty, to issue future checks in payment to the Contractor of amounts otherwise due hereunder naming the Contractor and such Subcontractor as joint payees. Such joint check procedure, if employed by the City, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the City to repeat the procedure in the future.

5.2.8 No progress payment, nor any use or occupancy of the Project by the City, shall be interpreted to constitute an acceptance of any Work not in strict compliance with this Contract.

5.3 WITHHELD PAYMENT

5.3.1 The City may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to the Contractor, to protect the City from loss because of:

- (a) defective Work not remedied by the Contractor or, in the opinion of the City, likely to be remedied by the Contractor;
- (b) claims of third parties against the City or the City's property;
- (c) failure by the Contractor to pay Subcontractors or others in a prompt and proper fashion;
- (d) evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price,
- (e) evidence that the Work will not be completed in the time required for substantial or final completion (final completion meaning the full and final completion of all work called for by this Contract and final acceptance by the Engineer and the City);
- (f) persistent failure to carry out the Work in accordance with the Contract;
- (g) damage to the City or a third party to whom the City is, or may be, liable.
- (h) failure to submit an updated project schedule in accordance with Subparagraph 3.2.3.
- (i) failure to submit record drawings in accordance with Subparagraph 7.9.1.

In the event that the City makes written demand upon the Contractor for amounts previously paid by the City as contemplated in this Subparagraph 5.3.1, the Contractor shall promptly comply with such demand. The City shall have no duty to third parties to withhold payment to the Contractor and shall incur no liability for a failure to withhold funds.

5.4 UNEXCUSED FAILURE TO PAY

5.4.1 If within twenty (20) days after the date established herein for payment to the Contractor by the City, the City, without cause or basis hereunder, fails to pay the Contractor any amount then due and payable to the Contractor, then the Contractor may after ten (10) additional days' written notice to the City and the Engineer, and without prejudice to any other available rights or remedies it may have, stop the Work until payment of those amounts due from the City have been received. Late payments shall not accrue interest or other late charges.

5.5 CERTIFICATE OF SUBSTANTIAL COMPLETION

5.5.1 When the Contractor believes that the Work is substantially complete, the Contractor shall submit to the Engineer a list of items to be completed or corrected. When the Engineer and the City on the basis of an inspection determine that the Work is in fact substantially complete, the Engineer will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall state the responsibilities of the City and the Contractor for Project security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete the items listed therein. In no event, however, shall the date of Final Completion be delayed. Guarantees required by the Contract shall commence on the date of Substantial Completion of the Work; however, the maintenance bond required herein, and the assurances given thereunder, shall commence of and from the date of final acceptance of the work by the City. The Certificate of Substantial Completion shall be submitted to the City and the Contractor for their written acceptance of the responsibilities assigned to them in such certificate.

Upon Substantial Completion of the Work, and execution by both the City and the Contractor of the Certificate of Substantial Completion, the City shall pay the Contractor for all work completed to date, less retainage.

5.6 COMPLETION AND FINAL PAYMENT

5.6.1 When all of the Work is finally complete and the Contractor is ready for a final inspection, it shall notify the City and the Engineer thereof in writing. Thereupon, the Engineer will make final inspection of the Work and, if the Work is complete in full accordance with this Contract and this Contract has been fully performed, the Engineer will promptly issue a final Certificate for Payment certifying to the City that the Project is complete and the Contractor is entitled to the remainder of the unpaid Contract Price (including retainage and the interest accrued on the retainage in excess of five (5) percent if the Contract Price is in excess of \$400,000), plus an early completion bonus, if any, less any amount withheld pursuant to this Contract. If the Engineer is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s) which cost may be deducted by the City from the Contractor's final payment.

5.6.1.1 If the Contractor fails to achieve final completion within the time fixed therefor by the Engineer in its Certificate of Substantial Completion, the Contractor shall pay the City the sum set forth hereinabove as liquidated damages per day for each and every calendar day of unexcused delay in achieving final completion beyond the date set forth herein for final completion of the Work. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the City, estimated at or before the time of executing this Contract. When the City reasonably believes that final completion will be inexcusably delayed, the City shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the City to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving final completion, or any part thereof, for which the City has withheld payment, the City shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages. Liquidated damages shall be deducted first from any earned early completion bonus, then from any sums otherwise due to the Contractor.

5.6.2 The Contractor shall not be entitled to final payment unless and until it submits to the Engineer its affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the City, or the City's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of lien from all Subcontractors of the Contractor and of any and all other parties required by the Engineer or the City; consent of Surety, if any, to final payment. If any third party fails or refuses to provide a release of claim or waiver of lien as required by the City, the Contractor shall furnish a bond satisfactory to the City to discharge any such lien or indemnify the City from liability.

5.6.3 The City shall make final payment of all sums due the Contractor within thirty (30) days of the Engineer's execution of a final Certificate for Payment.

5.6.4 Acceptance of final payment shall constitute a waiver of all claims against the City by the Contractor except for those claims previously made in writing against the City by the Contractor, pending at the time of final payment, and identified in writing by the Contractor as unsettled at the time of its request for final payment.

5.6.5 Other than interest on retainage in excess of 5% under Paragraph 5.2.5, under no circumstances shall Contractor be entitled to receive interest on any payments or monies due Contractor by the City, whether the amount on which the interest may accrue is timely, late, wrongfully withheld, or an assessment of damages of any kind.

ARTICLE VI

THE CITY

6.1 INFORMATION, SERVICES AND THINGS REQUIRED FROM CITY

6.1.1 The City shall furnish to the Contractor, at the time of executing this Contract, any and all written and tangible material in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to the Contractor only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, the City does not represent, warrant, or guarantee its accuracy either in whole, in part, implicitly or explicitly, or at all, and shall have no liability therefor. The City shall also furnish surveys, legal limitations and utility locations (if known), and a legal description of the Project site.

6.1.2 Excluding permits and fees normally the responsibility of the Contractor, the City shall obtain all approvals, easements, and the like required for construction and shall pay for necessary assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

6.1.3 The City shall furnish the Contractor, free of charge, two copies of the Contract Documents for execution of the Work.

6.2 RIGHT TO STOP WORK

6.2.1 If the Contractor persistently fails or refuses to perform the Work in accordance with this Contract, if the Contractor fails to meet milestones set forth in approved construction schedules, if the City has sufficient reason to believe that the Contractor is not and will not complete the Project by the scheduled completion date, or if the best interests of the public health, safety or welfare so require, the City may order the Contractor to stop the Work, or any described portion thereof, until the cause for stoppage has been corrected, no longer exists, or the City orders that Work be resumed. In such event, the Contractor shall immediately obey such order.

6.3 CITY'S RIGHT TO PERFORM WORK

6.3.1 If the Contractor's Work is stopped by the City under Paragraph 6.2, and the Contractor fails within seven (7) days of such stoppage to provide adequate assurance to the City that the cause of such stoppage will be eliminated or corrected, then the City may, without prejudice to any other rights or remedies the City may have against the Contractor, proceed to carry out the subject Work. In such a situation, an appropriate Change Order shall be issued deducting from the Contract Price the cost of correcting the subject deficiencies, plus compensation for the Engineer's additional services and expenses necessitated thereby, if any. If the unpaid portion of the Contract Price is insufficient to cover the amount due the City, the Contractor shall pay the difference to the City.

ARTICLE VII

THE CONTRACTOR

7.1 MUST FOLLOW CONTRACT

7.1.1 The Contractor shall perform no part of the Work at any time without adequate Contract Documents or, as appropriate, approved Shop Drawings, Product Data or Samples for such portion of the Work. If the Contractor performs any of the Work knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Engineer, the Contractor shall bear responsibility for such performance and shall bear the cost of correction. The Contractor shall perform the Work strictly in accordance with this Contract

7.2 PROSECUTION OF WORK

7.3.1 The Contractor shall supervise and direct the Work using the Contractor's best skill, effort and attention. The Contractor shall be responsible to the City for any and all acts or omissions of the Contractor, its employees and others engaged in the Work on behalf of the Contractor.

7.3.2 The Contractor shall give adequate attention to the faithful prosecution of the Work and the timely completion of this Contract, with authority to determine the manner and means of performing such Work, so long as such methods insure timely completion and proper performance.

7.3.3 The Contractor shall exercise all appropriate means and measures to insure a safe and secure jobsite in order to avoid and prevent injury, damage or loss to persons or property.

7.3.4 The City will not interfere with the Contractor's manner and means of performing the Work. However, the City's insistence on strict compliance with the Contract shall not be regarded as an interference with the Contractor's manner and means. In the event that any part of the Work is not in strict compliance with the Contract, the Contractor is and shall be estopped from claiming any interference by the City or Engineer with the Contractor's manner and means of performing that part of the Work.

7.4 WARRANTY

7.4.1 The Contractor warrants to the City that all labor furnished to progress the Work under this Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality and new unless otherwise permitted by this Contract, and that the Work will be of good quality, free from faults and defects and in strict conformance with this Contract. All Work not conforming to these requirements may be considered defective. THE CONTRACTOR WARRANTS AND GUARANTIES THAT IT SHALL COMPLETE THE WORK AND ACHIEVE SUBSTANTIAL COMPLETION BY THE SCHEDULED COMPLETION DATE, STRICTLY IN ACCORDANCE WITH THIS CONTRACT. DEFECTIVE WORK OR MATERIALS SHALL BE FIXED, REPAIRED OR REPLACED FREE OF CHARGE OR COST TO THE CITY.

7.5 PERMITS; FEES; LICENSES

The Contractor shall obtain and pay for all permits, fees and licenses necessary and ordinary for the Work. The Contractor shall comply with all lawful requirements applicable to the Work and shall give and maintain any and all notices required by applicable law pertaining to the Work.

7.6 SUPERVISION

7.6.1 The Contractor shall employ and maintain at the Project site only competent supervisory personnel. Absent written instruction from the Contractor to the contrary, the superintendent shall be deemed the Contractor's authorized representative at the site and shall be authorized to receive and accept any and all communications from the City or the Engineer.

7.6.2 Key supervisory personnel assigned by the Contractor to this Project are as follows:

| NAME | FUNCTION |
|-------------|-----------------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

So long as the individuals named above remain actively employed or retained by the Contractor, they shall perform the functions indicated next to their names unless the City agrees to the contrary in writing. In the event one or more

individuals not listed above subsequently assume one or more of those functions listed above, the Contractor shall be bound by the provisions of this Subparagraph 7.6.2 as though such individuals had been listed above.

7.7 WORK SCHEDULE

7.7.1 At the pre-construction meeting, the Contractor shall submit to the City and the Engineer for their information, the Contractor's schedule for completing the Work (also referred to herein as the construction schedule). The Contractor's schedule shall be revised no less frequently than monthly (unless the parties otherwise agree in writing) and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project. Each such revision shall be furnished to the City and the Engineer.

7.7.2 The Contractor's schedule for completing the Work and any revised schedules, shall demonstrate achievement of substantial completion by the scheduled completion date. Failure by the Contractor to strictly comply with the provisions of this Paragraph 7.7 shall constitute a default and a material breach of this Contract.

7.8 ON-SITE DRAWINGS

7.8.1 The Contractor shall continuously maintain at the site, for the benefit of the City and the Engineer, one record copy of this Contract marked to record on a current basis changes, selections and modifications made during construction. Additionally, the Contractor shall maintain at the site for the City and Engineer the approved Shop Drawings, Product Data, Samples and other similar required submittals. Upon final completion of the Work, all of these record documents shall be delivered to the City.

7.9 RECORD DRAWINGS/PLANS, AS-BUILT PLANS, SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

7.9.1 The Contractor shall submit, with each Application for Payment, As-Built plans for any and each part or portion of the Project that varies from the Engineer's plans and specifications and the Contract Documents.

7.9.2 Shop Drawings, Product Data, Samples and other submittals from the Contractor do not constitute Contract Documents. Their purpose is merely to demonstrate the manner in which the Contractor intends to implement the Work in conformance with information received from the Contract Documents.

7.9.3 The Contractor shall not perform any portion of the Work requiring submittal and review of Shop Drawings, Product Data or Samples unless and until such submittal shall have been approved by the Engineer. Approval by the Engineer, however, shall not be evidence that Work installed pursuant thereto conforms to the requirements of this Contract.

7.10 CLEANING THE SITE AND THE PROJECT

7.10.1 The Contractor shall keep the site reasonably clean during performance of the Work. The Contractor shall clean the site and the Project and remove all waste, rubbish, temporary structures, and other materials during construction and, upon completion of construction, shall clean the site and remove all such material together with all of the Contractor's property therefrom. Contractor shall dispose of all refuse at a landfill approved by the Texas Commission on Environmental Quality. The Contractor shall further restore all property damaged during the prosecution of the Work and shall leave the site in a clean and presentable condition. No additional payment shall be made by the City for this work, the compensation having been considered and included in the contract price.

7.11 ACCESS TO WORK AND INSPECTIONS

7.11.1 The City and the Engineer shall have access to the Work at all times from commencement of the Work through final completion. The Contractor shall take whatever steps necessary to provide access when requested. When reasonably requested by the City or the Engineer, the Contractor shall perform or cause to be performed such testing as may be necessary or appropriate to insure suitability of the jobsite or the Work's compliance with the Contract requirements.

7.12 INDEMNITY AND DISCLAIMER

7.12.1 CITY SHALL NOT BE LIABLE OR RESPONSIBLE FOR, AND SHALL BE INDEMNIFIED, DEFENDED, HELD HARMLESS AND RELEASED BY CONTRACTOR FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, LOSSES, DAMAGES, CLAIMS, OR LIABILITY OF ANY CHARACTER, TYPE, OR DESCRIPTION, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY OR DEATH TO ANY PERSON, INJURY OR LOSS TO ANY PROPERTY, OR ECONOMIC LOSS, RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS, INCLUDING THE CONTRACTOR, OR PROPERTY, DIRECTLY OR INDIRECTLY ARISING OUT OF, OR OCCASIONED BY THE PERFORMANCE OF CONTRACTOR UNDER THIS CONTRACT, INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE OR IN PART FROM THE NEGLIGENCE OF CITY, WITHOUT WAIVING THE CITY'S GOVERNMENTAL, SOVEREIGN OR OTHER IMMUNITIES OR DEFENSES AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. IT IS THE EXPRESS INTENT OF THE PARTIES TO THIS CONTRACT THAT THE INDEMNITY PROVIDED FOR HEREIN IS AN INDEMNITY EXTENDED BY CONTRACTOR TO INDEMNIFY AND PROTECT CITY FROM THE CONSEQUENCES OF THE CONTRACTOR'S AS WELL AS THE CITY'S NEGLIGENCE, WHETHER SUCH NEGLIGENCE IS THE SOLE OR PARTIAL CAUSE OF ANY SUCH INJURY, DEATH, OR DAMAGE.

The provisions of this indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

7.12.2 The Contractor will secure and maintain contractual liability insurance to cover this indemnification agreement that will be primary and non-contributory as to any insurance maintained by the City for its own benefit, including self-insurance. In addition, Contractor shall obtain and file with City a standard form Certificate of Insurance evidencing the required coverage.

7.12.3 In claims against any person or entity indemnified under this Paragraph 7.12 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 7.12 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

7.13 NONDISCRIMINATION

7.13.1 The Contractor shall not discriminate in any way against any person, employee or job applicant on the basis of race, color, creed, national origin, religion, age, sex, or disability where reasonable accommodations can be effected to enable the person to perform the essential functions of the job. The Contractor shall further insure that the foregoing nondiscrimination requirement shall be made a part and requirement of each subcontract on this Project.

7.14 PREVAILING WAGE RATES

7.14.1 The Contractor shall comply in all respects with all requirements imposed by any laws, ordinances or resolutions applicable to the Project with regard to the minimum prevailing wage rates for all classes of employees, laborers, subcontractors, mechanics, workmen and persons furnishing labor and services to the Project. The City has adopted a Prevailing Wage Rate Schedule, available to the Contractor by request (or attached to this contract as a part of the exhibits), which specifies the classes and wage rates to be paid to all persons. The Contractor shall pay not less than the minimum wage rates established thereby for each class, craft or type of labor, workman, or mechanic employed in the execution of this Contract. The failure of the Contractor to comply with this requirement shall result

in the forfeiture to the City of a sum of not less than Sixty Dollars (\$60.00) for each person per day, or portion thereof, that such person is paid less than the prevailing rate. Upon request by the City, Contractor shall make available for inspection and copying its books and records, including but not limited to its payroll records, account information and other documents as may be required by the City to insure compliance with this provision.

7.15 JOB SITE SAFETY PRECAUTIONS

7.15.1 The Contractor shall at all times exercise reasonable precautions for the safety of its employees, laborers, subcontractors, mechanics, workmen and others on and near the jobsite and shall comply with all laws, ordinances, regulations, and standards of federal, state and local safety laws and regulations. The Contractor shall provide such machinery guards, safe walk-ways, ladders, bridges, and other safety devices as may be necessary or appropriate to insure a safe and secure jobsite and shall require its subcontractors to comply with this requirement. The Contractor shall immediately comply with any and all safety requirements imposed by the Engineer during the progress of the Work.

7.16 WARNING DEVICES AND BARRICADES

7.16.1 The Contractor shall furnish and maintain such warning devices, barricades, lights, signs, pavement markings, and other devices as may be necessary or appropriate or required by the Engineer to protect persons or property in, near or adjacent to the jobsite. No separate compensation shall be paid to the Contractor for such measures. Where the Work is being conducted in, upon or near streets, alleys, sidewalks, or other rights-of-way, the Contractor shall insure the placement, maintenance and operation of any and all such warning devices as may be required by the City and shall do so until no longer required by the City. Such devices shall be in compliance with and conform to the manual and specifications for the uniform system of traffic control devices adopted by the Texas Department of Transportation.

7.17 PROTECTION OF UTILITIES AND OTHER CONTRACTORS

7.17.1 The Contractor shall use best efforts to leave undisturbed and uninterrupted all utilities and utility services provided to the jobsite or which presently exists at, above or beneath the location where the Work is to be performed. In the event that any utility or utility service is disturbed or damaged during the progress of the Work, the Contractor shall forthwith repair, remedy or restore the utility at Contractor's sole expense. The Contractor shall coordinate any utility conflicts with the owner of the utility and no extension of time will be requested or given if adequate coordination is not provided by Contractor.

7.17.2 The Contractor understands and acknowledges that other contractors of the City or of other entities may be present at the jobsite performing other work unrelated to the Project. The Contractor shall use best efforts to work around other contractors without impeding the work of others while still adhering to the scheduled completion date. In the event that the Contractor's work is or may be delayed by any other person, the Contractor shall immediately give notice thereof to the Engineer and shall request a written Change Order in accordance with the procedures set forth by this Contract. The Contractor's failure to provide such notice and to request such Change Order shall constitute a waiver of any and all claims associated therewith.

ARTICLE VIII

CONTRACT ADMINISTRATION

8.1 THE ENGINEER

8.1.1 When used in this Contract the term "Engineer" does not necessarily denote a duly licensed, trained or certified engineer; as used herein, the term shall be used interchangeably and shall mean a designated Engineer, Engineer, or Contract Administrator (who may not be an architect or engineer) for the City, said person to be designated or re-designated by the City prior to or at any time during the Work hereunder. The Engineer may be an

employee of the City or may be retained by the City as an independent contractor but, in either event, the Engineer's duties and authority shall be as set forth hereinafter. The Contractor understands and agrees that it shall abide by the decisions and instructions of the Engineer notwithstanding the contractual relationship between the City and Engineer, the title of Contract Administrator, or the fact that the Engineer is an employee of the City.

In the event the City should find it necessary or convenient to replace the Engineer, the City shall retain a replacement Engineer and the status of the replacement Engineer shall be that of the former Engineer.

8.2 ENGINEER'S ADMINISTRATION

8.2.1 The Engineer, unless otherwise directed by the City in writing, will perform those duties and discharge those responsibilities allocated to the Engineer as set forth in this Contract. The Engineer shall be the City's representative from the effective date of this Contract until final payment has been made.

8.2.2 The City and the Contractor shall communicate with each other in the first instance through the Engineer.

8.2.3 The Engineer shall be the initial interpreter of the requirements of the drawings and specifications and the judge of the performance thereunder by the Contractor. The Engineer shall render written or graphic interpretations necessary for the proper execution or progress of the Work with reasonable promptness on request of the Contractor.

8.2.4 The Engineer will review the Contractor's Applications for Payment and will certify to the City for payment to the Contractor, those amounts then due the Contractor as provided in this Contract.

8.2.5 The Engineer shall have authority to reject Work which is defective or does not conform to the requirements of this Contract. If the Engineer deems it necessary or advisable, the Engineer shall have authority to require additional inspection or testing of the Work for compliance with Contract requirements.

8.2.6 The Engineer will review and approve, or take other appropriate action as necessary, concerning the Contractor's submittals including Shop Drawings, Product Data and Samples. Such review, approval or other action shall be for the sole purpose of determining conformance with the design concept and information given through the Contract Documents.

8.2.7 The Engineer will prepare Change Orders and may authorize minor changes in the Work by Field Order as provided elsewhere herein.

8.2.8 The Engineer shall, upon written request from the Contractor, conduct inspections to determine the date of Substantial Completion and the date of final completion, will receive and forward to the City for the City's review and records, written warranties and related documents required by this Contract and will issue a final Certificate for Payment upon compliance with the requirements of this Contract.

8.2.9 The Engineer's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of this Contract.

8.3 CLAIMS BY THE CONTRACTOR

8.3.1 The Engineer shall determine all claims and matters in dispute between the Contractor and City with regard to the execution, progress, or sufficiency of the Work or the interpretation of the Contract Documents, including but not limited to the plans and specifications. Any dispute shall be submitted in writing to the Engineer within seven (7) days of the event or occurrence or the first appearance of the condition giving rise to the claim or dispute and the Engineer shall render a written decision within a reasonable time thereafter. The Engineer's decisions shall be final and binding on the parties. In the event that either party objects to the Engineer's determination as to any submitted dispute, that party shall submit a written objection to the Engineer and the opposing party within ten (10) days of receipt of the Engineer's written determination in order to preserve the objection. Failure to so object shall constitute a waiver of the objection for all purposes.

8.3.2 Pending final resolution of any claim of the Contractor, the Contractor shall diligently proceed with performance of this Contract and the City shall continue to make payments to the Contractor in accordance with this Contract.

8.3.3 CLAIMS FOR CONCEALED, LATENT OR UNKNOWN CONDITIONS - The Contractor expressly represents that it has been provided with an adequate opportunity to inspect the Project site and thoroughly review the Contract Documents and plans and specifications prior to submission of its bid and the City's acceptance of the bid. Subject to the conditions hereof, Contractor assumes full responsibility and risk for any concealed, latent or unknown condition which may affect the Work. No claims for extra work or additional compensation shall be made by Contractor in connection with concealed, latent or unknown conditions except as expressly provided herein. Should concealed, latent or unknown conditions encountered in the performance of the Work (a) below the surface of the ground or (b) in an existing structure be at variance with the conditions indicated by this Contract, or should unknown conditions of an unusual nature differing materially from those ordinarily encountered in the area and generally recognized as inherent in Work of the character provided for in this Contract, be encountered, the Contract Price shall be equitably adjusted by Change Order upon the written notice and claim by either party made within seven (7) days after the first observance of the condition. As a condition precedent to the City having any liability to the Contractor for concealed or unknown conditions, the Contractor must give the City and the Engineer written notice of, and an opportunity to observe, the condition prior to disturbing it. The failure by the Contractor to make the written notice and claim as provided in this Subparagraph shall constitute a waiver by the Contractor of any claim arising out of or relating to such concealed, latent or unknown condition and the Contractor thereby assumes all risks and additional costs associated therewith.

8.4 EXTRA WORK

8.4.1 The Contractor shall not claim, request or demand any sum from the City for Extra Work or for additional costs, and hereby waives all such claims, requests and demands and any right to assert same, unless the conditions of this subparagraph are strictly complied with. "Extra Work" is defined herein to mean any labor, service, materials, equipment, supplies or charges that are directly or indirectly related to the Work, the Project or the Project site, that is not necessarily or fairly required or implied by the Contract Documents.

8.4.2 The parties acknowledge and agree that there shall be no payment made by the City to the Contractor without a written agreement (either a separate contract or a written Change Order) signed by the parties. Should the Contractor perform Extra Work or be requested to perform Extra Work by the Engineer or City, it shall be the Contractor's obligation and duty to first apply for and obtain a written Change Order, approved by the Engineer and executed by the City. The Contractor's failure to obtain a written, signed Change Order prior to commencement of Extra Work shall constitute a complete and final waiver of any right for compensation for the Extra Work.

8.5 CLAIMS FOR ADDITIONAL COSTS OR TIME; CONTRACT PRICE INCREASE

8.5.1 If the Contractor wishes to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the City therefor, the Contractor shall give the Engineer written notice of such claim within seven (7) days after the occurrence of the event, or the first appearance of the condition, giving rise to such claim. Such notice shall be given by the Contractor before proceeding to execute any additional or changed Work. The failure by the Contractor to give such notice and to give such notice prior to executing the Work shall constitute a waiver of any right to or claim for additional compensation.

8.5.2 In connection with any claim by the Contractor against the City for compensation in excess of the Contract Price, any liability of the City for the Contractor's costs shall be strictly limited to direct costs incurred by the Contractor and shall in no event include indirect costs or consequential damages of the Contractor. The City shall not be liable to the Contractor for claims of third parties, including Subcontractors. The City shall not be liable to the Contractor for any claims based upon delay to the Contractor for any reason whatsoever including any act or neglect on the part of the City.

8.5.3 If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the City or someone acting in the City's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather

conditions not reasonably anticipated, fire or any causes beyond the Contractor's control, then the date for achieving Substantial Completion of the Work shall be extended upon the written notice and claim of the Contractor to the City and the Engineer, for such reasonable time as the Engineer may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than seven (7) days after the occurrence of the event or the first appearance of the condition giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Project. In the event the delay to the Contractor is a continuing one, only one notice and claim for additional time shall be necessary. If the Contractor fails to make such claim as required in this Subparagraph, any claim for an extension of time shall be waived. The procedures and remedies provided by this provision shall be the sole remedy of Contractor and Contractor shall not assert nor be entitled to any additional delays or damages associated therewith.

8.6 FIELD ORDERS

8.6.1 The Engineer shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and not inconsistent with the intent of the Contract. Such changes shall be effected by Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.

