



AMENDED AGENDA CITY COUNCIL MEETING

December 16, 2021 | 6:00 PM

Council Chambers | Video Conference

City Hall | 665 Country Club Road, Lucas, Texas

Notice is hereby given that a meeting of the Lucas City Council will be held on Thursday, December 16, 2021, beginning at 6:00 pm at Lucas City Hall, 665 Country Club Road, Lucas, Texas 75002-7651 and by video conference, 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.

To join the meeting, please click this URL:

<https://us06web.zoom.us/j/95534828374?pwd=ZkJ5cTZkVWNEEL3o0WFNCQXBjQ0RvZz09>

and enter your name and email address.

Join by phone: 1-346-248-7799

Webinar ID: 955 3482 8374

Passcode: 712285

If you would like to watch the meeting live, and not participate via Zoom, you may go to the City's live streaming link at <https://www.lucastexas.us/live-streaming-videos/>.

How to Provide Input at a Meeting:

Speak In Person: Request to Speak forms will be available at the meeting. Please fill out the form and give to the City Secretary prior to the start of the meeting. This form will also allow a place for comments.

Speak Remotely Via Zoom: If you would like to attend a meeting remotely and speak via Zoom, email the City Secretary at shenderson@lucastexas.us by 4:00 pm noting the item you wish to speak on and noting your attendance will be remote. Please note, any requests received after 4:00 pm will not be included at the meeting.

Submit Written Comments: If you are unable to attend a meeting and would like to submit written comments regarding a specific agenda item, email the City Secretary at shenderson@lucastexas.us by no later than 4:00 pm the day of the meeting. The email must contain the person's name, address, phone number, and the agenda item(s) for which comments will be made. Any requests received after 4:00 pm will not be included at the meeting.

Call to Order

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

Executive Agenda

1. Executive Session:

The City Council will convene into Executive Session pursuant to Section 551.071 of the Texas Government Code to consult with the City Attorney regarding City of Lucas, Texas v. Robert Kubicek and the following real property: 2205 Estates Parkway, Lucas, Texas, In Rem, Cause No. 417-00147-2018 in the 417th Judicial District Court of Collin County, Texas.

2. Reconvene from Executive Session and take any action necessary as a result of the Executive Session.

Citizen Input

3. Citizen Input

Community Interest

Pursuant to Section 5510415 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.

4. Items of Community Interest

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.

5. Consent Agenda:

- A. Approval of the minutes of the December 2, 2021, City Council meeting. **(City Secretary Stacy Henderson)**
- B. Approval of the City of Lucas Investment Report for quarter ended September 2021. **(Finance Director Liz Exum)**
- C. Consider authorizing the City Manager to enter into a contract with Hydromax USA, LLC for fire hydrant and valve maintenance utilizing an interlocal with the City of Garland, Texas in the amount not to exceed \$100,000. **(Public Works Director Scott Holden)**

Public Hearing Agenda

6. Public hearing to consider adopting Ordinance 2021-12-00942 approving a request by Bill Shipley on behalf of Golden Chick for a Specific Use Permit (SUP) to allow a drive-thru restaurant on a proposed tract of land, zoned Commercial Business, being 0.833 acres, on Lot 1, Block A, Pennington Addition, William Snider Survey, Abstract No. 821, Collin County Texas, also known as 451 South Angel Parkway. **(Development Services Director Joe Hilbourn)**

- A. Presentation by Development Services Director Joe Hilbourn
- B. Conduct Public Hearing
- C. Take action on the specific use permit request

Regular Agenda

- 7. Discussion regarding the regulations pertaining to a home-based business. **(City Attorney Joe Gorfida, Development Services Director Joe Hilbourn)**
- 8. Consider authorizing the City Manager to enter into a bank depository service agreement with American National Bank of Texas for a three-year period commencing on December 27, 2021, through December 27, 2024, with the option to renew for two additional one-year extensions under the same terms and conditions. **(Finance Director Liz Exum)**
- 9. Consider authorizing the City Manager to enter into a professional services agreement with Birkhoff, Hendricks, & Carter, LLP (BH&C) in the amount of \$93,800 to complete the following:
 - A. Water Master Plan Update including engineering analysis and reports for the Water Distribution System Map and Water Impact Fee Update appropriating funds from Unrestricted Water Fund Reserves to account 51-6409-309 Professional Services in the amount of \$63,800.00; and
 - B. Engineering analysis for the Roadway Impact Fee Update appropriating funds from Unrestricted General Fund Reserves to account 11-6209-309 Professional Services in the amount of \$30,000.00. **(Public Works Director Scott Holden, Gary Hendricks, Birkhoff, Hendricks, & Carter, LLP)**
- 10. Consider approval of the Request for Proposal for Residential Solid Waste Services per the City of Lucas Specifications and provide direction to the City Manager regarding the proposal submission and evaluation process. **(Assistant to the City Manager Kent Souriyasak, City Secretary Stacy Henderson, Graduate Intern Kevin Becker)**
- 11. Consider amending FY 21/22 budget by appropriating \$57,300 from 2017 Certificates of Obligation funding to account 21-8210-490-130 and authorize the City Manager to enter into an agreement with Interstate Contracting & Coating, Inc. to replace the stem in the McGarity Elevated Tank. **(Public Works Director Scott Holden)**
- 12. Consider First Amendment to the Development Agreement between the City of Lucas, Texas and Megatel Homes, III, LLC and an addendum to declaration of covenants, conditions, and restrictions for Enchanted Creek Homeowners Association, Inc. **(Development Services Director Joe Hilbourn)**
- 13. Consider an appeal made by Robert Miklos on behalf of Matt Dorsett with Spiars Engineering and Surveying and Brock Babb with Centurion American CTMGT Lucas 238 LLC, on behalf of property owners Steve Lenart with CTMGT Lucas 238, LLC and Mehrdad Moayedi for the denial of an extension of a preliminary plat for Enchanted Creek Estates Phase 2, expiring December 1, 2021, for the property located in the James Anderson Survey, Abstract No. 17 and John McKinney Survey, Abstract No. 596, being 135.743 acres, 700 feet north of the intersection of Enchanted Way and Lillyfield Drive. **(Development Services Director Joe Hilbourn)**

14. Adjournment.

Certification

I do 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 December 10, 2021.

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 City Secretary 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 December 16, 2021

Item No. 1

Requestor: Mayor Jim Olk

Agenda Item Request

Executive Session.

The City Council will convene into Executive Session pursuant to Section 551.071 of the Texas Government Code to consult with the City Attorney regarding City of Lucas, Texas v. Robert Kubicek and the following real property: 2205 Estates Parkway, Lucas, Texas, In Rem, Cause No. 417-00147-2018 in the 417th Judicial District Court of Collin County, Texas.

Background Information

NA

Attachments/Supporting Documentation

NA

Budget/Financial Impact

NA

Recommendation

NA

Motion

NA



City of Lucas

City Council Agenda Request

December 16, 2021

Item No. 2

Requester: Mayor Jim Olk

Agenda Item Request

Reconvene from Executive Session and take any action necessary as a result of the Executive Session.

Background Information

NA

Attachments/Supporting Documentation

NA

Budget/Financial Impact

NA

Recommendation

NA

Motion

NA



City of Lucas

City Council Agenda Request

December 16, 2021

Item No. 03

Requester: Mayor Jim Olk

Agenda Item Request

Citizen Input

Background Information

NA

Attachments/Supporting Documentation

NA

Budget/Financial Impact

NA

Recommendation

NA

Motion

NA



City of Lucas

City Council Agenda Request

December 16, 2021

Requester: Mayor Jim Olk

Agenda Item Request

Items of Community Interest

Background Information

NA

Attachments/Supporting Documentation

NA

Budget/Financial Impact

NA

Recommendation

NA

Motion

NA



City of Lucas

City Council Agenda Request

December 16, 2021

Item No. 05

Requester: City Secretary Stacy Henderson
Finance Director Liz Exum
Public Works Director Scott Holden

Agenda Item Request

Consent Agenda:

- A. Approval of the minutes of the December 2, 2021, City Council meeting.
- B. Approval of the City of Lucas Investment Report for quarter ended September 2021.
- C. Consider authorizing the City Manager to enter into a contract with Hydromax USA, LLC for fire hydrant and valve maintenance utilizing an interlocal with the City of Garland, Texas in the amount not to exceed \$100,000.

Background Information

Agenda Item 5C

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 activity was funded in the amount of \$100,000 (line item 51-6400-233 Repairs and Maintenance of Water Facilities) in FY 21-22 budget. Hydromax USA, LLC will begin the project in 2022.

Attachments/Supporting Documentation

- 1. Minutes of the December 2, 2021, City Council meeting.
- 2. Investment Report quarter ended September 2021.
- 3. Hydromax Service Contract/Garland Water Utilities 2020 Specification for Water Valves and Fire Hydrant Maintenance

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.



MINUTES **CITY COUNCIL REGULAR MEETING**

December 2, 2021 | 6:30 PM
Council Chambers | Video Conference
City Hall | 665 Country Club Road, Lucas, Texas

City Councilmembers Present:

Mayor Jim Olk
Mayor Pro Tem Kathleen Peele
Councilmember Tim Johnson (*arrived 6:39 pm*)
Councilmember Tim Baney
Councilmember David Keer
Councilmember Debbie Fisher

City Staff Present:

City Manager Joni Clarke
City Secretary Stacy Henderson
City Attorney Joe Gorfida (*arrived 6:35 pm*)
Development Services Director Joe Hilbourn
Public Works Director Scott Holden
Assistant to the City Manager Kent Souriyasak

City Councilmember Absent:

Councilmember Phil Lawrence

The regular City Council meeting was called to order at 6:30 pm.

Executive Session Agenda

- 1. The City Council will convene into Executive Session as permitted under the Texas Government Code, Section 551.074, Personnel Matters, to conduct an interview of a Board of Adjustment applicant and discuss Board of Adjustment appointments.**

The City Council convened into Executive Session at 6:32 pm.

- 2. Reconvene from Executive Session and take any action necessary as a result of the Executive Session.**

The City Council reconvened from Executive Session at 7:01 pm. There was no action taken as a result of the Executive Session.

Citizen Input

- 3. Citizen Input**

There was no citizen input at this meeting.

Mayor Olk read an email into the record received from Kathleen Losapio regarding the Friends of Lucas Fire-Rescue requesting to participate in the Country Christmas farmers market event. Mayor Olk forwarded this email to the Lucas Farmers Market Committee Chairman Bill Esposito for response.

Community Interest

4. Items of Community Interest

Mayor Olk discussed upcoming community events related to Country Christmas, service tree award nominations, and candidate filing for the May 7, 2022, election.

Consent Agenda

5. Consent Agenda:

- A. Approval of the minutes of the November 18, 2021, City Council meeting.

MOTION: A motion was made by Councilmember Johnson, seconded by Councilmember Baney to approve the Consent Agenda as presented. The motion passed unanimously by a 6 to 0 vote.

Public Hearing Agenda

- 6. **Public hearing to consider adopting Ordinance 2021-12-00941 approving the request by Ron Lacock on behalf of Lucas Country Corner for a change in zoning from Residential 2-acre (R-2) to Commercial Business (C) on a parcel of land consisting of 5.831 acres situated in the James Anderson Survey, Abstract No. 17, Collin County, Texas, and being a part of a called 10.262-acre and a 0.54-acre tract of land leaving a remainder of 4.971 +/- tract of land R-2 more commonly known as the Lewis property at the intersection of East Lucas Road and West Lucas Road.**

Development Services Director Joe Hilbourn gave a presentation noting the areas proposed to be rezoned and that a Development Agreement for this property had also been approved. Staff recommended approval of the proposed rezoning request.

Mayor Olk opened the public hearing at 7:11 pm. There being no one wishing to speak the public hearing was closed at 7:12 pm.

MOTION: A motion was made by Mayor Pro Tem Peele, seconded by Councilmember Johnson to adopt Ordinance 2021-12-00941 approving the request by Ron Lacock on behalf of Lucas Country Corner for a change in zoning from Residential 2-acre (R-2) to Commercial Business (C) on a parcel of land consisting of 5.831 acres situated in the James Anderson Survey, Abstract No. 17, Collin County, Texas, and being a part of a called 10.262-acre and a 0.54-acre tract of land leaving a remainder of 4.971 +/- tract of land R-2 more commonly known as the Lewis property at the intersection of East Lucas Road and West Lucas Road. The motion passed unanimously by a 6 to 0 vote.

Regular Agenda

7. **Consider the request by James Peters on behalf of Good Shepherd United Methodist Church for approval of a final plat for the property situated in the Benjamin Sparks Survey, ABS A0813, Tract 73, being 4.0-acres located at 750 West Lucas Road.**

Development Services Director Joe Hilbourn gave a presentation noting the final plat was being requested to create an official lot of record, and that the church building currently on site was located on an existing lot line. Should any alterations be made to the existing main structure they would be required to come into compliance. Staff recommended approving the final plat.

MOTION: A motion was made by Councilmember Fisher, seconded by Mayor Pro Tem Peele to approve the request by Good Shepherd United Methodist Church for approval of a final plat for the property situated in the Benjamin Sparks Survey, ABS A0813, Tract 73, being 4.0-acres located at 750 West Lucas Road. The motion passed unanimously by a 6 to 0 vote.

8. **Consider the 2021 Lucas Farmers Market Annual Report and authorize the Lucas Farmers Market Committee to proceed with the 2022 season of the Lucas Farmers Market.**

Farmers Market Committee Chairman Bill Esposito, 13 North Star, Lucas, gave a presentation regarding the 2021 farmers market season discussing the history of the farmers market, volunteer assistance, operational costs and market vendor fees, new features added in 2021, results from customer and vendor surveys, and planning efforts for 2022.

There was no formal action taken on this item, it was for informational purposes only.

9. **Consider updating Chapter 7 (Streets and Drainage) of the City of Lucas Comprehensive Plan dated March 2017 and the City of Lucas 2017 Master Thoroughfare Plan.**

Development Services Director Joe Hilbourn explained that the Comprehensive Plan requires review every five years, and in particular review of Chapter 7 including the Master Thoroughfare Plan.

City Council recommended the Planning and Zoning Commission review the following items on the Master Thoroughfare Plan and Chapter 7 and provide a recommendation to the City Council on any recommended updates:

- Review all proposed future roadways including Allison Lane and review the Forest Grove extension that loops to Snider Lane and determine if they should remain on the Thoroughfare Plan
- Consider increasing right of way widths from 90 feet to 120 feet on all thoroughfares
- Consider leaving right of way as is and requiring the State to acquire right of way
- Review drainage system analysis in the Comprehensive Plan (page 34) and include the intent of drainage and how it works
- Determine if the geometric configuration of the streets (pages 30 – 32) outlined in the Comprehensive Plan meets current vehicle demands as well as future demands

- Recommended roads for reconstruction graph on page 36 needs updating

10. Discuss amending the City of Lucas Fee Schedule to cover costs associated with a builder or landowner proceeding with work prior to the issuance of a building permit from the City.

Mayor Pro Tem Peele discussed the need for additional controls in place to ensure that developers and property owners who do not obtain a permit before beginning construction can be enforced and the City has a way to recoup costs associated with having to incur additional time and efforts regarding that particular enforcement action.

The City Council was in agreement with language presented and directed staff to prepare an ordinance and place on the Consent Agenda.

11. Consider cancelling the January 6, 2022, City Council meeting.

MOTION: A motion was made by Councilmember Baney seconded by Councilmember Keer to cancel the January 6, 2022, City Council meeting. The motion passed unanimously by a 6 to 0 vote.

12. Adjournment.

MOTION: A motion was made by Councilmember Johnson seconded by Councilmember Baney to adjourn the meeting at 8:43 pm. The motion passed unanimously by a 6 to 0 vote.

APPROVED:

ATTEST:

Mayor Jim Olk

City Secretary Stacy Henderson

**CITY OF LUCAS
QUARTERLY INVESTMENT REPORT**

Quarter Ended

September, 2021

Bank Account Name	Rating	June 30, 2021	September 30, 2021	Changes	Total Portfolio
ANB Pooled Cash	AAAm	\$6,902,604.60	\$6,876,891.63	-\$25,712.97	19.12%
Interest Rate		0.20%	0.16%	-0.04%	
ANB - Reserve	AAAm	\$3,000,000.00	\$3,000,000.00	\$0.00	8.34%
General Fund					
ANB - West Lucas Rd	AAAm	\$4,092,001.33	\$3,402,458.18	-\$689,543.15	9.46%
Interest Rate		0.20%	0.16%	-0.04%	
ANB American Rescue Plan	AAAm	\$0.00	\$1,059,661.83	\$1,059,661.83	2.95%
Interest Rate		0.00%	0.01%	0.01%	
Total Bank Accounts		\$13,994,605.93	\$14,339,011.64	\$344,405.71	39.87%
Weighted Average Life/Days(Balances assumed to have a one day maturity)		1	1	0	
Pools					
Logic - General Fund	AAAm	\$4,127,434.79	\$4,058,213.88	-\$69,220.91	11.28%
Logic - Water Fund	AAAm	\$5,236,658.53	\$5,237,218.80	\$560.27	14.56%
Logic 2017 CO - Water Fund	AAAm	\$706,447.16	\$676,961.77	-\$29,485.39	1.88%
Logic 2019 CO - General Fund	AAAm	\$6,555,118.72	\$6,286,700.90	-\$268,417.82	17.48%
Logic 2019 CO - Water Fund	AAAm	\$1,471,632.89	\$1,471,790.33	\$157.44	4.09%
Interest Rate		0.0588%	0.0364%	-0.0224%	
Weighted Average Life/Days(Balances assumed to have a one day maturity)		1	1	0	
Lone Star Invest - General Fund	AAAm	\$2,052,174.86	\$2,052,201.32	\$26.46	5.71%
Lone Star Invest- Water Fund	AAAm	\$770,978.55	\$770,988.49	\$9.94	2.14%
Interest Rate		0.0051%	0.0051%	0.0000%	
Weighted Average Life/Days(Balances assumed to have a one day maturity)		1		-1	
Tex Pool - Debt Service Fund	AAAm	\$1,321,343.71	\$1,072,465.59	-\$248,878.12	2.98%
Interest Rate		0.0131%	0.0279%	0.0148%	
Weighted Average Life/Days(Balances assumed to have a one day maturity)		1		-1	
Total Pools		\$22,241,789.21	\$21,626,541.08	-\$615,248.13	60.13%
Total Bank Acct. and Pools		\$36,236,395.14	\$35,965,552.72	-\$270,842.42	100.00%

The invested portfolio of the City of Lucas is in compliance with the Public Funds Investment Act and the City's Investment Policy and Strategies


Joni Clarke - City Manager


Liz Exum - Finance Director

CITY OF LUCAS, TEXAS

PUBLIC WORKS CONSTRUCTION PROJECT

Water Valve & Fire Hydrant Maintenance

Via an Interlocal with the City of Garland, Texas

Hydromax USA

TABLE OF CONTENTS

ARTICLE I; THE CONTRACT AND THE CONTRACT DOCUMENTS	1
1.1 The Contract	1
1.2 The Contract Documents	1
1.3 Entire Agreement	1
1.4 No Privity with Others	1
1.5 Intent and Interpretation	1
1.6 Ownership of Contract Documents	2
ARTICLE II; THE WORK	2
2.1	2
2.2 Work	2
ARTICLE III; CONTRACT TIME	3
3.1 Substantial Completion	3
3.2 Time	3
3.3 Time is of the Essence	3
3.4 Liquidated Damages; Early Completion Bonus	4
3.5 No Damages for Delay; No Back-Charges; Damage Waiver	4
ARTICLE IV; CONTRACT PRICE	5
4.1 The Contract Price	5
ARTICLE V; PAYMENT OF THE CONTRACT PRICE	5
5.1 Schedule of Values	5
5.2 Payment Procedure	5
5.3 Withheld Payment	6
5.4 Unexcused Failure to Pay	6
5.5 Certificate of Substantial Completion	7
5.6 Completion and Final Payment	7
ARTICLE VI; THE CITY	8
6.1 Information, Services and Things Required from City	8
6.2 Right to Stop Work	8
6.3 City's Right to Perform Work	8
ARTICLE VII; THE CONTRACTOR	8
7.1 Must Follow Contract	8
7.2 Use of Web-Based Project Management System	8
7.3 Prosecution of Work	8
7.4 Warranty	9
7.5 Permits; Fees; Licenses	9
7.6 Supervision	9
7.7 Work Schedule	9
7.8 On-Site Drawings	10
7.9 As-Built Plans, Shop Drawings, Product Data, and Samples	10
7.10 Cleaning the Site and the Project	10
7.11 Access to Work and Inspections	10
7.12 Indemnity and Disclaimer	10
7.13 Nondiscrimination	11
7.14 Prevailing Wage Rates	11
7.15 Job Site Safety Precautions	11
7.16 Warning Devices and Barricades	12
7.17 Protection of Utilities and Other Contractors	12

ARTICLE VIII; CONTRACT ADMINISTRATION	12
8.1 The Engineer	12
8.2 Engineer's Administration	12
8.3 Claims by the Contractor	13
8.4 Extra Work	13
8.5 Claims for Additional Costs or Time; Contract Price Increase	14
8.6 Field Orders	14
8.7 Mediation	14
ARTICLE IX; SUBCONTRACTORS	15
9.1 Definition	15
9.2 Award of Subcontracts	15
ARTICLE X; CHANGES IN THE WORK	15
10.1 Changes Permitted	15
10.2 Change Order Defined	15
10.3 Changes in the Contract Price	15
10.4 Minor Changes	16
10.5 Effect of Executed Change Order	16
10.6 Notice to Surety; Consent	16
ARTICLE XI; UNCOVERING AND CORRECTING WORK	16
11.1 Uncovering Work	16
11.2 Correcting Work	16
11.3 City May Accept Defective or Nonconforming Work	17
ARTICLE XII; CONTRACT DEFAULT AND TERMINATION	17
12.1 Termination by the Contractor	17
12.2 Termination by the City	17
12.3 Use of Third-Party Oversight or Construction Manager	19
ARTICLE XIII; INSURANCE	19
13.1 Contractor Shall Maintain Insurance	19
13.2 Types and Amounts of Contractor's Insurance	19
13.3 Additional Insured	19
13.4 Written Notification	19
13.5 Premiums and Assessments; Subrogation	20
13.6 Certificate of Insurance	20
13.7 Primary Coverage	20
13.8 Worker's Compensation Insurance Coverage	20
ARTICLE XIV; MISCELLANEOUS	21
14.1 Laws and Ordinances	21
14.2 Governing Law	21
14.3 Successors and Assigns	21
14.4 Surety Bonds	21
14.5 Force Majeure	22
14.6 Immunities; Defenses	22
14.7 No Rights in Third Parties	22
14.8 Severability	22
14.9 Amendments; No Waiver	22
14.10 Notices	22

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 *Hydromax USA*, (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):

1.3 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 outline AWWA Manual M17 and M44; and other miscellaneous improvements as show 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, 2022. "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

N/A

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

\$100,000 Total Contract Amount

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 FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE WORK OF CONTRACTOR PURSUANT TO THIS AGREEMENT. CONTRACTOR HEREBY WAIVES ALL CLAIMS AGAINST CITY, ITS COUNCIL, OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO IN THIS PARAGRAPH AS "CITY") FOR DAMAGE TO ANY PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON ARISING AT ANY TIME AND FROM ANY CAUSE OTHER THAN THE NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY OR BREACH OF CITY'S OBLIGATIONS HEREUNDER.

7.12.2 CONTRACTOR HEREBY DEFENDS, INDEMNIFIES AND HOLDS HARMLESS THE CITY, ITS COUNCIL, OFFICERS, EMPLOYEES, AGENTS AND REPRESENTATIVES (THE "CITY") FROM AND AGAINST ANY AND ALL DAMAGES, LOSSES, COST AND EXPENSES, INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES AND COSTS, INCURRED BY CITY TO THE EXTENT THEY ARE: (1) DUE TO THE VIOLATION OF ANY ORDINANCE, REGULATION, STATUTE, OR OTHER LEGAL REQUIREMENT BY CONTRACTOR OR ANY OF ITS CONSULTANTS, SUBCONTRACTORS, OR ANY OF THEIR AGENTS AND EMPLOYEES, AS TO THE PERFORMANCE OF THE AGREEMENT; (2) THE RESULT OF ANY NEGLIGENT ACT OR OMISSION OR ANY INTENTIONAL ACT OR OMISSION IN VIOLATION OF CONTRACTOR'S STANDARD OF CARE, BY THE CONTRACTOR, A CONSULTANT, A SUBCONTRACTOR OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE CONTRACTOR OR ANYONE FOR WHOSE ACTS THE CONTRACTOR MAY BE LIABLE; OR (3) OTHERWISE ARISING OUT OF OR RESULTING FROM NEGLIGENT PERFORMANCE OF THE SERVICES UNDER THIS AGREEMENT OR THE BREACH BY THE CONTRACTOR OF THIS AGREEMENT, INCLUDING SUCH CLAIMS, DAMAGES, LOSSES OR EXPENSES ARE ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF PROPERTY, INCLUDING LOSS OF USE RESULTING THEREFROM.

WITHOUT LIMITING THE FOREGOING, AND TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR HEREBY DEFENDS, INDEMNIFIES AND HOLDS HARMLESS CITY FROM AND AGAINST ALL DAMAGES, LOSSES, COSTS, AND EXPENSES, INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES, INCURRED BY CITY IN CONNECTION WITH ANY CLAIM OR ACTION AGAINST CITY FOR PERSONAL INJURY, DISEASE OR DEATH OF ANY EMPLOYEE OF THE CONTRACTOR OR ANY OF CONTRACTOR'S SUBCONTRACTOR, CONSULTANTS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, BROUGHT BY SUCH INJURED EMPLOYEE OR THE EMPLOYEE'S WORKERS COMPENSATION INSURANCE CARRIER (HEREINAFTER REFERRED TO AS AN "EMPLOYEE INJURY CLAIM").

WITH REGARD TO CLAIMS AGAINST THE CITY UNDER THIS PARAGRAPH WHICH ARE MADE BY AN EMPLOYEE OF THE CONTRACTOR, A CONSULTANT, A SUB-CONTRACTOR OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE CONTRACTOR, SUBS CONTRACTOR OR ANYONE FOR WHOSE ACTS THE CONTRACTOR OR SUBCONTRACTOR MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION UNDER THIS PARAGRAPH SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR OR SUBCONTRACTOR OR ANY OTHER EMPLOYER UNDER WORKER'S COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER SIMILAR EMPLOYEE BENEFIT ACTS.

IT IS AGREED WITH RESPECT TO ANY LEGAL LIMITATIONS NOW OR HEREAFTER IN EFFECT AND AFFECTING THE VALIDITY OR ENFORCEABILITY OF THE INDEMNIFICATION OBLIGATIONS BY CONTRACTOR OR THE ADDITIONAL INSURED REQUIREMENTS UNDER THE INSURANCE REQUIRED BY THIS AGREEMENT, SUCH LEGAL LIMITATIONS ARE MADE A PART OF THE CONTRACTUAL OBLIGATIONS AND SHALL OPERATE TO AMEND THE OBLIGATIONS TO THE MINIMUM EXTENT NECESSARY TO BRING THE PROVISION INTO CONFORMITY WITH THE REQUIREMENTS OF SUCH LIMITATIONS, AND AS SO MODIFIED, THE OBLIGATIONS SHALL CONTINUE IN FULL FORCE AND EFFECT. SHOULD ANY PROVISION OR ANY PART OF ANY PROVISION OF THIS AGREEMENT BE HELD INVALID, UNENFORCEABLE OR CONTRARY TO PUBLIC POLICY, LAW, STATUTE OR ORDINANCE, THEN THE REMAINDER OF THE PROVISION, PARAGRAPH, SECTION AND/OR AGREEMENT SHALL NOT BE AFFECTED THEREBY AND SHALL REMAIN VALID AND FULLY ENFORCEABLE.

THE OBLIGATIONS CONTAINED IN THIS INDEMNIFICATION BY CONTRACTOR SHALL SURVIVE THE EXPIRATION, COMPLETION, ABANDONMENT AND/OR TERMINATION OF THE AGREEMENT AND FINAL COMPLETION OF THE WORK AND ANY OTHER SERVICES TO BE PROVIDED PURSUANT TO THIS AGREEMENT.

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.

7.12.3 The Contractor will secure and maintain contractual liability insurance to cover this indemnification that will be primary and non-contributory as to any insurance maintained by the City for its own benefit, including self-insurance.

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

N/A

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	\$600,000 per occurrence

Liability Insurance	\$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: Scott A. Holden, 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 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

N/A

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 is it 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:

Mayor or City Manager

(Signature)

(Type/Print Name and Title)

ATTEST:

(Street Address)

City Secretary (Rev. 03/14)

(City/State/Zip)

APPROVED TO FORM

City Attorney



GARLAND

WATER UTILITIES

2020 Specifications for Water Valves & Fire Hydrant Maintenance

Intent & Scope:

The City of Garland Water Utilities is seeking a contractor to provide maintenance, inspections, adjustments and minor repair of water valves and fire hydrants. Fire hydrants are dry barrel hydrants and will either be compression type hydrants or toggle type hydrants. The contract will be for \$250,000 or 1 year whichever comes first, with the option for 4 renewals. The successful bidder must supply all labor, and equipment necessary for completion of the contract. The successful bidder must provide weekly electronic Excel spreadsheets to the City. The City will provide examples of required spreadsheets and inspection work sheets to the successful bidder if requested. The successful bidder will submit monthly invoices to the City on or about the 26th of each month.

The City will provide the vendor PDF maps or GIS layers in ESRI file formats of our water network. The Contractor must be able to edit a copy of City GIS layers (ESRI feature class format, version ArcGIS 10.5) in the field to capture hydrant and valve data. Contract personnel must be able to differentiate between infrastructure they have serviced from hydrants and valves they have yet to service in their electronic mapping interface. Contractor shall ensure records have not been previously submitted to the City prior to submission for billing purposes. Contractor shall guarantee all fields are populated with relevant data prior to submission to the City. Explanations will be required in the field notes in the table for each vacant entry. Contractor field personnel must be able to view City planimetric data in ESRI feature class file format and City aerial photos in MrSid file format in their electronic map interface for the purpose of data collection. The inability to provide accurate data could result in termination or non-renewal of this contract.

While this contract will be for all valves and hydrants in both residential areas and commercial areas, the first phase of work will be along and in all the major thoroughfares and intersections in Garland. The successful bidder will be expected to supply all traffic control devices necessary to safely complete this task.

The City may or may not require GPS coordinates for each valve and fire hydrant, please include in your bid the price to provide GPS coordinates with sub-meter accuracy. GPS coordinate data must be submitted to the City in an ESRI Geo Database Format.

Valve Inspection & Maintenance Procedures

The City of Garland has approximately 23,141 valves ranging from 2" to 42" in size. The bid will be broken down by size range, below is an approximate number of valves in each size range:

8" and smaller	22,077
10" to 14"	702
16" and larger	362

The 16" and larger valves with by-passes will be counted as two separate valves for billing purposes, each valve will be billed according to its size. The City will require the successful bidder provide the number of turns for each valve on the individual inspection work sheet.

Valve maintenance must be performed in accordance with American Water Works Association (AWWA) manual M44.

Valve Maintenance Special Procedure

- A. Locate the valve – The successful bidder will locate all water distribution valves using the following procedure.
 1. The successful bidder will search for all valves visually using the City of Garland water distribution maps.
 2. The successful bidder will search for water valves shown, but not identified by visual inspection, using a magnetic locator, probing rods and other tools.
 3. If the valve cannot be located after searching for fifteen minutes, the valve will be labeled cannot locate on the water distribution map and noted on the weekly electronic spreadsheet of completed work.
- B. Clean out the valve box or manhole – The successful bidder will remove all debris and water from the valve box or manhole in order to access the valve operating nut. In every case, the operating nut must be exposed and clearly visible (not under water or debris) when the valve is exercised.
- C. Valve exercising – The successful bidder will exercise each valve a minimum of two full cycles. (A full cycle is defined as operating the valve from open to shut to open again.) All valves will be operated with extreme care as not to damage the valve.
- D. Valve marking – Curbs will be painted with a blue arrow after completion of the exercising to indicate the completion of work for each valve. The successful bidder will verify that an arrow is etched in the curb to mark the valve. If the curb is not etched, the successful bidder will note that on the daily individual inspection sheet and the weekly electronic spreadsheet. The successful bidder will be responsible for supply the paint. The valve lid will not be painted.
- E. Valve box maintenance – The successful bidder will ensure that valve boxes are ground level and free from grass, dirt, concrete, asphalt or any other debris covering the lid. Any valve boxes that are not ground level or vertically straight

and can be adjusted without the use of motorized excavation equipment will be done by the successful bidder, the City will supply any new valve stacks or lids needed, the successful bidder will be paid for the labor on an hourly rate. Any valve boxes that are not ground level or vertically straight and cannot be adjusted will be identified on the weekly electronic spreadsheet as requiring further action by the City. The successful bidder will ensure any valves not ground level are not a safety issue; if an unsafe condition exists the successful bidder will protect the public by barricades, flagging or other means at the successful bidder cost. Safety issues will be reported to the City immediately.

Fire Hydrant Inspection & Maintenance Procedures

The City of Garland has approximately 8,359 fire hydrants; they are dry barrel hydrants of either the compression type or the toggle type. Before painting the fire hydrants the successful bidder will use a wire brush to remove grime and loose paint, stripping of paint layers off the fire hydrant is not required.

Fire hydrant maintenance must be performed in accordance with American Water Works Association (AWWA) manual M17.

The successful bidder will make minor repairs to the fire hydrant if any are needed. Minor repairs will be defined as any repairs that can be done without the use of mechanical equipment, such replacing break flanges, couplings, bolts, chains, etc. The City of Garland will supply any repair parts needed, the successful bidder will be paid for the repair labor on an hourly rate.

City of Garland fire hydrants are painted as follows, all fire hydrant bodies, barrels and caps are painted using Tnemec Series V530 Omnithane 1201 Aluminum. Tnemec Paint is the required brand of paint to be used, the paint must be applied in as purchased condition, no thinners can be used to dilute the thickness of the paint.

Bonnets are painted according to the size of the water main that the fire hydrant lead is connected to;

Water main size 6" or less – Series V530 Omnithane 1201 Aluminum

Water main size 8" – Series 2H.B Tnemec – Gloss Safety Blue

Water main size 10" or larger – Series 2H.B Tnemec – Gloss Safety Yellow

Fire Hydrant Maintenance Special Procedures

- A. Locate the fire hydrant – The City will provide the successful bidder with at least 2 copies of the current water distribution map for the project area. The successful bidder will locate all water distribution system fire hydrants using the following procedure.
 1. The successful bidder will search for all fire hydrants visually using the City of Garland water distribution maps.
 2. The successful bidder will search for fire hydrants shown, but not identified by visual inspection, using a magnetic locator, probing rods and other tools.

3. If the fire hydrant cannot be located after searching for fifteen minutes, the fire hydrant will be labeled cannot locate on the water distribution map and noted on the weekly electronic spreadsheet of completed work.
- B. Routine fire hydrant maintenance shall also include the following activities.
1. Check the fire hydrant to make sure that it is visible from the roadway and it is clear of any landscaping, plant growth, or other obstructions that could impair locating the fire hydrant or interfere with its use.
 2. Minor obstructions such as weed growth or wild plant growth should be trimmed to provide clear access to the hydrant.
 3. Obstructions caused by utilities, landscaping or ornamental growth shall be noted and reported to the City on the individual inspection work sheet.
 4. Improperly installed fire hydrants height wise shall be noted and reported to the City on the individual inspection work sheet.
 5. Any fire hydrant that, for any reason, must be removed from service shall be covered with a black bag. This information must be immediately forwarded to the City.
 6. When flushing a fire hydrant a non-rigid deflector must be used to prevent erosion around the fire hydrant.

Bid Pricing

Valve Maintenance & Inspection for valve sizes 8" and smaller - \$ 28.00 each.

Valve Maintenance & Inspection for valve sizes 10" to 12" - \$ 40.00 each.

Valve Maintenance & Inspection for valve sizes 14" and larger - \$ 95.00 each.

Valve Maintenance & Inspection for valve that could not be located \$ 28.00 each.

Valve Maintenance & Inspection labor for adjusting valve stack \$ 185.00 per hour.

Fire Hydrant Maintenance & Inspection - \$ 27.00 each.

Fire Hydrant Maintenance & Inspection labor for minor repairs – \$ 185.00 per hour.

FH Maintenance & Inspection – for FH that could not be located \$ 10.00 each.

GPS coordinates for valve location - \$ 1.00 each.

GPS coordinates for fire hydrant location - \$ 1.00 each.



GARLAND

Ship and Bill To:

BLANKET ORDER
BL 08093

Water Utilities 972-205-3206
BRENT ERICKSON
2343 Forest Lane
Garland, Texas 75042

This PO number must appear on all documentation. Invoices not referencing this PO number will be returned.

Line	Commodity / Item	Description	Qty	Ut	Unit Price	Total
		OB # 20-1205-05974-01 TERM CONTRACT FOR HYDRANT/VALVE MAINTENANCE BID# 270-20 PR# 42762 EFFECTIVE DATE: 07/01/2020 EXPIRATION DATE: 06/30/2021 FOUR (4) OPTIONS FOR RENEWAL THIS PURCHASE ORDER WILL BE ISSUED FOR THE CONTRACT PERIOD OF ONE (1) YEAR. THE PURCHASE ORDER MAY BE RENEWED FOR FOUR (4) ADDITIONAL PERIODS BEYOND THE ORIGINAL PERIOD. RENEWALS WILL BE MADE IN ACCORDANCE WITH THE ORIGINAL BID AND WILL BE BASED SOLELY UPON THE OPTION AND AGREEMENT BETWEEN BOTH THE CITY AND THE CONTRACTOR. EITHER PARTY DISSENTING WILL TERMINATE THE CONTRACT WITH IT'S INITIAL SPECIFIED TERM. THIS TERM ORDER IS ISSUED TO CONFIRM THE ITEM(S) UPON WHICH YOU WERE THE SUCCESSFUL BIDDER IN VERIFICATION ONLY, AND DOES NOT CONSTITUTE AN				

Signed:

TERMS & CONDITIONS of the City of Garland are incorporated in this order.

