1. May 12, 2022 - Agenda

   Documents:

   05-12-2022 - AGENDA.PDF

1.I. May 12, 2022 - Agenda Packet

   Documents:

   05-12-2022 - AGENDA PACKET.PDF

1.II. May 12, 2022 - MEETING SLIDE DECK

   MAY 12, 2022 - MEETING SLIDE DECK

DAVID A. RETTIG, MAYOR

RENA HARDEMAN, COUNCIL PLACE 1
MICHAEL C. GANZ, COUNCIL PLACE 2
BRIAN MONTINI, COUNCIL PLACE 3
ROGER SESSIONS, COUNCIL PLACE 4
BILL MOORE, COUNCIL PLACE 5
WES BOYER, COUNCIL PLACE 6

# NORTHLAKE TOWN COUNCIL
# REGULAR MEETING AGENDA
# MAY 12, 2022, AT 5:30 P.M.
# 1500 COMMONS CIRCLE, SUITE 300, NORTHLAKE, TEXAS 76226

Notice is hereby given as required by Title 5, Chapter 551.041 of the Government Code that the Northlake Town Council will meet in a Regular Meeting on May 12, 2022, at 5:30 p.m., at the Northlake Town Hall in the Chamber Room, 1500 Commons Circle, Suite 300, Northlake, Texas 76226. The items listed below are placed on the agenda for discussion and/or action.

**1. CALL TO ORDER**

- Roll Call
- Invocation
- Pledge of Allegiance

**2. ANNOUNCEMENTS, PROCLAMATIONS, AND PRESENTATIONS**

A. Proclamation - Peace Officers' Memorial Day, May 15th, and National Police Week, May 15-21, 2022

B. Briefing - Cleveland Gibbs Extension

C. Briefing - Municipal Court Update

D. Briefing - Town Secretary's Office Update

**3. PUBLIC INPUT**

This item is available for citizens to address the Town Council on any matter. The presiding officer may ask the citizen to hold his or her comment on an agenda item until that agenda item is reached. By law, no deliberation or action may be taken on the topic if the topic is not posted on the agenda. The presiding officer reserves the right to impose a time limit on this portion of the agenda.

**4. CONSENT ITEMS**

*Any Council member may request an item on the Consent Agenda to be taken up for individual consideration*

E. Consider approval of the Town Council Meeting Minutes for April 14, 2022

F. Consider Resolution 22-22, approving and authorizing the Town Manager to execute an Interlocal Agreement with Denton County for the use of the Denton County Radio Communications System

## 5. ACTION ITEMS

G. Consider Resolution 22-23, approving and authorizing the Town Manager to execute an amendment to the Hotel Conference Center Master Developer Agreement with Lodging Host Hotel Corporation to increase the amount of the construction participation from $4,5000,000 to $5,900,000

H. Consider Resolution 22-24, approving all matters incident and related to the adoption of the resolution expressing official intent to reimburse costs of projects

I. Consider Resolution 22-25, approving and authorizing the Town Manager to execute a professional services agreement with Plummer & Associates for Denton Creek Sewer Line in the amount of $1,587,563

## 6. EXECUTIVE SESSION

The Town Council will convene in an Executive Session, pursuant to Texas Government Code, annotated, Chapter 551 Subchapter D:

**a.** **Section 551.071** authorizes a governmental body to consult with its attorney in an executive session to seek his or her advice on a legal matter. It provides as follows: A governmental body may not conduct a private consultation with its attorney except: (1) When the governmental body seeks the advice of its attorney about: (a) pending or contemplated litigation; or (b) a settlement offer; or (2) on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter. The Town Council may adjourn into executive session for consultation with the Town Attorney regarding:

i. Development and annexation of the Revival Fire tract on approximately 5.1 acres of land generally located east of Florance Road and north of Hill Ridge Drive in the extraterritorial jurisdiction of the Town.

**b.** **Section 551.072 – Real Property**

The Town Council may convene in an executive session to discuss or deliberate regarding the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the governmental body in negotiations with a third person.

i. Acquisition of right-of-way, drainage easement, and temporary construction easement from a parent tract of approximately 152.3 acres generally located west of Faught Road, south of Robson Ranch Road, and north of Evelyn Lane.

ii. Partial easement acquisition participation regarding CV-2020-03039 - County of Denton, Texas vs. Texas Air Classics, Inc.

**c.** **Section 551.087 - Economic Development Negotiations**

The Town Council may convene in an executive session to discuss or deliberate regarding commercial or financial information that the Town has received from a business prospect that the Town seeks to have locate, stay, or expand in or near the Town and with which the Town is conducting economic development negotiations; or to deliberate the offer of a financial or other incentive to a business prospect described below.

i. Potential development agreement with Henry Northlake Development LLC on five tracts totaling approximately 122 acres generally located east of I-35W and north of Denton Creek. 551.087

**7. RECONVENE INTO OPEN SESSION**

*In accordance with Texas Government Code, Section 551, the Town Council will reconvene into Open Session and consider action, if any, on matters discussed in Executive Session*

a. Consider authorizing the Town Manager to take all necessary actions and execute all necessary documents regarding easement acquisition related to CV-2020-03039 - County of Denton, Texas vs. Texas Air Classics, Inc.

**8. ADJOURN**

**NOTE:** The Town Council reserves the right to adjourn into executive session at any time the course of this meeting to discuss any of the matters listed above as authorized by Texas Government Code Section 551.071 (Consultation with Attorney); Section 551.072 (Deliberations about Real Property); 551.073 (Deliberations about Gifts and Donations); 551.074 (Personnel Matters); 551.076 (Deliberations about Security Devices); 551.087 (Economic Development Negotiations).

**CERTIFICATION**

I, Zolaina R. Parker, Town Secretary for the Town of Northlake, Texas, hereby certify that the above agenda was posted on the official bulletin board located at Town Hall, 1500 Commons Circle, Suite 300, Northlake, Texas 76226, on May 6, 2022, by 5:00 p.m., in accordance with Chapter 551 of the Texas Government Code.

TOWN OF NORTH LAKE TEXAS

Zolaina R. Parker, Town Secretary

**NOTICE**: THE TOWN OF NORTHLAKE'S DESIGNATED PUBLIC MEETING FACILITIES ARE ACCESSIBLE IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT (ADA). THE TOWN WILL PROVIDE ACCOMMODATIONS, SUCH AS SIGN LANGUAGE INTERPRETERS FOR THE HEARING IMPAIRED IF REQUESTED AT LEAST FORTY-EIGHT (48) HOURS IN ADVANCE OF THE SCHEDULED MEETING. PLEASE CALL THE TOWN SECRETARY'S OFFICE AT 940-242-5702 OR USE TELECOMMUNICATIONS DEVICES FOR THE DEAF (TDD), BY CALLING 1-800-RELAY-TX SO THAT REASONABLE ACCOMMODATIONS CAN BE ARRANGED.

DAVID A. RETTIG, MAYOR

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MICHAEL C. GANZ, COUNCIL PLACE 2
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**TOWN OF NORTHLAKE COUNCIL ITEM NO. 1**

**DATE:** MAY 12, 2022

**ITEM:** CALL TO ORDER

**TOWN OF NORTHLAKE COUNCIL ITEM NO. 2**

**DATE:** MAY 12, 2022

**ITEM:** ANNOUNCEMENTS-PROCLAMATIONS-PRESENTATIONS

TOWN OF NORTHLAKE, TEXAS

OFFICIAL PROCLAMATION

**No. 22-2**

**WHEREAS**, law enforcement officers play an essential role in ensuring our safety and in safeguarding our rights and freedoms; and

**WHEREAS**, our officers partner with citizens to keep our community as safe as possible, by enforcing traffic laws, proactive policing, and forming neighborhood watch groups; and

**WHEREAS**, when an unsafe situation does arise, officers are the first to respond and provide assistance, often at great risk to their own personal safety; and

**WHEREAS**, Northlake police officers continue to face increased danger, both seen and unseen, scrutiny in the performance of their official duties; and

**WHEREAS**, in 2021 Northlake police officers responded to over 4,200 calls for service, arrested 230 suspects, made 5,093 traffic stops, removed 31 impaired drivers from our roadways and provided needed security and participated in numerous community events; and

**WHEREAS**, Congress and the President of the United States have established May 15, 2022, as Peace Officers' Memorial Day and the week in which it falls as National Police Week.

**NOW, THEREFORE**, I, David Rettig, Mayor, of the Town of Northlake along with the entire Town Council, hereby proclaim:

***May 15, 2022 - Peace Officers' Memorial Day***

***&***

***May 11-17, 2022 - National Police Week***

and urge all citizens to mark the occasion with appropriate ceremonies, commemorating police officers, past and present, who by their faithful and loyal devotion have collectively preserved our rights and our security.

**IN WITNESS WHEREOF I HAVE HEREUNTO SET MY HAND AND CAUSED THIS SEAL TO BE AFFIXED THIS 12TH DAY OF MAY, 2022.**

_____

**David Rettig, Mayor**

**ATTEST:**

_____

**Zolaina R. Parker, Town Secretary**

**NORTHLAKE MAYOR AND COUNCIL COMMUNICATION**

**DATE:** MAY 12, 2022

**REF. DOC.:** DEVELOPMENT AGREEMENT WITH D-F PACIFIC TMCY

**SUBJECT:** CLEVELAND-GIBBS ROAD EXTENSION

GOALS/OBJECTIVES:

- Invest in Infrastructure/Continue to invest in infrastructure expansions and improvements
- Provide an adequate/functional roadway system

BACKGROUND INFORMATION:

- TMCY (Taylor Morrison) developer of The Ridge at Northlake
- Development agreement requires developer to build Cleveland-Gibbs Road per Master Thoroughfare Plan in phases
- Developer agreement reimburses 75% of collected Roadway Impact Fees for road construction costs
- Current Phase 3 includes 2 of 4 lanes halfway through property (eastern lanes of northern section)
- Remaining section of roadway built with Phase 4 (eastern lanes of southern section, and western lanes of northern and southern sections)
- Breakout 2 of 4 lanes from Phase 4 (eastern lanes of southern section) to complete with Phase 3
- Redirect Roadway Impact Fees from developer reimbursement to pay road contractor directly
- Net out breakout project direct payments from developer reimbursement
- Extend 2 of 4 lanes through development from Robson Ranch Rd. to existing Cleveland-Gibbs Road

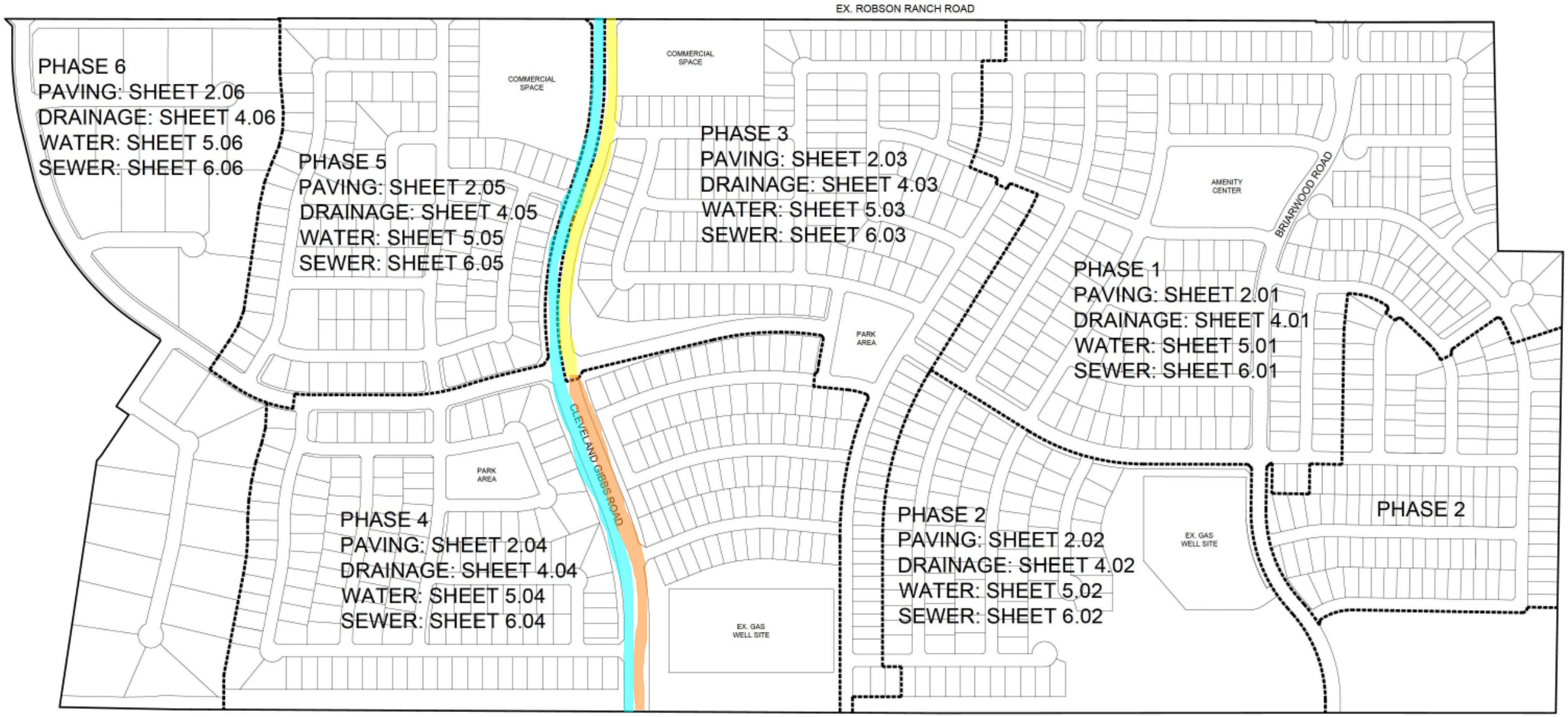
COUNCIL ACTION:

- Revise or amend development agreement to directly pay for road extension and reduce by same amount reimbursement to developer

# CLEVELAND-GIBBS ROAD EXTENSION

REGULAR MEETING
THURSDAY, MAY 12, 2022 - 5:30 PM

NORTHLAKE
TEXAS


EX. ROBSON RANCH ROAD
PHASE 6
PAVING: SHEET 2.06
DRAINAGE: SHEET 4.06
WATER: SHEET 5.06
SEWER: SHEET 6.06
COMMERCIAL SPACE
PHASE 5
PAVING: SHEET 2.05
DRAINAGE: SHEET 4.05
WATER: SHEET 5.05
SEWER: SHEET 6.05
COMMERCIAL SPACE
PHASE 3
PAVING: SHEET 2.03
DRAINAGE: SHEET 4.03
WATER: SHEET 5.03
SEWER: SHEET 6.03
AMENITY CENTER
BRIARWOOD ROAD
PHASE 1
PAVING: SHEET 2.01
DRAINAGE: SHEET 4.01
WATER: SHEET 5.01
SEWER: SHEET 6.01
PARK AREA
CLEVELAND GIBBS ROAD
PARK AREA
PHASE 4
PAVING: SHEET 2.04
DRAINAGE: SHEET 4.04
WATER: SHEET 5.04
SEWER: SHEET 6.04
EX. GAS WELL SITE
PHASE 2
PAVING: SHEET 2.02
DRAINAGE: SHEET 4.02
WATER: SHEET 5.02
SEWER: SHEET 6.02
EX. GAS WELL SITE
PHASE 2

# DEVELOPMENT AGREEMENT

- D-F Pacific TMCY (Taylor Morrison)
- Infrastructure for Phase 3
  - Includes 2 of 4 lanes of Cleveland-Gibbs Rd.
  - Eastern lanes of northern section of property
  - i.e.: ¼ of the roadway
- The Ridge Development
  - Developer reimbursed 75% Roadway Impact Fees
  - Up to 100% of actual cost of MTP roads constructed

# STRATEGY

- Build east lanes of southern section
- 2 of 4 lanes will extend completely through the development
- Robson Ranch Rd. to existing Cleveland-Gibbs Rd. (Harvest)
- Redirect Roadway Impact Fees from developer reimbursement
- Pay road contractor directly for southern section of 2 east lanes
- Western lanes of northern and southern sections built with Phase 4

**NORTHLAKE MAYOR AND COUNCIL COMMUNICATION**

**DATE:** MAY 12, 2022

**REF. DOC.:** MUNICIPAL COURT UPDATE PRESENTATION

**SUBJECT:** MUNICIPAL COURT UPDATE

BACKGROUND INFORMATION:

- Department Overview
  - Citation Processing
  - Payments
  - Dismissals
  - Compliance Verification
  - Docketing
- Workload Measures
- Process Improvements
  - Cloud Based Computing – (To provide advanced technology to improve delivery of citizen services)
- Court Of Record Requirements
  - Council Ordinance
  - Licensed Attorney as Judge – (Done)
  - Recording and Transcribing Requirements
  - Court Facilities (Ability to Utilize Existing Space)
  - Staff
- Forgone Revenue
- Operational Costs

COUNCIL ACTION:

- No action needed

TOWN OF NORTHLAKE

# MUNICIPAL COURT

MAY 12, 2022

NORTHLAKE
TEXAS

*Municipal Court*

# DEPARTMENT OVERVIEW

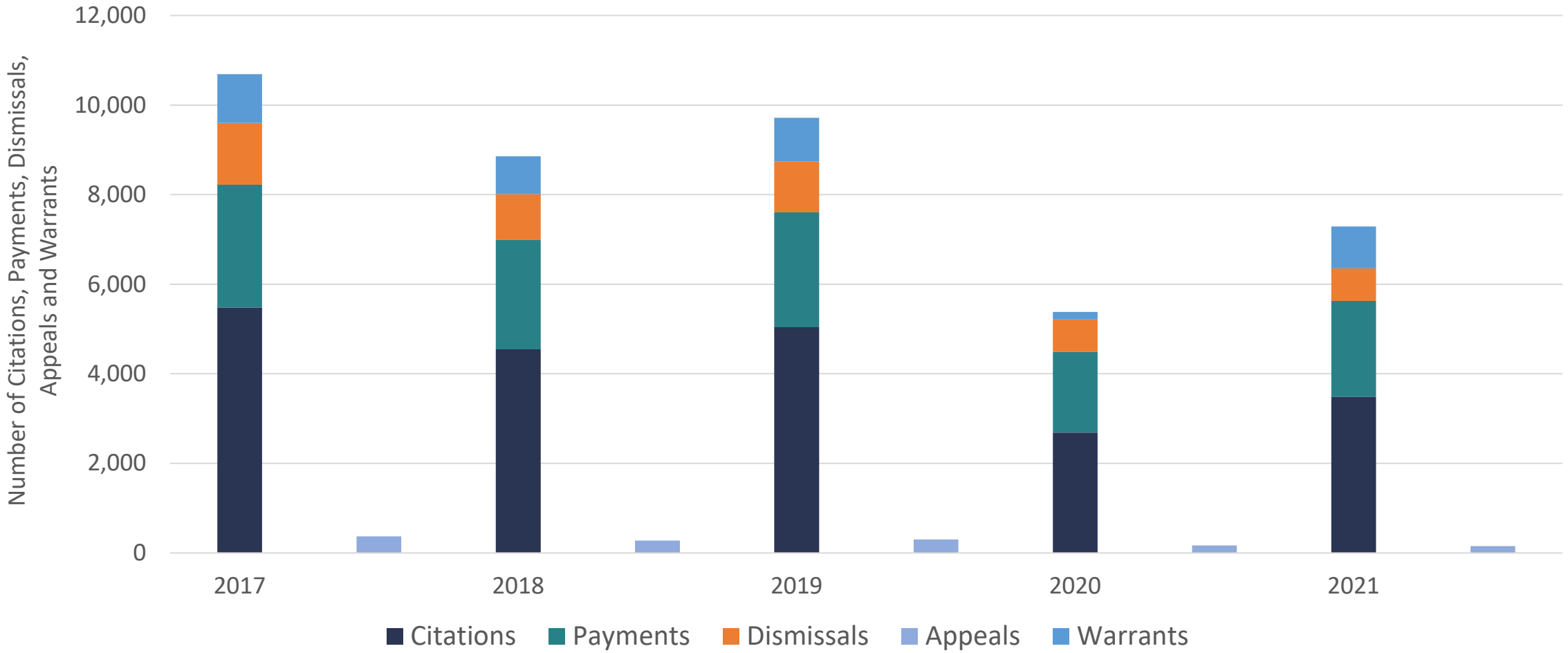
## Core Functions

1. Citation Processing
2. Payments
3. Dismissals
4. Compliance Verification
5. Docketing

**3** **Full-Time Employees**

*Municipal Court*

# WORKLOAD MEASURES



*Municipal Court*

# PROCESS IMPROVEMENTS

Cloud-Based Computing

Having 24/7 access to your software from any location is a great benefit given the pandemic and natural weather conditions.

It's also going to eliminate the need for your IT department to maintain the local servers for the city, which will not only save time, but also money.

Lastly, your software will now be fully backed up and secure in Tyler's environment. In our hosted environment, you will receive disaster recovery in the cost which ensures you will never lose your software information should disaster strike.