8.7 MEDIATION

8.7.1 In the event that a dispute arises under the terms of this Contract, following an adverse determination by the Engineer and proper preservation of the issue as required herein, the parties agree to submit to mediation. In such event, the parties shall agree to a designated person to serve as mediator and each party shall be responsible for payment of one-half of the total mediation fees. The parties shall submit the dispute to mediation as soon as practical and in no event later than one (1) year after the Engineer's written decision on the matter. At least one designated representative of each party must attend and participate in good faith in an effort to resolve the matters in dispute.

8.7.2 In no event shall the foregoing provision justify or authorize any delay in the progress of the Work; the parties shall abide by the decision of the Engineer in accomplishing the timely completion of the Project.

ARTICLE IX

SUBCONTRACTORS

9.1 DEFINITION

9.1.1 A Subcontractor is a person or entity that has a direct contract with the Contractor to perform a portion of the Work. No Subcontractor shall be in privity with the City.

9.2 AWARD OF SUBCONTRACTS

9.2.1 Upon execution of the Contract, the Contractor shall furnish the City, in writing, the names of persons or entities proposed by the Contractor to act as a Subcontractor on the Project. The City shall promptly reply to the Contractor, in writing, stating any objections the City may have to such proposed Subcontractor. The Contractor shall not enter into a subcontract with a proposed Subcontractor with reference to whom the City has made timely objection. The Contractor shall not be required to subcontract with any party to whom the Contractor has objection.

9.2.2 All subcontracts shall afford the Contractor rights against the Subcontractor which correspond to those rights afforded to the City against the Contractor herein, including those rights afforded to the City by Subparagraph 12.2.1 below. All subcontracts shall incorporate by reference the provisions hereof and shall provide that no claims, causes or demands shall be made by any Subcontractor against the City.

9.2.3 The Contractor shall indemnify, defend and hold harmless the City from and against any and all claims, demands, causes of action, damage, and liability asserted or made against the City by or on behalf of any Subcontractor.

ARTICLE X

CHANGES IN THE WORK

10.1 CHANGES PERMITTED

10.1.1 Changes in the Work within the general scope of this Contract, consisting of additions, deletions, revisions, or any combination thereof, may be ordered without invalidating this Contract, by Change Order or by Field Order.

10.1.2 Changes in the Work shall be performed under applicable provisions of this Contract and the Contractor shall proceed promptly with such changes.

10.2 CHANGE ORDER DEFINED

10.2.1 Change Order shall mean a written order to the Contractor executed by the City and the Engineer, issued after execution of this Contract, authorizing and directing a change in the Work or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The Contract Price and the Contract Time may be changed only by written Change Order.

10.3 CHANGES IN THE CONTRACT PRICE

10.3.1 Any change in the Contract Price resulting from a Change Order shall be determined as follows: (a) by mutual agreement between the City and the Contractor as evidenced by (1) the change in the Contract Price being set forth in the Change Order, (2) such change in the Contract Price, together with any conditions or requirements related thereto, being initiated by both parties, and (3) the Contractor's execution of the Change Order, or (b) if no mutual agreement occurs between the City and the Contractor, then, as provided in Subparagraph 10.3.2 below.

10.3.2 If no mutual agreement occurs between the City and the Contractor as contemplated in Subparagraph 10.3.1 above, the change in the Contract Price, if any, shall then be determined by the Engineer on the basis of the reasonable expenditures or savings of those performing, deleting or revising the Work attributable to the change, including, in the case of an increase or decrease in the Contract Price, a reasonable allowance for direct job site overhead and profit. In such case, the Contractor shall present, in such form and with such content as the City or the Engineer require, an itemized accounting of such expenditures or savings, plus appropriate supporting data for inclusion in a Change Order. Reasonable expenditures or savings shall be limited to the following: reasonable costs of materials, supplies, or equipment including delivery costs, reasonable costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance, reasonable rental costs of machinery and equipment exclusive of hand tools whether rented from the Contractor or others, reasonable costs of premiums for all bonds and insurance, permit fees, and sales, use or other taxes related to the Work, and reasonable cost of direct supervision and jobsite field office overhead directly attributable to the change. In no event shall any expenditure or savings associated with the Contractor's home office or other non-jobsite overhead expense be included in any change in the Contract Price. Pending final determination of reasonable expenditures or savings to the City, payments on account shall be made to the Contractor on the Engineer's Certificate for Payment.

10.3.3 If unit prices are provided in the Contract, and if the quantities contemplated are so changed in a proposed Change Order that application of such unit prices to the quantities of Work proposed will cause substantial inequity to the City or to the Contractor, the applicable unit prices shall be equitably adjusted.

10.4 MINOR CHANGES

10.4.1 The Engineer shall have authority to order minor changes in the Work not involving a change in the Contract Price or an extension of the Contract Time and not inconsistent with the intent of this Contract. Such minor changes shall be made by written Field Order, and shall be binding upon the City and the Contractor. The Contractor shall promptly carry out such written Field Orders.

10.5 EFFECT OF EXECUTED CHANGE ORDER

10.5.1 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work, this Contract as thus amended, the Contract Price and the Contract Time. The Contractor, by executing the Change Order, waives and forever releases any claim against the City for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.

10.6 NOTICE TO SURETY; CONSENT

10.6.1 The Contractor shall notify and obtain the consent and approval of the Contractor's surety with reference to all Change Orders if such notice, consent or approval are required by the Contractor's surety or by law. The Contractor's execution of the Change Order shall constitute the Contractor's warranty to the City that the surety has been notified of and consents to, such Change Order and the surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.

ARTICLE XI

UNCOVERING AND CORRECTING WORK

11.1 UNCOVERING WORK

11.1.1 If any of the Work is covered contrary to the Engineer's request or to any provisions of this Contract, it shall, if required by the Engineer or the City, be uncovered for the Engineer's inspection and shall be properly replaced at the Contractor's expense without change in the Contract Time or Contract Price.

11.1.2 If any of the Work is covered in a manner consistent with the Engineer's request or the provisions of this Contract, it shall, if required by the Engineer or City, be uncovered for the Engineer's inspection. If such Work conforms strictly to this Contract, costs of uncovering and proper replacement shall by Change Order be charged to the City. If such Work does not strictly conform to this Contract, the Contractor shall pay the costs of uncovering and proper replacement.

11.2 CORRECTING WORK

11.2.1 The Contractor shall immediately proceed to correct Work rejected by the Engineer as defective or failing to conform to this Contract. The Contractor shall pay all costs and expenses associated with correcting such rejected Work, including any additional testing and inspections, and reimbursement to the City for the Engineer's services and expenses made necessary thereby.

11.2.2 If within four (4) years after Substantial Completion of the Work any of the Work is found to be defective or not in accordance with this Contract, the Contractor shall correct it promptly upon receipt of written notice from the City. This obligation shall survive final payment by the City and termination of this Contract. With respect to Work first performed and completed after Substantial Completion, this four year obligation to specifically correct defective and nonconforming Work shall be extended by the period of time which elapses between Substantial Completion and completion of the subject Work.

11.2.3 Nothing contained in this Paragraph 11.2 shall establish any period of limitation with respect to other obligations which the Contractor has under this Contract. Establishment of the four year time period in Subparagraph 11.2.2 relates only to the duty of the Contractor to specifically correct the Work.

11.3 CITY MAY ACCEPT DEFECTIVE OR NONCONFORMING WORK

11.3.1 If the City chooses to accept defective or nonconforming Work, the City may do so at its sole discretion. In such event, the Contract Price shall be reduced by the greater of (a) the reasonable cost of removing and correcting the defective or nonconforming Work, and (b) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming Work. If the remaining portion of the unpaid Contract Price, if any, is insufficient to compensate the City for its acceptance of defective or nonconforming Work, the Contractor shall, upon written demand from the City, pay the City such remaining compensation for accepting defective or nonconforming Work.

ARTICLE XII

CONTRACT DEFAULT AND TERMINATION

12.1 TERMINATION BY THE CONTRACTOR

12.1.1 If the Work is stopped for a period of ninety (90) days by an order of any court or other public authority, or as a result of an act of the Government, through no fault of the Contractor or any person or entity working directly or indirectly for the Contractor, the Contractor may, upon fifteen (15) days' written notice to the City and the Engineer, terminate performance under this Contract and recover from the City payment for the actual reasonable expenditures of the Contractor (as limited in Subparagraph 10.3.2 above) for all Work executed and for materials, equipment, tools, construction equipment and machinery actually purchased or rented solely for the Work, less any salvage value of any such items.

12.1.2 If the City shall persistently or repeatedly fail to perform any material obligation to the Contractor for a period of fifteen (15) days after receiving written notice from the Contractor of its intent to terminate hereunder, the City shall have fifteen (15) days to remedy its failure and if not so cured, the Contractor may terminate performance under this Contract by written notice to the Engineer and the City. In such event, the Contractor shall be entitled to recover from the City as though the City had terminated the Contractor's performance under this Contract for convenience pursuant to Subparagraph 12.2.1 hereunder.

