

executed by the Parties up to an aggregate number of eighty-nine single-family residential units within the Property; and

WHEREAS, upon final permitting of eighty-nine (89) single-family residential units on the Property any unused credits, subject to any changes in the number of single-family residential units permitted on the Property, shall be reimbursed to the Developer.

NOW THEREFORE, in consideration of these premises, the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which both Parties acknowledge, the City and Developer agree as follows:

ARTICLE I

DEFINITIONS

A. Definitions.

1. *City* means the City of McKinney, a Texas home-rule city and municipal corporation situated in Collin County, and includes its representatives, agents, assigns, inspectors, contractors, employees, and consultants.
2. *Developer* means W/J Wilmeth Ridge, LP, its representatives, agents, contractors, employees, and consultants.
3. *Effective Date* means the latter of the date on which City accepts the construction of Roadway Improvements or the approval of this Agreement.
4. *Notice* means any formal notice or communication required or permitted to be given by one Party to another pursuant to this Agreement.
5. *Ordinance* means the "McKinney Impact Fees Article – Roadways" as set forth in Section 130-103, *et seq.*, of the Code of Ordinances, City of McKinney, Texas, and as it may further be amended, including any schedules or exhibits attached thereto.
6. *Parties* means the City and Developer.
7. *Property* means Developer's single-family residential property located in an area south of Wilmeth Road and along the east side of Ridge Road known as Wilmeth Ridge South Addition, which land is more particularly described in Exhibit A attached hereto and incorporated herein by reference for all purposes allowed by law.
8. *Roadway Impact Fee Credits* as used in this Agreement means the amount of the reduction of a roadway impact fee designed to fairly reflect the value of any construction of, contributions to, or dedications of a system facility

agreed to or required by the City as a condition of development approval, pursuant to rules established in the Ordinance credited on a vehicle mile basis against roadway facilities impact fees otherwise due from the development.

8. *Roadway Improvements* means right of way preparation, paving excavation, construction of concrete paving, curbs, signage, roadway transitions, turn lanes, pavement markings, sidewalks, irrigation, landscaping, lighting and any other improvements necessary for a complete roadway system, and all engineering, surveying, inspection and permit fees for the two (2) eastern or northbound lanes of **Ridge Road** together with storm drains, inlets, and a box culvert located at or about the intersection of **Ridge Road** with Auburn Hills Parkway, that is the subject of this Agreement.
9. *Roadway Project* means the Roadway Improvements situated along the western boundary of the Wilmeth Ridge South Addition, between a location approximately six hundred and seventy-five feet (675') south of Wilmeth Road and extending in a southerly direction a distance of approximately one thousand six hundred twenty-five (1,625) linear feet, as depicted generally on the civil engineering plans for Wilmeth Ridge South, on file in the City of McKinney Engineering Department;
10. *Service Unit* means one vehicle mile of travel in the afternoon peak hour of traffic and is also referred to as a "vehicle mile" in the Ordinance. The impact fees per service unit are as set forth in Impact Fee Schedule 1 and its various equivalency tables attached to Ordinance No. 2020-12-091 - as Impact Fee Schedule 1 and its various equivalency tables may be amended from time to time - and serve as the standardized measure of consumption or use of roadway facilities attributable to new development.

B. Interpretation of Terms, and Incorporation of Exhibits.

Except where the context otherwise clearly requires, in this Agreement: words imparting the singular will include the plural and vice versa;

1. all exhibits attached to this Agreement are incorporated by reference for all pertinent purposes as though fully copied and set forth at length; and
2. references to any document means that document as amended or as supplemented from time to time; and references to any party means that party, its successors, and assigns.

[Remainder of page intentionally left blank.]

