

WHEREAS, due to Developer having previously paid impact fees to cover the Roadway Improvements, Developer shall be entitled to a cash reimbursement in the amount provided for in this Agreement.

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

ARTICLE I

DEFINITIONS

A. Definitions.

1. *Adjusted Cost to Developer* means the difference between the Cost to Developer and the impact fee credits earned by Developer through this Agreement.
2. *City* means the City of McKinney, a Texas home-rule city and municipal corporation situated in Collin County, and includes its representatives, agents, assigns, inspectors, contractors, employees and consultants.
3. *Cost to Developer* means the sum of the estimated construction cost of the Roadway Project and the impact fee previously paid by Developer.
4. *Developer* means **RG MCKINNEY COMMERCE CENTER OWNER LLC**, its representatives, agents, contractors, employees, and consultants.
5. *Development Unit* is the expression of the magnitude of the transportation demand created by each land use planned within a particular development and is used to compute the number of service units consumed by each individual land use application.
6. *Effective Date* means the date on which the City issues final acceptance of the construction of Roadway Improvements.
7. *Notice* means any formal notice or communication required or permitted to be given by one Party to another by this Agreement.
8. *Ordinance* means the “McKinney Impact Fees Article – Roadways” as set forth in Section 130-103, *et seq.*, of the Code of Ordinances, City of McKinney, Texas, and as it may further be amended, including any schedules or exhibits attached thereto.
9. *Parties* means the City and Developer.

10. *Property* means Developer's property known as **McKinney Commerce Center, Lots 1 - 4, Block A**, a description of which is attached hereto as Exhibit A.
11. *Reimbursement Amount* means that amount to be reimbursed to Developer in accordance with this Agreement, totaling **Five Hundred Forty-Nine Thousand, Two Hundred Seventy-Five Dollars (\$549,275.00)**, said amount being equal to the total impact fees paid by the Developer.
12. *Roadway Improvements* means right of way preparation, paving excavation, construction of concrete paving, curbs, signage, roadway transitions, turn lanes, pavement markings, sidewalks, irrigation, landscaping, lighting and any other improvements necessary for a complete roadway system, and all engineering, surveying, inspection and permit fees for the two (2) southbound lanes of **Redbud Boulevard** adjacent to the eastern boundary of the **McKinney Commerce Center, Lots 1 - 4, Block A** subdivision, that is the subject of this Agreement.
13. *Roadway Project* means the Roadway Improvements, approximately 956 linear feet in length, depicted on the civil engineering plans for **McKinney Commerce Center, Lots 1 - 4, Block A**, attached hereto as Exhibit "B" and on file in the City of McKinney Engineering Department;

B. Interpretation of Terms, and Incorporation of Exhibits.

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

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

ARTICLE II

DEVELOPER CONTRIBUTION OF ROADWAY IMPROVEMENTS

A. Roadway Improvements

1. Developer shall construct the Roadway Project depicted on the attached Exhibit B. Developer shall construct all Roadway Improvements appurtenant to the Roadway Project.
2. At this time, the Roadway Project is included in the City's Roadway Improvement Plan ("RIP"). Therefore, Developer is eligible for the following impact fee credits under the Ordinance:
 - a. City agrees to grant Developer impact fee credits in conjunction with the acceptance of the Roadway Project. The impact fee credits shall vest and attach to the Property as of the Effective Date.
 - b. The impact fee credits which shall attach to the Property under this Agreement shall cover **319.3470** development units (290.6057 vehicle-miles of demand) for the design, construction and dedication to the City, at no cost to City, of approximately nine hundred fifty-six linear feet (956') of the two southbound lanes of **Redbud Boulevard**.
3. In addition, due to Developer having previously paid to the City the required impact fees for the Roadway Improvements, the Adjusted Cost to Developer exceeds the Maximum Assessable Impact Fee for the Roadway Project. Accordingly, within sixty (60) days of the City's acceptance of the Roadway Project, City shall make payment to Developer the Reimbursement Amount, totaling **Five Hundred Forty-Nine Thousand, Two Hundred Seventy-Five Dollars (\$549,275.00)**, said amount being equal to the total impact fees paid by the Developer.

