

**ESCROW AGREEMENT
BETWEEN BRITISH AMERICAN PROPERTIES OF TEXAS, INC., AND
THE CITY OF MCKINNEY
CONCERNING THE CONSTRUCTION OF A TRAFFIC SIGNAL
AT UNIVERSITY DRIVE (US 380) AND THE ENTRY TO
380 MCKINNEY C & D LANDFILL**

THIS ESCROW AGREEMENT, is entered into effective the ____ day of _____, 2021, by and between **CITY OF MCKINNEY**, a Texas municipal corporation and home-rule city ("City"), and **BRITISH AMERICAN PROPERTIES OF TEXAS, INC.**, a Texas corporation, whose address is 410 Pierce Street, Houston, Texas 77002, witnesseth that:

WHEREAS, BRITISH AMERICAN PROPERTIES OF TEXAS, INC., owns the 380 McKinney C & D Landfill, a Type IV Construction & Demolition Landfill, ("Owner") located at 2540 E. University Drive in McKinney, Texas 75069; and

WHEREAS, the Owner and City desire to enter into this Escrow Agreement ("Agreement") concerning the construction of a multiple-leg traffic signal at the intersection of University Drive (US 380) and the entry to the 380 McKinney C & D Landfill (the "Project") in McKinney, Collin County, Texas; and

WHEREAS, the Owner and City have determined that the Project is necessary due to the increased traffic and occurrence of collisions at and about this uncontrolled intersection; and

WHEREAS, the Owner and City have determined that the Project may be constructed most economically by implementing this Agreement.

NOW, THEREFORE, this Agreement is made and entered into by the Owner and the City upon and for the mutual consideration stated herein.

**ARTICLE I.
Recitals Incorporated by Reference**

The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the parties.

**ARTICLE II.
Location and Design and Construction**

The City shall arrange to design and construct the Project. The Project shall consist of designing and constructing the traffic signal together with left-turn signalization and all

appurtenances related thereto at the intersection of University Drive (US 380) and the entry to the 380 McKinney C & D Landfill. The proposed traffic signal is warranted under the Texas Uniform Manual of Traffic Control Devices. All improvements shall be designed to meet or exceed the City's and TxDOT's roadway design standards and criteria and shall be constructed in accordance with the plans and specifications approved by the City and TxDOT.

ARTICLE III.
City to Take Lead on Project

It is agreed that the City is responsible for constructing the Project. The City shall prepare plans and specifications for the improvements, accept bids and award a contract to construct the improvements and administer the construction contract. In all such activities, the City shall comply with all statutory requirements applicable to a municipal public work project. The City shall provide the Owner with a copy of the executed design and construction contract(s) for the Project. Owner agrees and understands that the City makes no assurances or representations that the Project will be constructed and accepted prior to any date certain.

ARTICLE IV.
Right-of-Way and Easements

City is not required to obtain any additional right-of-way or easements in connection with the Project.

ARTICLE V.
Escrow

A. **Estimated Project Costs and Owner Participation.**

1) The City estimates the total actual cost of the Project to be Three Hundred Fifteen Thousand Six Hundred Dollars (\$315,600.00) ("Estimated Project Cost"). The Owner agrees to participate in the Project by depositing a cash amount of One Hundred Fifty-Seven Thousand Eight Hundred Dollars (\$157,800.00) (the "Owner Participation Amount") with the City for the performance of the Project. The Owner Participation Amount is an amount equal to fifty percent (50%) of the Estimated Project Cost associated with the design, construction, installation, and signal equipment costs of the Project.

2) The Estimated Project Cost also includes a projected cost of purchasing a payment bond and performance bond, which meet the requirements of Chapter 252 of the Texas Local Government Code and Chapter 2253 of the Texas Government Code, in the full amount of the Project. The Estimated Project Cost also includes a projected cost of purchasing a maintenance bond in the amount of fifteen percent (15%) of the estimated cost of the improvements from a reputable and solvent corporate surety, in favor of City, to indemnify City against any repairs

arising from defective workmanship or materials used in any part of the construction of the improvements to Property, for a period of two (2) years from the date of final acceptance of such improvements.

3) As used herein, the terms "Estimated Project Cost" and "Actual Project Cost" may include engineering, construction, inspection, testing, street lighting, and construction administration costs including contingencies.

B. City Access to Owner's Property, if Necessary.

The Owner agrees that the City shall have the right to enter upon Owner's property to survey, stake, bore, construct, and install the Project at such time as the City deems necessary. The City may at its sole option and discretion enter into one or more agreements with third parties who shall be authorized to construct the Project and enter upon Owner's property to survey, stake, bore, construct and install the Project at the City's direction. Owner specifically authorizes the City to utilize the funds escrowed pursuant to this Agreement to pay for the construction of the Project and all necessary appurtenances to said Project.

ARTICLE VI.
No Waiver

Owner expressly acknowledges that by entering into this Agreement, Owner, its successors, assigns, vendors, grantees, and/or trustees, shall not construe any language contained herein or in any exhibits as waiving any of the requirements of the Zoning Ordinance or Subdivision Ordinance or any other ordinance of the City except as herein specifically agreed.

ARTICLE VII.
Indemnity and Hold Harmless Agreement

OWNER, its successors, assigns, vendors, grantees, and/or trustees do hereby agree to fully indemnify, protect and hold CITY harmless from 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.

ARTICLE VIII.
Revocation

In the event OWNER fails to comply with any of the provisions of this Agreement, CITY shall be authorized to file this instrument in the records of Collin County as a

Mechanic's Lien against OWNER'S Property; and in the alternative, CITY shall be authorized to levy an assessment against OWNER'S Property for public improvements to be held as a tax lien against the Property by CITY.

ARTICLE IX.
Assignability

This Agreement shall not be assignable by OWNER without the prior written consent of the CITY, and such consent shall not be unreasonably withheld, conditioned or delayed.

ARTICLE X.
Termination and Release

Upon CITY's final acceptance of the Project that is the subject of this Agreement and satisfactory completion of all other requirements of this Agreement, this Agreement shall terminate.

ARTICLE XI.
General Provisions

A. OWNER hereby relieves CITY of any responsibilities for any inadequacies in the preliminary plans, designs, construction drawings and details, and exhibits prepared by or at the request of DEVELOPER for the purpose of this Agreement.

B. CITY agrees that all coordination required with public and/or private utility agencies to eliminate conflicts between proposed street grades or underground improvements and the improvements only shall be the responsibility of CITY. Likewise, coordination with agencies requiring special conditions (i.e., railroads and the Texas Department of Transportation), if any, shall be the responsibility of the CITY.

CITY OF MCKINNEY

By: _____
PAUL G. GRIMES
City Manager

Date Signed: _____

ATTEST:

EMPRESS DRANE
City Secretary
JOSHUA STEVENSON
Deputy City Secretary

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

**BRITISH AMERICAN PROPERTIES
OF TEXAS, INC.**, a Texas corporation

By: 
THOMAS F. NOONS
President

Date Signed: 12/20/2021

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