

**City of McKinney, Texas**  
**DEVELOPMENT AGREEMENT**  
*(Third-Party Public Infrastructure Inspections)*

THIS AGREEMENT, entered into effective the 30<sup>th</sup> day of JUNE, 2021 (“Effective Date”), is executed by and between **CITY OF MCKINNEY**, a Texas municipal corporation and home-rule city (“CITY”), and **D.R. HORTON – TEXAS, LTD.**, a Texas limited liability company, whose address is 4306 Miller Road, Rowlett, TX 75088, (“OWNER”) witnesseth that:

WHEREAS, OWNER’s predecessor-in-interest petitioned the Texas Commission on Environmental Quality (“TCEQ”) for an order creating the Collin County Municipal Utility District CR412, which was issued December 10, 2020 for the development of the property situated in the extraterritorial jurisdiction (the “ETJ”) of the CITY, as further described in Exhibit “B” (the “Property”); and

WHEREAS, the Subdivision Regulations of the City of McKinney, Texas contained in Chapter 142 of the Code of Ordinances of the City of McKinney, Texas (the “Subdivision Regulations”) requires the City’s Director of Engineering or their duly authorized representative to make periodic inspection of the construction of improvements for subdivisions constructed within the corporate limits of the CITY and its ETJ (“Inspection Requirements”); and

WHEREAS, Section 2-1 of the Schedule of Fees contained in the Code of Ordinances of the City of McKinney, Texas (the “Schedule of Fees”) sets a charge/fee for the review and inspection of construction of municipal infrastructure items, such as roadway improvements, drainage systems, water distribution systems and wastewater collection systems, a portion of which is specifically designated as the construction inspection fee for construction services and is calculated on the basis of 3.0 percent of the valuation of the infrastructure improvement project (the “Inspection Fee”); and

WHEREAS, the development of the subdivision on the Property to be known as **Oxford Place** involves the inspection of certain public infrastructure in accordance with the Subdivision Regulations; and

WHEREAS, in lieu of paying the Inspection Fee for inspections performed by City employees, Owner requests that it may enter into a contract with JBI PARTNERS, INC. (“CONSULTANT”), to satisfy the Inspection Requirements contained in the Subdivision Ordinance, (the “Certified Inspector Contract”), for which OWNER has agreed to be responsible for all associated costs and fees; and

WHEREAS, OWNER requests that it be reimbursed the Inspection Fee already paid to the CITY for Phase 1 of the **Oxford Place** development in the amount of \$111,200.51 upon successful completion of the Inspection Requirements for said portion of the Property, as further described in Exhibit “C”.

NOW THEREFORE, in consideration of the covenants and agreements hereinafter contained and subject to the terms and conditions hereinafter stated, the OWNER and CITY agree as follows:

A. INCORPORATION OF FINDINGS

The findings set forth above are hereby found to be true and correct and are hereby incorporated into the body of this Ordinance and made a part hereof for all purposes as if fully set forth herein.

B. PERFORMANCE OF INSPECTION REQUIREMENTS

OWNER agrees to complete the Inspection Requirements for the subdivision to be known as **Oxford Place** within three (3) years from and after the date of this Agreement, unless required sooner as provided herein below in this Agreement and the attached Exhibits.

It is specifically understood and agreed by and between OWNER and CITY that the CONSULTANT's performance of the work identified in the Certified Inspector Contract, attached as Exhibit A and incorporated by reference, shall be completed at no cost to the CITY. OWNER agrees and understands that the CONSULTANT and CONSULTANT's Certified Inspectors are NOT employees of the CITY and that it shall be the OWNER's sole responsibility to ensure that all work performed is in conformance with the CITY's inspection requirements contained in the City's Subdivision Regulations.

The CITY agrees that it will work with OWNER and the CONSULTANT to coordinate the CONSULTANT's performance of the Certified Inspector Contract identified in Exhibit A as may be requested by OWNER. OWNER agrees that CITY and/or CONSULTANT and CONSULTANT's Certified Inspectors shall have the right to enter upon OWNER's property to inspect the construction or installation of all Public Infrastructure upon and across the Property at such time(s) as the CITY and/or the CONSULTANT and CONSULTANT's Certified Inspectors deems necessary.