*Municipal Court*

# CLOUD BASED SOFTWARE

## A persona-by-persona approach?

### Judge

View Court Calendar
Manage Docket
Enter Judgments
Issue Warrants

### Prosecutor

View Court Calendar
Manage Docket
Initiate Cases
Prepare for Docket
Negotiate Pleas

### Clerk

(actually 4 personas)
Filing Clerk
Docket Clerk
Window Clerk
Collections Clerk

### Administrator

Manage Settings
Manage Security
Manage Retention
Deliver Reports
Interface with State

*Municipal Court*

# CLOUD BASED SOFTWARE

**Collection Agency Export Interface**

**Criminal Court Case Management**

**Centralized Cash Collections**

**Secure Signatures -Unlimited**

**Dallas Regional Warrant Interface**

**Tyler Output Processor Server**

*Municipal Court*

# COURT OF RECORD REQUIREMENTS

**Creation**
- Council Ordinance

**Judge**
- Licensed Attorney
- 2+ Years Experience
- U.S. Citizen
- Texas Resident

**Court Record**
- Court Reporter
- Electronic Recording
- All appeals transcribed

**Court Facilities**
- Dedicated Courtroom
- Jury Room
- Offices w/ furniture
- Library w/ law books

**Staff**
- Court Clerk

*Municipal Court*

# FOREGONE REVENUE

- Since September 1, 2019,  618 citations appealed and 98 remanded (15%)
- Over last 12 months 153 citation appealed, assume 15% remanded
- Equates to $45,900 in gross revenue annually
- State Comptroller charges approximately 40% in fees
- $27,540 in net revenue lost to appeals annually

*Municipal Court*

# COURT OF RECORD OPERATIONAL COSTS

| Requirements | Current On-going | Court of Record Start-up | Court of Record Future Expense |
|---|---|---|---|
| Judge (Part-time) | $42,000 | $50,000 | $50,000 |
| Prosecutor (Part-time) | $5,040 | $30,000 | $30,000 |
| Court Reporter | $0 | $0 | $5,000 |
| Electronic Recording (one time) | $0 | $7,500 | $0 |
| Transcription | $0 | $1,000 | $1,000 |
| Law Library | $0 | $7,500 | $1,000 |
| Court Clerk | $0 | $75,000 | $75,000 |
| Total | $47,040 | $171,000 | $162,000 |

**NORTHLAKE MAYOR AND COUNCIL COMMUNICATION**

**DATE:** MAY 12, 2022

**REF. DOC.:** TEXAS ELECTION CODE/TOWN CHARTER

**SUBJECT:** TOWN SECRETARY'S OFFICE UPDATE

STRATEGIC GOALS/OBJECTIVES:

- Define Future Amenities/Provide advanced technology to survey, track and deliver citizen services

BACKGROUND INFORMATION:

- May 7 General Election Update
  - Total Registered Voters - 5,248
  - Early Voting - 559 Voters
  - Election Day - TBD Voters
  - Canvass for Election/Oath Ceremony
    - Special Town Council Meeting - May 17, 2022 @ 5:30 PM

- Overview of Workload Metrics
- Public Information Request Module - Implemented March 2022
- Town Issued Emails for appointed officials - May 2022
- Agenda Management System - October 2022
- Records Management System - October 2022
- Board/Commission/Corporation Appreciation Banquet - December 10, 2022 (Proposed)

COUNCIL ACTION:

- No action needed

TOWN OF NORTHLAKE

# TOWN SECRETARY'S OFFICE

MAY 12, 2022

# GENERAL ELECTION – MAY 7

- Total Registered Voters - 5,248
- Early Voting - April 25th through May 3rd - 559 Voters
- Election Day - May 7 - TBD Voters
- Canvass for Election/Oath Ceremony
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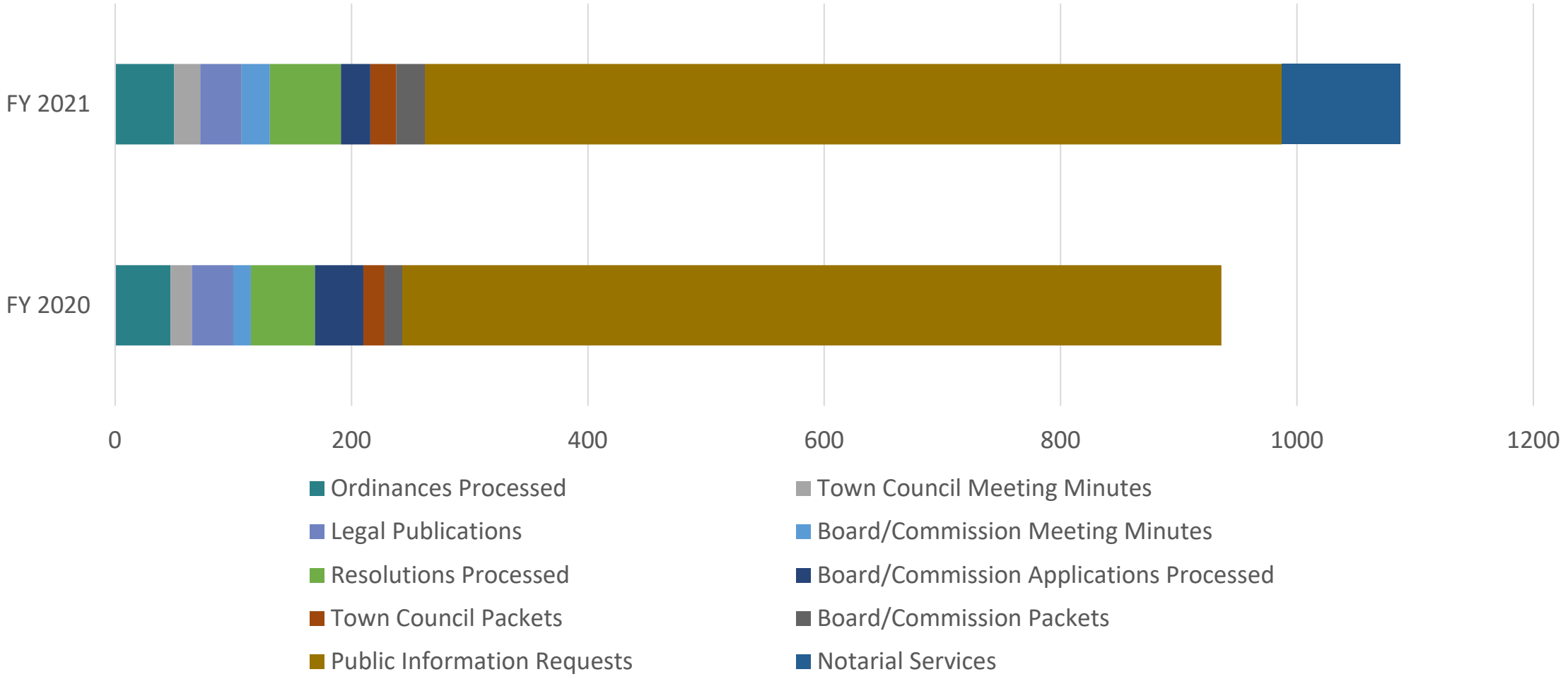
# WORKLOAD METRICS



# REQUEST TRACKER/ PUBLIC INFORMATION REQUEST MODULE

# E-MAIL

In process of issuing Town e-mail addresses to all appointed officials

Assist with archiving and managing Town-related records created via email

Facilitate communication between staff and appointed officials

Target date for implementation

May 2022

# AGENDA MANAGEMENT SYSTEM (AMS)

- Reviewing options to implement AMS and improve agenda creation process which will seamlessly integrate with current voting equipment on dais
- Enable use of paperless agenda for Council (optional)
- Improve customer experience when reviewing and searching agendas online
- Target date for implementation – October 2022

# RECORDS MANAGEMENT SYSTEM (RMS)

Meeting with departments to assess need and develop strategy for implementation of RMS

Facilitate Customer Experience and allow staff to improve the management, retention, and disposition of records without impacting use of existing software

Target date for implementation September - October 2022

# APPRECIATION BANQUET

- BOARD/COMMISSION/CORPORATION (BCC) BANQUET
  - Discussed during FY 21-22 Budget
    - Budget - $5,000
    - Proposed Date - Saturday, December 10, 2022
    - Proposed Time - 5:30 PM - 7:30 PM
    - Proposed Location - NISD Outdoor Learning Center
    - Food to be catered by local establishment
    - Invite would include appointed official and one (1) guest
    - Estimated number of attendees - 80
      - Council - 14
      - BCC - 54
      - Staff (Directors) - 12

**TOWN OF NORTHLAKE COUNCIL ITEM NO. 3**

**DATE:** MAY 12, 2022

**ITEM:** PUBLIC INPUT

**TOWN OF NORTHLAKE COUNCIL ITEM NO. 4**

**DATE:** MAY 12, 2022

**ITEM:** CONSENT ITEMS

DAVID A. RETTIG, MAYOR

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# NORTHLAKE TOWN COUNCIL
# REGULAR MEETING MINUTES
# APRIL 14, 2022

The Northlake Town Council convened in a Regular Meeting on April 14, 2022, at 5:30 p.m., in the Northlake Town Hall - Chamber Room, 1500 Commons Circle, Suite 300, Northlake, Texas.

## 1. CALL TO ORDER

Mayor David Rettig called the meeting to order at 5:30 p.m., and a quorum was present as follows:

- Roll Call:

David Rettig, Mayor
Rena Hardeman, Place 1
Michael Ganz, Place 2
Brian Montini, Mayor Pro Tem
Roger Sessions, Place 4
Bill Moore, Place 5
Wes Boyer, Place 6 - Absent with Notice

Also present were Drew Corn, Town Manager, and Ashley Dierker, Town Attorney.

- Invocation was given by Mayor Rettig.

- The Pledge of Allegiance to the United States and Texas Flags was recited.

## 2. ANNOUNCEMENTS, PROCLAMATIONS, AND PRESENTATIONS

A. Proclamation - Declaring May 2022 Mental Health Awareness Month and May 7, 2022, Children's Mental Health Awareness Day

Mayor Rettig presented the Proclamation to Alisa Quimby, Program Coordinator with The Center for Children's Health.

B. Presentation - Anniversary recognition to Tyler Lenderman for five years of service to the Town of Northlake

The item was presented by Michael Coleman, Police Captain, and no discussion followed.

C. Briefing - Indoor Sports Facility Funding and Operations Options

The item was presented by Drew Corn, Town Manager, and discussion followed.

Following discussion, Town Council consensus was for staff to seek input from the Northlake Economic Development Corporation and the Northlake Community Development Corporation regarding a sustainability study.

D. Briefing - Hotel Conference Center Construction Cost Increases and Proposed Funding Methodology

The item was presented by Drew Corn, Town Manager, and discussion followed.

Following discussion, Town Council consensus was for staff to pursue Finance Option 1 as presented.

E. Briefing - Fiscal Year 2021 Audit Presentation by Town Auditor

The item was presented by Austin Henderson, Audit Manager with BW&C, and commentary followed.

There was no direction provided as the item was for presentation purposes.

F. Briefing - Quarterly Reports
   i. Investments
   ii. Finances

The item was presented by John Zagurski, Finance Director, and commentary followed.

There was no direction provided as the item was for presentation purposes.

## 3. PUBLIC INPUT

None.

## 4. CONSENT ITEMS

The Consent Agenda consisted of items 4.G. and 4.H., and no items were pulled for Individual Consideration.

Mayor Pro Tem Montini moved to approve the Consent Agenda as presented. Motion seconded by Council Member Ganz. Motion carried.

AYES (6): Rettig, Montini, Hardeman, Ganz, Sessions, Moore
NAYS (0): None
ABSENT (1): Boyer

G. Consider approval of the Town Council Meeting Minutes for March 24, 2022
**APPROVED**

H. Consider acceptance of the Audit for Fiscal Year 2021
**APPROVED**

**5. ACTION ITEMS**

I. Consider calling and authorizing a public hearing to be held on May 12, 2022, at 5:30 p.m., at the Town of Northlake, 1500 Commons Circle, Suite 300, Northlake, Texas 76226, in the Council Chambers, regarding the proposed annexation of the remaining unannexed portion of the 237.569-acre Bob Smith Management Co. Tract, is generally located on the east side of Cleveland-Gibbs Road approximately 200 feet south of the intersection with Edna Lane
**NOT CONSIDERED - WITHDRAWN BY APPLICANT**

The item was not presented or discussed.

J. Consider Resolution 22-19, approving and authorizing the Town Manager to execute a lease agreement with NextLink to locate an antenna on the Town of Northlake North Water Tower for an annual amount to be paid to the Town of Northlake not to exceed $2,500, pending an engineering report on installation
**APPROVED RESOLUTION 22-19**

The item was presented, and discussion followed.

Mayor Pro Tem Montini moved to approve the item as presented. Motion seconded by Council Member Ganz. Motion carried.

AYES (6): Rettig, Montini, Hardeman, Ganz, Sessions, Moore
NAYS (0): None
ABSENT (1): Boyer

K. Consider Resolution 22-20, approving and authorizing the Town Manager to enter into an agreement with Neel Schaffer for the design and project management of the North 0.6 MG Ground Storage Tank and Pump in an amount not to exceed $233,330
**APPROVED RESOLUTION 22-20**

The item was presented, and discussion followed.

Mayor Rettig moved to approve the item as presented. Motion seconded by Mayor Pro Tem Montini. Motion carried.

AYES (6): Rettig, Montini, Hardeman, Ganz, Sessions, Moore
NAYS (0): None
ABSENT (1): Boyer

L. Consider Resolution 22-21, approving a Unified Sign Development Plan for Chadwick Commons Phases 1 & 2, a mixed-use development consisting of 249 apartments, a 17,400 square-foot commercial building, and another 17,400 square-foot building proposed to be built on 24.638 acres situated in the L. Medlin Survey, Abstract No. 830, generally located south of State Highway 114 (SH

114) approximately 1,000feet east of Interstate Highway 35W (IH 35W), and zoned Mixed-Use Planned Development (MPD). Chadwick Farms Ltd, Chadwick Retail Ltd, and Chadwick Apartments Phase II Ltd are the owners. Signs Manufacturing Corporation is the applicant. Case # USDP-22-001
**APPROVED RESOLUTION 22-21**

The item was presented, and discussion followed.

Council Member Sessions moved to approve the item as presented. Motion seconded by Mayor Rettig. Motion carried.

AYES (6): Rettig, Montini, Hardeman, Ganz, Sessions, Moore
NAYS (0): None
ABSENT (1): Boyer

M. Consider Ordinance 22-0414A, approving a zoning change from RR - Rural Residential to I - Industrial for the approximately 200-acre portion within the Town limits of a 237.569-acre tract of land situated in the G. Ramsdale Survey, Abstract No. 1128, generally located on the east of Cleveland-Gibbs Road approximately 200 feet south of the intersection with Edna Lane. Bob Smith Management Co., Ltd. is the owner/applicant. Case # Z-22-001
**NOT CONSIDERED - WITHDRAWN BY APPLICANT**

The item was not presented or discussed.

## 6. EXECUTIVE SESSION

The Town Council convened into an Executive Session at 7:07 p.m., consistent with Chapter 551 of the Texas Government Code, as amended, or as otherwise allowed by law to address the following:

### a. Section 551.071 - Consultation with Attorney

i. Development and annexation of the CKD Holdings Tracts on approximately 24.8-acre, 11.9-acre, and 1.8-acre tracts of land generally located north of Oliver Creek and west of FM 156 in the extraterritorial jurisdiction of the Town.

ii. Development and annexation of the Gebert Tract on approximately 156.8-acre tract of land generally located west of FM 156 and north of Petty Place in the extraterritorial jurisdiction of the Town.

iii. Application and Intent to Obtain Water Quality Permit by TCCI Land Development for a proposed domestic wastewater treatment facility located approximately 0.3 miles southeast of the intersection of Blair Road and FM 156 in the extraterritorial jurisdiction of the Town.

iv. Claim filed against Town of Northlake for reimbursement of materials submitted by Amy Donoho, 211 Bingham Road

**b. Section 551.087 Economic Development Negotiations**

The Town Council may convene in an executive session to discuss or deliberate regarding commercial or financial information that the Town has received from a business prospect that the Town seeks to have locate, stay, or expand in or near the Town and with which the Town is conducting economic development negotiations; or to deliberate the offer of a financial or other incentive to a business prospect described below.

i. Potential development agreement with Henry Northlake Development LLC on five tracts totaling approximately 122 acres generally located east of I-35W and north of Denton Creek.
ii. Potential development agreement with potential operator, and Chadwick Farms for the development of indoor sports facility and surrounding retail development at Chadwick Parkway and SH 114.
iii. Potential development agreement for regional headquarters seeking to locate in Northlake

**7. RECONVENE INTO OPEN SESSION**

Mayor Rettig reconvened the Regular Meeting at 8:51 p.m., to address any Council action regarding the items deliberated during Executive Session. No votes or actions were taken on any of the items deliberated.

**8. ADJOURN**

With no further business, Mayor Rettig adjourned the meeting at 8:52 p.m.

_____
David Rettig, Mayor

Attest:

_____
Zolaina R. Parker, Town Secretary

MINUTES APPROVED ON: _____

**NORTHLAKE MAYOR AND COUNCIL COMMUNICATION**

**DATE:** MAY 12, 2022

**REF. DOC.:** TEXAS GOVERNMENT CODE CHAPTER 791

**SUBJECT:** INTERLOCAL AGREEMENT – DENTON COUNTY RADIO COMMUNICATIONS SYSTEM

STRATEGIC GOALS/OBJECTIVES:

- Maintain a safe community with the support of diligent and aware residents
- Partner with neighboring cities on projects of joint interest

BACKGROUND INFORMATION:

- Northlake PD has partnered with Denton County Radio Communications (DCSO) many years
- Interlocal Agreement provides Northlake Talk Groups on the radio system
- Interlocal Agreement provides activation of radios via Radio Systems Manager at Denton County
- Annual cost: Radio Usage Fee through Denton County Communications

COUNCIL ACTION:

- Approve interlocal cooperation agreement (ICA)

TOWN OF NORTHLAKE, TEXAS

OFFICIAL RESOLUTION

**NO. 22-22**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF NORTHLAKE, TEXAS, APPROVING AND AUTHORIZING THE TOWN MANAGER TO EXECUTE AN INTERLOCAL AGREEMENT BETWEEN THE TOWN OF NORTHLAKE AND DENTON COUNTY FOR THE USE OF THE DENTON COUNTY RADIO COMMUNICATIONS SYSTEM**

**WHEREAS,** the Town Council of the Town of Northlake, Texas, has determined that a public need and necessity exists for use of the Denton County Radio Communication System; and

**WHEREAS**, this Interlocal Agreement is made under the authority of the Interlocal Cooperation Act as codified in Chapter 791 of the Texas Government Code; and

**WHEREAS**, the Town Council finds that it is in the public interest, safety, and welfare to authorize the execution of the Interlocal Agreement attached hereto and incorporated herein for all intents and purposes as Exhibit "A".

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF NORTHLAKE, TEXAS:**

**SECTION 1.** All the above premises are true and correct legislative and factual findings of the Town Council, and they are hereby approved, ratified, and incorporated into the body of this resolution as if copied in their entirety.

**SECTION 2.** That the Town Council hereby authorizes the Town Manager to execute an Interlocal Agreement (Exhibit "A") with Denton County for the use of the Denton County Radio Communications System.

**SECTION 3.** That this Resolution is effective immediately upon approval by the Town Council.

**PASSED AND APPROVED** by the Town Council of the Town of Northlake, Texas, this 12th day of May 2022.

Town of Northlake, Texas

_____

David Rettig, Mayor

Attest:

_____

Zolaina R. Parker, Town Secretary

EXHIBIT "A"

# INTER-LOCAL COOPERATION AGREEMENT BETWEEN DENTON COUNTY AND THE TOWN OF NORTHLAKE POLICE DEPARTMENT FOR THE USE OF THE DENTON COUNTY RADIO COMMUNICATIONS SYSTEM

This Inter-Local Agreement ("Agreement") is entered into by and between the County of Denton, Texas ("the County") and the Town of Northlake, Texas, both entities being located in Denton County, Texas (collectively, the "Parties" or separately as a "Party"). The Parties execute this agreement as hereinafter provided, pursuant to the Texas Governmental Code, Chapter 791, known as the Inter-Local Cooperation Act:

**WHEREAS,** Denton County is a political subdivision within the State of Texas, each of which engages in the provision of governmental services for the benefit of its citizens; and

**WHEREAS**, the Agency is duly organized and operating under the laws of the State of Texas engaged in the provision of municipal government and/or related services for the benefit of the citizens of Agency; and

**WHEREAS,** the Inter-Local Cooperation Act, Texas Government Code, Chapter 791, as amended "the Act" provides authority for local governments of the State of Texas to enter into Inter-local agreements with each other for the purpose of performing governmental functions and services as set forth in the Act; and

**WHEREAS,** the County owns, operates, and maintains the radio-communications system, exclusive of the radios owned individually by each User Agency ("System") for the purpose of providing radio communications in support of its governmental operations; and

**WHEREAS,** Northlake wishes to use certain portions of the System for its governmental operations; and

**WHEREAS,** the use of the System in the provision of governmental services benefits the public health and welfare, promotes efficiency and effectiveness of local governments, and is of mutual concern to the contracting Parties; and

**WHEREAS,** Northlake and the County have current funds available to satisfy any fees and costs required pursuant to this Agreement;

**NOW, THEREFORE,** in consideration of the mutual covenants and agreement herein contained, the sufficiency of which are hereby acknowledged, and upon and subject to the terms and conditions hereinafter set forth, the Parties agree as follows:

## I.

## DEFINITIONS

*"Assignee"* means the Agency employee assigned to a specific Subscriber Unit.