12.2 TERMINATION BY THE CITY

12.2.1 FOR CONVENIENCE

12.2.1.1 The City may for any reason whatsoever terminate performance under this Contract by the Contractor for convenience. The City shall give written notice of such termination to the Contractor specifying when termination becomes effective.

12.2.1.2 The Contractor shall incur no further obligations in connection with the Work and the Contractor shall stop Work when such termination becomes effective. The Contractor shall also terminate outstanding orders and subcontracts. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The City may direct the Contractor to assign the Contractor's right, title and interest under terminated orders or subcontracts to the City or its designee.

12.2.1.3 The Contractor shall transfer title and deliver to the City such completed or partially completed Work and materials, equipment, parts, fixtures, information and Contract rights as the Contractor has.

- 12.2.1.4 (a) The Contractor shall submit a termination claim to the City and the Engineer specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the Engineer. If the Contractor fails to file a termination claim within one (1) year from the effective date of termination, the City shall pay the Contractor, an amount derived in accordance with subparagraph (c) below.
- (b) The City and the Contractor may agree to the compensation, if any, due to the Contractor hereunder.
- (c) Absent agreement to the amount due to the Contractor, the City shall pay the Contractor the following amounts:
- (i) Contract prices for labor, materials, equipment and other services accepted under this Contract;
 - (ii) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the Work, and in terminating the Contractor's performance, plus a fair and reasonable allowance for overhead and profit thereon (such profit shall not include anticipated profit or consequential damages), provided however, that if it appears that the Contractor would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;
 - (iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph 12.2.1.2 of this Paragraph. These costs shall not include amounts paid in accordance with other provisions hereof.

12.2.1.5 The total sum to be paid the Contractor under this Subparagraph 12.2.1 shall not exceed the total Contract Price, as properly by amounts withheld by the City and reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

12.2.2 FOR CAUSE

12.2.2.1 The following constitute grounds for termination of this Contract by the City:

- (a) the Contractor's failure or refusal to prosecute the Work in a timely manner;
- (b) The Contractor abandons the jobsite and fails to resume work within five (5) days of written notice thereof by the City;
- (c) the Contractor fails to meet milestones or comply with approved construction schedules;
- (d) the Contractor fails to grant or allow access to the jobsite by the City or Engineer;
- (e) the Contractor fails to supply enough properly skilled workers, supervisory personnel or proper equipment or materials;
- (f) the Contractor fails to make prompt payment to Subcontractors or for materials or labor;
- (g) the Contractor persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction; or,
- (h) the Contractor is otherwise guilty of a violation of a material provision of this Contract.

In the event of the occurrence of any one or more of the above events, the City may by written notice to the Contractor, without prejudice to any other right or remedy, terminate the employment of the Contractor, exclude the Contractor from the job site, and take possession of the site and of all materials, equipment, tools, construction equipment and

machinery thereon owned by the Contractor and may finish the Work by whatever methods it may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished.

12.2.2.2 If the unpaid balance of the Contract Price does not exceed the cost of finishing the work, including compensation for the Engineer's additional services and expenses made necessary thereby, such difference shall be paid by the Contractor to the City. This obligation for payment shall survive the termination of the Contract.

12.2.2.3 In the event the employment of the Contractor is terminated by the City for cause pursuant to Subparagraph 12.2.2 and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under Subparagraph 12.2.1 and the provisions of Subparagraph 12.2.1 shall apply.

12.3 USE OF THIRD-PARTY OVERSIGHT OR CONSTRUCTION MANAGER

12.3.1 Should the City allow the Contractor to continue its performance of Work notwithstanding an event of default specified in Subparagraph 12.2.2.1, or should there be an imminent potential of default, the City, at its sole option and within its sole discretion, may retain a third-party construction manager to document the events of default and oversee further progress of the Work. The use of a third-party construction manager shall not prevent the City from declaring the Contractor to be in default and the City may, at its sole option and within its sole discretion, terminate this Contract at any time. Should the City retain a third-party construction manager, the costs thereof shall be withheld from any amounts due Contractor upon termination. The City's exercise of this option shall be without prejudice to any other right or remedy available to the City by law or under this Contract.

ARTICLE XIII

INSURANCE

13.1 CONTRACTOR SHALL MAINTAIN INSURANCE

13.1.1 The Contractor at its own expense shall purchase, maintain and keep in force during the life of this contract, adequate insurance that will protect the Contractor and/or any Additional Insured from claims which may arise out of or result from operations under this Contract. The insurance required shall provide adequate protections from all claims, whether such operations be by the Contractor or by any Additional Insured or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone whose acts of any of them may be liable and from any special hazards, such as blasting, which may be encountered in the performance of this contract in the amounts as shown below in Paragraph 13.2.1.

13.1.2 The Contractor shall not commence work on any Contract in the City until the Contractor has obtained all the insurance required under this paragraph and such insurance has been approved by the City.

13.2 TYPES AND AMOUNTS OF CONTRACTOR'S INSURANCE

13.2.1. The Contractor shall furnish and maintain during the life of the contract adequate Worker's Compensation and Commercial General Liability (Public) Insurance in such amounts as follows:

| <u>Type of Insurance</u> | <u>Amount</u> |
|---------------------------------|---|
| Worker's Compensation | As set forth in the Worker's Compensation Act. |
| Commercial General | \$1,000,000 Each Accident/Occurrence. |
| Liability (Public) | \$1,000,000 Aggregate \$1,000,000 Products & Completed Operations |

- (3) provide the governmental entity prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project;
- (4) obtain from each person providing services on a project, and provide to the governmental entity:
 - (A) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
 - (B) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
- (5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
- (6) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project;
- (7) post a notice on each project site informing all persons providing services on the project that they are required to be covered, and stating how a person may verify current coverage and report failure to provide coverage. This notice shall comply with the requirements established by the Division of Workers Compensation of the Texas Department of Insurance, or its successor agency.

and

- (8) contractually require each person with whom it contracts to provide services on a project, to:
 - (A) provide coverage based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements for all of its employees providing services on the project, for the duration of the project;
 - (B) provide a certificate of coverage to the contractor prior to that person beginning work on the project;
 - (C) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (D) obtain from each other person with whom it contracts, and provide to the Contractor:
 - (i) a certificate of coverage, prior to the other person beginning work on the project; and
 - (ii) prior to the end of the coverage period, a new certificate of coverage showing extension of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (E) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
 - (F) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

- (G) contractually require each other person with whom it contracts, to perform as required by subparagraphs (A) - (G) of this paragraph, with the certificate of coverage to be provided to the person for whom they are providing services.

ARTICLE XIV

MISCELLANEOUS

14.1 LAWS AND ORDINANCES

14.1.1 The Contractor shall at all times and in all respects observe and comply with all federal, state and local laws, ordinances, and regulations applicable to the Project and Work. The Contractor shall further insure that all Subcontractors observe and comply with said laws, ordinances and regulations.

14.2 GOVERNING LAW

14.2.1 The Contract shall be governed by the laws of the State of Texas. Exclusive venue for any causes of action arising under the terms or provisions of this Contract or the Work to be performed hereunder shall be in the state courts of Collin County, Texas.

14.3 SUCCESSORS AND ASSIGNS

14.3.1 The City and Contractor bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Contract. The Contractor shall not assign this Contract without written consent of the City.

14.4 SURETY BONDS

14.4.1 The Contractor shall furnish separate performance and payment bonds to the City, according to the requirements set out in the bid documents and state statutes to guaranty full and faithful performance of the Contract by the Contractor and the full and final payment of all persons supplying labor or materials to the Project. Each bond required by the bid documents or state statute shall set forth a penal sum in an amount not less than the full Contract Price. Each bond furnished by the Contractor shall incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in such bonds. In the event the Contract Price is adjusted by Change Order executed by the Contractor, the penal sum of both the performance bond and the payment bond shall be deemed increased by like amount. The performance and payment bonds furnished by the Contractor shall be in form suitable to the City and shall be executed by a surety, or sureties, reasonably suitable to the City and authorized to do business in the State of Texas.

14.4.2 If the Contract Price exceeds the sum of \$25,000.00, the Contractor, upon execution of the Contract and prior to commencement of the Work, shall furnish to the City a two-year maintenance bond in the amount of one hundred percent (100%) of the Contract Price covering the guaranty and maintenance prescribed herein, written by an approved surety authorized and duly licensed to conduct business in the State of Texas. The cost of said maintenance bond shall be included in the Contractor's unit bid prices and shall be paid by the Contractor.

