PRE-DEVELOPMENT AGREEMENT

FOR THE DESIGN / BUILD / FINANCE OF
"MULTIPLE FACILITIES AT THE McKINNEY NATIONAL AIRPORT"

THIS PRE-DEVELOPMENT AGREEMENT (hereinafter referred to as "AGREEMENT") for purposes of identification hereby numbered Projects 1 & 2, and dated January __, 2023 is by and between ***CITY OF McKINNEY, TEXAS***, a Texas home-rule municipal corporation (hereinafter referred to as "OWNER"), and ***GRIFFIN/SWINERTON, LLC***, a State of Delaware limited liability company (hereinafter referred to as "DEVELOPER"), which are sometimes individually referred to as "PARTY" or collectively referred to as "PARTIES."

RECITALS

WHEREAS, the OWNER is the owner and operator of the McKinney National Airport ("Airport") which is located in the City of McKinney, Texas, as more particularly identified in Exhibit A; and

WHEREAS, the OWNER is seeking a public-private partnership with a Design / Build / Finance firm (the "D/B/F") to assist with expanding the general aviation facilities at the Airport to include one additional corporate aircraft hangar facility ("Project 1") and, potentially, a general aviation Federal Inspection Stations (FIS) facility for international arrivals requiring U.S. Customs services ("Project 2"); and

WHEREAS, DEVELOPER has developed properties similar to the property, including the public-private partnership development of public facilities in other cities and counties; and

WHEREAS, on or about January 9, 2022, OWNER issued Request for Qualifications No. 22-17RFQ (the "RFQ"); and

WHEREAS, DEVELOPER responded to the RFQ and submitted its response to OWNER on or about January 27, 2022; and

WHEREAS, OWNER engaged in a multi-step developer solicitation process that included the RFQ, evaluating each respondent's experience, technical competence, and capability to perform, the past performance of the respondent's team and members of the team, and other appropriate factors submitted by the team or firm, written responses to supplemental questions, and interviews; and

WHEREAS, DEVELOPER certified to OWNER that each architect or engineer that is a member of DEVELOPER's team has been or will be selected based on demonstrated competence and qualifications in the manner provided by Section 2254.004 of the Texas Government Code; and

WHEREAS, OWNER ranked the respondents and selected DEVELOPER as having submitted the proposal offering the best value for the OWNER on the basis of the published

selection criteria and on its ranking evaluations to design, construct, and finance the project identified in Exhibit B (the "PROJECT") through a two-step contract process utilizing the design, build, finance project delivery method; and

WHEREAS, this AGREEMENT is entered into for the Pre-Development Phase of the PROJECT being referred to herein as the "PHASE 1 SERVICES" which may be followed by the execution of a Development Agreement between the PARTIES for the Construction Phase of the PROJECT being referred to herein as the "PHASE 2 SERVICES" provided that OWNER elects to proceed with the PHASE 2 SERVICES and which Development Agreement for PHASE 2 SERVICES shall hereafter be negotiated in good faith by and between the PARTIES prior to the commencement of the PHASE 2 SERVICES; and

WHEREAS, OWNER desires to engage DEVELOPER to provide the PHASE 1 SERVICES as described herein subject to the terms hereof; and

WHEREAS, after the provision of the PHASE 1 SERVICES described herein, OWNER and DEVELOPER may enter into a Development Agreement for the PHASE 2 SERVICES, in addition to a Site Lease, a Facility Lease, Continuing Disclosure Statement and appurtenant and related documentation (e.g., additional documentation OWNER may require, but to which DEVELOPER will not be a party, by way of example such as indenture, loan agreement, bond purchase agreement, and preliminary and final official statements, collectively, the "Lease Documents") for the development of the property and the lease-back of certain portions of the property to the OWNER, with the understanding that OWNER will manage, operate, and maintain the completed PROJECT.

NOW, THEREFORE, IT IS AGREED by and between the PARTIES hereto as follows:

1. Retainer

1.1 OWNER does hereby retain DEVELOPER to perform the PHASE 1 SERVICES as defined in Section 2.

1.2 DEVELOPER shall assign one or more principals to perform the SERVICES. The principals assigned by DEVELOPER and whose expertise and services are offered by DEVELOPER and accepted by OWNER are Roger Torriero and Korin Crawford, acting in their capacity as principals of DEVELOPER.

1.3 DEVELOPER may employ such Consultants/Contractors, as well as DEVELOPER's Construction Manager at Risk ("DEVELOPER's CMAR"), as DEVELOPER determines appropriate for performance of portions of DEVELOPER's obligations under this AGREEMENT; provided, however, that DEVELOPER will remain responsible for all such obligations and the acts and omissions of DEVELOPER's Consultants/Contractors and DEVELOPER's CMAR. The term "Consultants/Contractors" refers to any professional or other person or party directly retained by DEVELOPER for provision of any of the SERVICES required to be performed by DEVELOPER under this AGREEMENT. DEVELOPER's employment of

independent Consultants/Contractors shall not relieve DEVELOPER from the performance of its own responsibilities pursuant to this AGREEMENT. However, all Consultants contracting separately with OWNER (if any) shall be independently liable to OWNER for the performance of their work pursuant to their respective agreements directly with OWNER, and DEVELOPER shall have no liability for work by contractors contracting separately with OWNER.

1.4 DEVELOPER intends to retain J.R. MILLER AND ASSOCIATES, INC. ("JRMA") as the architect for the Schematic Design and Design Development architectural services ("DEVELOPER's ARCHITECT"). DEVELOPER intends to retain SWINERTON BUILDERS as DEVELOPER's CMAR to perform the pre-construction services ("DEVELOPER's CMAR"). DEVELOPER will have the right to select or replace all or any of the Consultants (including the DEVELOPER's ARCHITECT) and DEVELOPER's CMAR, with the OWNER's consent, which consent will not be unreasonably withheld. OWNER consents to DEVELOPER retaining JRMA and SWINERTON BUILDERS as DEVELOPER's ARCHITECT and CMAR, respectively, for the PHASE 1 and/or PHASE 2 SERVICES. DEVELOPER hereby certifies to OWNER that any architect or engineer selected as Consultants will be selected based on demonstrated competence and qualifications in the manner required by Section 2254.004 of the Texas Government Code.

2. PROJECT and SERVICES.

2.1 Description of PROJECT.

The OWNER's Initial Information on which this AGREEMENT is based and the OWNER's program for the PROJECT are generally set forth in the OWNER's Request for Proposals together with Addendum No. 1 thereto, and the OWNER's Aerials, Site Plans and Floor Plans. In addition, the PROJECT's physical characteristics are generally set forth in the OWNER's Request for Proposals together with Addendum No. 1 thereto, and the OWNER's Aerials, Site Plans and Floor Plans. The PROJECT is broken into two phases as follows:

(1) PHASE 1 – Pre-Development Phase; and

(2) PHASE 2 – Construction Phase (including development of the Construction Documents).

2.2 Description of SERVICES.

For purposes of this AGREEMENT, the term "SERVICES" includes both the PHASE 1 and the PHASE 2 SERVICES. DEVELOPER shall first provide the PHASE 1 SERVICES pursuant to this AGREEMENT, which includes determining a Guaranteed Maximum Price ("GMP") for the PROJECT. OWNER will then either (1) terminate this AGREEMENT or (2) have DEVELOPER perform the PHASE 2 SERVICES in accordance with the DEVELOPMENT AGREEMENT to be agreed to by and between OWNER and DEVELOPER.

2.3 Description of PHASE 1 SERVICES.

The OWNER's budget for the Guaranteed Maximum Price ("GMP") is generally set forth in the OWNER's Request for Proposals and is more particularly identified in Addendum No. 1 thereto for both Project 1 and Project 2. The Owner's budget for the Guaranteed Maximum Price may be further detailed and/or further modified and updated by and through the processes set out in this AGREEMENT. The PHASE 1 SERVICES include DEVELOPER's development and delivery to OWNER of (a) a needs assessment and program, pre-design services, basis of design, and schematic design services through which phase a range of alternative design concepts are explored by the DEVELOPER's ARCHITECT with the OWNER to define the character of the completed Project and the completed Project is described three-dimensionally culminating in a schematic design of the Project (the "Schematic Design Documents"), (b) entitlement package, (c) design development services, and (d) financing, all of which culminate in an OWNER-approved design development set of plans and specifications and an estimate of construction costs (the "Design Development Documents") for the PROJECT in accordance with OWNER's standards and procedures and applicable local, state, and federal laws and requirements. DEVELOPER shall also deliver to OWNER a GMP (which shall also refer to the associated documentation related to the work to be performed for a Guaranteed Maximum Price) for the delivery of the PROJECT, complete and operational. DEVELOPER will deliver its GMP in accordance with the schedule described in Exhibit C. The PHASE 1 SERVICES are described in detail in Exhibit D.