ARTICLE II

DEVELOPER CONTRIBUTION OF ROADWAY IMPROVEMENTS

A. Roadway Improvements

1. Developer has completed construction of the Roadway Project, and all Roadway Improvements appurtenant to the Roadway Project, depicted on the attached Exhibit B.
2. At the time of construction, the Roadway Project was included in the City's Impact Fee Roadway Improvement Plan ("IFRIP"). The Roadway Project is therefore eligible for roadway impact fee credits as calculated under the Ordinance.
3. City agrees to grant Developer roadway impact fee credits in conjunction with the acceptance of the Roadway Project. The roadway impact fee credits shall vest and attach to the Property as of the Effective Date.
4. The total roadway impact fee credits which shall attach to the Property under this Agreement are **430.87** Service Units for approximately 1,625 linear feet of Roadway Improvements.

ARTICLE III

IMPACT FEE CREDITS

A. Assignment and Expiration of Roadway Impact Fee Credits

The Roadway Impact Fee Credits granted under this Agreement shall only be assigned with the City's consent pursuant to Section 130-111(b)(2) of the Ordinance. The Roadway Impact Fee Credits shall have no expiration; but in any event, the Roadway Impact Fee Credits shall only be applied to the Property. Application of the Roadway Impact Fee Credits to future developed lots and any reimbursement for unused Roadway Impact Fee Credits shall be governed by the Ordinance.

B. Value of Roadway Improvements

Developer and City agree that the value of the Roadway Improvements shall be expressed in Service Units.

C. *Reimbursement of Previously Paid Roadway Impact Fees*

Within thirty (30) days after the execution of this Agreement, City shall reimburse to Developer Roadway Impact Fee Credits in an amount equal to the amount of roadway impact fees that were actually paid to the City for the single-family residential units for which a building permit was issued on the Property before this Agreement was fully executed by the Parties. In this regard, prior to August 1, 2021, twenty-five single-family residential units were permitted within this Property and were charged roadway impact fees in the amount of Three Thousand Eight Hundred Dollars (\$3,800.00) each. The amount of roadway impact fees charged per service unit in the roadway area in which the Property is situated were increased effective August 1, 2021, and each additional single-family residential unit for which initial permits are sought and issued on or after August 1, 2021, will be charged Four Thousand Four Hundred Eighty-Four Dollars \$ 4,484 in roadway impact fees. The amount of Roadway Impact Fee Credits that will be reimbursed to Developer for each single-family residential unit permitted within the Property before the final execution of this Agreement will be reimbursed in an amount equal to the amount of the roadway impact fee actually collected by the City.

D. *Use of Roadway Impact Fee Credits*

The balance of the Roadway Impact Fee Credits shall be used as development occurs on the Property. Service Unit calculations for proposed uses on the Property shall be in accordance with then existing tables of the Ordinance. Unused Roadway Impact Fee Credits shall generally not be transferable and cannot be applied to other fees, converted to cash, or used on other tracts. Notwithstanding the foregoing, however, upon final permitting of eighty-nine (89) single-family residential units on this Property, the Developer shall be reimbursed for any unused Roadway Impact Fee Credits in an amount not to exceed Eighty-Eight Thousand Eight Hundred Twenty-Eight Dollars (\$88,828.00) subject to the availability of funds in the roadway service area in which the Roadway Project is situated and further subject to any increases in the number of single-family residential units actually permitted on the Property. If, however, the Roadway Impact Fee Credits are exhausted by Developer on the Property, any additional development on the Property (such as the creation of additional lots) shall pay then existing Roadway Impact Fees or receive credits for construction of additional roadway improvements under then existing ordinances.

E. *Developer Responsibilities under Development Ordinances*

Nothing herein shall relieve the Developer from its responsibilities for construction of public improvements under applicable development ordinances upon development of the Property.

ARTICLE IV

AGREEMENT MAY NOT BE PLEDGED AS COLLATERAL

Developer may not pledge this Agreement, or any credits granted hereunder, as collateral for purposes of securing financing for development of the Property.