*"Communications System"* or "*System"* means a wide area, multi-agency digital trunked radio system compliant with P-25 interoperability standards to be used jointly by the City of Lewisville, the City of Denton, Denton County, and other Infrastructure Members, if any, primarily for providing public safety dispatch and communications for fire, emergency medical and police services and such other governmental services as may be agreed from time to time by the Parties.

*"Coordinating Committee"* means the committee that is responsible for making recommendations to the Infrastructure Management Committee on the administration and operation of the Communications System.

*"Infrastructure Management Committee"* means the committee that is responsible for the administration and operation of the Communications System.

*"Subscriber Units"* means mobile radios, portable radios or any similar devices used for communicating over the Communications System.

*"Talk Group"* means a specific group of Subscriber Units allowed to communicate privately within that group over shared infrastructure resources.

*"Technical Committee"* means the committee that advises the Coordinating Committee on technical issues related to the operation of the Communications System.

"*User*" means any entity with which the City of Denton, the City of Lewisville, Denton County, or other Infrastructure Member has entered into a contractual agreement for the provision of radio communication services through the Consolidated Communications System.

## II.

## TERM

2.1 This Agreement is for a period of a one (1) year term, beginning on the 1st day of October, 2021, and ending on the 30th day of September, 2022. unless terminated earlier pursuant to Section 7.1.

2.2 It is the intention of the Parties for this to be a long term enterprise which will be renewed with a new ILA each year subject to approval by each Party's governing body.

## III.

## OBLIGATIONS OF TOWN OF NORTHLAKE

3.1 Northlake shall use the System in accordance with this Agreement to provide integration of communications by Northlake between its Users on the System for governmental operations.

3.2 When using the System, Northlake shall abide by all applicable Federal and State laws and regulations, including any regulations of the Denton County Radio System. When Northlake uses the System for interoperability with Talk Groups (hereinafter defined) other than those provided by this Agreement, Northlake will also abide by the User rules of those Talk Groups.

3.3 Northlake must provide a written request to the Denton County Radio System Manager ("System Manager") or his designee, to activate radios ("Subscriber Units") on the System. Such request must include the model and serial number of the Subscriber Unit, the name of the Assignee, and identifying Talk Groups required in the Subscriber Unit.

3.4 Northlake is responsible for furnishing its own Subscriber Units, which must be compatible with the APCO P-25 Phase 2 TDMA Digital System, and for maintenance of the Subscriber Units. Northlake is responsible for all programming of Agency-owned Subscriber Units.

3.5 Northlake shall be solely responsible for obtaining a technical services support contract and a maintenance contract for all Agency-owned dispatch infrastructure equipment, either from the manufacturer of the equipment or from a manufacturer-authorized service provider. The County shall not be responsible for maintenance of any Agency-owned equipment.

3.6 Depending on the equipment that will be purchased and installed by Northlake, the Agency shall be solely responsible for entering into such Software Update Agreements and/or Software Maintenance Agreements from the manufacturer as necessary to ensure that the equipment owned by the Agency will be maintained and upgraded to meet the requirements of the System when the County performs System upgrades.

3.7 Northlake shall be solely responsible for having periodic maintenance (PM) performed on its Subscriber Units at least every two years which shall include tuning and alignment of the Subscriber Units and updating the Subscriber Units with the latest firmware available.

3.8 The County shall not be liable to the Agency for the lack of interoperability between the Subscriber Units and the System if the Agency fails to perform the required PM and/or obtain the software and/or firmware upgrades recommended by the County and/or the

manufacturer of the Subscriber Units necessary to communicate through the System as set forth in Sections 3.5, 3.6, and 3.7 above.

## IV.

## OBLIGATIONS OF THE COUNTY

4.1 The County will allow Northlake to use County provided Talk Groups, which are a primary level of communication for Users on the System ("Talk Group"), comparable to a channel on a conventional radio system, for the exclusive use of Northlake. Talk Groups will be established for the Agency by the County.

4.2 The System Manager will not activate radios on the Northlake Talk Groups nor make changes to the Northlake radios without first receiving authorization from the designated representative of the Agency, unless, in the opinion of the County, such action is necessary to eliminate harmful interference.

4.3 The County is solely responsible for:

(1) Coordinating Talk Groups among System Users;

(2) Grouping of Talk Groups to allow transmitting and receiving on all associated Talk Groups as required by the Agency; and

(3) The operation, maintenance, and control of the System

## V.

## FEES

5.1 The fees payable for the term of this Agreement are set out in **Exhibit B** which is attached and incorporated for all purposes.

5.2 The County may increase the fees each October 1st, the beginning of each County fiscal year, by an amount not to exceed five percent (5%) of the previous year's fees. The County will provide ninety (90) days' notice to Northlake before increasing the fees.

5.3 Based on the fees described above, the County will calculate the annual fee due based upon the total number of Subscriber Units and submit an invoice to the Agency on or before October 1st of each year. This amount is subject to change when the Agency adds or deletes the number of Subscriber Units in service. The Agency must notify the System Manager in writing of any addition or deletion of Subscriber Units.

5.4 Fees for Additions - The amount owed for annual fees for additions of Subscriber Units will be prorated for the year added, invoiced immediately, and amounts will be due within thirty (30) days of receipt of the invoice for the addition(s).

5.5 Deletions - No refunds for deletions will be made for the Agencies deletion of Subscriber Units during the period of the Agreement. The fees for the upcoming fiscal year will be calculated based on the number of Subscriber Units in service on the radio system as of May 1st of the current contract year.

5.6 In the event a new Inter-Local Agreement is not executed prior to the expiration of this Agreement, and the Sheriff's Office continues to provide access to the Radio Communications System, the Agency shall reimburse and compensate the County for access to the Denton County Radio Communications System at the rate set by the Denton County Sheriff and approved by the Denton County Commissioners Court for the next fiscal year.

## VI.

## PAYMENT DUE

6.1 The Agency agrees to pay the County the annual fees specified under Article V within thirty (30) days of the receipt of the invoice. Should the Agency add Subscriber Units or Talk Groups to the Service within a Term, the Agency agrees to pay the additional fee(s) due within thirty (30) days of invoice. All payments for expenses incurred as a result of the performance of the Agreement shall be made only from current revenues legally available to each respective Party.

## VII.

## TERMINATION

7.1 Either Party may terminate this Agreement at any time by giving ninety (90) days advance written notice. The Agency shall pay for all fees incurred through the effective date of termination. If the County permanently discontinues the operation of its System, this Agreement shall terminate on the date of discontinuance without further notice, and the County will reimburse the Agency the pro-rated amount of the fees previously paid by the Agency for the use of the System for the then current fiscal year.

## VIII.
## RELEASE AND HOLD HARMLESS

**TO THE EXTENT PERMITTED BY LAW, EACH PARTY AGREES TO WAIVE ALL CLAIMS AGAINST, TO RELEASE, AND TO HOLD HARMLESS THE OTHER PARTY AND ITS RESPECTIVE OFFICIALS, OFFICERS, AGENTS, EMPLOYEES, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM ANY AND ALL LIABILITY, CLAIMS, SUITS, DEMANDS, LOSSES, DAMAGES, ATTORNEYS, FEES, INCLUDING ALL EXPENSES OF LITIGATION OR SETTLEMENT, OR CAUSES OF ACTION WHICH MAY ARISE BY REASON OR INJURY TO OR DEATH OF ANY PERSON OR FOR LOSS OF, DAMAGE TO, OR LOSS OF USE OF ANY PROPERTY**

**ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT. IN THE EVENT THAT A CLAIM IS FILED, EACH PARTY SHALL BE RESPONSIBLEFOR ITS PROPORTIONATE SHARE OF LIABILITY.**

## IX.

## IMMUNITY

In the execution of this Agreement, neither of the Parties waives, nor shall be deemed hereby to have waived any immunity or any legal or equitable defense otherwise available against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the Parties do not create any obligations, express or implied, other than those set forth herein, and this Agreement does not create any rights in parties who are not signatories to this Agreement.

## X.

## ASSIGNMENT

The Agency agrees to retain control and to give full attention to the fulfillment of this Agreement. The Agency cannot assign or sublet this Agreement without the prior written consent of the County. Further, the Agency cannot sublet any part or feature of the work to anyone objectionable to Denton County. Northlake also agrees that the subletting of any portion or feature of the work, or materials required in the performance of this Agreement, does not relieve the Agency from its full obligations to the County as provided by this Agreement.

## XI.

## ENTIRE AGREEMENT

This Agreement represents the entire and integrated agreement between Denton County and Northlake and supersedes all prior negotiations, representations and/or agreements, either written or oral, between Denton County and Northlake. This Agreement may be amended only by written instrument signed by Denton County and Northlake.

## XII.

## NOTICES

Unless notified otherwise in writing, all notices are required to be given to either Party in writing and delivered in person or sent via certified mail to the other Party at the following respective addresses:

| | | |
|---|---|---|
| County: | 1 | Denton County Judge<br>Denton County Commissioners Court<br>1 Courthouse Drive, Ste 3100<br>Denton, Texas 76201 |
| | 2 | Denton County Sheriff<br>Denton County Sheriff's Office<br>127 N. Woodrow Lane<br>Denton, Texas 76205 |
| | 3 | Assistant District Attorney<br>Counsel to the Sheriff<br>127 N. Woodrow Lane<br>Denton, Texas 76205 |

| | |
|---|---|
| Name of Agency: | Northlake Police Department |
| Contact Person | Robert Crawford, Chief of Police |
| Address | 1600 Commons Circle |
| City, State, Zip | Northlake, TX 76226 |
| Telephone | 940-648-4804 x 231 |
| Email | rcrawford@town.northlake.tx.us |

## XIII.

## AUTHORITY TO SIGN

The undersigned officers and/or agents of the Parties hereto are the properly authorized officials or representatives and have the necessary authority to execute this Agreement on behalf of the Parties.

## XIV.

## SEVERABILITY

The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held to be contrary to the law or contrary to any rule or regulation having the force and effect of the law, such decisions shall not affect the remaining portions of the Agreement. However, upon the occurrence of such event, either Party may terminate this Agreement by giving the other Party thirty (30) days written notice.

## XV.

## VENUE

This Agreement and any of its terms or provisions, as well as the rights and duties of the Parties hereto, shall be governed by the laws of the State of Texas. The Parties agree that this Agreement shall be enforceable in Denton County, Texas, and if legal and necessary, exclusive venue shall lie in Denton County, Texas.

## XVI.

## INTERPRETATION OF AGREEMENT

Although this Agreement is drafted by the County, this is a negotiated document. Should any part of this Agreement be in dispute, the Parties agree that the Agreement shall not be construed more favorably for either Party.

## XVII.

## REMEDIES

No right or remedy granted herein or reserved to the Parties is exclusive of any right or remedy granted by law or equity; but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this Agreement may be waived without the express written consent of the Parties. It is further agreed that one (1) or more instances of forbearance by either Party in the exercise of its respective rights under this Agreement shall in no way constitute a waiver thereof.

## XVIII.

## SUCCESSORS AND ASSIGNS

The Parties each bind themselves, their respective successors, executors, administrators, and assigns to the other Party to this contract. Neither Party will assign, sublet, subcontract or transfer any interest in this Agreement without the prior written consent of the other Party. No assignment, delegation of duties or subcontract under this Agreement will be effective without the written consent of all Parties.

**EXECUTED** duplicate originals on the dates indicated below:

**SIGNED AND AGREED BY THE TOWN OF NORTHLAKE, TEXAS:**

**BY:**

_____ Date:_____

Drew Corn, Town Manager
Town of Northlake
1500 Commons Circle, Ste 300
Northlake, TX 76226
940-648-3290

Approved as to content:

_____
Robert Crawford, Chief of Police

Approved as to form:

_____
Attorney for Agency

**APPROVED BY THE DENTON COUNTY COMMISSIONERS COURT OF DENTON COUNTY, TEXAS:**

**BY:**

**DENTON COUNTY, TEXAS**

_____ Date:_____

Andy Eads County Judge
Denton County Commissioners Court
1 Courthouse Drive, Ste 3100
Denton, Texas 76201
(940)349-2820

Approved as to content:

_____
Denton County Sheriff's Office

Approved as to form:

_____
Assistant District Attorney
Counsel to the Sheriff

# Exhibit B
# Denton County Sheriff's Office
# Radio Communications System Agreement
# Agency Payment Worksheet

| | |
|---|---|
| **Agency:** | **The Town of Northlake Police Department** |
| Payment Contact Person: | Zolaina Parker, Town Secretary |
| Phone Number: | 940-242-5702 |
| Email(s): | zparker@town.northlake.tx.us |
| Address: | 1500 Commons Circle, Suite 300 |
| City, State, Zip | Northlake, TX 76226 |

**Agency Should Include this Worksheet with Each Payment Sent to Denton County.**

| | | |
|---|---|---|
| Make checks payable to: | | **Denton County** |
| Mail payments to: | | **Radio Communications Systems Agreement Payments**<br>**Denton County Auditor**<br>**1 Courthouse Drive, Ste 2000**<br>**Denton, Texas 76208** |

**Please select one of the following options:**

| **Tier 1** | | | **Tier 3** | | |
|---|---|---|---|---|---|
| Radio User ***ONLY*** - $4 each per month | | | Includes Tier 1 User + add on of Subscriber Services (program once per year and PM radios every two years) - $6 each per month | | |
| PD Radio Subscribers | 35 | $1,680.00 | PD Radio Subscribers | 35 | $2,520.00 |
| **Total Amt Per Year =** | | **$1,680.00** | **Total Amt Per Year =** | | **$2,520.00** |
| ***BILLED ANNUALLY*** | | | | | |

**Please make your Tier selection, sign and date below.**

**Circle One: Tier 1 / Tier 3**

**Signature of Agency Representative** **Title** **Date**

**TOWN OF NORTHLAKE COUNCIL ITEM NO. 5**

**DATE:** MAY 12, 2022

**ITEM:** ACTION ITEMS

**NORTHLAKE MAYOR AND COUNCIL COMMUNICATION**

**DATE:** MAY 12, 2022

**REF DOC.:** MASTER DEVELOPMENT AGREEMENT FOR HOTEL-CONF. CENTER

**SUBJECT:** HOTEL CONFERENCE CENTER CONSTRUCTION COST INCREASES AND PROPOSED FUNDING METHODOLOGY

GOALS/OBJECTIVES:

- Exercise Fiscal Responsibility; Build a robust commercial sales tax revenue base (Council Goal)

BACKGROUND INFORMATION:

- Hotel-Conference Center Public/private partnership
  - Hotel developer, Northlake Innkeepers I, Ltd., to construct hotel & conference center
  - Developer to pay all development costs for hotel
  - Town to fund conference center construction with Hotel Occupancy Taxes (HOT)
  - Town ownership of conference center upon completion
  - Hotel management to operate conference center
- Conference Center Cost Increase
  - $6.3 million total project budget per 2019 Master Development Agreement
    - $1.8 million initial payment for land
    - $4.5 million remaining budget for design, construction, and equipment
  - $7.7 million (+22%) total bid costs with construction planned to begin soon
    - $1.8 million paid for land
    - $5.9 million (+31%) remaining costs for design, construction, and equipment
    - Increase primarily due to construction costs rising (labor, materials, etc.)
- Options to fund $1.4 million gap per Council direction on April 14, 2022
  - Increase budget
    - HOT fund balance over $1 million
    - $480,000 current annual HOT fund revenue budget
      - Fund up to $7 million in debt
        - Finance full $5.9 million
        - Pay $1 million cash & finance $4.9 million
    - HOT fund expected to grow
      - Cambria not currently included in budgeted revenues
      - Up to 3 additional hotels planned

COUNCIL DIRECTION:

- Revise or amend development agreement to increase amount of construction not to exceed $5,900,000

TOWN OF NORTHLAKE, TEXAS

OFFICIAL RESOLUTION

**NO. 22-23**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF NORTHLAKE, TEXAS, APPROVING AND AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AMENDMENT TO THE HOTEL CONFERENCE CENTER MASTER DEVELOPMENT AGREEMENT WITH NORTHLAKE INNKEEPERS I, LTD. TO INCREASE THE AMOUNT OF THE CONSTRUCTION PARTICIPATION FROM $4,500,000 to $5,900,000**

**WHEREAS,** the Town Council of the Town of Northlake, Texas, approved a Master Development Agreement on September 12, 2019, for the Cambria Hotel and Conference Center; and

**WHEREAS**, the Town Council has determined that it is advisable and in the best interests of the Town to execute a First Amendment to the Master Development Agreement attached hereto as Exhibit "A" in an amount not to exceed $5,900,000 for the completion and construction of the Conference Center; and

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF NORTHLAKE, TEXAS:**

**SECTION 1.** All the above premises are true and correct legislative and factual findings of the Town Council, and they are hereby approved, ratified, and incorporated into the body of this resolution as if copied in their entirety.

**SECTION 2.** That the Town Council hereby authorizes the Town Manager to execute the First Amendment to the Master Development Agreement which increases the authorized construction participation by $1,400,000 for a total amount not to exceed $5,900,000.

**SECTION 3.** This Resolution shall be effective immediately upon adoption.

**PASSED AND APPROVED** by the Town Council of the Town of Northlake, Texas, this 12th day of May 2022.

Town of Northlake, Texas

_____

David Rettig, Mayor

Attest:

_____

Zolaina R. Parker, Town Secretary

**FIRST AMENDMENT TO MASTER DEVELOPMENT AGREEMENT BY AND BETWEEN THE TOWN OF NORTHLAKE, TEXAS AND NORTHLAKE INNKEEPERS I, LTD.**

This First Amendment to the MASTER DEVELOPMENT AGREEMENT for the Northlake Cambria Hotel and Conference Center ("Amendment") is made and entered into this _____ day of May 2022, by and between the Town of Northlake, Texas, a Texas home-rule municipality ("Town"), and Northlake Innkeepers I, Ltd. ("NIIL"). Town and Owner are sometimes hereinafter referred to individually as a "party" and collectively as the "parties."

**RECITALS**

WHEREAS, on September 12, 2019, the parties entered into that certain MASTER DEVELOPMENT AGREEMENT for the Northlake Cambria Hotel and Conference Center attached hereto as Exhibit A, (the "Agreement"); and

WHEREAS, in accordance with the terms of the Agreement, NIIL is, among other things, obligated to construct a Hotel and Conference Center (the "Project" as defined in the Agreement); and

WHEREAS, the purpose of this Amendment is to modify the amount of money requirement for competition of the Project due to rising construction costs; and

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and NIIL agree as follows:

1. Section 8 of the Agreement is amended in its entirety to read as follows:

*8.* ***Construction****. NIIL shall design, construct, and equip the Conference Center on the Conference Center Site; the Town shall pay $1,755,468 of the costs associated with the design, construction and equipping of the Conference Center upon execution of this Master Development Agreement for the acquisition of the land for the Conference Center. Provided the design is acceptable to the Town, NIIL shall pay all amounts in excess of ~~$4,500,000.00~~$5,900,000.00 for the completion of the Conference Center. NIIL shall be subject to events of force majeure, and in a good and workmanlike manner cause Commencement of Construction of the Conference Center within a reasonable time after the execution of this Agreement and the completion of the Plans and shall work diligently toward completion. NIIL will secure a loan for the Town for any amounts above the initial Town payment of $1,755,468 (the "NIIL Conference Center Loan"), that the Town opts not to pay in cash for the cost of the Conference Center, at the opening date of the Hotel and Conference Center. NIIL will obtain written approval from the Town regarding the terms of the NIIL Conference Center Loan prior to closing date of the NIIL Conference Center Loan. Provided the Town has approved the terms of the NIIL Conference Center Loan in writing, the Town agrees to pay NIIL on terms secured by NIIL for the NIIL Conference Center Loan from existing Tax Revenue (as*

*hereinafter defined) funds to the extent such funds are available. In the event that the Tax Revenue funds are insufficient to cover the cost of the NIIL Conference Center Loan, the Town agrees to work with NIIL to negotiate an extension of the NIIL Conference Center Loan and to pay NIIL the additional amount of interest that might be owed pursuant to such extension. NIIL guarantees to Town that the terms of NIIL Conference Center Loan will be at terms equal to or better than the terms of the mortgage on the Hotel. Understanding how such things work, the Parties agree that the closing date of the NIIL Conference Center Loan may extend past the actual opening date of the Conference Center. Notwithstanding anything to the contrary herein, the Town, in its sole discretion, reserves the right to seek alternate financing for any amounts above the initial Town payment of $1,755,468 if the Town is able to secure more advantageous financing through alternate means.*

2. All other terms and conditions of the Agreement, with the exception of the terms modified by this Amendment, shall remain in full force and effect.

EXECUTED as of the date first set forth above.