14.5 FORCE MAJEURE

14.5.1 As used herein, "force majeure" means an incident, situation, or act of a third party that is beyond a party's reasonable control such as an act of God, an act of the public enemy, strikes or other labor disturbances (other than strikes within such party's own labor force), hurricanes, earthquakes, fires, floods, epidemics, embargoes, war, and riots. The Contractor will not be liable or responsible for its failure to perform any obligation under this Contract because of an event of Force Majeure, provided, however, that the Contractor submits notice thereof to the City and

Engineer within seven (7) days of such an event, obtains a written Change Order, signed by all parties, that allows an extension of the scheduled completion date, and identifies the specific causes and number of days in the Statement of Delay submitted with the next ensuing Application for Payment. Notwithstanding, if the Contractor's failure to perform continues for more than twenty (20) calendar days, the City may at its option terminate this Agreement immediately and pursue such rights and remedies as may be allowed under Subparagraph 12.2.2 of this Contract.

14.6 IMMUNITIES; DEFENSES

14.6.1 Nothing in this Contract shall be deemed to waive any immunity, sovereign, governmental, official, qualified or otherwise, from liability or suit, which the City may have or assert, except as may be provided by law, all such immunities being hereby expressly retained.

14.7 NO RIGHTS IN THIRD PARTIES

14.7.1 The indemnification provisions of this Contract and the rights and remedies afforded herein are solely for the benefit of the parties to this Contract. Nothing in this Contract is intended nor shall be construed to grant, create or confer any right, benefit, interest or cause of action in any person not a party to this Contract, or to the public in general.

14.8 SEVERABILITY

14.8.1 The provisions of this Contract are herein declared to be severable; in the event that any term, provision or part hereof is determined to be invalid, void or unenforceable, such determination shall not affect the validity or enforceability of the remaining terms, provisions and parts, and this Contract shall be read as if the invalid, void or unenforceable portion had not been included herein.

14.9 AMENDMENTS; NO WAIVER

14.9.1 This Contract may be amended by the parties only by a written agreement duly executed by both parties. The failure of the City to object to any nonperformance or nonconforming work or to enforce any provision hereof shall in no event be regarded as or construed to be a waiver, release or modification of any term or provision in this Contract, nor shall such failure to object or enforce estop the City from insisting on strict compliance with this Contract or from recovering damages, costs or expenses arising as a result of such nonperformance or nonconforming work.

14.10 NO BOYCOTT ISRAEL

14.10.1 Pursuant to Texas Government Code Chapter 2270, the Contractor agrees that acceptance of these Terms & Conditions serves as written verification that Contractor: (1) does not boycott Israel, as defined by Texas Government Code Section 808.001; and (2) will not boycott Israel during the term of the contract.

14.11 COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATIONS.

14.11.1 Pursuant to Texas Government Code Chapter 2252, Subchapter F, Contractor affirms that it is not identified on a list created by the Texas Comptroller of Public Accounts as a company known to have contracts with or provide supplies or services to a foreign terrorist organizations.

14.12 NOTICES

14.12.1 All notices required by this Contract shall be in writing and presumed received when deposited in the mail properly addressed to the other party or Engineer at the address set forth herein or set forth in a written designation of change of address delivered to all parties and the Engineer.

EXECUTED in single or multiple originals, this _____ day of _____, 20__.

CITY OF LUCAS, TEXAS

CONTRACTOR:

City Manager

(Signature)

(Type/Print Name and Title)

ATTEST:

(Street Address)

City Secretary (Rev. 03/14)

(City/State/Zip)

APPROVED TO FORM

City Attorney



City of Lucas City Council Agenda Request October 19, 2017

Item No. 07

Requester: Public Works Director/City Engineer Stanton Foerster

Agenda Item:

Discuss project scheduling related to Public Works projects pertaining to street maintenance and improvements and the north pump station improvements.

Background Information:

The City Council has requested an update regarding the scheduling of various Public Works projects.

Attachments/Supporting Documentation:

1. Project Schedules

Budget/Financial Impact:

NA

Recommendation:

NA

Motion:

NA

| Project Name | Work Plan Schedule | Update #1 |
|--|-----------------------------|------------------|
| | August 2017 | |
| W. Lucas Road Widening and Overlay | Completion-December 2017 | |
| Winningkoff Road Reverse Curve | Planning-complete | |
| NCSP #1 | Design-complete | |
| | Funding-July 2017 | Complete |
| | Letting-August 2017 | Complete |
| | Construction-September 2017 | November 2017 |
| | Completion-April 2018 | May 2018 |
| Stinson Road/W. Lucas Road Intersection | Funding-July 2017 | |
| NCSP #2 | Planning-TBD | |
| | Design-TBD | October 2017 |
| | Letting-TBD | |
| | Construction-TBD | |
| | Completion-TBD | |
| Country Club Rd/Estates Pkwy Turn Lanes | Funding-July 2017 | |
| NCSP #3 | Planning-TBD | |
| TxDOT may want to add this to one of their projects in 2019. | Design-TBD | October 2017 |
| | Letting-TBD | March 2018 |
| | Construction-TBD | May 2018 |
| | Completion-TBD | September 2018 |
| Winningkoff Road Middle Section | Funding-July 2017 | |
| NCSP #4 | Planning-TBD | |
| | Design-TBD | October 2017 |
| | Letting-TBD | May 2018 |
| | Construction-TBD | July 2018 |
| | Completion-TBD | November 2018 |
| Stinson Road Southern Section | Funding-July 2017 | |
| NCSP #5 | Planning-TBD | |
| | Design-TBD | |
| | Letting-TBD | |
| | Construction-TBD | |
| | Completion-TBD | |
| Blondy Jhune Road Middle & East Sections | Funding-July 2017 | |
| NCSP #6 | Planning-TBD | Complete |
| | Design-TBD | July 2018 |
| | Letting-TBD | August 2018 |
| | Construction-TBD | October 2018 |
| | Completion-TBD | |
| N. Pump Station Water Tower | Funding-July 2017 | |
| | Planning-TBD | Complete |
| | Design-TBD | May 2017 |
| | Letting-TBD | January 2018 |
| | Construction-TBD | March 2018 |

| | | | | |
|--|-----------------------|---------------------------|---------------|--|
| | | Completion-TBD | February 2019 | |
| | | | | |
| | | | | |
| | Parker Road Phase 1-1 | Planning-TBD | Compete | |
| | | Design-TBD | Compete | |
| | | Letting-TBD | Compete | |
| | | Construction-TBD | July 2017 | |
| | | Completion-TBD | November 2017 | |
| | | | | |
| | Parker Road Phase 2 | Planning-TBD | | |
| | | Design-TBD | | |
| | | Letting-TBD | | |
| | | Construction-January 2018 | | |
| | | Completion-TBD | | |
| | | | | |
| | Parker Road Phase 3T | Planning-TBD | | |
| | | Design-TBD | | |
| | | Letting-TBD | | |
| | | Construction-2018 | | |
| | | Completion-TBD | | |



City of Lucas

City Council Agenda Request

October 19, 2017

Item No. 08

Requester: Public Works Director/City Engineer Stanton Foerster

Agenda Item:

Discuss the opportunity 1) to add a fourth approach from 995 W. Lucas Road to the Country Club Road/W. Lucas Road intersection; 2) make improvements to the northwest corner of the same intersection; and 3) provide the City Manager with direction on the same.

Background Information:

1) The Texas Department of Transportation (TxDOT) is planning to update the traffic signal at this intersection next summer. Public Works Director/City Engineer Stanton Foerster met with TxDOT to discuss two main items: 1) improvements to the city property on the northwest corner to eliminate the W. Lucas Road ditch and the need for guardrail and 2) a fourth leg/new driveway on the south side of the intersection to improve access to the commercial businesses at 995 (Willard property) and 1005 (Craig's Car Care) W. Lucas Road. TxDOT is requiring the city to let TxDOT know about the fourth leg by the end of October 2017.

On September 21, 2017, the City Council requested that the City Manager contact the property owners impacted by the addition of the fourth approach.

Public Works Director/City Engineer Stanton Foerster has communicated directly with Alan Spurgin and Craig Zale.

Alan Spurgin (1015 W. Lucas Road) received a copy of the schematic and is reviewing the impacts to his property access. He has not made any decision either way.

Craig Zale of Craig's Car Care (1005 W. Lucas Road) is willing to make changes to his drive and allowing cross traffic within a new easement.

Bobby Willard (995 W. Lucas Road) was contacted by Craig Zale. Mr. Willard is willing to discuss, but has not made any decision either way.

Stanton has determined that 1045 and 945 W. Lucas Road, given the current uses, should not be required to participate by closing their driveways and using the proposed new fourth approach.

2) When the new turn lanes were added to the intersection in 2013, modification were made to the drainage system. These improvements are causing unforeseen issues with the pavement integrity and need to be addressed.



City of Lucas

City Council Agenda Request

October 19, 2017

Item No. 08

Attachments/Supporting Documentation:

1. Schematic of 4th Approach

Budget/Financial Impact:

The use of RTR funds, roadway impact fees and/or Road Maintenance fund could be used depending on the scope of the work. Staff has contacted the NCTCOG about the use of the RTR funds for this work.

Recommendation:

Public Works Director/City Engineer Stanton Foerster recommends proceeding with the addition of the fourth approach.