OWNER will use its best efforts to administer the Certified Inspector Contract. OWNER will promptly notify CITY if CONSULTANT breaches or fails or refuses to perform the Certified Inspector Contract. It is specifically understood and agreed that CITY shall have no obligation to pursue any legal action against CONSULTANT to enforce the Certified Inspector Contract or otherwise incur any costs and expenses including, but not limited to, attorney's fees, expert witness fees, mediation costs and expenses, court costs and awards, settlement costs and other litigation related costs and expenses in the OWNER's administration of the Certified Inspector Contract. It is further agreed that in the event of a breach of the Certified Inspector Contract by CONSULTANT, the CITY will not be held responsible to reimburse OWNER for any costs and expenses associated with OWNER's efforts to enforce the Certified Inspector Contract including but not

limited to attorney's fees, expert witness fees, mediation costs and expenses, court costs and awards, settlement costs and other litigation related costs and expenses. As an alternative, and upon the written request of CITY, OWNER will seek CONSULTANT's permission to assign OWNER's rights and obligations under the Certified Inspector Contract to CITY and allow CITY to pursue any legal action against CONSULTANT to enforce the Certified Inspector Contract. Should CITY decline to seek enforcement of the said Certified Inspector Contract against CONSULTANT, OWNER may terminate the Certified Inspector Contract with CONSULTANT and engage another Certified Inspector to satisfy the requirements of the Subdivision Regulations.

**E. INDEMNITY AND HOLD HARMLESS AGREEMENT**

**OWNER and its successors, assigns, vendors, grantees, and/or trustees do hereby agree to hold CITY harmless from and waive any and all claims that OWNER and its successors, assigns, vendors, grantees, and/or trustees may have against CITY for CONSULTANT's failure or refusal to timely perform the Certified Inspector Contract, attached as Exhibit A to this Agreement. OWNER and its successors, assigns, vendors, grantees, and/or trustees further agree to hold CITY harmless from and against any and all claims that OWNER might assert related to, arising out of, or based upon CONSULTANT's breach of the Certified Inspector Contract including, but not limited to, any claim that CITY has violated or breached this Agreement as a result of CONSULTANT's actions or failure to act.**

**OWNER and its successors, assigns, vendors, grantees, and/or trustees do hereby further agree, to the extent allowed by Texas law, to fully indemnify, protect and hold CITY harmless from and against any and all third-party claims, suits, judgments, and demands, including its reasonable attorney's fees, arising out of the sole or concurrent negligence of OWNER, and only to the extent or percentage attributable to OWNER, in the subdividing, development, or construction of public improvements, including the negligent maintenance thereof. OWNER shall not be responsible for or be required to indemnify CITY from CITY'S own negligence. The indemnity contained in this Paragraph shall expire five (5) years from the date of final acceptance of each phase of the improvements.**

**F. INSURANCE**

OWNER will require CONSULTANT to name CITY as an additional insured on the insurance provided by CONSULTANT.

**G. CONTINUITY**

This Agreement shall be a covenant running with the land, and be binding upon OWNER, its successors, heirs, assigns, grantees, vendors, trustees,

representatives, and all others holding any interest in the Property now or in the future.

#### H. ASSIGNABILITY

This Agreement shall not be assignable by OWNER without the prior written consent of the CITY.

#### I. SATISFACTORY COMPLETION AND RELEASE

Upon satisfactory completion by OWNER and final acceptance by CITY of all requirements of this Agreement, this Agreement shall terminate and CITY will execute a release of covenant to OWNER, its heirs, successors, assigns, grantees, vendors, trustees, representatives, and all others holding any interest now or in the future.

#### K. CONFLICT OF INTEREST

OWNER covenants and agrees that OWNER and its associates and employees will have no interest, and will acquire no interest, either direct or indirect, which will conflict in any manner with the performance of the services called for under this Agreement. All activities, investigations and other efforts made by OWNER pursuant to this Agreement will be conducted by employees, associates or subcontractors of OWNER.

OWNER shall comply with the requirements of Texas Government Code § 2252.908 by completing and submitting Form 1295 to the Texas Ethics Commission ("Commission") at the time OWNER submits this signed Agreement to CITY, and as follows:

Form 1295 Filing Process: The Commission has made available on its website a new filing application that must be used to file Form 1295. The OWNER must use the application to enter the required information on Form 1295 and print a copy of the completed form, which will include a certification of filing that will contain a unique certification number. An authorized agent of the OWNER must sign the printed copy of the form and complete the "unsworn declaration" which includes, among other things, the date of birth and address of the authorized representative signing the form. The completed Form 1295 with the certification of filing must be filed with the CITY.