ARTICLE V

GENERAL PROVISIONS

A. Notice of Default; Opportunity to Cure; Remedies

1. Should any Party allege that the other has defaulted in the performance of any obligation hereunder, it will provide at least thirty (30) days written notice to the other Party specifying the nature of the alleged default and opportunity to cure the default before exercising any remedy related to the alleged default.
2. Upon the failure of either Party to comply with the provisions of this Agreement, which failure continues beyond the thirty (30) day notice and cure period provided above, the other Party shall have the right to enforce the terms and provisions of this Agreement by specific performance, or by such other legal or equitable relief to which the non-defaulting Party may be entitled.
3. Any remedy or relief described in this Agreement shall be cumulative of and in addition to any other remedies and relief available at law or in equity.
4. The foregoing notwithstanding, it is understood and agreed that in addition to any other remedy which the City may have upon default by Developer under this Agreement, should Developer fail to comply with the Subdivision Ordinance or any City development regulation, the City may terminate this Agreement. Upon termination pursuant to this subsection, all roadway impact fee credits shall terminate.

B. Entire Agreement; Interpretation of this Agreement

1. This Agreement including any attached exhibits is the entire agreement between the Parties and supersedes all prior or contemporaneous understandings or representations, whether oral or written, respecting the subject matter herein. If there is a conflict between this Agreement and prior written or verbal representations, this Agreement shall control.
2. This Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strictly for nor against either Party.

C. *Amendment*

No amendment of this Agreement will be effective unless it is in writing and signed by the duly authorized representatives of the Parties hereto, which amendment will incorporate this Agreement in every particular not otherwise changed by the amendment.

D. *No Amendment of Other Agreements*

Unless otherwise expressly stipulated herein, this Agreement is separate from and will not constitute an amendment or modification of any other agreement between the Parties.

E. *Other Instruments, Actions*

The Parties hereto agree that they will take such further actions and execute and deliver such other and further consents, authorizations, instruments, or documents as are necessary or incidental to effectuate the purposes of this Agreement.

F. *No Third-Party Beneficiaries*

Except as expressly provided herein, nothing herein shall be construed to confer upon any person other than the Parties hereto any rights, benefits, or remedies under or because of this Agreement.

G. *Applicable Law; Venue*

This Agreement shall be construed under and according to the laws of the State of Texas. Personal jurisdiction and venue for any suit arising hereunder shall be in Collin County, Texas.

H. *Severability*

The provisions of this Agreement are severable, and if any court shall ever hold any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement or the application of it to any person or circumstance of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to other persons or circumstances will not be affected by that and this Agreement will be construed as if it had never contained such invalid or unconstitutional portion therein.

I. *Counterparts*

The Parties may execute this Agreement in one or more duplicate originals each of equal dignity.

J. Notices

For the purposes of Notice, the addresses of the Parties will, until changed as provided below, be as follows:

DEVELOPER:

W/J Wilmeth Ridge, LP
Attn: Christopher Jackson
600 N. Pearl Street, Suite 650
Dallas, Texas 75201

CITY OF MCKINNEY:

Office of the City Manager
222. N. Tennessee Street
McKinney, Texas 75069

The Parties will have the right from time to time to change their respective addresses upon written notice to the other Party. If any date or notice period described in this Agreement ends on a Saturday, Sunday or legal holiday, the applicable period for calculating the Notice will be extended to the first business day following such Saturday, Sunday, or legal holiday.

K. No Waiver of Development Ordinances

No waiver of any provision of this Agreement will be deemed to constitute a waiver of any other provision or any other agreement between the Parties. No waiver of any provision of this Agreement will be deemed to constitute a continuing waiver unless expressly provided for by written amendment to this Agreement; nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent defaults of the same type. Nothing herein shall waive any obligations of Developer under applicable ordinances, including but not limited to the subdivision ordinance, the sewer and water impact fee ordinance, or the roadway impact fee ordinance.

L. Attorney's Fees

Should either Party be required to resort to litigation to enforce the terms of this Agreement, the prevailing Party, plaintiff or defendant, shall be entitled to recover its costs, including reasonable attorney's fees, court costs, and expert witness fees, from the other Party. If the court awards relief to both Parties, each will bear its own costs in their entirety except as otherwise specified by the court.