Total: Continued

Vendor 40870 Vendor Ph# (813) 305-6610

PO Date: 06/30/20

To: HYDROMAX USA LLC
SHANE MAJETICH
2501 S KENTUCKY AVE

EVANSVILLE IN 47714

Buyer: GUY TRAMPE 972-205-2424
Bid #:
Delivery Promised:
Delivery Required: 06/30/21
F.O.B.: DESTINATION
Terms: Net 30



GARLAND

BLANKET ORDER
BL 08093

Line	Commodity / Item	Description	Qty	Ut	Unit Price	Total
		<p>ORDER FOR ANY ITEM OR A REQUEST OR AUTHORIZATION TO PRODUCE, SHIP OR DELIVERY ANY OF THE IDENTIFIED ITEMS. SEPARATE RELEASES WILL BE ISSUED BY THE USING DEPARTMENT, IDENTIFYING ITEMS AND QUANTITIES DESIRED IF AND AS THEY ARE NEEDED</p> <p>THIS CONTRACT IS NOT EXCLUSIVE TO THE RESPONDENT. THE CITY OF GARLAND MAY OBTAIN PRODUCTS AND RELATED SERVICES FROM OTHER SOURCES DURING THE TERM OF THE CONTRACT. THE CITY MAKES NO EXPRESS OR IMPLIED WARRANTIES WHATSOEVER THAT ANY PARTICULAR QUANTITY OR DOLLAR AMOUNT OF PRODUCTS AND RELATED SERVICES WILL BE PROCURED THROUGH THE CONTRACT. THE QUANTITIES SHOWN IN THIS ORDER REFLECT THE CITY'S ESTIMATED ANNUAL REQUIREMENT</p> <p>DISCLOSURE OF BUSINESS RELATIONSHIPS/AFFILIATIONS, CONFLICT OF INTEREST QUESTIONNAIRE. VENDOR REPRESENTS THAT IT IS IN COMPLIANCE WITH THE APPLICABLE FILING AND DISCLOSURE REQUIREMENTS OF CHAPTER 176 OF THE TEXAS LOCAL GOVERNMENT CODE. THE STATUTE AND CIQ FORM MAY BE FOUND ON THE PURCHASING WEBSITE. WWW.GARLANDPURCHASING.COM</p> <p>SUPPLIER SHOULD FAMILIARIZE THEMSELVES WITH THE CITY OF GARLAND'S FRAUD POLICY LOCATED AT WWW.GARLANDTX.GOV, CITY HALL/INTERNAL AUDIT/FRAUD POLICY. SUPPLIER'S HAVE A RESPONSIBILITY TO REPORT SUSPECTED FRAUDULENT ACTIVITIES TO THE CITY'S HOT LINE AT 972-205-2739</p> <p>A CERTIFICATE OF INSURANCE (COI) MUST BE RECEIVED BY THE CONTRACTS ADMINISTRATION PRIOR TO BEGINNING WORK ON ANY CITY PROPERTY. IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO ENSURE THAT COVERAGE REMAINS IN EFFECT DURING THE ENTIRE PERIOD OF THE CONTRACT. YOU CAN EMAIL YOUR</p>				

Total:	Continued
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GARLAND

BLANKET ORDER
BL 08093

Line	Commodity / Item	Description	Qty	Ut	Unit Price	Total
1		CERTIFICATE TO: CONTRACTS@GARLANDTX.GOV OR FAX TO: 972.205.2495 WATER UTILITIES TERM CONTRACT FOR VALVE & FIRE HYDRANT MAINTENANCE	250000.000	EA	\$1.00000	\$250,000.00
Total:						\$250,000.00

**CITY OF GARLAND
STANDARD TERMS AND CONDITIONS**

1. **ENTIRE AGREEMENT:** These standard terms and conditions and the terms and conditions, specifications, drawings and other requirements included in the City of Garland's Request for Bid/Proposal are applicable to contracts/purchase orders issued by the City of Garland ("City or Buyer") and the Seller ("Bidder", "Contractor," or "Supplier") (collectively, "Parties"). The terms and conditions stated herein, along with the Request for Bid/Proposal ("RFP"), the purchase order (if any) and any finally accepted response to the RFP (collectively, this "Agreement"), are intended to be collectively read and interpreted as the entire memorialization of the Agreement between the Parties. In the event there is an express conflict between these Standard Terms and Conditions, the RFP, the purchase order (if any), and the Response to the RFP, the order of precedence is as follows: (i) the RFP; (ii) the purchase order (if any); (iii) these Standard Terms and Conditions; and (iv) the Response to the RFP. Neither party may modify or add to the terms and conditions as stated herein unless expressly agreed upon in writing and executed by both Parties. Any deviations must be in writing and signed by a representative of the City's Purchasing department and the Supplier. No terms and conditions contained in the Bidder's bid/proposal, invoice or statement of acceptance shall serve to modify the terms set forth herein. If there is a conflict between the provisions of these terms and conditions and the contract/purchase order, these terms and conditions shall control.
2. **OFFICIAL BID NOTIFICATION:** The City utilizes the following for official notifications of bid opportunities: garlandtx.ionwave.net and the Commercial Daily Record of Dallas County. These are the only forms of notification authorized by the City. The City is not responsible for receipt of notifications or information from any source other than those listed. It shall be Bidder's responsibility to verify the validity of all bid information received from any source other than the City. There will be no cost to the Bidder for using IonWave for its bids/proposals.
3. **FRAUD POLICY:** The City is committed to preventing fraud, waste, abuse and unethical conduct by its employees. Bidders should become familiar with the City's fraud policy located on our website at www.garlandtx.gov, City Hall/Internal Audit/fraud Policy. Suppliers have a responsibility to report any known or suspected fraudulent activities, or unethical conduct, by calling the City's Hot Line at 972-205-2739 or write to, Fraud Hot Line P.O. Box 469002 Garland TX 75046. All contacts will be held in strict confidence.
4. **IMMIGRATION AND REFORM ACT:** The Bidder declares and affirms that their organization is in compliance with the Immigration and Reform Act of 1986 and all employees are legally eligible to work in the United States of America. The Bidder, by submitting its response to the RFP agrees and acknowledges that any non-compliance with the Immigration and Reform Act of 1986 at any time during the term of this contract will render the contract voidable by the City of Garland.
5. **COUNCIL POLICY:** Bidder shall comply with the requirements of City Council Policy OPNS-04 Qualifications for Doing Business with the City of Garland and OPNS-28 Business Conduct with Delinquent Account Holders and litigants attached hereto.
6. **PROHIBITION AGAINST PERSON INTEREST IN CONTRACTS:** No City of Garland employee shall have a direct or indirect financial interest in any contract with the City, or be directly or indirectly financially interested in the sale of land, materials, supplies or services to the City.
7. **INTERLOCAL AGREEMENT:** Successful Bidder agrees to extend prices to all entities that have entered into or will enter into joint purchasing interlocal cooperation agreements with the City. The City is a participating member of several interlocal cooperative purchasing agreements. As such, the City has executed interlocal agreements, as permitted under Chapter 791 of the Local Government Code, with certain other political subdivisions, authorizing participation in a cooperative purchasing program. The successful supplier may be asked to provide products/services based upon the bid price, to any other participant.
8. **RIGHT TO AUDIT:** The City shall have the right to examine and audit after reasonable notice any and all books and records of Bidder that may relate to this Agreement, including, without limitation, the performance of the selected Bidder, its employees, agents, and subcontractors. All applicable books and records will be maintained in accordance with generally accepted accounting principles

(GAAP) and shall, upon request and at the City's request, be made available at a location designated by the City. The selected Bidder shall, except for copying costs, otherwise bear all costs of producing such records for examination and copying by the City. Unless otherwise agreed by the Parties, such records must be made available to the City within five business days. The provisions of this paragraph shall survive the termination of this Agreement.

9. **AMENDMENT AND WAIVER:** This Agreement may be amended, supplemented, or otherwise modified only by means of a written instrument signed by both Parties. The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition of this Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other Party.
10. **RISK OF LOSS:** Until the time of the delivery and acceptance of the Bill of Sale for the purchase and sale of goods, if any, the risk of loss or damage to any of the goods, by fire or other casualty, shall be borne by the selected Bidder.
11. **SEVERABILITY:** Should any provision of this Agreement be unenforceable or invalid, the other provisions hereof shall remain in full force and effect.
12. **CORRESPONDENCE:** The bid number must appear on all correspondence and inquiries pertaining to the RFP. The purchase order number must appear on all invoices or other correspondence relating to the Agreement.
13. **INDEMNITY/INSURANCE:** See attached City minimum requirements, required for all on-site work on City property.
14. **EASEMENT PERMISSION:** The successful Bidder shall not enter or use private property except as allowed by easements shown on the contract documents or if the contractor obtains specific written permission from the property owner.
15. **CITY PROVIDED SERVICES:** The successful Bidder, or any sub-contractor or supplier shall use only City provided services in performing this Agreement, including but not limited to electric (if available), water, sanitation and solid waste services. The rate charged by the City shall be the same as charged for the same or similar services. Commercial Solid Waste rates may be obtained from City of Garland Environmental Waste Department at, 972-205-3500.
16. **CONTRACTOR EQUIPMENT IDENTIFICATION:** All equipment used on the project shall be clearly marked with the successful Bidder's name and LOGO. Subcontractor equipment shall also be similarly marked.
17. **DELIVERY:** All goods shall be delivered free on board (F.O.B). Destination unless otherwise authorized herein. Cash on delivery (C.O.D.) shipments or deliveries are not permitted.
18. **SPECIFICATIONS-SAMPLES:** If bidding on other than the item requested, the bid must identify the trade name, manufacturer's name and/or vatalog number, and certify the item offered is equivalent. Descriptive literature must be submitted with alternate brands. Samples shall be furnished free of expense to the City and if requested, may be returned at Bidder's expense.
19. **TIE BIDS:** In the event of tie bids, preference will be given to the Bidder who offers the best value to the City in accordance with state law.
20. **ERROR-QUANTITY:** Bids must be submitted in units of quantity specified, extended, and totaled. In the event of discrepancies in extension, the unit prices shall govern.
21. **ACCEPTANCE:** The right is reserved to accept or reject all or part of the bid, and to accept the offer considered most advantageous to the City by line item or total bid.
22. **OEM PARTS:** All vehicle options are to be OEM factory installed unless otherwise identified on this bid.

23. **SUBSTITUTION:** Every delivery of goods by the selected Bidder must comply with all provisions of this Agreement including the specifications, delivery schedule, quantity and quality. Any delivery which does not conform to the requirements of the Agreement shall constitute a breach of contract. The successful Bidder does not have authorization to make a substitute unless it is agreed to by the City.
24. **BID LIST REMOVAL:** The City reserves the right to remove a supplier from any bid list for: (1) continued failure to be responsive to the City, (2) failure to deliver merchandise within promised time, (3) delivery of substandard merchandise or (4) failure to comply with the requirements of the Agreement.
25. **DELIVERY TIMES:** Deliveries to the City Warehouse or other designated City Buildings or Facilities will be accepted during normal working hours, i.e. 8:00a.m. to 4:00p.m., Monday through Friday unless other arrangements have been made. Deliveries being made directly to City work sites should be coordinated with the City employee responsible for the work being performed at that site.
26. **PACKAGING:** Unless otherwise indicated, items will be new, not rebuilt, in first class condition, and in containers suitable for damage-free shipment.
27. **WARRANTY:** By accepting this Agreement, the selected Bidder warrants that the goods and services to be furnished will be free from defects in materials and workmanship, be of merchantable quality and fit for ordinary use, be in full conformance with City's specifications, drawings and data, Seller's samples or models, and express warranties, and to be fit for any City's particular purpose expressly or impliedly known. These warranties are in addition to all others given to the City by the Seller or by law. Seller shall not limit or exclude any implied warranties and any attempt to do so shall render this contract voidable at the option of the City, and any such limitations or exclusions are void.
28. **TERM CONTRACTS:** Except as otherwise provided herein, prices must remain firm for the entire contract period, including any periods of extension or renewal. At the time of any renewal or extension of the contract, the city or the selected Bidder may request a price adjustment based upon the economy. All requests for a price adjustment must include detailed documentation and rationale to support the requested adjustment. The party to whom a request for price adjustment is made may, in its sole discretion, accept or reject the request. Any price adjustment must be mutually agreed upon in writing by the Parties, and shall be effective for the applicable renewal term.
29. **TERM CONTRACT QUANTITIES:** The quantities in the request for bid are estimated requirements and the City reserves the right to increase or decrease the quantities or cancel any item to be furnished. The successful bidder shall have no claim against the City for anticipated profits for quantities diminished or deleted.
30. **TERM CONTRACT SHIPMENTS:** The selected Bidder will make shipments under this Agreement only when requested and only in the quantities requested. If there are minimum shipments or standard packaging requirements please note the items affected.
31. **CONTRACT RENEWAL OPTIONS:** In the event a clause for option to renew for an additional period is included in the RFP, all renewals will be based solely upon the option and agreement between the City and the selected Bidder. Either party dissenting will terminate the Agreement in accordance with its initial specified term.
32. **TAXES-EXEMPTION:** All quotations are required to be submitted LESS Federal Excise and State Sales Taxes. Tax Exemption Certificate will be executed for the selected Bidder.
33. **ASSIGNMENT:** Selected Bidder shall not assign this order or any interest herein, including any performance or any amount which may be due or become due hereunder, without City's prior written consent.
34. **INVOICING:** Send ORIGINAL INVOICE to address indicated on the purchase order. If invoice is subject to cash discounts the discount period will begin on the day invoices are received. So that

proper cash discount may be computed, invoice should show amount of freight as a separate item, if applicable; otherwise, cash discount will be computed on total amount of invoice.

- 35. INSPECTION:** Goods purchased are subject to inspection and approval by City. City reserves the right to reject or refuse acceptance of goods which are not in accordance with City's instructions, specifications, drawings and data, or the selected Bidder's warranties (expressed or implied). Goods not accepted will be returned to selected Bidder at selected Bidder's risk and expense. Payment for any goods shall not be deemed an acceptance thereof.
- 36. ELECTRONIC SIGNATURE – UNIFORM ELECTRONIC TRANSACTION ACT:** The City adopts Vernon's Texas Statutes and Codes Annotated Business and Commerce Code Chapter 43. Uniform Electronic Transaction Act, allowing individuals, companies, and governmental entities to lawfully use and rely on electronic signatures.
- 37. FUNDING OUT CLAUSE:** This Agreement may be terminated by the City without notice and without penalty or liability in the event that (1) the City lacks sufficient funds for this Agreement; (2) funds for this Agreement are not appropriated by the City Council of the City; and (3) funds for this Agreement that are or were to be provided by grant or through an outside service are withheld, denied or are otherwise not available to the City.
- 38. DISPUTE RESOLUTION:** Pursuant to subchapter I, Chapter 271, TEXAS LOCAL GOVERNMENT CODE, the selected Bidder agrees that, prior to instituting any lawsuit or other proceeding arising from any dispute or claim of breach under this Agreement (a "Claim"), the Parties will first attempt to resolve the claim by taking the following steps: (i) A written notice substantially describing the factual and legal basis of the claim shall be delivered by the selected Bidder to the City within one-hundred eighty (180) days after the date of the event giving rise to the claim, which notice shall request a written response to be delivered to the selected Bidder not less than fourteen (14) business days after receipt of the notice of claim; (ii) if the response does not resolve the claim, in the opinion of the selected Bidder, the selected Bidder shall give notice to that effect to the City whereupon each party shall appoint a person having authority over the activities of the respective Parties who shall promptly meet, in person, in an effort to resolve the claim; (iii) if those persons cannot or do not resolve the claim, then the Parties shall each appoint a person from the highest tier of managerial responsibility within each respective party, who shall then promptly meet, in person, in an effort to resolve the claim.
- 39. DISCLOSURE OF CERTAIN RELATIONSHIPS:** Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that any supplier or person considering doing business with a local government entity disclose in the Questionnaire Form CIQ, the supplier or person's affiliation or business relationship that might cause a conflict of interest with a local government entity. By law, this questionnaire must be filed with the Records Administrator of the City of Garland not later than the 7th business day after the date the supplier or person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code. A person commits an offense if the person violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor. Chapter 176 and the questionnaire may be found at www.garlandpurchasing.com. By submitting a response to this request, supplier represents that it is in compliance with the requirements of Chapter 176 of the Texas Local Government Code.
- 40. PERFORMANCE:** If the selected Bidder fails to comply with any provisions or terms of this Agreement, the City, may at City's option, cancel this Agreement and any other orders outstanding. In the event of cancellation City retains all rights and remedies it may have under state law.
- 41. PATENTS:** SELECTED BIDDER AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITYR AGAINST ALL COSTS AND EXPENSES, INCLUDING ATTORNEYS FEES AND UNDERTAKES AND AGREES TO DEFEND AT SELECTED BIDDER'S OWN EXPENSE, ALL SUITS, ACTIONS OR PROCEEDINGS IN WHICH CITY OR THE USERS OF CITY'S PRODUCTS ARE MADE DEFENDANTS OF ACTUAL OR ALLEGED INFRINGEMENT OF ANY U.S. OR FOREIGN PATENT RESULTING FROM THE USE OR SALE OF THE ITEMS PURCHASED HEREUNDER (EXCEPT INFRINGEMENT NECESSARILY RESULTING FROM ADHERENCE TO BUYER'S SPECIFICATIONS OR DRAWINGS) AND FURTHER AGREES TO PAY AND DISCHARGE ANY

AND ALL JUDGMENTS OR DECREES WHICH MAY BE RENDERED IN ANY SUCH SUIT, ACTION OR PROCEEDING.

- 42. APPLICABLE LAW:** This Agreement shall be governed by the Uniform Commercial Code as adopted in the State of Texas as effective and in force on the date of this agreement.
- 43. VENUE:** This Agreement will be governed and construed according to the laws of the State of Texas. This agreement is performable in Dallas County, Texas.
- 44. TERMINATION:** The City at any time after issuance of this Agreement, by 30 days written notice, has the absolute right to terminate this Agreement for cause or convenience. Cause shall be the selected Bidder's refusal or failure to satisfactorily perform or complete the work within the time specified, or failure to meet the specifications, quantities, quality and/or other requirements specified in the Agreement. In such case the selected Bidder shall be liable for any damages suffered by the City. If the Agreement is terminated for convenience, the selected Bidder has no further obligation under the Agreement. Payment shall be made to cover the cost of material and work in process or "consigned" to the City as of the effective date of the termination.
- 45. FORCE MAJEURE:** To the extent either party of this Agreement shall be wholly or partially prevented from the performance of the term specified, or of any obligation or duty placed on such party by reason of or through work strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, court judgment, act of God, or other specific cause reasonably beyond the Parties control and not attributable to its malfeasance, neglect or nonfeasance. In such event, the time for performance of such obligation or duty shall be suspended until such disability to perform is removed.
- 46. BEST AND FINAL OFFER:** During evaluation process City reserves the right to request a best and final offer upon completion of negotiations.
- 47. STATUTORILY MANDATED PROVISIONS:**
- A. **Anti-Boycott Verification.** Pursuant to Section 2271.002, Texas Government Code, to the extent this Agreement is a contract for goods or services, the selected Bidder hereby represents that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not Boycott Israel and, subject to or as otherwise required by applicable Federal law, Purchaser agrees not to Boycott Israel during the term of this Agreement. For purposes of this Section, "Boycott Israel" shall have the meaning given such term in Section 808.001, Texas Government Code. Purchaser understands "affiliate" for this Section 4.07 to mean an entity that controls, is controlled by, or is under common control with selected Bidder and exists to make a profit.
- B. **Prohibition on Contracts with Certain Companies.** Purchaser and the person or persons executing this Agreement on behalf of Purchaser, or representing themselves as executing this Agreement on behalf of Purchaser (collectively, the "Signing Entities"), hereby acknowledge that (a) the Signing Entities do not engage in business with Iran, Sudan or any foreign terrorist organization and (b) the Signing Entities are not named on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website:
- <https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>,
<https://comptroller.texas.gov/purchasing/docs/iran-list.pdf> or
<https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>
- C. **Open Records Contracting Information.** If this Agreement is executed on or after January 1, 2020, and the Agreement is a contract within the scope of Section 552.371, Government Code, then the following shall apply: (a) the requirements of Subchapter J, Chapter 552, Government Code, may apply to this Agreement and selected Bidder agrees that this Agreement may be terminated if selected Bidder knowingly or intentionally fails to comply with a requirement of that subchapter and (b) without limiting the foregoing Selected bidder agrees to comply with the requirements of Section 552.372, Government Code, including Section 552.372(a)(3)(B), Government Code.

48. WORKING DAY OR DAYS: The following are legal holidays for the City of Garland:

- New Year's Day
- Martin Luther King, Jr. Day
- Memorial Day
- July 4th
- Labor Day
- Thanksgiving (2 days)
- Christmas (2 days)
- Business Hours: 8:00a.m. to 5:00p.m. Monday through Friday.

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CITY COUNCIL POLICY

OPNS-04 – Qualifications for Doing Business with the City

I. Purpose and Need for Policy

The purpose of this policy is to foster the public's trust in the conduct of City business and to further insure the expenditures of public funds is beyond reproach.

II. Policy

Other than the exceptions cited below, it is the policy of the City Council to not enter into or renew a contract to purchase, sell, or lease property or services to or from any entity described in this policy.

III. Procedure to Accomplish Policy

A. The City of Garland shall not, except as provided herein, enter into or renew a contract to purchase, sell, or lease property or services to or from any person or entity who has been:

- 1) Convicted of any state or federal felony offense. Conviction includes a final probation, deferred adjudication or similar disposition.
- 2) Convicted or fined in excess of \$50,000 on certain state or federal discrimination offenses. Discrimination charges include only those brought for discrimination against the race, sex, or religion or an individual or class of individuals.

- B. Persons or entities doing business with the City include:
- 1) Individuals, corporations, partnerships, associations, or limited liability companies.
 - 2) Owner or principal operators of entities referenced in paragraph B (1).
 - 3) Principal officers of entities referenced in paragraph B (1).
 - 4) Shareholders in corporations or limited liabilities companies if there are five or fewer shareholders.
 - 5) Majority owned affiliates of any entity referenced in paragraph B (1).
- C. This policy shall not apply when:
- 1) Three years have elapsed between the conviction and the approval of the contract.
 - 2) The contract does not require City Council approval.
 - 3) Anything of value is paid or given to informants or participants in a crime stopper program, or
 - 4) The City Council determines this policy could cause grave injury or impose a severe financial hardship to the City of Garland by its application, and is waived by an affirmative vote of not less than six (6) Council members.
- D. On bid applications that may result in a contract award by the City Council, the City shall require a representation by bidders that the bidder is not disqualified by the application of this policy.
- E. After contract award, but prior to the commencement of the project or the delivery of the service or property, a determination that the bidder is in violation of this policy shall be cause for terminating the contract.

By the execution and submission of this bid, bidder acknowledges that bidder has received a copy of City Council Policy OPNS-04 and bidder represents and warrants that bidder complies with the requirements of the City Council Policy OPNS-04 and is in no manner disqualified from doing business with the City under that policy.

CITY COUNCIL POLICY

OPNS-28 – Business Conduct with Delinquent Account Holders and Litigants

I. Purpose and Need for Policy

The City conducts business with its citizens and the public at-large. In so doing, there are instances where the City may be asked to conduct business with those who are delinquent in their payment(s) to the City on various accounts or who may be involved in litigation with the City. Examples of the types of delinquent accounts which can be substantial in nature are impact fees, property taxes (generally person property), utility bills, EMS fees, and damage claims to City property. A policy is needed to ensure that the City does not conduct business with those individuals.

II. Policy

It is the policy of the City Council to forbid any individual or business entity to conduct business with the City if such person(s) currently owe(s) the City money which is past due or delinquent on property taxes, impact fees, utility bills, Municipal Court fees, EMS fees, or damage claims to City property. Unless prohibited by law, it shall further be the policy of the City Council to forbid any individual or business entity who files meritless litigation against the City from conducting business with the City.

III. Procedure to Accomplish Policy

On a monthly basis, the Managing Director of Customer Services shall produce a delinquent accounts list containing the names of those businesses and/or individuals who are delinquent in paying the City for property taxes, impact fees, utility bills, EMS fees, or damage claims. Copies of the delinquent tax history shall be distributed to the City Manager's office, Purchasing, Engineering, Planning, and Building Inspection Departments. The delinquent accounts list relating to impact fees, utility bills, EMS fees, and/or damage claims shall be housed in the Customer Service Department. These lists will be available to the City Manager, Assistant City Manager's, and other departments upon request, to be checked prior to permit issuance or other conduct of business by the City with any business or individual. The City will not do business with any business or individual until the delinquent account is paid in full. The City shall not award any contracts for services and/or goods to any business, firm, and/or individual(s) who are delinquent or have demonstrated that they are not the most responsible bidder.

IV. Responsibility and Authority

1. The Managing Director of Customer Service shall be responsible for producing and distributing a delinquent accounts list containing names of businesses and/or individuals who are delinquent in paying their property taxes, impact fees, utility bills, EMS fees, or damage claims to the City.
2. The Purchasing Manager shall be responsible for the reporting and removal of any bids submitted by any business(es), firm(s), and/or individual(s) who are delinquent in payment(s) of their utility bills, EMS fees, property taxes, impact fees, or have damage claims to the City.
3. The City Manager is responsible to ensure that this policy is upheld and that the Council is kept abreast of its effectiveness.

By the execution and submission of this bid, bidder acknowledges that bidder has received a copy of City Council Policy OPNS-28 and bidder represents and warrants that bidder complies with the requirements of the City Council Policy OPNS-28 and is in no manner disqualified from doing business with the City under that policy.

**City of Garland
CONTRACTOR INSURANCE REQUIREMENTS & AGREEMENT**

Contractors performing work on City property or public right-of-way for the City of Garland shall provide the City a certificate of insurance or a copy of their insurance policy(s) evidencing the coverages and coverage provisions identified herein. Contractors shall provide the City evidence that all subcontractors performing work on the project have the same types and amounts of coverages as required herein or that the subcontractors are included under the contractor's policy.

All insurance companies and coverages must be authorized by the Texas Department of Insurance to transact business in the State of Texas and must be acceptable to the City of Garland Risk Management office.

Listed below are the types and minimum amounts of insurances required and which must be maintained during the term of the contract. The City reserves the right to amend or require additional types and amounts of coverages or provisions depending on the nature of the work.

TYPE OF INSURANCE	AMOUNT OF INSURANCE	PROVISIONS
1. Workers' Compensation Employers' Liability	Statutory Limits \$100,000 per occurrence	1. City to be provided a waiver of subrogation, and 30-DAY notice of cancellation or material change in coverage. 2. Insurance company must be A-rated

Page _____ of _____

		or above.
2. Commercial General (Public) Liability to include coverage for: a) Premises/Operations b) Products/Completed Operations c) Independent Contractors d) Personal Injury e) Contractual Liability	Bodily Injury - \$250,000 per person, \$500,000 per occurrence; Property Damage - \$100,000 per occurrence -OR- Combined single limit of \$600,000	1. City to be listed as Additional Insured and provided 30-day notice of cancellation or material change in coverage. 2. Insurance company must be A-rated or above.
3. Business Auto Liability to include coverage for: a) Owned/Leased vehicles b) Non-owned vehicles c) Hired vehicles	Bodily Injury - \$250,000 per person, \$500,000 per occurrence; Property Damage - \$100,000 per occurrence -OR- Combined single limit of \$600,000	1. City to be listed as Additional Insured and provided 30 day notice of cancellation or material change in coverage. 2. Insurance company must be A-rated or above.
4. Professional Liability Aggregate d) \$1,000,000.00 per year	Bodily Injury - \$250,000 per person, \$500,000 per occurrence; Property Damage - \$100,000 per occurrence.	1. 30 day cancellation notice Insurance company must be A-rated or above.

Certificate of Liability Insurance forms may be faxed to Purchasing Department , Attn: Joel Wilson, @ (972) 205-2495, or emailed to: jwilson@garlandtx.gov Questions regarding required insurance should be directed to Robby Neill, City of Garland Risk Manager, (972) 205-2481.

City of Garland INDEMNIFICATION AGREEMENT

The Contractor agrees to indemnify, hold harmless and defend the City of Garland, its officers, agents and employees, both past and present, from and against liability for any and all claims, liens, suits, demands, and actions for damages, injuries to persons (including death), property damage (including loss of use), and expenses, (including court costs, attorneys' fees and other reasonable costs of litigation) arising out of or resulting from Contractor's work and activities conducted in connection with or incidental to this Contract and from any liability arising out of or resulting from intentional acts or negligence of the Contractor, including all such causes of action based upon common, constitutional, or statutory law, or based in whole or in part upon the negligent or intentional acts or omissions of Contractor, including but not limited to its officers, agents, employees, subcontractors, licensees, invitees, and other persons.

It is the express intention of the parties hereto, both the City and the Contractor, that the indemnity provided for in this Contract indemnifies and protects the City from the consequences of the City's own negligence.

The Contractor further agrees that it shall at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of its officers, agents, employees, subcontractors, licensees, invitees and other persons, as well as their property, while in the vicinity where the work is being done. It is expressly understood and agreed that City shall not be liable or responsible for the negligence or other fault of the Contractor, its officers, agents, employees, subcontractors, licensees, invitees, or other person associated with the Contractor.

The Contractor agrees to indemnify and save the City harmless from all claims growing out of any demands of subcontractors, laborers, workers, mechanics, materialmen, and furnishers of supplies, equipment, financing, or any other goods or services, tangible or intangible. When the City so desires, the Contractor shall furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid discharged or waived.

INDEPENDENT CONTRACTOR

Contractor acknowledges that Contractor is an independent contractor of the City and that Contractor is not an employee, agent, official or representative of the City. Contractor shall not represent, either expressly or through implication, that Contractor is an employee, agent, official or representative of the City. Any income taxes, self-employment taxes, social security taxes and the like are the sole responsibility of the Contractor.

Nothing contained in this Contract shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the parties, it being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Contract.



City of Lucas

City Council Agenda Request

December 16, 2021

Item No. 06

Requester: Development Services Director Joe Hilbourn

Agenda Item Request

Public hearing to consider adopting Ordinance 2021-12-00942 approving a request by Bill Shipley on behalf of Golden Chick for a Specific Use Permit (SUP) to allow a drive-thru restaurant on a proposed tract of land, zoned Commercial Business, being 0.833 acres, on Lot 1, Block A, Pennington Addition, William Snider Survey, Abstract No. 821, Collin County Texas, also known as 451 South Angel Parkway.

- A. Presentation by Development Services Director Joe Hilbourn
- B. Conduct Public Hearing
- C. Take action on the specific use permit request

Background Information

Golden Chick is building a 1,914 square foot restaurant with a proposed drive through window. The site is currently zoned Commercial Business. Per Section 14.03.353 of the City's Code of Ordinances, businesses with a drive-through, drive-in and drive-up shall be allowed only upon the approval of a specific use permit.

Attachments/Supporting Documentation

- 1. Public Notice
- 2. Concept Plan
- 3. Location Map
- 4. Ordinance 2021-12-00942

Budget/Financial Impact

NA

Recommendation

Staff recommends approving the specific use permit with the following recommendations and will bring forward the Planning and Zoning Commission's recommendation at the Council meeting:

- 1. Tie the attached concept plan to the SUP
- 2. All exterior lighting will be on a timer, that turns all lights except security lighting off thirty minutes after close of business.
- 3. Hours of operation are 6:00 a.m. to 1:00 a.m. (Golden Chick's current hours of operation are 10:00 a.m. until 10:00 p.m. Staff is recommending the hours of 6:00 a.m. to 1:00 a.m.



City of Lucas

City Council Agenda Request

December 16, 2021

to be consistent with surrounding businesses as the SUP goes with the property should it change hands.

4. Exterior lighting shall omit no glare across property lines.

Motion

I make a motion to approve/deny adopting Ordinance 2021-12-00942 approving a request by Bill Shipley on behalf of Golden Chick for a Specific Use Permit (SUP) to allow a drive-thru restaurant on a proposed tract of land, zoned Commercial Business, being 0.833 acres, on Lot 1, Block A, Pennington Addition, William Snider Survey, Abstract No. 821, Collin County Texas, also known as 451 South Angel Parkway.



NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN, that the Planning & Zoning Commission of the City of Lucas, Texas will conduct a public hearing on Thursday, December 9, 2021 at 7:00 p.m. and City Council will conduct a second public hearing on Thursday, December 16, 2021 at 7:00 p.m. at Lucas City Hall, 665 Country Club, Lucas, Texas to consider a Specific Use Permit (SUP) application to permit a drive-thru for a restaurant at 451 S. Angel Parkway. The property is Zoned Commercial and more particularly described as follows:

WHEREAS, PENNINGTON PARTNERS, LTD. IS THE OWNER OF THAT CERTAIN 36,293 SQUARE FEET (0.833 ACRE) TRACT OF LAND SITUATED IN THE WILLIAM SNIDER SURVEY, ABSTRACT NUMBER 821, CITY OF LUCAS, COLLIN COUNTY, TEXAS; SAID 36,293 SQUARE FEET (0.833 ACRE) OF LAND BEING A PORTION OF THAT CERTAIN TRACT OF LAND DESCRIBED IN A WARRANTY DEED WITH VENDOR'S LIEN TO PENNINGTON PARTNERS, LTD. (HEREINAFTER REFERRED TO AS PENNINGTON PARTNERS TRACT), AS RECORDED IN VOLUME 5184, PAGE 1102, DEED RECORDS, COLLIN COUNTY, TEXAS (D.R.C.C.T.); SAID 36,293 SQUARE FEET (0.833 ACRE) BEING MORE PARTICULARLY DESCRIBED, BY METES AND BOUNDS, AS FOLLOWS:

BEGINNING AT A FIVE-EIGHTHS INCH IRON ROD WITH RED PLASTIC CAP STAMPED "RPLS 4838" SET FOR THE NORTHEAST CORNER OF THAT CERTAIN TRACT OF LAND DESCRIBED AS LOT 1, BLOCK A, DONALD ALAN ADDITION (HEREINAFTER REFERRED TO AS LOT 1), AN ADDITION TO THE CITY OF LUCAS, COLLIN COUNTY, TEXAS, ACCORDING TO THE PLAT RECORDED IN INSTRUMENT NUMBER 2019-700, PLAT RECORDS, COLLIN COUNTY, TEXAS (P.R.C.C.T.);

THENCE SOUTH 89 DEGREES 14 MINUTES 22 SECONDS WEST WITH THE COMMON LINE BETWEEN THE REMAINDER OF SAID PENNINGTON PARTNERS TRACT AND SAID LOT 1, A DISTANCE OF 302.44 FEET TO A ONE-HALF INCH IRON ROD WITH PLASTIC CAP FOUND FOR THE WESTERLY SOUTHWEST CORNER OF THE REMAINDER OF SAID PENNINGTON PARTNERS TRACT, SAME BEING THE EXISTING EAST RIGHT-OF-WAY LINE OF ANGEL PARKWAY, ALSO KNOWN AS F.M. HIGHWAY 2170 AND F.M. HIGHWAY 2551 (VARIABLE WIDTH RIGHT-OF-WAY), AS RECORDED IN INSTRUMENT NUMBER 2020030600326240, OFFICIAL PUBLIC RECORDS, COLLIN COUNTY, TEXAS;

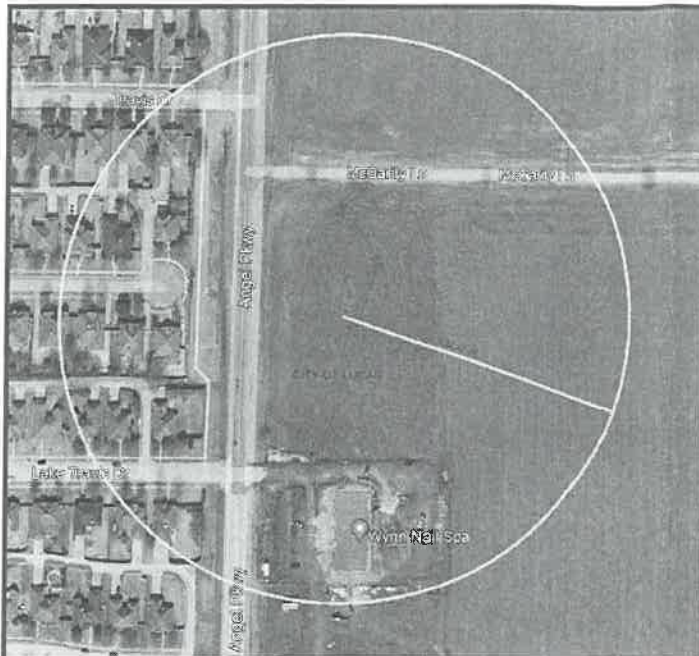
THENCE NORTH 00 DEGREES 56 MINUTES 15 SECONDS WEST, DEPARTING THE NORTH LINE OF SAID LOT 1, WITH THE COMMON LINE BETWEEN THE REMAINDER OF SAID PENNINGTON PARTNERS TRACT AND THE EXISTING EAST RIGHT-OF-WAY LINE OF SAID ANGEL PARKWAY, A DISTANCE OF 120.00 FEET TO A FIVE-EIGHTHS INCH IRON ROD WITH RED PLASTIC CAP STAMPED "RPLS 4838" SET FOR CORNER;

THENCE NORTH 89 DEGREES 14 MINUTES 22 SECONDS EAST, DEPARTING THE EXISTING EAST RIGHT-OF-WAY LINE OF SAID ANGEL PARKWAY, CROSSING SAID PENNINGTON PARTNERS TRACT, A DISTANCE OF 302.44 FEET TO A FIVE-EIGHTHS INCH IRON ROD WITH RED PLASTIC CAP STAMPED "RPLS 4838" SET FOR CORNER;

THENCE SOUTH 00 DEGREES 56 MINUTES 15 SECONDS EAST, CONTINUE CROSSING SAID PENNINGTON PARTNERS TRACT, A DISTANCE OF 120.00 FEET TO THE PLACE OF

BEGINNING, AND CONTAINING A CALCULATED AREA OF 36,293 SQUARE FEET (0.833 ACRE) OF LAND

Those wishing to speak FOR or AGAINST the above item are invited to attend. If you are unable to attend and have comments you may send them to City of Lucas, Attention: City Secretary, 665 Country Club Road, Lucas, Texas 75002, email shenderson@lucastexas.us and it will be presented at the Hearing. If you have any questions about the above hearing you may contact jhilbourn@lucastexas.us

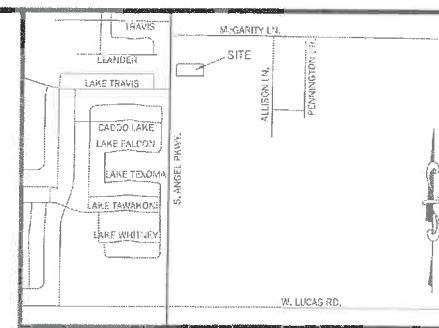


LAND USE CHART

SITE DATA SUMMARY	
DESCRIPTION	PROPOSED
CURRENT ZONING	C "COMMERCIAL"
PROPOSED USE	RESTAURANT WITH DRIVE THROUGH
BUILDING AREA (INCLD. PATIO) SF	1914
BLDG. HEIGHT	22' 7"
OCCUPANT LOAD	59
LOT AREA SF (NET)	36,293
LOT COVERAGE	5.27%
FLOOR AREA RATIO	0.08:1
IMPERVIOUS AREA SF	25,435
LANDSCAPING AREA PROVIDED SF	10556
PARKING REQUIRED (1/100 SF FOR RESTAURANT)	20
PARKING PROVIDED	25

LEGEND:

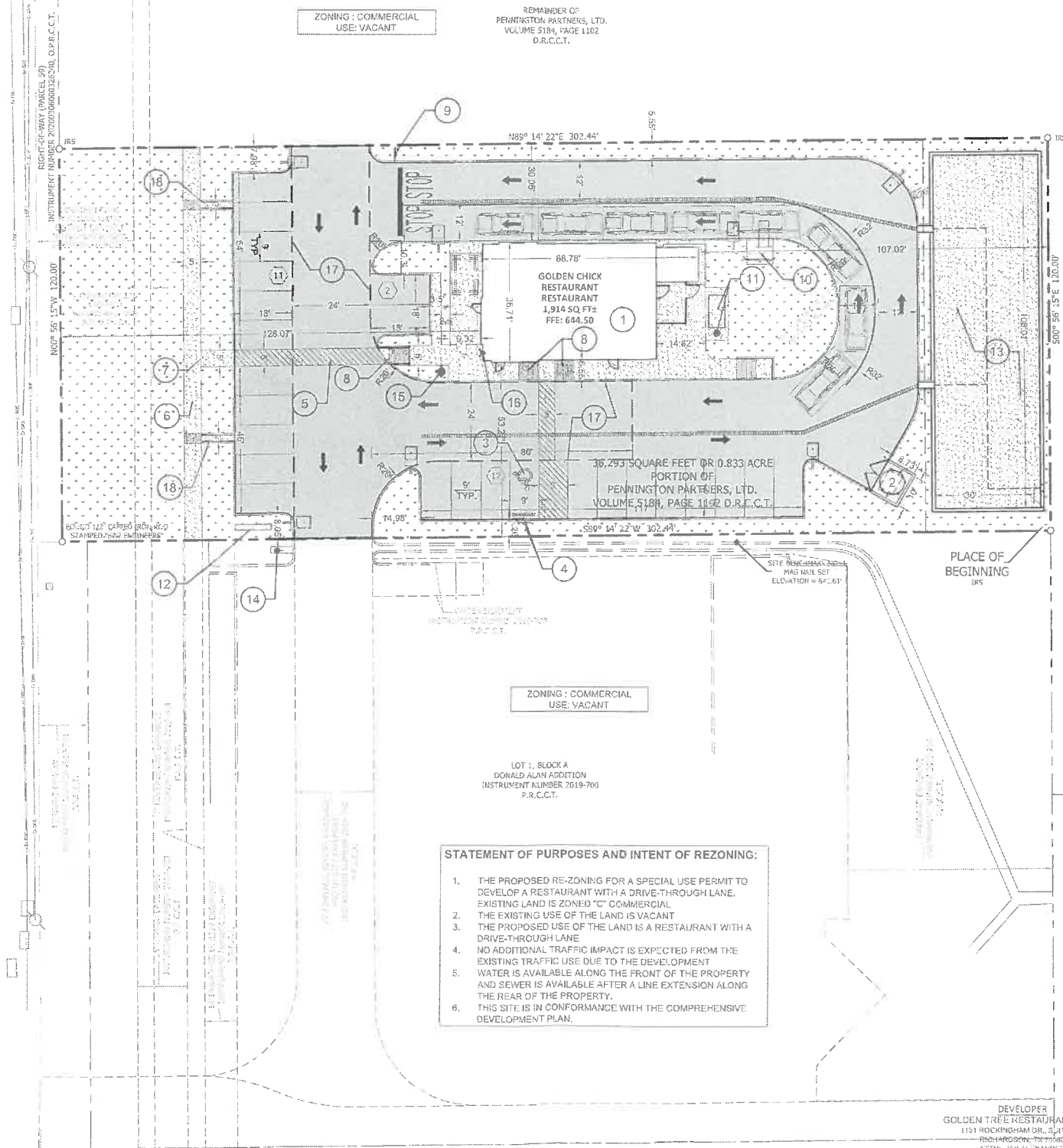
- PROPERTY LINE
- ADJOINED PROPERTY
- BUILDING SETBACK LINE
- EASEMENTS
- EXISTING CURB
- PROPOSED CURB AND GUTTER
- PAINTED STRIPE (TRAFFIC WHITE)
- PAINTED WALKWAY (TRAFFIC WHITE)
- CONCRETE PAVING, REFER TO SHEET C-2.1 FOR PAVEMENT THICKNESS
- INTERIOR LANDSCAPED AREA (RE: LANDSCAPE PLANS)
- PARKING STALL COUNT
- SITE LIGHTING (SEE ELECTRICAL PLANS)



VICINITY MAP
NOT TO SCALE

NOTES BY SYMBOL:

- 1 PROPOSED RESTAURANT STRUCTURE.
- 2 DUMPSTER WITH ENCLOSURE WITH 7" THICK CONC. APRON. REFER TO ARCHITECTURAL PLANS FOR DETAILS
- 3 ACCESSIBLE PARKING SPACE (TYP.)
- 4 ACCESSIBLE PARKING POLE SIGNAGE - 1 VAN ACCESSIBLE SIGNAGE
- 5 ADA COMPLIANT WALKWAY
- 6 PROPOSED 5' WIDE SIDEWALK.
- 7 CONNECT ADA COMPLIANT WALKWAY TO PROPOSED SIDEWALK IN CITY ROW.
- 8 INSTALL ACCESSIBLE RAMP
- 9 "DO NOT ENTER" SIGNAGE
- 10 ORDER BOARD (REFER ARCH. SHEETS)
- 11 GREASE INTERCEPTOR AND SAMPLE WELL
- 12 PROPOSED MONUMENT SIGNAGE BY SEPARATE PERMIT (LOCATION SHOWN FOR REFERENCE ONLY)
- 13 PROPOSED STORM DRAIN DETENTION POND
- 14 EXISTING FIRE HYDRANT
- 15 PROPOSED FIRE HYDRANT
- 16 FIRE DEPARTMENT CONNECTION
- 17 FIRE LANE STRIPING PER CITY OF LUCAS FIRE DEPARTMENT REQUIREMENTS
- 18 DRAINAGE FLUME



METES & BOUNDS:

WHEREAS, PENNINGTON PARTNERS, LTD. IS THE OWNER OF THAT CERTAIN 36,293 SQUARE FEET (0.833 ACRE) TRACT OF LAND SITUATED IN THE WILLIAM SNIDER SURVEY, ABSTRACT NUMBER 821, CITY OF LUCAS, COLLIN COUNTY, TEXAS; SAID 36,293 SQUARE FEET (0.833 ACRE) OF LAND BEING A PORTION OF THAT CERTAIN TRACT OF LAND DESCRIBED IN A WARRANTY DEED WITH VENDORS LIEN TO PENNINGTON PARTNERS, LTD. (HEREINAFTER REFERRED TO AS PENNINGTON PARTNERS TRACT), AS RECORDED IN VOLUME 5184, PAGE 1102, DEED RECORDS, COLLIN COUNTY, TEXAS (D.R.C.C.T.); SAID 36,293 SQUARE FEET (0.833 ACRE) BEING MORE PARTICULARLY DESCRIBED, BY METES AND BOUNDS, AS FOLLOWS:

BEGINNING AT A FIVE-EIGHTHS INCH IRON ROD WITH RED PLASTIC CAP STAMPED "RPLS 4838" SET FOR THE NORTHEAST CORNER OF THAT CERTAIN TRACT OF LAND DESCRIBED AS LOT 1, BLOCK A, DONALD ALAN ADDITION (HEREINAFTER REFERRED TO AS LOT 1, AN ADDITION TO THE CITY OF LUCAS, COLLIN COUNTY, TEXAS, ACCORDING TO THE PLAN RECORDED IN INSTRUMENT NUMBER 2019-700, PLAT RECORDS, COLLIN COUNTY, TEXAS (P.R.C.C.T.);

THENCE SOUTH 89 DEGREES 14 MINUTES 22 SECONDS WEST WITH THE COMMON LINE BETWEEN THE REMAINDER OF SAID PENNINGTON PARTNERS TRACT AND SAID LOT 1, A DISTANCE OF 302.44 FEET TO A ONE-HALF INCH IRON ROD WITH PLASTIC CAP FOUND FOR THE WESTERLY SOUTHWEST CORNER OF THE REMAINDER OF SAID PENNINGTON PARTNERS TRACT, SAME BEING THE EXISTING EAST RIGHT-OF-WAY LINE OF ANGEL PARKWAY, ALSO KNOWN AS F.M. HIGHWAY 2170 AND F.M. HIGHWAY 2521 (VARIABLE WIDTH RIGHT-OF-WAY), AS RECORDED IN INSTRUMENT NUMBER 207003060320240, OFFICIAL PUBLIC RECORDS, COLLIN COUNTY, TEXAS;

THENCE NORTH 03 DEGREES 56 MINUTES 15 SECONDS WEST, DEPARTING THE NORTH LINE OF SAID LOT 1, WITH THE COMMON LINE BETWEEN THE REMAINDER OF SAID PENNINGTON PARTNERS TRACT AND THE EXISTING EAST RIGHT-OF-WAY LINE OF SAID ANGEL PARKWAY, A DISTANCE OF 120.60 FEET TO A FIVE-EIGHTHS INCH IRON ROD WITH RED PLASTIC CAP STAMPED "RPLS 4838" SET FOR CORNER;

THENCE NORTH 39 DEGREES 14 MINUTES 22 SECONDS EAST, DEPARTING THE EXISTING EAST RIGHT-OF-WAY LINE OF SAID ANGEL PARKWAY, CROSSING SAID PENNINGTON PARTNERS TRACT, A DISTANCE OF 302.44 FEET TO A FIVE-EIGHTHS INCH IRON ROD WITH RED PLASTIC CAP STAMPED "RPLS 4838" SET FOR CORNER;

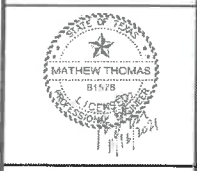
THENCE SOUTH 03 DEGREES 56 MINUTES 15 SECONDS EAST, CONTINUOUSLY CROSSING SAID PENNINGTON PARTNERS TRACT, A DISTANCE OF 120.60 FEET TO THE PLACE OF BEGINNING, AND CONTAINING A CALCULATED AREA OF 36,293 SQUARE FEET (0.833 ACRE) OF LAND

GENERAL NOTES:

1. ALL PAVEMENT DIMENSIONS ARE TO FACE OF CURB UNLESS INDICATED OTHERWISE. ALL BUILDING DIMENSIONS ARE TO OUTSIDE FACE OF WALL UNLESS INDICATED OTHERWISE.
2. SEE ARCHITECTURAL SHEETS FOR EXACT DIMENSIONS OF BUILDING, AND DETAILS AROUND THE BUILDING.
3. ALL CURVE RADII ARE 3' UNLESS NOTED OTHERWISE.
4. SEE ELECTRICAL PLANS FOR SITE LIGHTING DESIGN AND DETAILS.

1. SOURCE: CITY OF LUCAS WORKS PLANS 2019-07-16 02:00:00 2019-07-16 02:00:00 2019-07-16 02:00:00 2019-07-16 02:00:00
 2. SOURCE: CITY OF LUCAS WORKS PLANS 2019-07-16 02:00:00 2019-07-16 02:00:00 2019-07-16 02:00:00 2019-07-16 02:00:00
 3. SOURCE: CITY OF LUCAS WORKS PLANS 2019-07-16 02:00:00 2019-07-16 02:00:00 2019-07-16 02:00:00 2019-07-16 02:00:00
 4. SOURCE: CITY OF LUCAS WORKS PLANS 2019-07-16 02:00:00 2019-07-16 02:00:00 2019-07-16 02:00:00 2019-07-16 02:00:00

THOMAS
 SITE DEVELOPMENT
 ENGINEERING INC.
 REGISTRATION NO. F-10289
 2008 BEDFORD ROAD, SUITE 200, BEDFORD, TX 76021
 PHONE: (214) 680-2728; THOMAS-ENG.COM
 EMAIL: MATHEW@THOMAS-ENG.COM



GOLDEN CHICK RESTAURANT
 480 S. ANGEL PARKWAY
 LUCAS, TEXAS 75002



ZONING CONCEPT PLAN - EXHIBIT B

36,293 SQUARE FEET OR (0.833 ACRE)
 WILLIAM SNIDER SURVEY, ABSTRACT NO. 821
 CITY OF LUCAS, COLLIN COUNTY, TEXAS

OWNER: PENNINGTON PARTNERS, LTD.
 3403 NORTH FITZGUGH AVENUE SUITE 252
 DALLAS, TEXAS 75204
 ATTN: BILL SHIPLEY

ENGINEER / APPLICANT: THOMAS SITE DEVELOPMENT ENGINEERING INC.
 P.O. BOX 1261, COLLEYSVILLE, TX 76034
 ATTN: MATHEW THOMAS, PE
 PH: (214) 680-2728

REVISION	DESCRIPTION	DATE

Z-1.0

Location Map

Proposed Golden Chick





ORDINANCE 2021-12-00942

[Special Use Permit for Restaurant Drive-Through]

AN ORDINANCE OF THE CITY OF LUCAS, TEXAS, AMENDING THE COMPREHENSIVE ZONING ORDINANCE AND MAP OF THE CITY OF LUCAS, TEXAS, AS HERETOFORE AMENDED, BY GRANTING A SPECIFIC USE PERMIT WITH SPECIAL CONDITIONS TO ALLOW FOR A RESTAURANT DRIVE-THROUGH ON A 0.833-ACRE TRACT OF LAND, LOCATED AT 451 SOUTH ANGEL PARKWAY, CITY OF LUCAS, COLLIN COUNTY, TEXAS (THE “PROPERTY”), CURRENTLY ZONED COMMERCIAL BUSINESS DISTRICT (CB), AND BEING MORE PARTICULARLY DESCRIBED IN EXHIBIT “A” ATTACHED HERETO; PROVIDING FOR APPROVAL OF THE CONCEPT PLAN ATTACHED HERETO AS EXHIBIT “B”; PROVIDING A CONFLICTS CLAUSE; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000.00) FOR EACH OFFENSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Planning and Zoning Commission of the City of Lucas, Texas, and the governing body of the City of Lucas in compliance with the laws of the State of Texas and the ordinances of the City of Lucas, have given requisite notice of publication and otherwise, and after holding due hearings and affording a full and fair hearing to all property owners generally and to all persons interested and situated in the affected area, and in the vicinity thereof, and in the exercise of its legislative discretion have concluded that the Comprehensive Zoning Ordinance and Map of the City of Lucas, Texas, as previously amended, should be amended.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LUCAS, TEXAS, THAT:

SECTION 1. That the Comprehensive Zoning Ordinance and Map of the City of Lucas, Texas, as heretofore amended, be and the same are hereby amended, to grant a Special Use Permit to allow for a restaurant drive-through, located at 451 South Angel Parkway, City of Lucas, Collin County, Texas, currently zoned Commercial Business (CB), and being more particularly described in Exhibit “A” attached hereto and made a part hereof for all purposes.

SECTION 2. That the above-described property shall be used only in the manner and for the purposes provided for by the Comprehensive Zoning Ordinance of the City of Lucas as heretofore amended, subject to the following special conditions:

- (1) The Property shall be developed in accordance with the Concept Plan attached hereto as Exhibit “B” and made a part hereof for all purposes.

- (2) All exterior lighting will be on a timer that turns all lights, except security lighting off, thirty (30) minutes after close of business.
- (3) Hours of operation shall be 6:00 a.m. to 1:00 a.m.

SECTION 3. To the extent of any irreconcilable conflict with the provisions of this ordinance and other ordinances of the City of Lucas governing the use and development of the Property and which are not expressly amended by this ordinance, the provisions of this ordinance shall be controlling.

SECTION 4. That all ordinances of the City of Lucas in conflict with the provisions of this Ordinance shall be, and same are hereby, repealed, provided, however, that all other provisions of said Ordinances are not in conflict herewith shall remain in full force and effect.

SECTION 5. That should any word, sentence, paragraph, subdivision, clause, phrase or section of this Ordinance or of the City of Lucas Code of Ordinances, as amended hereby, be adjudged or held to be voided or unconstitutional, the same shall not affect the validity of the remaining portions of said Ordinances or the City of Lucas Code of Ordinances, as amended hereby, which shall remain in full force and effect.

SECTION 6. An offense committed before the effective date of the Ordinance is governed by prior law and the provisions of the City of Lucas Code of Ordinances in effect when the offense was committed and the former law is continued in effect for this purpose.

SECTION 7. That any person, firm or corporation violating any of the provisions or terms of this Ordinance shall be subject to the same penalty as provided for in the Code of Ordinances, as amended, and upon conviction in the municipal court shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000.00) for each offense, and each and every day such violation shall continue shall be deemed to constitute a separate offense.

SECTION 8. That this Ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Lucas, and it is accordingly so ordained

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF LUCAS, COLLIN COUNTY, TEXAS, ON THIS 16th DAY OF DECEMBER 2021.

APPROVED:

Jim Olk, Mayor

APPROVED AS TO FORM:

ATTEST:

Joseph J. Gorfida, Jr., City Attorney
(12-08-2021:TM 126530)

Stacy Henderson, City Secretary

EXHIBIT "A"
LEGAL DESCRIPTION

WHEREAS, PENNINGTON PARTNERS, LTD. IS THE OWNER OF THAT CERTAIN 36,293 SQUARE FEET (0.833 ACRE) TRACT OF LAND SITUATED IN THE WILLIAM SNIDER SURVEY, ABSTRACT NUMBER 821, CITY OF LUCAS, COLLIN COUNTY, TEXAS; SAID 36,293 SQUARE FEET (0.833 ACRE) OF LAND BEING A PORTION OF THAT CERTAIN TRACT OF LAND DESCRIBED IN A WARRANTY DEED WITH VENDOR'S LIEN TO PENNINGTON PARTNERS, LTD. (HEREINAFTER REFERRED TO AS PENNINGTON PARTNERS TRACT), AS RECORDED IN VOLUME 5184, PAGE 1102, DEED RECORDS, COLLIN COUNTY, TEXAS (D.R.C.C.T.); SAID 36,293 SQUARE FEET (0.833 ACRE) BEING MORE PARTICULARLY DESCRIBED, BY METES AND BOUNDS, AS FOLLOWS:

BEGINNING AT A FIVE-EIGHTHS INCH IRON ROD WITH RED PLASTIC CAP STAMPED "RPLS 4838" SET FOR THE NORTHEAST CORNER OF THAT CERTAIN TRACT OF LAND DESCRIBED AS LOT 1, BLOCK A, DONALD ALAN ADDITION (HEREINAFTER REFERRED TO AS LOT 1), AN ADDITION TO THE CITY OF LUCAS, COLLIN COUNTY, TEXAS, ACCORDING TO THE PLAT RECORDED IN INSTRUMENT NUMBER 2019-700, PLAT RECORDS, COLLIN COUNTY, TEXAS (P.R.C.C.T.);

THENCE SOUTH 89 DEGREES 14 MINUTES 22 SECONDS WEST WITH THE COMMON LINE BETWEEN THE REMAINDER OF SAID PENNINGTON PARTNERS TRACT AND SAID LOT 1, A DISTANCE OF 302.44 FEET TO A ONE-HALF INCH IRON ROD WITH PLASTIC CAP FOUND FOR THE WESTERLY SOUTHWEST CORNER OF THE REMAINDER OF SAID PENNINGTON PARTNERS TRACT, SAME BEING THE EXISTING EAST RIGHT-OF-WAY LINE OF ANGEL PARKWAY, ALSO KNOWN AS F.M. HIGHWAY 2170 AND F.M. HIGHWAY 2551 (VARIABLE WIDTH RIGHT-OF-WAY), AS RECORDED IN INSTRUMENT NUMBER 2020030600326240, OFFICIAL PUBLIC RECORDS, COLLIN COUNTY, TEXAS;

THENCE NORTH 00 DEGREES 56 MINUTES 15 SECONDS WEST, DEPARTING THE NORTH LINE OF SAID LOT 1, WITH THE COMMON LINE BETWEEN THE REMAINDER OF SAID PENNINGTON PARTNERS TRACT AND THE EXISTING EAST RIGHT-OF-WAY LINE OF SAID ANGEL PARKWAY, A DISTANCE OF 120.00 FEET TO A FIVE-EIGHTHS INCH IRON ROD WITH RED PLASTIC CAP STAMPED "RPLS 4838" SET FOR CORNER;

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THENCE SOUTH 00 DEGREES 56 MINUTES 15 SECONDS EAST, CONTINUE CROSSING SAID PENNINGTON PARTNERS TRACT, A DISTANCE OF 120.00 FEET TO THE PLACE OF BEGINNING, AND CONTAINING A CALCULATED AREA OF 36,293 SQUARE FEET (0.833 ACRE) OF LAND.

EXHIBIT "B" CONCEPT PLAN

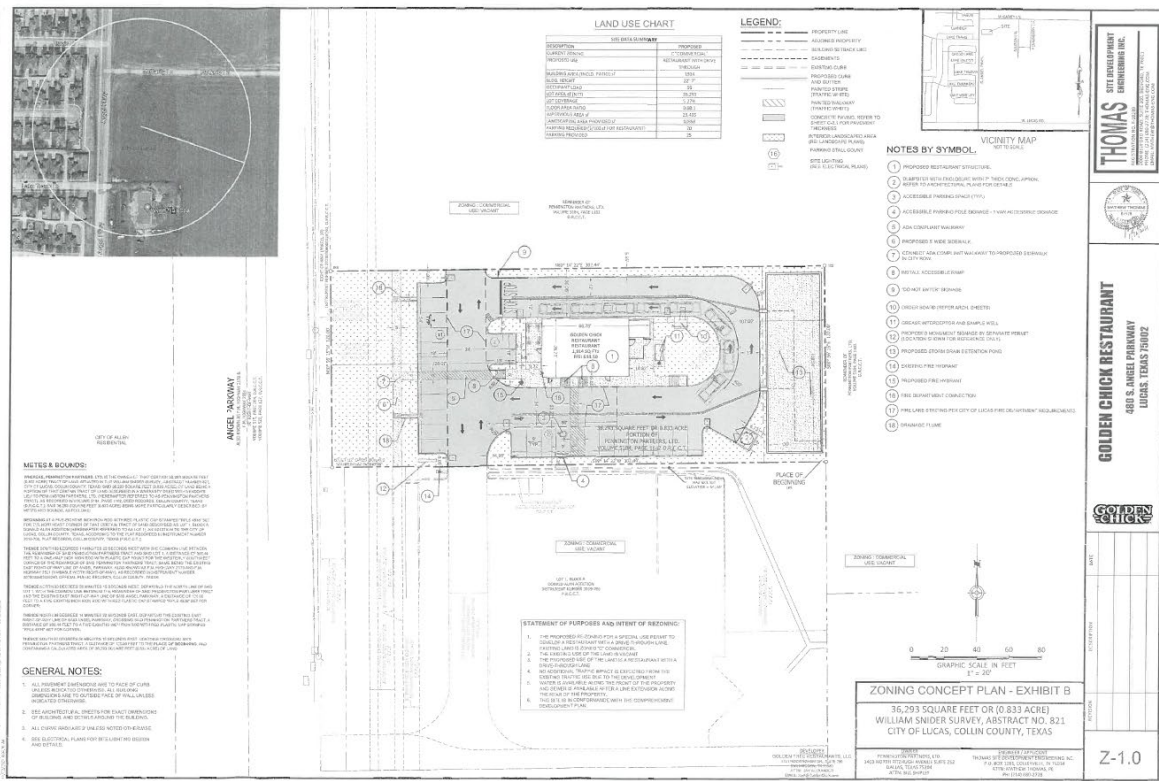


Exhibit "B"
City of Lucas
Ordinance 2021-12-00942
Approved: December 16, 2021



City of Lucas Council Agenda Request December 16, 2021

Requester: City Attorney Joe Gorfida
Development Services Director Joe Hilbourn

Agenda Item Request

Discussion regarding the regulations pertaining to a home-based business.

Background Information

The regulations pertaining to a home-based business found in Chapter 14 in the Code of Ordinances under definitions:

Home occupation. A business, occupation, or profession conducted wholly within a residential dwelling unit by only the residents thereof, and which shall have the following characteristics:

- (1) The activity shall employ only members of the immediate family of the resident of the dwelling unit.
- (2) There shall be no external evidence of the occupation detectable at any lot line, said evidence to include, advertising signs, or displays, smoke, dust, noise, fumes, glare, vibration, electrical disturbance, storage of materials or equipment, or traffic or parking of vehicles in a manner evidencing the conduct of a business.

A request was made to have the City Attorney review the regulations pertaining to a home-based business in Lucas and to clarify the legal authority/limitations the City of Lucas regarding the regulation of commercial activities that occur within residentially zoned properties.

When city staff receives a concern from a citizen regarding a potential violation, it is often difficult to substantiate the violation because a Code Enforcement Officer has limited authority to conduct investigations. Code Enforcement is the inspection, improvement, and rehabilitation of environmental hazards in public and private premises by determining the presence of fire or health hazards, nuisance violations, unsafe building conditions, and violations of any fire, health, or building regulation, statute, or ordinance.

Attachments/Supporting Documentation

1. Texas Municipal League September 2018 Legal Q&A by Evelyn Kimeu, TML Assistant General Counsel
2. Current and proposed home-based business definition



City of Lucas
Council Agenda Request
December 16, 2021

Budget/Financial Impact

NA

Recommendation

NA

Motion

NA

September 2018

Legal Q&A

By **Evelyn Kimeu**, TML Assistant General Counsel

Q. Who can enforce city ordinances?

A. Under the broad enforcement authority granted to cities under Section 54.001 of the Texas Local Government, a city may designate certain individuals to enforce city ordinances. Some cities call such individuals “code enforcement officials.” Cities are not required to employ or contract with a person who is registered as a code enforcement officer in order for the city to engage in code enforcement activities. See TEX. OCC. CODE §1952.003. However, a person may not claim to be a code enforcement officer or use the title “code enforcement officer” unless such person has a certificate of registration from the Texas Department of Licensing and Regulation (TDLR). See TEX. OCC. CODE §1952.101. Requirements to qualify for registration as a code enforcement officer include at least one year of full-time experience in the code enforcement field, passing an exam administered by TDLR, and taking continuing education classes after registration. See TEX. OCC. CODE §§1952.102 and 1952.1051.

Q. Can a code enforcement official or code enforcement officer issue a citation?

A. A citation is a document issued by a peace officer, in lieu of arrest, to an individual accused of committing an offense. See TEX. CODE CRIM. PRO. ART. 14.06(b) and TEX. TRANSP. CODE §§543.002-543.005. Because only a peace officer can arrest a person accused of committing a criminal offense, the most conservative advice is that only a peace officer certified by the Texas Commission on Law Enforcement is authorized by state law to issue a citation compelling a person to appear in court on a certain day. That advice holds true for a violation of either state law or a city ordinance.

Q. What non-citation enforcement options are available to enforce city ordinances?

A. Many cities give certain employees, including code enforcement officials, code enforcement officers, and animal control officers, the power to issue a “notice of violation” on behalf of the city in cases where there is an alleged ordinance violation. See TEX. LOCAL GOV'T CODE §54.005. The notice of violation usually includes information such as: (1) the text of the ordinance being violated; (2) the conduct that violates the ordinance; and (3) how to come into compliance. The notice of violation serves as a warning to the alleged violator that he or she is in violation of the ordinance. Typically, it also provides for a period of time in which the alleged violator may rectify the situation. In addition, a notice of violation will often include a warning that, if the situation is not brought into compliance within a certain period of time, a complaint will be filed in municipal court.

Q. Who may file a complaint in municipal court?

A. A complaint is a sworn allegation charging a person with the commission of an offense under either state law or a city’s ordinance. See TEX. CODE CRIM. PROC. ART. 45.018. As a general rule, anyone who is acquainted with the facts of an alleged offense may file a complaint in municipal court alleging a violation of a state law or city ordinance. See *id.* at 45.019. Accordingly, if a code enforcement official or code enforcement officer did not see or witness the alleged offense, a citizen must file a complaint. In order for the court to act upon a complaint, the complaint must be sworn to before any officer authorized to administer oaths, including the municipal judge, clerk or deputy clerk of the court, city secretary, city attorney or deputy city attorney. *Id.* at 45.019(d) and (e). After receiving a sworn complaint regarding an ordinance violation, the municipal judge may issue a summons requiring such person to appear before the court. *Id.* at 15.03(a). If the alleged violator does not appear on the date

listed on the summons, the municipal judge may not issue an arrest warrant for failure to appear unless the judge provides notice by telephone or mail that includes: (a) the date and time defendant must appear; (b) the name and address of the court; (c) information regarding alternatives to full payment of any fine or costs if the defendant is unable to pay; and (d) an explanation of the consequences if the defendant fails to appear. *Id.* at 45.014(e).

Q. Can a code enforcement official or code enforcement officer go onto private property without a search warrant to determine whether a code violation exists on the property?

A. The Fourth Amendment to the United States Constitution protects against unreasonable searches. It requires searches to be conducted with a warrant that is issued based upon probable cause, unless an exception for a warrantless search exists. Before 1967, the Supreme Court of the United States had upheld the legality of warrantless administrative inspections of private premises for purposes of nuisance abatement and detecting code violations. See *e.g. Frank v. State of Maryland*, 359 U.S. 360 (1959). However, in 1967, the Supreme Court, in two separate cases, held that (except in carefully defined classes of cases) routine administrative inspections of both residential and commercial premises for purposes of detecting code violations is unreasonable, unless authorized by a search warrant. See *Camara v. Municipal Court of City and County of San Francisco*, 387 U.S. 523, 534 (1967) (entry onto residential premises to conduct routine annual inspection for possible violations of city's housing code) and *See v. City of Seattle*, 387 U.S. 541, 545 (1967) (entry onto commercial warehouse without warrant and probable cause to conduct routine, periodic city-side canvass to obtain compliance with the city's fire code). The Court in *See*; however, distinguished the facts of that case with the "accepted regulatory techniques [such] as licensing programs which require inspections prior to operating a business or marketing a product." *Id.* at 546. The court further provided that "[a]ny constitutional challenges to such programs can only be resolved . . . on a case-by-case basis under the general Fourth Amendment standard of reasonableness." *Id.*

In response to the Supreme Court decisions, the Legislature enacted Article 18.05 of the Code of Criminal Procedure, which expressly allows a magistrate to issue a search warrant to a fire marshal, health officer, or code enforcement official of the city for "the purpose of allowing the inspection of any specified premises to determine the presence of a fire or health hazard or unsafe building condition or a violation of any fire, health, or building regulations, statute, or ordinance." TEX. CODE CRIM. PROC. ART. 18.05(a). Such warrant is often referred to as an "administrative search warrant." Each city or county may designate one or more code enforcement officials for the purpose of being issued an administrative search warrant. *Id.* at 18.05(d). Administrative search warrants do not allow for the seizure of persons or property, and can only be issued for the purposes of allowing an inspection of specific premises to determine the presence of hazardous conditions prohibited by law. *Id.* at 18.05(c); Tex. Att'y Gen. Op. MW-228 (1980). Accordingly, unless an exception applies, an administrative search warrant is required before a code enforcement officer or code enforcement official may enter onto private property to conduct administrative inspections of residential or commercial premises for code violations. Alternatively, a peace officer may secure a broader search warrant that is not specific to code enforcement. See TEX. CODE CRIM. PROC. ART. 18.02(10).

Q. Are there instances in which a code enforcement official or code enforcement officer may conduct code enforcement inspections on private property without a search warrant?

A. A code enforcement official or code enforcement officer may, in limited instances, conduct code enforcement inspections on private property without first obtaining an administrative search warrant. A person who receives the voluntary consent of a property owner to search the property may enter onto

the property without a search warrant. *See e.g., Schneckloth v. Bustamante*, 412 U.S. 218, 227 (1973) and *Dearmore v. City of Garland*, 519 F.3d. 517 (5th Cir. 2008), *cert. denied*, 555 U.S. 938 (2008). Additionally, if an emergency exists, such as threat of fire, a search could be conducted without a warrant. *See Michigan v. Tyler*, 436 U.S. 499 (1978).

State law also allows a public official, agent, or employee of the city to enter, at a reasonable time, a residential property that is reasonably presumed to be abandoned or that is uninhabited due to foreclosure and is an immediate danger to the health, life or safety of any person to inspect such property for the purpose of mosquito abatement. *See* TEX. HEALTH & SAFETY CODE §341.019.

In addition, certain highly regulated industries are exempted from the administrative search warrant requirement. *See e.g. Colonnade Catering Corp. v. United States*, 397 U.S. 72 (1970) (sale of liquor), *United States v. Biswell*, 406 U.S. 311 (firearms dealing), and *New York v. Burger*, 482 U.S. 691 (1987) (automobile junkyards). In these industries, a warrant is not required because “when an entrepreneur embarks upon such a business, he has voluntarily chosen to subject himself to a full arsenal of governmental regulation.” *Marshall v. Barlow’s, Inc.*, 436 U.S. 307 (1978). However, in a recent case, the Supreme Court invalidated a City of Los Angeles ordinance requiring hotel operators to keep a record of specific information concerning guests and make such records available to any officer for inspection on demand. *See City of Los Angeles v. Patel*, 135 S. Ct. 2443 (2015).

The Fifth Circuit Court of Appeals has also upheld the inspection of massage parlors for code violations without a search warrant. *See Pollard v. Cockrell*, 578 F.2d 1002, 1014 (5th Cir. 1978). Similarly, in *Harkey v. deWetter*, the court upheld the reasonableness of a city ordinance requiring the inspection of areas where animals are kept on residential premises, but did not opine on whether the enforcement of the ordinance would be constitutionally valid because the citizens challenging the ordinance never applied for a permit, no inspection was conducted, and no animals had been impounded. 443 F.2d 828, 829 (5th Cir. 1971), *cert. denied*, 404 U.S. 858 (1971).

The Supreme Court has concluded that no privacy interest or protected property interest exists in what is observable from a “public vantage point” in which one has a right to be. *See California v. Ciraolo*, 476 U.S. 207, 213 (1986). As such, inspections can be made from a public street or from a neighboring property with the property owner’s permission, and without the need of a warrant. Additionally, the use of aids to enhance inspections doesn’t infringe on a property owner’s constitutional rights. *See e.g., Florida v. Riley*, 488 U.S. 445 (1989) (upholding naked-eye surveillance of interior of a partially covered greenhouse in a residential backyard from the vantage point of a helicopter located 400 feet above the greenhouse); *Ciraolo*, 476 U.S. at 215 (upholding naked-eye aerial observation of backyard from aircraft 1,000 feet high); and *Dow Chemical Co. v. United States*, 476 U.S. 227 (1986) (aerial photography taken from an aircraft lawfully in public navigable airspace was not a search prohibited by the Fourth Amendment). Additionally, under the “open fields” doctrine, the Supreme Court has held that no expectation of privacy exists in fields that are far removed from a property owner’s home and curtilage, such as open fields, pastures, or wooded areas, even if such areas are fenced with “no trespass” signs posted. *See Oliver v. United States*, 466 U.S. 170 (1984); *Hester v. United States*, 265 U.S. 57 (1924); and *Rosalez v. States*, 875 S.W. 2d 705 (Tex. App. – Dallas 1983).

Cities should consult with local legal counsel before adopting regulations that allow for warrantless inspections of properties for code violations.

Current Language:

Home occupation. A business, occupation, or profession conducted wholly within a residential dwelling unit by only the residents thereof, and which shall have the following characteristics:

- (1) The activity shall employ only members of the immediate family of the resident of the dwelling unit.
- (2) There shall be no external evidence of the occupation detectable at any lot line, said evidence to include, advertising signs, or displays, smoke, dust, noise, fumes, glare, vibration, electrical disturbance, storage of materials or equipment, or traffic or parking of vehicles in a manner evidencing the conduct of a business.

Proposed:

Home Occupation. A business, occupation, or profession conducted wholly within a residential dwelling unit or detached accessory structure by only the residents thereof, and which shall have the following characteristics:

- (1) There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such Home Occupation. No sign, advertisement or display may be used to indicate the presence of a Home Occupation in the structure.
- (2) The Home Occupation shall be clearly incidental and subordinate to the home's use for residential purposes. Not more than five hundred (500) square feet or ten (10) percent of the square footage of the dwelling area, whichever is greater, shall be used in the conduct of the Home Occupation.
- (3) The address of the dwelling may not appear in any advertisement.
- (4) The Home Occupation shall be conducted by members of the immediate family residing on the premises and shall have no more than one (1) employee who does not reside on the premises.
- (5) No Home Occupation may utilize equipment other than that designed for residential use or which would be detrimental to or distract from the use of the premises as a residence.
- (6) The Home Occupation will not cause an increase in traffic volume in the neighborhood. No more than five (5) patrons may be on the premises on one time.
- (7) No equipment shall be used that creates offensive noises, vibration, sound, smoke, dust, odors, heat, glare, x-rays, or electrical disturbances to radio or telephone instruments.

- (8) Delivery of materials to and from the premises shall not involve the use of vehicles over two (2) ton capacity, except parcel post, United Parcel Service or similar delivery trucks.
- (9) No traffic shall be generated by a Home Occupation in greater volume than normally expected in a residential neighborhood, and any need for parking must be accommodated within the required off-street parking for the residence or along the street frontage for the lot.
- (10) When the Home Occupation is operated within a Detached Accessory Structure the following also applies:
 - (i) The accessory building used for home occupation must be located to the side or rear of the home or dwelling unit.
 - (ii) The area of an accessory building used for a home occupation shall not be more than twenty-five percent (25%) of the floor area of the home or dwelling unit.



City of Lucas

City Council Agenda Request

December 16, 2021

Item No. 08

Requester: Finance Director Liz Exum

Agenda Item Request

Consider authorizing the City Manager to enter into a bank depository service agreement with American National Bank of Texas for a three-year period commencing on December 27, 2021, through December 27, 2024, with the option to renew for two additional one-year extensions under the same terms and conditions.

Background Information

The City's Bank depository agreement expires December 27, 2021. Advertisements for banking services were published on Thursday, November 4 and 11 in the Allen American newspaper. Proposals were accepted until 4:00 pm Monday, November 29.

The city received a proposal from American National Bank of Texas. Staff reviewed the proposal and is recommending awarding the bank depository service agreement to American National Bank of Texas. Highlights that contributed to our decision include:

Service Availability:

- Account executive has more than 43 years of experience. Over 37 years working with public fund customers in the Allen, Texas market. One of the oldest community banks and has been working with the public sector for over 50 years. Over 33 years servicing the City of Lucas.
- Bank branch is close by with a live person to speak to and an attentive customer service team than can be reached by a local telephone number.
- Dedicated treasury management officer and operations group.
- Late cut-off times (4:30 pm) for incoming/outgoing wires, and ACH files.
- Online service 24 hours a day with immediate access to account information.

Deposit Interest Rates:

- Interest rate equal to the current ANBTX Public Fund Money Market Rate plus .10% (currently .11%) for balances in excess of \$4 million.

Cost of Service:

- Free of charge for all banking services with an average \$4 million compensating balance.

Safety and Creditworthiness of bank:

- Accounts are reconciled for fraud prevention and checked daily.
- Pledged securities of 105 % less the amount of FDIC coverage.



City of Lucas

City Council Agenda Request

December 16, 2021

- Balances are verified daily and compared to pledged securities market value to insure adequate pledge dollars.
- Securities are held in safekeeping at the Federal Home Loan Bank of Dallas.
- Currently provides service to seventy school districts, cities, and counties and manages over \$260 million in public deposits.

Attachments/Supporting Documentation

Bank Depository Service Agreement including the following exhibits:

- Exhibit A – City of Lucas 2021 Request for Qualifications Bank Depository Services
- Exhibit B – American National Bank of Texas Response to City of Lucas Request for Qualifications Bank Depository Service Agreement (*Due to the size of the of the document, copies are available in the City Secretary's office*)
- Exhibit C – Authorized Representatives

Budget/Financial Impact

NA

Recommendation

Staff recommends entering into a bank depository service agreement with American National Bank of Texas for a three-year period commencing on December 27, 2021, through December 27, 2024, with the option to renew for two additional one-year extensions under the same terms and conditions.

