

REIMBURSEMENT AGREEMENT
(aka PURCHASE OF “PHASE 1 SERVICES” WORK PRODUCT)

This Reimbursement Agreement (aka Purchase of “Phase 1 Services” Work Product) (the “**Agreement**”) is made and entered into as of January __, 2023 (the “**Effective Date**”), by and between the *CITY OF MCKINNEY, TEXAS*, a Texas home-rule municipal corporation (“**Owner**”), and **GRIFFIN / SWINERTON, LLC**, a State of Delaware limited liability company (“**Developer**”). Owner and Developer are collectively referred to as the “**Parties.**”

RECITALS

A. The Owner and the Developer are also entering into a Pre-Development Agreement (“**PDA**”) for the expansion of the general aviation facilities at the McKinney National Airport. Under the PDA, Developer will prepare the design documents through design development and will present to Owner a Guaranteed Maximum Price (“**GMP**”) for the completion of the design and construction at the McKinney National Airport (“**Airport**”) of one additional corporate aircraft hangar facility and, potentially, a general aviation Federal Inspection Stations (FIS) facility for international arrivals requiring U.S. Customs services (collectively the “**Project**”).

B. Concurrently with the execution of the PDA, the Parties will enter into this Agreement which sets forth the terms and conditions for Owner to elect to defer payment of costs and fees payable by Owner to Developer under the PDA for the “**Phase 1 Services**” defined in the PDA.

NOW, THEREFORE, in reliance on the foregoing recitals and in consideration of the mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and Developer hereby agree as follows:

AGREEMENT

1. NO WAIVER OF OWNER'S DISCRETIONARY AUTHORITY.

Developer and Owner acknowledge and agree that Owner retains all discretion granted to Owner under law in considering the proposed Project and that nothing in this Agreement is intended to limit Owner’s discretionary powers or waive any third-party procedural due process rights.

2. TERM AND TERMINATION OF AGREEMENT.

The term of this Agreement shall commence upon the Effective Date and shall terminate upon the Termination Date. For purposes of this Agreement, the “**Termination Date**” shall mean the earliest date when any of the following events has occurred: (a) Owner elects not to proceed with the Project; (b) the PDA expires or is terminated by Owner or Developer; (c) the Parties execute a development agreement for the Project, as contemplated by the PDA; or (d) July 31, 2023. The date in subsection (d) in the prior sentence may be extended only by mutual agreement of the Parties, and City Manager is authorized to exercise any such extension on behalf of Owner without further approval of the City Council.

3. DEFERRED PAYMENT.

Total payment for the performance and delivery of the services to be performed under the PDA shall be a sum not to exceed Three Million Two Hundred Fifty-Eight Thousand Seven Hundred Sixty-Six Dollars (\$3,258,766.00) as set out in more detail in Exhibit E to the PDA (the “**PDA Compensation**”). This PDA Compensation includes DEVELOPER’s “**Reimbursable Expenses**” as further detailed in Section 10 of the PDA and Exhibit E to the PDA and the Interest (defined below) payable under this Agreement as further detailed in this Agreement and Exhibit E to the PDA.

The Parties acknowledge that Section 10 of the PDA contemplates Developer submitting Applications for Payment to Owner for costs, expenses, overhead, and fees incurred by Developer under the PDA for the Phase 1 Services in accordance with Exhibit E to the PDA and Sections 7, 8, and/or 10 (as applicable) of the PDA, and Owner paying the undisputed amounts of such Applications for Payment within thirty (30) days. The Parties desire to provide that Owner will defer payment of the PDA Compensation such that all submitted costs, expenses, overhead, and fees incurred shall be deemed Owner approved reimbursements provided they have been submitted at cost. The intent is to allow Owner to pay the Deferred PDA Compensation and Interest (as defined below) from the Project financing if the Owner elects to proceed with the completion of the design and construction of the Project pursuant to the Guaranteed Maximum Price (“Phase 2 Services”), but with the understanding that the Owner must pay the PDA Compensation, including the Deferred PDA Compensation and Interest, regardless of whether Owner elects to proceed with the Phase 2 Services component of the Project and regardless of whether bond financing funds are available to make the required payments. Owner’s deferral of payment will be on the following terms:

- (a) Developer will submit Applications for Payment to Owner for the PDA Compensation as contemplated by Section 10 of the PDA (including, but not limited to, Developer’s costs incurred or expended, fees, and overhead, as provided in the PDA for Phase 1 Services), which will include the amount of “Deferred PDA Compensation” and “Interest” (as such terms are defined below).
- (b) The PDA Compensation in each Application for Payment will be deferred (“**Deferred PDA Compensation**”) and the Deferred PDA Compensation will accrue simple interest at an annual rate of 7.25% (“**Interest**”) from the date the Deferred PDA Compensation was to be paid under the PDA through the date of Owner’s payment of such Deferred PDA Compensation.
- (c) The Deferred PDA Compensation and Interest will become due and payable by Owner to Developer no later than thirty (30) days after the Termination Date (the “**Due Date**”). At Owner’s election, Owner may pay all or a portion of the Deferred PDA Compensation and Interest prior to the Due Date.
- (d) In any action to recover overdue payment under this Agreement, the prevailing party is entitled to recover its reasonable attorneys’ fees and costs. Other than as set forth in this Section 3, all other payment provisions of the PDA will continue in full force and effect.

4. PURCHASE OF PROJECT DOCUMENTS

Owner's payment of the PDA Compensation under the terms of the PDA and payment of the Deferred PDA Compensation and Interest under the terms of this Agreement is (a) a mandatory obligation of Owner, and (b) a condition precedent to Owner receiving the PROJECT DOCUMENTS (as defined in Section 22 of the PDA) and ownership rights in such PROJECT DOCUMENTS as provided in the PDA, and payment of the PDA Compensation, Deferred PDA Compensation and Interest under the PDA and this Agreement will be deemed to be for the purpose of Owner purchasing the PROJECT DOCUMENTS with all of the ownership rights related thereto as provided in Section 22 of the PDA.

5. MISCELLANEOUS.

All of the terms and obligations of this Agreement will survive the expiration or termination of this Agreement. For brevity, the following miscellaneous provisions of the PDA apply to and are hereby incorporated into this Agreement, with the understanding that any reference to AGREEMENT in such provisions refers to this Agreement instead of the PDA. It is specifically understood and agreed by the Parties that all such amendments to the PDA provisions being incorporated herein that are necessary and helpful to conform the incorporated PDA provisions into this Agreement will be deemed by the Parties and by any such reviewer to have been made to the incorporated provisions even though it has not been expressly referred to or specifically amended in this section. The incorporated PDA provisions are:

- (a) Section 15: Amendments.
- (b) Section 16: Successors and Assigns.
- (c) Section 17: Entirety.
- (d) Section 18: Severability.
- (e) Section 19: Binding Obligation.
- (f) Section 20: Governing Law and Venue.
- (g) Section 25: Records and Audit/Inspections.
- (h) Section 26: Notices.
- (i) Section 28: Interpretation.
- (j) Section 29: Headings.
- (k) Section 31: Consent to Breach not Waiver.
- (l) Section 32: Remedies Not Exclusive.
- (m) Section 35: Assignment.
- (n) Section 36: Changes in Ownership.
- (o) Section 39: Calendar Days.
- (p) Section 40: Breach of Contract.
- (q) Section 41: Conflict of Interest DEVELOPER Personnel.
- (r) Section 42: Title to Data.

- (s) Section 44: Availability of Funds.
- (t) Section 45: Public Records Act.
- (u) Section 46: Conflict of Interest.
- (v) Section 47: Prohibition on Contracts with Companies Boycotting Israel.
- (w) Section 48: Prohibition on Contracts with Companies Boycotting Energy Companies.
- (x) Section 49: Prohibition on Contracts with Companies That Discriminate Against Firearm and Ammunition Industries.
- (y) Section 50: Prohibition on Contracts with Companies That Support Foreign Terrorist Organizations.

IN WITNESS WHEREOF, the parties hereto have executed this Reimbursement Agreement as of the Effective Date.

OWNER:

CITY OF MCKINNEY, TEXAS, a Texas home-rule municipal corporation

By: _____
PAUL G. GRIMES
City Manager

Date Signed: _____

ATTEST:

EMPRESS DRANE
City Secretary

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

[Signatures continue on following page.]

DEVELOPER:
GRIFFIN/SWINERTON, LLC, a State of
Delaware limited liability company

By: _____

Name: Roger Torriero

Title: Principal

Date Signed: _____

By: _____

Name: Korin Crawford

Title: Executive Vice President

Date Signed: _____