2.4 Description of PHASE 2 SERVICES.

PHASE 2 SERVICES include DEVELOPER's completion and delivery of the construction documents, and construction of the PROJECT in accordance with the OWNER-approved construction documents. These services include preparation of the 100% construction documents, construction observation by the design team, competitive bidding of trade contractors, construction, delivery, and PROJECT close-out, all as more fully set forth in the Development Agreement. OWNER shall provide a PROJECT budget for the PHASE 2 SERVICES to DEVELOPER in accordance with the schedule described in Exhibit C. Notwithstanding anything to the contrary set forth herein, DEVELOPER shall not perform any PHASE 2 SERVICES, or Construction Phase work, under this AGREEMENT.

2.5 OWNER Election to Terminate or Proceed to PHASE 2

(a) OWNER will have sixty (60) days after DEVELOPER submits its GMP to OWNER to elect one of the following options (and the GMP will become void and unenforceable, and OWNER will be deemed to have elected the option to terminate this AGREEMENT if OWNER fails to provide written notice of its election to DEVELOPER within sixty (60) days after OWNER's receipt of the GMP):

(1) Terminate this AGREEMENT;

(2) Proceed with the PROJECT on a public-private partnership basis, in which case the PARTIES will proceed pursuant to the DEVELOPMENT AGREEMENT that the PARTIES will negotiate in good faith to achieve their goals, comply with legal requirements, and establish the budget, schedule, and scope exhibits in accordance with the GMP, and Lease Documents to be negotiated by the PARTIES in good faith, with the understanding that the Lease is financeable in the public markets (including any changes required by the party providing the financing) per financing terms acceptable to OWNER, lender(s), and DEVELOPER and is a triple net lease with OWNER providing all of the services (*e.g.*, utilities, janitorial, landscaping, etc.) for the PROJECT so that the lease payment will only be recapturing DEVELOPER's fixed fee, share of savings, and total costs incurred for the design and construction of the PROJECT (inclusive of all legal and all financing related costs). The final and actual base annual triple net rent will be determined by several factors and components, including but not limited to the amortization period, final PROJECT GMP, and all costs of financing (including then current market conditions and interest rate) established on the actual date of placement and issuance of the PROJECT financing.

(b) If OWNER and DEVELOPER are unable to agree as to the GMP and terms of the Development Agreement and the Lease Documents in accordance with subsection (a), then at the end of the sixty (60) day period, this AGREEMENT will terminate.

2.6 Conflicts.

In the event Exhibits D or E shall be in conflict with any provision of this AGREEMENT, the provisions set forth in Exhibits D or E, as applicable, shall prevail.

2.7 PHASE 1 Contingency.

(a) OWNER's Contingency are funds to be used at the discretion of the OWNER usually to cover, among other things, any increases in PROJECT costs that result from OWNER directed changes or unforeseen site conditions. For OWNER's convenience, DEVELOPER will include OWNER's Contingency as a separate line item included in the GMP amount provided by the DEVELOPER. Markups for overhead, profit, and insurance will be applied by the DEVELOPER at the time that OWNER's Contingency is used. Any OWNER Contingency not utilized shall remain as OWNER's funds after PROJECT completion.

(b) The amount of DEVELOPER's Contingency will be noted as a separate line item in the GMP and shall reflect the DEVELOPER's risk for the PROJECT. DEVELOPER's Contingency is a fund to cover cost growth or unexpected or unforeseen costs that may arise during the PROJECT. DEVELOPER has a

Contingency line item in the PHASE 1 budget (Exhibit E) and will have a separate contingency line item in DEVELOPER's PHASE 2 budget. The amount of the DEVELOPER's Contingency for PHASE 1 and PHASE 2 will be a separate line item in the applicable budget(s). DEVELOPER's Contingency for each PHASE may be used at DEVELOPER's discretion with OWNER's approval, which approval will not be unreasonably withheld.

(c) DEVELOPER's budget (Exhibit E) for PHASE 1 includes line items for DEVELOPER's Contingency and Allowances. Payment for any Allowance identified in Exhibit E shall be for direct cost reimbursement only, unless Exhibit E identifies it as a "Time and Materials" or "T&M" item. Reimbursable direct costs shall be verified by invoices and shall include any amounts paid to third parties, and do not include markups, including but not limited to supervision, labor, overhead, or profit related to the item. Payment for any work to be performed in connection with any Allowance identified in Exhibit E will be made by OWNER as part of the normal payment procedures for the PROJECT. Any costs that exceed the maximum amount of any Allowance line item shall be addressed as a change to the AGREEMENT. DEVELOPER's Contingency in Exhibit E may be used at DEVELOPER's discretion with OWNER's approval, which approval will not be unreasonably withheld, for increases in the cost of the PHASE 1 SERVICES which are not the OWNER's responsibility; provided, however, that DEVELOPER may not apply the DEVELOPER's Contingency to DEVELOPER's Professional Services Fixed Fee.

2.8 GMP.

The DEVELOPER will prepare its GMP in accordance with the OWNER's Requests for Proposals together with the addenda thereto and the OWNER's Specifications and Drawings giving due regard to OWNER's budget for the GMP, which budget and scope may be modified and updated by and through the processes set out in this AGREEMENT. The DEVELOPER will obtain from the DEVELOPER's ARCHITECT four (4) separate sets of Design Development Documents (including Specifications and all addenda) for each of Project 1 and Project 2. The DEVELOPER will place a signature block on each page of each document of each set upon which its proposed GMP is based. OWNER, DEVELOPER, DEVELOPER's CMAR, and the DEVELOPER's ARCHITECT will all approve, in writing, the Design Development Documents (including Specifications and all addenda) upon which DEVELOPER's GMP for PHASE 2 is based. The DEVELOPER will send one set of the Design Development Documents to the OWNER, retain one set, and return a set to both the DEVELOPER's ARCHITECT and DEVELOPER's CMAR.

2.8.1 The GMP shall include all contingencies described in Section 2.7.

2.8.2 The GMP shall be the sum of the estimated cost of the completion of the 100% construction documents, construction of the PROJECT in accordance with the OWNER-approved

construction documents, and all of DEVELOPER's and DEVELOPER's CMAR's fees, all as more fully set forth in the Development Agreement for the PHASE 2 SERVICES.

2.8.3 The GMP shall include no amount for sales or use taxes for which Texas municipal corporations are exempt and for which the OWNER has timely provided to the DEVELOPER an appropriate tax exemption certificate or other required verification of the OWNER's tax-exempt status. Such taxes shall not be reimbursable costs under PHASE 1 OR PHASE 2.

2.8.4 Except with the OWNER's prior written consent, which consent will not be unreasonably withheld, the DEVELOPER shall not include any allowances in its proposed GMP.

2.8.5 By its submission of a GMP proposal, the DEVELOPER and DEVELOPER's CMAR agree that any applicable buy-out savings, discounts, rebates, refunds, unused allowances, other amounts received from the sale of surplus materials and equipment, and other cost savings shall be returned to the OWNER without sharing with the DEVELOPER and DEVELOPER's CMAR, unless the OWNER specifically agrees otherwise in writing. Savings shall be identified and submitted with each application for payment submitted by the DEVELOPER and DEVELOPER's CMAR and shall be fully reconciled with the DEVELOPER's and DEVELOPER's CMAR's submission of the final payment application.

2.9 Construction Schedule.

An updated/revised PROJECT Schedule will be included with the GMP that reflects the approved Design Development Documents.

2.10 Savings.

In PHASE 1, as previously stated, all savings from the Budget (Exhibit E) shall be fully for the benefit of the OWNER.

2.11 GMP Review and Approval.

2.11.1 The DEVELOPER will meet with the OWNER, DEVELOPER's ARCHITECT, and DEVELOPER's CMAR to review the GMP and the written statement of its basis. In the event the OWNER discovers inconsistencies or inaccuracies in the information presented, the DEVELOPER will make adjustments as necessary to the GMP, its basis or both. OWNER, DEVELOPER's ARCHITECT, DEVELOPER's CMAR, and DEVELOPER will each review and initial each page of the approved Schematic Design Documents and Design Development Documents (upon which the GMP will be based). The Design Development Documents will be in accordance with the preliminary building program set forth in Exhibit F. OWNER will have 30 days after OWNER's receipt thereof to review and approve in writing each set of "Design Documents" being and including the Schematic Design Documents and Design Development Documents. If OWNER approves a set of Design Documents, on which DEVELOPER relies, then later directs DEVELOPER to make material changes to the approved Design Documents as opposed to making simple changes or modifications to the Design Documents in furtherance of

the continuing design process, then OWNER will pay DEVELOPER for the actual difference in cost of making such revisions as an additional cost through a Change Order.

2.11.2 The OWNER, upon receipt of the GMP from the DEVELOPER, may submit the GMP Plans and Specifications to an independent third party for review and verification of construction costs only, at OWNER's sole cost. At OWNER's discretion, the third party may develop an independent estimate of the Cost of the Work for construction costs only and review the Construction Schedule for the associated scope of the GMP. DEVELOPER must receive the third party estimate no later than 30 days after DEVELOPER provides the GMP to the OWNER.