Motion

I make a motion to approve/deny the Bank Depository Service Agreement with American National Bank of Texas for a three-year period commencing on December 27, 2021, through December 27, 2024, with the option to renew for two additional one-year terms under the same terms and conditions authorizing the City Manager to execute the agreement.

STATE OF TEXAS

§

BANK DEPOSITORY AGREEMENT

§

COUNTY OF COLLIN

§

This Bank Depository Agreement (the "Agreement") is made by and between the City of Lucas, Texas, a municipal corporation existing under the laws of the State of Texas (the "City"), and American National Bank of Texas (the "Bank") a national bank, (each a "Party" and collectively the "Parties"), acting by and through their authorized representatives.

RECITALS:

WHEREAS, the City advertised and received bids for a depository contract pursuant to and in accordance with Chapter 105 of the Texas Local Government Code, as amended; and

WHEREAS, the City received responses from banks designed to be designated as the City's depository; and

WHEREAS, the City Council did find and conclude the Bank offered a proposal containing the most favorable terms and conditions for the handling of the City's deposited funds and designated the Bank as the City's depository bank;

NOW THEREFORE, the City will use the Bank's facilities and services in accordance with the following terms and conditions set out herein.

Article I

Designation as Depository

1.1 Term. The City, through action of the City Council, hereby designates the Bank as its depository for banking services for a three-year period commencing December 27, 2021 ("Effective Date"), through December 27, 2024 ("Initial Term").

1.2 The City shall have the right and option to renew this Agreement for two (2) additional one (1) year periods (each such one-year period after the Initial Term being an "Additional Term") under the same terms and conditions as provided herein by giving written notice to the Bank of the City's election to so extend the term hereof prior to the expiration of the Initial Term or Additional Term.

Article II

Contract Documents

2.1 Every provision of the documents below is incorporated into this Agreement by reference. The documents referenced below are in descending order of precedence. Any conflict between or among any of the documents shall be resolved in favor of the document with higher precedence. These documents shall be referred to collectively as "Contract Documents."

- (a) This Agreement;

- (b) The City’s 2021 Request for Qualifications for Banking Services (Exhibit “A”); and
- (c) The Bank’s Response to the City’s Request for Qualifications (Exhibit “B”).

Article III
Scope of Services

3.1 The Bank agrees to provide those services as described in Exhibits “A” and “B” attached hereto.

3.2 The Bank shall faithfully perform all of its duties and obligations required by the laws of the State of Texas for public funds depositories and shall, upon presentation, pay all checks drawn on it against collected funds on demand deposits, and shall, at the expiration of the Agreement, turn over to its successor all funds, City–owned securities, property and things of value as held as depository.

3.3 The City shall have the power to determine and designate the character and amount of the funds to be deposited in the Bank. The City may arrange for time deposits and Bank may accept such deposits subject to the terms of the Bank’s Response.

3.4 The Bank shall, on a semi-annual basis, analyze the City’s use of banking services and make recommendations to the City that will maximize financial return and decrease the City’s overall cost of banking services.

Article IV
Collateral

4.1 The City time and demand deposits, inclusive of interest, in excess of the Federal Deposit Insurance Corporation (FDIC) insurance shall be secured at all times by collateral, acceptable to the City and in accordance with the Public Funds Collateral Act (Texas Government Code 2257), pledged by the Bank and held in trust by the Custodian in an amount equal to at least 105% of the total of those funds, Custodian shall provide a monthly report of the collateral directly to the Authority.

4.2 Such pledged securities shall be subject only to the joint written instructions of both (a) authorized representatives of the City and (b) specifically authorized representatives of the Bank. The Bank shall have the right, with the prior written consent of the Bank, to substitute or replace any or all of the pledged securities with collateral acceptable to the Bank. All investments shall meet the requirements set forth in Chapter 2256, Texas Public Funds Investment Act, Texas Government Code.

**Article V
Financial Position**

The Bank shall provide a statement of its financial position on at least a quarterly basis. The Bank shall provide an annual statement audited by its independent auditors including a letter as to its “fair representation”.

**Article VI
Authorized Authority Representatives**

For the term of this Agreement, the City and Bank designate the individuals listed in Exhibit “C” as authorized to represent and act for the City in any and all matters including collateral assignment and substitution, execution of the agreements and transfer of funds. Any change in these representatives shall be made in writing.

**Article VII
Bank Compensation**

The Bank shall be compensated for any and all services rendered to the City under this Agreement on a Cost Per Service Unit or monthly charge basis as set forth in the service charges listed on Exhibit “B.” The Bank agrees to offset monthly service fees against its customary earnings credit for balances in City’s non-interest bearing accounts. Net insufficiencies in earnings credits shall be charged on an annual basis.

**Article VIII
Default**

8.1 The Bank shall be in default if it fails to pay all or part of a demand deposit, a matured time deposit, or a matured certificate of deposit, including accrued but unpaid interest, at a specified maturity date. The Bank shall also be in default if ruled “bankrupt”, “insolvent” or “failed” by a federal or state banking regulator, or if a receiver is appointed for the Bank.

8.2 In the event of a default, failure or insolvency of the Bank, the City shall be deemed to have vested full title to all securities pledged under this Agreement. The City is empowered to take possession of and transfer and or sell any and all securities. If the security is liquidated, any proceeds over the defaulted amount, plus expenses related to liquidation, shall be returned to the Bank. This power is in addition to other remedies which the City may have under this Agreement and without prejudice to its rights to maintain any suit in any court for redress of injuries sustained by the City under this Agreement.

**Article IX
Miscellaneous**

9.1 Governing Law. This Agreement is governed by the laws of the State of Texas; and exclusive venue for any action shall be in Collin County, Texas. The Parties agree to submit to the jurisdiction of said court.

9.2 Review. There shall be a review of the services of the Bank every six (6) months to evaluate the work relationship between the City and the Bank. The objective of the review shall be to address any problems and to discuss the procedures involved in protecting the City's funds and pledged collateral.

9.3 Notice. The Bank shall use its best efforts to notify the Authority in writing within ten (10) days of any changes in federal or state regulations or laws that would thereafter materially affect the Bank Depository Agreement. The Bank shall also notify the Authority of any services that become available to the Authority throughout the Agreement. Any notice required to be given by any term of this Agreement or otherwise may be given as follows:

If intended for City:

Attn: City Manager
City of Lucas, Texas
665 Country Club Road
Lucas, Texas 75002-7651
Phone: (972) 727-8999

With a copy to:

Joseph J. Gorfida, Jr.
Nichols, Jackson, Dillard, Hager & Smith, LLP
500 N. Akard Street
Suite 1800
Dallas, Texas 75201
Phone: (214) 965-9900

If intended for Bank:

Attn: Colleen Biggerstaff
Banking Center Manager
American National Bank of Texas
720 S. Greenville Avenue
Allen, Texas 75002
(972) 727-5785

9.4 Non-Assignability. This Agreement is not assignable in whole or part but is binding on the Parties, their successors and assigns.

9.5 Termination. Notwithstanding any provision of this Agreement to the contrary, this Agreement may be terminated by either Party, without cause and without liability (except for continuing obligations during such period), upon ninety (90) days advance written notice to the other Party. The Bank shall provide an extension period not to exceed ninety (90) days for the transition to a new depository bank.

9.6 Severability. In the event any section, subsection, paragraph, sentence, phrase or word herein is held invalid, illegal or unconstitutional, the balance of this Agreement, shall be enforceable and shall be enforced as if the Parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase or word; and such invalid, illegal, unconstitutional or unenforceable section, subsection, paragraph, sentence, phrase or word shall be substituted by a section, subsection, paragraph, sentence, phrase or word as near in substance thereto as may be valid, legal, constitutional and enforceable.

9.7 Entire Agreement. This Agreement embodies the complete agreement of the Parties hereto, superseding all oral or written previous and contemporary agreements between the Parties and relating to the matters in this Agreement, and except as otherwise provided herein cannot be modified without written agreement of the Parties to be attached to and made a part of this Agreement.

9.8 Incorporation of Recitals. The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement.

9.9 Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

9.10 Amendments. This Agreement may be amended by the mutual agreement of the Parties to it in writing and attach to and incorporate it in this Agreement.

9.11 Authorization. By executing this Agreement, each Party represents that they have full capacity and authority to grant all rights and assume all obligations that they have granted and assumed under this Agreement and that this Agreement has been authorized by the governing party of the respective Party.

9.12 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

(signature page to follow)

EXECUTED this _____ day of _____, 2021.

City of Lucas, Texas

By: _____
Joni Clarke, City Manager

Approved as to form:

By: _____
Joseph J. Gorfida, Jr.

EXECUTED this _____ day of _____, 2021.

American National Bank of Texas

By: _____
Name: _____
Title: _____

EXHIBIT “A”
City of Lucas 2021 Request for Qualifications
Bank Depository Services



CITY OF LUCAS
REQUEST FOR QUAILIFICATIONS
(RFQ # 024-22)

BANK DEPOSITORY SERVICES

RFQ# 024-22 – Bank Depository Services

DUE NOVEMBER 29, 2021

665 Country Club Road, Lucas, Texas 75002

REQUEST FOR QUALIFICATION FOR BANK DEPOSITORY SERVICES

I. INTRODUCTION

The City of Lucas is requesting proposals for qualifications for a bank depository service contract to be awarded December 16, 2021, with service to begin December 27, 2021 and extend through December 27, 2024. Upon expiration of the contract there shall be an option for two one-year extensions under the same terms and conditions with the mutual consent of all parties. The depository term also provides an extension period not to exceed ninety (90) days for the transition to a new depository bank. Through this contract the City intends to minimize banking costs, improve operational efficiency, and maximize investment capabilities. This Request for Qualification (RFQ) represents the cash management goals, specifies all banks' required qualifications, the banking services required, the estimated activity volumes on all accounts, the method and terms of compensation, submission instructions and the contract award provision.

The City reserves the right to reject any and all proposals. The City has the option to waive any informalities, minor irregularities, or technicalities. The City may reject the proposal of a proponent who is in litigation with the City or who has previously failed to properly perform or complete contracts of a similar nature. The City may reject the proposal of a proponent who is not, in the opinion of the City, in a position to satisfactorily perform the options outlined in the contract. The City may also accept or reject any of the alternate options that may be set forth in the proposal. The City reserves the right to reject any proposal if the evidence submitted by, or an investigation of, a proponent fails to satisfy the City that such proponent is properly qualified to carry out the obligation of the contract and to complete the services contemplated therein.

II. PROPOSAL INSTRUCTIONS AND QUALIFICATIONS

A. MINIMUM QUALIFICATIONS

Any required statement regarding equal opportunity and affirmative action should be included if required or desired. The proposal submitted will become part of the final contract.

B. PROPOSAL SUBMISSION INSTRUCTIONS

1. Proposal Format

In order to fully and equitably evaluate each bank's ability to meet the banking services needs of the City, a standard reply format is required. Each proposal must include a response to each item in the RFQ in the order given. Only proposals submitted in the prescribed format will be evaluated for contract award.

2. Submission Requirements

Submission of this RFQ or the service requested will be accepted in written form or via email at the address below on or before 4:00 p.m., November 29, 2021. One original and

two (2) copies of the response, including supporting documentation, are required. The original must be clearly marked “ORIGINAL” and the copies must clearly be marked “COPY”.

City of Lucas
Linezka Maduro, Purchasing Coordinator
665 Country Club Road
Lucas, TX 75002

For email proposals send to: lmaduro@lucastexas.us

3. RFQ Questions

Questions regarding this RFQ or the service requested will be accepted in written form or via email at the address below on or before 5:00 pm November 18, 2021. Responses to all material questions submitted will be communicated to each prospective bidder.

City of Lucas
Liz Exum, Finance Director
665 County Club Road
Lucas, TX 75002

For RFQ questions by Email: lexum@lucastexas.us

4. Request for Qualifications Amendments

Modifications or additions may be made as a result of questions submitted. Written notification of any such change will be made in writing by the City to all known bidders.

5. Selection Criteria

The City will evaluate the proposals for qualifications based on the criteria listed below. The objective of this evaluation will be to determine the financial institution whose proposal is most responsive to the City’s bank depository needs and to determine an efficient implementation of the depository services. After the review is completed a recommendation will be made, which will be sent to the City Council at their December 16, 2021 City Council Meeting.

Evaluation of proposals will be made on the basis of the following criteria:

Deposit Interest Rates	15%
Cost of Service	25%
Service Availability	30%
Safety and Creditworthiness of Bank	30%

6. Award of Bid and Service Initiation

The contract is to be awarded by City Council at its meeting December 16, 2021.

III. REQUIRED FINANCIAL INSTITUTION INFORMATION

All banks must provide as part of the proposal:

- Audited financial statements for the most recent fiscal year
- Copy of the current call report
- Statement regarding any recent or foreseen merger or acquisition

IV. REQUIRED BANKING SERVICES

This section lists all the services to be provided by the bank under this agreement. The bank should provide:

- Fee schedule detailing the specific prices for each type of service (See “Attachment A – Banking Services Charges” for example format)
- Proforma analysis of yearly account activity (See “Attachment B – Estimate of Yearly Account Activity”)

A. *Consolidated Account Structure*

The bank is to provide a master consolidation account and zero balance accounts from which daily balance and detail reporting is available. The City’s current account structure and foreseeable addition(s) contains the following accounts:

Account Title

- General Operating Account
- Grant Depository/Reserve
- Lucas Fire Control Prevention & EMS District
- West Lucas Road
- American Rescue Plan Act

B. *Wire Transfer Services*

The City currently generates an average of 15 wire transfers per month during the last fiscal year. A standard wire transfer agreement will be executed with the bank. This proposal should include a copy of your standard transfer procedures and wire transfer agreement. The City requires adequate security provisions and procedures. If the wire transfer requests are available online, full information should be submitted detailing the use.

C. *Automated Daily Balance Reporting*

The City requires an automated PC-based or web based reporting system for access to the closing ledger and available balances, stipulate the time at which the access is available, and describes the systems to be used. Samples of the reports are to be included in the proposal. This balance reporting system will include but not be limited to the following:

1. Current Day Balance Report
2. Previous Day Balance Report
3. Debit and Credit detail
4. ACH Activity Report
5. Wire Transfers

6. Ability to view images of the checks cleared in the last 60 days
7. Monthly Bank Statements
8. Detail Reporting
9. Charge Back Reporting
10. ACH Positive Pay
11. Check Positive Pay

Detail any other internet services available.

D. Account Provisions

The City intends to use interest bearing transaction accounts. The City may use money market accounts for excess funds and special purpose accounts. Describe the following:

- Interest rate mythology for setting interest rates on interest bearing transaction accounts and money market accounts (The City would prefer that the interest rate be tied to a third party index)
- Specific charges in account analysis for interest bearing and money market accounts
- Frequency of rate changes
- History of the account interest rates for the prior three months.

The City reserves the right to use other financial institutions for money market accounts.

E. Investment of Idle Funds and Safekeeping of City Securities

All certificates of deposit bought by the City will be bought on a competitive basis. The City has no obligation to invest its funds with or through the bank awarded the contract. If the bank is proposing overnight repurchase agreements, an executed master repurchase agreement is required. In order to fulfill GASB III requirements for reporting, if a repurchase agreement is executed with the bank itself, the collateral must be held in the trust department of the bank in a separate account.

All securities will be handled on a delivery versus payment (DVP) basis as they are cleared into and out of the account. There will be approximately ten securities in safekeeping at any time. All clearing and safekeeping will be in the bank or its correspondent. All correspondent and safekeeping arrangement will be stipulated in the proposal.

F. Standard Disbursing Services

Standard disbursing services for all accounts are required to include the payment of all checks upon presentation.

G. Standard Deposit Services

The bank must guarantee immediate credit on all incoming wire transfers and U.S. Treasury checks upon receipt and all other checks based on the bank's published availability schedule (attach availability schedule). The bank should specify in their deposit, requirements for commercial and retail deposit locations, including night deposit services and procedures.

The bank should include any remote check capture options with a full description of the system, bank fees, hardware, and software requirements.

H. Reporting and Account Analysis

Monthly account analysis reports must be provided by the bank on a timely basis for each account and on a total account basis. A sample account analysis format must be provided as part of the proposal. All costs associated with account analysis reports should be provided, as well as samples of monthly statements. The monthly statements are to be received within ten business days following the end of the month.

I. Account Executive

An account executive must be assigned to the account to coordinate the account services and expedite the solution of any problem. A trained and competent backup for the account executive, familiar with the account, should be assigned in the proposal. Stipulate the name and a brief biography of the account executives to be assigned to the City's account.

J. Direct Deposit

Describe the requirements and deadlines for input of ACH transactions. The proposal should indicate when funds will be available in participating banks. ACH input should be available via the banking online system.

K. Daylight Overdraft Provisions

Every effort will be made to eliminate daylight overdraft situations on the account. However, in case this situation does arise, the proposal should include any and all bank policies regarding daylight overdraft charges or handling procedures.

L. Stop Payments

The proposal must include a statement on the proposed stop payment process on an automated or manual basis.

M. Collateralization of Deposits

The bank must agree to obtain and maintain acceptable collateral sufficient to cover all time and demand deposits, above FDIC insurance limits. All the requirements, including those beyond the Public Funds Collateral Act, must be met by the bank. Failure to meet these requirements may be cause for termination of the contract. The proposal must state agreement to the following terms and conditions:

- Collateral will be maintained at a minimum market value of 105% of the City's total deposits calculated daily and marked to market at least once a month.
- All investments should meet the requirements of the Texas Public Funds Investment Act contained in Chapter 26 of the Texas Government Code.
- Securities used to pledge against time and demand must be held in an independent third-party safekeeping institution outside the bank's holding company.
- Securities other than those secured by the "full faith and credit" of the United States government are subject to prior approval of the City.
- The depository bank will execute a tri-party safekeeping agreement with the City and the safekeeping bank for custody of pledged securities. Control will be shared jointly between the depository bank and the entity.
- Substitution rights shall be granted if the depository bank obtains the City's prior approval and if substituting securities are received before previously pledged securities

are removed from safekeeping. The proposal will name the safekeeping bank for collateral.

- The bank shall be contractually liable for the continuous monitoring and maintaining of collateral at the City's required margin levels.
- The City shall receive a monthly report of collateral pledged including security description, par value, market value, maturity date, CUSIP number, and bond rating.
- The securities so pledged, the amounts thereon and the time for pledging same shall satisfy the requirement of the Texas Public Funds Collateral Act Statutes contained in Chapter 2257 of the Texas Government Code.

N. Additional Services

If new services become available and are provided during the period of this contract, they will be charged at the bank's then published rate.

V. OTHER SERVICES

The City is interested in obtaining service and cost information on additional services for possible use during the contract period. These services are not required but will be evaluated in terms of availability, feasibility, service levels, service providers and cost. The City will make its determination after receipt of proposals as to whether a service will be used. If the service is accepted later in the contract period the services and charges stipulated in the proposal will be applied.

VI. BANK COMPENSATION

Any net settlement based on compensating balances will be made annually. If fees are chosen as the payment methodology, fees will be paid monthly after receipt of the account analysis.

Attachment A – Banking Services Charges

Any and all anticipated service charges must be shown on this form to be applicable under the agreement. Add additional lines as required.

Service Unit	Unit Charge	Cost of Service
Account Maintenance	Per Month/account	
Cash Management Online Banking		
Daily Balance Reporting	Per Month	
Credits Posted	Per Transaction	
Debits Posted	Per Transaction	
Encoding Charge	Per Transaction	
ACH Origination	Per Transaction	
ACH Deletions	Per Transaction	
ACH Entries	Per Transaction	
Chargeback Checks	Per Transaction	
Items Deposited-Branch		
Deposits Processed	Per Transaction	
Deposited Items	Per Transaction	
Remote Capture	Per Transaction	
Deposits Processed	Per Transaction	
Deposited Items	Per Transaction	
Stop Payments	Per Transaction	
Wire Transfers		
Incoming	Per Transaction	
Outgoing	Per Transaction	
Investment Safekeeping		
Safekeeping Interest/Credit	Per Transaction	
Safekeeping Receipt Deposit	Per Transaction	
Safekeeping Outgoing	Per Transaction	
Securities Purchased DVP	Per Transaction	
Check Printing	Per Transaction	
Extra Statements	Per Transaction	
Disposable Bank Bags	Per Item	
Chargeback Checks – Re-cleared	Per Transaction	
Check Positive Pay	Per Month	
ACH positive Pay	Per Month	

Attachment B – Proforma Yearly Account Analysis

Any and all anticipated service charges must be shown on this form to be applicable under the agreement. Add additional lines as required.

Service	Volume	Cost	Monthly Projected Costs	Yearly Projected Costs
Monthly Maintenance				
Debits				
Debits - Electronic				
Credits				
Credits - Electronic				
Deposited Items				
Charge Back				
ACH Origination Batch				
ACH Origination Items(Credits/Debits)				
Cash Management Fee				
Stop Payment				
Outgoing Wire Transfer OLB				
Incoming Wire Transfer OLB				
Subtotal 2021 Service Charges				
		\$		
Average Daily Ledger Balance		-		
		\$		
Less Average Daily Float		-		
		\$		
Average Daily Collected Balance		-		
		\$		
Less Required Reserve		-		
		\$		
Average Net Collected Balance		-		
Current Month Earnings(Percentage)		0.00%		
			\$	\$
Current Month Net Excess/Payable			-	-

Calendar for RFQ 024-22 for Banking Services

DATE	DESCRIPTION	NOTES
November 04	First Ad	Allen American
November 11	Second Ad	Allen American
November 18	Due date for submitting questions	5:00pm
November 29	Due date for RFQ submission	4:00pm
December 1 -3	Evaluation/Tabulation	
December 16	City Council contract award	

EXHIBIT “C”
Authorized Representatives

The following individuals shall be the Authorized Representative(s) of the City of Lucas empowered to direct the Bank and the Custodian for the Bank, in regard to collateral pledges, releases and substitution in the joint safekeeping account as well as authorized to represent and act for the Authority in any and all matters including execution of the agreements and transfer of funds:

Liz Exum	City Finance Director
Debbie Fisher	City Councilmember
Joni Clarke	City Manager
Jim Olk	Mayor
Kathleen Peele	Mayor Pro Tem



City of Lucas

City Council Agenda Request

December 16, 2021

Item No. 09

Requester: Public Works Director Scott Holden
Gary Hendricks, Birkhoff, Hendricks, & Carter, LLP

Agenda Item Request

Consider authorizing the City Manager to enter into a professional services agreement with Birkhoff, Hendricks, & Carter, LLP (BH&C) in the amount of \$93,800 to complete the following:

- A. Water Master Plan Update including engineering analysis and reports for the Water Distribution System Map and Water Impact Fee Update appropriating funds from Unrestricted Water Fund Reserves to account 51-6409-309 Professional Services in the amount of \$63,800.00; and
- B. Engineering analysis for the Roadway Impact Fee Update appropriating funds from Unrestricted General Fund Reserves to account 11-6209-309 Professional Services in the amount of \$30,000.00.

Background Information

Following the presentation of the existing Hydraulic Model during the October 21, 2021, City Council meeting, direction was given to staff to meet and discuss updating the City's Water Master Plan with the creation of the Water Distribution System Map with BH&C. A scoping meeting was held with City of Lucas staff and BH&C to discuss the creation of a Water Distribution Master Plan Update, Water Impact Fee Update, and Roadway Impact Fee Update.

Attachments/Supporting Documentation

1. Birkhoff, Hendricks & Carter, LLP Professional Services Agreement
2. General Fund Reserves Schedule
3. Water Fund Reserves Schedule

Budget/Financial Impact

The total cost of professional services is \$93,800.00 appropriating funds from Unrestricted Water Fund Reserves to account 51-6409-309 Professional Services in the amount of \$63,800.00 and appropriating funds from Unrestricted General Fund Reserves to account 11-6209-309 Professional Services in the amount of \$30,000.00.



City of Lucas
City Council Agenda Request
December 16, 2021

Recommendation

City staff recommends approving funding for the professional services agreement to complete the engineering analysis and reports for the Water Distribution Map, Water Impact Fee Update, and Roadway Impact Fee Update.

Motion

I make a motion to approve/deny authorizing the City Manager to enter into a professional services agreement with BH&C in the amount of \$93,800.00 to complete:

- A. Water Master Plan Update including engineering analysis and reports for the Water Distribution System Map and Water Impact Fee Update appropriating funds from Unrestricted Water Fund Reserves to account 51-6409-309 Professional Services in the amount of \$63,800.00; and
- B. Engineering analysis for the Roadway Impact Fee Update appropriating funds from Unrestricted General Fund Reserves to account 11-6209-309 Professional Services in the amount of \$30,000.00.

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, LLP, a Texas Limited Liability Partnership (“Professional”) (each a “Party” and collectively the “Parties”), acting by and through their authorized representatives.

RECITALS:

WHEREAS, the City desires in connection with the

**2022 Water Distribution System Master Plan,
2022 Water System Impact Fee Update, and the
2022 Roadway Impact Fee Update**

(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” and Exhibit “E” (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” and Exhibit “E”, 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
Email: Jclarke@lucastexas.us

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:

Birkhoff, Hendricks & Carter, LLP
Attn: Gary C. Hendricks, P.E., R.P.L.S.
11910 Greenville Ave., Suite 600
Dallas, TX 75243
Office Phone: 214-361-7900
Email: ghendricks@bhcllp.com

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 Disbarment and Suspension

- (a) In accordance with 2 CFR section 180.300, the principal of this contract as described in 2 CFR section 180.995 being duly sworn or under penalty of perjury under the laws of the United States, certifies that neither this company nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency, the State of Texas or any of its departments or agencies.
- (b) If during the contract period the principal becomes debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation, the principal shall immediately inform the City of Lucas.
- (c) For contracts that are financed by Federal or State grants, the principal agrees that this section will be enforced on each of its subcontractors and will inform the City of DeSoto of any violations of this section by subcontractors to the contract.
- (d) The certification in this section is a material representation of fact relied upon by the City in entering into this contract.

6.12 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. IF THIS AGREEMENT IS A CONTRACT FOR ENGINEERING OR ARCHITECTURAL SERVICES, THEN THE FIRMS INDEMNITY AND DEFENSE OBLIGATIONS UNDER THIS SECTION ARE LIMITED BY AND TO BE READ AS COMPLYING WITH SECTION 271.904 OF THE TEXAS LOCAL GOVERNMENT CODE.

6.13 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.

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

6.15 No Boycott Israel. 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.

6.16 Companies Engaged in Business with Iran, Sudan, or Foreign Terrorist Organization. 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 organization.

6.17 Debarment and Suspension.

(a) In accordance with 2 CPR section 180.300, the principal of this contract as described in 2 CPR section 180.995 being duly sworn under penalty of perjury under the laws of the United States, certifies that neither this company, nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this

transaction by any federal department or agency, the State of Texas or any of its departments or agencies.

(b) If during the contract period the principal becomes debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation, the principal shall immediately inform City of Lucas

(c) For contracts that are financed by Federal or State grants, the principal agrees that this section will be enforced on each of its subcontractors and will inform City of Lucas of any violations of this section by subcontractors to the contract.

(d) The certification in this section is a material representation of fact relied upon by City in entering into this contract.

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 _____ day of _____, 20__.

Birkhoff, Hendricks & Carter, LLP
At Texas Limited Liability Partnership
TBPELS Engineering Firm No. 526
TBPEL Surveying Firm No. 100318-00

By: _____
Gary C. Hendricks, P.E., R.P.L.S.
Alternate Managing Partner

**Exhibit “A”
Scope of Services**

WATER MASTER PLAN UPDATE

AND

WATER AND ROADWAY IMPACT FEE UPDATE

Part A: Water Distribution System Master Plan Update

General Description:

Prepare the City of Lucas Water Distribution System Master Plan. Utilizing the City of Lucas Existing Water Distribution Hydraulic Water Model and maps, prepare a Water System Master Plan based on the City’s current (or updated) Comprehensive Land Use Plan

1. Update the water distribution master plan system model data to the City’s latest future Planning/CCN Boundary. This includes updating pumps, water lines, elevated storage, ground storage, groundwater sources (existing and proposed) future surface water sources, and demand nodes.
2. Review waterlines and facilities in model to reflect existing distribution system.
3. Update the demand and population spreadsheets, based on existing and projected land use assumptions as provided by the City.
4. Update and model the existing pump stations utilizing actual pump flow data or pump curves, where available from the City.
5. Add existing water lines to the model at the City’s direction and as required to properly evaluate the system.
6. Update the existing system model demands utilizing the most current available water use data from the City Water System SCADA data sets.
7. Confirm the existing hydraulic water model and buildout hydraulic water model in an extended period simulation of 72 hours during the time of peak demand.
8. Analyze model results to check facilities, lines, and operation of elevated storage.
9. Complete a fire flow analysis for existing model and buildout model.
10. Create the master plan hydraulic map.

11. Evaluate and make recommendations for system improvements for both the existing system and the buildout master plan system.
12. Update and prepare written report of the study.

Part B: Water Impact Fee Update

1. Impact Fee update to include City's waterlines, City's pump stations, City's ground storage reservoirs and City's elevated storage tanks, all in one (1) service area within the City's current ETJ area.
2. Review the water capital improvement projects included in the last impact fee report.
3. Review, update, and add where necessary capital projects eligible for recovery in the impact fee program.
4. Update the impact fee models for the years 2022 and 2032 based on population and land use absorption provided by the City. Water models will be 72-hour extended period simulation models for maximum hourly demand conditions. Impact fee models will be compared to the Master Plan buildout models to determine excess capacity in impact fee water lines and facilities.
5. Update the 10-year capital improvement program, including opinions of probable costs and implementation schedule. The 10-year Capital Improvement Program will be based on land use and growth assumptions provided by the City of Lucas.
6. Inventory new and existing water and wastewater projects eligible for the impact fee program.
7. For each project identified, analyze the capacity currently utilized, total capacity available, and the capacity utilized over the impact fee period.
8. Review of the existing living unit equivalent (LUE) for the impact fee. Update water meter equivalency based on latest AWWA Standards.
9. Calculate the water impact fee based on the list of projects eligible for recovery, actual construction cost of existing projects, projected cost of projects on the 10-year C.I.P, living unit equivalent and the utilized capacity of the facilities during the 10-year period.
10. Complete the Water Impact Fee Update Report. The Updated Land Use Assumptions prepared by the City's Planning Department will be inserted into the body the report. The impact fee update report will also include schedules,

opinions of probable costs, capacity tabulations, capital improvement program exhibits, and the calculation of the maximum water and wastewater impact fee.

11. Coordinate information and findings with City staff.
12. Attend up to three (3) meetings to discuss project approach, project identification, study findings, interim reports and final conclusions and recommendations; and at least one (1) Impact Fee Advisory Committee Meeting and one (1) Public Hearing.
13. Establish schedule for adoption of fee by Council.

Part C: **ROADWAY IMPACT FEE UPDATE**

The Roadway Impact Fee Update will be prepared by our traffic engineering sub-consultant, Lee Engineering, Dallas, TX 75243. The Roadway Impact Fee Scope of Services is as outlined in the Lee Engineering Scope and Fee Proposal to Birkhoff, Hendricks & Carter, LLP, dated December 6, 2021 and attached hereto as **Exhibit “E”**.

Part D: **Deliverables**

Printing of reports, and maps for review by the City and for final use by the City.

- 1) Deliver two (2) copies of the Preliminary Water Master Plan Update Report, and Water Impact Fee Update Report for City review.
- 2) Deliver two (2) copies of the Final Water Master Plan Update Report, and Water Impact Fee Update Report for the City’s use.
- 3) Prepare and deliver one (1) unbound original copy of the final Impact Fee Update Report for reproduction by the City.
- 4) Provide ten (10) copies of Final Impact Fee Update Report (bound).
- 5) Deliver electronic files of the report material in .PDF format in a USB Drive.

Part E: 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:

- 1) Preparation of Land Use Assumptions for the Water Master Plan, and the Impact Fee Update Report.
- 2) Determination of the City Planning Boundary
- 3) Legal Services
- 4) Preparation of Ordinance
- 5) Public Notice Notifications
- 6) Scheduling of Advisory Committee and City Council Meetings
- 7) Fiduciary responsibility to the Client.
- 8) Model Calibration
- 9) Water Quality Analysis

Part F: Terms and Conditions for Electronic File Transfers

Electronic files are transmitted on the terms and conditions below:

By opening, accessing, copying or otherwise using the transmitted electronic files, these terms and conditions are accepted by the user.

- A. The electronic files are compatible with the following software packages operating on a PC using Windows operating systems:
 - AutoCAD , current release • WaterCAD V8XM • Innovzye H₂O NET or InfoSewer
 - MS Office Products (Current Release)
 - Adobe Acrobat (PDF)
- B. Birkhoff, Hendricks & Carter, L.L.P. does not make any warranty as to the compatibility of these files beyond the specified release of the above stated software.

- C. Because data stored on electronic media can deteriorate undetected or be modified, Birkhoff, Hendricks & Carter, L.L.P. will not be held liable for completeness or correctness of electronic media.
- D. The electronic files are instruments of our service. Where there is a conflict between the hard copy drawings and the electronic files, Birkhoff, Hendricks & Carter, L.L.P.'s hard copy file will govern in all cases.
- E. Electronic files may only be modified in accordance with the Texas Engineering Practice Act for modifying another Engineer's design.

**Exhibit “B”
Project Schedule**

**WATER MASTER PLAN UPDATE
AND WATER and ROADWAY IMPACT FEE UPDATE**

Notice to Proceed	December , 2021
Update Water Master Plan	5 Months after Notice to Proceed
Update Impact Fee Report	6 Months after Notice to Proceed
Presentations and Hearings	6-7 Months after Notice to Proceed

**Exhibit “C”
Compensation Schedule**

WATER MASTER PLAN UPDATE

AND IMPACT FEE UPDATE

Compensation for Engineering Services under Exhibit A, Part A through C, shall be on a lump sum basis. The tabulation below establishes the not to exceed amount for each category of contract service:

<u>Contract Part</u>	<u>Amount</u>
Part A – Water Distribution Master Plan Update	\$35,000
Part B – Water Impact Fee Update	\$28,800
Part C – Roadway Impact Fee Update (Lee Engineering)	<u>\$30,000</u>
Total Not to Exceed Amount (Engineering Services)	\$93,800

Invoices will be posted monthly based upon percent of work completed for Engineering Services Parts A through C. Payment is due upon receipt of invoice.

The maximum overall fee established herein shall not be exceeded without written authorization from the City, based on increased scope of services.

Exhibit “D”
Information to be provided to professional

1. Current or Updated Comprehensive Plan Map and Land Uses.
2. Current or Updated Thoroughfare Plan.
3. 10-year population projections and growth assumptions.
4. Current water meter count by size.
5. Existing water and roadway debt services schedules.
6. Existing water and roadway project capital improvement plans and cost, if known.
7. Future or proposed water and roadway capital improvements plans and cost estimates.
8. Cost information on existing water and roadway infrastructure eligible for impact fee recovery.
9. Publications in local newspaper(s) of public hearings and impact fee advisory meetings

EXHIBIT “E”

ROADWAY IMPACT FEE SCOPE OF SERVICES

By LEE ENGINEERING

Continued Next Pages



ARIZONA
TEXAS
NEW MEXICO
OKLAHOMA

December 6, 2021

Mr. Gary Hendricks, P.E.
Birkhoff, Hendricks & Carter, LLP
11910 Greenville Ave., Suite 600
Dallas, TX 75243

Re: City of Lucas Roadway Impact Fee Update Study

Dear Mr. Hendricks:

Lee Engineering is pleased to submit this proposal to provide professional traffic engineering services for Birkhoff, Hendricks & Carter. This proposal is based on our understanding of the needs of this project. If accepted, this letter will be an agreement between Birkhoff, Hendricks & Carter (BHC), LLP and Lee Engineering, LLC (LEE) to provide the services outlined in the Scope of Services below.

PROJECT UNDERSTANDING

It is our understanding that the City of Lucas is updating Water, Wastewater, and Roadway Impact Fees. Lee Engineering will provide the necessary technical support and data for updating the roadway impact fees, while BHC will be updating the water and wastewater impact fees. We understand that the City of Lucas and/or BHC will generate land use, population, and employment projections as well as tax credit information for use in this project. The roadway impact fee update will consider land annexation, which has occurred within the City since the previous impact fees were developed and will also use new 10-year demographic projections.

SCOPE OF SERVICES

Task 1 - Project Initiation

LEE will meet with the City and BHC to gather data, discuss methodologies, and confirm the project schedule. Prior to this meeting, we will gather information on the most recent legal requirements for roadway impact fees and methodologies that have been successfully implemented in other cities.

Task 2 - Data Collection

LEE will collect available base map, demographic, and roadway project data (thoroughfare plan and cross-section standards) provided by the City and/or BHC. We will also update the inventory of the existing arterial and collector roadways and compile the data for use in this project. LEE will identify any additional data needs and gather the information required.

Task 3 – Update Service Areas

LEE will review the existing roadway impact fee service areas for the City of Lucas and identify any potential modifications necessary for the two service areas. The goal in updating the service area boundaries will be to keep the service areas as large as allowed by state law and to share major projects between service areas where possible. We will review these boundaries with BHC and City Staff to identify any required modifications. At this time, we anticipate using up to one (1) service area for the City of Lucas.

Task 4 - Existing Land Uses and Roadways

We will review the existing land use data provided by the City of Lucas and/or BHC and compile it into a format for use in updating the roadway impact fees. The number of vehicle trips generated by the existing land uses and average trip lengths, if necessary, will be calculated.

Task 5 - Review Growth Assumptions

LEE will review projected land use, population, and employment data and identify new PM peak hour trips and vehicle-miles of travel that will be generated in the next 10 years and at ultimate build-out of the City.

Task 6 - Review 10-year Roadway Improvement Projects

LEE will review the proposed 10-year roadway improvement plan to ensure that projected traffic demands will be served. Any modifications or additions to the plan to meet projected demands will be identified by LEE. Only projects that are eligible for roadway impact fee funding will be included. Other eligible projects such as traffic signal installations and recoupment projects will also be identified.

Information on the roadway improvement projects including location, cost, and length will be provided by and reviewed with BHC. The data will be compiled and assigned to service areas for use in calculating roadway impact fees.

Task 7 - Develop Service Unit Generation Rates

LEE will use existing land use data and the growth assumptions to develop service unit generation data under existing, 10-year, and build-out (ultimate) conditions. A Service Unit Equivalency table will be developed from this data.

Task 8 - Calculate Maximum Fee Per Service Unit

Based on the project cost data, projected growth data, service unit equivalents, and credits for taxes generated by new development (if applied), a maximum fee per service unit will be calculated for each service area. ***If calculated, the amount of tax credit will be supplied by the City of Lucas and/or BHC.*** If the tax credit is not applied, the maximum fee per service unit will be 50 percent of the total projected cost of implementing the capital improvements plan.

Task 9 - Documentation

LEE will provide the Preliminary Roadway Impact Fee text that documents the study procedures and results for the City and BHC to review. After incorporating review comments, we will provide up to two hard copies

and an electronic copy of the Final Draft Roadway Impact Fee for inclusion in the BHC impact fee report or as a standalone document. Upon approval of the roadway impact fees, LEE will provide the Final Roadway Impact Fee text in up to 25 hard copies and electronic format.

