

**DOWNTOWN REDEVELOPMENT PLAN
LEAGUE PARK & DRAINAGE IMPROVEMENTS
(BID NO. 20-CIP-001)**

AGREEMENT BETWEEN OWNER AND CONTRACTOR

THIS AGREEMENT is effective as of the _____ day of November in the year 2019 by and between City of League City (hereinafter called "**OWNER**") and Lucas Construction Company, Inc. (hereinafter called "**CONTRACTOR**").

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1. WORK

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

The Project work includes, but is not limited to, installation of storm trunk sewer, regrading existing ditches, construction of new parking lot, milling and overlay of existing asphalt pavement, new sidewalk and curb ramps, and park improvements including relocation of existing amenities, lighting and fencing.

- 1.02 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

LEAGUE PARK AND DRAINAGE IMPROVEMENTS

ARTICLE 2. ENGINEER

- 2.01 The Project has been designed by Huitt-Zollars, Inc. (Engineer), which is to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 3. CONTRACT TIMES

- 3.01 *Time of the Essence.*

All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

- 3.02 *Days to Achieve Substantial Completion and Final Payment.*

The Contractor has 255 calendar days to achieve Substantial Completion of the Work, as indicated in the Bid Proposal, after the date when the Contract Time began, and 15 calendar days to achieve Final Completion and meet all requirements for final payment.

The Contractor will be permitted to prosecute the work in the order of his own choosing unless stated otherwise in the Contract Documents, provided, however, the Owner reserves the right to require the Contractor to submit a progress schedule of the work contemplated by the contract documents. In the event the Owner requires a progress schedule to be submitted and it is determined by the Owner that

the progress of the work is not in accordance with such schedule, the Owner may direct the Contractor to take such action as the Owner deems necessary to insure completion of the project within the time specified.

The Contract Time begins to run on the date indicated in the Notice to Proceed. Contractor shall mobilize and begin Work in earnest by the date and terms indicated on the Notice to Proceed. The work shall be complete within the number of calendar days indicated in the Contractor's Bid Proposal, after the date the Contract Time commences.

3.03 *Early Completion Bonus*

The Owner is providing an incentive to complete this project ahead of November 1, 2020. Contractor shall be entitled to earn an early completion bonus for each calendar day at the levels described below for each calendar day that Final Completion has occurred before November 1, 2020, hereunder up to the maximum potential bonus of \$135,000.00.

60-31 day(s) before November 1, 2020	\$1,500 per calendar day
30-1 day(s) before November 1, 2020	\$3,000 per calendar day

The final determination for award of the bonus shall be solely determined by the Owner.

ARTICLE 4. LIQUIDATED DAMAGES

- 4.01 Contractor and Owner recognize that time is of the essence as stated in Paragraph 3.01 above and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 3.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner **\$1,500.00** for each day that expires after the time specified in Paragraph 3.02 above for Final Completion.

Failure of the Contractor to complete the work by November 1, 2020, shall entitle the Owner to deduct from the money due to the Contractor an amount equal to **\$3,000.00** for each calendar day of delay in completion of the work, not as penalty, but as liquidated damages and added expense for supervision.

ARTICLE 5. CONTRACT PRICE

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraphs 5.01.A, below:
- A. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit, for a total of \$3,735,745.00.

ARTICLE 6. PAYMENT PROCEDURES

6.01 *Submittals and Processing of Payments*

Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General

Conditions.

6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 5th day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.
1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 6.06 of the General Conditions.
 - a. Ninety (90) percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and
 - b. Ninety (90) percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 6.06 of the General Conditions and less 200 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

6.03 *Final Payment*

Upon final completion and acceptance of the Work in accordance with Paragraph 6.09 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 6.09.

ARTICLE 7. INTEREST

- 7.01 All moneys not paid when due as provided in 6.13 of the General Conditions shall bear interest at the rate of six (6) percent per annum.

ARTICLE 8. CONTRACTOR'S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:
- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
 - B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified in Paragraph SC-4.02 of the Supplementary Conditions as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Paragraph SC-4.06 of the Supplementary Conditions as containing reliable "technical data."

E. Contractor has considered the information known to Contractor; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor's safety precautions and programs.

F. Based on the information and observations referred to in Paragraph 8.01.E above, Contractor does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 9. CONTRACT DOCUMENTS

9.01 Contents

A. The Contract Documents Consist of the following:

1. This Agreement
2. Performance bond
3. Payment bond
4. General Conditions
5. Supplementary Conditions
6. Specifications as listed in the table of contents of the Project Manual.
7. Drawings consisting of 5 sheets with each sheet bearing the following general title: SWPPP REPORT FOR LEAGUE PARK AND DRAINAGE IMPROVEMENTS
8. Maintenance Bond
9. Addenda
10. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid
11. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Notice to Proceed.
 - b. Written Amendments.
 - c. Work Change Directives.

- d. Change Orders.
12. Project Manual for BID No. 20-CIP-001

B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).

C. There are no Contract Documents other than those listed above in this Article 9.

D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

ARTICLE 10. MISCELLANEOUS

10.01 *Terms*

Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

10.02 *Assignment of Contract*

No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 *Successors and Assigns*

Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 *Severability*

Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 *Contractor's Certifications*

Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:

A. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;

B. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

C. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and

D. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

10.06 *Other Provisions*

A. Prohibition on Boycotting Israel: Pursuant to Section 2270.002, Texas Government Code, by executing this Agreement Contractor verifies that Contractor: (1) does not boycott Israel; and (2) will not boycott Israel during the term of this Agreement.

B. Prohibition Against Business with Iran, Sudan or Foreign Terrorists Organizations: Contractor warrants, covenants, and represents that Contractor is not engaged in business with Iran, Sudan, or any company identified on the list referenced in Section 2252.152, Texas Government Code.

ARTICLE 11. CDBG SECTION 3 CLAUSE

To induce OWNER to enter into this Agreement, CONTRACTOR makes the following representations:

- 11.1 The construction work to be performed within this project is funded in part by U.S. Department of Housing and Urban Development funds and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- 11.2 The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- 11.3 The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- 11.4 The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- 11.5 The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- 11.6 Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- 11.7 With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest

extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

ARTICLE 12. IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed five (5) copies of this Agreement. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR.

This Agreement will be effective on _____, 2019.

OWNER: CITY OF LEAGUE CITY

CONTRACTOR: LUCAS CONSTRUCTION CO., INC.

By: _____
John Baumgartner, City Manager

By: _____
Willis Lucas, President

Attest:

By: _____
Diana Stapp, City Secretary

Approved as to Form:

By: _____
Nghiem V. Doan, City Attorney

Address for giving notices:

300 West Walker Street
League City, Texas 77573

Address for giving notices:
