

KENNEDALE CITY COUNCIL AGENDA

SPECIAL MEETING | AUGUST 24, 2021 AT 5:30 PM
CITY HALL COUNCIL CHAMBERS | 405 MUNICIPAL DRIVE, KENNEDALE, TX 76060

MEMBERS OF THE PUBLIC MAY JOIN IN PERSON OR
ACCESS A LIVE FEED AT WWW.CITYOFKENNEDEALE.COM/VIDEOS
THE VIRTUAL OPTION DOES NOT ALLOW FOR PUBLIC COMMENT

I. CALL TO ORDER

To address the City Council regarding an agenda item, submit a 'Request to Speak' form before the meeting begins. Speakers are allotted three (3) minutes, must limit their comments to the subject indicated on the form, and should address the Council as a whole, rather than individual Councilmembers or staff.

II. ROLL CALL

III. WORK SESSION

A. WORK SESSION REPORTS

1. Continued discussion of the FY2021-22 Proposed Budget

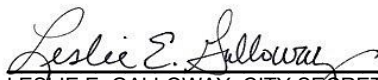
IV. SPECIAL SESSION

- A. Consider authorizing the Interim City Manager to enter into a professional services agreement with Dunaway for interim municipal planning consulting services at a maximum cost of \$6,000 per month
- B. Consider approval of a Developer's Agreement for the Alta 287 Development, 3100 Joplin Road

V. ADJOURNMENT

CERTIFICATION

I DO HEREBY CERTIFY THAT THE AUGUST 24, 2021 KENNEDALE CITY COUNCIL AGENDA WAS POSTED INSIDE THE MAIN ENTRANCE OF CITY HALL (405 MUNICIPAL DRIVE), IN A PLACE CONVENIENT AND READILY ACCESSIBLE TO THE GENERAL PUBLIC AT ALL TIMES; AND THAT SAID AGENDA WAS POSTED AT LEAST SEVENTY-TWO (72) HOURS PRECEDING THE SCHEDULED TIME OF SAID MEETING, IN ACCORDANCE WITH CHAPTER 551 OF THE TEXAS GOVERNMENT CODE.



LESLIE E. GALLOWAY, CITY SECRETARY

In compliance with the Americans with Disabilities Act (ADA), the City of Kennedale will provide for reasonable accommodations for persons attending meetings. This facility is wheelchair accessible and accessible parking spaces are available. Requests for sign interpreter services must be made forty-eight (48) hours prior to the meeting by calling 817-985-2104 or (TTY) 1-800-735-2989.

POSTED _____ (DATE) _____ (TIME)

MEETING DATE: AUGUST 24, 2021

AGENDA ITEM NUMBER: WORK SESSION ITEM III.A.1.

SUBJECT

Continued discussion of the FY2021-22 Proposed Budget

ORIGINATED BY

Lakeita Sutton, Director of Finance and Information Technology

SUMMARY

Discussion of the FY2021-22 budget began during a special meeting on Tuesday, August 10, 2021 and continued during the last regular Council meeting on Tuesday, August 17. Printed copies of the proposed budget have been provided to the Council. Staff will not make a formal presentation during this meeting, but Finance Director Lakeita Sutton and all current directors will be available to answer questions from the Council. Council input is, as always, invited and appreciated as we continue the budget development process.

RECOMMENDATION

ATTACHMENTS

MEETING DATE: AUGUST 24, 2021

AGENDA ITEM NUMBER: INDIVIDUAL CONSIDERATION ITEM IV.A.

SUBJECT

Consider authorizing the Interim City Manager to enter into a professional services agreement with Dunaway for interim municipal planning consulting services at a maximum cost of \$6,000 per month

ORIGINATED BY

Leslie E. Galloway, Interim City Manager

SUMMARY

The attached agreement shows redlines from the attorney's office. The proposed changes to the Terms and Conditions (pages 4-6) are being reviewed by Dunaway's team.

This agreement would allow for consulting services to be provided by Dunaway related to the preparation, presentation, and hearing of P&Z and BOA cases as well as various other planning or development questions that might arise. Staff met with Barry Hudson and Chance LeBlanc on Friday, August 20. Mr. Hudson has consulted with the City of Kennedale in the past — including on the 2006 Comprehensive Plan — while at a different firm. Mr. LeBlanc would be our primary point of contact with Mr. Hudson serving as a point of escalation for issues that may be more strategic or complex.

The maximum monthly cost is capped at \$6,000, but will be billed hourly on a monthly basis. This contract does not have a term, but is expected to continue until a Director of Planning and Economic Development has been hired permanently and any knowledge transfer completed.

Staff appreciates Council's consideration and input.

RECOMMENDATION

Approve

ATTACHMENTS

1.	Dunaway Planning Flyer_2020	Dunaway Planning Flyer_2020.pdf
2.	7618.001 - Kennedale Planning Consulting Proposal - 2021-0817 DAL redline	DUNAWAY - Kennedale Planning Consulting Proposal - 2021-0817 DAL redline (002).pdf



OUR SERVICES

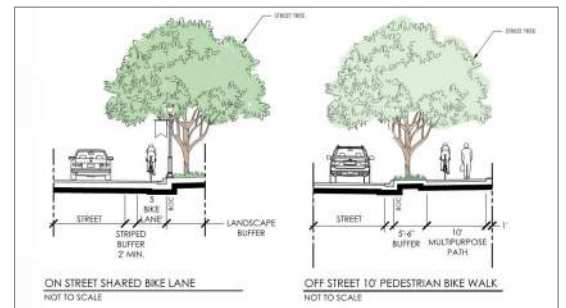
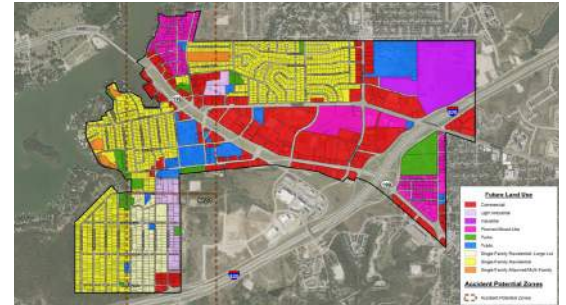
Dunaway's planning expertise is derived from hundreds of projects in both the private and public sectors. Private sector planning supports a wide variety of development needs, whether retail, commercial, residential, healthcare, education, cultural district, or other venues. Services include concept and land use plans, zoning and variance case processing, subdivision and lot layouts, due diligence levels 1, 2, and 3, site assessments and feasibility studies. Public sector planning supports city, county, and agency initiatives to accommodate population growth, demographic change, or revitalization efforts. Services include comprehensive land use plans, transportation planning, corridor studies, zoning and subdivision ordinances, sign ordinances, overlay districts, planning reviews, and a variety of research and reports. Some of our planning services include:

- **Comprehensive Land Use Plans**
- **Transportation Planning/Traffic Studies**
- **Corridor Studies and Streetscapes**
- **Zoning and Subdivision Ordinances**
- **Public Engagement**
- **Special Districts and Small Area Plans**
- **GIS Mapping and Land Use Inventories**
- **Master Planned Developments**
- **Site Investigations & Entitlements**
- **Sign Ordinances**
- **Overlay Districts**
- **Municipal Planning Reviews**
- **Parks and Open Space Master Plans**
- **Multi-Use Trail Planning**



PROJECT EXPERIENCE

- CITY OF LAKE WORTH COMPREHENSIVE PLAN
- CITY OF CROWLEY COMPREHENSIVE PLAN
- TOWN OF LAKESIDE FUTURE LAND USE PLAN
- CITY OF NEW FAIRVIEW PLANNING CONSULTANT AND GIS MAPPING
- CITY OF JUSTIN "STAFF EXTENSION" PLANNING CONSULTANT
- CITY OF JUSTIN COMPREHENSIVE PLAN
- TOWN OF BARTONVILLE PLANNING CONSULTANT
- MIDLAND COUNTY PLAT REVIEWS
- CITY OF LAKE WORTH ZONING AND SUBDIVISION ORDINANCE
- CITY OF JUSTIN SIGN ORDINANCE
- TOWN OF FLOWER MOUND PARKS AND OPEN SPACE MASTER PLAN
- CITY OF WHITE SETTLEMENT PARKS AND OPEN SPACE MASTER PLAN



ABOUT DUNAWAY

Founded in 1956, Dunaway provides civil and structural engineering, planning, landscape architecture, traffic engineering, hydraulics/hydrology, land surveying, environmental, and GIS services to public and private clients across Texas. Our goal is to provide our clients the best possible expertise and service, to commit the resources necessary to ensure the success of each project, and to maintain excellent professional relationships.



Fort Worth • Austin • Midland • San Antonio

dunawayassociates.com

**To:**

Leslie Galloway
Interim City Manager
City of Kennedale
405 Municipal Dr.
Kennedale, TX 76060

From:

Barry Hudson, AICP
Senior Discipline
Associate

Dunaway Location

550 Bailey Avenue
Suite 400
Fort Worth, TX 76107

Dunaway No. P007618.001

August 17, 2021

Reference: Proposal for Professional Services
City of Kennedale Planning Consulting Services

Leslie:

Dunaway Associates, LLC (Dunaway) is pleased to submit this proposal for planning services on the above-referenced Project. Based on emails, we believe the following scope of services will meet the needs of City of Kennedale (Client) for this Project.

Project Understanding

Dunaway will provide interim planning consulting services as follows:

SCOPE OF WORK

1. Interim Municipal Planning Consulting – Dunaway will provide professional planning consulting services as requested by the City Manager or Interim City Manager on a variety of planning related topics. These topics shall include but are not limited to: review and provide input on zoning cases, appeals to the Board of Adjustment, special exception requests, variance requests, preliminary plats, final plats, and other platting documents (for developments not represented by Dunaway); other special planning services requested by the City Manager or Interim City Manager; attendance and staff representation at City Council, Planning & Zoning Commission, and Board of Adjustment meetings; and coordination with other city staff on the foregoing services. Dunaway will provide a Primary Consultant (herein so called) to provide the foregoing services, and if necessary, a Secondary Consultant (herein so called) to assist in providing the services.

FEE

- **Primary Consultant: \$125 per hour**
- **Secondary Consultant: \$195 per hour**
- **Not to exceed \$6,000.00 per month without prior written authorization from Client**

Dunaway proposes to provide the scope of work described above for a fee as shown above, plus a 2% administrative fee, direct expenses, and any applicable State Sales Tax. All administrative and application fees required by review authorities will be paid by the Client and are not included in Dunaway's proposed fee. Please find attached to this proposal our Standard Terms & Conditions for professional services, which is also part of this proposal.

ADDITIONAL SERVICES (not included in proposal)

The following is a list of some, but not necessarily all, of the services that can be useful or required in conjunction with municipal planning services. The listed services have not been included in this proposal. Dunaway can provide or sub-consult many of these services if desired by the Client. If the Client determines any of these services are desired, Dunaway can either amend this proposal to incorporate the desired service or services or recommend other actions to cover the needs as expressed.

1. Preparation of amendments to the Kennedale Unified Development Ordinance.
2. Special planning corridor studies.
3. Civil Engineering services, including paving, drainage, water, and sewer utilities design.
4. Landscape Architecture services, including park design, streetscape, irrigation, and site lighting design.
5. Surveying services, including boundary, topographic, easements, and tree surveys.
6. Environmental services, including storm water management, wetlands delineation, and grant application assistance.