TOWN:

**TOWN OF NORTHLAKE, TEXAS**

_____
Drew Corn, Town Manager

**ATTEST:**

_____
Zolaina Parker, Town Secretary

**STATE OF TEXAS** §
§
**COUNTY OF DENTON** §

This instrument was acknowledged before me on the ____ day of _____, 2022, Drew Corn, Town Manager of the Town of Northlake, Texas, a Texas home rule municipality, on behalf of said Town.

_____
Notary Public, State of Texas

NIIL**:**

**NORTHLAKE INNKEEPERS I, LTD.**

By:_____

Printed Name:_____

Its:_____

**STATE OF TEXAS** **§**
**§**
**COUNTY OF DENTON** **§**

This instrument was acknowledged before me on the ____ day of _____, 2022, by _____, the _____ of Northlake Innkeepers I, Ltd., a Texas corporation, on behalf of said corporation.

_____
Notary Public, State of Texas

EXHIBIT "A"

# MASTER DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE TOWN OF NORTHLAKE,

TEXAS AND

LODGING HOST HOTEL CORP.

For the Northlake

Cambria Hotel and Conference Center

# MASTER DEVELOPMENT AGREEMENT

This Agreement ("Agreement") is by and among the Town of Northlake, Texas ("Town"), Lodging Host Hotel Corp. ("LHHC"), each acting by and through their representatives, (collectively referred to herein as the "Parties").

## RECITALS

**WHEREAS**, the Town desires to have an upscale hotel and conference center and related parking located on certain property within the Town (the "Development Area") and has selected LHHC to provide these improvements; and

**WHEREAS,** prior to entering into this Agreement, the Parties agreed to and did pay a proportional share of a feasibility study before proceeding with this Agreement to assure the viability of the proposed agreement of the Parties as outlined herein; and

**WHEREAS,** pursuant to the feasibility study, the Parties have agreed to enter into this Agreement to cooperate in the development, construction and operation of the Hotel and Conference Center and related Parking Facility all as defined herein (the "Project"); and

**WHEREAS**, LHHC intends to construct a full service upscale, Hotel (an upscale national brand Cambria Hotel operated in conjunction with the reservation system thereof) consisting of a minimum of one hundred ten guestrooms, with food service (the "Hotel") to satisfy the needs of local employers in the Development Area, conventioneers and visitors to the Town; and

**WHEREAS**, LHHC owns or will own the Development Area, which is approximately Five point Two Seven (5.27) acres of land within the Town limits on which LHHC will construct the Project; and

**WHEREAS**, LHHC intends to convey to and the Town intends to purchase approximately two point six (2.6) acres of land within the Development Area (the "Conference Center Site") on which LHHC will construct the Conference Center and portions of the Parking Facility (as hereinafter defined); and

**WHEREAS**, Town will then own enough land within the Development Area on which LHHC will construct a conference center on behalf of the Town (the "Conference Center"); and

**WHEREAS**, LHHC desires to manage and Town agrees to allow LHHC to manage the Conference Center; and

**WHEREAS,** LHHC and Town may wish to expand their respective facilities in the future; and

**WHEREAS,** LHHC agrees that it has sufficient land to accommodate a future expansion on terms agreeable to the Parties at the time; and

**WHEREAS**, LHHC and Town will enter into a Purchase and Sale Agreement for the land to be acquired by the Town and a Conference Center Management Agreement, dated of even date herewith (the "Related Agreements").

**NOW THEREFORE,** in consideration of the foregoing and the mutual promises contained herein, and other valuable consideration the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

## ARTICLE 1

## PURPOSE AND DEFINITIONS

1. **Purpose:** The purpose of this agreement is, as described in the foregoing recitals, to evidence the agreement of the Town and LHHC to cooperate in the development, construction and operation of the Hotel and Conference Center and related Parking. The Parties hereto desire to cooperate to ensure that the Project is constructed and operated in a harmonious and efficient manner. This Agreement shall be interpreted in such a manner as may be most consistent with the foregoing purposes.

1.2 **Definitions**: For purposes of this Agreement, each of the following terms shall have the meanings set forth in the foregoing recitals and herein.

1.2.1 **"An Event of Bankruptcy or Insolvency"** shall mean the dissolution or termination of a party's existence as a going business, insolvency, appointment of receiver for any part of the party's property and such appointment is not terminated within ninety (90) days after such appointment is initially made, and any general assignment for the benefit of creditors, or the commencement of any proceedings under any bankruptcy or insolvency laws by or against a party and such proceedings is not dismissed within ninety (90) days after the filing thereof.

1.2.2 **"Approved Franchise"** shall mean a franchise arrangement with Choice Hotels International whereby LHHC is permitted to operate the Cambria Hotel as a full service, upscale hotel using the name and reservation system of the Approved Franchisor.

1.2.3 **"Approved Franchisor" or "Franchisor"** shall mean Choice Hotels International hotel franchisor, or a specific alternate franchise hotel product, approved by Town; provided, however that Town shall not unreasonably withhold its consent to a franchisor of full service, upscale hotels, so long as such franchisor is one of the fifteen (15) largest national or fifty (50) largest international hotel chains as of such date and has been approved as the initial Approved Franchisor.

1.2.4 **"Approved Plans"** shall mean the plans and specifications for the Hotel, Parking areas or Conference Center as the case may be, approved by the Town, all applicable authorities, and, to the extent required, by the Franchisor for such improvements.

1.2.5 **"Commencement of Construction"** means (i) preparation and approval of the Approved Plans, (ii) issuance by all applicable governmental authorities of necessary permits for grading the Hotel, Parking Facility, and Conference Center Sites, (iii) commencement of grading of the Hotel, Parking and Conference Center Sites pursuant to the Approved Plans, (iv) commencement of construction of vertical elements of the Hotel Parking Facility, and Conference Center pursuant to Approved Plans, and (v) issuance by all applicable governmental authorities of necessary permits for construction of the Hotel, Parking and Conference Center pursuant to the Approved Plans.

1.2.6 "**Completion of Construction**" means that (i) the Hotel, Conference Center and related Parking have been substantially completed in accordance with the Approved Plans, (ii) a certificate of substantial completion has been issued by the general contractor(s) and architect(s) for the Hotel, Parking, and Conference Center, and a copy of such certificate has been delivered to LHHC and the Town, (iii) a final permanent certificate(s) of occupancy for the Hotel, Parking, and Conference Center have been issued, and copy thereof delivered to LHHC and the Town, and (iv) the Hotel, Parking and Conference Center are fully operational and open for business to the general public.

1.2.7 "**Force Majeure**" shall mean any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, acts of terrorism, civil commotion, insurrection, government or de facto governmental action (unless caused by acts or omissions of the party), fires, explosions, rain or other weather delays, floods strikes, slowdowns or work stoppages.

1.2.8 "**Hotel and Conference Center**" means (i) a full service, upscale hotel facility on the Hotel Site (constructed in substantial accordance with Approved Plans) containing not less than one hundred ten (110) guestrooms, and related amenities for providing services as necessary for a full service upscale hotel, and (ii) a first- class conference center and meeting rooms (constructed in substantial accordance with Approved Plans) on the Conference Center Site containing Approximately eight thousand (8,000) gross square feet of conference and meeting space.

1.2.9 "**Parking**" or "**Parking Facility**" means surface parking providing for at least the minimum of required parking spaces required by Town ordinances.

1.2.10 "**Related Agreements**" shall mean, collectively, the Purchase and Sale Agreement in a form mutually-agreeable to Town and LHHC, attached hereto as

Exhibit "A", the Conference Center Management Agreement attached hereto as Exhibit "B", and any other agreement, as needed and executed between the Town and LHHC (or any affiliate) in respect of the construction or operation of the Hotel and Conference Center and Parking Facility.

## ARTICLE II

## PROJECT OVERVIEW

2. **General**. This Agreement outlines the parties' respective rights and obligations regarding the design, construction, development, ownership, use and maintenance of the Project

2.1 **Hotel.** The Hotel shall be a full-service upscale hotel (constructed in substantial accordance with Approved Plans) consisting of one hundred ten (110) guest rooms and related amenities and space for providing the services as necessary for a full service upscale hotel, open to the public and serving the Conference Center, adjacent business community and citizens of the Town, under and in accordance with the standards of an Approved Franchise.

2.2 **Conference Center**. The Conference Center shall be constructed to provide a first-class conference center and meeting rooms of the quality and standard as desired by the Town of Northlake, Texas. It will be constructed by LHHC and operated by LHHC (in substantial accordance with Approved Plans) on the Conference Center Site containing not less than eight thousand (8,000) gross square feet of meeting and conference space which shall include a minimum of one (1) ballroom and other small meeting rooms and operated in accordance with the Conference Center Management Agreement.

2.3 **Hotel/Conference Center Site**. The Hotel, Parking and Conference Center shall be constructed on approximately five point two seven (5.27) acres of land, the Development Area, located in Northlake, Texas depicted on Exhibit "C" attached hereto (the "Hotel/Parking/Conference Site").

2.3.1 **Hotel Site**. The Hotel shall be constructed on approximately Two point Six Seven (2.67) acres of land as depicted in Exhibit "C" (the "Hotel Site"). The actual acreage and location of the Hotel Site shall be determined by the Parties at least sixty (60) days prior to the Commencement of Construction. LHHC acknowledges that LHHC will acquire the Hotel Site from the land-owner pursuant to an agreement and will construct the Hotel on such site.

2.3.2 **Conference Center Site**. The Conference Center shall be constructed on approximately two point six (2.6) acres of land as depicted in Exhibit "C" (the "Conference Center Site"). The actual acreage and location of the Conference

Center Site shall be determined by the Parties at least sixty (60) days prior to the Commencement of Construction. LHHC will contract with a design firm and licensed contractor to construct the Conference Center on the Conference Center Site in accordance with the required statutory formalities, selecting the firms that offer the best value to the Town based upon that firm's experience and reputation in constructing conference centers of the size and character described herein LHHC will operate the Conference Center facility through a Management Agreement on the terms and conditions and for the term contained in the previously entered into Memorandum of Understanding between the Parties dated April 25, 2019.

2.3.3 **Parking**. The Parking spaces shall be constructed on approximately one point two (1.2) acres of land as depicted in Exhibit "C" attached hereto. The actual acreage and location of the Parking is to be determined by the Parties at least sixty (60) days prior to the Commencement of Construction. The Town and LHHC acknowledge that they will enter into cross access and cross parking agreements beneficial to the Parties and the Town and LHHC agree in advance to adapt those agreements to the extent required in the future to best facilitate any future expansion of the Hotel and Conference Center.

2.3.4 **Plans**. The Hotel, Parking, and Conference Center shall be constructed in accordance with the Approved Plans. LHHC shall provide to the Town, for the Town's approval, at least sixty (60) days prior to Commencement of Construction, a rendering of the Hotel. At least sixty (60) days prior to Commencement of Construction, LHHC shall have its design firm provide to, and coordinate with, persons designated by the Town (Northlake Business Focus Group), the renderings and plans and specifications for the Parking and Conference Center in order that the same are compatible in design and operation with the Hotel.

2.3.5 **Project Quality**. LHHC shall construct, and continuously maintain and operate the Hotel in accordance with the standards of the Approved Franchise. The results of any quality inspection made by Franchisor of the Hotel shall be made available to the Town upon request. LHHC shall continually maintain and operate the Conference Center in accordance with the standards set forth in the Conference Center Management Agreement and will immediately address any concerns of the Town about the operation and maintenance of the Conference Center and adjacent parking.

**ARTICLE III**

3. **Utility and Access Easements**. The Parties acknowledge that the Project is still in its formative stages. It may not be possible to identify all necessary easements for the Project at the time this Agreement is executed. The Parties agree to cooperate in

good faith to grant each other, such additional easements as may be necessary to allow the efficient operation of the Hotel, Parking and Conference Center; provided, however, nothing in this Section is intended to impose on any party an obligation to grant any further easement if such further easement would materially interfere with the grantor's use or intended use of its own property. While the project is being constructed, the Town's and LHHC's contractors may use the Hotel Site, Parking Facility Site and Conference Center Site and with the Town's prior written approval, which approval may be withheld at the Town's sole discretion, other Town-owned areas, for general construction purposes, including laydown, storage, utilities, trailers and construction and related vehicle parking.

**ARTICLE IV**

4. **Closing**. The closing of the Conference Center Site shall commence on or before December 1, 2019 (the "Closing Date") at a place in Northlake, Texas or at such a place and time as the Parties may mutually agree. If any of the conditions set forth in Section 6 hereof have not been met on or before the Closing Date, (unless sooner required herein) then the Town or LHHC may terminate this Agreement by written notice to the other party. In the event of such termination, the parties shall be relieved from any liability or further obligation hereunder.

**ARTICLE V**

5. **Term**. The term of this Agreement shall begin on the date of the last signature executed (the "Effective Date") and will continue in effect so long as the Conference Center Management Agreement is in effect unless earlier terminated in accordance with Article IV, Article VI, or Article XI herein. The term of the Conference Center Management Agreement shall begin on the date when Completion of Construction has been achieved on the Conference Center and Hotel and will continue in accordance with the Conference Center Management Agreement. The term of the Purchase and Sale Agreement shall begin on the date indicated in said Purchase and Sale Agreement and will continue until the Closing Date (as hereinafter defined).

**ARTICLE VI**

6. **Conditions Precedent to Party Obligations**. This Agreement shall not become effective unless each of the following conditions shall have been satisfied. If any one or more of such conditions are not satisfied at or before the date of the closing by the Town on the Conference Center Site from LHHC, (unless sooner required or waived) then this Agreement shall be of no further force and effect and none of the parties shall have any obligation or liability hereunder.

6.1 **Hotel Plans and Specifications**. The design plans and specifications for the Hotel shall have been prepared or caused to have been prepared by LHHC, and shall have been submitted to the Approved Franchisor for approval at least sixty

(60) days prior to the selection of the construction contractor. The Town shall have approved the schematic design and plans for the Hotel at least sixty (60) days prior to the selection of the construction contractor.

6.2 **Conference Center Plans and Specifications**. LHHC shall have provided drawings for the Conference Center which are acceptable to the Town at least sixty (60) days prior to the selection of the construction contractor.

6.3 **Franchise Approval**. LHHC shall have received approval for a franchise from an Approved Franchisor for the Hotel at least sixty (60) days prior to the selection of the construction contractor. LHHC shall provide Town written confirmation, in a form satisfactory to the Town, of franchise approval at least sixty (60) days prior to the selection of the construction contractor.

6.4 **Management and Related Agreement Executions**. LHHC and Town shall have executed a Conference Center Management Agreement outlining the operation and maintenance of the Conference Center in a form satisfactory to the Town and LHHC to be attached hereto as Exhibit "B";

6.5 **Legal Proceedings**. The Parties represent that no preliminary or permanent injunction or other order, decree or ruling issued by a governmental entity, and no statute, rule, regulation, or executive order promulgated or enacted by a governmental entity, is or shall be in effect which restrains, enjoins, prohibits or otherwise makes illegal the consummation of the transactions contemplated by this Agreement; no proceedings by a governmental entity has been or shall be commenced or threatened against the Town or LHHC (or any of their respective affiliates, associates, directors, or officers) seeking to prevent or challenge the transactions contemplated by the Agreement; and that no proceeding(s) before a court of competent jurisdiction has been commenced against the Town or LHHC (or any of their respective affiliated, associates, directors, or officers) seeking to prevent or challenge the transactions contemplated by this Agreement or seeking material damages in connection therewith.

6.6 **Consents**. All consents and approvals reasonably necessary to permit consummations of the transactions contemplated by this Agreement under any bond, debenture, note, mortgage, indenture, lease, contract, agreement or other instrument or obligation between the parties shall have been obtained, and all thereof shall be in full force and effect as of the effective date of this Agreement.

6.7 **Exhibit Completion**. Town and LHHC shall have executed or agreed to the form and content of any items to be attached as exhibits to this Agreement.

**ARTICLE VII**

## LHHC OBLIGATIONS

7. **Construction**. LHHC agrees, without cost to the Town, to design and construct the Project. LHHC shall, subject to events of "Force Majeure", and in good and workmanlike manner, cause Commencement of Construction of the Project on or before May of 2020. This date is meant to be a target date and may be extended by mutual agreement of the Parties.

7.1 **Construction Plans**. LHHC shall comply with all applicable laws, regulations, rules, codes and ordinances in the design and construction of the Project and shall prior to Commencement of Construction of any phase or portion thereof, obtain the Town's written approval of the plans and specifications therefore, which shall not be unreasonably withheld. LHHC shall periodically consult with designated representatives of the Town in connection with the design of the Project and make available to such representatives, copies of the plans and specifications for the Project upon request of the Town.

7.2 **Assignment/Transfer**. During the term of this Agreement, LHHC shall continuously own and operate the Hotel and Hotel Site and shall not sell, convey, lease, sublease, or transfer its ownership or any interest in the Hotel or the Hotel Site, or any portion, thereof whether by sale, lease, assignment, mortgage, or other means to any other party without the express written consent of the Town, except the following:

(i) the granting of a mortgage lien to the lender providing LHHC the Hotel financing which shall be subordinate to LHHC's covenants and obligations under this Agreement and the Related Agreements;

(ii) the transfer of an interest in the Hotel or the Hotel Site LHHC to a related or affiliated entity owned or controlled by LHHC, or a financially qualified third-party subject to the reasonable approval of Town, provided such entity expressly assumes all of the covenants and obligations of LHHC herein and the Related Agreements, subject to the reasonable satisfaction of the Town.

(iii) sublease of space for retail or gift shops within the Hotel, sublease of space for franchise restaurants within the Hotel, franchise restaurant service for the ballroom and meeting space within the Conference Center, (which are approved by Approved Franchisor, and which are in accordance with franchise standards or comparable full-service, upscale national brand hotel industry standards).

7.3 **Ownership of Conference Center and Parking**. The Town shall own the Conference Center, the Conference Center Site, and a portion of the Parking Facility immediately adjacent to the Conference Center Site.

7.4 **Conference Center Management**. LHHC agrees to manage the Conference Center for the Town in accordance with the Conference Center Management Agreement.

7.5 **Conference Center Operations**. LHHC agrees upon completion to operate and maintain the Conference Center in accordance with the Conference Center Management Agreement.

7.6 **Parking**. LHHC agrees upon completion to operate and maintain the Parking Facility area in accordance with the Conference Center Management Agreement.

7.7 **Construction Period Insurance**. During the time of construction of the Project (the "Construction Period"), LHHC shall maintain such liability and property damage insurance, and shall maintain or cause to be maintained builder's risk coverage as may be required by the Town for the construction of the Project.

7.8 **Conference Center and Parking Capital Maintenance**. LHHC shall be responsible for all capital maintenance on the Convention Center and related Parking. LHHC shall be entitled to reimbursements therefor, to the extent funds are available, from the Town Capital Maintenance Reserve Account (as hereinafter defined) upon written request accompanied by such supporting information as Town may require.

7.9 **Franchisor's Approval of Hotel Plans**. LHHC shall obtain approval of the designs, plans and specifications for the Hotel from the franchisor not later than sixty (60) days prior to the Commencement of Construction of the Project. The Town shall not be required to issue a certificate of occupancy for the Hotel and Conference Center or any portion thereof unless and until LHHC has obtained opening approval from the Franchisor and provided Town written confirmation thereof.

7.10 **Franchise Required Use**. LHHC agrees during the term of this Agreement that the Hotel shall be operated as a full-service, upscale hotel and related amenities open to the public and serving the Town, the adjacent business community and the citizens of the Town under and in accordance with the standards of the Approved Franchise.

7.11 **Purchase of Conference Center Site**. LHHC shall purchase for the Town and LHHC shall sell to Town the Conference Center Site on the terms and conditions contained in the Purchase and Sale Agreement.

## ARTICLE VIII

## TOWN'S OBLIGATIONS

8. **Construction**. LHHC shall design, construct, and equip the Conference Center on the Conference Center Site; the Town shall pay $1,755,468 of the costs associated with the design, construction and equipping of the Conference Center upon execution of this Master Development Agreement for the acquisition of the land for the Conference Center. Provided the design is acceptable to the Town, LHHC shall pay all amounts in excess of $4,500,000.00 for the completion of the Conference Center. LHHC shall be subject to events of force majeure, and in a good and workmanlike manner cause Commencement of Construction of the Conference Center within a reasonable time after the execution of this Agreement and the completion of the Plans and shall work diligently toward completion. LHHC will secure a loan for the Town for any amounts above the initial Town payment of $1,755,468 (the "LHHC Conference Center Loan"), that the Town opts not to pay in cash for the cost of the Conference Center, at the opening date of the Hotel and Conference Center. LHHC will obtain written approval from the Town regarding the terms of the LHHC Conference Center Loan prior to closing date of the LHHC Conference Center Loan. Provided the Town has approved the terms of the LHHC Conference Center Loan in writing, the Town agrees to pay LHHC on terms secured by LHHC for the LHHC Conference Center Loan from existing Tax Revenue (as hereinafter defined) funds to the extent such funds are available. In the event that the Tax Revenue funds are insufficient to cover the cost of the LHHC Conference Center Loan, the Town agrees to work with LHHC to negotiate an extension of the LHHC Conference Center Loan and to pay LHHC the additional amount of interest that might be owed pursuant to such extension. LHHC guarantees to Town that the terms of LHHC Conference Center Loan will be at terms equal to or better than the terms of the mortgage on the Hotel. Understanding how such things work, the Parties agree that the closing date of the LHHC Conference Center Loan may extend past the actual opening date of the Conference Center. Notwithstanding anything to the contrary herein, the Town, in its sole discretion, reserves the right to seek alternate financing for any amounts above the initial Town payment of $1,755,468 if the Town is able to secure more advantageous financing through alternate means.