2.11.3 If the DEVELOPER's GMP is greater than the independent third party's estimate, the OWNER may require the DEVELOPER to reconfirm its GMP; provided, that the DEVELOPER timely received the third party's estimate. The DEVELOPER will either (a) accept the independent third party's estimate for the Cost of Work for construction costs as part of the GMP or (b) present a written report within fourteen (14) days of a written request to the OWNER identifying, explaining and substantiating the differences.

2.11.4 The DEVELOPER may be requested to, or at its own discretion may, submit a revised GMP for consideration by the OWNER, including reducing scope, quality, or features if necessary to bring the PROJECT into budget for either or both of Project 1 and Project 2 reflecting the anticipated scope and timing of the PROJECT that is deemed fair and reasonable to DEVELOPER.

2.11.5 At the time DEVELOPER submits its original or revised GMP the OWNER may do one of the following:

(a) Accept the DEVELOPER's original or revised GMP, if within the OWNER's budget, without comment.

(b) Accept the DEVELOPER's original or revised GMP that exceeds the OWNER's budget and indicate in writing to the DEVELOPER that the PROJECT Budget has been increased to fund the differences.

(c) Reject the DEVELOPER's original or revised GMP because it exceeds the OWNER's budget and/or the independent third party's estimate, in which event, the OWNER may terminate this AGREEMENT and/or elect to not enter into a separate AGREEMENT with the DEVELOPER for PHASE 2, the Construction Phase, associated with the scope of Work reflected in the GMP.

(d) With the DEVELOPER's consent, wait to accept the GMP if the OWNER believes adequate funding will be available in the near future.

2.11.6 If during the review and negotiation of a GMP, design changes are required or requested by OWNER, then DEVELOPER will authorize and cause its Consultants to revise the documents to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the final approved GMP. Such revised documents will be furnished to the OWNER.

The provisions of Section 2.11.1 apply to determine whether OWNER is responsible for paying for the revisions. The OWNER will promptly notify the DEVELOPER in writing if any such revised documents are inconsistent with the agreed-upon assumptions and clarifications.

2.12 PHASE 1 Schedule.

DEVELOPER will perform the PHASE 1 SERVICES in accordance with the schedule in Exhibit C, provided, however, that DEVELOPER shall not be responsible for any delay beyond the direct control of DEVELOPER or its Consultants.

3. Assistance and Cooperation by and between OWNER and DEVELOPER.

3.1 OWNER and DEVELOPER shall assign an appropriate staff member (or members) to work with each other in connection with the work to be performed under PHASE 1 and PHASE 2 of this AGREEMENT. OWNER designates Patricia L. Jackson, PE, RAS, Facilities Construction Manager for the City of McKinney, Texas as "OWNER's Representative," it being understood that such representative shall have the authority to bind the OWNER only to the extent expressly authorized by the OWNER and shall have no implied authority. The OWNER's Representative shall have the authority to bind the OWNER only in the following particulars:

(a) contacting and coordinating the location of existing lines, cables, pipes, and pipelines belonging to private and public utilities;

(b) approval of any construction directives regarding construction means and methods;

(c) approval of any extensions of time; and

(d) approval of field changes not requiring a Change Order.

DEVELOPER designates Roger Torriero and Korin Crawford as "DEVELOPER's Representatives." Each PARTY may change its designated representative by giving written notice to the other PARTY of the name and contact information for the new representative. The Representatives' duties will consist of the giving of advice and consultations, providing information in a timely manner as requested by each other, assisting each other in negotiations with other public agencies and private parties, miscellaneous items which in the judgment of DEVELOPER or OWNER's staff warrant attention, and all other duties as may be described in Exhibit D. The Representatives will be the single points of contact between the PARTIES and will be responsible for obtaining information from others within their organization or team (*e.g.*, OWNER's Representative is responsible for obtaining information from other departments within OWNER in accordance with the Project Schedule, DEVELOPER's Representatives are responsible for obtaining information from DEVELOPER's Consultants and DEVELOPER's CMAR in accordance with the Project Schedule).

3.2 All of the activities described in Exhibit D, however, shall be the primary responsibility of DEVELOPER to schedule, initiate and carry through to completion, except to the

extent that a particular activity relies on receiving information from OWNER; in which event OWNER is responsible for providing necessary information.

4. OWNER and DEVELOPER Personnel.

Nothing in this AGREEMENT shall be (a) deemed to make DEVELOPER, or any of DEVELOPER's employees or agents, agents or employees of the OWNER, or (b) deemed to make OWNER, or any of OWNER's employees or agents, agents or employees of DEVELOPER. DEVELOPER shall be an independent contractor and shall have responsibility for and control over the details and means for performing the work under the AGREEMENT, provided that DEVELOPER is in compliance with the terms of this AGREEMENT. Anything in the AGREEMENT which may appear to give OWNER the right to direct DEVELOPER as to the details of the performance of the work or to exercise a measure of control over DEVELOPER shall mean that DEVELOPER shall follow the desires of OWNER, only in the results of the work.

5. Limited Waiver of Immunity

Notwithstanding anything to the contrary herein, the DEVELOPER and OWNER hereby acknowledge and agree that to the extent this AGREEMENT is subject to the provisions of Subchapter I of Chapter 271 of the Texas Local Government Code, as amended, the OWNER'S immunity from suit is waived only as set forth in Subchapter I of Chapter 271 of the Texas Local Government Code. OWNER expressly authorizes the prevailing party in any adjudication involving the OWNER to recover its reasonable and necessary attorney's fees that are equitable and just as referenced in Section 271.153 of the Texas Local Government Code.

6. Reserved

7. Termination of AGREEMENT for Cause.

7.1 If DEVELOPER breaches any of the covenants or conditions of this AGREEMENT, then OWNER may send DEVELOPER a notice of default setting forth the nature and extent of the alleged default and, if not otherwise self-evident, the actions necessary to cure the alleged default. DEVELOPER must cure the default within thirty (30) days after receipt of the notice of default (or if the default is not capable of being cured in such time, DEVELOPER must commence necessary actions to timely remedy such default and thereafter diligently prosecute such cure to completion). If DEVELOPER fails to timely cure the breach, then OWNER shall have the right to terminate this AGREEMENT upon three (3) days additional written notice prior to the effective day of termination.

7.2 DEVELOPER shall have the opportunity to cure the alleged breach prior to termination as set forth in Section 7.1.

7.3 In the event the alleged breach is not cured by DEVELOPER prior to termination, all work performed by DEVELOPER pursuant to this AGREEMENT, which work has been

reduced to plans or other documents, shall become the property of and be made available to OWNER (subject to the provisions of Section 22).

7.4 If OWNER breaches any of the covenants or conditions of this AGREEMENT, then DEVELOPER may send OWNER a notice of default setting forth the nature and extent of the alleged default and, if not otherwise self-evident, the actions necessary to cure the alleged default. OWNER must cure the default within thirty (30) days after receipt of the notice of default (or if the default is not capable of being cured in such time, OWNER must commence necessary actions to timely remedy such default and thereafter diligently prosecute such cure to completion). If OWNER fails to timely cure the breach, then DEVELOPER shall have the right to terminate this AGREEMENT upon three (3) days additional written notice prior to the effective day of termination.

7.5 OWNER shall have the opportunity to cure the alleged breach during the notice periods set forth herein prior to termination as set forth in Section 7.4.

7.6 OWNER must proceed with the PROJECT in a diligent manner in accordance with the Schedule for PHASE 1 SERVICES (Exhibit C). If the PROJECT and/or SERVICES are delayed in the aggregate more than sixty (60) calendar days because of suspensions, delays, or interruptions of the PROJECT through no act or fault of DEVELOPER, then DEVELOPER may terminate the AGREEMENT by providing seven (7) days' written notice to OWNER of DEVELOPER'S intention to terminate the AGREEMENT. If DEVELOPER terminates the AGREEMENT under this provision, OWNER shall pay the DEVELOPER for (a) all SERVICES actually performed, (b) a pro rata portion of DEVELOPER's Fixed Fee and Fixed Overhead on only that portion of the work actually performed prior to termination, and (c) , and all reimbursable expenses paid or incurred by DEVELOPER in accordance with Exhibit E prior to the date on which DEVELOPER provides written notice of termination to OWNER, and such payment shall be the DEVELOPER's sole remedy for termination of this AGREEMENT under this provision. If the cause of the work stoppage is removed prior to the end of the seven-day notice period, the DEVELOPER may not terminate this agreement.

8. Termination of AGREEMENT for Convenience.

8.1 Notwithstanding any other provision of the AGREEMENT, OWNER may at any time, and without cause, terminate this AGREEMENT in whole or in part, upon not less than thirty (30) calendar days' written notice to the DEVELOPER. Such termination shall be effected by delivery to the DEVELOPER of a written notice of termination specifying the effective date of the termination and the extent of the Work to be terminated.

8.2 Upon receipt of such notice, DEVELOPER shall immediately stop working on, placing orders or entering into contracts for supplies, assistance, facilities or materials in connection with this AGREEMENT and shall proceed to promptly cancel all existing contracts insofar as they are related to this AGREEMENT.