ARTICLE III

IMPACT FEE CREDITS

A. Assignment and Expiration of Roadway Impact Fee Credits

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

B. Value of Roadway Improvements

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

C. Use of Impact Fee Credits

Impact fee credits shall be used as development occurs on the Property. Unused impact fee credits shall not be transferable and cannot be applied to other fees, converted to cash, or used on other tracts; however, impact fee credits shall be subject to any reimbursements allowed by then existing ordinances. Upon the exhaustion of the impact fee credits by Developer on the Property, any additional development on the Property (such as the creation of additional lots) shall pay then existing Roadway impact fees or receive credits for construction of additional roadway improvements under then existing ordinances.

D. Developer Responsibilities under Development Ordinances

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

ARTICLE IV

AGREEMENT MAY NOT BE PLEDGED AS COLLATERAL

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

ARTICLE V

GENERAL PROVISIONS

A. Notice of Default; Opportunity to Cure; Remedies

1. Should any Party allege that the other has defaulted in the performance of any obligation hereunder, it will provide at least thirty (30) days written notice to the other Party specifying the nature of the alleged default and opportunity to cure the default before exercising any remedy related to the alleged default.
2. Upon the failure of either Party to comply with the provisions of this Agreement, which failure continues beyond the thirty (30) day notice and cure period provided above, the other Party shall have the right to enforce the terms and provisions of this Agreement by specific performance, or by

such other legal or equitable relief to which the non-defaulting Party may be entitled.

3. Any remedy or relief described in this Agreement shall be cumulative of and in addition to any other remedies and relief available at law or in equity.
4. The foregoing notwithstanding, it is understood and agreed that in addition to any other remedy which the City may have upon default by Developer under this Agreement, should Developer fail to comply with the Subdivision Ordinance or any City development regulation, and such failure continues beyond the thirty (30) day notice and cure period provided above, the City may terminate this Agreement. Upon termination pursuant to this subsection, all impact fee credits shall terminate.

B. *Entire Agreement; Interpretation of this Agreement*

1. This Agreement including any attached exhibits is the entire agreement between the Parties and supersedes all prior or contemporaneous understandings or representations, whether oral or written, respecting the subject matter herein. If there is a conflict between this Agreement and prior written or verbal representations, this Agreement shall control.
2. This Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strictly for or against either Party.

C. *Amendment*

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

D. *No Amendment of Other Agreement*

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

E. *Other Instruments, Actions*

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

F. *No Third Party Beneficiaries*

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

G. *Applicable Law; Venue*

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

H. *Severability*

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

I. *Counterparts*

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

J. *Notices*

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

DEVELOPER:

RG McKinney Commerce Center Owner LLC
Attn: Philip Croker, Senior Managing Director
717 Texas Avenue, Suite 1200
Houston, Texas 77002
Email: pcroker@rockefellergroup.com

CITY OF MCKINNEY:

Office of the City Manager
401 E. Virginia Street
McKinney, Texas 75069

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

K. *No Waiver of Development Ordinances*

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

L. Attorney's Fees

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

M. Governmental Authority

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

N. Assignability

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

O. Binding Obligation

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

P. Waiver of Claims.

Developer has voluntarily agreed to undertake the construction of the Roadway Improvements for the Roadway Project in exchange for impact fee credits to be applied to the Property. The construction of the Roadway Project is not a condition of approval or acceptance the development of the Property. **Developer waives any statutory or state constitutional takings claims under the Texas Constitution and Chapter 395 of the Tex. Loc. Gov't. Code and any federal constitutional claims in connection with this Agreement. Developer further**

releases City from any and all claims based on excessive or illegal exactions. Developer acknowledges the receipt of good and valuable consideration for the release and waiver of such claims. Developer shall indemnify and hold harmless City from any claims and suits of third parties, including but not limited to Developer's successors, assigns, grantees, vendors, trustees or representatives, brought pursuant to this Agreement or the claims or types of claims described in this paragraph.

[Signature Pages Follow]

CITY OF MCKINNEY

By: _____
PAUL G. GRIMES
City Manager

ATTEST:

EMPRESS DRANE
City Secretary
TENITRUS PARCHMAN
Deputy City Secretary

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

THE STATE OF TEXAS,
COUNTY OF COLLIN

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE _____
DAY OF _____, 2025.

