

ARTICLE I
DEFINITIONS

A. Definitions.

1. *City* means the City of McKinney, a Texas home-rule city and municipal corporation situated in Collin County, and includes its representatives, agents, assigns, inspectors, contractors, employees and consultants.
2. *Developer* means **MM JOPLIN 60, LLC**, its representatives, agents, contractors, employees, and consultants.
3. *Effective Date* means the date on which City accepts the construction of Roadway Improvements.
4. *Notice* means any formal notice or communication required or permitted to be given by one Party to another by this Agreement.
5. *Ordinance* means the "McKinney Impact Fees Article – Roadways" as set forth in Section 130-103, *et seq.*, of the Code of Ordinances, City of McKinney, Texas, and as it may further be amended, including any schedules or exhibits attached thereto.
6. *Parties* means the City and Developer.
7. *Property* means Developer's property known as **Erwin Farms Phase 4**, a description of which is attached hereto as Exhibit A.
8. *Roadway Improvements* means right of way preparation, paving excavation, construction of concrete paving, curbs, signage, roadway transitions, turn lanes, pavement markings, sidewalks, irrigation, landscaping, lighting and any other improvements necessary for a complete roadway system, and all engineering, surveying, inspection and permit fees for the two (2) northbound lanes of **Taylor Burk Drive** adjacent to the western boundary of the **Erwin Farms Phase 4** subdivision, that is the subject of this Agreement.
9. *Roadway Project* means the Roadway Improvements, approximately 2,003 linear feet in length, depicted on Exhibit B, also depicted as Station 9+86.71 to Station 29+90.29 on the civil engineering plans for **Erwin Farms Phase 4**, on file in the City of McKinney Engineering Department;
10. *Single Family Residential Lot* means a lot platted to accommodate a single family or a duplex dwelling unit, as authorized under the City's Zoning Ordinance or Unified Development Code.

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"). The Roadway Project is therefore eligible for impact fee credits under the Ordinance.
3. 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.
4. The impact fee credits which shall attach to the Property under this Agreement shall cover **206** Single Family Residential Lots for the design, construction and dedication to the City, at no cost to City, of approximately two thousand three linear feet (2,003') of the two northbound lanes of **Taylor Burk Drive**.

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 Single Family Residential Lots.

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, 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:

MM Joplin 60, LLC
Attn: Mehrdad Moayedi
1800 Valley View Lane, Suite 300
Farmers Branch, Texas 75234-8945

CITY OF MCKINNEY:

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

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

K. *No Waiver of Development Ordinances*

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

L. *Attorney's Fees*

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

M. *Governmental Authority*

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

N. *Assignability*

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

O. *Binding Obligation*

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

P. Waiver of Claims.

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

CITY OF MCKINNEY

By: _____
PAUL G. GRIMES
City Manager

ATTEST:

EMPRESS DRANE
City Secretary

APPROVED AS TO FORM:


MARK S. HOUSER
City Attorney

DEVELOPER

MM JOPLIN 60, LLC,
a Texas limited liability company

By: MMM Ventures, LLC
a Texas limited liability company
Its Manager,

By: 2M Ventures, LLC
a Delaware limited liability company
Its Manager

By: 
MEHRDAD MOAYEDI
Manager

Date Signed: 4/24/2023

THE STATE OF TEXAS,
COUNTY OF COLLIN

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

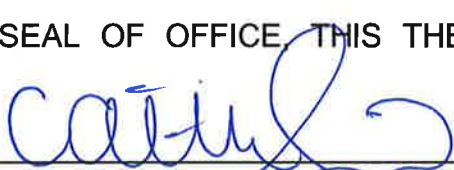
GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE _____ DAY OF _____, 20____.