The CITY must notify the Commission, using the Commission's filing application, of the receipt of the filed Form 1295 with the certification of filing not later than the 30th day after the date the Agreement binds all parties to the Agreement. The Commission will post the completed Form 1295 to its website within seven business days after receiving notice from the CITY.

Form 1295 Availability: Certificate of Interested Parties Form is available from the Texas Ethics Commission website at the following address:

[https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)

For questions regarding and assistance in filling out Form 1295, please contact the Texas Ethics Commission at 512-463-5800.

#### L. NO BOYCOTTING OF ISRAEL

In accordance with Chapter 2271, Texas Government Code, a Texas governmental entity may not enter into a contract with a company for the provision of goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. Chapter 2271 does not apply to (1) a company that is a sole proprietorship; (2) a company that has fewer than ten (10) full-time employees; or (3) a contract that has a value of less than One Hundred Thousand Dollars (\$100,000.00). Unless the CONSULTANT is not subject to Chapter 2271 for the reasons stated herein, the signatory executing this contract on behalf of the CONSULTANT verifies by its signature on this Contract that the CONSULTANT does not boycott Israel and will not boycott Israel during the term of this contract.

#### M. GENERAL PROVISIONS

1. OWNER agrees that inspections of the Property as set forth herein shall be completed within three (3) years from the date of approval of this Agreement. Upon acceptance by the CITY, OWNER shall not owe the Inspection Fee, as defined herein. Additionally, OWNER shall be entitled to the reimbursement of the already paid Inspection Fee for Phase 1 of the **Oxford Place** development in the amount of **One Hundred Eleven Thousand Two Hundred Dollars and Fifty-One Cents** (\$111,200.51), upon successful completion of the Inspection Requirements for said portion of the Property, as further described in Exhibit "C". OWNER acknowledges that the Inspection Fee does not include the 0.5 percent fee for plan review services set forth in Sec. 2-1(b) of the Schedule of Fees, and that OWNER is not eligible for reimbursement or a waiver of said fee.
2. All water improvements installed on the Property shall be in accordance with those standards promulgated by the North Collin Special Utility District.
3. No right or remedy granted herein or reserved to the parties is exclusive of any other right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every other right or remedy given hereunder. No covenant or condition of this Contract may be waived without written consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this Contract.

**CITY OF MCKINNEY**


By: \_\_\_\_\_  
PAUL G. GRIMES  
City Manager

Date Signed: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
EMPRESS DRANE  
City Secretary  
JOSHUA STEVENSON  
Deputy City Secretary

**D.R. HORTON – TEXAS, LTD.**, a Texas  
limited liability company,

BY:  \_\_\_\_\_  
Name: David L Booth  
Title: Asst VP  
Date Signed: 6/30/21



**EXHIBIT A**

*Certified Inspector Contract*



Exhibit A



June 30, 2021

D.R. Horton – Texas, Ltd. acting on behalf of Collin County MUD No. CR412  
4306 Miller Rd. Ste. A  
Rowlett, TX 75088

**RE: Proposal for Construction Inspection Services  
Oxford Place, Phase 1 (158 Lots / 43.800 Acres)  
Collin County Municipal Utility District No. CR412  
Collin County, Texas  
JBI Project No. HOE315IA**

Dear Mr. Booth:

Thank you for permitting us the opportunity to submit this proposal for Construction Inspection services on the referenced property. A plat of the project is attached in Exhibit "C". Our proposal includes Construction Inspection for the water, sanitary sewer, force main, lift station, drainage and paving improvements within the district.

## **SCOPE OF WORK**

**Construction Inspection** – JBI Construction Inspection will observe the construction as indicated in the accepted proposal for the purpose of confirming compliance with approved construction documents, noting non-compliance, and compile all associated documentation. Our scope of work includes:

- A.** Verify construction materials comply with accepted / approved product submittals and project details, and report any deviations.
- B.** Monitor compliance with all accepted safety plans, and report any deviations.
- C.** Monitor/Inspect the installation and testing of the water, sanitary sewer, drainage and street paving. We will not monitor/inspect the testing procedure, but will notify the contractor(s) if testing has not been performed if required.
- D.** We will communicate with the testing technicians to verify testing scopes and frequencies. We will review testing reports and notify you and the contractor(s) of any deficiencies or deviations.
- E.** Attend and perform a final walk through inspection with your representative, construction manager, the contractor(s), and other agency officials; issue the punch list; verify completion of the punch list; and coordinate final acceptance of the project.