If this proposal meets with your approval, please sign below and return one copy to our office as our notice to proceed. We appreciate the opportunity to assist you with this Project and look forward to its success.



Proposal for Professional Services
City of Kennedale Planning Consulting Services
Page 3

Respectfully submitted,

**DUNAWAY ASSOCIATES, LLC,
a Texas limited liability company**

Agreed & Accepted

CITY OF KENNEDALE

Barry Hudson, AICP, CNU-A
Senior Discipline Lead - Associate

By:_____

Name:_____

Title:_____

Date:_____

Attachment: Standard Terms & Conditions

BH/lau

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These Standard Terms & Conditions are attached to and fully incorporated into the Base Contract. The Base Contract, together with these Standard Terms and Conditions, is sometimes called this "Agreement" herein.

- I. **Basis of Compensation.** Unless stated otherwise in the Base Contract, Professional Services shall be billed monthly and based upon either a percent complete for lump sum tasks or Dunaway Associates, LLC's Standard Hourly Bill Rate Schedule. This Schedule is updated annually in January.

2021 STANDARD HOURLY BILL RATE SCHEDULE

STAFF TYPE	HOURLY BILL RATE
Administrative	\$90.00 - \$160.00
Information Systems	\$110.00 - \$121.00
Marketing/Business Development	\$95.00 - \$275.00
Financial	\$125.00 - \$286.00
Civil Technician.....	\$100.00 - \$121.00
Civil Designer.....	\$65.00 - \$143.00
Graduate Engineer.....	\$125.00 - \$143.00
Project Engineer.....	\$140.00 - \$226.00
Managing Engineer.....	\$170.00 - \$193.00
Technical Engineer.....	\$190.00 - \$286.00
Project Surveyor.....	\$155.00 - \$171.00
Survey Party Chief.....	\$125.00 - \$160.00
Survey Technician.....	\$90.00 - \$132.00
Survey Field Assistant.....	\$70.00 - \$88.00
GIS	\$100.00 - \$171.00
Planner.....	\$105.00 - \$231.00
Landscape Architect Intern.....	\$105.00 - \$116.00
Landscape Designer.....	\$115.00 - \$127.00
Landscape Architect.....	\$115.00 - \$165.00
Environmental Scientist.....	\$110.00 - \$154.00
Intern	\$75.00 - \$83.00
Discipline Lead.....	\$145.00 - \$270.00
Engagement Manager.....	\$215.00 - \$350.00
Line of Business Manager/Executive	\$280.00 - \$320.00
Regional Manager/Executive	\$265.00 - \$292.00
Managing Partner.....	\$375.00 - \$420.00
Chairman/President.....	\$475.00 - \$540.00

- II. **Limitation of Liability.** To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability in the aggregate of Dunaway Associates, LLC and Dunaway Associates, LLC's officers, directors, partners, employees, agents and Dunaway Associates, LLC's Subconsultants, and any of them, to Client and anyone claiming by, through or under Client, for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project or this Agreement from any cause or causes, including **but not limited to the negligence, professional errors or omissions**, strict liability or breach of contract, or warranty express or implied of Dunaway Associates, LLC or Dunaway Associates, LLC's officers, directors, partners, employees, agents or Dunaway Associates, LLC's Subconsultants or any of them, shall not exceed the total compensation received by Dunaway Associates, LLC under this Agreement.

- III. **No Consequential Damages.** Notwithstanding any other provision of this Agreement, neither party shall be liable to the other for any consequential damages incurred due to the fault of the other party, regardless of the nature of this fault or whether it was committed by the Client or Dunaway Associates, LLC, their employees, agents, or subconsultants. Consequential damages include, but are not limited to, loss of use and loss of profit.

- IV. **No Duties to Third Parties.** The services to be performed by Dunaway Associates, LLC under this Agreement are intended solely for the benefit of the Client. Nothing contained herein shall confer any rights upon or create any duties on the part of Dunaway Associates, LLC toward any person or persons not a party to this Agreement including, but not limited to any contractor, subcontractor, supplier, or the agents, officers, employees, insurers, or sureties of any of them.

- V. **Claims Limited to Insurance Coverage.** The Client and Dunaway Associates, LLC waive all rights for damages, each against the other and against the contractors, subconsultants, agents, and employees of the other, but only to the extent covered by property insurance during or after construction, except such rights as they may have to the proceeds of such insurance. The Client and Dunaway Associates, LLC each shall require similar waivers from their contractors, subconsultants, and agents.

- ~~VI. **General Contractor Duties and Responsibilities.** Neither the professional activities of Dunaway Associates, LLC, nor the presence of Dunaway Associates, LLC or his or her employees and subconsultants at a construction site, shall relieve the General Contractor and any other entity of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the Work of construction in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. Dunaway Associates, LLC and his or her personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions. The Client agrees that the General Contractor is solely responsible for jobsite safety, and warrants that this intent shall be made evident in the Client's agreement with the General Contractor. The Client also agrees that the Client, Dunaway Associates, LLC and Dunaway Associates, LLC's Subconsultants shall be indemnified and shall be made additional insureds under the General Contractor's general liability insurance policy.~~

- ~~VII. **Cancellation.** It is understood that this Agreement may be canceled at any time for any reason upon written notice by the Client or its City Manager or Interim City Manager and payment shall be due based on the method of computation in this Agreement in Section I on Work performed or expenses incurred to date of cancellation.~~

- ~~VIII. **Payments and Interest.** Client recognizes that prompt payment of Dunaway Associates, LLC's invoices is an essential aspect of the overall consideration Dunaway Associates, LLC requires for providing service to Client. Client agrees to pay all charges not in dispute within 30 days of date of invoice. All accounts past due 60 days from date of invoice shall pay interest at the rate of 18% (1.5% per month), or maximum allowable by law, whichever is lower, of the past due amount per month.~~