8.3 OWNER shall pay the DEVELOPER for all costs paid, or incurred but unpaid for the Work completed, a pro rata portion of DEVELOPER's Fixed Fee and Fixed Overhead on only that portion of the work actually performed prior to termination, and all reimbursable expenses paid or incurred by DEVELOPER in accordance with Exhibit E prior to the date of termination, and such payment shall be the DEVELOPER's sole remedy under this AGREEMENT.

8.4 Under no circumstances will DEVELOPER be entitled to anticipatory or unearned profits, consequential damages, or other damages of any sort as a result of a termination or partial termination under this Paragraph.

8.5 DEVELOPER shall insert in all Consultants' and Contractors' contracts and subcontracts that the Consultant and Contractor and any subconsultant or subcontractor shall stop work on the date of and to the extent specified in a written notice of termination, and shall require their respective consultants and subcontractors to insert the same condition in any lower tier contracts.

9. The term of this AGREEMENT is not to exceed seven (7) months commencing upon approval and execution of this AGREEMENT by the OWNER and in accordance with the schedule described in Exhibit C.

10. Compensation and Extra Work.

For the SERVICES authorized under this AGREEMENT, DEVELOPER shall be paid an amount not to exceed Three Million Two Hundred Fifty-Eight Thousand Seven Hundred Sixty-Six Dollars ($3,258,766.00) (the "Total Compensation") as set out in further detail in the "Reimbursement Agreement (aka Purchase of "Phase 1 Services" Work Product)" (the "Reimbursement Agreement") approved contemporaneously with and executed by the Parties concurrently with the execution of this AGREEMENT. **Subject to the not-to-exceed amount of the Total Compensation and the provisions of the Reimbursement Agreement DEVELOPER will be compensated generally in accordance with the following Sections 10.1 through 10.8:**

10.1 OWNER will pay DEVELOPER the compensation (costs and fee) for the PHASE 1 SERVICES as set forth in Exhibit E as work progresses on the PHASE 1 SERVICES. DEVELOPER will also be entitled to reimbursement of out-of-pocket costs as they are incurred, which costs are identified in Exhibit E. Reimbursable expenses will be paid at cost and will not exceed what is shown in Exhibit E without prior written approval of OWNER. DEVELOPER shall allocate savings from other line items to cover cost overruns in other line items or the reimbursable expenses budget, with notice to the OWNER, so long as doing so does not exceed the total cost set forth in Exhibit E. DEVELOPER's fee and DEVELOPER's overhead for PHASE 1 SERVICES will be fixed amounts as set forth in Exhibit E. The DEVELOPER's Fixed Fee and DEVELOPER's Fixed Overhead for DEVELOPER's services under this AGREEMENT will be paid in equal monthly installments (the number of installments equal to the number of months for the SERVICES duration under the Project Schedule in Exhibit C); provided, however, that if

DEVELOPER completes the PHASE 1 SERVICES in less time, then the unpaid balance of the DEVELOPER's Fixed Fee and DEVELOPER's Fixed Overhead is due with the final payment to DEVELOPER under this AGREEMENT (i.e., the equal monthly installments are for billing purposes, but the intent is that OWNER will pay the full amount of DEVELOPER's Fixed Fee and DEVELOPER'S Fixed Overhead). If the PHASE 1 SERVICES takes more time due to causes within DEVELOPER's control, then DEVELOPER is not entitled to additional Developer's Fixed Fee or DEVELOPER's Fixed Overhead compensation; DEVELOPER would only be entitled to additional Fixed Fee or Fixed Overhead for delays caused through no act or fault of DEVELOPER or for increases in scope requested by OWNER.

10.2 DEVELOPER's Payment Applications to OWNER for PHASE 1 SERVICES shall include, but not be limited to, the following information:

- DEVELOPER's name and address
- DEVELOPER's remittance address, if different from (A), above
- Name of OWNER agency/department
- Delivery/service address
- CONTRACT number
- Service Date
- Description of Services
- Total
- Taxpayer ID number
- A list of all Consultants with whom DEVELOPER has entered into contracts, the amount of each Consultants' contract, the amount requested for any Consultants in the Application for Payment and the amount to be paid to DEVELOPER from such progress payment.
- A payment breakdown for the PHASE 1 SERVICES for which DEVELOPER and each Consultant is responsible; such breakdown being submitted on a uniform standardized form reasonably approved by the OWNER. The form shall reflect (1) description of services, (2) total value, (3) percent of the services completed to date, (4) value of services completed to date, (5) percent of previous amount billed, (6) previous amount billed, (7) current percent completed, and (8) value of services completed to date.
- DEVELOPER's computerized summary of all costs, disbursements and activities for the most recent billing cycle and, to the extent requested by OWNER, such other information, documentation and materials including payrolls, receipted invoices or invoices with check vouchers attached, contracts, and any other evidence required by OWNER to demonstrate that cash disbursements already made by DEVELOPER on account of the PHASE 1 SERVICES equal or exceed: (1) progress payments already received by DEVELOPER; less (2) that portion of those payments attributable to DEVELOPER's Fixed Fee; plus (3) payrolls and costs for the period covered by the present Application for Payment; less

(4) PROJECT costs previously paid by DEVELOPER which were previously approved by OWNER.

- Any other information reasonably requested by OWNER.

10.3 Within 30 days of receiving DEVELOPER's application for payment, OWNER will notify DEVELOPER in writing of any objections to DEVELOPER's application for payment. Within 30 days of receiving an undisputed, properly completed application for payment, OWNER shall pay to DEVELOPER a sum equal to the value of the work completed since the commencement of the work, less all previous payments. OWNER shall not withhold retention. No progress payment paid by OWNER to DEVELOPER shall be considered to be OWNER's acceptance of any part of the SERVICES.

10.4 The compensation that OWNER pays to DEVELOPER for the PHASE 2 SERVICES (if OWNER elects to proceed with the PHASE 2 SERVICES) will be determined after completion of the PHASE 1 SERVICES, as the compensation for the PHASE 2 SERVICES will be dependent upon the GMPs for Project 1 and Project 2, respectively, that are calculated during the PHASE 1 SERVICES.

10.5 Budget adjustments between Task Line Items in Exhibit E may be made by DEVELOPER at DEVELOPER's sole discretion with notice to the OWNER, including the reduction of the allocated budget for a Task in order to augment by this same amount the budget for any other Task.

10.6 For completion and approval of all PHASE 1 SERVICES where "Extra Work" (defined as changes in approved portions of the SERVICES requested by and ordered in writing by OWNER which changes constitute a change in or departure from said approved portions of SERVICES) is not authorized, compensation including reimbursable expenses shall be limited to the types and amounts described and payable as stipulated in DEVELOPER's Budget and Fees for PHASE 1 SERVICES, attached hereto as Exhibit E and incorporated herein by reference.

10.7 Where extra work is authorized for PHASE 1 SERVICES: The amount for Extra Work shall be determined using Exhibit E. Extra Work shall be required by and ordered in advance in writing by OWNER. OWNER may order Extra Work not to exceed Ten Thousand Dollars ($10,000) for contracts of less than One Hundred Thousand Dollars ($100,000), and may order Extra Work up to ten percent (10%) for contracts not exceeding Two Hundred Fifty Thousand Dollars ($250,000). For contracts greater than Two Hundred Fifty Thousand Dollars ($250,000), Extra Work shall not exceed Twenty-Five Thousand Dollars ($25,000) plus one percent (1%) of the original contract amount in excess of Two Hundred Fifty Thousand Dollars ($250,000). In no case shall Extra Work cumulatively exceed One Hundred Thousand Dollars ($100,000), unless authorized in advance by the OWNER's City Council.

10.8 For partial completion of work of PHASE 1 SERVICES followed by default on the part of DEVELOPER and termination by OWNER pursuant to Paragraph 7:

(1) For failure to complete and secure approval of the first required submittal (i.e., program and conceptual site plan), there shall be no compensation paid to DEVELOPER.

(2) For failure to complete and secure approval of SERVICES subsequent to approval of the first required submittal (i.e., program and conceptual site plan), DEVELOPER shall, upon completion of the PHASE 1 SERVICES by others, be entitled to receive compensation based on DEVELOPER's approved work for PHASE 1 SERVICES in such amounts not to exceed the amounts specified in Exhibit E for that particular submittal, plus the reasonable value as determined by OWNER of the non-approved work; provided, however, that if the cost to OWNER to complete the PHASE 1 SERVICES through contracts with others exceeds the amount specified herein, DEVELOPER shall be entitled to no compensation and shall instead be liable to OWNER for such excess costs attributable to DEVELOPER's breach of the AGREEMENT.

10.9 Notwithstanding anything to the contrary contained in this Section 10, any "Extra Work" shall require the advance written approval of the OWNER. If the "Extra Work" requires payment in excess of the not-to-exceed amount of the Total Compensation, an amendment to this Agreement and the Reimbursement Agreement shall be required. In the event of any conflict between the terms and provisions of this Section 10 and the Reimbursement Agreement, the terms and provisions of the Reimbursement Agreement shall control.