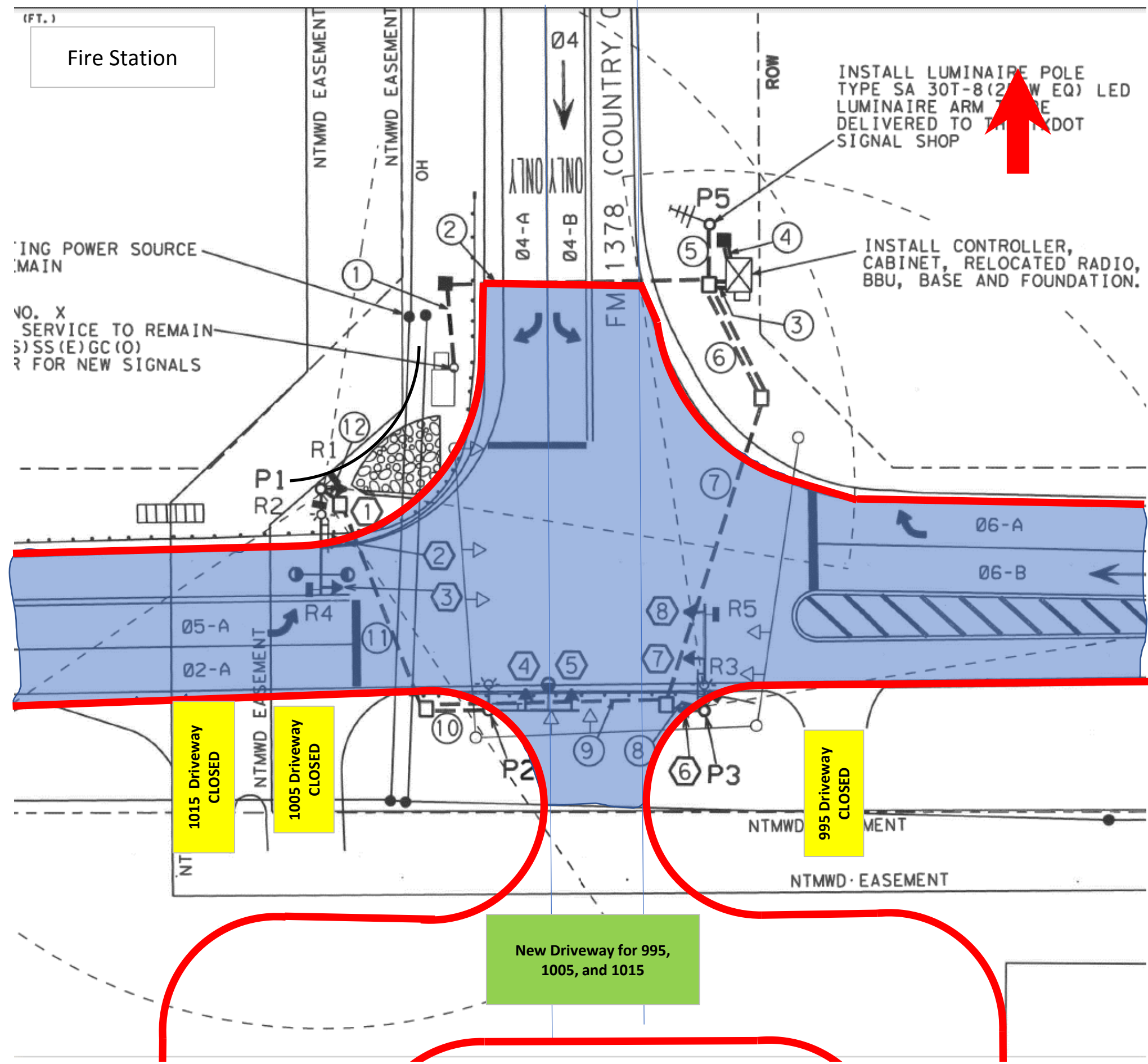
Motion:

I make a motion to give direction to the City Manager:

- 1) work with TxDOT and add a fourth approach from 995 W. Lucas Road to the Country Club Road/W. Lucas Road intersection;
- 2) make drainage improvements to the northwest corner of the same intersection; and
- 3) fund this work using RTR funding, roadway impact fees, and/or Road Maintenance funds.

(FT.)

Fire Station





City of Lucas

City Council Agenda Request

October 19, 2017

Item No. 09

Requester: Public Works Director/City Engineer Stanton Foerster

Agenda Item:

Consider giving direction to the City Manager 1) to make repairs to various roadways as determined in the June 15, 2017, City Council meeting and 2) enter into a contract with APAC/Oldcastle in an amount not to exceed \$258,234.56 plus any additional roadways needing repairs as part of the Street Maintenance for Summer 2018 or amending the FY 17-18 Budget by using reserve funds to fund street maintenance work.

Background Information:

During the June 15, 2017, City Council meeting, Mayor Pro Tem Peele motioned, and it was seconded by Councilmember Baney, to approve the following roadways and funds as part of street maintenance repairs for the summer of 2017. The motion passed unanimously by a 5 to 0 vote.

- Blondy Jhune Road - \$45,000
- Horseman Drive - \$62,000
- Skyview Drive - \$45,000
- Daytona Avenue - \$31,000
- Hammerheads located at Estates Road, Edgefield Lane and Prado Verde Drive - \$20,000

This motion allowed the City Manager to contract with APAC for \$203,000 in maintenance work using FY 16-17 street maintenance funds. APAC did not start on the City of Lucas work until October 4, 2017. The FY 16-17 funds are no longer available.

Now that APAC is working on the various Lucas streets, we have an opportunity to contract with them to do the Summer of 2018 work this fall.

Maintenance for the following streets (in alphabetical order) should be considered:

- Brookdale Park Road
- Fairbrook Circle
- Forest Grove Road
- Hammerheads on
 - Horseman Drive
 - Janna Way
 - Hickory Hill Street
 - McGarity Lane



City of Lucas

City Council Agenda Request

October 19, 2017

Item No. 09

- Rock Ridge Court
- Graham Lane
- Lewis Lane
- Lynn Lane
- Osage Lane
- Snider Lane
- Sterling Brown Lane
- Stinson Road

Attachments/Supporting Documentation:

1. APAC Asphalt Estimate
2. APAC Cement Estimate

Budget/Financial Impact:

Balance in Account 11-8209-301 is \$750,000.

Recommendation:

Public Works Director/City Engineer Stanton Foerster recommends using all available funds to repair Stinson Road and Lewis Lane.

Motion:

I make a motion to give direction to the City Manager:

1) to make repairs to various roadways as determined in the June 15, 2017, City Council Meeting and enter into a contract with APAC/Oldcastle in an amount not to exceed \$258,234.56 using

Street Maintenance for Summer 2018 (11-8209-301)

OR

amending the FY 17-18 Budget by use reserve funds to fund street maintenance work

2) to make repairs to the following roadways:

- Brookdale Park Road
- Fairbrook Circle
- Forest Grove Road
- Hammerheads on
 - Horseman Drive
 - Janna Way



City of Lucas

City Council Agenda Request

October 19, 2017

Item No. 09

- Hickory Hill Street
- McGarity Lane
- Rock Ridge Court
- Graham Lane
- Lewis Lane
- Lynn Lane
- Osage Lane
- Snider Lane
- Sterling Brown Lane
- Stinson Road

And enter into a contract with APAC/Oldcastle in an amount not to exceed \$490,000 using Street Maintenance for Summer 2018 (11-8209-301).



2121 Irving Boulevard
Dallas, TX 75207
Phone: (214) 741-3531

PROPOSAL AND CONTRACT
(Dallas County Interlocal Agreement)

To: City of Lucas

Effective Date: August 16, 2017

TexasBit Inc. TexasBit offers to furnish all material, labor and equipment required for the performance of the following described work subject to the terms and conditions of the Dallas County Interlocal Agreement.

Description of Work and Price: Place hot mix asphalt paving @ approximately 330 lbs/sy
Seven Streets and Mobs

| <u>Location</u> | <u>Limits</u> | <u>Tons</u> | <u>Unit Price</u> | <u>Approx. Total</u> |
|-----------------|---------------|-------------|-------------------|----------------------|
| Various | Various | 1716 | \$75.37/ton | \$163,347.36 |

*“See Attached Sheet”

Unless the words “Lump Sum” appear next to an item of work, it is understood and agreed that the quantities referred to above are estimates only and that payment shall be made at the stated unit prices for actual quantities of work performed by TexasBit.

This estimate expires thirty (30) days from the above date.

TEXASBIT INC.