8.1 **Conference Center**. LHHC shall comply with applicable laws, regulations, rules, codes and ordinances in the design and construction of the Conference Center. The Town shall periodically consult, via its designated representatives, with LHHC in connection with design of the Conference Center and LHHC shall, upon the request of the Town, make available to such representatives copies of the plans and specifications for the Conference Center. LHHC may maintain an electronic site to fulfil this obligation and will control access to that electronic site.

8.2 **Conference Center Management.** Upon completion of construction of the Conference Center, the Town agrees to operate the Conference Center through a Management Agreement with LHHC under the terms and provisions contained in the Conference Center Management Agreement.

8.3 **Utilities**. On or before the time the Hotel Site and Conference Center Site is being prepared for the pouring and/or construction of the foundation for the Hotel and Conference Center, the Town shall subject to events of "Force Majeure", cause water and sanitary sewer connections necessary for the operation of the Hotel and Conference Center to be "stubbed out" or otherwise made available for connection at the property line of the Hotel/Conference Center Site. LHHC shall be responsible for obtaining all other necessary utilities for the operation of the Hotel and Conference Center.

8.4 **Directional Signage**. Town agrees to use its reasonable best efforts to cause directional signage to be installed and maintained during the term of this Agreement at those locations which Town presently provides directional signage for other venues within the Area identifying the location of the Hotel and Conference Center, the costs of such signage, if any, shall be the responsibility of the Town.

8.5 **Capital Maintenance Reserve Account**. The Town shall establish a capital maintenance reserve account (the "Town Capital Maintenance Reserve Account") into which the Town, on a periodic basis and for so long as there shall exist debt issued by Town for the Convention Center Facility, shall deposit fifty percent (50%) of the hotel/motel tax revenue (the "Tax Revenue") derived from the Hotel and received by Town in excess of the amount of such Tax Revenue which is required to meet the Town's repayment obligation for debt issued by Town for the Convention Center Facility. The remaining fifty percent (50%) of the excess Tax Revenue shall be used by the Town for any lawful purpose. After the repayment in full of any debt issued by Town for the Convention Center Facility, the Town shall deposit into the Town Capital Maintenance Reserve Account, on a periodic basis, but no less frequently than annually, the lesser of (a) fifty percent (50%) of the Tax Revenue derived from the Hotel and received by Town for such annual period, or (b) Two Hundred and Fifty Thousand Dollars ($250,000.00) for the same annual period.

## ARTICLE IX

## GENERAL PROVISIONS

9.1 **Successors and Assigns**. The terms and conditions of this Agreement are binding upon the successors and assigns of all Parties hereto. Except as provided in Section 7.2, this Agreement may not be assigned by any party without the

express written consent of the other party.

9.2 **Indemnification**. It is understood and agreed by and among the Parties that in the design, construction and development of the Hotel, the Conference Center, the Parking and any of the related improvements described herein, and in the Parties' satisfaction of the terms and conditions of this Agreement, that each party is acting independently, and the Town assumes no responsibility or liability to any third parties in connection with these actions. **LHHC AGREES TO INDEMNIFY AND DEFEND THE TOWN, ITS OFFICERS, AGENTS AND EMPLOYEES AGAINST ANY CLAIMS, SUITS, DAMAGES AND CAUSES OF ACTION, LIABILITIES, COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES AND COURT COSTS, ARISING OUT OF OR RESULTING FROM LHHC'S NEGLIGENT ACTS OR OMISSIONS PERTAINING TO ITS OBLIGATIONS UNDER THIS AGREEMENT**. To the extent permitted by applicable law, the Town agrees to indemnify and defend LHHC, its directors, officers, agents and employees against any and all claims, causes of action, costs and liabilities including reasonable attorneys fees and court costs, arising out of, or resulting from the Town's negligent acts or omissions pertaining to its obligations under this Agreement. In the event of joint and concurrent negligence of both LHHC and the Town, responsibility and indemnity, if any, shall be apportioned comparatively, to the extent permitted by law, in accordance with the laws of the State of Texas, without however, waiving any governmental immunity available to Town under Texas Law and without waiving any defense of the Parties under Texas Law. The provisions of this section are solely for the benefit of the Parties hereto and are not intended to create or grant any rights, contractual or otherwise to any third person or entity.

9.3 **No Joint Venture**. It is acknowledged and agreed by and among the Parties that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture among the Parties. The Town, past, present and future officers, elected officials, employees and agents of the Town do not assume any responsibility or liabilities to any third party in connection with the development, design, construction or operation of any of the improvements contemplated by the Agreement. In addition, LHHC acknowledges and agrees that there shall be no recourse against any of the aforesaid parties or individuals, who shall incur no liability in respect to any claims based upon or relating to the Agreement

9.4 **Notice**. Any notice required or permitted to be delivered hereunder shall be deemed received if given in writing and delivered personally, transmitted by a nationally recognized overnight delivery service, or when sent by United States mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the following address:

To the Town:

Drew Corn
Town Administrator
Town of Northlake
1500 Commons Circle, Suite 300
Northlake, TX 76226

To LHHC:

Lodging Host Hotel Corp
6176 FM 2011
Longview, TX 75603
Telephone 903-643-9171
Attn: Kevin P. Hilchey

9.5 **Entire Agreement**. This Agreement and the Exhibits attached or to be attached hereto is the entire agreement among the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written agreement among the Parties that in any manner related to the subject matter of this Agreement, except as provided in the Exhibits attached or to be attached hereto.

9.6 **Covenants Run with the Property**. The provisions of this Agreement are hereby declared covenants running with the Property (hereinafter defined) and are fully binding on the Town, LHHX and each and every subsequent owner, tenant, subtenant, licensee, manager and occupant of all or any portion of the Property but only during the term of such party's ownership, tenancy, sub tenancy, license, management or occupancy thereof (except with respect to defaults that occur during the term of such person's ownership, tenancy, sub tenancy, license, management or occupancy) and shall be binding on all successors, heirs, and assigns of LHHC as may relate to this project, the Property, or this Agreement.

9.7 **Governing Law**. This Agreement is performable in Denton County, Texas. The validity of this Agreement including any of its terms and provisions, as well as the rights and duties of the Parties, shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in Denton County, Texas.

9.8 **Amendment**. This Agreement may be amended only by the mutual written agreement of the Parties.

9.9 **Legal Construction**. In the event any one or more of the provisions contained in the Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect other provisions, and the Agreement shall be construed as if such

invalid, illegal, or unenforceable provision had never been contained in it.

9.10 **Recitals**. The recitals and Exhibits to this Agreement are incorporated herein.

9.11 **Survival of Covenants**. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the closing of the transactions contemplated hereby shall survive the closing and shall not be merged therein. Upon termination of this Agreement, all of the Town's obligations hereunder will terminate, however LHHC's obligations under Section 7.11 shall survive such termination.

9.12 **Gender**. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.

9.13 **Brokers**. Each party represents to the other party that it has not employed or retained any broker or finder in connection with the purchase or lease of any property and/or transaction contemplated hereby.

9.14 **Counterparts**. This Agreement and the attached Exhibits may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

9.15 **Conflicts**. In the event any one or more of the provisions contained in this Agreement conflict with any one or more of the provisions contained in any one or more of the Related Agreements, the provision(s) of the specific Related Agreement(s) shall control.

## ARTICLE X

## REPRESENTATIONS, WARRANTIES AND COVENANTS

10. **Representations and Warranties of the Town**. The Town hereby represents and warrants to LHHC that the following statements are true as of the date hereof and shall be true as of the date of Closing Date.

10.1 **Due Authority: No Conflict**. The Town has all requisite power and authority to execute this Agreement and to carry out its obligations hereunder and the transactions contemplated hereby. This Agreement has been, and the documents contemplated hereby will be, duly executed and delivered by the Town and constitute legal, valid and binding obligations enforceable against the Town in accordance with the terms. To the best of the Town's knowledge and awareness, the consummations by the Town of the transactions contemplated hereby is not in violation of or in conflict with, nor does it constitute a default under, any of the terms of any agreement or instrument to which the Town is a party, or by which the Town is bound, or of any provision of any applicable law,

ordinance, rule or regulations or any governmental authority or of any provision of any applicable order, judgement or decree of any court, arbitrator or governmental authority.

10.1.1 **Survival of City's Representations and Warranties**. All representations and warranties of the Town hereunder shall survive the Closing indefinitely.

10.2 **LHHC's Representation and Warranties**. LHHC represents and warrants to the Town that the following representations and warranties are true as of the date hereof and shall be true as of the Closing Date.

10.2.1 **Due Organization**. LHHC is a C Corporation duly formed under the laws of the State of Texas and under approval of its Board of Directors, duly authorizes Kevin P Hilchey, President to enter into this Development Agreement with the Town.

10.2.2 **Due Authority: No Conflict**. LHHC has the requisite power and authority to execute and deliver this Agreement and to carry out its respective obligations hereunder and the transactions contemplated hereby. This Agreement has been, and the documents contemplated hereby will be, duly executed and delivered by LHHC and constitute LHHC legal, valid and binding obligations enforceable against LHHC in accordance with their terms. The consummation by LHHC of the transactions contemplated hereby is not in violation of or in conflict with, nor does it constitute a default under, any term or provision of the organizational documents of LHHC, or any of the terms of any agreement or instrument to which LHHC is a party, or by which LHHC is bound, or of any provision of any applicable law, ordinance, rule or regulation of any governmental authority or of any provision of any applicable order, judgement or decree of any court, arbitrator or governmental authority.

10.2.3 **Consents**. No consent, approval, order or authorization of, or declaration or filing with any governmental authority is required on the part of LHHC in connection with the execution and delivery of the Agreement or for the performance of the transactions herein contemplated by the respective Parties hereto.

10.2.4 **Litigation**. There are no pending or, to the best knowledge of LHHC, threatened, judicial, municipal or administrative proceedings, consent decrees or, judgments which might affect LHHC's ability to consummate the transaction contemplated hereby.

10.2.5 **Survival of LHHC's Representations and Warranties**. The representations and warranties of LHHC hereunder shall survive the Closing Date indefinitely.

10.3 **Covenants of the Town**. The Town hereby covenants as follows:

10.3.1 **Compliance with Laws and Agreements**. To comply with all laws, ordinances and regulations of and agreements with or obligations to any federal, state, municipal or other governmental body as may apply to the performance of the Town's obligations hereunder.

10.3.2 **Other Agreements**. To perform and comply with all of the terms and conditions of this Agreement and any other agreement now or hereafter entered into between the Town and LHHC relating to the Project.

10.4 **Covenants of LHHC**. LHHC hereby covenants as follows:

10.4.1 **Compliance with Laws and Agreements**. To comply with all laws, ordinances and regulations of and agreements with or obligations to any federal, state, municipal or other governmental body as may apply to the performance of LHHC's obligations hereunder.

10.4.2 **Other Agreements**. To perform and comply with all of the terms and conditions of this Agreement, the Related Agreements, and any other agreement now or hereafter entered into between LHHC and the Town relating to the Project.

## ARTICLE XI

## TERMINATION

11. **Termination**. This Agreement may be terminated upon the following:

(i) by written agreement of the Parties.

(ii) by the Town, if LHHC defaults or breaches any of the terms or conditions of this Agreement or any of the Related Agreements, and such default or breach is not cured within sixty (60) days after notice thereof by the Town.

(iii) by the Town, if any real or personal property taxes, sales and use taxes or hotel/motel occupancy taxes owed to the Town or any other applicable taxing unit, by LHHC, its successors, assigns and affiliates and/or assessed the Hotel, the Hotel Site, and/or the Conference Center shall have become delinquent (provided LHHC retains the right to timely and properly protest or contest of any such taxes).

(iv) by the Town, for an "Event of Bankruptcy or Insolvency" which shall mean the dissolution or termination of LHHC's existence as a going business, insolvency, appointment of receiver for any part of LHHC's property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or

insolvency laws by or against LHHC and such proceeding is not dismissed within ninety (90) days after the filing thereof.

(v) by Town, if LHHC is unable to acquire the necessary Franchise Agreement within ninety (90) days after the Effective Date hereof.

(vi) by Town, if LHHC fails to construct the Conference Center or any portion of the Project.

THE BALANCE OF THIS PAGE IS INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have hereunder set their hands and seals as of the day and year first above written.

Name: Town of Northlake:
Address: 1500 Commons Circle, Suite 300
Northlake, TX 76226

By: _____
Drew Corn
Its: Town Administrator

Developer:

Name: Lodging Host Hotel Corp
Address: P. O. Box 8931
Longview, TX 75607
(903) 643 - 9171

By: _____
Kevin P. Hilchey
Its: President

APPROVED BY TOWN COUNCIL
September 12, 2019

**NORTHLAKE MAYOR AND COUNCIL COMMUNICATION**

**DATE:** MAY 12, 2022

**REF. DOC.:** CODE OF FEDERAL REGULATIONS, SECTION 1.150-2 PROCEEDS OF BONDS USED FOR REIMBURSEMENT

**SUBJECT:** SERIES 2022 CERTIFICATES OF OBLIGATION REIMBURSEMENT RESOLUTION

GOALS/OBJECTIVES:

- Operate Efficiently and Effectively (Council Goal)
- Systematically Invest in Infrastructure; Maintain a safe, reliable water system (Council Goal)

BACKGROUND INFORMATION:

- Proposed FY 2022 issuance of $10M in certificates of obligation for water and wastewater capital projects.
- Per Internal Revenue Service regulations, Town may reimburse project costs that occur prior to debt issuance, if a resolution expressing official intent is approved.
- Due to the timeline of the projects, the resolution will enable the Town to begin design and permitting for critical projects including Denton Creek Wastewater Main Trunk Line Engineering Design

COUNCIL DIRECTION:

- Adopt resolution with intent to finance projects and reimburse project costs

TOWN OF NORTHLAKE, TEXAS

OFFICIAL RESOLUTION

**NO. 22-24**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF NORTHLAKE, TEXAS, EXPRESSING OFFICIAL INTENT TO REIMBURSE COSTS OF PROJECTS**

**WHEREAS**, the Town of Northlake, Texas (the "Town") is a home-rule municipality and political subdivision of the State of Texas (the "State"); and

**WHEREAS**, the Town expects to pay, or have paid on its behalf, expenditures in connection with the design, planning, acquisition, and construction of the projects described in Exhibit A hereto (the "Projects") prior to the issuance of tax-exempt obligations or other obligations for which a prior expression of intent to finance or refinance is required by federal or State law (collectively and individually, the "Obligations") to finance the Projects; and

**WHEREAS**, the Town finds, considers and declares that the reimbursement for the payment of such expenditures will be appropriate and consistent with the lawful objectives of the Town and, as such, chooses to declare its intention to reimburse itself for such payments at such time as it issues Obligations to finance the Projects.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF NORTHLAKE, TEXAS:**

**Section 1.** The Town reasonably expects to incur debt, or have debt incurred on its behalf, in one or more series of Obligations with an aggregate maximum principal amount not to exceed $10,000,000, for the purpose of paying the costs of the Projects.

**Section 2.** All costs to be reimbursed pursuant hereto will be capital expenditures. No tax-exempt Obligations will be issued by the Town in furtherance of this Resolution after a date which is later than 18 months after the later of (1) the date the expenditures are paid or (2) the date on which the Projects, with respect to which such expenditures were made, are placed into service.

**Section 3.** The foregoing notwithstanding, no tax-exempt Obligations will be issued pursuant to this Resolution more than three years after the date any expenditure which is to be reimbursed is paid.

**Section 4.** This Resolution shall be effective immediately upon adoption.

**PASSED AND APPROVED** by the Town Council of the Town of Northlake, Texas, this 12th day of May 2022.

Town of Northlake, Texas

_____

David Rettig, Mayor

Attest:

_____

Zolaina R. Parker, Town Secretary

**Exhibit A**

acquiring, constructing, installing and equipping additions, improvements, extensions and equipment for the Town's waterworks and sewer system and the acquisition of land and rights-of-way therefor

**NORTHLAKE MAYOR AND COUNCIL COMMUNICATION**

**DATE:** MAY 12, 2022

**REF. DOC. :** TEXAS GOVERNMENT CODE, SECTION 2254.004 CONTRACT FOR PROFESSIONAL SERVICES OF ENGINEER

**SUBJECT:** CONTRACT WITH PLUMMER ASSOCIATE FOR ENGINEERING AND DESIGN OF DENTON CREEK WASTEWATER MAIN TRUNK LINE

GOALS/OBJECTIVES:

- Systematically Invest in Infrastructure; Maintain a safe, reliable water system
- Diversify the Tax Base; Attract high-quality, compatible commercial growth

BACKGROUND INFORMATION:

- September 9, 2021 Denton Creek route study awarded to Plummer
- Denton Creek engineering and design complicated by following factors:
    - Coordination with Trinity River Authority
    - Coordination with Army Corps of Engineers
- Plummer Associates designed multiple projects in coordination with mentioned entities
- Due to Plummer's familiarity with project, recommend awarding design to Plummer
- Proposed professional services agreement for design of sewer trunk line $1,587,563
- Additional funds to be reimbursed from future Certificates of Obligation (C.O.s)

COUNCIL ACTION:

- Authorize Town Manager to enter into a contract with Plummer Associates for engineering and design of Denton Creek Wastewater Main Trunk Line not to exceed $1.600,000

TOWN OF NORTHLAKE, TEXAS

OFFICIAL RESOLUTION

**NO. 22-25**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF NORTHLAKE, TEXAS, AUTHORIZING THE TOWN MANAGER TO CONTRACT WITH PLUMMER ASSOCIATES FOR ENGINEERING DESIGN SERVICES FOR DENTON CREEK WASTEWATER MAIN TRUNK LINE NOT TO EXCEED $1,600,000**

**WHEREAS**, the Town will soon begin construction of the interim wastewater treatment plant and the Catherine Branch wastewater interceptor; and

**WHEREAS**, treatment capacity at the treatment plant will soon be reached; and

**WHEREAS**, the growth in the industrial areas of Town northwest of Interstate 35W and Dale Earnhardt Way creates a pressing need for additional capacity in the Town's wastewater system; and

**WHEREAS**, Plummer Associates has experience and expertise in designing wastewater systems in cooperation with the Trinity River Authority (TRA), the Town's wastewater wholesale treatment provider, and the Army Corps of Engineers (COE), the major property owner in the main trunk line proposed alignment; and

**WHEREAS**, Plummer Associates has recently designed a wastewater collection system that transports to TRA and runs through COE properties; and

**WHEREAS**, Plummer has recently completed the route study for Town wastewater lines in Denton Creek to the TRA Regional Wastewater Treatment Plan; and

**WHEREAS**, Plummer's familiarity with the project, TRA and COE best suits them to design the wastewater trunk line; and

**WHEREAS**, the Town adopted Resolution 21-20 allowing for the reimbursement of project expenditures from future debt issuances; and

**WHEREAS**, the Town Council intends to issue $10,000,000 of certificates of obligations in fiscal year 2022-2023; and

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF NORTHLAKE, TEXAS:**

**SECTION 1.** The Town Council finds it advantageous to contract for professional engineering services for the design of public infrastructure.

**SECTION 2.** The Town Manager is hereby authorized to finalize and enter into a contract with

TOWN OF NORTHLAKE, TEXAS
OFFICIAL RESOLUTION

Plummer Associates whereby the Town will contract for engineering design services in an amount not to exceed $1,600,000 for the engineering and design of a wastewater line alignment along Denton Creek.

**SECTION 3.** This resolution shall be effective immediately upon adoption.

**PASSED AND APPROVED** by the Town Council of the Town of Northlake, Texas, this 12th day of May 2022.

Town of Northlake, Texas

_____
David Rettig, Mayor

Attest:

_____
Zolaina R. Parker, Town Secretary

# PLUMMER ASSOCIATES, INC.

# AGREEMENT FOR PROFESSIONAL SERVICES

Project No. 3181-002-O-0883

**THIS AGREEMENT** (the "Agreement") is made and entered into as of the _____ day of _____**, 2022,** by and between the **TOWN OF NORTHLAKE**, Texas, (hereinafter called "Owner") and the firm of **PLUMMER ASSOCIATES, INC.**, a Texas Corporation with its corporate office at 1320 South University, Suite 300, Fort Worth, Tarrant County, Texas, (hereinafter called "Engineer").

OWNER INFORMATION

| | | | |
|---|---|---|---|
| Name: | Town of Northlake | Contact: | Drew Corn |
| Billing Address: | 1500 Commons Circle #300 | Title: | Town Manager |
| | Town of Northlake, Tx 76226 | Telephone: | (940) 648-3290 |

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, Owner and Engineer agree as follows:

**SCOPE OF SERVICE**:

Owner requests and authorizes Engineer to perform BASIC ENGINEERING SERVICES as further described in Exhibit A, " **Scope of Services**," and hereinafter called the "Project" as set forth in this Agreement.