11. Laws to be Observed.

DEVELOPER is assumed to be familiar with and, at all times, shall observe and comply with all federal, state and local laws, ordinances and regulations in any manner affecting the conduct and performance of the SERVICES. DEVELOPER will require the DEVELOPER's ARCHITECT to have full responsibility for complying with all applicable requirements of Chapter 1051 of the Texas Occupations Code. DEVELOPER will require the engineers engaged by DEVELOPER or DEVELOPER's ARCHITECT to have responsibility for compliance with the engineering design requirements and all other applicable requirements of Chapter 1001 of the Texas Occupations Code. DEVELOPER agrees to comply with all applicable provisions of Texas Administrative Code Title 28, Section 110.110, regarding building or construction contracts with governmental entities and the contractual requirements.

12. Errors and Omissions.

12.1 All SERVICES submitted by DEVELOPER shall be complete and shall be reviewed prior to submission. DEVELOPER understands that OWNER's review is discretionary, and DEVELOPER shall not assume that OWNER will discover errors and/or omissions. If OWNER discovers any errors or omissions prior to approving DEVELOPER's SERVICES, the SERVICES will be returned to DEVELOPER for correction. Should OWNER or others discover errors or omissions in the work submitted by DEVELOPER after OWNER's approval or

acceptance thereof, OWNER's approval or acceptance of DEVELOPER's SERVICES shall not be used as a defense by DEVELOPER to any claims asserted by OWNER.

12.2 If DEVELOPER subcontracts portions of the architectural or engineering design SERVICES to be performed under the terms of this AGREEMENT to DEVELOPER's Consultants/Contractors, DEVELOPER shall obtain evidence that such Consultants/Contractors have purchased Professional Liability Insurance in accordance with the limits as described in Paragraph 13 and containing the same clauses as the insurance required of DEVELOPER under the terms of this AGREEMENT. Evidence of DEVELOPER's Consultants'/Contractors' insurance shall be submitted to OWNER upon request.

13. Insurance.

13.1 Before commencing work under this AGREEMENT, DEVELOPER shall, at its own expense, procure, pay for and maintain the following insurance written by companies approved by the State of Texas and acceptable to the City of McKinney (OWNER). DEVELOPER shall furnish to OWNER Certificates of Insurance executed by the insurer or its authorized agent stating coverage, limits, expiration dates, and compliance with all applicable required provisions. Certificates shall reference the project/contract number and be addressed as follows:

RFQ 22-17RFQ DESIGN / BUILD / FINANCE
McKINNEY NATIONAL AIRPORT
City of McKinney
ATTN: Ian Coubrough, CPPB
P.O. Box 517
McKinney, Texas 75070
Or email to:
icoubrough@mckinneytexas.org

(a) Commercial General Liability insurance, including, but not limited to Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors and Contractual Liability, with minimum limits of $2,000,000 per-occurrence, $4,000,000 general aggregate. Coverage must be written on an occurrence form. The General Aggregate may be written on a per policy basis for the PHASE 1 SERVICES, Design Phase work, only, that is performed under this AGREEMENT.

(b) Workers' Compensation insurance with Texas statutory limits; and Employer's Liability coverage with minimum limits for bodily injury: a) by accident, $1,000,000 each accident, b) by disease, $1,000,000 per employee with a per policy aggregate of $1,000,000.

(c) Business Automobile Liability insurance covering owned, hired and non-owned vehicles, with a minimum combined single limit of $1,000,000.

(d) Umbrella or Excess Liability insurance with minimum limits of $5,000,000 each occurrence and annual aggregate for bodily injury and property damage, that follows form and applies in excess of the above indicated primary coverage (1, 2 and 3). The total limits required may be satisfied by any combination of primary, excess or umbrella liability insurance provided all policies comply with all requirements. The DEVELOPER may maintain reasonable deductibles, subject to approval by the OWNER.

(e) Professional Liability Insurance to provide coverage against any claim which the DEVELOPER or DEVELOPER's Consultants and all consultants engaged or employed by the DEVELOPER's Consultants become legally obligated to pay as damages arising out of the performance of professional services caused by error, omission or negligent act with minimum limits of $1,000,000 per claim, $2,000,000 annual aggregate.

(f) Builder's Risk Insurance will not be required for the PHASE 1 SERVICES, Design Phase work, only, performed under this AGREEMENT.

13.2 With reference to the foregoing required insurance, the DEVELOPER shall endorse applicable insurance policies as follows:

(a) A waiver of subrogation in favor of OWNER, its officials, employees, agents and officers shall be contained in the Workers' Compensation insurance policy.

(b) The OWNER, its officials, employees, and officers shall be covered as additional insureds on the Commercial General Liability and Business Automobile Liability policies.

(c) Policies of insurance shall not be cancelled, non-renewed, or terminated unless and until thirty (30) days' notice has been given to OWNER.

13.3 The total limits required may be satisfied by any combination of primary, excess or umbrella liability insurance provided all policies comply with all requirements. The DEVELOPER and DEVELOPER's ARCHITECT and DEVELOPER's CMAR may maintain reasonable deductibles, subject to approval by the OWNER.

13.4 All insurance shall be purchased from an insurance company that meets a financial rating of A-VI or better as assigned by the A.M. BEST Company or equivalent.

13.5 The DEVELOPER agrees to comply with all applicable provisions of Texas Administrative Code Title 28, Section 110.110, regarding building or construction contracts with governmental entities and the contractual requirements.

(a) Certain language must be included in this AGREEMENT and in the DEVELOPER's contracts with DEVELOPER's Consultants/Contractors, DEVELOPER's CMAR, subcontractors and others relating to the performance of the PHASE 1 SERVICES;

(b) The DEVELOPER is required to submit to the OWNER certificates of coverage for its employees and for all others providing services relating to the performance of the PHASE 1 SERVICES until all PHASE 1 SERVICES are completed; and

(c) The DEVELOPER is required to post certain notices at job sites.

13.6 In addition, all of DEVELOPER's Consultants/Contractors performing work on behalf of DEVELOPER pursuant to this AGREEMENT and DEVELOPER's CMAR and CMAR's contractors shall obtain insurance subject to the same terms and conditions as set forth herein for DEVELOPER, except to the extent that different insurance requirements are set forth in this Section 13. DEVELOPER shall not allow any one or more of DEVELOPER's Consultants/Contractors or DEVELOPER's CMAR to work on the PROJECT to the extent that any such Consultant/Contractor or DEVELOPER's CMAR have less than the level of coverage required by OWNER under this AGREEMENT, except as approved in writing in advance by OWNER. It is the obligation of DEVELOPER to provide notice of the insurance requirements to every Consultant/Contractor and to receive proof of insurance prior to allowing any Consultant/Contractor to begin work. Such proof of insurance must be maintained by DEVELOPER through the entirety of this AGREEMENT for inspection by OWNER's representative(s) at any reasonable time.

13.7 All self-insured retentions (SIRs) or deductibles shall be clearly stated on the Certificate of Insurance. If no deductibles or SIRs apply, indicate this on the Certificate of Insurance with a zero (0) by the appropriate line of coverage. Any deductible or self-insured retention (SIR) in an amount in excess of $250,000 ($25,000 for automobile liability), shall specifically be approved by the OWNER's Risk Manager upon review of DEVELOPER's latest financial reports. The DEVELOPER or DEVELOPER's Consultant/Contractor or DEVELOPER's CMAR that is identified as the named insured shall be responsible for the payment of any deductible and/or SIR. Upon notice of any actual or alleged claim or loss arising out of DEVELOPER's or DEVELOPER's Consultant's/Contractor's or DEVELOPER's CMAR's work hereunder, the responsible party for any actual or alleged claim shall promptly notify the insurance carrier of the claim in order to trigger coverage for the DEVELOPER and Additional Insureds.

13.8 If DEVELOPER fails to maintain the required insurance for the full term of this AGREEMENT, OWNER may terminate this AGREEMENT in accordance with the provisions of Section 7 above.

[Remainder of page intentionally left blank.]