~~IX.VIII.~~ Cessation of Services. If Client, for any reason, fails to pay the undisputed portion of Dunaway Associates, LLC's invoices within 30 days of invoice date, Dunaway Associates, LLC has the right to cease work on the project and Client shall waive any claim against Dunaway Associates, LLC for cessation of services, **and, to the extent permitted by law, shall defend and indemnify Dunaway Associates, LLC** from and against any claims for injury or loss stemming from Dunaway Associates, LLC's cessation of service. ~~Client shall also pay Dunaway Associates, LLC the cost associated with premature project demobilization. In the event the project is remobilized, Client shall also pay the cost of remobilization, and shall renegotiate appropriate contract terms and conditions, such as those associated with budget, schedule or scope of service.~~

~~X.IX.~~ Legal Action. Subject in all respects to the other provisions of this Agreement, in the event legal action is necessary to enforce the payment terms of this Agreement, the prevailing party in any such action shall be entitled to collect any judgment or settlement sums due, plus reasonable attorney's fees, court costs and other reasonable expenses incurred by the prevailing party in connection with such collection action.

~~XI.X.~~ Dispute Resolution and Termination. In the event any bill, or portion thereof, is disputed by Client, Client shall notify Dunaway Associates, LLC within 10 days of receipt of the bill in question, and Client and Dunaway Associates, LLC shall work together to resolve the matter within 60 days of its being called to Dunaway Associates, LLC's attention. If resolution of the matter is not attained within 60 days, either party may terminate this Agreement in accordance with conditions indicated in the termination of agreement clause specified in Section VII.

~~XII.~~ Mediation. In an effort to resolve any conflicts that arise during the design and construction of the Project or following the completion of the Project, the Client and Dunaway Associates, LLC agree that all disputes between them arising out of or relating to this Agreement or the Project shall be submitted to nonbinding mediation unless the parties mutually agree otherwise. The Client and Dunaway Associates, LLC further agree to include a similar mediation provision in all agreements with independent contractors and subconsultants retained for the Project and to require all independent contractors and subconsultants also to include a similar mediation provision in all agreements with their subcontractors, subconsultants, suppliers and fabricators, thereby providing for mediation as the primary method for dispute resolution between the parties to all those agreements.

~~XIII.~~ Surveying Regulations. Land Surveying in the State of Texas is regulated by the Texas Board of Professional Engineers and Land Surveyors, 1917 S. Interstate 35, Austin, Texas 78741, telephone number (512) 440-7723. Dunaway Associates, LLC Survey Firm Registration #10098100
Dunaway | UDG Survey Firm Registration #100659

~~XIV.XI.~~ Reimbursable Expenses. Other charges which may apply to the Client's project include:

- A. Expenses included in 2% Administrative Fee: mileage, parking, tolls, internal printing, aerials, postage, FedEx/Courier, courthouse records, tax

certificates, on the job meals, invoicing time, field supplies, and other local travel expenses.

- B. All direct non-labor expenses, including fees paid on behalf of Client, bid advertising, airfare, lodging, and rental cars are charged at actual cost.
- C. For services not offered as a part of Dunaway Associates, LLC's normal services, the Client may, at his option, contract directly with the third party for such services or through Dunaway Associates, LLC. If such contracts are made through Dunaway Associates, LLC, a service charge of 10% will be added to the net amount of such contracts.

Dunaway reserves the right to amend this fee policy at any given time.

~~XV.XII.~~ Certifications, Guarantees and Warranties. Dunaway Associates, LLC shall not be required to execute any document that would result in its certifying, guaranteeing or warranting the existence of conditions whose existence Dunaway Associates, LLC cannot ascertain.

~~XVI.XIII.~~ Assignment. Neither party to this Agreement shall transfer, sublet or assign any rights or duties under or interest in this Agreement, including but not limited to monies that are due or monies that may be due, without the prior written consent of the other party. Subcontracting to subconsultants, normally contemplated by the Consultant as a generally accepted business practice, shall not be considered an assignment for purposes of this Agreement.

~~XVII.XIV.~~ Miscellaneous.

- A. **Intellectual Property.** The drawings, specifications and any other work products (including but not limited to software programs and electronic media of any description) prepared by Dunaway Associates, LLC for this project shall remain the property of Dunaway Associates, LLC and Dunaway Associates, LLC shall retain all common law, statutory and other reserved rights, including the copyright, where applicable.
- B. **Entire Agreement.** This Agreement is the entire agreement between the parties with respect to the subject matter of this Agreement and shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, heirs, successors and assigns.
- C. **Counterparts.** This Agreement shall be executed with one or more separate counterparts, each of which, when so executed, shall, together, constitute and be one in the same instrument.
- D. **Governing Law and Venue.** This Agreement shall be governed by, and construed in accordance with the substantive laws of the State of Texas and the parties hereto agree and consent that venue for all purposes shall be in Tarrant County, Texas.
- E. **Proposal Expiration.** The terms stated in the proposal are valid only if executed by both parties within 90 days from the date of the proposal.
- F. **Free Publicity.** Dunaway Associates, LLC has the right to photograph the above named project and to use the photos in the promotion of the professional practice of Dunaway Associates, LLC through advertising, public relations, brochures or other marketing materials. Should additional

photos be needed in the future, the Client agrees to provide reasonable access to the project.

F.G. Independent Contractor. Dunaway Associates, LLC's status shall be that of an independent contractor and not an agent, servant, or employee of Client in the performance of this Agreement. No term or provision of or act of Dunaway Associates, LLC or Client under this Agreement shall be construed as changing that status. Dunaway Associates, LLC will have exclusive control of and the exclusive right to control the details of the work performed hereunder, and, in accordance with the terms of this Agreement, shall be liable for the acts and omissions of its officers, agents, employees, contractors, and subcontractors. The doctrine of respondent superior shall not apply between Client and Dunaway Associates, LLC, its officers, agents, employees, contractors, and subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between Client and Dunaway Associates, LLC.