**GENERAL TERMS AND CONDITIONS:**

**1. Authorization to Proceed**

Execution of this Agreement by the Owner will be authorization for Engineer to proceed with the Project, unless otherwise provided for in this Agreement.

**2. Lump Sum Costs**

Engineer's Lump Sum Costs, when the basis of compensation, will be the total amount paid by the Owner to the Engineer as identified in Exhibit B.

**3. Hourly Rates**

Engineer's Hourly Rates, when the basis of compensation, are those hourly or daily rates charged for work performed on Owner's Project by Engineer's employees of the indicated classifications, as identified in Exhibit B. These rates are subject to annual calendar year adjustments and include all allowances for salary, overheads, and

fee, but do not include allowances for Direct Expenses.

**4. Direct Expenses**

Engineer's “Direct Expenses”, when part of the basis of compensation, are those costs incurred on or directly for the Owner's Project, including, but not limited to, necessary transportation costs, including Engineer's current rates for Engineer's vehicles; meals and lodging; laboratory tests and analyses; computer services; word processing services, telephone, printing, binding, and reproduction charges; all costs associated with outside consultants, subconsultants, subcontractors, and other outside services and facilities; and other similar costs. Reimbursement for Direct Expenses will be on the basis of actual charges when furnished by commercial sources and on the basis of current rates when furnished by Engineer.

**5. Cost Opinions**

Any cost opinions or Project economic evaluations provided by Engineer will be on a basis of experience and judgment; but, since it has no control over market conditions or bidding procedures, Engineer cannot warrant that bids, ultimate construction cost, or Project economics will not vary from these opinions.

**6. Termination**

This Agreement may be terminated for convenience upon 30 days' written notice by either party with or without cause. On termination, Engineer will be paid for all work performed up to the date of notification. If no notice of termination is given and termination is not for cause, relationships and obligations created by this Agreement, except Articles 8 through 15, will be terminated upon completion of all applicable requirements of this Agreement.

**7. Compensation**

Owner shall pay Engineer for Basic Services and Additional Services rendered in accordance with the provisions of Exhibit B.

Monthly invoices will be issued by Engineer for all work performed under this Agreement. Invoices are due and payable on receipt. Interest at the rate of 1-1/2 percent per month, or that permitted by law if lesser, will be charged on all past-due amounts starting 30 days after date of invoice. Payments will first be credited to interest and then to principal.

In the event of a disputed or contested billing, only that portion so contested will be withheld from payment, and the undisputed portion will be paid. The Owner will exercise reasonableness in contesting any bill or portion thereof. No interest will accrue on any contested portion of the billing until mutually resolved.

**8. Insurance**

Engineer, as a minimum, shall maintain insurance of a form and in amounts as required by state law, approved by Owner, and as set forth in the attachment "Insurance and as set forth in Exhibit C, "Insurance”. Engineer shall provide proof of said insurance requirements by attaching a Certificate of Insurance with the executed Agreement.

**9. Independent Consultant**

Engineer agrees to perform all services as an independent consultant and not as a subcontractor, agent or employee of the Owner.

**10. Engineer's Personnel at the Project Site**

The presence or duties of the Engineer's personnel at the Project site, whether as on-site representatives or otherwise, do not make the Engineer or its personnel in any way responsible for those duties that belong to Owner and/or to other contractors, subcontractors, or other entities, and do not relieve the other contractors,

subcontractors, or other entities of their obligations, duties, and responsibilities, including, but not limited to, all methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the Project by those parties in accordance with their contract requirements and any health or safety precautions required by such work. The Engineer and its personnel have no authority to exercise any control over any contractor, subcontractor, or other entity or their employees in connection with their work or any health or safety precautions and have no duty for inspecting, noting, observing, correcting, or reporting on health or safety deficiencies of any contractor, subcontractor, or other entity or any other persons at the Project site except Engineer's own personnel.

Engineer neither guarantees the performance of any contractors, subcontractors or other entities nor assumes responsibility for their failure to perform their work in accordance with their contractual responsibilities.

**11. Litigation Assistance**

Unless specifically set forth in the Scope of Services, the Scope of Services does not include costs of the Engineer for required or requested assistance to support, prepare, document, bring, defend, or assist in litigation or administrative proceedings taken or defended by the Owner.

**12. Venue**

In the event that any legal proceeding is brought to enforce this Agreement or any provision hereof, the same shall be brought in Denton County, Texas, and shall be governed by the laws of the State of Texas.

**13. Severability and Survival**

If any of the provisions contained in this Agreement are held illegal, invalid or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby. Limitations of liability and indemnities shall survive termination of this Agreement for any cause.

**14. Interpretation**

The limitations of liability and indemnities will apply whether Engineer's liability arises under breach of contract or warranty; tort, including negligence; strict liability; statutory liability; or any other cause of action, except for willful misconduct or gross negligence for limitations of liability and sole negligence for indemnification, and shall apply to Engineer's officers, affiliated corporation, employees and subcontractors. The law of the state of Texas shall govern the validity of this Agreement, its interpretation and performance, and any other claims related to it.

**15. No Third Party Beneficiaries**

This Agreement gives no rights or benefits to anyone other than the Owner and Engineer and has no third party beneficiaries. The Owner will include a provision in each agreement which Owner enters into with any other entity or person that such entity or person shall have no third-party beneficiary rights under this Agreement.

Engineer’s services are defined solely by this Agreement, and not by any other contract or Agreement that may be associated with the Project.

**16. Indemnity and Liability**

**TO THE FULLEST EXTENT PERMITTED BY LAW, ENGINEER SHALL INDEMNIFY AND HOLD HARMLESS OWNER AND THEIR OFFICERS, DIRECTORS, MEMBERS, PARTNERS, AGENTS, CONSULTANTS, AND EMPLOYEES FROM REASONABLE CLAIMS, COSTS, LOSSES, AND DAMAGES ARISING OUT OF ENGINEER'S NEGLIGENT ACT OR OMISSION OF ENGINEER, ITS CONSULTANTS, OR THEIR OFFICERS, DIRECTORS, MEMBERS, PARTNERS, AGENTS, OR EMPLOYEES ON SERVICES PERFORMED UNDER THIS AGREEMENT PROVIDED THAT ANY SUCH CLAIM, COST, LOSS, OR DAMAGE IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE, OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE**

**PROPERTY (OTHER THAN THE PROJECT ITSELF), INCLUDING THE LOSS OF USE RESULTING THEREFROM. IT IS SPECIFICALLY UNDERSTOOD AND AGREED THAT IN NO CASE SHALL THE ENGINEER BE REQUIRED TO PAY AN AMOUNT DISPROPORTIONAL TO ENGINEER'S CULPABILITY, OR ANY SHARE OF ANY AMOUNT LEVIED TO RECOGNIZE MORE THAN ACTUAL ECONOMIC DAMAGES.**

**ENGINEER WILL STRIVE TO PERFORM SERVICES UNDER THIS AGREEMENT IN A MANNER CONSISTENT WITH THAT LEVEL OF CARE AND SKILL ORDINARILY EXERCISED BY MEMBERS OF THE PROFESSION CURRENTLY PRACTICING SIMILAR WORK IN THE SAME LOCALITY UNDER SIMILAR CONDITIONS DURING THE SAME TIME. ENGINEER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, UNDER THIS AGREEMENT OR OTHERWISE, IN CONNECTION WITH ANY SERVICES PERFORMED OR FURNISHED BY ENGINEER. ENGINEER'S SERVICES SHALL BE GOVERNED BY THE NEGLIGENCE STANDARD FOR PROFESSIONAL SERVICES, MEASURED AS OF THE TIME THOSE SERVICES ARE PERFORMED.**

**THE OWNER'S REVIEW, APPROVAL, OR ACCEPTANCE OF, OR PAYMENT FOR, ANY OF THESE SERVICES SHALL NOT BE CONSTRUED TO OPERATE AS A WAIVER OF ANY RIGHTS UNDER THIS AGREEMENT OR OF ANY CAUSE OF ACTION ARISING OUT OF THE PERFORMANCES OF THIS AGREEMENT, AND THE ENGINEER SHALL BE AND REMAIN LIABLE IN ACCORDANCE WITH APPLICABLE LAW FOR ALL DAMAGES TO THE OWNER CAUSED BY ENGINEER'S OMISSIONS OR NEGLIGENT PERFORMANCE OF ANY OF THE SERVICES FURNISHED UNDER THIS AGREEMENT.**

**TO THE MAXIMUM EXTENT PERMITTED BY LAW, ENGINEER'S LIABILITY FOR OWNER DAMAGES FOR ANY CAUSE OR COMBINATION OF CAUSES WILL, IN THE AGGREGATE, NOT EXCEED THE LIMITS OF THE ENGINEER'S PROFESSIONAL LIABILITY INSURANCE COVERAGE.**

**AS USED HEREIN, ENGINEER INCLUDES THE CORPORATION, SUBCONTRACTORS, AND ANY OF ITS OR THEIR OFFICERS, OR EMPLOYEES.**

**AS BETWEEN THE OWNER AND THE ENGINEER, ANY CONTRACT CLAIM MUST BE BROUGHT WITHIN FOUR YEARS FROM THE DAY FOLLOWING THE ACT OR OMISSION GIVING RISE TO THE BREACH OF CONTRACT CLAIM.**

### 17. Documents and Notices

Contract documents, reports, plans, specifications, memorandums, or other delivered documents (furthermore known as Documents), in printed paper format (also known as hard copies) prepared or furnished by Engineer, pursuant to this Agreement are instruments of service but shall become the property of the Owner subject to Engineer's receipt of full payment for all services relating to preparation of the Documents. Engineer shall have the right to retain copies of Documents for information and reference. Signed and sealed printed form documents and plans shall be deemed superior and shall govern over same electronic format documents.

Contracted notices required by this Agreement shall be made in writing and shall be delivered by:

a. person;
b. overnight courier with written verification of receipt;
c. electronic communication; or
d. certified mail, return receipt requested.

### 18. Assignment

Neither Party will assign all or any part of this Agreement without prior written consent of the other party.

**Exhibit A – Scope of Services**

**Exhibit B – Compensation**

**Exhibit C – Insurance**

By execution of this Agreement, Owner authorizes Engineer to provide Basic Services for the Project in accordance with Exhibit A, "Scope of Services." Services covered by this Agreement will be performed in accordance with the Provisions attached to this form and any other attachments or schedules. This Agreement supersedes all prior Agreements and understandings and may only be changed by written amendment executed by both parties.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first written above.

| **Owner:** | **Plummer Associates, Inc.:** |
|---|---|
| By _____ | By _____ |
| Title _____ | Title _____ |
| Date _____ | Date _____ |

# EXHIBIT A

# TOWN OF NORTHLAKE

# PHASE I SEWER TRUNK LINE DESIGN

# SCOPE OF SERVICES

## 1.0 BACKGROUND

The Town of Northlake is experiencing development associated with master-planned communities. Plummer Associates, Inc. completed a route study in 2022 for a proposed sewer trunk sewer line identified in the 2018 Sanitary Sewer Master Plan. The proposed sewer line routes wastewater flows from the Catherine Branch Interim Wastewater Treatment Plant to the Trinity River Authority Denton Creek Wastewater Treatment Plant. The Phase I Sewer Trunk Line project includes up to approximately 15,000 linear feet sanitary sewer interceptor ranging in diameters from 24-inch to 54-inch diameter. The proposed trunk line will expand the Town's wastewater capacity. Major activities include:

- Conduct a field walk through, and evaluation of minor adjustments to alignment identified in the 2022 Route Study as accepted by the OWNER,
- Conduct surveying, review of any cultural resources, geotechnical, and environmental field analysis of the alignment accepted by the OWNER,
- Environmental permitting support for federal and state agencies.
- Development of preliminary design report and design plans (30% design) detailing the pipeline alignment and surveyed top of ground,
- Development of 60% design plans incorporating pipeline vertical design geometry,
- Development of 90% design plans for the recommended improvements,
- Development of construction plans for construction of the interceptor,
- Preparation of specifications to fully describe the intended work and convey the intent of the design,
- Update Opinion of Probable Construction Cost (OPCC) at the 30%, 60%, 90%, and Final design phases.

## 2.0 BASIC SERVICES

Basic Services provided by the ENGINEER shall generally be covered under the following activities:
Activity A – Project Coordination
Activity B – Preliminary Design (30%)
Activity C – Detailed Design (60%, 90%, and Final Design)
Activity D – Bid Phase Services
Activity E – Construction Phase Services

Specific tasks for each activity are identified in the following sections.

## ACTIVITY A – PROJECT COORDINATION

### Task 1 – Project Management

Provide project management for Activities A, B, C, D, and E. Project management shall include, but not be limited to, developing and implementing a project management plan; tracking and managing internal schedules of work; monitoring and addressing issues related to the scope of work, budget and deliverables; preparing and processing monthly billings; providing labor resources necessary to fulfill scoped work; scheduling and participating in quality control reviews; and providing updates to the OWNER on a regular basis.

a. ENGINEER shall coordinate design efforts on project tasks identified below.

b. ENGINEER shall prepare a common monthly invoice.

c. The project management tasks included in this agreement include services through the construction phase services.

Deliverables:
- Monthly Invoices

### Task 2 – Kickoff Meeting and Meeting Preparation

ENGINEER shall prepare for and participate in a Project kick-off meeting for the Interceptor Design. At the kick-off meeting ENGINEER shall confirm with the OWNER the scope of work, deliverables, schedule and administrative protocols.

a. ENGINEER shall prepare and present at the kickoff meeting the following:

1. ENGINEER will present an overview of work to be completed.
2. Draft Project Management Plan including critical success factors.
3. Project schedule.

b. ENGINEER shall prepare and distribute draft meeting notes for review within 5 business days of the kickoff meeting. After receipt of comments, the meeting notes shall be finalized and distributed to the team for record purposes.

Deliverables:
- Draft and Final Meeting Notes
- Project Management Plan
- Baseline Evaluation Schedule

### Task 3 – Design Coordination Meetings

Progress Meetings - ENGINEER shall coordinate, prepare for, and conduct coordination meetings to review progress with the OWNER and the consultants working on the design. Meetings shall take place at the OWNER's office in Denison.

a. ENGINEER shall prepare an agenda for the meetings.

b. ENGINEER shall moderate the meetings.

c. ENGINEER shall prepare and distribute draft meeting notes for review within 5 business days of the progress meeting. After receipt of comments, the meeting notes shall be finalized and distributed to the OWNER and sub-consultants for record purposes.

d. Up to ten (10) progress meetings shall be held during the design phase; the budgeted meetings are in addition to the kickoff meeting. Meetings during construction are included under Activity E below.

Deliverables:
- Draft and Final Meeting Notes

**Task 4 – TRA Coordination**

ENGINEER will assist the OWNER with the following:

a. Assist OWNER in coordinating with Trinity River Authority (TRA) and preparing the Point of Entry (POE) form for connecting the proposed interceptor to the TRA's Henrietta Creek Relief Interceptor. The required service area acreage and flow information required to complete the POE form shall be provided by the OWNER from their existing wastewater model. Any additional required permits will be considered an Additional Service.

b. Assist the OWNER in coordinating with TRA for installation of a permanent flow meter prior to the connection to TRA's Henrietta Creek Relief Interceptor.

c. ENGINEER will attend up to two (2) coordination meetings with TRA. Meeting notes will be prepared and distributed.

Deliverables:

- Draft and Final POE
- Draft and Final Meeting Notes

**ACTIVITY B – PRELIMINARY DESIGN**

Preliminary design shall include field activities necessary for the design of the interceptor to approximately 30% completion. Once Right of Entry is secured, ENGINEER shall conduct topographic survey and conduct a field investigation under Special Services to field verify potential environmental issues that provide information for refinement of the selected pipeline alignment. Topographic survey, environmental, archaeological, and geotechnical borings shall also be conducted on the selected alignment. Impacted utility and public and private entities shall be identified and design constraints documented. A 30% conveyance design package shall be developed including site location map, sheet index, abbreviations and symbols, and plan and profile sheets.

**Task 1 – Preliminary Design (30%)**

The ENGINEER shall advance the interceptor pipeline design to approximately 30% complete as follows:

a. OWNER to Obtain Right of Entry

    1. OWNER shall identify landowner's contact information for those parcels impacted by the selected alignment and request Right-of-Entry (ROE) by letter to facilitate inspection of the alignment by the ENGINEER, survey, subsurface utility engineering (SUE) locates, and collection of geotechnical samples.
    2. ROE for non-responsive or refusal parcels shall be obtained by the OWNER.

b. Pipeline Material and Mechanical Equipment Selection:
    1. The material for the gravity pipeline shall be Fiberglass and/or PVC.
    2. Recommendations for flow meter equipment for gravity flow.
    3. Specific material standards recommendations shall be provided in the Preliminary Design TM identified below. The study and recommendation of alternate materials, if requested by the OWNER, shall be provided as an ADDITIONAL SERVICE.

c. The ENGINEER shall prepare a Preliminary Design TM documenting compliance with Texas Commission on Environmental Quality (TCEQ) regulations. The design capacity of the proposed interceptor shall be provided by the OWNER from their wastewater model.

d. Permanent Easement width for the proposed interceptor will be 30 feet for pipe diameters up to 24-inch and 50 feet for pipe diameters up to 54-inch at depths up to 20 feet deep. The temporary easement will be 20 ft. wide unless otherwise determined during the preliminary design phase.

e. Conduct a field walk through, and evaluation of minor adjustments to alignment identified in the 2022 Route Study as accepted by the OWNER.

f. Review and process of topographic survey data as specified in SPECIAL SERVICES.

g. Review of environmental, cultural resources, subsurface utility engineering (SUE), and geotechnical activities as specified in SPECIAL SERVICES.

h. Develop 30% plans and specifications table of contents for the proposed interceptor. The 30% plans shall include plan and profile drawings at 1-inch equals 40 feet scale horizontally and 1-inch equals four fee vertical on 22-inch x 34-inch paper size (half size plans will have one-inch equals 80 feet horizontal scale). Profile information shall be limited to surveyed top of ground only and a draft line reflecting approximate planned top of pipe (depth of burial). The plans will include the proposed meter station location near the Denton Creek Wastewater Plant.

i. Participate in a 30% design review meeting with OWNER's personnel. The meeting will occur in concert with a monthly progress meeting. ENGINEER will furnish four sets of

the draft plans, to the OWNER approximately 7 days prior to the meeting. Provide a written record of OWNER comments and the ENGINEER's responses.

j. ENGINEER shall prepare the 30% level Conceptual Opinion of Probable Construction Cost.

Deliverables:

- Draft and Final Preliminary Design Technical Memorandum
- 30% Interceptor Pipeline Improvements Plans
- 30% Specifications Table of Contents
- 30% Level OPCC

**ACTIVITY C – DETAILED DESIGN**

**Task 1 – Detailed Design Plans**

The ENGINEER shall develop the final plans as follows:

a. Perform design calculations as needed for the development of 60% and 90% plans. Present 60% and 90% draft plans to the OWNER for review accompanied by required specifications and an OPCC as described below. The ENGINEER will submit plans and specifications to inhouse quality control team for review and comment. The construction plans at a minimum shall include:

    1. Plan and Profile sheets shall show the following: proposed plan/profile and recommended pipe sizes, manhole sizes/locations, existing utilities and utility easements, and pertinent information needed to construct the project. Property lines, legal description (Lot Nos., Block Nos., and Addition Names) along with property ownership shall be provided on plan view. Plans will reflect actual conditions to a distance of at least 25 feet on either side of the proposed interceptor.
    2. The ENGINEER shall prepare standard and special detail sheets for the interceptor.
    3. Design shall include an aerial crossing or inverted siphon at creek crossing at Elizabeth Creek, and road bores.
    4. Design shall include a flow meter station.
    5. Division of the recommended improvements into more than one (1) bid package shall be provided as an ADDITIONAL SERVICE.

b. Meet with the OWNER approximately 7 days following delivery of review documents to collect comments. ENGINEER will provide a written response to OWNER comments and will modify documents incorporating required changes.

c. The ENGINEER will consult with the OWNER, public utilities, private utilities, TxDOT, the county and other facilities that have an impact or influence on the project.

d. After completion of the 90% quality control review meeting the ENGINEER shall advance the design to 100% completion. The ENGINEER shall provide sealed construction contract documents to OWNER.

e. ENGINEER shall complete and submit TxDOT and county road permit applications for road and highway crossings and entrances.

f. Engineer will assist the OWNER completing and submitting required franchise utility encroachment agreements.

g. Engineer will assist the OWNER in completing and submitting the Trinity River Authority Point of Entry Request Packet.

h. Final Sealed Plans, the following documents will be provided by the ENGINEER after sealing the contract document sets: Four (4) sets of half size (11-in x 17-in) plans, four (4) specification books, electronic (PDF OCR) files of plans and specifications via optical disc.

i. Prior to the advertisement for bids, ENGINEER will prepare contract documents to comply with TCEQ requirements. ENGINEER shall submit required notification to the TCEQ. When requested, the ENGINEER shall provide plans and specifications to the TCEQ for review.

j. Preparation of additional construction packages, separate procurement packages or additional OPCC's if requested by the OWNER shall be provided as an ADDITIONAL SERVICE.