M. Governmental Authority

Nothing in this Agreement shall be construed to limit, restrict, modify, or abrogate the City's governmental authority or ordinances respecting the facilities and roadway improvements contemplated by the terms of this Agreement except as specifically waived or modified herein or by specific action of the City Council, nor the City's duty to provide for the public health, safety, and welfare in the construction or maintenance of the same.

N. Assignability

This Agreement shall not be assignable by Developer without the prior written consent of the City.

O. Binding Obligation

This Agreement shall be binding upon and inure to the benefit of the Parties and their representatives, successors, and assigns.

P. Waiver of Claims.

Developer has voluntarily agreed to undertake the construction of the Roadway Improvements for the Roadway Project in exchange for impact fee credits to be applied to the Property. The construction of the Roadway Project is not a condition of approval or acceptance the development of the Property. Developer waives any statutory or state constitutional takings claims under the Texas Constitution and Chapter 395 of the Tex. Loc. Gov't. Code and any federal constitutional claims. Developer further releases City from any and all claims based on excessive or illegal exactions. Developer acknowledges the receipt of good and valuable consideration for the release and waiver of such claims. Developer shall indemnify and hold harmless City from any claims and suits of third parties, including but not limited to Developer's successors, assigns, grantees, vendors, trustees, or representatives, brought pursuant to this Agreement or the claims or types of claims described in this paragraph.

IN WITNESS WHEREOF, DEVELOPER and CITY have executed this Agreement as of the Effective Date.

CITY OF MCKINNEY

By: _____
PAUL G. GRIMES
City Manager

Attest:

EMPRESS DRANE
City Secretary
JOSHUA STEVENSON
Deputy City Secretary

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

W/J Wilmeth Ridge, LP, a Texas limited partnership

By: Brent A. Miller
Name: Brent A. Miller
Title: Vice President
Date Signed: 9-3-2021

THE STATE OF TEXAS,
COUNTY OF COLLIN

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared PAUL G. GRIMES, City Manager of the **CITY OF MCKINNEY**, a Texas Municipal Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he has executed the same on the City's behalf.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE _____
DAY OF _____, 20_____.

Notary Public _____ County, Texas
My commission expires _____

THE STATE OF TEXAS,
COUNTY OF DALLAS

This instrument was acknowledged before me on the 3rd day of September,
2021, by Brent A. Miller, in his capacity as Vice President of W/J

WILMETH RIDGE, LP, a Texas limited partnership, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same on behalf of and as the act of the limited liability company.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 3RD
DAY OF September, 2021.

Michelle Clark
Notary Public DALLAS County, Texas
My commission expires 09-02-2024



PREPARED IN THE OFFICES OF:

BROWN & HOFMEISTER, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081
214/747-6100
214/747-6111 Fax

Exhibit A

DESCRIPTION OF PROPERTY

(Consisting of following four pages.)

OWNERS CERTIFICATION

STATE OF TEXAS }
COUNTY OF COLLIN }

WHEREAS W/J Wilmeth Ridge, LP is the Developer of four tracts of land conveyed by deed as recorded in Instrument No. 20140604000558990, Instrument No. 20140610000580120, Instrument No. 20170718000940690 and Instrument No. 20170718000940700, Official Public Records, Collin County, Texas, (O.P.R.C.C.T.) and Collin County is the owner of a tract of land conveyed by deed as recorded in Volume 3927, Page 1001, Deed Records, Collin County, Texas, and being situated in the Malachi Tucker Survey, Abstract No. 904 and the Andrew Stapp Survey, Abstract No. 833, and the James M. Feland Survey, Abstract No. 322, City of McKinney, Collin County, Texas, and being more particularly described as follows:

BEGINNING a 1/2-inch iron rod found at the northwest corner of a tract of land described in deed to James H. Stidham and Wife, Linda Stidham, recorded in Volume 2968, Page 321, Deed Records, Collin County, Texas, said corner being in the south line of said Collin County tract No. 2;

THENCE South 04°01'39" West, along the common line between said W/J Wilmeth Ridge tract No. 2 with said Stidham tract, a distance of 379.29 feet to a 1/2-inch iron rod with plastic cap stamped "VOTEX SURVEYING" set for corner;

THENCE South 03°51'11" West, along the common line between said W/J Wilmeth Ridge tract No. 2 with said Stidham tract, a distance of 507.05 feet to a 3/8-inch iron rod found for corner;

THENCE, with a common line between the W/J Wilmeth Ridge tract No. 2 and said Stidham tract, and continuing with the common line between the W/J Wilmeth Ridge tract No. 2 and a tract of land described in deed to 2015 Auburn Hills Development LLC recorded in Instrument No 20151016001312620, O.P.C.C.T., and with said common line and a tract of land described in deed to Felix Y. Chen & YCK Collin Properties 346, LLC recorded in Instrument No. 20110302000227540 (O.P.R.C.C.T.) the following courses and distances:

South 04°03'10" West, a distance of 240.26 feet to a 1/2-inch iron rod with plastic cap stamped "VOTEX SURVEYING" set for corner;

South 11°18'49" West, a distance of 234.06 feet to a 1/2-inch iron rod with plastic cap stamped "VOTEX SURVEYING" set for corner;

South 11°22'02" West, a distance of 307.44 feet to a 1/2-inch iron rod with plastic cap stamped "VOTEX SURVEYING" set for corner;

South 30°16'10" West, a distance of 280.96 feet to a 1/2-inch iron rod with plastic cap stamped "VOTEX SURVEYING" set for corner;

South 30°18'50" West, a distance of 205.45 feet to a 1/2-inch iron rod with plastic cap stamped "VOTEX SURVEYING" set for corner;

South 30°04'10" West, a distance of 172.70 feet to a 1/2-inch iron rod with plastic cap stamped "VOTEX SURVEYING" set for corner;

South 30°29'41" West, a distance of 257.42 feet to a 1/2-inch iron rod with plastic cap stamped "VOTEX SURVEYING" set for corner;

THENCE In a northwesterly direction with a common line between the W/J Wilmeth Ridge tract and a tract of land described in a deed to Hixon Family Partnership, LTD. recorded in Document No. 01-0159314, Land Records, Collin County, Texas and a common line between said W/J Wilmeth Ridge tract and a tract of described in a deed to Baseball Group of Texas, LP, recorded in Volume 5877, Page 3081, Deed Records, Collin County, Texas and with said common line and a tract of land described in a deed to Baseball Nation LLC, recorded in Instrument No. 20131126001585490, O.P.R.C.C.T. the following courses and distances:

North 52°45'46" West, a distance of 15.41 feet to a point;
North 13°16'19" West, a distance of 90.71 feet to a point;
North 21°58'06" West, a distance of 39.95 feet to a point;
North 75°00'04" West, a distance of 45.97 feet to a point;
South 59°28'29" West, a distance of 123.29 feet to a point;
North 88°29'40" West, a distance of 41.75 feet to a point;
North 29°00'54" West, a distance of 53.90 feet to a point;
North 12°26'30" West, a distance of 63.53 feet to a point;
North 06°58'27" East, a distance of 90.35 feet to a point;
North 12°13'49" West, a distance of 103.19 feet to a point;
North 37°30'03" West, a distance of 73.61 feet to a point;
North 83°31'29" West, a distance of 79.41 feet to a point;
North 51°27'53" West, a distance of 61.47 feet to a point;
North 06°02'59" East, a distance of 34.74 feet to a point;
North 37°49'51" East, a distance of 70.92 feet to a point;
North 10°49'37" East, a distance of 43.58 feet to a point;
North 12°19'14" West, a distance of 74.02 feet to a point;
North 38°07'24" West, a distance of 79.82 feet to a point;
North 53°51'05" West, a distance of 81.15 feet to a point;
North 19°05'19" West, a distance of 159.10 feet to a point;
North 06°18'26" West, a distance of 94.91 feet to a point;
North 54°58'21" West, a distance of 143.46 feet to a point;
North 34°50'27" West, a distance of 78.06 feet to a point;
North 17°35'58" East, a distance of 49.95 feet to a point;
North 54°57'11" East, a distance of 83.03 feet to a point;
North 36°11'35" East, a distance of 82.03 feet to a point;
North 12°11'13" West, a distance of 27.13 feet to a point;
North 61°31'24" West, a distance of 53.87 feet to a point;
North 86°22'44" West, a distance of 59.71 feet to a point;
North 76°57'03" West, a distance of 52.06 feet to a point;
North 66°34'27" West, a distance of 49.01 feet to a point;
North 31°36'47" West, a distance of 53.51 feet to a point;