**Documentation** - Written reports will be completed on a regular basis to document our observations.

**Defects** - Please note that we do not assume any responsibility or liability for such defects or deficiencies or for the failure to so detect. We do not underwrite, guarantee, or ensure the work done by the Contractor(s).

**Safety** - We do not assume any responsibility for any deviations by the contractors from accepted safety plans or safety standards and regulations. During the course of our construction monitoring we will document and report any deviations noted to onsite personnel and to your construction manager. Construction safety shall remain the sole responsibility of the construction contractor(s).

**Submittals** - If requested, we will review submittals from construction contractor(s) we will review and approve or take other appropriate action upon construction contractor(s)' submittals such as shop drawings, product data and samples, but only for the limited purpose of checking for general conformance with information given and the design concept expressed in the contract documents. Our action shall be taken with such reasonable promptness as to cause no delay in the work while allowing sufficient time in our professional judgment to permit adequate review. Review of such submittals will not be conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities.

**Liability** - We do not assume any responsibility or liability for performance of the construction services, or for the safety of persons and property during construction, or for compliance with federal, state and local statutes, rules, regulations and codes applicable to the conduct of the construction services. We shall have no influence over the construction means, methods, techniques, sequences or procedures. Construction liability shall remain the sole responsibility of the construction contractor(s).

## FEES

For the scope of work described herein, we propose to be compensated a fee equal to **three and one half percent (3.5%)** of the total final construction cost including change orders and will be billed monthly as construction items are billed. The estimated inspection fee based on the Blue Star Utilities, LLC Utility Improvements contract, the Blue Star Utilities, LLC Lift Station contract, and the Gilco Contracting Paving Improvements contract are shown in attached Exhibit "A". Next to each work item, we have noted whether the fee is either a lump sum or hourly. If the fee is noted to be hourly, the amount shown is an estimate because the time necessary to complete the task is unknown. Hourly based fees will be billed in accordance with the attached Hourly Fee Schedule, Exhibit "B". For your budgeting purposes, an estimated fee has been shown for hourly-based fees.

Non-labor expenses will be charged at cost plus ten (10%) percent. These expenses include all necessary and related non-labor expenses incurred by JBI Partners, Inc., which are directly chargeable to the work. These generally include expenses for reproduction, deliveries and filing fees.

**TERMS AND CONDITIONS**

Reference Master Agreement between D.R. Horton-Texas, Ltd. And JBI Partners, Inc. for other terms.

Services which are not expressly written in this agreement will be considered additional services. JBI Partners, Inc. will not proceed with any additional services without your prior authorization. Some of those services may include: traffic studies, geotechnical studies, off-site improvements design and surveying, perimeter road design and surveying, perimeter utility design and surveying, re-topo of phased improvements, environmental studies, water system flow and pressure studies, storm water pollution prevention plan. Projects which are directed to stop and restart will incur additional cost.

JBI Partners, Inc. is NOT a structural engineering firm and is not responsible for the performance of any retaining wall(s). JBI does not make recommendations for Corps of Engineer Water of the U.S. delineations. JBI are not soils/geologist and do not make recommendations for "bulking" or "shrinkage" factors for dirt balancing calculations.

This proposal is valid for sixty (60) days from the date of its submittal; if not accepted by the end of the 60-day period, it is subject to change, renegotiation or withdrawal at the option of JBI Partners, Inc.

If this proposal is acceptable, please signify your acceptance below and initial each page of the attached exhibits. Please return one fully executed original to us.

Should you have any questions, please do not hesitate to contact us. Thank you for allowing us to submit this proposal.

Sincerely,

JBI PARTNERS, INC.



Jeff Klement, PE  
Vice President / Partner

Enclosures (3 Exhibits)

ACCEPTED this 30<sup>th</sup> day of JUNE, 2021.