Deliverables:

- 60% and 90% quality control review plans for the interceptor project.
- Final Sealed Plans for the interceptor improvement project.

**Task 2 – Specifications**

a. Prepare specifications to fully describe the intended work and convey the intent of the design. The ENGINEER will develop and submit specifications to the OWNER for review in advancing the design. The OWNER will review and comment. ENGINEER will provide a written response to OWNER comments and modify specifications incorporating required changes.

b. Four (4) specification book shall be prepared by the Engineer to support bid and construction of the pipeline improvements. Additional bid packages shall be provided as an ADDITIONAL SERVICE.

c. The ENGINEER shall prepare specification books for review by the OWNER at approximately 60% and 90% design completion.

Deliverables:

- 60% and 90% quality control review specifications for the interceptor pipeline improvement project.
- Final Sealed Specifications for interceptor pipeline improvement project.

**Task 3 – Opinion of Probable Construction Cost (OPCC) Development**

a. ENGINEER will prepare an OPCC for review by the OWNER in conjunction with the preliminary design of improvements. This OPCC will be updated and submitted with the 60% and 90% quality control review of the plans and specifications. The ENGINEER will update the OPCC for submittal with the final sealed plans and specifications.

Deliverables:

- 60%, 90%, and Final OPCC for the interceptor pipeline improvement project.

**ACTIVITY D – BID PHASE SERVICES**

**Task 1 – Pre-Bid Activities**

a. Assist the OWNER in the advertisement of the project for competitive bids. Services shall include:
    1. Providing draft and final advertisement language (Notice to Bidders).
    2. Advertisement in a local publication selected by the OWNER. The cost of publication will be paid by the OWNER.
    3. Coordinate, attend and administer a pre-bid conference for the project for each bid package included in Basic Services.
    4. Tabulate all bids and provide the OWNER a letter recommending award of the contract or rejection of all bids.

b. Assist the OWNER in securing bids, preparing addenda, issuing notice to bidders and notifying construction news publications.
c. The ENGINEER will reproduce copies and distribute bidding documents. The ENGINEER will retain money received from the sale of bidding documents. The price of bid documents shall be agreed to by the OWNER and ENGINEER prior to advertisement.

**Task 2 – Post-Bid Activities**

a. Assist the OWNER in the opening and tabulation of bids for construction of project and recommend to the OWNER as to the proper action on all proposals received.

b. Following the opening of bids the ENGINEER shall conform the contract documents including all addendum changes. The following contract document sets shall be provided:

    1. Four reproducible sets of half size (11-in x 17-in) conformed plans.
    2. One reproducible sets of full size (22-in x 34-in) conformed plans.
    3. Four conformed specification books for execution by the respective parties.
    4. Electronic (PDF OCR) files of the conformed plans and specifications via ftp site.

c. Assist the OWNER in coordinating the execution of the conformed contract documents.

d. Preparation of additional copies of the documents for the OWNER or other parties will be performed by the ENGINEER as an ADDITIONAL SERVICE.

## ACTIVITY E – CONSTRUCTION ADMINISTRATION

### Task 1 – Field Activities

a. Represent the OWNER in Non-Resident construction administration of the project. In this capacity, the construction administration duties shall not place any responsibility on ENGINEER for the techniques, sequences and methods of construction or the safety precautions incident thereto, and the ENGINEER will not be responsible or liable in any degree for the Contractor's failure to perform the construction work in accordance with the Contract Documents.

b. ENGINEER will attend and assist the OWNER in conducting up to one (1) preconstruction meeting.

c. Make an average of one visit each month to the site for a 18-month period beginning with the date of execution of a construction contract by the OWNER to observe the progress and the quality of work and attend a construction progress meeting. The ENGINEER shall become familiar with the progress and quality of the work completed and will determine in general if the work when completed will be in accordance with the contract documents. In addition, on the basis of on-site observations as an ENGINEER, the ENGINEER shall exercise reasonable care and due diligence in discovering and promptly reporting to the OWNER any defects or deficiencies in the work of CONTRACTOR or any subcontractor. The OWNER’s approval, acceptance, use of, or payment for all or any part or the ENGINEER’s services hereunder or the PROJECT itself shall in no way alter the ENGINEER’s obligations or the OWNER’s rights hereunder.

d. Meet and review construction progress with OWNER inspectors, or 3rd Party Inspection personnel under contract with the OWNER, during the monthly site visits.

e. Exhaustive or continuous on-site inspections by the Engineer to check quality or quantity of the work or material shall be considered an ADDITIONAL SERVICE.

f. Provide Engineering surveys in AutoCAD format to establish benchmarks and reference points for construction, one time only. Construction staking shall be considered an ADDITIONAL SERVICE.

g. Conducting, with the OWNER’s representative, a final inspection of the PROJECT for conformance with the design concept of the PROJECT and general compliance with the contract documents.

**Task 2 – General Contract Administration, Submittal Review and Record Drawing Preparation**

a. Review, evaluate and prepare routine change orders or proposed contract modifications typical for the scope and size of the improvements included. Review up to four (4) Contract Modification Requests/Proposed Contract Modifications (CMR/PCM). Prepare up to two (2) Change Orders (CO) and up to four (4) Field Orders (FO) for execution by the OWNER. Additional authorized CMR/PCM review or CO/FO preparation in excess of the specified number will be considered an ADDITIONAL SERVICE.

b. Review and answer request-for-information (RFI) typical for the scope and size of the improvements included. It is anticipated that the ENGINEER will review and respond to up to a total of ten (10) RFIs. Review of authorized RFIs in excess of the specified number will be considered an ADDITIONAL SERVICE.

c. Review samples, catalog data, schedules, shop drawings, laboratory, shop and mill tests of material and equipment and other data which the Contractor is required to submit, only for conformance with the design concept of the project and compliance with the information given by the Contract Documents; and assemble written guarantees which are required by the Contract Documents. It is anticipated that the ENGINEER will review and respond to up to a total of twenty (20) shop drawing submittals. Documents received and filed as record data (not reviewed by the ENGINEER) are not considered shop drawing submittals. Additional authorized shop drawing submittals will be considered an ADDITIONAL SERVICE.

d. Review and comment on the certificate of completion and the recommendation for monthly progress payments to the CONTRACTOR. Verification of quantities and completion of work shall be the responsibility of assigned OWNER or 3rd Party Resident Representative Staff. Such verifications shall take place in advance of the ENGINEER's review.

e. Review and comment on the certificate of completion and the recommendation for final payment to the CONTRACTOR following final inspection of the completed Project.

f. Revise contract drawings with reference to the Contract Document required "red line" notations and the assistance of assigned OWNER or 3rd Party Resident Representative Staff. Revised drawings shall reflect available information as to how the work was constructed. Furnish a set of the revised drawings to the OWNER.

## 3.0 SPECIAL SERVICES

SPECIAL SERVICES incidental to the Project, but not included within the scope of Basic Services covered above, which may be performed or arranged for separately by the OWNER, or may be added to the ENGINEER'S responsibilities by mutual agreement and written authorization, include, but are not necessarily limited to the following:

**Task 1 – Geotechnical Engineering**

a. Geotechnical investigation will occur on parcels where ROE has been obtained at the selected sites. Soil borings will be advanced in selected locations based on surface conditions, pre-existing geotechnical data and other factors. When possible, soil borings will be placed on public ROW. Samples will be acquired, and laboratory tests will be conducted to provide engineering data necessary for the design. Laboratory tests for each sample collected are anticipated to include:

- Dry, saturated, buoyant and total unit weight
- Cohesion
- Particle size and gradation
- Atterburg's limits
- Unified Soil Classification
- Internal soil friction angle
- Void ratio
- Elastic modulus
- Resistivity
- pH
- oxidation-reduction potential
- sulfides
- moisture content

b. The geotechnical budget allowance is based on 12 soil borings up to 20 feet total depth (TD), two borings up to 25 feet TD, and 1 soil boring up to 35 feet TD each. The borings will be backfilled using cuttings and bentonite chips. Actual work required will be refined as the PROJECT progresses. Billing will be based on actual work performed by the geotechnical subcontractor.

Deliverables:

- Certified Laboratory Report Copies
- Draft Geotechnical Report
- Final Geotechnical Report

**Task 2 – Topographic Survey**

a. Utility coordination. Prior to commencing any topographic fieldwork, surveyor will coordinate, collect and review available public and private utility records within the project limits. The surveyor will submit a utility locate request for the project limits to Texas 811.

b. City Owned Utilities shall be located and tied together accordingly (water, wastewater, storm sewer, and telephone/fiber) and associated appurtenances including but not limited to: manholes, cleanouts, meters, services, isolation valves, blow-offs, fire hydrants, inlets, junction boxes, headwalls, wingwalls, rip-rap aprons, and all other appurtenances. Survey shall denote size, material type, and flow direction as applicable. Accessible utility manholes/vaults shall be detailed identifying: structure size, material type, rim elevations, measure downs and corresponding flow line and top of pipe elevations for visible pipe wall penetrations. Upstream and downstream sanitary and storm sewer rim and invert data shall be included.

c. Right-of-Way and Property. Survey will locate and tie existing ROW, property lines and easements including type, size, volume and page, where applicable.

d. Collect high-resolution orthometric images and topographic field data, with UAV-mounted LiDAR unit, along the proposed route area (approximate 15,000 linear feet) for evaluation (approximate total area of 400 acres). Collected data will be 500 foot in width centered on the proposed route.

e. Survey will horizontally and vertically identify surface features; drainage features; building locations; fences/retaining walls; trees and/or tree lines; roadways; railways; and city, county and franchise utilities (as provided by Texas 811 utility locate request) within the project area to the following limits:

    i. Approximately 15,000 LF of pipeline alignment mapping to support the design of wastewater pipeline improvements.
    ii. Alignment swaths shall be approximately 500 feet wide centered on the centerline of the pipeline alignment corridor.
    iii. Rim elevation, bench elevation, flow line of all incoming pipes, and approximate pipe size for all manholes identified by ENGINEER.
    iv. Set control points every 500 linear feet.

f. A tree survey will be performed under Task 3 Tree Survey in Special Services.

g. Methods and precision. Survey coordinates will be reported on the Texas State Plane Coordinate System, NAD83 (+/- 0.01 feet) with vertical coordinates reported in the NAVD 88 Vertical System (+/- 0.01 feet). Horizontal and vertical control will be set using post-processed GPS static methods. Data will be collected using RTK GPS and robotic total stations for the majority of the survey. Laser scanning methods will be used at state highway and railroad crossings for safety reasons.

h. All survey data collected will also be submitted in GIS format per project spatial data management and procedures with appropriate ground to grid conversion.

i. Survey location of all geotechnical borings.

j. Survey location of all SUE locates.

k. At creek crossings, provide survey to show grade of side-slope from top of bank to flowline of the creek.

l. ENGINEER will research boundaries, subdivision plats, rights-of-way (ROW) and easements of which the surveyor has knowledge, which may affect the physical boundaries of the project. Easements with volume and page numbers will be identified and labeled in the survey submittal. Research will include public record resources, including but limited to: county records; TxDOT records; franchise utility records (gas, telephone, electric, cable and others); ownership or easement records as available; and title/abstracting reports from owner on proposed easement parent tracts.

m. Preparation of metes and bounds description of permanent and temporary construction easements, with accompanying exhibits, will be performed under Special Services Task 4.

Deliverables:

i. CAD Format: AutoCAD Civil3D 2013 format CAD files
ii. Project Scale: 20 scale
iii. Base Map: An electronic base map at 1:1 scale (base unit US Survey Foot) containing pertinent topographic field data will be prepared.
iv. PAI CAD Drafting Standards including layers and styles to be used.
v. Text will be oriented with North being true reading West to East.
vi. The base map shall be in AutoCAD DWG format.
vii. DTM generated contours shall have one foot minor and five foot major intervals
viii. XML surface file, defining the AutoCAD Civil 3D surface.

**Task 3 – Tree Survey**

ENGINEER, in coordination with the topographic survey (Task 2), will perform a tree survey inclusive of the following:

a. The survey of trees shall include caliper size trunks approximately 6-in and larger (diameter at breast height ([dbh]) for a 100-foot swatch centered on the pipeline alignment for trees outside of USACE property. Based on the judgement of the ENGINEER the edge (tree line) of groups of trees or shrubs may be substituted for the survey of all trees within heavily wooded areas. In such areas the ENGINEER shall survey trees that exceed 12-in caliper size. A table with the assigned tree tag number, size, and species will be compiled for the project.

**Task 4 – Easement Exhibits**

a. ENGINEER will prepare metes and bounds description of permanent and temporary construction easements, with accompanying exhibits, for up to 15 parcels at the parcel rate identified under compensation. Extra Exhibits shall be provided as an Additional Service.

Deliverables:

- Metes and bounds description with accompanying exhibit.
- One (1) electronic executed PDF of the complete instrument for each parcel
- One (1) original hard copy of the complete instrument for each parcel.

**Task 5 – Subsurface Utility Engineering (SUE)**

a. Perform up to ten (15) nondestructive SUE Quality Level A (QL A) "locates" of up to 15 feet deep for use within project constructions limits. This shall be done using vacuum excavation or another appropriate nondestructive technique.

b. Collect and employ SUE Quality Level B (QL B), Quality Level C (QL C) and Quality Level D (QL D) data as necessary to assist in locating the utilities. Coordinate collection of SUE Quality Level C (QL C) data in conjunction with the project survey including use of applicable parties including utility owners and one call locates.

Deliverables:

- Draft SUE Report
- Final SUE Services Report

Billings will be based on actual work performed by the SUE subcontractor.

**Task 6 – Environmental Permitting Support**

ENGINEER, in coordination with the OWNER, shall plan and coordinate the permitting strategy and process, conduct all necessary fieldwork and prepare environmental documentation and permit application to be submitted by ENGINEER on behalf of OWNER. The federal, state, and local agency permits/concurrence that are anticipated are described below. ENGINEER shall confirm permitting agencies, such as Federal, State, and Local (e.g., Denton County, Texas Commission on Environmental Quality (TCEQ), Texas Historical Commission (THC), US Army Corps of Engineers (USACE), Town of Northlake and others as appropriate) and permits associated with each agency that are anticipated for the delivery of the USACE 404 and USACE 408 Authorizations for the PROJECT. Based on input from agency staff obtained during the pre-application meetings and concurrence from the OWNER, ENGINEER shall proceed with acquisition of the permits/authorizations required for the PROJECT or notifications to applicable agencies. Those permits/acquisitions anticipated for the PROJECT, or agency notifications include:

i. USACE Section 404 Authorization. It is anticipated that authorization for the Project activities will be provided under a USACE Section 404 Nationwide Permit.

ii. USACE Section 408 Authorization. Due to the anticipated work within the USACE operational authority, a 408 Authorization is anticipated.

iii. THC Antiquities Permit for Cultural Resources Survey. For compliance with Section 106 of the National Historic Preservation Act (Section 106) and the Antiquities Code of Texas (ACT), an Antiquities Permit from the THC is anticipated to authorize cultural resources field survey of the area.

iv. Denton County Floodplain Development Permit. Due to the anticipated work within the floodplain, this permit will be required for issuance of the USACE Section 404 permit.

**6.1 USACE Section 404 Authorization**

ENGINEER shall prepare the USACE Section 404 Permit application for the PROJECT:

a. ENGINEER will schedule one (1) pre-application meeting with USACE to discuss the identified waters of the U.S. (WOTUS) resources, potential impacts, and permitting pathways.

b. ENGINEER will prepare the Section 404 Nationwide Permit Pre-Construction Notification (PCN) and necessary supporting documents for submittal to the USACE Fort Worth District. USACE Fort Worth District permitting templates will be utilized as much as possible in the permit application preparation. The permit packet shall be provided to the OWNER for review and signature. Upon approval and receipt of OWNER signature, the application will be submitted to the USACE by ENGINEER acting as the agent. ENGINEER assumes that impacts to WOTUS within the project area would meet requirement for authorization by a NWP. Requirement for a mitigation plan is anticipated based on potential impacts to aquatic and terrestrial resources on USACE property. Mitigation is assumed to include purchase of available credits from appropriate USACE approved mitigation banks with service areas covering the PROJECT area.

### 6.1.1 Aquatic Resources Delineation Report

ENGINEER shall prepare an Aquatic Resources Delineation Report for the PROJECT:

a. ENGINEER shall obtain background data for task: Floodplain maps, National Wetland Inventory maps, U.S. Geological Survey maps, current and historical aerial photographs, soil data maps, and other readily available data. ENGINEER shall perform desktop analysis to review the data to identify areas that potentially contain environmental resources in preparation of field investigation.

b. ENGINEER shall conduct field investigations required to delineate potential jurisdictional WOTUS including wetlands within the investigation area for the proposed PROJECT. ENGINEER will provide delineation data that includes wetland determination data forms, GPS data including but not limited to data points and wetland and WOTUS boundaries in the form of a SHP file, and field notes.

c. ENGINEER shall prepare an Aquatic Resources Delineation Report (ARDR) documenting the findings from the delineation of the PROJECT site, identification of potential impacts resulting from proposed project components to jurisdictional areas, and applicable Section 404 (Clean Water Act) permitting options.

d. ENGINEER shall provide draft ARDR to OWNER for their review. Draft documents will be finalized as needed based on OWNER feedback. Final ARDR will be submitted as attachment with Section 404 permit application to the USACE.

### 6.1.2 Threatened and Endangered Species Letter Report

ENGINEER shall prepare a Threatened and Endangered Species (T&E) Report for the PROJECT:

a. ENGINEER shall obtain background data for task: U.S. Fish and Wildlife Service Information for Public Consultation reports, Texas Parks and Wildlife Department Denton County species list, current and historical aerial photographs, and other readily available data. ENGINEER shall perform desktop analysis to review the

data to identify areas that potentially contain biological resources and habitat in preparation of field investigation.

b. ENGINEER shall conduct a survey of the PROJECT site for biological resources and habitat including potential federal and state listed threatened, endangered, candidate, or proposed candidate species and/or critical habitat for species listed within Denton County.

c. ENGINEER shall prepare T&E Report documenting the findings of the survey for environmental resources within the investigation area.

d. ENGINEER shall provide draft T&E Report to OWNER for their review. Draft documents will be finalized as needed based on OWNER feedback. Final T&E Report will be submitted as attachment with Section 404 permit application to the USACE.

### 6.1.3 Cultural Resource Services

ENGINEER shall complete the following for the PROJECT:

a. Historic Resources Review and Coordination

   i. Based on the results of the constraints analysis for the PROJECT, a historic resources survey is not being recommended in advance of the project construction. According to the Texas Sites Atlas, National Register of Historic Places (NRHP) database, and historic aerials, there are no recorded historic resources within the project area. A coordination letter will be prepared to inform the state and/or cultural resource regulatory agencies about the PROJECT and seek their comment about the project's Section 106 regulatory compliance requirements. A draft letter will be sent to OWNER for review and revision, as necessary. ENGINEER will provide revised draft coordination letters and address any comments and/or revisions. Upon final approval, the coordination letter will be sent to the THC and USACE for their respective reviews under Section 106. ENGINEER assumes approximately 30 days after agency delivery to receive agency comment. ENGINEER will coordinate all agency comments with the OWNER upon receipt.

   ii. Based upon a preliminary project review, ENGINEER assumes that a historic resources field survey will not be required as there are no NRHP resources within the proposed project area of potential effect (APE).

b. Archeological Resources Coordination

   i. This evaluation calls for Federal-level regulatory compliance outlined in Section 106. All work proposed for lands and/or easements owned by a political subdivision of the State of Texas (e.g., the Town of Northlake) will also be subject to state-level archeological resource regulatory compliance outlined in the ACT. ENGINEER will coordinate with sub-consultant for services outlines in Task 7 of SPECIAL SERVICES.

Deliverables:

- Section 404 NWP PCN and necessary supporting documents

- Draft and Final Aquatic Resources Delineation Report which will include map identifying jurisdictional wetland areas
- Draft and Final Threatened and Endangered Species Letter Report
- Draft and Final Cultural Regulatory Coordination Letter

## 4.2 USACE Section 408 Authorization

ENGINEER shall prepare required documentation and coordination with the USACE Operations Division for Section 408 review for the PROJECT:

### 4.2.1 Agency Coordination

a. ENGINEER will organize up to three (3) coordination meetings with USACE and OWNER to discuss the USACE procedures, potential issues, submittal status, and review procedures.

### 4.2.2 Environmental Baseline Study

ENGINEER shall prepare an Environmental Baseline Study for the PROJECT:

a. ENGINEER shall obtain background data for task: U.S. Fish and Wildlife Service Information for Public Consultation reports, Texas Parks and Wildlife Department Denton County species list, current and historical aerial photographs, and other readily available data. ENGINEER shall perform desktop analysis to review these data to identify areas that potentially contain environmental resources in preparation of field investigation.

b. ENGINEER shall conduct a survey of the PROJECT site for environmental and biological resources and habitat.

c. ENGINEER shall prepare Environmental Baseline Study Report documenting the findings of the survey for environmental resources within the investigation area.

d. ENGINEER shall provide draft Environmental Baseline Study Report to OWNER for their review. Draft documents will be finalized as needed based on OWNER feedback and provided to OWNER for their records. Upon submittal of the USACE 408 Letter of Request, the finalized document will be included in the attachments.