13.9 Coverages for Others

(a) The policy or policies of insurance maintained by DEVELOPER's CMAR shall provide the minimum limits and coverage as set forth below:

Coverage	Minimum Limits
Commercial General Liability, including, but not limited to Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors and Contractual Liability, and Contractor's Pollution Liability and NODS	$2,000,000 per occurrence $4,000,000 general aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	Minimum, Combine Single Limit of $1,000,000 per occurrence
Workers' Compensation	Texas Statutory Limits
Employers' Liability Insurance with Minimum Limits for Bodily Injury	a) by accident, $1,000,000 each accident, b) by disease, $1,000,000 per employee with a per policy aggregate of $1,000,000

(b) The policy or policies of insurance maintained by DEVELOPER's ARCHITECT shall provide the minimum limits and coverage as set forth below:

Coverage	Minimum Limits
Commercial General Liability, including, but not limited to Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors and Contractual Liability	$1,000,000 per occurrence $2,000,000 general aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	$1,000,000 per occurrence
Workers' Compensation	Texas Statutory Limits
Employers' Liability Insurance with Minimum Limits for Bodily Injury	a) by accident, $500,000 each accident, b) by disease, $500,000 per employee with a per policy aggregate of $500,000
Professional Liability	$1,000,000 per claim $2,000,000 aggregate

**Increased limits of insurance may be met with umbrella/excess coverage provided the policy is written on a Follow Form basis. **

14. Indemnification.

14.1 **TO THE FULLEST EXTENT ALLOWED BY LAW, SUBJECT TO THE LIMITATIONS APPLICABLE TO THE SERVICES AND WORK PRODUCT OF ARCHITECTS AND ENGINEERS ONLY AS SET OUT IN TEXAS LOCAL GOVERNMENT CODE § 271.904(A) AND TEXAS CIVIL PRACTICE AND REMEDIES CODE § 130.002(B) AS SUCH STATUTES EXIST ON THE EFFECTIVE DATE OF THIS AGREEMENT, DEVELOPER DOES HEREBY AGREE TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY OF MCKINNEY (OWNER) AND ALL OF ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST ANY AND ALL LIABILITY, CLAIMS, LOSSES, DAMAGES, SUITS, DEMANDS OR CAUSES OF ACTION INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT (SUBJECT TO ANY CONTEMPORANEOUS SIGNED WRITTEN AGREEMENT TO THE CONTRARY BY AND BETWEEN CITY AND DEVELOPER), COURT COSTS AND REASONABLE ATTORNEYS' FEES WHICH MAY ARISE BY REASON OF BODILY INJURY TO OR DEATH OF ANY PERSON OR FOR LOSS OF, DAMAGE TO, OR LOSS OF USE OF ANY TANGIBLE PROPERTY OCCASIONED BY THE WRONGFUL INTENTIONAL ACT, ERROR, OMISSION, OR NEGLIGENT ACT OF DEVELOPER, HIS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, SUB-SUBCONTRACTORS, INVITEES OR ANY OTHER PERSONS, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT, AND DEVELOPER WILL AT HIS OR HER OWN COST AND EXPENSE DEFEND AND PROTECT CITY OF MCKINNEY (OWNER) FROM ANY AND ALL SUCH CLAIMS AND DEMANDS.**

14.2 **TO THE FULLEST EXTENT ALLOWED BY LAW, SUBJECT TO THE LIMITATIONS APPLICABLE TO THE SERVICES AND WORK PRODUCT OF ARCHITECTS AND ENGINEERS ONLY AS SET OUT IN TEXAS LOCAL GOVERNMENT CODE § 271.904(A) AND TEXAS CIVIL PRACTICE AND REMEDIES CODE § 130.002(B) AS SUCH STATUTES EXIST ON THE EFFECTIVE DATE OF THIS AGREEMENT, DEVELOPER DOES HEREBY AGREE TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS CITY OF MCKINNEY (OWNER) AND ALL OF ITS OFFICIALS, OFFICERS, AGENTS, AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, SUITS, DEMANDS OR CAUSES OF ACTION, AND LIABILITY OF EVERY KIND INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT (SUBJECT TO ANY CONTEMPORANEOUS SIGNED WRITTEN AGREEMENT TO THE CONTRARY BY AND BETWEEN CITY AND DEVELOPER), COURT COSTS AND REASONABLE**

ATTORNEYS' FEES FOR BODILY INJURY OR DEATH OF ANY PERSON OR FOR LOSS OF, DAMAGES TO, OR LOSS OF USE OF ANY TANGIBLE PROPERTY, ARISING OUT OF OR IN CONNECTION WITH THE DEVELOPER'S PERFORMANCE OF THIS AGREEMENT. SUCH INDEMNITY SHALL APPLY (SAVE AND EXCEPT AS TO THE SERVICES AND WORK PRODUCT OF ANY ARCHITECT OR ENGINEER HEREUNDER OR AS OTHERWISE PROHIBITED BY CURRENT TEXAS LAW) WHETHER THE CLAIMS, LOSSES, DAMAGES, SUITS, DEMANDS OR CAUSES OF ACTION ARISE IN WHOLE OR IN PART FROM THE ORDINARY NEGLIGENCE OF THE CITY OF MCKINNEY (OWNER), ITS OFFICERS, OFFICIALS, AGENTS OR EMPLOYEES. IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH (A) IS INDEMNITY BY DEVELOPER TO INDEMNIFY AND PROTECT CITY OF MCKINNEY (OWNER) FROM THE CONSEQUENCES OF CITY OF MCKINNEY'S (OWNER'S) OWN ORDINARY NEGLIGENCE, WHETHER THAT NEGLIGENCE IS A SOLE OR CONCURRING CAUSE OF THE INJURY, DEATH OR DAMAGE AND (B) SUCH INDEMNITY SHALL NOT APPLY TO THE GROSS NEGLIGENCE OR WRONGFUL INTENTIONAL CONDUCT OF THE CITY OF MCKINNEY (OWNER) AND ITS OFFICIALS, OFFICERS, AGENTS, AND EMPLOYEES.

14.3 **IN ANY AND ALL CLAIMS AGAINST ANY PARTY INDEMNIFIED UNDER THIS SECTION 14 BY ANY EMPLOYEE OF THE DEVELOPER, ANY SUBCONTRACTOR, ANY SUB-SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION HEREIN PROVIDED SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE DEVELOPER, ANY SUBCONTRACTOR OR SUB-SUBCONTRACTOR UNDER WORKMEN'S COMPENSATION OR ANY OTHER DISABILITY BENEFITS ACT OR EMPLOYEE BENEFIT ACTS.**

14.4 **DEVELOPER SHALL BE RESPONSIBLE FOR AND SHALL HOLD OWNER FREE AND HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO DEVELOPER'S OR ITS SUBCONTRACTOR'S OR ITS SUB-SUBCONTRACTOR'S CONSTRUCTION TOOLS AND EQUIPMENT AND RENTED ITEMS WHICH ARE USED OR INTENDED FOR USE IN PERFORMING THE WORK REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF OWNER, OWNER'S CONSULTANTS, DEVELOPER'S ARCHITECT OR ARCHITECT'S CONSULTANTS. THIS PROVISION SHALL APPLY, WITHOUT LIMITATION, TO LOSS OR DAMAGE OCCURRING AT THE WORK SITE OR WHILE SUCH ITEMS ARE IN TRANSIT TO OR FROM THE WORK SITE AND IS IN ADDITION TO DEVELOPER'S OBLIGATIONS UNDER THIS SECTION 14. IT IS THE EXPRESSED INTENTION OF THE PARTIES HERETO, BOTH**

DEVELOPER AND OWNER, THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH AS TO DEVELOPER'S OR ITS SUBCONTRACTOR'S TOOLS AND EQUIPMENT AND RENTAL ITEMS, IS AN INDEMNITY BY DEVELOPER TO INDEMNIFY AND PROTECT OWNER, SUBJECT TO THE LIMITATIONS IN TEXAS LOCAL GOVERNMENT CODE § 271.904(A) AND TEXAS CIVIL PRACTICE AND REMEDIES CODE § 130.002(B), FROM THE CONSEQUENCES OF FROM THE CONSEQUENCES OF OWNER'S OWN NEGLIGENCE, AND THAT OF OWNER'S CONSULTANTS, THE DEVELOPER'S ARCHITECT AND DEVELOPER'S ARCHITECT'S CONSULTANTS WHETHER THAT NEGLIGENCE IS THE SOLE OR CONCURRING CAUSE OF THE LOSS OR DAMAGE; PROVIDED, THAT WHERE THE NEGLIGENCE OF OWNER OR DEVELOPER'S ARCHITECT IS A CONCURRING CAUSE, DEVELOPER'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER AND DEVELOPER TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER AND DEVELOPER ARE ALL PARTIES.

14.5 **INDEMNIFICATION HEREUNDER SHALL INCLUDE, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, LIABILITY WHICH COULD ARISE TO THE OWNER, ITS AGENTS, CONSULTANTS, AND REPRESENTATIVES PURSUANT TO STATE STATUTES FOR THE SAFETY OF WORKMEN AND IN ADDITION, ALL FEDERAL STATUTES AND RULES EXISTING THEREUNDER FOR PROTECTION, OCCUPATIONAL SAFETY AND HEALTH TO WORKMEN, IT BEING AGREED THAT THE PRIMARY OBLIGATION OF THE DEVELOPER IS TO COMPLY WITH SAID STATUTES IN PERFORMANCE OF THE WORK BY DEVELOPER AND DEVELOPER'S CMAR AND THAT THE OBLIGATIONS OF THE OWNER, ITS AGENTS, CONSULTANTS, AND REPRESENTATIVES UNDER SAID STATUTES ARE SECONDARY TO THAT OF THE DEVELOPER.**

15. Amendments.

No alteration or variation of the terms of this AGREEMENT shall be valid unless made in writing and signed by the PARTIES; no oral understanding or agreement not incorporated herein shall be binding on either of the PARTIES; and no exceptions, alternatives, substitutes or revisions are valid or binding on OWNER unless authorized by OWNER in writing.