Task 10 – Public Meetings

We have included participation in three (3) public meetings with BHC, the City, the impact fee advisory committee and/or City Council as part of this process. Additional public meetings will be considered beyond the scope of this agreement and will be billed as additional work.

FEE AND SCHEDULE

LEE will perform the work included above on an hourly basis according to the attached terms and conditions dated August 12, 2020 and will not exceed \$24,500. This work will be performed based on a schedule agreed upon in Task 1. A monthly progress report will be provided for the duration of this project. Additional meetings not included in Task 10, as well as additional services not identified in the Scope of Services, will be performed on an hourly basis for a fee not to exceed \$4,000 without prior authorization.

If you have any questions, please contact me at (972) 248-3006. We appreciate the opportunity to submit this proposal and look forward to working with you on this project. We can begin work immediately upon receipt of a signed copy of this letter.

Sincerely,



Digitally signed by
Joseph T Short
Date: 2021.12.06
15:08:03 -06'00'

Joseph T. Short, P.E., PTOE
President

Accepted:

Birkhoff, Hendricks & Carter, LLP

Date

**Lee Engineering
Terms and Conditions
August 12, 2020**



Digitally signed by
Joseph T Short
Date: 2021.12.06
15:08:21 -06'00'

Hourly and additional services as authorized by you will be performed at the following rates:

Principal	\$275.00 per hour
Senior Project Manager	\$220.00 per hour
Project Manager	\$175.00 per hour
Senior Program Manager	\$220.00 per hour
Program Manager	\$175.00 per hour
Senior Engineer	\$160.00 per hour
Project Engineer	\$140.00 per hour
Sr. Engineering Designer	\$120.00 per hour
Engineering Designer	\$105.00 per hour
Senior ITS System Designer	\$175.00 per hour
ITS System Designer	\$130.00 per hour
CAD Designer	\$ 95.00 per hour
Senior Technician	\$120.00 per hour
Technician	\$ 75.00 per hour
Data Collector	\$ 50.00 per hour
Accountant	\$ 75.00 per hour
Technical Writer	\$ 50.00 per hour
Admin Assistant	\$ 50.00 per hour
Intern	\$ 45.00 per hour
Highway travel	IRS Allowable Rate
Meals, lodging, air fares	out-of-pocket costs
Other Direct Expenses	at cost

TERMS AND CONDITIONS:

1. Invoices will be submitted monthly and are due and payable when received.
3. Interest at the rate of 1.5% per month will be applied to invoices not paid within 30 days of initial billing date.
4. We reserve the right to cease work on delinquent accounts.
5. We reserve the right to bill for expenses related to delays caused by contracting party.
6. Contracting party is responsible for paying all fees and expenses associated with all activities related to an engagement. Credit will be given for payments received directly from clients of the contracting party or from others.
7. The retainer fee will be credited against fee with the final invoice.
8. In addition to invoices rendered and interest thereon, contracting party agrees to pay any and all legal fees and costs incurred in collecting overdue accounts.
9. Rates are subject to change annually. Work performed in subsequent years will be charged at the adjusted rates.
10. Draft reports are for review purposes only and are not to be released to any entity that is not party to this agreement.
11. Extra copies of reports will be billed at \$10.00 per copy.
12. All contracts shall be subject to the laws of the State of Texas.

S:\standard rate2020 Texas.doc

City of Lucas
 General Fund Reserves by Fiscal Year (Unaudited)

	Actual 2013-2014	Actual 2014-2015	Actual 2015-2016	Actual 2016-2017	Actual 2017-2018	Actual 2018-2019	Actual 2019-2020	Projected 2020-2021	Projected 2021-2022
Unassigned Fund Balance per Audit Report	\$ 5,867,875	\$ 6,203,973	\$ 7,545,674	\$ 8,774,909	\$ 7,380,496	\$ 7,442,323	\$ 8,524,465	\$ 8,524,465	\$ 8,524,465
Adjusted For:									
Projected Excess Fund Balance FY 20-21 (Revenue vs. Expense)								\$ 2,497,885	\$ 2,497,885
Projected Excess Fund Balance FY 21-22 (Revenue vs. Expense)								\$	\$ 24,659
Additional Restrictions:									
Capital Project funding approved at (3-2-17) City Council Meeting				\$ (1,385,000)					
FY 20-21 Brockdale Roadway Improvements carry-over	\$ (47,935)	\$ (102,935)	\$ (140,335)	\$ (199,570)		\$ -	\$ (41,349)	\$ (41,349)	\$ (41,349)
Water Rescue Boat							\$ (120,000)	\$ (120,000)	\$ (120,000)
FY 20-21 FD Equipment/bunker gear carry-over							\$ (21,379)	\$ (21,379)	\$ (21,379)
FY 20-21 Restriction American Rescue Plan (CLFRF)							\$ (1,059,657)	\$ (1,059,657)	\$ (1,059,657)
FY 20-21 Energov Software/Hardware carry-over							\$ (34,843)	\$ (34,843)	\$ (34,843)
FY 20-21 -CC 7-1-21 Lemontree drainage carry-over							\$ (67,813)	\$ (67,813)	\$ (67,813)
Reserve for Capital Outlay FY 20-21			\$ (50,000)	\$ (100,000)			\$ (50,000)	\$ (50,000)	\$ (50,000)
Reserve for Capital Outlay FY 21-22							\$	\$	\$ -
CC 11-4-21 Reserves for Claremont Springs Drainage (FY 21-22)								\$	\$ (192,025)
CC 11-4-21 Reserves for Brookhaven Culvert (FY 21-22)								\$	\$ (110,758)
Reserve Balance Prior to GASB 54 Requirement	\$ 5,819,940	\$ 6,101,038	\$ 7,355,339	\$ 7,090,339	\$ 7,380,496	\$ 7,442,323	\$ 8,524,465	\$ 9,627,309	\$ 9,349,185
Reserve Balance in Operating Months	16.7	17.1	19.3	16.5	16.9	14.9	17.9	17.8	16
50% Current Year General Fund Expenditures (6 months)	\$ (2,089,807)	\$ (2,143,890)	\$ (2,286,670)	\$ (2,583,535)	\$ (2,624,410)	\$ (3,009,319)	\$ (2,861,041)	\$ (3,245,588)	\$ (3,463,246)
Reserve Balance After GASB 54 Requirement	\$ 3,730,133	\$ 3,957,148	\$ 5,068,669	\$ 4,506,804	\$ 4,756,086	\$ 4,433,005	\$ 5,663,424	\$ 6,381,721	\$ 5,885,939
Reserve Balance in Operating Months	10.7	11.1	13.3	10.5	10.9	8.9	11.9	11.8	10
Restricted during Fiscal Year Audit:									
Ambulance Donation					\$ 100,000	\$ -	\$ -	\$ -	\$ -
Capital Project Funding approved (3105)					\$ 1,385,000	\$ 1,385,000	\$ 613,590	\$ -	\$ -
Restricted Court/Misc (3105.10)(3105.35)	\$ 35,473	\$ 45,612	\$ 51,004	\$ 56,820	\$ 64,031	\$ 77,266	\$ 78,726	\$ 76,647	\$ 76,647
Restricted Cable Fees (3105.20)	\$ 8,256	\$ 12,773	\$ 17,670	\$ 21,843	\$ 25,318	\$ 28,582	\$ 31,834	\$ 34,707	\$ 34,707
Brockdale Roadway Improvements (3105.25)					\$ 245,054	\$ 285,878	\$ 385,528	\$ -	\$ -
Restricted Impact Fees (3105.30)	\$ 770,508	\$ 867,279	\$ 1,116,079	\$ 1,254,213	\$ 1,572,405	\$ 1,785,286	\$ 2,115,802	\$ 1,417,318	\$ 1,417,318
Restricted Water Rescue (3105-32)							\$ 120,000	\$ 120,000	\$ 120,000
Restricted FD Equipment (3105-34)							\$ 16,379	\$ 16,379	\$ 16,379
Restricted Cares Funding (3105.40)							\$ 89,755	\$ 1,059,657	\$ 1,059,657
Restricted American Rescue Plan Act Funding (3105.50)									
Restricted Mass Mutual LOSAP (3105.45)				\$ 216,615	\$ 233,592	\$ 252,407	\$ 265,669	\$ 279,043	\$ 279,043
Capital Outlay (\$50K per year) (3106)					\$ 150,000	\$ 200,000	\$ 250,000	\$ 300,000	\$ 250,000
Project Mgmt (3107)						\$ 358,290	\$ 70,853	\$ -	\$ -
Reserve Restricted per Audit Report	\$ 814,237	\$ 925,664	\$ 1,184,753	\$ 1,549,491	\$ 3,775,400	\$ 4,372,709	\$ 3,901,757	\$ 3,303,751	\$ 3,253,751

City of Lucas
Water Fund Reserves by Fiscal Year (Unaudited)

	Actual 2013-2014	Actual 2014-2015	Actual 2015-2016	Actual 2016-2017	Actual 2017-2018	Actual 2018-2019	Actual 2019-2020	Projected 2020-2021	Projected 2021-2022
Unrestricted Cash Balance per Audit Report	\$ 3,382,193	\$ 4,295,531	\$ 5,579,746	\$ 5,548,487	\$ 5,996,412	\$ 6,215,622	\$ 6,945,017	\$ 6,945,017	\$ 6,945,017
Adjusted For:									
Projected Excess Fund Balance FY 20-21								\$ 331,300	\$ 331,300
Projected Excess Fund Balance FY 21-22									\$ 218,584
Additional Restrictions:									
Capital Project funding approved at (3-2-17) City Council Meeting Customer Deposits	\$ (209,565)	\$ (223,300)	\$ (239,250)	\$ (245,600)	\$ (247,600)	\$ (256,220)			
				\$ (120,979)					
Reserve Balance Prior to GASB 54 Requirement	\$ 3,172,628	\$ 4,072,231	\$ 5,340,496	\$ 5,181,908	\$ 5,748,812	\$ 5,959,402	\$ 6,945,017	\$ 7,276,317	\$ 7,494,901
Reserve Balance in Operating Months	13	15	19	16	18	18	20	20	19.8
50% Current Year General Fund Expenditures (6 months)	\$ (1,397,368)	\$ (1,605,672)	\$ (1,656,470)	\$ (1,897,744)	\$ (1,949,722)	\$ (1,983,894)	\$ (2,081,761)	\$ (2,127,754)	\$ (2,278,539)
Reserve Balance After GASB 54 Requirement	\$ 1,775,260	\$ 2,466,559	\$ 3,684,026	\$ 3,284,164	\$ 3,799,090	\$ 3,975,508	\$ 4,863,256	\$ 5,148,563	\$ 5,216,362
Reserve Balance in Operating Months	7	9	13	10	12	12	14	14	13.8
Restricted during Fiscal Year Audit:									
Capital Project Funding approved (3-2-17)(51-1007-50/3105)					\$ 120,979	\$ 120,979	\$ 120,979	\$ 120,979	\$ -
Reserve Funding Bait Shop Water Line(51-1007-75/51-3106-75)							\$ 31,118		
Impact Fees (Lakeview Downs) (51-1001-75)/(51-3106-10)							\$ 27,500	\$ 33,000	\$ 33,000
Impact Fees (Capital Projects) (51-1001)/(51-3106-15)								\$ 352,448	\$ -
Debt Service (51-1007-40)/(51-1008)/(51-3106)	\$ 360,000	\$ 365,000	\$ 375,000	\$ 425,000	\$ 435,000	\$ 477,800	\$ 515,000	\$ 495,000	\$ 410,000
Project Mgmt (51-1007-70)						\$ 69,945	\$ 17,486		
Customer Deposits (51-1012)/(51-3106-20)							\$ 258,400	\$ 278,625	\$ 258,400
Reserve Restricted per Audit Report	\$ 360,000	\$ 365,000	\$ 375,000	\$ 425,000	\$ 555,979	\$ 668,724	\$ 939,365	\$ 1,311,170	\$ 701,400



City of Lucas

City Council Agenda Request

December 16, 2021

Requester: Assistant to the City Manager Kent Souriyasak
City Secretary Stacy Henderson
Graduate Intern Kevin Becker

Agenda Item Request

Consider approval of the Request for Proposal for Residential Solid Waste Services per the City of Lucas Specifications and provide direction to the City Manager regarding the proposal submission and evaluation process.

Background Information

At the City Council meeting on November 18, 2021, the City Council discussed the process to acquire the services of a qualified solid waste services provider. The City Council provided the following direction to the City Manager:

- Prepare Request for Proposal (RFP) to obtain proposals from multiple vendors.
- Focus on residential services only.
- Specify size of vehicle and include an alternate option for various size trucks to be used. Include language that smaller trucks are preferred, but not required.
- Concierge service allowing access to homeowners' driveway to pick up trash closer to the home and the associated fee.
- Include trash and subscription-based recycling as part of proposal. Recycling would not go into effect until 2023.
- Include residential brush pickup, larger than six cubic yards, and offered more than once a month.
- Extra residential brush pickup service and associated fee.
- Storm cleanup services and associated fees.

Staff has updated the draft of the Request for Proposal (RFP) for Residential Solid Waste Services with changes that are highlighted in the attachment.

The City Council requested that administrative and franchise fees from other cities be reviewed to determine how much is being charged along with how billing for services was handled. Staff has received the requested information from the Cities of Allen, Fairview, Murphy, Sachse, and Wylie. This information is included in the Budget/Financial Impact section.

Staff also obtained information from Barnes Waste Disposal regarding the size of their vehicles used to collect waste in Lucas. The regular size trucks are 8-yard compactors and the big truck that is used to service dumpsters is an 11-yard compactor. Per the City's current agreement with Barnes Waste Disposal, the trucks used to collect waste shall be no larger than a "single axle" type and shall not exceed 26,000 pounds in weight.



City of Lucas

City Council Agenda Request

December 16, 2021

Current Solid Waste and Disposal Services from Barnes Waste Disposal, Inc.

The City of Lucas receives the following solid waste and disposal services from Barnes Waste Disposal, Inc.:

1. Residential refuse collections at curbside or, if qualified (disabled or elderly), house side, in response to the individual customer's request, all other "house side" collection is subject to Contractor approval. All trash, garbage and refuse must be bagged and placed in an appropriate container. Contractor shall have no obligation to pick up or otherwise collect motor vehicle tires, oil, batteries, hazardous chemicals or items containing refrigerants. Contractor shall perform collection service no less frequently than once per week.
2. Collect unbundled brush (cut not greater than 4 feet in length) and bulky items in a volume of two (2) cubic yards [6'x3'x3'], no less frequently than twice per month. Unbundled brush and bulky items shall be placed curbside for collection. As used herein, a "bulky item" shall refer to appliances (not containing refrigerants) water tanks, yard maintenance machines, furniture and waste materials other than dead animals or hazardous waste.
3. Collect unlimited bundled brush (cut not greater than four feet in length) and not heavier than 40 pounds per bundle, and placed curbside for collection.
4. At the request of the customer, Contractor will collect 10 cubic yards of brush curbside twice per year per household at no additional cost to the customer. This service must be scheduled with the Contractor and shall be collected on a first come first basis.
5. Contractor shall have no obligation to collect or dispose of construction, remodel, or landscape/brush debris if generated by a business, individual or entity providing such services to the property owner.
6. The resident should call Contractor for household hazardous waste collection for special pick-up instructions. Collection of these materials may require extra charges negotiated by Contractor and the individual resident.
7. Excessive amounts, as determined by Contractor, may require extra charges negotiated by Contractor and the individual resident.
8. Refrigeration appliances not certified and tagged by an HVAC technician may be subject to a \$35.00 disposal fee that shall be billed to the individual resident by Contractor.



City of Lucas

City Council Agenda Request

December 16, 2021

9. Contractor shall host, with the help of City staff, one (1) annual clean-up event for each year of the Agreement. The event shall be scheduled on a Saturday agreed to by the Contractor and the City at a location provided by the City.
10. Manure or stable matter shall be negotiated by Contractor and the individual resident per 95-gallon container and billed directly to the resident. Resident must purchase containers for manure/stable matter.

The City received notice from Barnes Waste Disposals, Inc. that they will be terminating services as of September 30, 2022.

Current Subscription-Based Recycling Services with Republic Services

The City has a separate agreement with Allied Waste Systems, Inc., d/b/a Republic Services of Plano for the collection of recyclable materials on a subscription basis every other week. Republic collects recyclable materials in a 95-gallon poly cart with an automated side-load vehicle.

The contract was executed on February 12, 2018, with an initial term commencing on April 1, 2018, and continuing for five years terminating on March 31, 2023. The agreement may be terminated as indicated in Article XII of the agreement. Republic Services has been very proactive in resolving any customer issue that arises, has excellent communication with City staff and overall, the City has been extremely satisfied with their performance in the provision of recycling services.

Attachments/Supporting Documentation

1. DRAFT Template of the Request for Proposal for Residential Solid Waste Services per the City of Lucas Specifications

Budget/Financial Impact

Staff has put together a table consisting of information regarding monthly rates, administrative and franchise fees for solid waste and recycling services from the Cities of Allen, Fairview, Murphy, Sachse, and Wylie. These cities have a single provider for both solid waste and recycling services.

The City of Lucas currently has two separate providers: Barnes Waste Disposal (solid waste) and Republic Services (subscription-based curbside recycling). The City of Lucas handles the billing of solid waste services provided by Barnes Waste Disposal. Republic Services handles the billing of recycling services for the City of Lucas.



City of Lucas

City Council Agenda Request

December 16, 2021

Item No. 10

Table of Municipal Solid Waste and Recycling Services, Rates and Fees

City	Provider for Solid Waste and Recycling Services	Monthly Base Rate ⁽¹⁾	Franchise Fee	Admin. Fee	Total Cost for Services ⁽²⁾
Lucas	Solid Waste: Barnes	\$18.13	\$1.27	\$1.45	\$28.65
	Recycling: Republic ⁽³⁾	\$7.80	None	None	
Allen	CWD	\$7.01	None	\$8.58	\$15.59
Fairview	Republic	\$19.00	None	\$1.80	\$20.80
Murphy	Republic	\$13.49	\$3.45 ⁽⁴⁾		\$16.94
Sachse	CWD	\$16.79	\$1.34	\$0.28	\$18.41
Wylie	CWD	\$13.39	None	\$1.34	\$14.73

Notes:

1. Monthly Base Rate does not include sales tax.
2. Total Cost for Services includes Monthly Base Rate, Franchise and Administrative Fees.
3. Republic Services handles the billing of subscription-based services for the City of Lucas.
4. The City of Murphy has a combined franchise and administrative fee.

Recommendation

Staff recommends finalizing and approving the Request for Proposal for Residential Solid Waste Services per the City of Lucas Specifications. Staff anticipates seeking proposals in January 2022 with a tentative deadline of February 28, 2022.

Motion

I make a motion to approve/deny the Request for Proposal for Residential Solid Waste Services per the City of Lucas Specifications and authorize the City Manager to move forward with the proposal process.



REQUEST FOR PROPOSALS

for

RESIDENTIAL SOLID WASTE SERVICES

per

THE CITY OF LUCAS SPECIFICATIONS

At

**Lucas City Hall
665 Country Club Road
Lucas, TX 75002**

DUE DATE: MONDAY, FEBRUARY 28, 2022 AT 5:00 PM Central Time



REQUEST FOR PROPOSALS

The enclosed Request for Proposals (RFP) is for your convenience in proposing the enclosed referenced products and/or services for the City of Lucas. Sealed proposals shall be received no later than:

*****MONDAY, FEBRUARY 28, 2022 AT 5:00 PM Central Time*****

PRE-PROPOSAL CONFERENCE

The City of Lucas will host a pre-proposal conference on ***** MONDAY, JANUARY 24, 2022 AT 10:00 AM Central Time***** in the City of Lucas Conference Room, located at 665 Country Club Road, Lucas, Texas 75002.

Please reference RFP "RESIDENTIAL SOLID WASTE SERVICES," in all correspondence pertaining to this RFP and affix this label to outside front of proposal envelope for identification. All proposals shall be to the attention of the City Secretary.

The City of Lucas appreciates your time and effort in preparing a proposal. Please note that all proposals must be received at the designated location by the deadline shown. Proposals received after the deadline will be returned unopened and shall be considered void and unacceptable. Proposal opening is scheduled to be held in the Lucas City Hall Conference Room. No results will be read aloud when proposals are submitted to the City. However, the City will acknowledge all proposals received via email to all bidders.



**REQUEST FOR PROPOSALS INSTRUCTIONS
AND TERMS OF CONTRACT
RESIDENTIAL SOLID WASTE SERVICES**

By order of the City Council of the City of Lucas, Texas, sealed proposals will be received for:

RESIDENTIAL SOLID WASTE SERVICES

TO PROVIDE for an annual agreement commencing October 1, 2022 and continuing for five (5) year period. The City of Lucas reserves the right to extend this Agreement for up to two (2) additional three (3) year periods as it deems to be in the best interest of the City.

IT IS UNDERSTOOD that the City Council of the City of Lucas, Texas reserves the right to reject any and/or all proposal for any/or all products and/or services covered in this RFP and to waive informalities or defects in proposals or to accept such proposals as it shall deem to be in the best interests of the City of Lucas.

PROPOSALS MUST BE submitted on the forms included for that purpose in this packet. Each proposal shall be placed in a separate sealed envelope, with the letter of intent and the forms manually signed by a person having the authority to bind the firm in a Contract and marked clearly on the outside as shown below. Seven copies of each proposal must be included in the bid packet. Electronic/Facsimile transmittals **will not** be accepted.

SUBMISSION OF PROPOSALS:

Sealed proposals must be submitted no later than *****MONDAY, FEBRUARY 28, 2022 AT 5:00 PM Central Time***** to the following address:

City of Lucas
665 Country Club Road
Lucas, Texas 75002
Attention: City Secretary Stacy Henderson

Please mark envelope with:

“CITY OF LUCAS RESIDENTIAL SOLID WASTE SERVICES”

PUBLIC NOTICE FOR AMERICANS WITH DISABILITIES ACT COMPLIANCE

The City of Lucas acknowledges its responsibility to comply with Title II of the Americans with Disabilities Act of 1990. To assist individuals with disabilities who require special services for participation in or access to the City of Lucas sponsored public programs, services, and/or activities, the City requests that the individual make request for these services at least 48- hours ahead of the scheduled event. To decide, please contact City Secretary Stacy Henderson for the City of Lucas at 972-912-1211 or shenderson@lucastexas.us.

TEXAS PUBLIC INFORMATION ACT

The City is subject to the Texas Public Information Act (“the Act”), a state law which may require the City to make the information provided in response to this RFP available to the public upon request following award. If a proposer submits information to the City in response to this RFP that the proposer believes to constitute a proprietary trade secret or other confidential information, the proposer must clearly identify such information within the proposal. In the event the City receives a request for disclosure of information in any proposal that has been identified by the proposer and confidential or a proprietary trade secret, the City will notify the proposer in accordance with the provisions of the Act; however, it shall be the sole responsibility of the proposer, at the proposer’s sole cost, to comply with the Act’s provisions relating to submission of a request to the Texas Attorney General for an opinion regarding the exemption from disclosure of such information to the public pursuant to the Act.

PROPOSER CONTACT WITH THE CITY

To ensure an objective, orderly award process that provides all potential proposers an equal opportunity to compete for and win City business, the following requirements will be enforced during the proposal process:

All requests for information will be made in writing to:

City Secretary Stacy Henderson, shenderson@lucastexas.us.

Replies to all information-pertinent requests will be sent in the form of an addendum to all bidders. **No direct contact with or lobbying of City management, City staff, consultant, or the Lucas City Council will be permitted during the RFP process after the RFP is released to the public.**

No gifts, lunches, or other gratuities will be accepted by the City during the RFP process. Vendors not complying with the above requirements will be disqualified from consideration.

FUNDING: Funds for payment have been provided through the City of Lucas budget approved by the City Council for this fiscal year only. State of Texas statutes prohibit the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. Therefore, anticipated orders or other obligations that may arise past the end of the current fiscal year shall be subject to budget approval.

LATE PROPOSALS: Proposals received in the City of Lucas City Secretary's Office after submission deadline will be considered void and unacceptable. The City of Lucas is not responsible for lateness or non-delivery of mail, carrier, etc., and the date/time stamp in the City Secretary's Office shall be the official time of receipt.

ALTERING PROPOSALS: Proposals cannot be altered or amended after submission deadline. Any interlineation, alteration, or erasure made before opening time must be initialed by the signer of the proposal, guaranteeing authenticity.

WITHDRAWAL OF PROPOSAL: A proposal may not be withdrawn or canceled by the Proposer without the permission of the City for a period of 120 days following the date designated for the receipt of proposals, and Proposer so agrees upon submittal of their proposal.

SALES TAX: The City of Lucas is exempt by law from payment of Texas State Sales Tax and Federal Excise Tax.

AGREEMENT AWARD: The City reserves the right to award any combination of the services asis deemed in the best interest of the City. The City also reserves the right to not award the services.

CHANGE ORDERS: No oral statement of any individual shall modify or otherwise change, or affect the terms, conditions or specifications stated in the resulting contract. All change orders to the Agreement will be made in writing by the City Manager.

NET PRICES: If during the life of the Contract, the successful Proposer's net prices to other customers for items awarded herein are reduced below the Contracted price, it is understood and agreed that the benefits of such reduction shall be extended to the City of Lucas.

DELIVERY: All delivery and freight charges (F.O.B. City of Lucas) are to be included in the proposed price.

CONFLICT OF INTEREST: No public official shall have interest in this Contract, in accordance with Vernon's Texas Codes Annotated, Local Government Code Title 5. Subtitle C, Chapter 171.

DISCLOSURE OF CERTAIN RELATIONSHIPS: Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that any vendor or person considering doing business with a local government entity disclose in the Questionnaire Form CIQ, the vendor or person's affiliation or business relationship that might cause a conflict of interest with a local government entity. By law, this questionnaire must be filed with the City Secretary of the City of Lucas not

later than the seventh business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code. A person commits an offense if the person violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

ETHICS: Proposer shall not offer or accept gifts of anything of value nor enter any business arrangement with any employee, official or agent of the City of Lucas.

EXCEPTIONS/SUBSTITUTIONS: All proposals meeting the intent of this RFP will be considered for award. Proposers taking exception to the specifications, or offering substitutions, shall state these exceptions in the section provided or by attachment as part of the proposal. In the absence of such, a list shall indicate that the Proposer has not taken exceptions and shall hold the Proposer responsible to perform in strict accordance with the specifications of the RFP. The City of Lucas reserves the right to accept all, or none, of the exception(s)/ substitution(s) deemed to be in the best interest of the City.

ADDENDA: Any interpretations, corrections, or changes to this RFP will be made by addenda. Sole issuing authority of addenda shall be vested in the City of Lucas City Manager. Addenda will be mailed to all who are known to have received a copy of this RFP. Proposers shall acknowledge receipt of all addenda.

DESCRIPTIONS: Any reference to model and/or make/maker used in RFP specifications will be made by addenda. Sole issuing authority of addenda shall be vested in the City of Lucas City Manager. Addenda will be mailed to all who are known to have received a copy of this RFP. Proposers shall acknowledge receipt of all addenda.

LEGAL COMPLIANCE: Proposal must comply with all federal, state, county, and local laws concerning these types of service(s).

QUALITY: Design, strength, quality of materials must conform to industry standards.

MINIMUM STANDARDS FOR RESPONSIBLE PROSPECTIVE PROPOSERS: A prospective Proposer must affirmatively demonstrate Proposer's responsibility. A prospective Proposer must meet the following requirements:

1. Have adequate financial resources, or the ability to obtain such resources as required.
2. Be able to comply with the required or proposed delivery schedule.
3. Have a satisfactory record of performance.
4. Have a satisfactory record of integrity and ethics.
5. Be otherwise qualified and eligible to receive an award.

The City may request representation and other information sufficient to determine Proposer's ability to meet these minimum standards listed above.

REQUIRED DOCUMENTATION: Proposer shall provide with this RFP response, all documentation required by this RFP. Failure to provide this information may result in rejection of proposal.

INSURANCE AND INDEMNIFICATION: Successful proposer shall defend, indemnify, and save harmless the City of Lucas and all its officers, agents and employees from all suits, actions, or other claims of any character, name and description brought for or on account of any injuries or damages received or sustained by any person, persons, or property on account of any negligent act or fault of the successful Proposer, or of any agent, employee, subcontractor or supplier in the execution of, or performance under, any agreement which may result from RFP award. Successful Proposer indemnifies and will indemnify and save harmless the City from liability, claim, or demand on their part, agents, servants, customers, and/or employees whether such liability, claim or demand arise from event or casualty happening or within the occupied premises themselves or happening upon or in any of the halls, elevators, entrances, stairways or approaches of or to the facilities within which the occupied premises are located. Successful Proposer shall pay any judgment with costs which maybe obtained against the City growing out of such injury or damages. In addition, Contractor shall obtain and file with Owner City of Lucas a Standard Certificate of Insurance and applicable policy endorsement evidencing the required coverage and naming the Owner City of Lucas as an additional insured on the required coverage.

WAGES: Successful Proposer shall pay or cause to be paid, without cost or expense to the City of Lucas, all Social Security, Unemployment and Federal Income Withholding Taxes of all such employees and all such employees shall be paid wages and benefits as required by Federal and/or State Law.

NOTICE: Any notice provided (or required by law) to be given to the successful Proposer by the City of Lucas shall conclusively deemed to have been given and received on the next day after such written notice has been deposited in the mail in the City of Lucas, Texas by Registered or Certified Mail with sufficient postage affixed thereto, addressed to the successful Proposer at the address so provided; provided this shall not prevent the giving of actual notice in any other manner.

PATENTS/COPYRIGHTS: The successful Proposer agrees to protect the City of Lucas from claims involving infringement of patents and/or copyrights.

AGREEMENT ADMINISTRATOR: Under this Contract, the City of Lucas may appoint an Agreement Administrator with designated responsibility to ensure compliance with Agreement requirements, such as but not limited to, acceptance, inspection, and delivery. The Agreement Administrator will serve as liaison between the City and the successful Proposer.

ITEMS: All items supplied under this Agreement shall be subject to the City's approval.

SAMPLES: When requested, samples shall be furnished free of expense to the City of Lucas.

WARRANTY: Successful Proposer shall warrant that all items/services shall conform to the proposed specifications and/or all warranties as stated in the Uniform Commercial Code and be free from all defects in material, workmanship, and title.

REMEDIES: The successful Proposer and the City of Lucas agree that both parties have all rights, duties, and remedies available as stated in the Uniform Commercial Code.

VENUE: This Agreement will be governed and construed according to the laws of the State of Texas. This Agreement is performable in the City of Lucas, Texas.

ASSIGNMENT: The successful Proposer shall not sell, assign, transfer, or convey this Contract, in whole or in part, without prior written consent of the City of Lucas.

SPECIFICATIONS: Specification and model numbers are for description only. Proposer may propose on description only. Proposer may propose an alternate model but must clearly indicate the alternate model being proposed. Proposer must enclose full descriptive literature on alternate item(s).

SILENCE OF SPECIFICATION: The apparent silence of these specifications as to any detail or to the apparent omission of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practices are to prevail. All interpretations of these Specifications shall be made based on this statement. Each insurance policy to be furnished by successful Proposer shall include, by endorsement to the policy, a statement that a notice shall be given to the City of Lucas by Certified Mail thirty (30) days prior to cancellation or upon any material change in coverage.

RFP NOTIFICATION: The City of Lucas will notify interested parties of the RFP posting. This is the only form of notification authorized by the City. The City of Lucas shall not be responsible for receipt of notification and information from any source other than those listed. It shall be the vendor's responsibility to verify the validity of all information received by sources other than what was.

EMPLOYMENT ELIGIBILITY VERIFICATION: The Immigration Reform and Control Act of 1986 (IRCA) makes it illegal for employers to knowingly hire or recruit immigrants who do not possess lawful work authorization and requires employers to verify their employees' work eligibility on a U.S. Department of Justice form I-9. The contractor/vendor warrants that contractor/vendor follows IRCA and will maintain compliance with IRCA during the term of the Agreement with the city. Contractor/vendor warrants that contractor/vendor has included or will include a similar provision in all written agreements with any subcontractors engaged to perform services under its contract.

PROPOSAL SUMMARY SHEET: Proposal summary results will be made available upon execution of Agreement with the successful Proposer. Proposers desiring a copy of the proposal summary sheet may request a copy via email at shenderson@lucastexas.us. No results will be given over the telephone.

ENVIRONMENTALLY PREFERABLE PRODUCTS AND SERVICES: Proposers are encouraged to offer Energy Star, GreenSeal, EcoLogo and/or EPEAT certified products. The City also encourages proposers to offer products and services that are produced or delivered with minimal use of virgin materials and maximum use of recycled materials and reduce waste, energy usage, water utilization and toxicity in the manufacture and use of products.

QUESTIONS: Any questions concerning this RFP should be directed to the City Manager (Email: jclarke@lucastexas.us).

DRAFT



CITY OF LUCAS

REQUEST FOR PROPOSALS

RESIDENTIAL SOLID WASTE SERVICES

The City of Lucas will receive proposals for furnishing **RESIDENTIAL SOLID WASTE SERVICES**. Proposals must be received no later than *****MONDAY, FEBRUARY 28, 2022 AT 5:00 PM Central Time*****. Proposals submitted by that time will be reviewed by the committee. Any proposals received after ***** MONDAY, FEBRUARY 28, 2022 AT 5:00 PM Central Time ***** will not be opened. Any questions regarding the specifications and process should be directed to the City of Lucas City Manager.

Each Proposer shall make its own examination, investigation, and research regarding the proper method of doing the work, all conditions affecting the work to be done, the labor, equipment and materials, and the quantity of the work to be performed. The Proposer agrees that it has satisfied itself by Proposer's own investigation and research regarding all of such conditions, and that Proposer's conclusion to enter into the Agreement and execution of the Agreement is based upon such investigation and research, and that Proposer shall make no claim against the City because of any of the estimates, statements, or interpretations made by any officer or agent of the City which may prove to be erroneous in any respect.

The data contained in the RFP are for informational purposes only. The City makes no warranty as to the accuracy of this information. By submitting a proposal, Proposer agrees it is the sole responsibility of the Proposer to calculate and be responsible for the prices quoted in the applicable set of RFP forms.

SECTION I: BACKGROUND

The City of Lucas is a community of approximately 8,000 residents in the northeastern portion of the Metroplex. The City places a high priority on providing excellent municipal services, including residential solid waste services. The City's current Agreement for residential solid waste services expires on September 30, 2022. The current Agreement provides for residential services and City services. The current Agreement does not provide for commercial collection services or exclusive right to roll-off services. Currently, commercial businesses are responsible for sourcing their own solid waste provider. For materials collected within the City, the current contractor is responsible for disposal of all solid waste and bulk waste. There is a separate agreement for subscription-based recycling service. This section provides an overview of the current services.

1. Residential Services

Under the current residential solid waste contract, the provider services approximately 2,454 residential units within the City. From November 1, 2020, through October 31, 2021, 4,300 tons or 8,600,000 pounds of refuse was collected from the City of Lucas.

Current rates for solid waste residential services can be found in Appendix A.

Current rates for subscription-based recycling service can be found in Appendix B.

2. City Services

The current contracts provide for solid waste and recycling services to City facilities. The solid waste provider supports one annual clean-up event. City services are not billed to the City.

SECTION II: SPECIFICATIONS

The purpose of this section is to familiarize Proposers with the requested scope of services. Proposer must carefully review the Agreement in Appendix C for the complete scope of services. Services performed will be in accordance with the Agreement included as Appendix C. If the City elects an alternative scope of services for residential services, the Agreement shall be amended accordingly. The following is overview of the scope of services.

1. Agreement Term

An Agreement awarded in response to this RFP will be for an initial term of five (5) years commencing on October 1, 2022. The City shall have the option to renew the Agreement for two (2) additional renewal terms of three (3) years each.

2. Exclusive Franchise

The successful Proposer will be granted the exclusive right to provide residential services and City services except as explicitly excluded in the Agreement.

3. Residential Services

The successful Proposer shall provide all residents with once per week collection of solid waste and disposal services. Residential refuse will be placed in an appropriate/approved cart and placed curbside. If qualified (disabled or elderly), the Proposer will pick up refuse at a designated location near the home.

Add-alternate for enhanced residential collection of solid waste and disposal services are as follows:

Alternate #1 Enhanced Residential Service - At the request of the customer, Contractor will provide enhanced services such as picking up residential solid waste at a designated area near the home for an additional fee.

The successful proposer shall provide all residents with **residential brush removal** as follows:

- Collect unlimited BUNDLED brush (cut not greater than four feet in length) and not heavier than forty pounds per bundle, and placed curbside for collection, weekly.
- Collect UNBUNDLED brush (cut not greater than four feet in length) in a volume of (2) cubic yards [6'x3'x3'], no less frequently than twice per month.

Add-alternate for residential brush removal are as follows:

- **Alternate #2 Brush Removal** - At the request of the customer, Contractor will collect brush **in excess of** the amount allowed to be collected curbside for a fee. The fee for custom brush service is to be negotiated between customer and contractor. This service must be scheduled with the Contractor and shall be collected on a first come first basis.

The successful proposer shall provide all residents with **residential bulky item removal** once per month on a day that is agreed upon between the Proposer and the City as follows:

- Collect bulky items placed curbside for collection. A “bulky item” shall refer to appliances (not containing refrigerants) water tanks, yard maintenance machines, furniture, and waste materials other than dead animals or hazardous waste.

Add-alternate for residential recycling services are as follows:

The City of Lucas has a separate agreement with Allied Waste Systems, Inc., d/b/a Republic Services of Plano for the collection of recyclable materials on a subscription basis every other week. The contract with Republic was executed on February 12, 2018, with an initial term commencing on April 1, 2018, and continue for five years terminating on March 31, 2023.

Alternate #3 Residential Recycling Services – At the request of the customer provide the collection of recyclable materials on a subscription basis every other week. **The City prefers Contractor to manage the billing for subscription-based recycling services.**

Add-alternates for residential manure or stable matter are as follows:

Alternate #4 Residential Manure/Stable Matter Collection – At the request of the customer, provide removal services of a 95-gallon contain and invoiced directly to the resident. Resident must purchase containers for manure/stable matter. The fee for manure/stable matter collection is to be negotiated between customer and contractor.

4. Commercial Services

Currently, the City does not have exclusive rights to commercial collection services included in its contract. Commercial entities are responsible for sourcing and selecting their own solid waste provider.

NOTE: The City of Lucas is served by six school districts (Allen, Lovejoy, Plano, McKinney, Princeton, and Wylie) and one private school (Lucas Christian Academy). Their corresponding facilities in Lucas are not included in the collection routes for the purposes of the RFP.

5. Roll-off Services

Currently, the City does not have exclusive rights to collection services associated with construction and demolition debris, via roll-off and roll-off compactors included in its contract. Commercial entities and individuals are responsible for sourcing and selecting their own solid waste provider for services associated with the removal of construction and demolition debris.

6. City Services

The successful proposer shall provide City Services in accordance with the Agreement. The successful Proposer shall provide City Services at no cost to the City unless explicitly authorized in the Agreement. City Services will include, but will not be limited to, the following:

- a) Collection and disposal of solid waste from City Facilities.
- b) Collection and processing of program recyclable materials from City Facilities.
- c) Unlimited collection and processing of one roll-off for use by the City's Public Works Department.
- d) Collection of household hazardous waste annually at an event to be designated by the City.**
- e) Roll-off containers provided for two City events to be held in the spring and fall.
- f) Contractor will be responsive to any storm events or acts of nature. Proposer must provide a fee schedule outlining the hourly rate for storm debris collections.