### 4.2.3 Mitigation Plan

ENGINEER shall prepare the following:

a. As required by the USACE in support of Section 408 coordination, ENGINEER shall prepare a Mitigation Plan for the PROJECT. The Mitigation Plan shall address potential impacts of the proposed PROJECT activities on the identified habitat and other environmental resources from the baseline environmental survey. The Mitigation Plan shall be prepared according to current standards and will describe the following:

    i. Quantification and qualification of the environmental resources likely to be impacted and the amount and type of impacts to be expected

    ii. Development of a mitigation plan that will compensate for the anticipated lost functions of the resources to be impacted

b. Attend up to two (2) meetings with USACE and OWNER to discuss mitigation alternatives and negotiate a finalized mitigation plan

c. ENGINEER shall provide draft Mitigation Plan to OWNER for their review. Draft documents will be finalized as needed based on OWNER feedback. The final Environmental Baseline Study Report and Mitigation Plan will be submitted to the USACE at attachments with the Section 408 Letter of Request.

#### 4.2.4 Letter of Request

a. ENGINEER shall prepare a Letter of Request for authorization to impact the USACE managed resources within the PROJECT area. The draft letter, and all attachments, shall be provided to the OWNER for review and signature. Upon approval and receipt of OWNER signature, the Letter of Request will be submitted to the USACE by ENGINEER acting as the agent.

Deliverables:

- Draft and Final Environmental Baseline Study Report
- Draft and Final Mitigation Plan
- Draft and Final Letter of Request for USACE 408 Authorization

### 4.3 Floodplain Development Permit Application

ENGINEER shall prepare the Floodplain Development Permit Application for the PROJECT to include:

a. Coordination with Denton County and OWNER.

b. Preparation of draft floodplain permit to the OWNER for their review and signature. Upon approval and receipt of signature by OWNER, the application will be submitted to Denton County by ENGINEER acting as the agent.

c. Coordination with Denton County to obtain approval of the Floodplain Development Permit.

Deliverables:

- Draft and Final Floodplain Development Permit Application

**ASSUMPTIONS**

- One (1) mobilization for field work associated with ARDR, T&E survey, and Environmental Baseline Study is planned. Additional mobilizations would be an ADDITIONAL SERVICE.
- Field survey is based on a 2.75 mile long, 50ft-wide corridor centered on Preferred Alignment 3 as provided in the Technical Memorandum. Additional width or length of survey would be an ADDITIONAL SERVICE.
- This project is assumed to qualify for USACE Section 404 authorization via NWP. An Individual Section 404 Authorization is not anticipated for this project. Preparation of an Individual Permit application for submittal to the USACE would be an ADDITIONAL SERVICE.
- One (1) USACE 404 Nationwide Permit PCN is planned with use of available mitigation bank credits covering 100% of proposed impacts. If impacts are not able to be compensated using existing mitigation bank credits, or they are available but at a price

that the OWNER isn't willing to purchase, such that a permittee responsible mitigation plan development is needed, it would be an ADDITIONAL SERVICE.

- One (1) Section 404 pre-application meeting with the USACE is planned.
- ENGINEER assumes negotiation with USACE on a Mitigation Plan to receive approval of the USACE 408 permit with an agreed-upon transfer of funds. Development of a site-specific resource mitigation plan, including bid documents, construction plans, special provisions, and a monitoring plan would be an ADDITIONAL SERVICE.
- ENGINEER assumes no Environmental Information Document (EID) is required by USACE for the 408 Authorization. If needed by USACE, development of an EID would be an ADDITIONAL SERVICE.
- ENGINEER assumes no Phase I ESA survey is required for the PROJECT and if required by Agency or OWNER, it would be an ADDITIONAL SERVICE.
- All proposed work is subject to Section 106. Any work to take place on lands or easements owned by a political subdivision of the State of Texas (e.g., the Town of Northlake) is subject to the ACT.
- Adjustments to the proposed project area could result in supplemental costs (i.e., corridor width, additional properties, temporary construction easements, etc.)
- Through cultural resources coordination, ENGINEER will recommend that archeological fieldwork is necessary.
- ENGINEER will recommend that historic architectural resources fieldwork is not likely to be required.
- 100% right of entry will be available at the time of initiating field survey – including, if necessary, backhoe trenching - and access will be obtained and coordinated by others.
- Archeological survey will follow the state's published minimum standards for area survey on projects of this size.
- Backhoe trenching will likely be required to fully assess project impacts and is scoped and budgeted in this document.
- ENGINEER assumes that all cultural resources fieldwork will occur in a single mobilization.
- ENGINEER assumes up to one (1) round of review/revisions for each submittal. Additional review/revisions will be an ADDITIONAL SERVICE.
- Field investigations beyond listed surveys – e.g., Architectural Survey, National Register of Historic Places and/or State Antiquities Landmark eligibility testing; mitigation for adverse effects to significant cultural resources, etc. - is not included.
- ENGINEER assumes no tree preservation plan or tree permitting is required for the project with the Town of Northlake or the City of Roanoke. A requirement to complete tree preservation plan, or tree permits for either would be an ADDITIONAL SERVICE.
- ENGINEER assumes no Corridor Development Certificate (CDC) will be required for this project.

**Task 7 – Archaeological Resources**

a. ENGINEER will consult available desktop-level background information to determine the project's potential for impacting significant archeological resources. Once compiled from these sources, ENGINEER will send preliminary constraints data (e.g., recorded archeological sites; historic-age resources; NRHP properties, etc.) to OWNER in electronic GIS-based format for their use in routing studies. ENGINEER will compile the background information into an ACT and Section 106 coordination letter for delivery to the THC and USACE. The letter will outline the proposed project, summarize available background information, and provide recommendations for project-related regulatory compliance. A draft letter will be sent to OWNER for review and revision, as necessary. ENGINEER will send the approved letter to the THC for their formal, 30-day regulatory review and provide OWNER with the THC's comments and anticipated concurrence with the letter's recommendations.

b. Preparation of Texas Antiquities Permit Application: Should the THC and the USACE determine an archeological survey is warranted and any of the areas warranting field investigations correspond with lands/easements owned by the Town of Northlake (or any political subdivision of the State of Texas), an Antiquities Permit application per the requirements of the ACT for those areas will be prepared. This permit application package will include a summary of the known resources in the vicinity, the proposed field methods, and an application form. This application package will be submitted to OWNER for review and signature. Upon approval and receipt of OWNER signature, the application will be submitted to the THC for their review and eventual permit issuance. Simultaneously with permit application preparation, ENGINEER will coordinate with OWNER to outline access to the project location, schedules, etc., then make final arrangements for on-site survey.

c. Pre-Field Preparation: After approval of the Texas Antiquities Permit Application and Scope of Work, ENGINEER will travel to the survey area to conduct an archeological survey following the THC's minimum standards for intensive linear surveys: pedestrian inspection with subsurface shovel tests at a rate of 1 shovel tests (STs) per 100 m of corridor per 30 m of corridor width. During the pedestrian survey, field archeologists will identify potential floodplains and landforms containing deep Holocene alluvium along the survey corridor and decide whether supplemental backhoe trenching will be necessary to assess impacts to potential deeply buried archeological resources. Preliminary review of soils in the project corridor suggests that backhoe trenching will be required to fully evaluate the potential for deeply buried archeology deposits. Observations will be recorded through notes, photographs, field forms, and with hand-held GPS. Any archeological sites observed within the survey tract will be documented in accordance with THC standards.

d. Draft Reporting: After field investigations, TexSite form(s) for any archeological site(s) recorded will be prepared. A comprehensive report that details project components, field methods and observations, recorded sites (if any), and regulatory recommendations for the PROJECT will be prepared. A draft will be electronically submitted to OWNER for review and comment, then (upon revision/approval) submitted to the THC for their review under the ACT.

e. Final Report Preparation: Upon THC/State Historic Preservation Officer and USACE approval, ENGINEER will prepare final reports in accordance with Section 106 requirements. Following acceptance of the final archeological survey reports by the THC and USACE, ENGINEER will curate related field forms and photographs with a certified curation facility in order to satisfy the terms of the Texas Antiquities Permit.

Deliverables:

- Draft and Final Antiquities Permit application
- Draft and Final Archeological Resources Survey Report

**4.0 ADDITIONAL SERVICES**

ADDITIONAL SERVICES are those services not included in General Services that may be required for the Project but cannot be defined sufficiently at this time to establish a Scope of Work. These include, but are not necessarily limited to the following:

a. Additional visits to the site during construction (if required) that are not identified in Activity F (Task 1) above.

b. Rights-of-Way acquisition support as requested by the OWNER.

c. Traffic Control plan.

d. Preparation of Section 404 (CWA) Individual permit application

e. Formal Consultation with the U.S. Fish and Wildlife Service for Threatened or Endangered Species.

f. Extensive Tree Survey along route tagging trees as well as identifying location, size, and species other than described in Basic Services.

g. Tree preservation plan or tree permit for either the Town of Northlake or The City of Roanoke.

h. Resident construction administration to inspect and monitor terrestrial mitigation improvements during construction that was identified during detailed design by USACE.

i. Design of other improvements not identified in Basic or SPECIAL SERVICES.

j. Modifications to the design of improvements previously approved by the OWNER by acceptance without comment on conceptual, preliminary or detailed design progress submittals.

k. Easement acquisition assistance or aid is acquiring property in fee, including in house labor by the Engineer, subconsultant services or property appraisals.

l. Corrosion studies beyond those included in Basic or SPECIAL SERVICES.

m. Archeological investigations not included in Basic or SPECIAL SERVICES.

n. GIS processing of geophysical and/or geotechnical data beyond the assumptions provided in Basic or SPECIAL SERVICES.

o. Preparation of storm water permits or pollution protection plans (SWPPP).

p. Preparing applications and supporting documents for grants, loans, or planning advances for providing data for detailed applications. Coordination with Texas Water Development Board SRF.

q. Providing additional copies of reports, plans, specifications, OPCC's and contract documents beyond those specifically described in Basic and SPECIAL SERVICES.

r. Preparing environmental impact statements, storm water discharge permits, and 404 permit applications, except as specifically included in the Basic Engineering Services.

s. Appearing before regulatory agencies or courts as an expert witness in any litigation with third parties other than condemnation proceedings arising from the development or construction of the Project, including the preparation of engineering data and reports for assistance to the OWNER.

t. Payment of fees for permit applications and publication(s) of notices.

u. Public relation activities and consulting services.

v. Other services beyond those included in Basic or SPECIAL SERVICES that are approved by the OWNER.

w. Services known to be required for completion of the PROJECT that the OWNER agrees are to be furnished by the ENGINEER or by a sub-consultant that cannot be defined sufficiently at this time to establish the maximum compensation.

## 5.0 SCHEDULE

The time period for preliminary (30%), 60% and 90% design tasks identified under BASIC SERVICES as detailed above shall be completed within 12 months for conceptual after notice to proceed. Plus, any additional time as may be considered reasonable for obtaining approval of governmental authorities having jurisdiction to approve the final design documents, if such approval is to be obtained during the Final Design Phase. Construction phase services shall be completed within approximately 24 calendar months of project bid.

# Exhibit B

## Compensation

1. **Basic Services of Engineer**

Owner shall pay Engineer for Basic Services of Engineer rendered for "Scope of Services" as provided in this agreement. Fees shall be paid per Article 7 of the General Terms and Conditions.

Compensation for the following Services actually completed shall be paid as shown below:

| Activity | Task Description | Fee Ceiling | Payment Terms |
|---|---|---|---|
| BASIC SERVICES | | | Lump Sum |
| Activity A | Project Coordination | $159,500 | |
| Activity B | Preliminary Design | $268,975 | |
| Activity C | Detailed Design | | |
| C1 | 60% Detailed Design | $249,400 | |
| C2 | 90% Detailed Design | $203,100 | |
| C3 | Final Design | $127,400 | |
| Activity D | Bid Services | $29,500 | |
| Activity E | Construction Services | $178,300 | |
| SUBTOTAL BASIC SERVICES | | $1,216,175 | |
| SPECIAL SERVICES | | | |
| Task 1 | Geotechnical Engineering | $28,500 | Not to Exceed (Time and Materials) |
| Task 2 | Topographic Survey | $79,888 | Lump Sum |
| Task 3 | Tree Survey | $23,000 | Not to Exceed (Time and Materials) |
| Task 4 | Easement Exhibits* | $22,500 | |
| Task 5 | SUE | $30,000 | |
| Task 6 | Env. Permitting Support | $80,500 | |
| Task 7 | Archeological Resources | $47,000 | |
| SUBTOTAL SPECIAL SERVICES | | $311,388 | |
| ADDITIONAL SERVICES | | $60,000 | |
| TOTAL FEE | | $1,587,563 | |

*The metes and bounds description and easement exhibit will be prepared for $1,500 each parcel.

Cost reimbursable compensation shall be based on Engineer's personnel time at Engineer's hourly labor rates attached hereto as Table B -1 Hourly Rate Schedule for Professional Services. All direct expenses, including mileage, travel and lodging expenses, but excluding subcontract expenses, applied to the Basic Services of Engineer, shall be paid at invoice or internal office cost plus a **fifteen percent (15%)** service charge. Subcontract expenses shall be paid at direct cost plus a **fifteen percent (15%)** service charge. All sales, use, value added, business transfer, gross receipts, or other similar taxes will be added to Engineer's compensation when invoicing Owner.

2. **Additional Services of Engineer**

Owner shall pay Engineer for Additional Services of Engineer rendered for "Scope of Services" as provided in this agreement. Fees shall be paid per Article 7 of the General Terms and Conditions.

Cost reimbursable compensation shall be based on Engineer's personnel time at Engineer's hourly labor rates attached hereto as Table B -1 Hourly Rate Schedule for Professional Services. All direct expenses, including mileage, travel and lodging expenses, but excluding subcontract expenses, applied to the Additional Services of Engineer, shall be paid at invoice or internal office cost plus a **fifteen percent (15%)** service charge. Subcontract expenses shall be paid at direct cost plus a **fifteen percent (15%)** service charge. All sales, use, value added, business transfer, gross receipts, or other similar taxes will be added to Engineer's compensation when invoicing Owner.

3. **Definitions**

**Direct Labor Cost:** Salaries and wages paid to Engineer's personnel engaged directly on the Project, but do not include indirect costs, insurance costs, fringe benefits, overhead or profit. Direct Labor Cost is subject to annual calendar year adjustments.

**Hourly Labor Rates:** Direct Labor Cost plus a percentage applied to all such wages or salaries to cover payroll taxes, insurance premiums, benefits and all other overhead or profit.

**Direct Expenses:** All expenses incurred directly by the Engineer. These may include transportation costs, travel, meals, lodging, laboratory testing and analyses, telecommunication, computer services, document reproduction and processing, all direct expenses associated with outside consultants, and any other direct expense incurred by the Engineer.

**EXHIBIT B-1**
**PLUMMER ASSOCIATES, INC.**
**HOURLY FEE SCHEDULE**
**2022**

| Staff Description | Staff Code | 2022 Rate |
|---|---|---|
| Admin Staff | A1 – A2 | $ 90.00 |
| Admin Staff III | A3 | $ 95.00 |
| Senior Admin Staff | A4 | $ 100.00 |
| Designer/Technician | C1-C2 | $ 90.00 |
| Designer/Technician III | C3 | $ 120.00 |
| Senior Designer/Technician | C4 | $ 140.00 |
| Construction Manager in Training *(CMIT)* | CM1 | $ 115.00 |
| Construction Manager in Training II | CM2 | $ 125.00 |
| Construction Manager in Training III | CM3 | $ 140.00 |
| Construction Manager IV | CM4 | $ 145.00 |
| Construction Manager V | CM5 | $ 175.00 |
| Construction Manager | CM6 | $ 215.00 |
| Senior Construction Manager | CM7 | $ 240.00 |
| Principal Construction Manager | CM8 | $ 260.00 |
| Resident Project Rep. I | RR1 | $ 80.00 |
| Resident Project Rep. II | RR2 | $ 110.00 |
| Resident Project Rep. III | RR3 | $ 130.00 |
| Lead Resident Project Rep. | RR4 | $ 135.00 |
| Field Tech I | LS1 | $ 80.00 |
| Field Tech II | LS2 | $ 95.00 |
| Survey Specialist I | LS3 | $ 105.00 |
| Survey Specialist II | LS4 | $ 115.00 |
| Survey Analyst | LS5 | $ 135.00 |
| Chief of Parties | LS6 | $ 150.00 |
| Engineer/Scientist Intern | ES0 | $ 60.00 |
| Engineer-in-Training/Scientist-in-Training | ES1 | $ 115.00 |
| Engineer-in-Training/Scientist-in-Training II | ES2 | $ 125.00 |
| Engineer-in-Training/Scientist-in-Training III | ES3 | $ 140.00 |
| Project Engineer/Scientist | ES4 | $ 145.00 |
| Senior Project Engineer/Scientist | ES5 | $ 175.00 |
| Project Manager | ES6 | $ 215.00 |
| Senior Project Manager | ES7 | $ 240.00 |
| Principal I | ES8 | $ 305.00 |
| Principal II | ES9 | $ 320.00 |
| Electrical Engineer in Training I | EE1 | $ 95.00 |
| Electrical Engineer in Training II | EE2 | $ 120.00 |
| Electrical Engineer in Training III | EE3 | $ 135.00 |
| Electrical Specialist | EE4 | $ 145.00 |
| Programmer | EE5 | $ 175.00 |
| Programmer II | EE6 | $ 200.00 |
| Senior Electrical Engineer | EE7 | $ 280.00 |

Billing rates may be adjusted by up to 4 percent annually (at the beginning of each calendar year) during the term of this agreement.

A multiplier of 1.15 will be applied to all direct expenses

A technology charge will be billed at $5 per labor hour.

**Exhibit C**

**Insurance**

Engineer shall maintain the following minimum insurance for the duration of the Project:

I. Workers Compensation and Employer's Liability:

| | |
|---|---|
| Workers Compensation: | Statutory Limits |
| Employer's Liability: | |
| Bodily Injury by Accident | $ 1,000,000 Each Accident |
| Bodily Injury by Disease | $ 1,000,000 Each Employee |
| Bodily Injury by Disease | $ 1,000,000 Policy Limit |

Required Endorsements:

Notice of Cancellation – as required by Section 6 below.
Waiver of Subrogation – as required by Section 7 below.

II. General Liability: Products - Completed Operations Coverage and Contractual Liability:

| | |
|---|---|
| General Each Occurrence: | $ 1,000,000 |
| General Aggregate: | $ 2,000,000 |
| Personal and Advertising Injury: | $ 1,000,000 |
| Products – Comp/Op Aggregate: | $ 2,000,000 |

Required Endorsements:

Additional Insured: Additional insured status shall be provided in favor of the Owner Parties on ISO forms CG 20 10, CG 2026 or an equivalent approved by the Owner

Primary and Non-Contributing Liability: It is the intent of the parties to this Contract that all insurance coverage required herein shall be primary to and shall seek no contribution from all insurance available to Owner Parties, with Owner Parties' insurance being excess, secondary and non-contributing. This CGL coverage shall be endorsed to provide such primary and non-contributing liability coverage.

Notice of Cancellation – as required by Section 6 below.
Waiver of Subrogation – as required by Section 7 below.

III. Umbrella Liability:

| | |
|---|---|
| Umbrella Each Occurrence: | $ 4,000,000 |
| Umbrella Aggregate: | $ 4,000,000 |

Required Endorsements:

Notice of Cancellation – as required by Section 6 below.
Waiver of Subrogation – as required by Section 7 below.

IV. Automobile Liability: Owned, Hired, and Non-Owned Vehicles:

Combined Single Limit: $ 1,000,000 Each Accident

Required Endorsements:

Notice of Cancellation – as required by Section 6 below.
Waiver of Subrogation – as required by Section 7 below.

V. Professional Liability:

Professional Liability Limit: $ 2,000,000 Per Claim/Annual Aggregate

VI. Notice of Cancellation or Reduction by Endorsement in Coverage:

In the event of cancellation or reduction by endorsement in coverage or a non-renewal affecting the Owner, thirty (30) days prior written notice shall be given to the certificate holder.

VII. Waiver of Subrogation:

Engineer hereby agrees to waive its rights of recovery from Owner with regard to all causes of property and/or liability loss and shall cause a waiver of subrogation endorsement to be provided in favor of the Owner on all insurance coverage carried by the Engineer, whether required or not (except Engineer's professional liability insurance).

VIII. Evidence of Insurance:

Certificates of Insurance shall be attached hereto.

**TOWN OF NORTHLAKE COUNCIL ITEM NO. 6**

**DATE:** MAY 12, 2022

**ITEM:** EXECUTIVE SESSION

**TOWN OF NORTHLAKE COUNCIL ITEM NO. 7**

**DATE:** MAY 12, 2022

**ITEM:** OPEN SESSION

**TOWN OF NORTHLAKE COUNCIL ITEM NO. 8**

**DATE:** MAY 12, 2022

**ITEM:** ADJOURNMENT