16. Successors and Assigns.

The terms and provisions of this AGREEMENT shall be binding upon and inure to the benefit of the PARTIES hereto and their successors and assigns.

17. Entirety.

This AGREEMENT contains the entire agreement between the PARTIES with respect to the matters provided for herein.

18. Severability.

If any part of this AGREEMENT is held, determined, or adjudicated to be illegal, void, or unenforceable by a court of competent jurisdiction, the remainder of this AGREEMENT shall be given effect to the fullest extent reasonably possible.

19. Binding Obligation.

The PARTIES to this AGREEMENT represent and warrant that this AGREEMENT has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity enforceable in accordance with its terms.

20. Governing Law and Venue.

20.1 This AGREEMENT has been negotiated and executed in the State of Texas and shall be governed by and construed under the laws of the State of Texas. In the event of any legal action to enforce or interpret this AGREEMENT, the sole and exclusive venue shall be a court of competent jurisdiction located in Collin County, Texas, and the PARTIES hereto agree to and do hereby submit to the jurisdiction of such court.

20.2 The PARTIES specifically agree that by soliciting and entering into and performing SERVICES under this AGREEMENT, the DEVELOPER shall be deemed to constitute doing business within the City of McKinney, Texas from the time of solicitation of work; through the period when all SERVICES under this AGREEMENT is completed, and continuing until the expiration of any applicable limitations period.

21. Reserved.

22. Ownership of Documents.

All materials, documents and "Instruments of Service" prepared or assembled by or for DEVELOPER specifically in the performance of this AGREEMENT (collectively referred to as "PROJECT DOCUMENTS") shall become the sole property of the OWNER and copies of the PROJECT DOCUMENTS are to be delivered to the OWNER before the final payment is made to the DEVELOPER. DEVELOPER (and its Consultants) will be able to retain a copy of all such PROJECT DOCUMENTS as part of their archival records. It is the intent of the parties that, upon payment for particular PROJECT DOCUMENTS, OWNER will have the exclusive rights to use such PROJECT DOCUMENTS as a whole without restriction on future use. The DEVELOPER and its Consultants may retain copies of the PROJECT DOCUMENTS and all other pertinent information in their respective files. The DEVELOPER and its Consultants shall have no liability

for changes made to any PROJECT DOCUMENTS by others subsequent to the completion of this PROJECT.

23. Confidentiality.

23.1 All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, and all written or other information submitted to DEVELOPER in connection with the performance of this AGREEMENT shall be held confidential by DEVELOPER and/or anyone acting under contract to DEVELOPER and shall not, without the prior consent of OWNER, be used for any purposes other than the performance of the SERVICES, not be disclosed to any person, partnership, company, corporation or agency, that is not connected with the performance of the SERVICES.

23.2 Nothing furnished to DEVELOPER which is generally known among cities in Texas shall be deemed confidential.

23.3 DEVELOPER shall not use OWNER's name or insignia, photographs of the PROJECT, or any other publicity pertaining to the PROJECT in any magazine, trade paper, newspaper, or other medium without the prior written consent of OWNER. DEVELOPER will also use reasonable efforts to prevent anyone acting under the supervision of DEVELOPER from using OWNER's name or insignia, photographs of the PROJECT, or any other publicity pertaining to the PROJECT in any magazine, trade paper, newspaper, or other medium without the prior written consent of OWNER.

24. Publication.

24.1 No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art work, resulting from performance or prepared in connection with this AGREEMENT, are to be released by DEVELOPER and/or anyone acting under the supervision of DEVELOPER to any person, partnership, company, corporation, or agency, without prior written approval by the OWNER, except as necessary for the performance of the services of this AGREEMENT. All press contacts, including graphic display information to be published in newspapers, magazines, etc., are to be administered only after OWNER's advance written approval.

24.2 The DEVELOPER agrees that it will not issue any news releases or make any contact with the media in connection with either the award of this AGREEMENT or any subsequent amendment of, or effort under this AGREEMENT. DEVELOPER must first obtain review and written approval of said media contact from the OWNER. Any requests for interviews or information received by the media shall be referred directly to the OWNER. DEVELOPER is not authorized to serve as a media spokesperson for OWNER and/or OWNER's PROJECT without first obtaining written consent from the OWNER.

25. Records and Audit/Inspections.

25.1 DEVELOPER shall keep an accurate record of costs incurred by DEVELOPER and/or Consultants/Contractors employed by DEVELOPER in the performance of this AGREEMENT.

25.2 Within thirty (30) days of OWNER's written request, or sooner if ordered by a court of competent jurisdiction, DEVELOPER shall allow OWNER or authorized State or Federal agencies or any duly authorized representative thereof to have the right to access, examine, audit, excerpt, copy or transcribe any pertinent transaction, activity, time cards or other records relating to this AGREEMENT and/or the PROJECT.

25.3 DEVELOPER shall keep such material, including all pertinent cost accounting, financial records and proprietary data for a period of two (2) years after termination or completion of the AGREEMENT or until resolution of any claim or dispute between the PARTIES, whichever is later. Prior to discarding such material, DEVELOPER shall offer the above material to OWNER.

25.4 Should DEVELOPER cease to exist as a legal entity, records pertaining to this AGREEMENT shall be forwarded within a reasonable period of time not to exceed sixty (60) days to its successor-in-interest or surviving entity in a merger or acquisition, or, in the event of liquidation, to OWNER.

26. Notices.

26.1 Any and all notices, requests, demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the PARTIES' project managers routine exchange of information and cooperation during the performance of the SERVICES.

26.2 Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand-delivery, or upon delivery on the actual day of receipt, or no greater than four (4) calendar days after being mailed by U. S. certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day.

26.3 All communications shall be addressed to the appropriate PARTY at the address stated herein or such other address as the PARTIES hereto may designate by written notice from time to time in the manner aforesaid.

[Remainder of page intentionally left blank.]

For DEVELOPER:

Name:	Griffin/Swinerton, LLC c/o Griffin Structures, Inc.
Address:	1 Technology Drive, Building I, Suite 829
City:	Irvine, CA 92618
Attn:	Roger Torriero and Korin Crawford
Phone:	949.497.9000
E-mail:	rtorriero@griffinholdings.net kcrawford@griffinswinerton.com

For OWNER:

Name:	City of McKinney
Address:	222 N. Tennessee P.O. Box 517
City:	McKinney, Texas 75069
Attn:	Patricia Jackson and Kenneth Carley
Phone:	972.547.7439 (Patricia Jackson) 972.562.4053 (Kenneth Carley)
E-mail:	pjackson@mckinneytexas.org kcarley@flyTKI.com

27. Attorney's Fees.

In any action or proceeding to enforce or interpret any provision of this AGREEMENT, or where any provision hereof is validly asserted as a defense, each PARTY shall bear its own attorney's fees, costs and expenses.

28. Interpretation.

28.1 This AGREEMENT has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this AGREEMENT.

28.2 In addition, each PARTY acknowledges that it has been represented by experienced and knowledgeable independent legal counsel of their own choosing, or has knowingly declined to seek such counsel despite having the opportunity to do so.

28.3 Each PARTY further acknowledges that they have not been influenced to any extent whatsoever in executing this AGREEMENT by any other PARTY hereto or by any person representing them, or both.

28.4 Accordingly, any rule of law or legal decision that would require interpretation of any ambiguities in this AGREEMENT against the PARTY that has drafted it is not applicable and is waived.

28.5 The provisions of this AGREEMENT shall be interpreted in a reasonable manner to affect the purpose of the PARTIES and this AGREEMENT.

29. Headings.

The various headings and numbers herein, the grouping of provisions of this AGREEMENT into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.

30. Acceptance.

Unless otherwise agreed to in writing by OWNER acceptance shall not be deemed complete unless in writing and until all the services have actually been received, inspected, and tested to the satisfaction of OWNER.

31. Consent to Breach not Waiver.

31.1 No term or provision of this AGREEMENT shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the PARTY claimed to have waived or consented.

31.2 Any consent by any PARTY to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

32. Remedies Not Exclusive.

The remedies for breach set forth in this AGREEMENT are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this AGREEMENT does not preclude resort by either PARTY to any other remedies provided by law.

33. Independent Contractor.

33.1 As referenced in Section 4 of this AGREEMENT, DEVELOPER shall be considered an independent contractor.

33.2 Neither DEVELOPER, its employees nor anyone working under DEVELOPER shall qualify for workers' compensation or other fringe benefits of any kind through OWNER.

34. Changes.

DEVELOPER shall make no changes in the work or perform any additional work without the OWNER'S advance specific written approval.