7. Program Household Hazardous Waste and Electronics Collection

Program household hazardous waste and electronics shall include those materials as defined in the Agreement. The successful Proposer may provide recommendations and identify other materials that City may elect to include as part of the program.

8. Residential Services Set-out Limits

For Residential Services, solid waste set-out limits shall not be enforced for (i) first collection following a holiday; (ii) first collection following a move out or move-in, and (iii) Monday of last full week in December to Saturday of first full week in January.

9. Disposal and Processing of Materials Collected

The successful Proposer shall be responsible for disposal of solid waste, brush/yard trimmings and bulk waste, and program household hazardous waste and electronics collected within the City. The Proposer must disclose to the City how much percent by weight they are able to process for the following collections: (i) residential solid waste, (ii) brush and yard trimmings, (iii) bulk trash, (iv) household hazardous waste, and (v) electronics.

10. Collection Days

For residential services, the City has a strong preference for all program collections to be provided on the same day in each cycle for each customer. For example, if a resident receives regular solid waste collection on a Tuesday, then the City would strongly prefer that recycling and bulk collections also occur on a Tuesday, allowing for maximum consistency and predictability for residents' collection schedules. Proposers may propose alternative collection days for residential services. For other services, the successful Proposer and customer shall mutually agree on collection days.

11. Holidays

If a holiday occurs on a scheduled collection day for a residential service unit, the successful Proposer shall perform the collection for the holiday and the remainder of the week ending on Friday on the next calendar day after the scheduled collection day.

12. Collection Location

Unless otherwise instructed in writing by City, the successful Proposer shall provide collection for solid waste, program recyclable materials, and bulk waste for residential service units at a location agreed upon between the successful Proposer and the City.

13. Public Education and Outreach

The successful Proposer shall develop, submit for approval from the City, and distribute

program introduction notices and non-acceptable set-out notices.

14. Carts

The successful Proposer shall purchase new carts that will be used for the Agreement. Prior to the initial distribution, the successful Proposer shall mail a Cart Selection Notice to each residential service unit. Proposer shall provide a 95-gallon solid waste cart unless a 65-gallon solid waste cart is requested by the Customer. Proposer shall provide a 95-gallon recycling cart unless 65-gallon recycling cart is requested by the Customer. The successful Proposer shall be responsible for the carts during the Agreement term including, but not limited to, distribution, storage, ongoing repair, replacement, warranty issues, and other requirements. Senior Residents aged sixty-five and older will be entitled to the smaller carts without any additional charges.

15. Collection Vehicles

The successful Proposer shall utilize collection vehicles that meet the requirements set forth in the Agreement. This includes a requirement that collection vehicles shall be ten (10) years old or less. The City also prefers twenty-six cubic yard or smaller collection vehicles to be used for narrow roadways and driveways.

16. Customer Service

The successful Proposer shall be responsible for managing all customer service requests in accordance with the requirements of the Agreement. As set forth in the Agreement, the successful Proposer shall provide weekly reports of customer service requests to the City and an overview of all customer interactions, service requests, and complaints provided during the first week of each month to reflect the prior month's activity.

17. Local Customer Services Office

The successful Proposer shall maintain a local office within **twenty miles** of the City of Lucas City Hall. Contractor shall ensure the local office may be contacted by telephone without charge. Such office shall be equipped with sufficient telephones and shall have a responsible person in charge between the hours of 8:00 AM, Central Time and the later of 5:00 PM, Central Time or completion of collection from residential service units, Monday through Friday. For after office hours, local office must have a voicemail system. Voicemails from Customers shall be returned on the next Business Day.

18. Billing

The City shall be responsible for billing base services for residential services. The successful Proposer shall be responsible for all **other billings including enhanced residential service, brush removal, and residential manure/stable matter collection.**

19. Franchise Fee

The successful Proposer shall pay the City a franchise fee equal to seven percent (7%) of gross billings for services provided via the Agreement within the City.

20. Performance Bond and Insurance

The successful Proposer shall comply with the performance bond and insurance requirements set forth in the Agreement.

SECTION III: PROPOSAL CONTENT

Proposers must submit the following information with proposal packets in support of their Proposals. Proposers are required to use the following format in response to the specifications and include a corresponding Table of Contents for submittals.

NOTE: Any material submitted by the Proposer that is considered proprietary and confidential must be marked accordingly. Any documents marked as proprietary and confidential will be treated as such. Any documents not marked as proprietary and confidential will be treated as normal records. It is incumbent upon the Proposer to mark proprietary documents. The City will not do so.

1. Letter of Intent and Company Overview

- a) Proposers shall submit a letter of intent containing a statement that the proposal is a firm offer for one-hundred-twenty (120) days from the due date. The letter shall include a signature from a representative authorized to legally bind the proposing company.
- b) Proposers must complete Form 1- Company Information.

2. Method of Approach

- a) **Overview of Approach to Services.** Proposer shall provide a brief overview of the method of approach for providing the following services responsive to the specifications.
 - (i) Residential Services
 1. Residential Solid Waste and Disposal Services
Alternate #1: Enhanced Residential Service
 2. Residential Brush Removal
Alternate #2: Custom Brush Removal
 3. Bulky Items placed Curbside (excluding appliance with refrigerants)
 4. **Alternate #3:** Residential Recycling Services on a subscription basis every other week
 5. **Alternate #4:** Manure/Stable Matter Collection
 - (ii) City Services
 1. Collection and disposal of solid waste from City Facilities.
 2. **Collection and processing of program recyclable materials from City Facilities.**

3. Unlimited collection and processing of one roll-off for use by the City's Public Works Department.
 4. Collection of household hazardous waste annually at an event to be designated by the City.
 5. Roll-off containers provided for two City events to be held in the spring and fall.
 6. Contractor will be responsive to any storm events or acts of nature. Proposer must provide a fee schedule outlining the hourly rate for storm debris collections.
- b) **Description of Personnel.** Proposer shall meet the personnel standards as set forth in the Agreement. Proposer shall describe the following:
- (i) Proposer shall describe policies and procedures that are in place to ensure that personnel performing services are qualified and proficient.
 - (ii) Proposer shall describe any training programs for personnel.
 - (iii) Proposer shall describe the dress code that is required for personnel.
- d) **Program Household Hazardous Waste and Electronics to be Collected.** Proposer shall identify all household hazardous waste and electronics to be collected annually at a City designated special event.
- (i) Proposer shall collect, at a minimum, the materials defined as program household hazardous waste and electronics in the Agreement.
 - (ii) Proposer shall identify any additional materials that can be collected as part of the program household hazardous waste and electronics program at no additional cost.
 - (iii) Proposer shall describe approach to processing materials that can be collected as part of the program household hazardous waste and electronics program.
- e) **Collection Route Schedules and Maps.** Proposer shall include a proposed route schedule and maps for residential service units. Proposers must describe the collection route schedules and maps.
- f) **Description of Carts.**
- (i) Proposer shall describe the carts that will be purchased by the Proposer. The description shall include, at a minimum, the manufacturer, capacity, and color. Recycling carts shall be blue. Photos of the proposed carts should be included.
 - (ii) If requested, Proposer shall provide a sample of the carts to the City.
 - (iii) Proposer shall describe procedures used to minimize damage to carts.
 - (iv) City shall have the sole decision in determining the appearance of carts.
- h) **Description of Collection Vehicles.** Proposer shall provide a description of all collection vehicles to be used to provide service under the Agreement. Collection vehicles shall comply with the requirements of the Agreement. Descriptions shall include:
- (i) Make, model, and age of each proposed vehicle. Photos of each type of vehicle

- proposed should be included.
- (ii) Size of vehicles.
 - (iii) Number of front line and spare vehicles to be used to perform each service.
 - (iv) Any future equipment to be acquired and a timeline for acquisition of new equipment.
 - (v) Number of personnel needed for each collection crew to conduct each service.
 - (vi) Proposed maintenance program for all collection vehicles used to perform services, including a proposed frequency of cleaning vehicles.
 - (vii) Environmental features or benefits of proposed collection vehicles (e.g., compressed natural gas).
 - (viii) Contractor shall clean up any materials including leakage of fluids spilled from Contractor's vehicles, or by Contractor's employees or subcontractors while performing services pursuant to this Agreement. During transport, all materials shall be contained, covered, and enclosed so that leaking, spilling, and blowing of materials does not occur. Contractor shall be responsible for the cleanup of any spillage or leakage caused by Contractor, Contractor's vehicles or Contractor's employees or subcontractors. Contractor shall perform all clean-ups within two (2) hours of the earliest of either the (i) notification of spillage or leakage or (ii) knowledge of spillage or leakage by Contractor or Contractor's employees or subcontractors.
- i) **Disposal and Processing Facility Information.** Proposers shall provide the following information for all disposal and processing facilities to be used to provide services under the Agreement.
- (i) Name, location, and description of the facility and the type of material that will be processed and/or disposed at the location.
 - (ii) Name of owner and operator of the facility(ies), identifying whether the company that owns and/or operates the processing facility is the same as the Proposer, a related-party entity, or subcontractor.
 - (iii) Contact name and phone number of the site manager.
 - (iv) Term of the Proposer's Agreement with the facility and/or limitations.
 - (v) If the facility is owned and operated by the Proposer, provide a guarantee to provide the processing and/or disposal services proposed and guaranteeing the capacity required over the term of the agreement. If the facility is not owned and operated by the Proposer, provide a letter from the facility owner and operator that documents their commitment to provide the processing and/or disposal services proposed and guaranteeing the capacity required over the term of the agreement. If the capacity guaranteed to the City relies on development of a new facility or expansion of an existing facility, describe the development or expansion plans, additional capacity to be constructed, schedule for development/expansion, and permitting status of the development/expansion plan.
- j) **Description of Customer Service.** Proposers shall include a description of customer service policies and procedures. Proposers shall include the following:
- (i) Description of customer complaint resolution procedures.
 - (ii) Proposed customer call center information including location of call-center and a direct point of contact should issues arise.
 - (iii) Description of proposed policies for setouts that exceed set-out limits including

documentation, communication with residents and communication with the City.

- k) **Description of Customer Billing Policies and Procedures.** Proposer shall describe the policies and procedures to be used for billing services (excluding baseservices for residential services). Proposer shall include a description of proposed nonpayment procedures.
- l) **Description of Transition Plan.** Proposer will describe its proposed strategies to ensure a smooth transition from the current contractor to the successful Proposer. The proposed transition plan is of critical importance to the City. In the transition plan, Proposer must describe the following:
- (i) Individual or group of individuals that will oversee the execution of the transition plan.
 - (ii) Proposed approach including equipment, personnel, and schedule, for delivering carts to residential service units. Proposers shall also describe how the delivery of carts will be conducted in coordination with removal of the existing cans/carts used by customers.
 - (iii) Proposed approach for commercial container delivery, including a proposed date for the completed transition, if the Proposer elects to respond to Alternate #3.
 - (iv) Overall schedule for the transition.
 - (v) Proposed strategies for customer communication regarding the transition of service providers, including residential service units and, if responding to Alternate #3, commercial service units.
 - (vi) Description of exceptions to Agreement. Proposer shall identify all exception(s) to this RFP and the Agreement. If Proposer identifies an exception(s), Proposer shall clearly identify the exception(s) and state the reason for such exception(s). For each exception noted, Proposer shall provide alternative language for the City's consideration. Any exceptions to the RFP or the Agreement will be considered and included in the City's evaluation. If Proposer fails to list any **exceptions, Proposer shall not raise any exceptions later if selected for award.**

3. Experience and References

a) Experience of Key Personnel

Proposer shall provide an organization chart for key personnel and job descriptions indicating the qualifications and experience of key personnel the Proposer would assign to the transition team and to the ongoing management of the services provided under the Agreement. For positions that are currently unfilled, identify minimum qualifications for that position. Specify the amount of time everyone will be dedicated to work on the contract. At a minimum, key personnel shall include general manager, operations manager, and maintenance manager and any other personnel that will have regular contact with the City.

b) References

Proposers shall provide a minimum of three references for other communities, preferably in the Dallas-Fort Worth Metroplex, for which the Proposer is currently providing similar services. For each reference, Proposer shall provide the following:

- i. Name of community and description of services provided, including number of residential service units and commercial service units.
- ii. Contact person, including name, title, phone number, and email address.
- iii. Number of years of service and year in which services began.

4. Insurance, Performance Bond, and Financial History

- a) Proposal shall include a statement that the Proposer agrees to comply with the performance bond and insurance requirements set forth in the Agreement.
- b) Proposer shall furnish a copy of the Proposer's most recent audited financial statement. In the event the Proposer does not have an audited financial statement, Proposer may substitute non-audited financial statement and complete federal tax return for the last two (2) years.

5. Other Forms

- a) Proposers must complete Form 2 – Conflict of Interests
- b) Proposers must complete Form 3 – Pricing Information

SECTION IV: PROPOSAL EVALUATION

Award of an Agreement will be based upon the best value for the City. The Proposals will be evaluated using the following criteria and scoring system. The following table shows the maximum points and relevant Proposal content that will be considered for each scoring criteria.

Proposal Evaluation Criteria

Criteria	Proposal Content Considered	Maximum Points
Letter of Intent and Company Overview	Section 1	10
Method of Approach	Section 2	30
Experience of Key Personnel	Section 3	30
Insurance, Performance Bond, and Financial History	Section 4	30

The City may elect to conduct interviews of Proposers. If the City conducts interviews, the presentation shall be led by the Proposer's proposed day-to-day contact person for the City. Interviews are tentatively scheduled for a date to-be-specified during THURSDAY, MARCH 17, 2022 AT 7:00 PM Central Time. Proposers will be re-scored once the interviews are complete.

FORM 1: Company Information

Company Name:	
Address:	
Contact Person:	
Telephone Number:	
Fax Number:	
Email Address:	
Number of Years in Business:	

FORM 2: Conflict of Interest

Texas Local Government Code §176.006(a) requires a vendor to file a completed conflict of interest questionnaire in the form prepared by the Texas Ethics Commission (Form CIQ) if the vendor has a business relationship with a local governmental entity and:

1. Has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that (i) an Agreement between the local governmental entity and vendor has been executed; or (ii) the local governmental entity is considering entering into an Agreement with the vendor;
2. Has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that (i) an Agreement between the local governmental entity and vendor has been executed; or (ii) the local governmental entity is considering entering into an Agreement with the vendor; excluding any gift described by Texas Local Government Code Section 176.003(a-1); or
3. Has a family relationship with a local government officer of that local governmental entity.

The completed questionnaire must be filed with the City Secretary not later than the seventh business day after the later of:

1. The date that the vendor (A) begins discussions or negotiations to enter into an Agreement with the local governmental entity; or (B) submits to the local governmental entity an application, response to an RFP or bids, correspondence, or another writing related to a potential Agreement with the local governmental entity; or
2. The date the vendor becomes aware (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Texas Local Government Code §176.006(a); (B) that the vendor has given one or more gifts described by Texas Local Government Code §176.006(a); or (C) of a family relationship with a local government officer.

It is the responsibility of every vendor filling out and submitting a proposal pursuant to this RFP to determine if there is a conflict meeting the parameters listed above. If so, the City of Lucas requires this Questionnaire be completed and turned in with the proposal.

Note that Texas Local Government Code §176.013 establishes criminal penalties for failing to answer and submit a conflicts of interest questionnaire when required to do so as well as allows the City to declare an Agreement void if the City determines the vendor failed to submit the required questionnaire.

CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

FORM CIQ

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY	
Date Received	

1 Name of vendor who has a business relationship with local governmental entity.

2 **Check this box if you are filing an update to a previously filed questionnaire.** (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information is being disclosed.

 Name of Officer

4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

Yes No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

Yes No

5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

6 **Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).**

7

 Signature of vendor doing business with the governmental entity

 Date

CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

- (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
- (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
- (3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

- (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
- (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

- (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
- (B) that the vendor has given one or more gifts described by Subsection (a); or
- (C) of a family relationship with a local government officer.

Disclosure of Interested Parties (Form 1295)

Prior to entering into an Agreement with the City for the services to be provided pursuant to this RFP, the successful Proposer must complete a “Disclosure of Interested Parties” form (Form 1295) on the Texas Ethics Commission website at www.ethics.state.tx.us . By law, the City cannot sign an Agreement with the successful Proposer until Form 1295 is completed.

Certification Regarding Boycotting Israel

Texas Government Code §2270.002 prohibits a governmental entity from entering into an Agreement with a company for goods and services unless the Agreement contains a written verification from the company that the company does not boycott Israel and that it will not boycott Israel during the term of the contract. Any proposer that cannot so certify shall be disqualified.

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FORM 3: Pricing Information - Proposed Fees for Residential Services

Proposers shall complete this form to provide the City with an understanding of the base fees for residential service collection.

Residential Services	
Description	Proposed Monthly Fee per Residential Service Unit
<i>Collection and Disposal Processing Services</i>	
Residential solid waste collection once per week	
Alternate #1 Enhanced residential solid waste collection once per week	
Residential brush removal unlimited BUNDLED brush placed curbside for collection weekly	
Residential brush removal unlimited UNBUNDLED brush placed curbside for collection twice per month	
Alternate #2 Custom Brush Removal	
Residential Bulky Item Removal	
Alternate #3 Subscription-based Recycling every other week	
Alternate #4 Manure/Stable Matter Collection	
TOTAL PROPOSED MONTHLY RESIDENTIAL FEE	
<i>Additional Cart Services</i>	
Additional 95-gallon Solid Waste Cart	
TOTAL PROPOSED MONTHLY ADDITIONAL FEE	

1. Proposed fees exclude 7% franchise fee.
2. Includes disposal and/or processing of collected material.
3. Includes purchase, assembly, and initial distribution of carts.
4. Includes storage, repairs, replacements, subsequent distribution of carts, and other cart responsibilities.
5. Sum of all above items. Contractor shall provide a 10% discount for senior citizens, as described in the Agreement.

APPENDIX A
Current Rates

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Trash Collection Services

City of Lucas Guidelines: The City of Lucas contracts with Barnes Waste Disposal, Inc. (BWDI) for trash collection services. The charge for trash collection is added to your monthly water bill. If your water is provided by another source, you will receive a bill from the City of Lucas for trash service only.

General Information:

Time: To avoid missing collection, please be sure to have ALL trash out by 7 a.m. on your day of service.

Basic Service: The basic monthly service rate is for up to 120 gallons of trash collected each week from a single residence, which is equivalent to (1) 96-gallon polycart container plus up to 3 kitchen sized trash bags. Upon request, each residence will be supplied with (1) 96-gallon polycart at no charge. Basic service is \$22.35 per month (includes tax).

Expanded Service: The expanded monthly service rate is for up to 240 gallons of trash collected each week from a single residence, which is equivalent to (2) 96-gallon polycart containers plus up to 3 kitchen sized trash bags. Residents should contact BWDI to request expanded service. BWDI will then notify the City and your bill will be adjusted for the additional monthly cost. Expanded service does not change the collection frequency or the amount of included bulky items collected. Expanded service is \$27.28 per month (includes tax).

Expanded+ Service: The expanded+ monthly service rate is for up to 340 gallons of trash collected each week from a single residence, which is equivalent to (3) 96-gallon polycart containers plus up to 3 kitchen sized trash bags. Residents should contact BWDI to request expanded service. BWDI will then notify the City and your bill will be adjusted for the additional monthly cost. Expanded service does not change the collection frequency or the amount of included bulky items collected. Expanded service is \$32.21 per month (includes tax).

2 Basic Service: The 2 basic service rate is for up to 440 gallons of trash collected each week from a single residence, which is equivalent to (4) 96-gallon polycart containers plus up to 3 kitchen sized trash bags. Residents should contact BWDI to request expanded service. BWDI will then notify the City and your bill will be adjusted for the additional monthly cost. Expanded service does not change the collection frequency or the amount of included bulky items collected. Expanded service is \$37.92 per month (includes tax).

BWDI shall have no obligation to collect trash, garbage, or refuse in excess of the service level chosen for your residence. If your residence requires more than the above described services, you may request another polycart and each additional 100 gallons of refuse will be collected at an additional rate. If the amount of trash set out for collection each week exceeds your chosen level of service, you will automatically be raised to the level of service that is appropriate for the amount being collected.

Bulk Items: You must call in advance for bulk items (furniture, appliances, junk clean out, yard debris). Due to limited space on the truck, if you have not called in advance, items may be left. Please label any items that are not obvious as refuse. Route personnel are limited to 2 cubic yards of bulk, twice a month, collected with regular trash once it has been scheduled. Two cubic yards is 6ft long x 3ft wide x 3ft tall, or about the size of a loveseat.

Special Preparations for Bulk Items:

- Carpet** must be cut into strips no wider than 48 inches and rolled into secured bundles of no more than 35 lbs.
- Glass Doors, Mirrors, or Windows** must have the glass broken out and placed into a sealed cardboard or hard-sided container to be collected with the rest of the item.
- Basketball Goals** must be drained and disassembled.

Special Collections: For large amounts of refuse, furniture, bulk items, and/or yard debris in excess of 2 cubic yards, you must call BWDI directly to schedule a special collection.

Lawn Debris: All lawn clippings should be contained in either the paper “green bags” or 2mil plastic garbage bags, and weigh no more than 35 lbs. per bag, with a limit of 5 bags collected per week. Excessive grass, leaves, and lawn clippings are subject to an extra charge.

Cut and bundled limbs will be collected in unlimited amounts so long as limbs and brush are cut to no longer than 48 inches in length and bound in bundles of no more than 6 inches in diameter, weighing no more than 35 lbs. A different truck may collect tree limbs/brush if more than 2 cubic yards is placed out.

In addition, BWDI will schedule larger/uncut brush piles on a first come, first serve basis of up to (10) cubic yards, twice per calendar year. This complimentary service requires brush to be curbside and will not be collected with your regular trash. Contact BWDI to schedule a collection.

BWDI is not responsible for collecting brush or lawn debris generated by lawn services or any person that is not the account holder.

Extra Services: such as carryout from your backyard, pasture, tree line, etc. can be arranged and will be quoted on an “as needed” basis. The cost for these services will be billed directly from BWDI, and must be paid prior to collection.

Stable Matter: Manure or stable matter will be billed directly by BWDI and will not be collected with regular trash, unless the customer has contacted BWDI first. Customers must provide their own containers for manure or stable matter. Contact BWDI for more information on this service.

The following items will not be collected by BWDI: Including but not limited to hazardous waste, roofing material, shingles, dirt, rock, brick, steel shavings, concrete, hot ashes, automotive parts, tires, batteries, liquid paint, motor oil, solvents, pool chemicals, refrigerant appliances, radioactive material, pathogens, toxic waste, acidic waste, or volatile material.

BWDI will not collect or dispose of construction, remodel, or landscape debris generated by a business, individual, or entity providing services to the property owner.

Household Hazardous Waste: Please call BWDI for monthly collection dates and instructions.

Holiday Schedule: (BWDI only observes the following holidays)

New Year’s Day
Labor Day

Memorial Day
Thanksgiving Day

Fourth of July
Christmas Day

If your service day falls on or after these holidays your trash collection will be one day later, *for that week only*. Friday routes will be collected on Saturday. Service days preceding a holiday will not be affected. Bulk items will not be collected on holiday weeks.

Office Hours: Our office is typically open Monday – Thursday from 8 a.m. – 5 p.m., and Friday from 8 a.m. – 3 p.m. We do try to answer phone calls as they come in, however, if we are on the phone with another customer or out of the office, you may need to leave a message. We will return the call of anyone who has left a message while we were unavailable.

Containers provided to the customer by Barnes Waste Disposal, Inc. are on loan from the company to be used while the customer has service in good standing with Barnes Waste Disposal, Inc. In the event of a service cancellation, whether initiated by the customer or the company, the trash container must be returned to Barnes Waste Disposal Inc. If a container is not able to be recovered by the company, the customer will be charged for the container.

Please be sure to add wastedpl@swbell.net and sales@barneswds.com to your e-mail contacts or “white list” to ensure that you do not miss a notification from our office. We never sell your e-mail address, and will only use them to contact you regarding your service or billing.

If you have any questions or concerns, please feel free to contact us at 972-734-3333, wastedpl@swbell.net, or www.barneswds.com

APPENDIX B
Recycling Services

DRAFT

APPENDIX C
Insert Agreement Here

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City of Lucas

City Council Agenda Request

December 16, 2021

Item No. 11

Requester: Public Works Director Scott Holden

Agenda Item Request

Consider amending FY 21/22 budget by appropriating \$57,300 from 2017 Certificates of Obligation funding to account 21-8210-490-130 and authorize the City Manager to enter into an agreement with Interstate Contracting & Coating, Inc. to replace the stem in the McGarity Elevated Tank.

Background Information

McGarity Elevated Tank stem has developed a leak which has been contained with the application of a temporary mechanical patch. Due to the nature of the leak, this is considered an emergency repair. The timing of project is critical because the City will need to notify the public to conserve water during the stem replacement and it is necessary to perform the work during a time of low water consumption. To address the repair, staff contacted three (3) tank contractors for an evaluation of the McGarity Tank stem and to provide a proposal to repair the leak. Staff has received three proposals to remove and replace the stem and after conducting a thorough review of the proposals, staff is recommending Interstate Contracting & Coating, Inc. However, the greatest challenge will be the greater than normal fluctuation in the price of materials due to current economic circumstances. To accommodate the fluctuation in pricing, a 20% contingency was added to the proposal submitted by Interstate Contracting & Coating, Inc.

Attachments/Supporting Documentation

1. Cost proposals to repair the McGarity Tank Stem
 - a. Interstate Contracting & Coating, Inc.
 - b. Phoenix Fabricators & Erectors
 - c. Dale's Welding Services
2. Water Fund Reserve Schedule
3. 2017 Certificates of Obligation Schedule
4. 2019 Certificates of Obligation Schedule

Budget/Financial Impact

The estimated proposal from Interstate Contracting & Coating, Inc. is \$57,300 to be funded from one the following sources:

- | | |
|------------------------------------|---|
| 1. Water Fund Reserves | \$5,216,362 (after GASB 54 requirement) |
| 2. 2017 Certificates of Obligation | \$647,658 (remaining balance) |
| 3. 2019 Certificates of Obligation | \$1,471,835 (remaining balance) |



City of Lucas

City Council Agenda Request

December 16, 2021

Recommendation

When expending city funding sources for capital projects, the City will utilize the most restrictive sources and those funds held the longest first before moving down to the next category of available funds. The typical order in which funding sources are spent certificates of obligation, restricted reserves, impact fees, and unrestricted reserves. Staff recommends amending FY 21/22 budget by appropriating \$57,300 from 2017 Certificates of Obligation funding to account 21-8210-490-130 McGarity Stem Replacement to address outstanding water concerns at McGarity Elevated Tank.

Motion

I make a motion to approve/deny amending FY 21/22 budget by appropriating \$57,300 from 2017 Certificates of Obligation funding to account 21-8210-490-130 and authorize the City Manager to enter into an agreement with Interstate Contracting & Coating, Inc. to replace the stem in the McGarity Elevated Tank.

INTERSTATE

BID-PROPOSAL

Interstate Contracting & Coating, Inc. agrees to supply all equipment, labor, and materials necessary to remove and replace the interior dry and wet inlet pipe on one (1) 300,000-gallon waterspheroid storage tower.

SCOPE OF WORK TO BE PERFORMED

- The existing interior dry and existing interior wet area inlet pipe will be safety cut into 10' sections and safety removed.
- A new class 250 inlet pipe will be installed in the dry and wet areas where a new expansion joint will be installed allowing the new inlet pipe to move freely while maintaining the necessary seal.

SURFACE PREPARATIONS

- The new inlet dry area pipe will be sandblasted to an **SSPC-SP 10 / NACE 2 Near-White Blast Cleaning** where the surface area shall be free of all visible dirt, dust, mill scale, rust, and oxides where a single coat of **Sherwin-Williams Zinc Primer** applied at a DFT of 2.0 to 3.0 prior to being installed.
- There will be two (2) coats of **Sherwin-Williams Macropoxy 646** will be applied at a DFT of 8.0 to 10.0 mils once the new pipe is installed and tested.
- The new inlet wet area pipe will be sandblasted to an **SSPC-SP10 / NACE 2 Near-White Blast Cleaning** where the surface area shall be free of all visible dirt, dust, mill scale, rust, and oxides where a single coat of **Sherwin-Williams Zinc Primer** applied at a DFT of 2.0 to 3.0 mils prior to be installed.

- There will be two (2) coats of **Sherwin-Williams Macropoxy 646PW** will be applied at a DFT of 5.0 to 6.0 mils.

HYDROSTATIC TESTING

- All weld seams will be cleaned and tested prior to being painted and put back in service:

Price:

\$ 47,750.00

THIS PRICE WILL REMAIN IN EFFECT FOR THIRTY DATES

ACCEPTANCE

I, _____ have read and fully understand the scope of
Please Print Full Name

work that will be performed by **Interstate Contracting & Coating, Inc.** whereby my signature I am in full agreement with the scope of work to be performed.

CITY OF LUCAS, TEXAS

INTERSTATE CONTRACTING & COATING, INC.

Authorized Signature

Tommy Manley
President/CEO

Please Print Full Name

November 18th, 2021

Date of Acceptance

***INTERSTATE CONTRACTING & COATING, INC.
P. O. BOX 11071
FORT SMITH, ARKANSAS 72917***

***1-(479)-769-2317
ARKANSAS***

***1-(970)-518-6336
COLORADO***

***1-(956)-243-6874
TEXAS***



November 8, 2021

Mr. Scott Holden, P.E.
Public Works Director
City of Lucas
665 Country Club Rd
Lucas, TX 75002
Ph: 972.912.1208
Email: sholden@lucastexas.us

REFERENCE: McGarity Elevated Tank (standpipe replacement)
LOCATION: Lucas, Texas

Dear Mr. Holden,

We would like to offer the following scope of work:

- Install a carbon steel RFSO flange on the existing riser pipe above the upper platform to bolt to a new 304L RFSO flange welded to the new riser pipe
- Replace existing 16" riser pipe with new 16" 304L sch10S stainless steel riser pipe
- Install a new 16" expansion joint in the fill line

Special Terms:

Erection location shall be clear, level, unobstructed and easily accessible by automobile. The tank shall be drained and sediment removed by the Owner prior to our mobilization.

Price:

All the above to be completed in a substantial and workmanlike manner for **\$80,000.00**.

All work will be done on the same mobilization. We anticipate that our work will be completed in one week from approved drawings.

Our price will remain firm for 30 days from the date of this Proposal.

We will require a Purchase Order or signed Proposal prior to ordering the materials

Terms:

50% upon receipt of order
50% upon completion of work



November 8, 2021

Proposal Continued

Page 2

Insurance:

We carry workman's compensation, occupational disease, employer's liability, public liability, and professional liability insurance covering the work. We also carry a \$10,000,000 excess liability policy. We will furnish our standard limits of insurance for no additional cost.

Payment Terms:

We require 10% of the total amount stated above upon execution of the Subcontract/PO. Subsequent payment amounts will be determined based on an approved Schedule of Values prepared by Phoenix Fabricators and Erectors, LLC. Payment to be made as per terms listed above with monthly invoicing based on percentage of work completed. Payment shall be made via ACH or wire transfer within 30 days of the invoice date. Unpaid balances greater than thirty (30) days will accrue interest at a rate of 1.5% per month. In the event purchaser fails to abide by the terms and conditions of the contract requiring Phoenix Fabricators and Erectors, LLC to collect on amounts due and owing, purchaser agrees to pay all attorney fees and all costs incurred by Phoenix Fabricators and Erectors, LLC as a result.

Please contact me if you have questions at (270) 318-1217 or jonathan.dixon@phoenixtank.com.

Sincerely,
Phoenix Fabricators and Erectors, LLC

Jonathan R. Dixon, V.P. Sales

From: Dale's Welding Services
Address: 9824 County Rd 307
Terrell, TX 75161
Phone: 214-507-9569
email: dalesweldingsvc@sbcglobal.net

10/27/2021
Estimate

To: City of Lucas, TX
Attn: Scott Holden, P.E.
Public Works Director
Phone: 972-912-1208
email: sholden@lucastexas.us

Project: 300,000 Gallon Elevated Water Tank
City of Lucas, Texas

Description of work to be performed: 16" Fill Pipe Replacement

1. Remove (cut out) existing 16" fill pipe out of inside of Dry Riser Column from existing dresser coupling at ground level to approximately 5' below existing fill pipe tank bowl penetration. Approximately 120' of existing pipe to be removed.

2. Furnish and install approximately 120' of new 16" schedule 40 STD BLK A53 PE Steel Fill Pipe. The new Fill Pipe will be fabricated with 16" 150# slip-on-weld-on Steel bolt on flanges. 22 flanges total, with 1/8" red rubber gaskets and 16" 150# FLG BLK bolt and nut sets.

Amount of Quote for the above Listed Items: \$ 95,362.60

Sandblasting and Painting of new 16" Fill Pipe
Coating System:

1. Sandblast exterior of new 16" Fill Pipe and Flanges.
2. 1st Coat of Material- Tnemecs Series 91-H20 Hydro-Zinc
3. 2nd Coat of Material- Tnemecs Series 66 HI- Build Epoxoline
4. 3rd Coat of Material- Tnemecs Series 66 HI-Build Epoxoline

Amount of Quote for Sandblasting and Painting new Fill Pipe: \$ 15,120.00

Quote Includes:

- a. Certified Welders
- b. Welders Helpers
- c. Welding Equipment
- d. All Welding Supplies
- e. Special Rigging Equipment
- f. All Materials (new 16" Steel Pipe, Flanges, Gaskets and Bolt & Nut Sets)
as well as any Fabrication Costs.
- g. Insurance Certificates

City of Lucas
Water Fund Reserves by Fiscal Year (Unaudited)

	Actual 2013-2014	Actual 2014-2015	Actual 2015-2016	Actual 2016-2017	Actual 2017-2018	Actual 2018-2019	Actual 2019-2020	Projected 2020-2021	Projected 2021-2022
Unrestricted Cash Balance per Audit Report	\$ 3,382,193	\$ 4,295,531	\$ 5,579,746	\$ 5,548,487	\$ 5,996,412	\$ 6,215,622	\$ 6,945,017	\$ 6,945,017	\$ 6,945,017
Adjusted For:									
Projected Excess Fund Balance FY 20-21								\$ 331,300	\$ 331,300
Projected Excess Fund Balance FY 21-22									\$ 218,584
Additional Restrictions:									
Capital Project funding approved at (3-2-17) City Council Meeting Customer Deposits	\$ (209,565)	\$ (223,300)	\$ (239,250)	\$ (245,600)	\$ (247,600)	\$ (256,220)			
				\$ (120,979)					
Reserve Balance Prior to GASB 54 Requirement	\$ 3,172,628	\$ 4,072,231	\$ 5,340,496	\$ 5,181,908	\$ 5,748,812	\$ 5,959,402	\$ 6,945,017	\$ 7,276,317	\$ 7,494,901
Reserve Balance in Operating Months	13	15	19	16	18	18	20	20	19.8
50% Current Year General Fund Expenditures (6 months)	\$ (1,397,368)	\$ (1,605,672)	\$ (1,656,470)	\$ (1,897,744)	\$ (1,949,722)	\$ (1,983,894)	\$ (2,081,761)	\$ (2,127,754)	\$ (2,278,539)
Reserve Balance After GASB 54 Requirement	\$ 1,775,260	\$ 2,466,559	\$ 3,684,026	\$ 3,284,164	\$ 3,799,090	\$ 3,975,508	\$ 4,863,256	\$ 5,148,563	\$ 5,216,362
Reserve Balance in Operating Months	7	9	13	10	12	12	14	14	13.8
Restricted during Fiscal Year Audit:									
Capital Project Funding approved (3-2-17)(51-1007-50/3105)					\$ 120,979	\$ 120,979	\$ 120,979	\$ 120,979	\$ -
Reserve Funding Bait Shop Water Line(51-1007-75/51-3106-75)							\$ 31,118	\$ 31,118	\$ -
Impact Fees (Lakeview Downs) (51-1001-75)/(51-3106-10)							\$ 27,500	\$ 33,000	\$ 33,000
Impact Fees (Capital Projects) (51-1001)/(51-3106-15)							\$ 352,448	\$ -	\$ -
Debt Service (51-1007-40)/(51-1008)/(51-3106)	\$ 360,000	\$ 365,000	\$ 375,000	\$ 425,000	\$ 435,000	\$ 477,800	\$ 515,000	\$ 495,000	\$ 410,000
Project Mgmt (51-1007-70)						\$ 69,945	\$ 17,486	\$ -	\$ -
Customer Deposits (51-1012)/(51-3106-20)							\$ 258,400	\$ 278,625	\$ 258,400
Reserve Restricted per Audit Report	\$ 360,000	\$ 365,000	\$ 375,000	\$ 425,000	\$ 555,979	\$ 668,724	\$ 939,365	\$ 1,311,170	\$ 701,400

City of Lucas
Certificates of Obligation
Series 2017
Payments applied against outstanding Bond Funding
Water Fund Account 51-1011

Beginning Balance	3,000,000
Interest Earned	<u>146,105</u>
Subtotal	<u>3,146,105</u>

Payments Applied:

21-8210-490-120	Parker Rd Phase 1	(197,364)
21-8210-490-122	Parker Rd Phase 2	(444,078)
21-8210-490-125	Elevated Water Tower	(103,875)
21-8210-490-126	Parker Rd Phase 3T	(6,360)
21-8210-490-127	SCADA	(90,823)
21-8210-490-128	North Pump Station	<u>(1,655,947)</u>
Remaining Balance		<u><u>647,658</u></u>

GL Balance	676,982
O/S Wire	<u>(29,325)</u>
Balance	<u><u>647,658</u></u>

City of Lucas
Certificates of Obligation
Series 2019
Payments applied against outstanding Bond Funding
General Fund Account 51-1013

Beginning Balance	1,450,000.00
Interest Earned	<u>21,835.23</u>
Subtotal	<u>1,471,835.23</u>

Payments Applied:

Remaining Balance	<u><u>1,471,835.23</u></u>
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GL Balance 12-7-21	<u><u>1,471,835.23</u></u>
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Minus O/S Wire	<u><u>1,471,835.23</u></u>
Remaining Balance 2019 CO	<u><u>1,471,835.23</u></u>
Balance	<u><u>1,471,835.23</u></u>



City of Lucas

City Council Agenda Request

December 16, 2021

Item No. 12

Requester: Development Services Director Joe Hilbourn

Agenda Item Request

Consider First Amendment to the Development Agreement between the City of Lucas, Texas and Megatel Homes, III, LLC and an addendum to declaration of covenants, conditions, and restrictions for Enchanted Creek Homeowners Association, Inc.

Background Information

This property is currently zoned R-1 (Residential 1-acre) and has an approved development agreement and concept plan. This plat proposes 66 lots on 135.743 acres, with an average lot size of 2.05 acres. The smallest lot is greater in size than the required one acre.

The preliminary plat was originally approved on December 1, 2016, and expired December 1, 2021. The approval of a preliminary plat expires five years after the date of City Council approval unless a final plat is submitted and approved by the Planning and Zoning Commission for the property within such period, or the period is extended by the Planning and Zoning Commission upon written request of the owner. If the time period is not extended or a final plat is not submitted and approved by the Planning and Zoning Commission within the 60-month period, the preliminary plat approval shall be null and void, and the owner shall be required to submit a new plat for the property subject to the then-existing zoning, subdivision and other regulations.