MEETING DATE: AUGUST 24, 2021

AGENDA ITEM NUMBER: INDIVIDUAL CONSIDERATION ITEM IV.B.

SUBJECT

Consider approval of a Developer's Agreement for the Alta 287 Development, 3100 Joplin Road

ORIGINATED BY

Leslie E. Galloway, Interim City Manager

SUMMARY

A draft is attached that has two proposed edits. On page 4, the yellow highlight would be stricken and the red wording added; on page 6, the two highlighted paragraphs would be stricken as they appear to have been erroneously included (as they seemingly pertain to another neighborhood).

Council questions and input are appreciated.

RECOMMENDATION

ATTACHMENTS

1.	Development Agreement Kennedale_EDITS	Development Agreement Kennedale_EDITS.pdf
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CITY OF KENNEDALE
DEVELOPER'S AGREEMENT

FOR THE
ALTA 287 DEVELOPMENT, 3100 JOPLIN ROAD

STATE OF TEXAS

§
§
§
§

COUNTY OF TARRANT

THIS AGREEMENT is entered into on the ____ day of _____,

2021, between the City of Kennedale, Texas, hereinafter referred to as the "CITY", and Alta 287 Owner, LLC whose address is 5440 Harvest Hill Road, Suite 206, Dallas, Texas, 75230, hereinafter referred to as the "DEVELOPER".

WHEREAS, the DEVELOPER has requested the CITY to permit the platting and/or development of a tract of land known as Lot 2R, Block 1 (the "Land") of the Vaquero Coker Addition (the "Addition"); and

WHEREAS, the Planning & Zoning Commission approved the preliminary plat on March 11, 2021 and the City has approved civil plans submitted which requires the construction of community facilities and improvements to serve the Addition as provided herein; and

WHEREAS, this Agreement shall operate as a covenant running with the land and shall be binding upon the DEVELOPER and its representatives, officers, agents, servants, employees, successors and assigns.

NOW, THEREFORE, the CITY and the DEVELOPER, in consideration of the mutual covenants and agreements contained herein, do mutually agree as follows:

A. ZONING, PLATTING and ADDITION PLANNING

All property owned by the DEVELOPER and located within the limits of the Addition shall be zoned and platted in accordance with the Zoning Ordinance and the Subdivision Ordinance of the CITY before any Building Permit will be issued. The DEVELOPER shall dedicate, at no cost to the CITY, all easements and other dedications as required by CITY regulations at the time of platting.

The DEVELOPER shall comply with all requirements in this Agreement as a condition of approval of the Addition.

B. PUBLIC IMPROVEMENTS

All public and private infrastructure improvements, including streets, utilities, drainage, sidewalks, street lighting, street signage, and all other improvements required to be constructed and installed by Developer hereunder (collectively, the "**Public Improvements**"); which Public Improvements are more particularly set forth on the Construction Plans (defined below), shall be provided by the DEVELOPER, at no cost to the CITY, in accordance with the Subdivision Regulations of the Unified Development Code of the CITY and other Regulations of the CITY, and as approved by the City Engineer or his agent. Such improvements shall be installed within all applicable time frames in accordance with the Unified Development Code of the CITY, other Regulations of the CITY, and this Agreement.

The DEVELOPER shall employ a civil engineer licensed to practice in the State of Texas for the design and preparation of plans and specifications for the construction of the Public Improvements. The DEVELOPER shall assume all responsibility for the adequacy and accuracy of the design, plans and specifications. Engineering studies, plan/profile sheets, and other construction documents (hereinafter referred to as the "**Construction Plans**") prepared by the licensed engineer shall be provided by the DEVELOPER at the time of platting as required by the Subdivision Ordinance. Such documents shall be approved by the City Engineer or his agent prior to approval and filing of a Final Plat. Construction of such improvements shall not be initiated until a Pre-Construction Conference has been conducted regarding the proposed construction.

In accordance with the Subdivision Ordinance of the CITY, construction of all Public Improvements shall be subject to routine review by the City Engineer or his agent to evaluate conformance with the Construction Plans, project specifications and CITY standards. However, such review and evaluation shall not relieve the DEVELOPER, his engineer and/or agent of responsibility for the design, construction and maintenance of the Public Improvements as set out in this Agreement and relevant ordinances of the CITY.

Upon completion of construction of Public Improvements as required by this Agreement and the Subdivision Ordinance, the DEVELOPER shall deliver to the CITY the following As-

Built construction plans for the Public Improvements constructed or engineered by the DEVELOPER:

1. One FULL set in AutoCAD 14 (or the City's most recent version);
2. One FULL MYLAR set;
3. One FULL Blue-Line set;
4. One Blue-Line copy of the executed ("filed") Final Plat sheet;
5. One 11" X 17" copy of the Final Plat Sheet;
6. Two (2) Blue-Line copies of the Water and Sanitary Sewer Layout sheet at a scale of 1:200; and
7. One Blue-Line copy of the Storm Drain Layout sheet at a scale of 1:200.
8. Shapefiles (GIS) providing the location of water and sanitary sewer layout, storm drain layout, and street layout reflecting correct right-of-way width. The shapefiles shall be provided in the Texas NAD83 State Plane coordinate system for North Central Texas.

No building permits will be issued for the Land until all Public Improvements have been installed and inspected and a Letter of Acceptance has been issued by the City.

C. CONSTRUCTION BONDS

Prior to initiating any construction for the Addition, the construction contractor(s) for the DEVELOPER shall provide the CITY with one original and one quality copy of the following construction bonds:

1. PERFORMANCE BOND

A good and sufficient Performance Bond in an amount equal to one hundred percent (100%) of the total contract price of the contract between the DEVELOPER and the Prime Contractor for the construction of Public Improvements (and any private improvements constructed in lieu thereof), guaranteeing the full and faithful execution of the work and performance of this contract and for the protection of the CITY against any improper execution of the work or the use of inferior materials. The Performance Bond shall guarantee completion of the improvements within one year of execution of this Agreement.