By: [Signature] Title: [Signature]

Printed name: David L Booth

## EXHIBIT A

### CONSTRUCTION INSPECTION

C-1	Onsite Water Inspection (Blue Star)	\$	21,236	Lump Sum
C-2	Offsite Water Inspection (Blue Star)	\$	16,411	Lump Sum
C-3	Onsite Sanitary Sewer Inspection (Blue Star)	\$	21,070	Lump Sum
C-4	Onsite Drainage Inspection (Blue Star)	\$	41,393	Lump Sum
C-5	Lift Station Inspection (Blue Star)	\$	42,769	Lump Sum
C-6	Onsite Paving Inspection (Gilco)	\$	38,589	Lump Sum
C-7	Offsite Paving Inspection (Gilco)	\$	10,806	Lump Sum
	Sub Total	\$	192,275	

**Total** \$ 192,275

**For Budget Purposes:**  
Reimbursable Expenses \$ 5,000

**EXHIBIT B**  
**HOURLY FEE SCHEDULE**

<u>Title</u>	<u>Hourly Rate</u>
Engineer Principal (PE)	\$250
Project Manager (PE)	\$190
Project Engineer (PE)	\$175
Senior Engineer	\$155
Engineer	\$135
Graduate Engineer	\$115
Senior Construction Manager	\$175
Construction Manager	\$150
Construction Estimator	\$130
Inspector	\$120
Surveyor Principal (RPLS)	\$190
Professional Land Surveyor (RPLS)	\$165
Senior Survey Technician	\$140
Survey Technician	\$115
Survey Field Crew (2-man)	\$160
Survey Field Crew (3-man)	\$200
Landscape Architect Principal (PLA)	\$225
Landscape Project Manager (PLA)	\$185
Landscape Architect (PLA)	\$140
Landscape Designer	\$100
Land Planner Principal (AICP)	\$225
Land Planner	\$120
Administrative	\$90

## EXHIBIT B

### *Property Description*

#### LEGAL DESCRIPTION

Being a parcel of land located in Collin County, Texas, being a part of the Thomas A. Rhoades Survey, Abstract Number 741, and being all of that called 82.669 acre tract of land described in deed to D.R. Horton- Texas, Ltd., as recorded Document Number 20201020001823160, Official Public Records of Collin County, Texas, and being further described as follows:

BEGINNING at a "PK" nail found for corner at the intersection of the approximate centerline of County Road Number 412 with the approximate west edge of pavement line for County Road Number 409;

THENCE along the east line of said 82.669 acre tract of land as follows:

South 00 degrees 36 minutes 05 seconds West, 393.11 feet to a "PK" nail found for corner in the west part of pavement for County Road Number 409;

South 00 degrees 23 minutes 31 seconds West, 1,123.15 feet to a PK nail set for corner in the approximate centerline of county Road 409, said point being the northwest corner of a 30 foot right-of-way dedication dedicated by plat Waterstone Estates Section II, an addition to Collin County, Texas, as recorded in Document Number 20061019010004580, Official Public Records of Collin County, Texas;

South 00 degrees 55 minutes 55 seconds West, 300.22 feet along the west line of said 30 foot right-of-way dedication and along the approximate centerline of County Road 409 to a PK nail set for corner, said point being the southeast corner of said 82.669 acre tract, said point also being the northeast corner of that called 78.19 acre tract of land described in deed to Batra Family Trust, as recorded in Document Number 20060608000781280, Official Public Records of Collin County, Texas;

THENCE along the north line of said 78.19 acre tract as follows:

North 88 degrees 50 minutes 03 seconds West, 1,442.48 feet to a five-eighths inch iron rod found for corner;

North 88 degrees 46 minutes 14 seconds West, 557.43 feet to a three-eighths iron rod found for corner, said point being the southwest corner of said 82.669 acre tract, said point being the northwest corner of said 78.19 acre tract, said point also being in the east line of that called 61.892 acre tract of land described in deed to REA Capital, L.P., as recorded in Document Number 20150330000345130, Official Public Records of Collin County, Texas;

THENCE North 00 degrees 53 minutes 27 seconds East, 1,792.20 feet to a "PK" nail set for corner, said point being the northwest corner of said 82.669 acre tract, said point being the northeast corner of said 61.892 acre tract, said point also being in the approximate centerline of County Road Number 412;

THENCE South 89 degrees 34 minutes 24 seconds East, 1406.68 feet along the approximate centerline of County Road Number 412 to a PK" nail set for corner in the north line of said 82.669 acre tract;

THENCE South 89 degrees 22 minutes 01 seconds East, 581.71 feet along the north line of said 82.669 acre tract and along the approximate centerline of County Road 412 to THE POINT OF BEGINNING and containing 3,601,058 square feet or 82.669 acres of land.

**BASIS OF BEARING:**

The basis of bearing is derived from GPS observations using the City of McKinney geodetic monuments. (Coordinate System: North Central Zone 4202 State Plane Coordinates, NAD83)

# EXHIBIT C

## Oxford Place – Phase 1