35. Assignment.

The terms, covenants, and conditions contained herein shall apply to and bind the PARTIES and their approved heirs, successors, executors, administrators and assigns, if any. Furthermore, neither the performance of this AGREEMENT nor any portion thereof may be assigned or sub-contracted by DEVELOPER, by any means whatsoever including but not limited

to acquisition by merger, without the express written consent of OWNER or as specifically permitted herein. Except as set forth herein, any attempt by DEVELOPER to assign or sub-contract the performance or any portion thereof of this AGREEMENT without the express written consent of OWNER shall be invalid and shall constitute a breach of this AGREEMENT. As set forth hereinabove, OWNER hereby consents to DEVELOPER subcontracting the architectural/engineering services to JRMA and pre-construction services to SWINERTON BUILDERS.

36. Changes in Ownership.

DEVELOPER agrees that if there is a change or transfer in ownership in excess of 50% of the ownership of DEVELOPER, including but not limited to merger by acquisition, of DEVELOPER's business prior to completion of this AGREEMENT, the new owners shall be required under terms of sale or other transfer to assume DEVELOPER's duties and obligations contained in this AGREEMENT and to obtain the advance written approval of OWNER of such merger or acquisition (which approval will not be unreasonably withheld, conditioned, or delayed), and complete the obligations and duties contained in the AGREEMENT to the satisfaction of OWNER.

37. Force Majeure.

DEVELOPER shall not be assessed with damages or unsatisfactory performance penalties during any delay beyond the time needed for the performance of this AGREEMENT caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided DEVELOPER gives written notice of the cause of the delay to OWNER within seven (7) days of the start of the delay and DEVELOPER avails itself of any available remedies.

38. Compliance with Laws.

38.1 DEVELOPER represents and agrees that services to be provided under this AGREEMENT shall fully comply, at DEVELOPER's expense, with all applicable standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by OWNER in its governmental capacity and all other laws applicable to the SERVICES at the time SERVICES are provided to and accepted by OWNER.

38.2 DEVELOPER acknowledges that OWNER is relying on DEVELOPER for such compliance, and **pursuant to the requirements of the indemnification paragraph above, DEVELOPER agrees that it shall defend, indemnify and hold OWNER and OWNER INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws**.

39. Calendar Days.

Any reference to the word "day" or "days" herein means "calendar day" or "calendar days," respectively, unless otherwise expressly provided.

40. Breach of Contract.

The failure of the DEVELOPER to substantially comply with any of the material provisions, covenants or conditions of this AGREEMENT shall be a material breach of this AGREEMENT. In such event, in addition to any other remedies available at law, in equity, or otherwise specified in this AGREEMENT, the OWNER may:

40.1 provide the DEVELOPER written notice of the breach and thirty (30) calendar days or such shorter time that may be specified in this AGREEMENT within which to cure the breach;

40.2 discontinue payment to the DEVELOPER for and during the period in which the DEVELOPER is in breach; and

40.3 offset those monies disallowed pursuant to the above, against any monies billed by the DEVELOPER but yet unpaid by the OWNER.

41. Conflict of Interest DEVELOPER Personnel.

41.1 The DEVELOPER shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the OWNER. This obligation shall apply to the DEVELOPER, DEVELOPER's Consultants/Contractors, DEVELOPER's CMAR and their respective employees, agents, and relatives; sub-tier contractors; and third parties associated with accomplishing work and SERVICES hereunder.

41.2 DEVELOPER's efforts shall include, but not be limited to establishing precautions to prevent DEVELOPER, DEVELOPER's Consultants/Contractors, DEVELOPER's CMAR and their respective employees or agents from: making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the OWNER.

42. Title to Data.

42.1 All materials, documents, data or information obtained from the OWNER's data files or any medium furnished by OWNER to the DEVELOPER in the performance of this AGREEMENT, will at all times remain the property of the OWNER. Such data or information may not be used or copied for direct or indirect use by the DEVELOPER after completion or termination of this AGREEMENT without the express written consent of the OWNER.

42.2 All materials, documents, data or information, including copies furnished by OWNER and loaned to DEVELOPER for its temporary use, must be returned to the OWNER at the end of this AGREEMENT unless otherwise specified by the OWNER.

43. Staffing.

The DEVELOPER will maintain an adequate number of competent and qualified persons, as reasonably determined by the OWNER, to ensure acceptable and timely completion of the scope of services described in this AGREEMENT throughout the period of those services.

44. Availability of Funds.

The obligation of OWNER is subject to the availability of funds appropriated for this purpose, and nothing herein shall be construed as obligating the OWNER to expend or as involving the OWNER in any contract or other obligation for future payment of money in excess of appropriations authorized by law.

45. Public Records Act.

Pursuant to the Texas Public Information Act ("TPIA"), Texas Government Code §§ 552.001, *et seq*., all records provided by DEVELOPER to OWNER are subject to public disclosure upon request except as otherwise provided by law. Prior to their submission to OWNER, DEVELOPER shall identify any records it believes are exempt from disclosure, identify the applicable TPIA exemption, and mark or otherwise conspicuously identify those documents as CONFIDENTIAL. If the disclosure of such records is subsequently requested, OWNER will notify DEVELOPER of such request in accordance with Tex. Gov't Code § 552.305 to allow DEVELOPER an opportunity to persuade the Texas Attorney General that the requested information should be withheld. Unless DEVELOPER obtains a decision from the Texas Attorney General that the requested information should be withheld or the DEVELOPER files suit against the Texas Attorney General and obtains a protective order issued by a court of competent jurisdiction restricting disclosure of the requested records, OWNER may disclose the records if OWNER determines that the TPIA requires disclosure. **DEVELOPER shall indemnify and defend OWNER in any action to compel disclosure of such records that DEVELOPER has identified as exempt from TPIA and requested OWNER not to disclose.**

46. Conflict of Interest

46.1 DEVELOPER covenants and agrees that DEVELOPER 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 DEVELOPER pursuant to this AGREEMENT will be conducted by employees, associates or subcontractors of DEVELOPER.

46.2 In addition, to the extent that this AGREEMENT (a) must be approved by the OWNER's governing body before it may be signed or (b) has a value of $1,000,000, or more, DEVELOPER 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 DEVELOPER submits this signed AGREEMENT to OWNER, 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 DEVELOPER 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 DEVELOPER 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 OWNER.

The OWNER 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 Owner.

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/filinginfo/1295/

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

47. Prohibition on Contracts with Companies Boycotting Israel.

In accordance with Chapter 2271, Texas Government Code, a Texas governmental entity may not enter into an agreement with a company for the provision of goods or services unless the agreement 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 agreement.

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 DEVELOPER is not subject to Chapter 2271 for the reasons stated herein, the signatory executing this AGREEMENT on behalf of the DEVELOPER verifies by its signature on this AGREEMENT that the DEVELOPER and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, does not boycott Israel and will not boycott Israel during the term of this AGREEMENT.

48. Prohibition on Contracts with Companies Boycotting Energy Companies

In accordance with Senate Bill 13, 87th Leg., R.S., to be codified in Chapter 2274, 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 energy companies; and (2) will not boycott energy companies during the term of the contract.

Chapter 2274 does not apply to: (1) a company that has fewer than ten (10) full-time employees; or (2) a contract that has a value of less than One Hundred Thousand Dollars ($100,000.00). Unless the DEVELOPER is not subject to Chapter 2274 for the reasons stated herein, the signatory executing this AGREEMENT on behalf of the DEVELOPER verifies by its signature on this AGREEMENT that the DEVELOPER and its parent company, wholly- or

majority-owned subsidiaries, and other affiliates, if any, does not boycott energy companies and will not boycott energy companies during the term of this AGREEMENT.

49. Prohibition on Contracts with Companies That Discriminate Against Firearm and Ammunition Industries

In accordance with Senate Bill 19, 87th Leg., R.S., to be codified in Chapter 2274, 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 have a practice, policy, guidance, or directive that discriminates against any firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against any firearm entity or firearm trade association.

Chapter 2274 does not apply to: (1) a company that has fewer than ten (10) full-time employees; or (2) a contract that has a value of less than One Hundred Thousand Dollars ($100,000.00). In addition, this provision does not apply to: (1) a contract with a sole-source provider; or (2) a contract for which the governmental entity did not receive any bids from a company that is able to provide the required written verification. Unless the DEVELOPER is not subject to Chapter 2274 for the reasons stated herein, the signatory executing this AGREEMENT on behalf of the DEVELOPER verifies by its signature on this AGREEMENT that the DEVELOPER and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, does not have a practice, policy, guidance, or directive that discriminates against any firearm entity or firearm trade association and will not discriminate against any firearm entity or firearm trade association during the term of this AGREEMENT.

50. Prohibition on Contracts with Companies That Support Foreign Terrorist Organizations

In accordance with Senate Bill 252, 85th Leg., R.S., codified in Chapter 2252, Texas Government Code, a Texas governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Section 2252.153 or 2270.0201.

The signatory executing this AGREEMENT on behalf of the DEVELOPER verifies by its signature on this AGREEMENT that neither the DEVELOPER nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website:

- https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf
- https://comptroller.texas.gov/purchasing/docs/iran-list.pdf
- https://comptroller.texas.gov/purchasing/docs/fto-list.pdf.

IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT on the dates opposite their respective signatures:

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: _____