2. PAYMENT BOND

A good and sufficient Payment Bond in an amount equal to one hundred percent (100%) of the total contract price of the contract between the DEVELOPER and the Prime Contractor for the construction of Public Improvements (and any private improvements constructed in lieu thereof), guaranteeing payment for all labor, materials and equipment used in the construction of the improvements.

3. MAINTENANCE BOND

A good and sufficient Maintenance Bond in an amount equal to one hundred percent (100%) of the total cost of the Public Improvements (and any private improvements constructed in lieu thereof), guaranteeing the maintenance in good condition of the facilities for a period of two (2) years from and after the date that a Letter of Acceptance is issued by the CITY indicating that the Public Improvements have been completed by the DEVELOPER and accepted by the CITY.

Each of the above bonds shall be in a form acceptable to the CITY. Any surety company through which a bond is written shall be duly authorized to do business in the State of Texas, provided that the CITY, through its Mayor, shall retain the right to reject any surety company for any work under this Agreement regardless of such company's authorization to do business in the State of Texas. Approval by the City shall not be unreasonably withheld or delayed.

D. STREETS

1. In conjunction with the platting and development of the Addition, all required on-site and off-site street improvements shall be constructed by the DEVELOPER in accordance with the Construction Plans prepared by the DEVELOPER's engineer and accepted by the CITY prior to the issuance of any Building Permit. Streets shall be constructed of portland cement and DEVELOPER shall install curb and gutter in accordance with CITY standards. The CITY shall assume maintenance responsibilities of the street improvements once the two- year maintenance bond is released.
2. Street lighting shall be installed by TXU Delivery Company or its agent ("TXU") in accordance with a street lighting layout plan provided by TXU and approved by the City Engineer or his agent. The DEVELOPER shall be responsible for the installation costs of any required street lighting as provided herein.

E. SIDEWALKS

Sidewalks are required to be installed by the DEVELOPER in accordance with the CITY's Subdivision Ordinance. Sidewalks shall be installed at the following locations:

[insert locations list]

Sidewalks will be constructed at the locations as shown in the approved plans.

F. FENCES

The DEVELOPER shall be required to install and maintain a fence meeting the requirements of City ordinances and approved Construction Plans. The DEVELOPER shall retain ownership of the fence and the DEVELOPER shall be responsible to properly maintain the fence in a neat and presentable condition and to replace the fence as necessary.

G. UTILITIES

1. WATER

All required on-site and off-site water mains, valves, fire hydrants and other improvements shall be constructed by the DEVELOPER in accordance with the Construction Plans prepared by the DEVELOPER's engineer and accepted by the CITY prior to the issuance of any building permit. The CITY shall assume maintenance responsibilities of the water system once the two-year maintenance bond is released.

2. SANITARY SEWER

All required on-site and off-site sanitary sewer mains, manholes and other improvements shall be constructed by the DEVELOPER in accordance with the Construction Plans prepared by the DEVELOPER's engineer and accepted by the CITY prior to the issuance of any building permit. The CITY shall assume maintenance responsibilities of the sewer system once the two-year maintenance bond is released.

3. DRAINAGE

All required on-site and off-site drainage improvements shall be constructed by the DEVELOPER in accordance with the plans and specifications prepared by the DEVELOPER's engineer and accepted by the CITY prior to the issuance of any building permit. The DEVELOPER agrees to comply with all applicable EPA, TCEQ and other Federal, State and local requirements relating to the planning, permitting and management of storm water. The DEVELOPER agrees to construct the necessary drainage facilities within the Addition, as required by Developer pursuant to the Construction Plans. These facilities shall be designed and constructed in accordance with the CITY's Subdivision Ordinance, and the Construction Plans. The DEVELOPER agrees to comply with all provisions of the Texas Water Code. The CITY shall assume maintenance responsibilities of the drainage facilities once the two-year maintenance bond is released.

I. PUBLIC FACILITIES TO BE PROVIDED BY THE CITY

1. The CITY makes no guarantee that water supply or wastewater treatment capacity will be available at any particular time or place, it being fully understood by both parties hereto that the ability of the CITY to supply water and wastewater services is subject to the CITY's water and wastewater system capacity. The CITY shall be the sole judge of the availability of such capacity to supply such water and/or wastewater services, provided, however, that the CITY will use its best efforts to insure that said water supply and wastewater treatment capacity is available.
2. The CITY does note to the DEVELOPER that in and along Sublett Road of the proposed Addition, an 8 inch diameter water main exists for connections.
3. The CITY does note to the DEVELOPER that in and along Hillside Drive on the north side of the Addition, a 6 - inch diameter sanitary sewer main exists for connections. A sanitary sewer manhole is required for 6-inch connections and larger. There is also on the east side a 12-inch sewer line along Winding Creek just east of Hillside Drive for connection.

II. FEES TO BE PAID BY THE DEVELOPER

1. PLAT FEES

The DEVELOPER hereby agrees to pay the CITY a plat application fee of \$300 + \$10 per lot and a plat engineering review fee of \$2,500 plus any additional engineering fees incurred by the CITY for review of plans. Payment is due at the time of submittal for Final Plat approval.

2. CONSTRUCTION INSPECTION FEES

The DEVELOPER hereby agrees to pay the CITY construction inspection fees equal to four percent (4%) of the construction costs of water and sanitary sewer infrastructure improvements required to be constructed by Developer hereunder and four percent (4%) of the construction costs of street and drainage improvements for the Addition that are required to be constructed by Developer hereunder. Payment is due prior to initiating construction of these infrastructure improvements.