North 08°32'52" East, a distance of 54.71 feet to a point;
North 47°49'24" East, a distance of 28.73 feet to a point;
North 88°44'51" East, a distance of 116.54 feet to a point;
North 29°05'36" East, a distance of 80.87 feet to a point;
North 53°56'54" East, a distance of 48.91 feet to a point;
North 62°27'37" East, a distance of 132.76 feet to a point;
North 24°31'23" East, a distance of 40.15 feet to a point;
North 16°25'14" West, a distance of 58.16 feet to a point

THENCE North 85°28'38" East, leaving the said common line, a distance of 282.155 feet to a 1/2-inch iron rod with plastic cap stamped "VOTEX SURVEYING" set at the southwest corner of a tract of land described in deed to W/J Wilmeth Ridge LP recorded in Instrument No. 20190530000613850, Official Public Records, Collin County, Texas;

THENCE South 83°30'11" East, with the south line of last mentioned W/J Wilmeth Ridge LP tract, a distance of 91.26 feet to a 1/2-inch iron rod with plastic cap stamped "VOTEX SURVEYING" set at the southeast corner of said W/J Wilmeth Ridge LP tract;

THENCE with the east line of said W/J Wilmeth Ridge LP tract, the following courses and distances:

North 03°32'17" East, a distance of 239.83 feet to a 1/2-inch iron rod found for corner;
North 28°22'18" East, a distance of 359.16 feet to a 1/2-inch iron rod found for corner;

THENCE North 27°22'23" East, across Collin County tract No. 1, Collin County tract No. 2, and said W/J Wilmeth Ridge Tract No. 1, a distance of 129.83 feet to a 5/8-inch iron rod with plastic cap found for corner at the beginning of a non-tangent curve to the right having a central angle of 07°35'05", a radius of 990.00 feet and a chord bearing and distance of South 80°51'20" East, 130.96 feet;

THENCE in a southeasterly direction, with said curve to the right, an arc distance of 131.06 feet to a 5/8-inch iron rod with plastic cap found for corner;

THENCE South 77°03'58" East, over said W/J Wilmeth Ridge tract No. 1, a distance of 42.55 feet to 5/8-inch iron rod with plastic cap found for corner;

THENCE North 89°19'27" East, a distance of 254.97 feet to a 1/2-inch iron rod with plastic cap stamped "VOTEX SURVEYING" set for corner in the common line between the north line of said Collin County tract No. 1 with the south line of said W/J Wilmeth Ridge tract No. 1;

THENCE South 77°03'58" East, along the common line between the north line of said Collin County tract No. 1 with the south line of said W/J Wilmeth Ridge tract No. 1, a distance of 66.57 feet to a 1/2-inch iron rod with plastic cap stamped "VOTEX SURVEYING" set for corner at the beginning of a curve to the left having a central angle

of $03^{\circ}36'59''$, a radius of 1,050.00 feet and a chord bearing and distance of South $78^{\circ}52'27''$ East, a distance of 66.26 feet;

THENCE in a southeasterly direction, with said curve to the left, an arc distance of 66.27 feet to the POINT OF BEGINNING and containing 2,141,105 square feet or 49.153 acres of land, more or less.

Exhibit B

ROADWAY PROJECT PLAN

(Consisting of following two pages.)