ACCEPTED: City of Lucas

W. L. Warner
Account Manager

Date _____



Oldcastle Materials Texas, Inc

P.O. Box 224048
Dallas, TX 75222-4048
Telephone No.: 214-741-3531
Fax No.: 214-742-3540

Contact:
Project Name: CITY OF LUCAS 2017 STREET REPAIRS
Project Number:
CSJ:
Date: AUGUST 16, 2017

| ITEM | DESCRIPTION | QUANTITY | UNIT | UNIT PRICE | AMOUNT |
|--------------------|--|----------|------|------------|--------------------|
| 10 | DAYTONA-CEMENT STAB 6"(23LB/SY) | 1,556.00 | SY | 7.200 | 11,203.20 |
| 20 | BLONDY JHUNE-CEMENT STAB 6"(23LB/SY) | 2,222.00 | SY | 7.200 | 15,998.40 |
| 30 | HORSEMAN-CEMENT STAB 6"(23LB/SY) | 2,800.00 | SY | 7.200 | 20,160.00 |
| 40 | SKYVIEW-CEMENT STAB 6"(23LB/SY) | 2,111.00 | SY | 7.200 | 15,199.20 |
| 50 | ESTATES HH-CEMENT STAB 6"(23LB/SY) | 356.00 | SY | 7.200 | 2,563.20 |
| 60 | EDGEFIELD HH-CEMENT STAB 6"(23LB/SY) | 1,000.00 | SY | 7.200 | 7,200.00 |
| 70 | PRADO VERDE HH-CEMENT STAB 6" (23LB/SY) | 356.00 | SY | 7.200 | 2,563.20 |
| 80 | CONSTRUCTION CONTINGENCY | 1.00 | LS | 20,000.000 | 20,000.00 |
| GRAND TOTAL | | | | | \$94,887.20 |

NOTES:

1. Texas Bit is providing this quote based on a verbal request from the Owner. Texas Bit makes no guarantees as to the adequacy of the design for the above quoted items and is providing this quote based solely on information provided by the owner.
2. Unless the words "Lump Sum" appear next to a price for an item, all prices are per unit, and payments will be based upon the actual number of units performed at that price. The prices quoted are binding for 30 days. After such time, the prices are subject to escalation.
3. Texas Bit will mobilize on the project one time. Any additional mobilizations are \$2500 per mobilization.
4. Bonds (payment and performance) and AGC fees are not included.
5. This quote does not include the following: testing, engineering / staking, excavation/ removal / haul-off, / pavement markings, utility adjustments, permits, SWPPP, backfill of curb, backfill of pavement, QCQA testing beyond specifications.
6. This quote does not include traffic control or construction barricades.
7. Sales and other taxes are not included in this quote, but a "Tax Exempt Certificate" is required in order that taxes are not charged against work performed.

8. All work not covered by a specific pay item or stated subsidiary will be billed as time & equipment force account work.
9. This quote and its exclusions and notes are to become an attachment to any subcontract agreement between Owner and/or General Contractor and Oldcastle - Texas Bit.
10. Prices firm through 12/31/2017. Prices will terminate on 01/01/2018.
11. This quote based on all utilities being a minimum of 18 inches below the existing surface and the owner guarantees as such and assumes all liabilities and costs should any utilities be damaged in this area.
12. Not used.
13. This quote is for a continuous stabilization operation for the dimensions provided; patching/discontinuous work will require separate pricing.

Sincerely,
Oldcastle - Texas Bit

Matt Cooley
Project Estimator

City of Lucas

Authorized Agent

Name & Title



City of Lucas Council Agenda Request October 19, 2017

Item No. 10

Requester: City Secretary Stacy Henderson

Agenda Item:

Discuss nominations for the 2017 Service Tree Award Program.

Background Information:

The City of Lucas established a Service Tree Award Program in 2015 that allows for appropriate annual recognition of an individual, business, youth or civic group who has contributed a significant and useful service to the community. The award consists of planting a living tree on City property and presentation of an award plaque by the Mayor at the City's Founders Day event. A Service Tree Subcommittee was formed consisting of Councilmember Debbie Fisher, Councilmember Steve Duke, and Councilmember Wayne Millsap.

In 2015, four service trees were awarded to the following individuals and group:

- First Lucas City Council
- Rebecca Mark
- Charlie Gaines
- Suzanne Christian Calton and Shirley Biggs Parker

In 2016, two service trees were awarded to the following individuals:

- Don Kendall
- Lee Bauer

The following dates have been outlined for the Subcommittee and Council consideration:

- | | |
|--|------------------|
| • Application made available on City website | October 25, 2017 |
| • Application included as part of the November 2017 Lucas Leader <i>(will be a tear-off page on back of newsletter)</i> | October 25, 2017 |
| • Deadline to file an application with the City Secretary | January 15, 2018 |
| • Applications forwarded to Service Tree Nominating Committee | January 16, 2018 |
| • Item placed on City Council agenda for nomination consideration | February 1, 2018 |
| • Order trees and plaques | February 2, 2018 |
| • Announce winners and present tree/plaque at Founders Day | April 14, 2018 |

Attachments/Supporting Documentation:

1. Service Tree Application



City of Lucas Council Agenda Request October 19, 2017

Budget/Financial Impact:

The Service Tree program account 6211-445 has \$3,000 budgeted in the 2017-18 budget.

Recommendation:

NA

Motion:

NA



City of Lucas Service Tree Award Nomination Form

The City of Lucas has established a Service Tree Award Program that allows for appropriate annual recognition of an individual, business, youth or civic group who has contributed a significant and useful service to the community. The award will consist of the planting of a living tree on City property and presentation of an award plaque by the Mayor that will be placed by the Tree. The presentation will take place during the annual City of Lucas Founders Day event on April 14, 2018. The recipient(s) will have their picture taken and the photo, along with brief article of recognition, will be in the City's monthly newsletter, the Lucas Leader.

To recommend an individual, business, or group for recognition please fill out the Service Tree Award Nominating Form. Additional forms can be found on the City's website at www.lucastexas.us or picked up at the Lucas City Hall. Nominations must be submitted no later than **January 15, 2018** to City Secretary Stacy Henderson at shenderson@lucastexas.us or 665 Country Club Road, Lucas, Texas 75002.

Nominees to be selected for recognition should meet the following criteria:

- Actions being recognized should benefit the City of Lucas or its residents in a significant manner.
- Nominee may be individual, youth, Church group, Civic or neighborhood group (ex: HOA, garden club), youth group (ex: Boy or Girl Scout troop, 4-H Club), local business, local charity or other organization.
- The Individual must live in the City of Lucas or have lived in the City of Lucas corporate limits during the time the service was performed. If a business or church, they must be located within the City of Lucas.
- All nominees will be reviewed and finalists selected by the Lucas City Council at the September 15, 2016 City Council meeting. The City of Lucas Service Tree Award(s) will be presented to the recipient(s) during the annual Lucas Founders Day event scheduled for April 14, 2018. The recipients will be notified in advance to allow family and friends to attend.

| | | |
|--|--------|---------------|
| Name of individual/group being nominated: | | |
| Address: | Email: | Phone Number: |
| Description of accomplishment/action that benefited the City of Lucas: | | |
| | | |
| | | |
| Why do you believe this award is merited by this individual/or group: | | |
| | | |
| | | |

Submitted by: _____ Date Submitted: _____

Address: _____ Phone Number: _____

The nominator confirms that to the best of their knowledge, the nominee has not received remuneration for any professional services rendered in performing the community services described above nor was the service performed as part of court ordered community service program. Further, nominee knows and approved of this nomination. Additional sheets may be added if necessary.



City of Lucas Council Agenda Request October 19, 2017

Requester: Mayor Jim Olk

Agenda Item:

Consider the City Council meetings schedule for November and December 2017.

Background Information:

To schedule cases on the planning calendar for any upcoming public hearings, the attached calendar has been prepared outlining November and December to determine if any meeting cancellations will occur around the holidays.

Attachments/Supporting Documentation:

1. November and December calendars

Budget/Financial Impact:

NA

Recommendation:

NA

Motion:

NA

November 2017

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|--------|--------|---------|-----------|---|---------------------------|--------------------|
| | | | 1 | 2 City Council Meeting | 3 | 4 |
| 5 | 6 | 7 | 8 | 9 | 10 | 11 Veterans Day |
| 12 | 13 | 14 | 15 | 16 City Council Meeting | 17 | 18 |
| 19 | 20 | 21 | 22 | 23 City Offices closed Thanksgiving Day | 24 City Offices closed | 25 |
| 26 | 27 | 28 | 29 | 30 | | |
| | | | | | | |

December 2017

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|--------|--|---------------------------|-----------|----------------------------|--------|----------|
| | | | | | 1 | 2 |
| 3 | 4 | 5 | 6 | 7 City Council Meeting | 8 | 9 |
| 10 | 11 | 12 | 13 | 14 | 15 | 16 |
| 17 | 18 | 19 | 20 | 21 City Council Meeting | 22 | 23 |
| 24 | 25 City Offices closed Christmas | 26 City Offices closed | 27 | 28 | 29 | 30 |
| 31 | | | | | | |



City of Lucas Council Agenda Request October 19, 2017

Requester: Mayor Jim Olk

Agenda Item:

Executive Session:

An Executive Session is not scheduled for this meeting.

Background Information:

NA

Attachments/Supporting Documentation:

NA

Budget/Financial Impact:

NA

Recommendation:

NA

Motion:

NA