3. STREET NAME SIGNS and TRAFFIC CONTROL DEVICE SIGNAGE

The DEVELOPER is responsible for material costs, installation costs and maintenance costs of all street name signs, traffic control devices and school zone signs, including flashing light school zone signs as required by the City Engineer. All street name signs and traffic control device signs shall meet

the current CITY standards and comply with the requirements of the Texas Manual on Uniform Traffic Control Devices at the time of installation. Installation must be completed prior to CITY acceptance of the Addition's infrastructure improvements which are to be constructed by Developer hereunder. Traffic Control or regulatory signs shall be installed by the DEVELOPER where required.

4. IMPACT FEES

It is understood and agreed that impact fees will be assessed by the CITY at the time of final platting of the Addition, including the applicable sanitary sewer and water impact fees assessed by both the CITY and the City of Fort Worth. These fees must be paid prior to obtaining building permits for the Land.

5. PARK FEES

Required park fees (in lieu of dedication of park land) shall be paid by the DEVELOPER at the time of final plat approval. Park Dedication Fees are \$1200.00 (per residential dwelling unit) $\$1,200 \times 270 = \$324,000$.

6. PUBLIC UTILITIES

The DEVELOPER agrees to pay the public utility companies (Charter Communications Cable Company, SBC Telephone Company, TXU Energy Company, TXU Gas Company and TXU Delivery Company) for their required costs of main installations, for street lighting, etc. for the Addition that are the obligation of Developer hereunder.

K. GENERAL CONDITIONS

1. LAW COMPLIANCE

The DEVELOPER agrees to comply with all federal, state and local laws that are applicable to development of the Addition.

2. EROSION CONTROL

During construction of the Addition and after the streets have been installed, the DEVELOPER agrees to keep the streets free from soil build-up. The DEVELOPER agrees to use soil control measures such as silt screening, hydromulch, etc., to prevent soil erosion. It will be the DEVELOPER'S responsibility to present to the City Engineer a soil control development plan that will be implemented for the Addition. When, in the opinion of the City Engineer or his agent, there is sufficient soil build-up on the streets or other drainage areas and written notification has been given to the DEVELOPER, the DEVELOPER will have forty-eight (48) hours after receipt of such written notice to clear the soil from the streets or affected areas. If the DEVELOPER does not remove the soil from the streets within the forty-eight (48) hours, the CITY may cause the soil to be removed either by contract or CITY forces

and place the soil within the Addition at the DEVELOPER'S expense. All expenses must be paid to the CITY prior to acceptance of the Public Improvements.

3. PRIVATE AMENITIES

It is understood that the Addition may incorporate a number of unique amenities and aesthetic improvements such as ponds, aesthetic lakes, unique landscaping, fences and walls, street furniture, etc. and may incorporate specialty signage and accessory facilities. The DEVELOPER agrees to accept responsibility for the construction and maintenance of all such aesthetic or specialty items. The CITY shall not be responsible for the maintenance or replacement of these items under any circumstances.

4. AMENITIES WITHIN PUBLIC RIGHT-OF-WAY

Only those amenities or specialty items listed in this section may be constructed within the public right-of-way. The CITY shall not be responsible for the replacement of these items under any circumstances. The DEVELOPER, its successors and assigns, agrees to accept responsibility for the installation and maintenance of all landscaping and irrigation, as specified on the approved Construction Plans, within any open spaces or other public right-of-way within the Addition and agrees to indemnify and hold harmless the CITY from any and all damage, loss or liability of any kind whatsoever by reason of injury to property or third persons occasioned by the location of these amenities within the public right-of-way, and the DEVELOPER, its successors and assigns, shall defend and protect the CITY against all such claims and demands (except to the extent caused solely by the gross negligence or willful misconduct of the CITY). The DEVELOPER shall replace any plants, trees, or grass that die with the same type of plant, tree, or grass that is the same size and in the same stage of growth as the landscaping that died.

5. VENUE

Venue for any action brought hereunder shall be in Tarrant County, Texas.

6. ASSIGNMENT

This Agreement or any part hereof or any interest herein shall not be assigned by the DEVELOPER without the express written consent of the Mayor, which consent shall not be unreasonably withheld.

L. FINAL ACCEPTANCE OF SUBDIVISION INFRASTRUCTURE

The CITY will not issue a Letter of Acceptance until the Public Improvements are completely constructed (Final Completion) to the satisfaction of the City Engineer or his

agent. However, upon Substantial Completion, a "punch list" of outstanding items shall be presented to the DEVELOPER'S contractor(s) indicating those outstanding items and their deficiencies that need to be addressed for Final Completion of the Public Improvements.

The DEVELOPER agrees to deliver to the CITY clear and unencumbered title to all Public Improvements. Upon issuance of a Letter of Acceptance, title to all Public Improvements mentioned herein shall be vested in the CITY and the DEVELOPER hereby relinquishes any right, title or interest in and to such improvements or any part thereof. It is understood and agreed that the CITY shall have no liability or responsibility in connection with such Public Improvements until the Letter of Acceptance is issued.

M. NON-WAIVER

The DEVELOPER expressly acknowledges that by entering into this Agreement, the DEVELOPER, its successors, heirs, assigns, grantees, trustees, and/or representatives, shall never construe this Agreement as waiving any of the requirements of the Zoning Ordinance or Subdivision Ordinance or any other ordinance of the CITY.