The reasons for the delays on the project as described by the applicant are: The homebuilding groups initially experienced a slower than anticipated home sales velocity in Phase 1, which lead to the replacement phase being delayed. As the Owner's representative, we have full ability to comply with the conditions / terms of the plat.

The Planning and Zoning Commission denied the request for the extension. The developer has since agreed to a plat note that will not permit structures in the floodplain. Additionally, the developer has amended the Development agreement, and HOA CCR's to state "no permanent structures shall be constructed or placed in within the floodplain of the property".

Attachments/Supporting Documentation

1. Approved development agreement
2. Proposed amended and restated development agreement
3. Addendum to declaration of covenants, conditions, and restrictions for enchanted creek



City of Lucas
City Council Agenda Request
December 16, 2021

Item No. 12

Budget/Financial Impact

NA

Recommendation

Staff recommends approving this first amendment to development agreement, and an addendum to declaration of covenants, conditions, and restrictions for enchanted creek homeowners association as presented.

Motion

I make a motion to approve/deny the First Amendment to the Development Agreement between the City of Lucas, Texas and Megatel Homes, III, LLC and an addendum to declaration of covenants, conditions, and restrictions for Enchanted Creek Homeowners Association, Inc.

NOW, THEREFORE, in consideration of the covenants and conditions contained in this Agreement, the City and Developer agree as follows:

Article I
Term

This Agreement shall commence on the last date the Parties have executed the Agreement (“Effective Date”) and shall terminate on the date (“Expiration Date”) that is the earlier date of (1) the expiration of ten (10) years after City’s acceptance of the Road Improvements, the Waterline Improvements, the Trail Dedication, and the Parker Road Dedication or (2) the date the Developer and City have fully satisfied all of the terms and condition herein; or (3) January 1, 2024; or (4) unless sooner terminated herein.

Article II
Definitions

For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

“Approved Plans” shall mean the plans and specifications for the Road Improvements and Waterline Improvements approved by the City.

“City” shall mean the City of Lucas, Texas.

“Commencement of Construction” shall mean that (i) the plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction of the Road Improvements and Waterline Improvements; (ii) all necessary permits for the construction of the Road Improvements and Waterline Improvements pursuant to the respective plans therefore having been issued by all applicable governmental authorities; and (iii) the construction of the Road Improvements and Waterline Improvements have commenced.

“Completion of Construction” shall mean (i) the construction of the Road Improvements and Waterline Improvements have been substantially completed; and (ii) the final permanent certificate of completion for the Road Improvements and Waterline Improvements have been issued to the City, or the City has accepted the Road Improvements and Waterline Improvements, as the case may be.

“Developer” shall mean Megatel Homes III, LLC, or its assigns.

“Effective Date” shall mean the last date of execution hereof.

“Force Majeure” shall mean any contingency or cause beyond the reasonable control of Developer, as applicable, including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, adverse weather, governmental action or inaction (unless caused by negligence or omissions of Developer), fire, explosions or floods, strikes, slowdowns or work stoppages, shortage of materials and labor, or delays by the City.

“Open Space” shall mean any land required to be dedicated to the City per City ordinances.

“Park Fees” shall mean any payments required by City ordinance to be paid by the Developer or homebuilder for satisfaction of park land purchases or improvements.

“Property” shall mean the real property described by meets and bounds in the attached Exhibit “A”.

Article III **Road Dedication and Improvements**

3.01 Parker Road Dedication. Upon acquisition of the Property by Developer or its assigns, Developer hereby agrees to dedicate to the City a sixty foot (60’) wide portion of land along the southern boundary line of the Property that runs directly parallel and is adjacent to Parker Road, for purposes of constructing, maintaining, and using a public roadway thereon. Upon its dedication by Developer to City, the right-of-way portion dedicated shall be sixty (60) feet in width from the centerline of Parker Road to the northern boundary of the Parker Road right-of-way.

3.02 Construction of the Road Improvements. Developer shall construct at Developer’s cost and expense a thoroughfare on the Property to connect an existing roadway on the Property to a point in line with the southern boundary line of the proposed Wylie Independent School District tract depicted on the Concept Plan (the “WISD Tract”); provided, that Developer shall only be responsible for connecting the aforementioned Road Improvements to the location of the western point of the bridge that will be built connecting the Property to the WISD Tract. At a future unspecified date, the City shall be responsible for constructing at its own cost the bridge that will connect these Roadway Improvements to the actual southern boundary line of the WISD Tract. Notwithstanding the foregoing, the placement of the road extension constructed pursuant to this section may be re-located upon mutual written agreement of the Parties based on the course of actual development of the Property.

3.03 Compliance With City Standards. Developer agrees to construct the Roadway Improvements in accordance with the applicable standards, ordinances, and regulations adopted by the City (“City Standards”). Developer shall submit plans for the design and construction of the Road Improvements (“Construction Plans”) to the City for review and approval by the City. Subject to extensions for delay caused by events of Force Majeure and to the City’s approval of the Approved Plans, Developer agrees, at Developer’s sole cost, to construct or have constructed the Road Improvements. Developer and City acknowledge and agree that neither Party has any obligation to condemn or pay any sum of money in connection with the dedication of right-of-way except as provided herein. Developer agrees and covenants to cause commencement of the Road Improvements on or before July 15, 2014, and to cause Completion of Construction thereof within twelve (12) months thereafter.

Article IV
Waterline Improvements

4.01 Construction of Waterline Improvements. Developer agrees to design, construct, and install, as applicable, the Parker Road Waterline Expansion and Southview Drive Waterline Extension in accordance with the applicable standards, ordinances, and regulations adopted by the City (“City Standards”), as depicted on the attached Exhibit “C”. Developer shall submit plans for the design and construction of the Waterline Improvements (“Construction Plans”) to the City for review and approval by the City. Subject to extensions for delay caused by events of Force Majeure and City’s approval of the Approved Plans, Developer agrees to construct the Waterline Improvements. The Developer agrees and covenants to cause commencement of the Parker Road Waterline Expansion on or before July 15, 2014, and to cause Completion of Construction thereof within twelve (12) months thereafter. However, in no instance shall more than forty (40) homes be constructed prior to Completion of Construction of the Waterline Improvement. The Developer agrees and covenants to cause commencement of the Southview Drive Waterline Extension when Developer begins development of the northernmost portion of the Property.

4.02 Construction Specifications for the Parker Road Waterline Expansion. Developer and City agree that the Parker Road Waterline Expansion will consist of expanding the existing six inch (6”) water line to a ten inch (10”) waterline along the portion of Parker Road that is adjacent to the Property. In no event shall Developer be responsible for paying for the cost of expanding the waterline along any portion of Parker Road that is not adjacent to the Property.

4.03 Impact Fee Credits. Developer shall provide City with proof of the cost of the Parker Road Waterline Expansion, which shall include the design, engineering, material testing, inspection, and construction costs of expanding the waterline from six inches (6”) to ten inches (10”) (the “Waterline Cost”). The proof shall be in the form of contracts and/or invoices reflecting the amount actually paid for the Parker Road Waterline Expansion. The City shall credit the Water Impact Fees applicable to the Property up to the amount of the Waterline Cost (the “Waterline Credit”). The final amount of the Waterline Credit shall be agreed upon by both Parties after completion of the Parker Road Waterline Expansion and established within a secondary letter agreement. If the amount of the Impact Fee Credit exceeds the amount of the Impact Fees actually imposed against the Property, the City shall not be required to pay any remaining or unused portion of the Impact Fee Credit in cash or equivalent to Developer or any other party, or to apply any remaining or unused portion of the Impact Fee Credit against any other fees to be assessed against the Property.

Article V
Equestrian Trail Dedication

5.01 Dedication of Equestrian Trail Space. Upon acquisition of the Property by Developer or its assigns, Developer agrees dedicate to the City a 30 foot wide strip of land located within the flood plain on the Property (the “Trail Easement”), for purposes of the installation, development, use, and maintenance by the City of an equestrian trail over and across the dedicated area (the “Trail Dedication”).

5.02 Park Fee Reimbursement. As consideration to Developer for the Trail Dedication, City agrees to waive a portion of the Park Fees assessed against the Property or lots on the Property, which waived portion of the Park Fees shall be calculated by multiplying the price per acre paid by Developer for purchase of the Property times the total acreage (rounded to the nearest thousandth decimal place) of the Trail Easement.

Article VI
Notice

Any notice to be given or to be served upon a Party hereto in connection with this Agreement must be in writing and may be given by certified or registered mail and shall be deemed to have been given and received when a certified or registered letter containing such notice, properly addressed with postage prepaid, is deposited in the United States mail, and if given otherwise than by certified or registered mail, it shall be deemed to have been given and delivered to and received by the Party (or such Party's agent or representative) to whom it is addressed when actually received by the intended recipient. Such notice shall be given to the Parties hereto at the address set forth below. Any Party hereto may, at any time by giving two (2) days written notice to the other Party, designate any other address in substitution of the foregoing address to which such notice shall be given.

If Notice to Developer:
Megatel Homes III, LLC
5512 W. Plano Parkway, Suite 300
Plano, Texas 75093

With a copy to:
Liechty & McGinnis, LLP
11910 Greenville Avenue, Suite 400
Dallas, Texas 75243
Attention: Nathan Entsminger, Esq.

If Notice to Lucas:
Jeff Jenkins, City Manager
City of Lucas
665 Country Club Road
Lucas, Texas 75002

With a Copy to:
Joe Gorfida, Jr.
Nichols, Jackson, Dillard, Hager & Smith
500 N. Akard
Suite 1800
Dallas, Texas 75201

Article VII Termination

This Agreement may be terminated by: (a) the mutual written agreement of the Parties; (b) either Party providing written notice of such termination to the other Party if the other Party breaches any of the material terms and conditions of this Agreement, and such breach is not cured by such Party within sixty (60) days after receipt of written notice thereof (or, if cure cannot be completed within said time period, if cure of such breach is not commenced within such time period and/or not thereafter diligently and continuously pursued to completion within sixty (60) days after receipt of written notice thereof); (c) by City providing written notice to Developer if Developer suffers an event of bankruptcy or insolvency; (d) by either Party providing written notice to the other Party if any subsequent federal or state legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable.

Article VIII Miscellaneous

8.01 Assignment of Agreement. This Agreement may be assigned by Developer with the prior written consent of the City which consent shall not be unreasonably withheld, conditioned, or delayed. This Agreement may not be assigned, in whole or in part, by the City. Upon the prior written consent of the City, and the execution of an assignment document assigning the rights and obligations of this Agreement to an assignee, the original Developer hereunder shall be fully released from all obligations and liability hereunder from and after the date of the assignment.

8.02 Venue. This Agreement shall be construed under and in accordance with the laws of the State of Texas and is specifically performable in Collin County, Texas. Exclusive venue shall be in state district court in Collin County, Texas.

8.03 Legal Construction. In case any one or more provisions contained in this Agreement shall be for any reason held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and it is the intention of the Parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision be added to this Agreement which is legal, valid, and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid, or unenforceable.

8.04 Savings/Severability. In case any one or more provisions contained in this Agreement shall be for any reason held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and it is the intention of the Parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision be added to this Agreement which is legal, valid, and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid, or unenforceable.

8.05 Authority. Each of the Parties represents and warrants to the other that it has the full power and authority to enter into and fulfill the obligations of this Agreement.

8.06 Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the Parties to this Agreement.

8.07 Consideration. This Agreement is executed by the Parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

8.08 Counterparts. This Agreement may be executed in a number of identical counterparts, each of which will be deemed an original for all purposes.

8.09 Representations. Each signatory represents this Agreement has been read by the Party for which this Agreement is executed, and that such Party has had an opportunity to confer with it legal counsel.

8.10 Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by all Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any Party shall not apply. Headings in this Agreement are for the convenience of the Parties and are not intended to be used in construing this document.

8.11 Binding Effect. This Agreement will be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and authorized assigns. This Agreement only inures to the benefit of, and may only be enforced by, the Parties, assignees, lender, successors, and the City. No other person or entity is a third-party beneficiary of this Agreement.

8.12 Authority. The City represents and warrants that this Agreement has been approved by the City Council of the City in accordance with all applicable public meeting and public notice requirements (including, but not limited to, notices required by the Texas Open Meetings Act) and that the individual executing this Agreement on behalf of the City has been authorized to do so. Developer represents and warrants that this Agreement has been approved on behalf of Developer and that the individual executing this Agreement on behalf of Developer has been authorized to do so. Each assignee, lender, or successor who becomes a party to this Agreement represents and warrants that this Agreement has been approved by appropriate action of such assignee, lender, or successor and that the individual executing this Agreement on behalf of such assignee, lender, or successor has been authorized to do so.

8.13 Governmental Powers; Waiver of Immunity. By its execution of this Agreement, City does not waive or surrender any of its governmental powers, immunities, or rights except as to the enforcement of this Agreement.

8.14 No Joint Venture. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the Parties, nor to cause City to be deemed to be a constituent partner of the Developer.

8.15 Legal Construction. In case 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 enforceability shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

8.16 Multiple Counterparts and Duplicate Originals. This Agreement may be executed in any number of multiple counterparts and/or duplicate originals, each of which shall be deemed an original and all of which considered together shall be deemed one and the same Agreement.

(signature page to follow)

EXECUTED on this 15th day of August, 2013.

City of Lucas, Texas

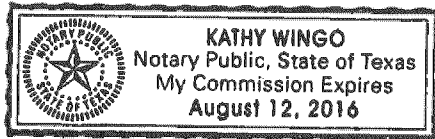
By: *Rebecca Mark*
Rebecca Mark, Mayor

Approved as to Form:

By: *Joe Gorfida, Jr.*
Joe Gorfida, Jr., City Attorney
(JJG/08-07-13/61701)

THE STATE OF TEXAS §
 §
COUNTY OF COLLIN §

The foregoing instrument was acknowledged before me this 15th day of August, 2013, by Rebecca Mark, Mayor of the City of Lucas, a municipal corporation existing under the laws if the State of Texas, in such capacity on behalf of such municipal corporation.



Kathy Wingo
Kathy Wingo
Notary Public, State of Texas

EXECUTED on this 29 day of August, 2013.

MEGATEL HOMES III, LLC
a Texas limited liability company

By: _____
Name: Armin Afzalipour
Title: _____

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the 29 day of August, 2013, by Armin Afzalipour, as President of Megatel Homes III, LLC, a Texas limited liability company, on behalf of said company.

Cheryl Stephens
Notary Public, State of Texas

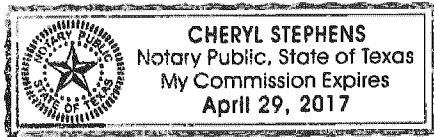


EXHIBIT "A"
LEGAL DESCRIPTION

EXHIBIT "A"
128.633 ACRES
JAMES ANDERSON SURVEY, No. 17
JOHN MCKINNEY SURVEY, ABSTRACT No. 596
COLLIN COUNTY, TEXAS

THENCE leaving the southwesterly right-of-way line of said Southview Drive, along the common line of the subject tract and a 2.00 acre tract of land described in a deed to Marie D. Harter, et ux, as recorded in Volume 4645, Page 491 of the Deed Records of Collin County, Texas the following courses and distances to wit:

South 87°16'23" West, a distance of 168.80 feet to a 5/8-inch iron rod with "KHA" cap set for corner;

South 01°37'06" East, a distance of 603.16 feet to a 5/8-inch iron rod with "KHA" cap set for corner.

North 88°01'09" East, a distance of 410.29 feet to a 5/8-inch iron rod with "KHA" cap set in the southwesterly right-of-way line of said Southview Drive for corner;

THENCE along the southwesterly right-of-way line of said Southview Drive and the easterly line of subject tract the following courses and distances to wit:

South 01°59'22" East, a distance of 618.69 feet to a 5/8-inch iron rod with "KHA" cap set for corner;

South 00°36'16" East, a distance of 413.18 feet to a 5/8-inch iron rod with "KHA" cap set for the northern corner of a corner clip at the intersection of said Southview Drive and Parker Road;

THENCE South 44°41'48" West, along said corner clip, a distance of 66.46 feet to a 5/8-inch iron rod with "KHA" cap set for the south corner of said corner clip;

THENCE leaving said corner clip, along the northerly right-of-way line of said Parker Road and the southerly line of said 427.600 acre tract the following courses and distances to wit:

North 89°53'12" West, a distance of 1047.65 feet to a 5/8 inch iron rod with "KHA" cap set for corner.

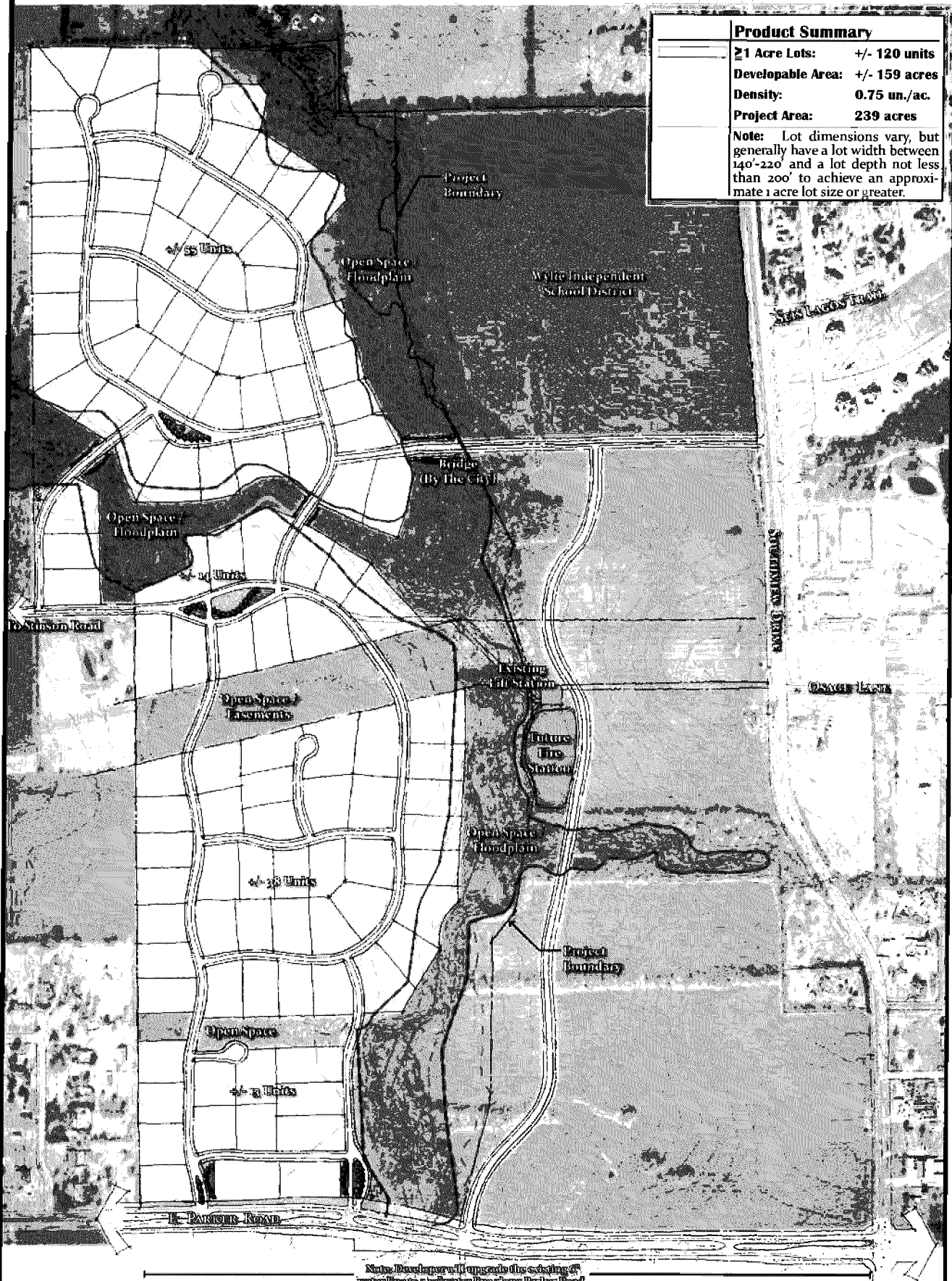
South 89°38'48" West, a distance of 512.30 feet to a 5/8-inch iron rod with "KHA" cap set for corner at the beginning of a curve to the right, through a central angle of 11°09'00", a radius of 1860.03 feet and a chord bearing and distance of North 84°46'42" West, 361.40 feet;

Northwesterly, along said curve to the right, an arc length of 361.97 feet to a 5/8-inch iron rod with "KHA" cap set for corner;

North 79°12'12" West, a distance of 106.44 feet to the POINT OF BEGINNING and containing 128.633 acres or 5,603,244 square feet of land, more or less.

EXHIBIT "B"
CONCEPT PLAN

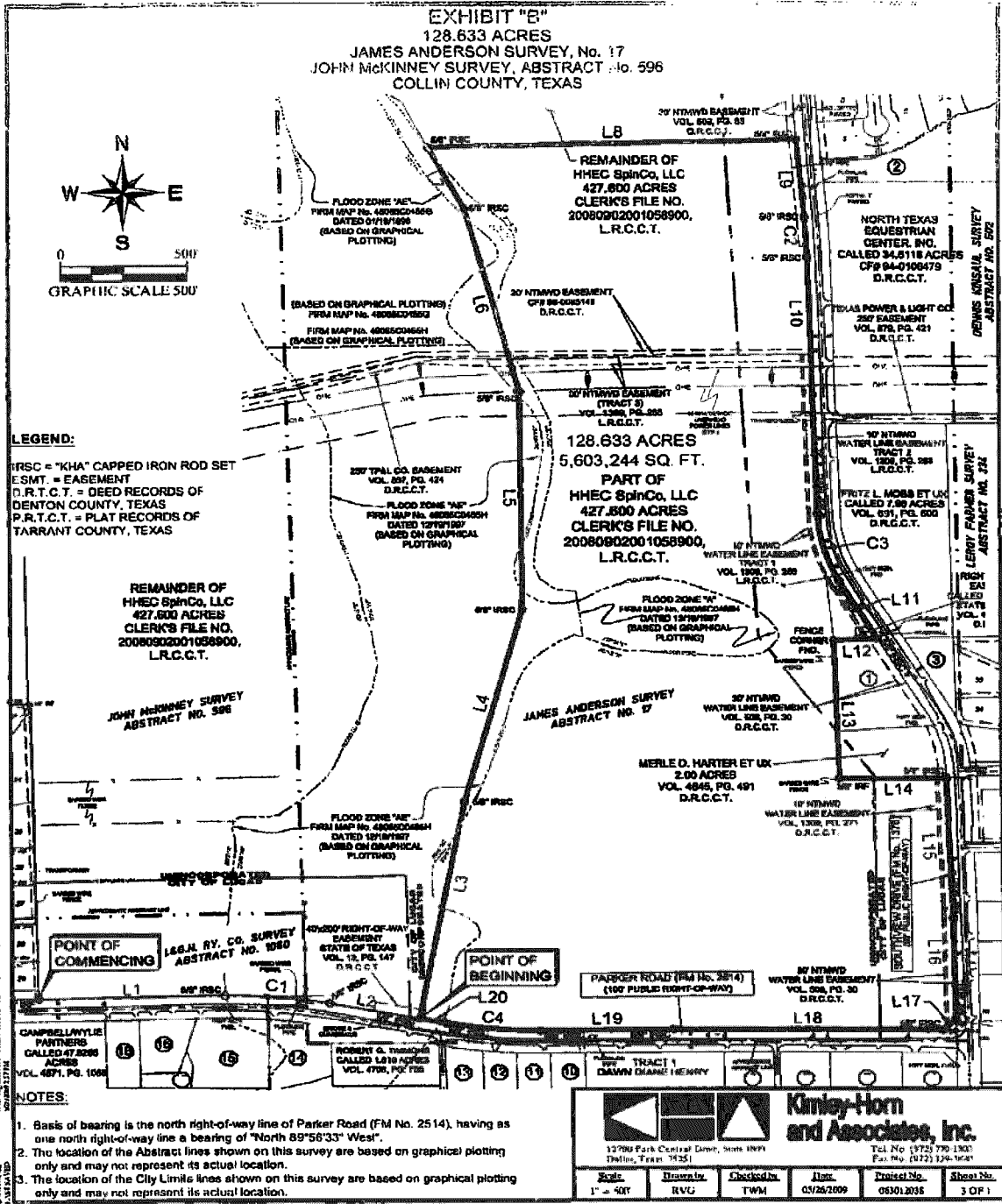
Product Summary	
21 Acre Lots:	+/- 120 units
Developable Area:	+/- 159 acres
Density:	0.75 un./ac.
Project Area:	239 acres
Note: Lot dimensions vary, but generally have a lot width between 140'-220' and a lot depth not less than 200' to achieve an approximate 1 acre lot size or greater.	



Note: Developer will upgrade the existing water line to 24" water line along Parker Road.

**EXHIBIT "C"
DEPICTION**

128.633 – ACRE TRACT OF LAND DEPICTION





Filed and Recorded
Official Public Records
Stacey Kemp, County Clerk
Collin County, TEXAS
07/07/2021 05:05:08 PM
\$90.00 NPRECELLA
20210707001368360

Stacey Kemp

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (“First Amendment”) is made and entered into by and between the **CITY OF LUCAS, TEXAS**, (the “City”), and **Megatel Homes, III, LLC**, a Texas limited liability company (the “Developer”), to be effective as of December 16, 2021 (the “Effective Date”).

RECITALS

WHEREAS, the Developer and the City are sometimes individually referred to as a “Party” and collectively as the “Parties”; and

WHEREAS, the City and the Developer previously entered into the Development Agreement (the “Development Agreement”) for the development of approximately 128.633 acres of property located in the City, described by metes and bounds and depicted in Exhibit A to the Development Agreement (the “Property); and

WHEREAS, capitalized terms used in this First Amendment herein but not otherwise defined shall have the meanings assigned to them in the Development Agreement; and

WHEREAS, the Parties desire to amend the Development Agreement to provide that no permanent structures will be constructed or placed within the floodplain located of the Property; and

WHEREAS, the Parties acknowledge and agree that, except to the extent amended by this First Amendment herein, all provisions and terms contained in the Development Agreement shall remain in full force and effect; and

NOW, THEREFORE, for and in consideration of the mutual covenants of the Parties set forth in this First Amendment, and for good and valuable consideration the receipt and adequacy of which are acknowledged and agreed, the Parties agree as follows:

AGREEMENT

1. Amendment to Article VIII. The Parties agree to amend Article VIII (“Miscellaneous”) of the Development Agreement by adding the following Section 8.17 as follows:

8.17 Flood Plain. Developer agrees that no permanent structures shall be constructed or placed within the floodplain of the Property.

2. Miscellaneous.

(a) This First Amendment amends the Development Agreement in no other manner except as expressly set forth herein, including the exhibits attached hereto. Except as amended herein, the terms, provisions, agreements, covenants and conditions of the Development

Agreement shall continue in full force and effect. In the event of a conflict between this First Amendment, including the exhibits attached hereto, and the Development Agreement, the terms of this First Amendment, including the exhibits attached hereto, shall control.

(b) This First Amendment together with the Development Agreement shall constitute the entire agreement between the Parties and supersedes all prior agreements and understandings, whether oral or written, concerning the subject matter of this First Amendment and the Development Agreement. This First Amendment and the Development Agreement shall not be modified or amended except in writing signed by the Parties.

(c) If any provision of this First Amendment is determined by a court of competent jurisdiction to be unenforceable for any reason, then: (a) such unenforceable provision shall be deleted from this First Amendment; (b) the unenforceable provision shall, to the extent possible and upon mutual agreement of the Parties, be rewritten to be enforceable and to give effect to the intent of the Parties; and (c) the remainder of this First Amendment shall remain in full force and effect and shall be interpreted to give effect to the intent of the Parties.

(d) This First Amendment may be executed in one (1) or more counterparts, each of which when taken together shall constitute one and the same instrument.

(e) The City represents and warrants that the individual executing this First Amendment on behalf of the City has been duly authorized to do so. The Developer represents and warrants that the individual executing this First Amendment on behalf of Developer has been duly authorized to do so.

[Signature Page to Follow]

EXECUTED BY THE PARTIES TO BE EFFECTIVE ON THE EFFECTIVE DATE:

CITY OF LUCAS, TEXAS

By: _____
Name: Jim Olk
Title: Mayor

ATTEST:

By: _____
Name: Stacy Henderson
Title: City Secretary

APPROVED AS TO FORM:

Name: Joseph J. Gorfida, Jr.
Title: City Attorney

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the 16 day of December, 2021 by Jim Olk, Mayor of the City of Lucas, Texas, on behalf of said City.

(SEAL)

Notary Public, State of Texas

Name printed or typed

Commission Expires: _____

DEVELOPER:

MEGATEL HOMES III, LLC
a Texas limited liability company

By: _____
Name:
Title:

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of December, 2021 by _____, as _____ of MEGATEL HOMES III, LLC, a Texas limited liability company, on behalf of said company.

Notary Public, State of Texas

ADDENDUM TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ENCHANTED CREEK HOMEOWNERS ASSOCIATION, INC.

THIS ADDENDUM TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ENCHANTED CREEK HOMEOWNERS ASSOCIATION, INC. (“Addendum”) is executed effective as of December 16, 2021, by CTMGT LUCAS 238, LLC, a Texas limited liability company (the “Declarant”).

RECITALS

WHEREAS, the Declarant previously executed the Declaration of Covenants, Conditions and Restrictions for Enchanted Creek Homeowners Association (the “Declaration”) for the Enchanted Creek subdivision located in the City of Lucas, Collin County, Texas, described by metes and bounds and depicted in Exhibit A (the “Property); and

WHEREAS, capitalized terms used in this Addendum herein but not otherwise defined shall have the meanings assigned to them in the Declaration; and

WHEREAS, the Declarant desires to amend the Declaration to provide that no permanent structures will be constructed or placed within the floodplain located of the Property; and

WHEREAS, except to the extent amended by this Addendum herein, all provisions and terms contained in the Declaration shall remain in full force and effect; and

AGREEMENT

1. Amendment to Section 2.2. The Declarant agrees to amend Section 2.2 of the Declaration by adding the following Section 2.2(r) as follows:

(r) **Flood Plain**. No permanent structures shall be constructed or placed within the floodplain of the Property.

2. Miscellaneous.

(a) This Addendum amends the Declaration in no other manner except as expressly set forth herein, including the exhibits attached hereto. Except as amended herein, the terms, provisions, agreements, covenants and conditions of the Declaration shall continue in full force and effect. In the event of a conflict between this Addendum, including the exhibits attached hereto, and the Declaration, the terms of this Addendum, including the exhibits attached hereto, shall control.

[Signature Page to Follow]

EXECUTED as of the _____ day of **December, 2021.**

DECLARANT:

CTMGT LUCAS 238, LLC
a Texas limited liability company

By: _____
Name: Mehrdad Moayed
Title: Manager

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of December, 2021 by Mehrdad Moayed, as Manager of CTMGT Lucas 238, LLC, a Texas limited liability company, on behalf of said company.

Notary Public, State of Texas



City of Lucas

City Council Agenda Request

December 16, 2021

Item No. 13

Requester: Development Services Director Joe Hilbourn

Agenda Item Request

Consider an appeal made by Robert Miklos on behalf of Matt Dorsett with Spiars Engineering and Surveying and Brock Babb with Centurion American CTMGT Lucas 238 LLC, on behalf of property owners Steve Lenart with CTMGT Lucas 238, LLC and Mehrdad Moayeddi for the denial of an extension of a preliminary plat for Enchanted Creek Estates Phase 2, expiring December 1, 2021, for the property located in the James Anderson Survey, Abstract No. 17 and John McKinney Survey, Abstract No. 596, being 135.743 acres, 700 feet north of the intersection of Enchanted Way and Lillyfield Drive.

Background Information

This property is currently zoned R-1 (Residential 1-acre) and has an approved development agreement and concept plan. This plat proposes 66 lots on 135.743 acres, with an average lot size of 2.05 acres. The smallest lot is greater in size than the required one acre. There are no dead-end water lines proposed with this development, all water lines are looped.

The preliminary plat was originally approved on December 1, 2016, and expired December 1, 2021. The approval of a preliminary plat expires five years after the date of City Council approval unless a final plat is submitted and approved by the Planning and Zoning Commission for the property within such period, or the period is extended by the Planning and Zoning Commission upon written request of the owner. If the time period is not extended or a final plat is not submitted and approved by the Planning and Zoning Commission within the 60-month period, the preliminary plat approval shall be null and void, and the owner shall be required to submit a new plat for the property subject to the then-existing zoning, subdivision and other regulations.

The reasons for the delays on the project as described by the applicant are: The homebuilding groups initially experienced a slower than anticipated home sales velocity in Phase 1, which lead to the replacement phase being delayed. As the Owner's representative, we have full ability to comply with the conditions / terms of the plat.

The Planning and Zoning Commission denied the request for the extension. The developer has since agreed to a plat note that will not permit structures in the floodplain. Additionally, the developer has amended the Development Agreement, and HOA CCR's to state "no permanent structures shall be constructed or placed within the floodplain of the property".



City of Lucas

City Council Agenda Request

December 16, 2021

Item No. 13

Attachments/Supporting Documentation

1. Preliminary Plat (note added)
2. Request for Appeal
3. Updated Tree Survey
4. Location Map

Budget/Financial Impact

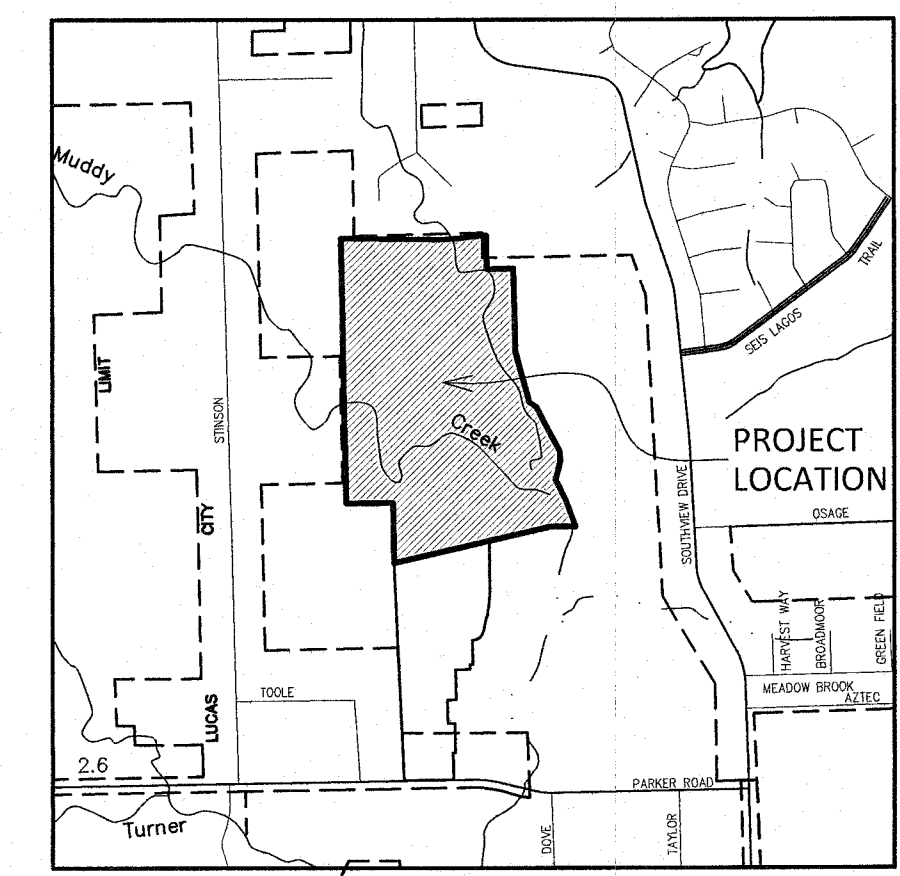
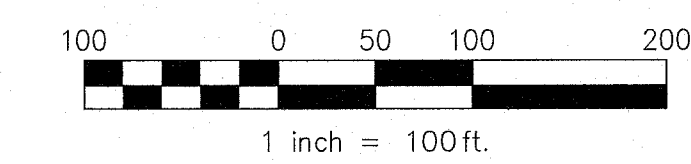
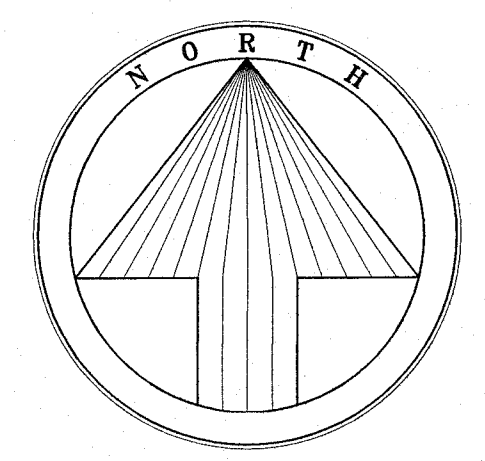
NA

Recommendation

This was denied by the Planning and Zoning Commission at their October 14, 2021, meeting. Based on the amended Development Agreement, staff is recommending approval.

Motion

I make a motion to approve/deny an appeal for the extension of a preliminary plat for Enchanted Creek Estates Phase 2, made by Robert Miklos on behalf of Matt Dorsett with Spiars Engineering and Surveying and Brock Babb with Centurion American CTMGT Lucas 238 LLC, on behalf of property owners Steve Lenart with CTMGT Lucas 238, LLC and Mehrdad Moayedito for the property located in the James Anderson Survey, Abstract No. 17 and John McKinney Survey, Abstract No. 596, being 135.743 acres, 700 feet north of the intersection of Enchanted Way and Lillyfield Drive.