Notary Public _____ County, Texas
My commission expires _____

DEVELOPER

RG MCKINNEY COMMERCE CENTER OWNER LLC, a Delaware limited liability company

By: _____
NAME: PHILIP CROKER
Title: Senior Managing Director

Date Signed: _____

THE STATE OF TEXAS,
COUNTY OF _____

This instrument was acknowledged before me on the _____ day of _____, 2025, by PHILIP CROKER, in his capacity as Senior Managing Director of **RG MCKINNEY COMMERCE CENTER OWNER LLC**, a Delaware limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument that he executed the same on behalf of and as the act of said entity.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE _____ DAY OF _____, 2025.

Notary Public Dallas County, Texas
My commission expires _____

PREPARED IN THE OFFICES OF:

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

Exhibit A
Description of Property
(Containing Approximately 19.628 Acres of Land)
(Consisting of the following two (2) sheets)

BEING a tract of land situated in the THOMAS J. MCDONALD SURVEY, ABSTRACT NO. 576, in the City of McKinney, Collin County, Texas, being all of a tract of land described in deed to Abigail G. Kampmann & Kampmann Children's Trust of 1998, et al, as recorded in County Clerk's Instrument No. 20150813001014240, Official Public Records, Collin County, Texas, and being more particularly described as follows:

BEGINNING at a mag-nail with metal disk stamped "W.A.I. R.P.L.S. 5714" set in concrete for the most Southerly Southwest corner of Lot 1, Block A, TSC-McKinney Addition, an addition to the City of McKinney, Collin County, Texas, according to the Plat thereof recorded in Cabinet O, Page 330, Official Public Records, Collin County, Texas;

THENCE North 88 degrees 43 minutes 43 seconds East, along a South line of said Lot 1, Block A, a distance of 384.17 feet to a point for corner from which an "X" cut in concrete found bears North 87 degrees 18 minutes 40 seconds E, a distance of 0.28 feet;

THENCE North 01 degrees 09 minutes 11 seconds West, departing said South line and along an East line of said Lot 1, Block A, a distance of 388.42 feet to a 5/8-inch iron rod with orange plastic cap stamped "5187" found for corner on the South line of a tract of land described in deed to Morton Buildings, Inc., as recorded in Volume 1042, Page 792, Official Public Records, Collin County, Texas;

THENCE North 88 degrees 43 minutes 43 seconds East, along the South line of said Morton Buildings, Inc. tract, a distance of 484.64 feet to a 3/8-inch iron rod found for the Southeast corner of said Morton Buildings, Inc. tract;

THENCE South 00 degrees 12 minutes 49 seconds East, departing the South line of said Morton Buildings, Inc. tract and along the West right-of-way of Redbud Boulevard, a variable width right-of-way, a distance of 949.78 feet to a 1/2-inch iron rod with red plastic cap stamped "W.A.I. 5714" set for corner;

THENCE South 88 degrees 46 minutes 36 seconds West, along the South line of the herein described tract, a distance of 1,184.48 feet to a 1/2-inch iron rod with red plastic cap stamped "W.A.I. 5714" set for corner on the East right-of-way of U.S. Highway 75, a variable width right-of-way;

THENCE North 11 degrees 37 minutes 22 seconds East, along said Easterly right-of-way, a distance of 768.66 feet to a TxDOT (Texas Department of Transportation) aluminum monument found for corner, said monument being situated in the Southerly line of said Lot 1, Block A;

THENCE North 32 degrees 18 minutes 47 seconds East, along the Southerly line of said Lot 1, Block A, a distance of 17.91 feet to a 5/8-inch iron rod found for corner;

THENCE North 88 degrees 43 minutes 43 seconds East, continuing along said Southerly line, a distance of 151.39 feet to a point for corner from which a 5/8-inch iron rod found bears South 65 degrees 18 minutes 07 seconds West, a distance of 0.63 feet, said point being an inner ell corner for said Lot 1, Block A;

THENCE South 01 degrees 09 minutes 11 seconds East, departing said Southerly line and along a West line of said Lot 1, Block A, a distance of 204.00 feet to the POINT OF BEGINNING.

CONTAINING within these metes and bounds 19.628 acres or 855,012 square feet of land, more or less.

Bearings shown hereon are based upon an on-the-ground Survey performed in the field on the 27th day of June, 2023, utilizing a G.P.S. bearing related to the City of McKinney Survey Monument No. 40 and Monument No. 41.