N. HOLD HARMLESS AGREEMENT

THE DEVELOPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT APPROVAL BY THE CITY ENGINEER OR OTHER CITY EMPLOYEE OF THE CONSTRUCTION PLANS OR ANY OTHER PLANS, DESIGNS OR SPECIFICATIONS SUBMITTED BY THE DEVELOPER PURSUANT TO THIS AGREEMENT SHALL NOT CONSTITUTE OR BE DEEMED TO BE A RELEASE OF THE RESPONSIBILITY AND LIABILITY OF THE DEVELOPER, HIS ENGINEER, EMPLOYEES, OFFICERS OR AGENTS FOR THE ACCURACY AND COMPETENCY OF THEIR DESIGN AND SPECIFICATIONS. SUCH APPROVAL SHALL NOT BE DEEMED TO BE AN ASSUMPTION OF SUCH RESPONSIBILITY AND LIABILITY BY THE CITY FOR ANY DEFECT IN THE DESIGN AND SPECIFICATIONS PREPARED BY THE DEVELOPER'S ENGINEER, HIS OFFICERS, AGENTS, SERVANTS OR EMPLOYEES, IT BEING THE INTENT OF THE PARTIES THAT APPROVAL BY THE CITY ENGINEER SIGNIFIES THE CITY'S APPROVAL ON ONLY THE GENERAL DESIGN CONCEPT OF THE IMPROVEMENTS TO BE CONSTRUCTED. IN THIS CONNECTION, THE DEVELOPER SHALL, FOR A PERIOD OF TWO (2) YEARS AFTER THE ACCEPTANCE BY THE CITY OF THE COMPLETED CONSTRUCTION OF INFRASTRUCTURE FOR THE ADDITION, INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES, FROM ANY LOSS, DAMAGE, LIABILITY OR EXPENSE ON ACCOUNT OF DAMAGE TO PROPERTY AND INJURIES, INCLUDING DEATH, TO ANY AND ALL PERSONS WHICH MAY ARISE OUT OF ANY DEFECT, DEFICIENCY OR NEGLIGENCE OF THE DEVELOPER'S ENGINEER'S DESIGNS AND SPECIFICATIONS INCORPORATED INTO ANY IMPROVEMENTS CONSTRUCTED IN ACCORDANCE THEREWITH, EXCEPT TO THE EXTENT CAUSED, IN WHOLE, BY

THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY, ITS OFFICERS, AGENTS, SERVANTS OR EMPLOYEES, AND THE DEVELOPER SHALL DEFEND AT HIS OWN EXPENSE ANY SUITS OR OTHER PROCEEDINGS BROUGHT AGAINST THE CITY, ITS OFFICERS, AGENTS, SERVANTS OR EMPLOYEES OR ANY OF THEM, ON ACCOUNT THEREOF, AND SHALL PAY ALL EXPENSES (INCLUDING WITHOUT LIMITATION REASONABLE FEES AND EXPENSES OF ATTORNEYS) AND SATISFY ALL JUDGMENTS WHICH MAY BE INCURRED BY OR RENDERED AGAINST THEM OR ANY OF THEM IN CONNECTION THEREWITH.

THE DEVELOPER, ITS SUCCESSORS, ASSIGNS, VENDORS, GRANTEEES, AND/OR TRUSTEES DO HEREBY FULLY RELEASE AND AGREE TO, INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY, ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES FROM ALL CLAIMS, SUITS, JUDGMENTS, AND DEMANDS OF ANY NATURE WHATSOEVER, FOR PROPERTY DAMAGE OR PERSONAL INJURY, INCLUDING DEATH, RESULTING FROM OR IN ANYWAY CONNECTED WITH THIS AGREEMENT OR THE CONSTRUCTION OF INFRASTRUCTURE IMPROVEMENTS AND FACILITIES IN THE ADDITION OR THE FAILURE TO SAFEGUARD THE CONSTRUCTION WORK, OR ANY OTHER ACT OR OMISSION OF THE DEVELOPER RELATED THERETO, WHICH ACCRUE PRIOR TO ACCEPTANCE OF THE IMPROVEMENTS BY THE CITY, EXCEPT TO THE EXTENT CAUSED, IN WHOLE, BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY, ITS OFFICERS, AGENTS OR EMPLOYEES.

O. AMENDMENTS

This Agreement may be changed or modified only with the written consent of both the DEVELOPER and the City Council of the CITY.

P. ASSESSMENT

In the event the DEVELOPER fails to comply with any of the provisions of this Agreement, the CITY shall be authorized to cease issuance of any further Certificates of Occupancy or building permits on property owned by the DEVELOPER, and the CITY shall be further authorized to file this Agreement in the Mechanic's Lien/Deed Records of Tarrant County as a mechanic's lien against the DEVELOPER'S property; and in the alternative, the CITY shall be authorized to levy an assessment against the DEVELOPER'S property for Public Improvements in accordance with applicable state law.

Q. CONTINUITY

This Agreement shall be a covenant running with the land and shall be binding upon the DEVELOPER, its successors, heirs, assigns, grantees, trustees and/or representatives.

R. SEVERABILITY

The provisions of this Agreement are severable and, in the event any word, phrase, sentence, paragraph, section or other provision of this Agreement, or the application thereof to any person or circumstance, shall ever be determined by a court of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, the remainder of this Agreement shall remain in full force and effect and the application thereof to any other person or circumstance shall not be affected thereby. The invalid, illegal or unenforceable provision shall be rewritten by the parties to this Agreement to accomplish the parties' original intent as nearly as possible.

S. TERMINATION AND RELEASE

Upon the satisfactory completion by the DEVELOPER and final acceptance by the CITY of all requirements of this Agreement, this Agreement shall terminate and if this Agreement has been filed in the county records, the CITY will execute a release of covenant to the DEVELOPER, its assigns, successors, grantees, trustees and/or representatives and the CITY shall file said release in the county records.

In Witness whereof, each of the parties hereto has caused this Agreement to be executed by its undersigned duly authorized representative as of the date herein above first mentioned.

DEVELOPER

By: _____
(Signature)

Name: _____
(Printed or typed)

Title: _____

Date: _____

CITY

By: _____
Linda Rhodes, Mayor

Date: _____

ATTEST:

By: _____
Leslie Galloway, City Secretary

Date: _____