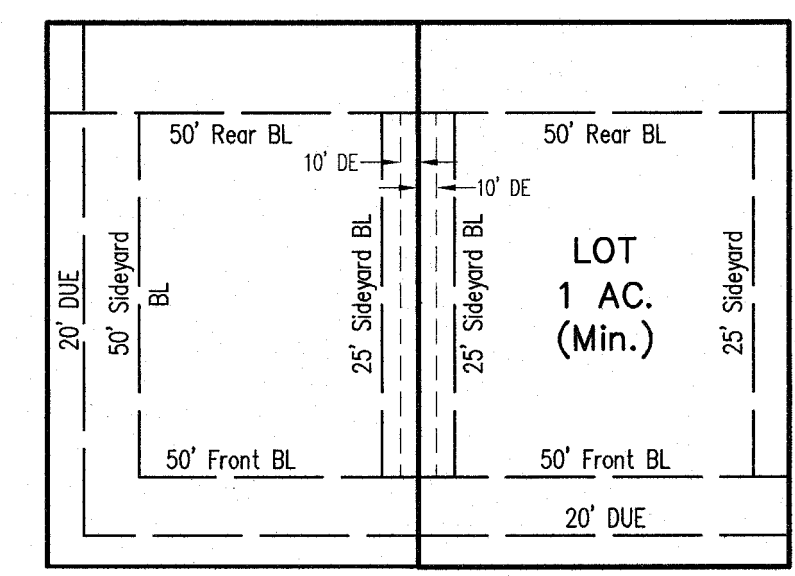


LOCATION MAP
1" = 2000'

LEGEND	
(Not all items may be applicable)	
○	1/2" IRON ROD WITH PLASTIC CAP STAMPED "SPARSING" SET, UNLESS OTHERWISE NOTED
IRF	IRON ROD FOUND
CIRF	CAPPED IRON ROD FOUND
IPF	IRON PIPE FOUND
AMF	ALUMINUM MONUMENT FOUND
CM	CONTROL MONUMENT
Esmt.	EASEMENT
UHL	UTILITY
DE	DRAINAGE EASEMENT
DUE	DRAINAGE AND UTILITY EASEMENT
UE	UTILITY EASEMENT
WE	WATER EASEMENT
SSE	SANITARY SEWER EASEMENT
SE	SIDEWALK EASEMENT
SFE	STREET EASEMENT
FAUE	FIRELANE, ACCESS, & UTILITY EASEMENT
WWE	WASTE WATER EASEMENT
WME	WALL MAINTENANCE EASEMENT
HBE	HIKE & BIKE TRAIL EASEMENT
VAM	VISIBILITY, ACCESS & MAINTENANCE EASEMENT
(BTP)	BY THIS PLAT
R.O.W.	RIGHT-OF-WAY
Min. FF	MINIMUM FINISH FLOOR ELEVATION
BL	BUILDING LINE
◆	STREET NAME CHANGE
⊥	CENTERLINE
Ⓢ	BLOCK DESIGNATION
▶	STREET FRONTAGE
Col.	CABINET
Vol.	VOLUME
Pg.	PAGE
No.	NUMBER
FEMA	FEDERAL EMERGENCY MANAGEMENT AGENCY
FIRM	FLOOD INSURANCE RATE MAP
N/S	NOT TO SCALE
Ord. No.	ORDINANCE NUMBER
Inst./Doc.	INSTRUMENT OR DOCUMENT
(DRCCT)	DEED RECORDS, COLLIN COUNTY, TEXAS
(PRCCT)	PLAT RECORDS, COLLIN COUNTY, TEXAS
(OPRCCT)	OFFICIAL PUBLIC RECORDS, COLLIN COUNTY, TEXAS
(DRCDT)	DEED RECORDS, DENTON COUNTY, TEXAS
(PRCCT)	PLAT RECORDS, DENTON COUNTY, TEXAS
(OPRCCT)	OFFICIAL PUBLIC RECORDS, DENTON COUNTY, TEXAS
(DRCCT)	DEED RECORDS, DALLAS COUNTY, TEXAS
(MRCCT)	MAP RECORDS, DALLAS COUNTY, TEXAS
(OPRCCT)	OFFICIAL PUBLIC RECORDS, DALLAS COUNTY, TEXAS

NOTES:

1. This replat was prepared without the benefit of a commitment for title insurance. No research was performed for any easements other than that shown on the record plat of this property. Therefore, easements, agreements, and other documents may exist that affect the subject property that are not shown on this replat.
2. Basis of bearing, horizontal and vertical position derived from the Texas WDS RTK Network—Texas State Plane Coordinate System, NAD83, North Central Zone (4202).
3. Selling a portion of this addition by metes and bounds is a violation of City ordinance and state law and is subject to fines and withholding of utilities and building permits.
4. Preliminary Plat— for inspection purposes only.
5. No permanent structures shall be permitted in the floodplain.



Front Property Line/Street
TYPICAL LOT DETAIL

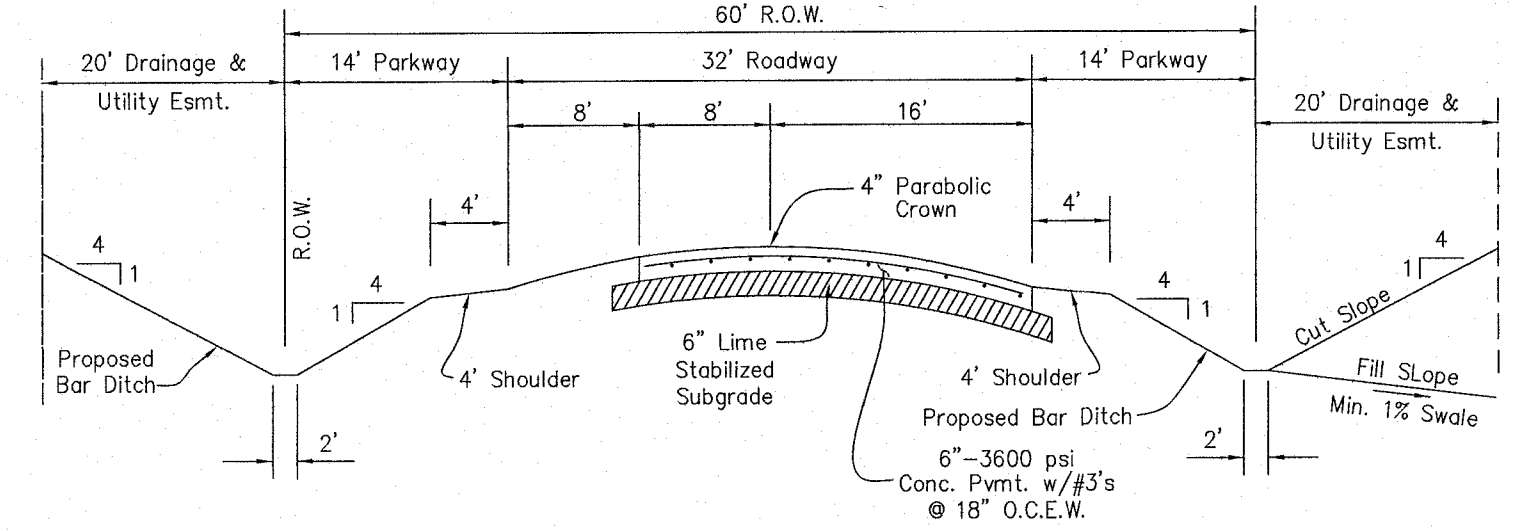
PRELIMINARY PLAT
ENCHANTED CREEK PHASE 2

LOTS 1-34, BLOCK A
LOT 10, BLOCK B
LOTS 16-19, BLOCK C
LOTS 1-9, BLOCK D
LOTS 1-11, BLOCK E
LOTS 13-19, BLOCK F

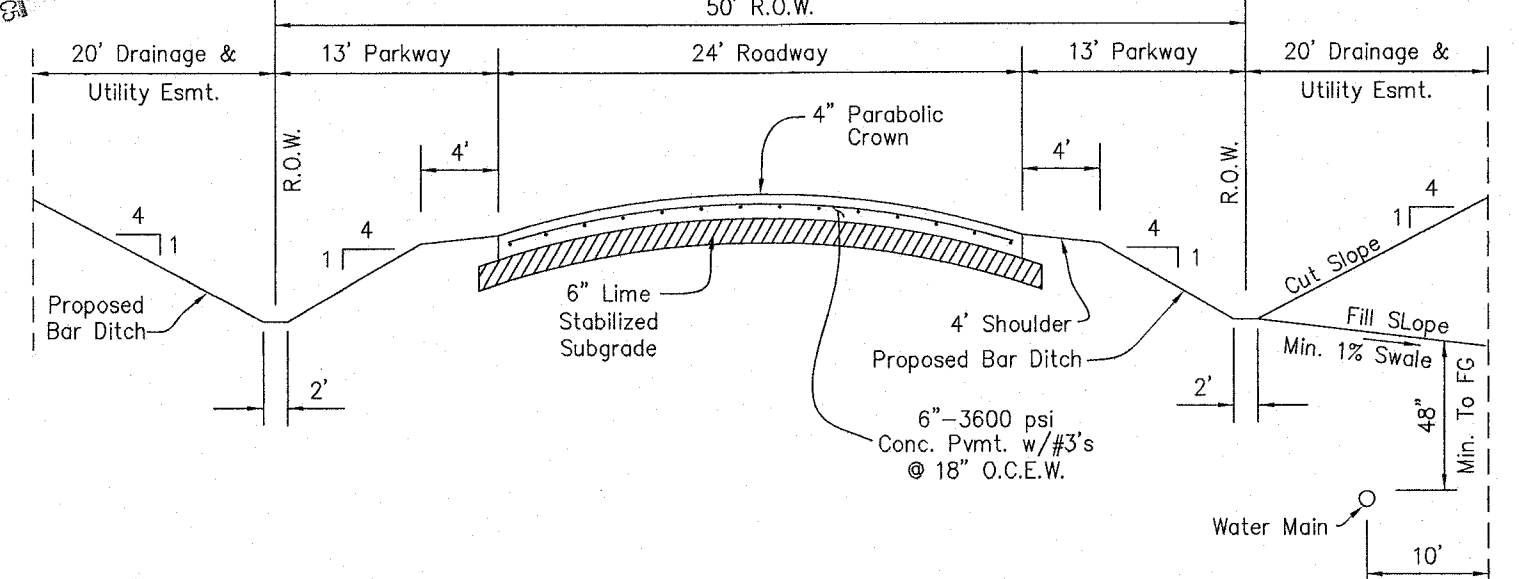
135.743 ACRES OUT OF THE
JAMES ANDERSON SURVEY ~ ABSTRACT NO. 17
JOHN MCKINNEY SURVEY ~ ABSTRACT NO. 596
CITY OF LUCAS, COLLIN COUNTY, TEXAS
ZONING DISTRICT R-1

ENGINEER / SURVEYOR
Spiars Engineering, Inc.
765 Custer Road, Suite 100
Plano, TX 75075
Telephone: (972) 422-0077
TBPB No., F-2121
Contact: Matt Dorsett

OWNER / APPLICANT
CTMGT Lucas 238, LLC
520 Central Parkway East, Suite 104
Carrollton, Texas 75006
Telephone (972) 422-9880
Contact: Steve Lenart

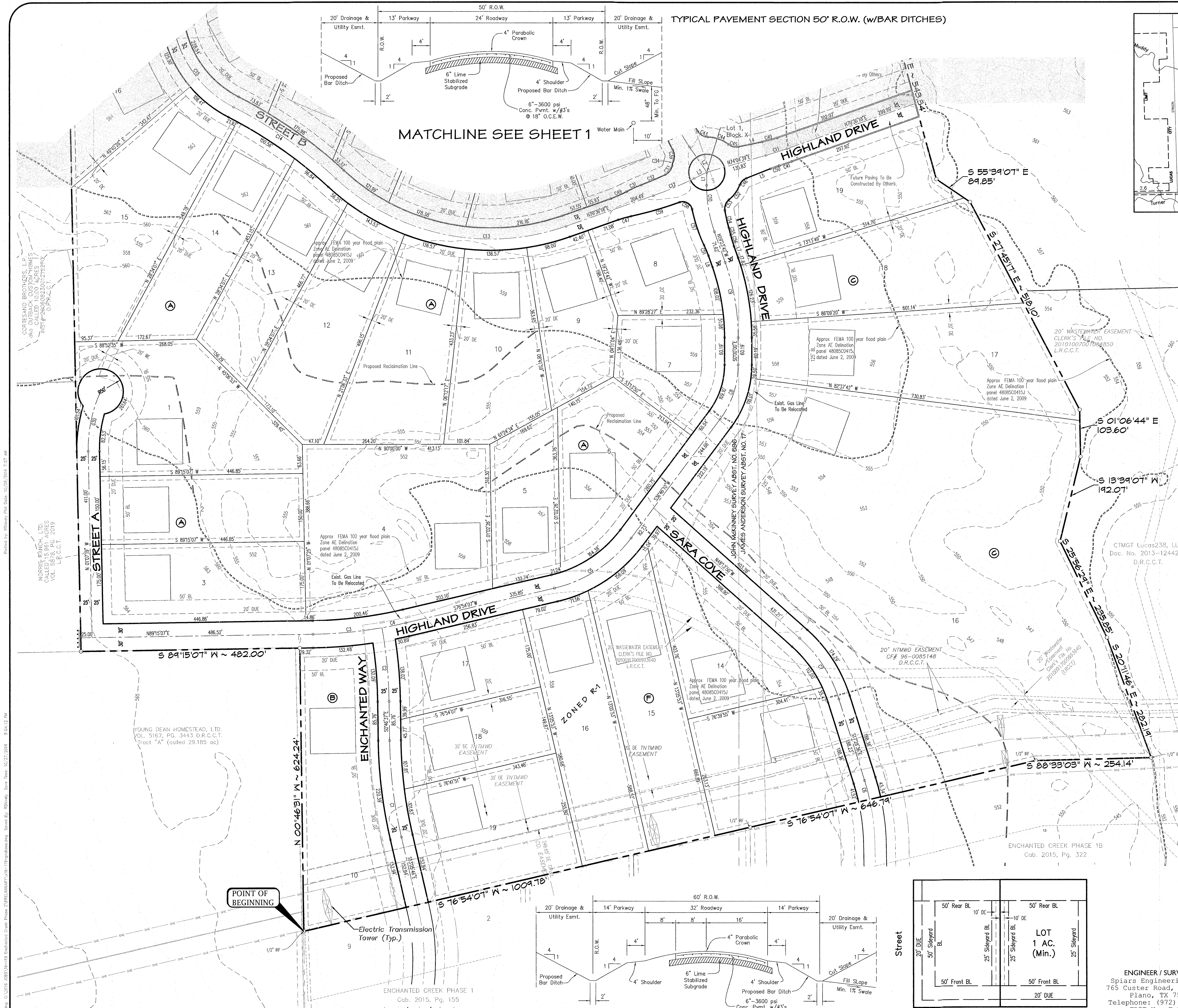


TYPICAL PAVEMENT SECTION 60' R.O.W. (w/BAR DITCHES)

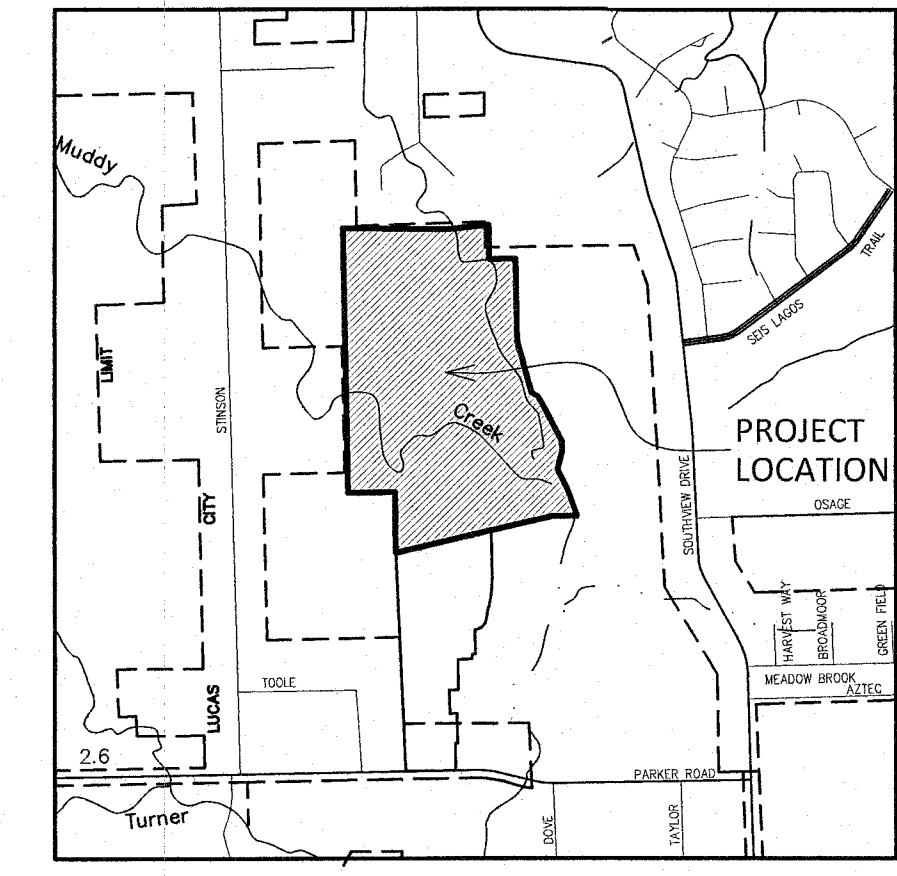
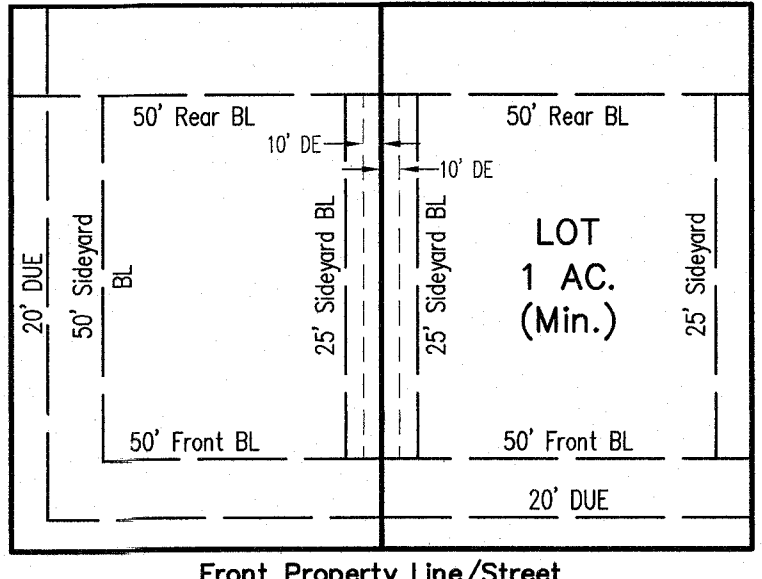
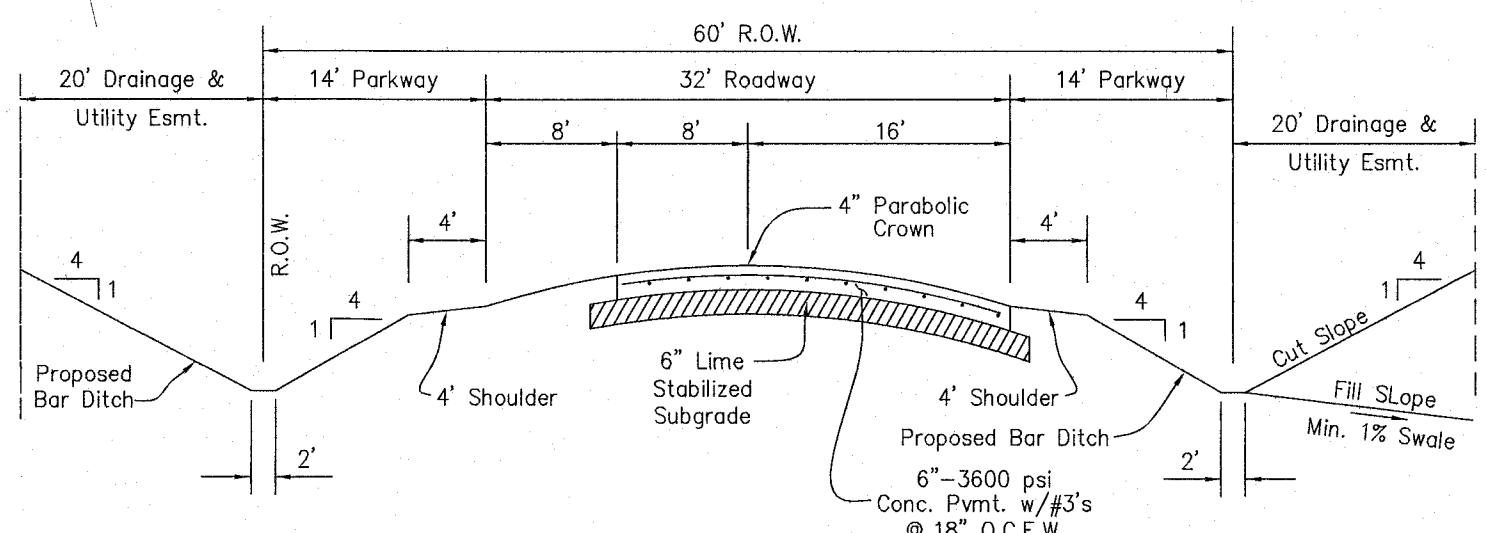
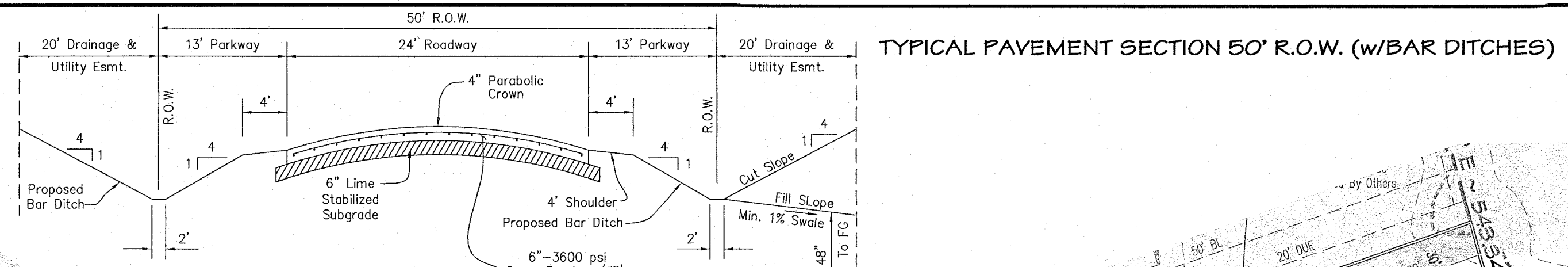


TYPICAL PAVEMENT SECTION 50' R.O.W. (w/BAR DITCHES)

MATCHLINE SEE SHEET 2



Drawn: C:\Users\235154-18\Documents\Enchanted Creek Phase 2\PRELIMINARY\15-19\preliminary.dwg, Sheet 10/27/2015, 8:04:12 PM
 Printed by: RShway, Plot Date: 10/27/2015, 7:57 AM



LEGEND
(Not all items may be applicable)

o	1/2" IRON ROD WITH PLASTIC CAP STAMPED "SPARSING" SET, UNLESS OTHERWISE NOTED
IRF	IRON ROD FOUND
CRF	CAPPED IRON ROD FOUND
IPF	IRON PIPE FOUND
AMF	ALUMINUM MONUMENT FOUND
CM	CONTROL MONUMENT
Easmt.	EASEMENT
UE	UTILITY EASEMENT
DE	DRAINAGE EASEMENT
DUE	DRAINAGE AND UTILITY EASEMENT
WE	WATER EASEMENT
SSE	SANITARY SEWER EASEMENT
SE	SIDEWALK EASEMENT
STE	STREET EASEMENT
FAUE	FIRELANE, ACCESS, & UTILITY EASEMENT
WW	WASTE WATER EASEMENT
WME	WALL MAINTENANCE EASEMENT
HBE	HIKE & BIKE TRAIL EASEMENT
VAM	VISIBILITY, ACCESS & MAINTENANCE EASEMENT
(BTP)	BY THIS PLAT
R.O.W.	RIGHT-OF-WAY
Min. FF	MINIMUM FINISH FLOOR ELEVATION
BL	BUILDING LINE
◆	STREET NAME CHANGE
⊙	CENTERLINE
⊙	BLOCK DESIGNATION
▶	STREET FRONTAGE
Cab.	CABINET
Vol	VOLUME
Pg	PAGE
No.	NUMBER
FEMA	FEDERAL EMERGENCY MANAGEMENT AGENCY
FIRM	FLOOD INSURANCE RATE MAP
NTS	NOT TO SCALE
Ord. No.	ORDINANCE NUMBER
Inst./Doc.	INSTRUMENT OR DOCUMENT
(DRCC)	DEED RECORDS, COLLIN COUNTY, TEXAS
(PRCCT)	PLAT RECORDS, COLLIN COUNTY, TEXAS
(OPRCC)	OFFICIAL PUBLIC RECORDS, COLLIN COUNTY, TEXAS
(DRDC)	DEED RECORDS, DENTON COUNTY, TEXAS
(PRDC)	PLAT RECORDS, DENTON COUNTY, TEXAS
(OPRDC)	OFFICIAL PUBLIC RECORDS, DENTON COUNTY, TEXAS
(DRDC)	DEED RECORDS, DALLAS COUNTY, TEXAS
(MRDC)	MAP RECORDS, DALLAS COUNTY, TEXAS
(OPRDC)	OFFICIAL PUBLIC RECORDS, DALLAS COUNTY, TEXAS

- NOTES:**
- This replat was prepared without the benefit of a commitment for title insurance. No research was performed for any easements other than that shown on the record plat of this property. Therefore, easements, agreements, and other documents may exist that affect the subject property that are not shown on this replat.
 - Basis of bearing, horizontal and vertical position derived from the Texas WDS RTK Network-Texas State Plane Coordinate System, NAD83, North Central Zone (4202).
 - Selling a portion of this addition by metes and bounds is a violation of City ordinance and state law and is subject to fines and withholding of utilities and building permits.
 - Preliminary Plat- for inspection purposes only.
 - No permanent structures shall be permitted in the floodplain.

PRELIMINARY PLAT
ENCHANTED CREEK PHASE 2
 LOTS 1-34, BLOCK A
 LOT 10, BLOCK B
 LOTS 16-19, BLOCK C
 LOTS 1-9, BLOCK D
 LOTS 1-11, BLOCK E
 LOTS 13-19, BLOCK F
 135.743 ACRES OUT OF THE
 JAMES ANDERSON SURVEY ~ ABSTRACT NO. 17
 JOHN MCKINNEY SURVEY ~ ABSTRACT NO. 596
 CITY OF LUCAS, COLLIN COUNTY, TEXAS
 ZONING DISTRICT R-1

ENGINEER / SURVEYOR
 Spiars Engineering, Inc.
 765 Cluster Road, Suite 100
 Plano, TX 75075
 Telephone: (972) 422-0077
 TBPE No. F-2121
 Contact: Matt Dorsett

OWNER / APPLICANT
 CTMGT Lucas 238, LLC
 520 Central Parkway East, Suite 104
 Carrollton, Texas 75006
 Telephone (972) 422-9880
 Contact: Steve Lenart

STATE OF TEXAS §
COUNTY OF COLON §

OWNER'S CERTIFICATE

Legal Description

BEING part of a 232.162 acre tract of land, situated in the John Anderson Survey, Abstract No. 17, and the John McKinney Survey, Abstract No. 596, City of Lucas, Collin County, Texas, the subject tract being a portion of a tract of land conveyed to CTMGT Lucas 238, LLC according to the deed recorded in 2013-1244240 of the deed records of Collin County, Texas (D.R.C.C.T.), the subject tract being more particularly described as follows:

BEGINNING at a 1/2" iron rod found for corner at the northwest corner of Lot 9 Block B, Enchanted Estates Phase 1, an addition to the City of Lucas, Collin County Texas, according to the plat thereof recorded in Cabinet 2015, Pg 155 & 156, Plat Records, Collin County, Texas (P.R.C.C.T)

Thence, N 0°46'31" W, a distance of 624.24', to a 1/2" iron rod with a plastic cap stamped "SPIARSENG" set;

Thence, S 89°15'07" W, a distance of 482.00' to a 1/2" iron rod with a plastic cap stamped "SPIARSENG" set;

Thence, N 1°07'19" W, a distance of 2730.35' to a 1/2" iron rod with a plastic cap stamped "SPIARSENG" set;

Thence, S 89°17'29" E, a distance of 1065.97' to a 1/2" iron rod with a plastic cap stamped "SPIARSENG" set;

Thence, N 84°12'29" E, a distance of 435.32', to a 1/2" iron rod with a plastic cap stamped "SPIARSENG" set;

Thence, S 0°38'47" E, a distance of 352.45', to a 1/2" iron rod with a plastic cap stamped "SPIARSENG" set;

Thence, N 88°48'37" E, a distance of 273.45', to a 1/2" iron rod with a plastic cap stamped "SPIARSENG" set;

Thence, S 1°11'22" E, a distance of 850.00', to a 1/2" iron rod with a plastic cap stamped "SPIARSENG" set;

Thence, S 15°26'29" E, a distance of 543.34', to a 1/2" iron rod with a plastic cap stamped "SPIARSENG" set;

Thence, S 55°39'07" E, a distance of 89.85', to a 1/2" iron rod with a plastic cap stamped "SPIARSENG" set;

Thence, S 27°45'17" E, a distance of 518.10', to a 1/2" iron rod with a plastic cap stamped "SPIARSENG" set;

Thence, S 1°06'44" E, a distance of 103.60', to a 1/2" iron rod with a plastic cap stamped "SPIARSENG" set;

Thence, S 13°39'07" W, a distance of 192.07', to a 1/2" iron rod with a plastic cap stamped "SPIARSENG" set;

Thence, S 25°56'29" E, a distance of 235.85', to a 1/2" iron rod with a plastic cap stamped "SPIARSENG" set;

Thence, S 20°11'46" E, a distance of 282.19', to a 1/2" iron rod with a plastic cap stamped "SPIARSENG" found;

Thence, S 88°33'03" W, a distance of 254.14', to a 1/2" iron rod with a plastic cap stamped "SPIARSENG" found;

Thence, S 76°54'07" W, a distance of 646.79', to a 1/2" iron rod with a plastic cap stamped "SPIARSENG" found;

Thence, S 76°54'07" W, a distance of 1009.78', to the POINT OF BEGINNING with the subject tract containing 5,912,976.21 square feet or 135.743 acres of land.

DEDICATION

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

THAT, CTMGT Lucas 238, LLC is the Owner of the above described project and does hereby adopt this plat designating the herein described property as **Enchanted Creek Phase 2** Lots 1-34 Block A, Lot 10 Block B, Lots 16-19 Block C, Lots 1-9 Block D and Lots 1-11 Block E and Lots 13-19 Block F an addition to City of Lucas, Texas and does hereby dedicate to The City of Lucas the right-of-way, streets, and easements platted hereon.

This plat approved subject to all platting ordinances, rules, regulations, and resolutions of the City of Lucas, Texas.

Executed this the ____ day of _____, 2016.

CTMGT Lucas 238, LLC

By: Mehrdad Moayedi

STATE OF TEXAS §
COUNTY OF COLLIN §

Before me, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared Mehrdad Moayedi, known to me to be the person(s) whose names are subscribed to the foregoing instrument and acknowledged to me that they each executed the same for the purpose and considerations therein expressed.

Given under my hand and seal of office, this ____ day of _____, 2016.

Notary Public in and for the State of Texas

SURVEYOR'S CERTIFICATE

KNOW ALL MEN BY THESE PRESENTS:

That I, Darren K. Brown, of Spiars Engineering, Inc., do hereby certify, that I prepared this plat from an actual on the ground survey of the land as described and that the corner monuments shown thereon were properly placed under my personal supervision in accordance with the Platting Rules and Regulations of the City of Lucas Planning and Zoning Commission.



DARREN K. BROWN, R.P.L.S. NO. 5252

STATE OF TEXAS §
COUNTY OF COLLIN §

Before me, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Darren K. Brown, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and considerations therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____ day of _____, 2016.

Notary Public in and for the State of Texas

CITY APPROVAL CERTIFICATE

This plat is hereby approved by the Planning and Zoning Commission of the City of Lucas, Texas

Chairman, Planning and Zoning Commission Date

ATTEST:

Signature Date

Name and Title Date

The Director of Public Works of the City of Lucas, Texas hereby certifies that to the best of his/her knowledge of belief, this subdivision plat conforms to all the requirements of the Code of Ordinances and with engineering construction standards and processes adopted by the City of Lucas, Texas as to which is /her approval is required

Director of Public Works Date

The Director of Planning and Community Development of the City of Lucas, Texas hereby certifies that to the best of his/her knowledge or belief, this subdivision plat conforms to all requirements of the Code of Ordinances, or as may have been amended or modified, as allowed, by the Planning and Zoning Commission as to which his/her approval is required

Director of Planning and Community Development Date

Health Department Certification

I hereby certify that the on-site sewage facilities described on this plat conform to the applicable OSSF laws of the State of Texas, that site evaluations have been submitted representing the site conditions in the area in which on-site sewage facilities are planned to be used.

Registered Sanitarian or Designated Representative Date
Collin County Development Services

Table with 3 columns: Line #, Length, Direction. Contains 8 rows of lot line data.

Table with 5 columns: Curve #, Length, Radius, Chord, Chord Bearing, Delta. Contains 20 rows of centerline curve data.

Table with 5 columns: Curve #, Length, Radius, Chord, Chord Bearing, Delta. Contains 10 rows of centerline curve data.

Table with 4 columns: Lot #, Block #, Gross Square Feet, Net Square Feet. Contains 10 rows of lot area data.

Table with 4 columns: Lot #, Block #, Gross Square Feet, Net Square Feet. Contains 14 rows of lot area data.

Table with 5 columns: Curve #, Length, Radius, Chord, Chord Bearing, Delta. Contains 20 rows of lot curve data.

Table with 4 columns: Lot #, Block #, Gross Square Feet, Net Square Feet. Contains 20 rows of lot area data.

Table with 4 columns: Lot #, Block #, Gross Square Feet, Net Square Feet. Contains 1 row of lot area data.

Table with 5 columns: Curve #, Length, Radius, Chord, Chord Bearing, Delta. Contains 10 rows of lot curve data.

Table with 4 columns: Lot #, Block #, Gross Square Feet, Net Square Feet. Contains 6 rows of lot area data.

Table with 4 columns: Lot #, Block #, Gross Square Feet, Net Square Feet. Contains 9 rows of lot area data.

Table with 4 columns: Lot #, Block #, Gross Square Feet, Net Square Feet. Contains 11 rows of lot area data.

Table with 3 columns: Lot #, Block #, Square Feet. Contains 1 row of open space area data.

PRELIMINARY PLAT
ENCHANTED CREEK PHASE 2

LOTS 1-34, BLOCK A
LOT 10, BLOCK B
LOTS 16-19, BLOCK C
LOTS 1-9, BLOCK D
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135.743 ACRES OUT OF THE
JAMES ANDERSON SURVEY ~ ABSTRACT NO. 17
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CITY OF LUCAS, COLLIN COUNTY, TEXAS
ZONING DISTRICT R-1

ENGINEER / SURVEYOR
Spiars Engineering, Inc.
765 Custer Road, Suite 100
Plano, TX 75075
Telephone: (972) 422-0077
TBPE No. F-2121
Contact: Matt Dorsett
October, 2016 SEI Job No. 16-119

OWNER / APPLICANT
CTMGT Lucas 238, LLC
Central Parkway East, Suite 104
Carrollton, Texas 75006
Telephone (972) 422-9880
Contact: Steve Lenart

Printed by: Bishay's Plat Date: 10/26/2016 7:55 AM
Drawn by: Bishay's Plat Date: 10/26/2016 7:55 AM
Scan by: Bishay's Plat Date: 10/27/2016 5:26:12 PM

November 11, 2021

Via email: jclarke@lucastexas.us

City of Lucas
Attn: Ms. Joni Clarke, City Manager
665 Country Club Road
Lucas, Texas 75002-7651

Re: Request for Appeal to City Council of Planning & Zoning Commission's Denial of a Request for a Preliminary Plat Extension for Enchanted Creek Estates Phase 2

Dear Ms. Clarke:

Our law firm represents CTMGT Lucas 238, LLC (the "Developer"), which Developer is the owner of certain property located within the Enchanted Creek Estates subdivision (the "Development") located within the City of Lucas, Texas (the "City").

The Developer, through its representatives, applied for an extension of a preliminary plat for Phase 2 of the Development, which preliminary plat expires on December 1, 2021. On October 14, 2021, the City's Planning & Zoning Commission voted to deny the Developer's extension request. In accordance with the City's Code of Ordinances Section 10.03.006, except as otherwise provided therein, "any developer aggrieved by any finding or action of the planning and zoning department or the planning and zoning commission may appeal to the city council within thirty (30) days after the date of such finding or action and not thereafter." Accordingly, the Developer hereby requests an appeal of the Planning & Zoning Commission's denial of an extension of the Enchanted Creek Estates Phase 2 preliminary plat and further requests that such appeal be considered at the City's next available City Council meeting.

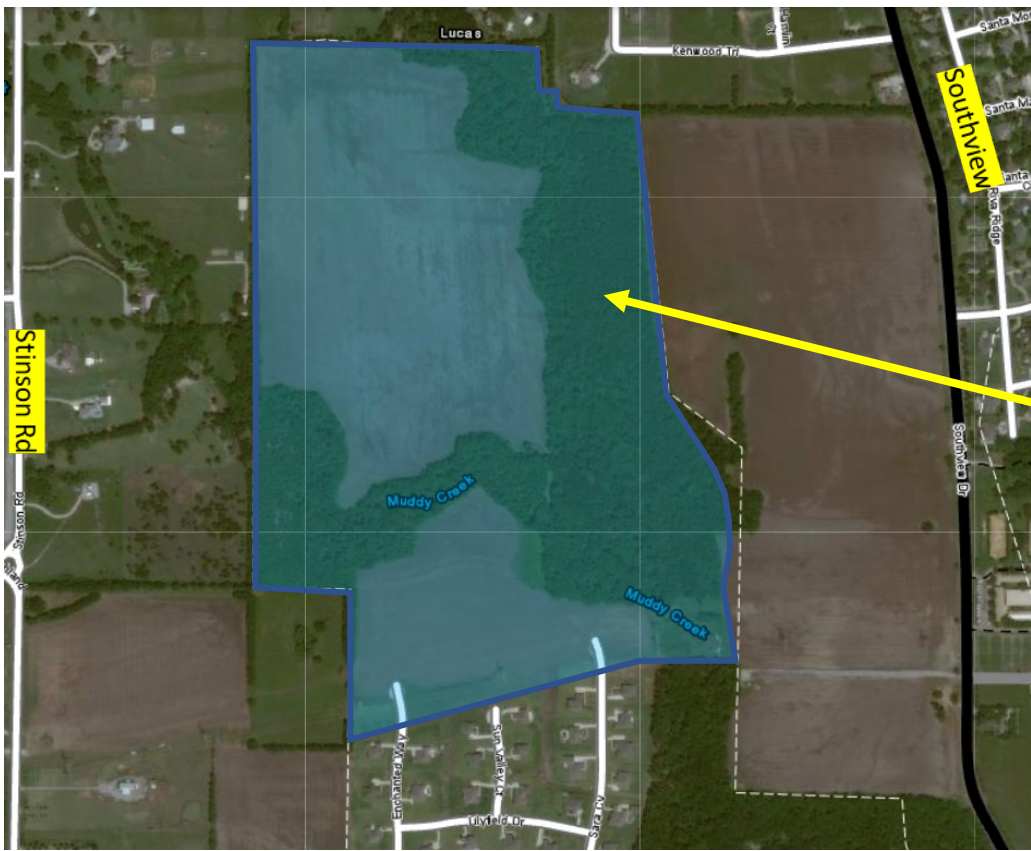
You may contact me at (214) 478-2046 or by email at Robert@m-legal.com should you have any questions or concerns.

Regards,

/s/ Robert Miklos

Robert Miklos
Member

C: Attn: Joseph J. Gorfida, Jr., City Attorney
Nichols, Jackson, Dillard, Hager & Smith LLP
500 N. Akard St., Suite 1800
Dallas, TX 75201
Via email: jgorfida@njdhs.com



Enchanted Creek Phase 2