Notary Public _____ County, Texas
My commission expires _____

THE STATE OF TEXAS,
COUNTY OF DALLAS

This instrument was acknowledged before me on the _____ day of _____, 2023, by MEHRDAD MOAYEDI, in his capacity as Manager of 2M Ventures, LLC, a Delaware limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that 2M Ventures, LLC is the Manager of MMM Ventures, LLC, a Texas limited liability company, and that MMM Ventures, LLC is the Manager of **MM JOPLIN 60, LLC**, a Texas limited liability company, and that he executed the same on behalf of and as the act of **MM JOPLIN 60, LLC**.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 26 DAY OF April, 2023.



Notary Public Dallas County, Texas
My commission expires April 26, 2023

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

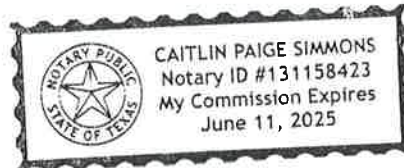


Exhibit A
Description of Property
(Containing Approximately 48.334 Acres of Land)
(Consisting of the following three (3) sheets)

A 48.334 acre tract or parcel of land situated in the HENRY H. TUCKER SURVEY, ABSTRACT NUMBER 907, and the W. W. BUTLER SURVEY, ABSTRACT NUMBER 87, in the City of McKinney, Collin County, Texas, same being a portion of the called 60.123 acre tract as described in an Special Warranty Deed With Vendor's Lien to MM JOPLIN 60, LLC, a Texas limited liability company, as filed for record in Clerk's File Number 20210517000995860, of the Land Records of Collin County, Texas, being more particularly described by metes and bounds as follows:

COMMENCE at a 1/2" iron rebar found for corner at the former northeast corner of said MM JOPLIN 60 tract, said corner now being the northeast corner of the land described in Right-of-Way Warranty Deed to the CITY OF MCKINNEY, also being the former northwest corner of the remaining portion of an 87.923 acre tract of land as described as PHASE 3 of the Special Warranty Deed With Vendor's to CADG ERWIN FARMS, LLC, as filed for record in Clerk's File Number 20170223000236820 of the Land Records of Collin County, Texas, now being the northwest corner of the land described in Right-of-Way Warranty Deed to the CITY OF MCKINNEY, as filed for record in Clerk's File Number 20210423000820790 of the Land Records of Collin County, Texas, said corner also being on the centerline of County Road 164, said line also being on the south boundary of a called 70.099 acre tract of land described in Special Warranty Deed to the CITY OF MCKINNEY, as filed for record in Clerk's File Number 20201217002278280 of the Land Records of Collin County, Texas;

THENCE S 5°16'37" W, along the east and the west boundaries of said CITY OF MCKINNEY Right-of-Ways, also being the former east boundary of said MM JOPLIN 60 tract, also being the former west boundary of said PHASE 3 of the CADG ERWIN FARMS tract, at 25.15 feet pass a 1/2" capped iron rebar (RICHEY) found for corner at the southeast corner and southwest corner of said CITY OF MCKINNEY Right-of-Ways, also being the northeast corner of the land described in Special Warranty Deed to COLLIN COUNTY, TEXAS, as filed for record in Clerk's File Number 20211216002537740 of the Land Records of Collin County, Texas, also being the northwest corner of the land described in Special Warranty Deed to COLLIN COUNTY, TEXAS, as filed for record in Clerk's File Number 20220404000540370 of the Land Records of Collin County, Texas, continuing in all a distance of 545.73 feet to 1/2" capped iron rebar (RICHEY) found for corner at the southeast corner of said COLLIN COUNTY, TEXAS tract and the southwest corner of said COLLIN COUNTY, TEXAS tract, said corner also being on the west boundary of the remaining portion of ERWIN FARMS PHASE 3, according to the Record Plat thereof, as filed for record in Volume 2021, Page 234 of the Plat Records of Collin County, Texas, also being the POINT OF BEGINNING of the hereinafter described tract of land;

From said POINT OF BEGINNING, along the east boundary of said MM JOPLIN 60 tract also being the west boundary of said ERWIN FARMS PHASE 3, the following three (3) courses:

- 1.) S 05°16'37" W, a distance of 1076.85 feet to a 1/2" iron rebar found for corner;
- 2.) S 83°03'40" E, a distance of 473.32 feet to a 1/2" iron rebar found for corner;
- 3.) S 00°50'18" E, a distance of 828.61 feet to a 3/8" iron rebar found for corner;

at the southeast corner of said MM JOPLIN 60 tract also being the southwest corner of said ERWIN FARMS PHASE 3, said corner also being on a north boundary of ERWIN FARMS PHASE 1, according to the Record Plat thereof, as filed for record in Volume 2015, Page 694 of the Plat Records of Collin County, Texas;

THENCE S 88°59'47" W, along the south boundary of said MM JOPLIN 60 tract, also being the north boundary of said ERWIN FARMS PHASE 1, and the north boundary of ERWIN FARMS PHASE 2, according to the Record Plat thereof, as filed for record in Volume 2018, Page 376 of the Plat Records of Collin County, Texas, at 393.99 feet pass a 1/2" capped iron rebar (PETSCH & ASSOC., INC.) found for corner at the northwest corner of said ERWIN FARMS PHASE 1, also being the northeast corner of said ERWIN FARMS PHASE 2, continuing for a total distance of 780.96 feet to a 1/2" capped iron rebar (PETSCH & ASSOC., INC.) found for corner at the northwest corner of said ERWIN FARMS PHASE 2, also being the northeast corner of the land described in General Warranty Deed to THE EAGLE INSTITUTE, a Texas non-profit corporation, as filed for record in Clerk's File Number 20160218000187960 of the Land Records of Collin County, Texas

THENCE S 88°57'49" W, along the south boundary of said MM JOPLIN 60 tract and the north boundary of said THE EAGLE INSTITUTE tract, a distance of 638.07 feet to a 1/2" capped iron rebar (PETSCH & ASSOC., INC.) found for corner at the southeast corner of the land described in Right-of-Way Warranty Deed to the CITY OF MCKINNEY, as filed for record in Volume 5840, Page 3157 of the Land Records of Collin County, Texas;

THENCE N 09°35'50" E, departing the south boundary of said MM JOPLIN 60 tract, along the east boundary of said CITY OF MCKINNEY Right-of-Way tract, a distance of 20.14 feet to a 1/2" capped iron rebar (PETSCH & ASSOC., INC.) found for corner at the northeast corner of said CITY OF MCKINNEY Right-of-Way tract;

THENCE S 88°57'49" W, along the north boundary of said CITY OF MCKINNEY Right-of-Way tract a distance of 40.57 feet to a 1/2" capped iron rebar (PETSCH & ASSOC., INC.) found for corner at the northwest corner of said CITY OF MCKINNEY Right-of-Way tract, said corner also being the southerly most west boundary of said MM JOPLIN 60 tract, and the easterly boundary of COUNTY ROAD 943, according to the Final Plat thereof, as filed for record in Volume 2023, Page , of the Plat Records of Collin County, Texas.

THENCE N 08°36'08" E, along the southerly most west boundary of said MM JOPLIN 60 tract and the east boundary of said COUNTY ROAD 943, a distance of 979.35 feet to a 1/2" iron rod found for corner at an ell corner of said MM JOPLIN 60 tract and said COUNTY ROAD 943;

THENCE S 89°17'03" E, along the northerly most south boundary of said MM JOPLIN 60 tract and said COUNTY ROAD 943, a distance of 29.69 feet to a 1/2" capped iron rebar (PETSCHER & ASSOC., INC.) found for corner;

THENCE N 00°42'57" E, along the northerly most west boundary of said MM JOPLIN 60 tract, and the east boundary of said COUNTY ROAD 943, a distance of 931.51 feet to a 1/2" capped iron rebar (RICHEY ENG.) found for corner at the southwest corner of the aforesaid COLLIN COUNTY, TEXAS tract;

THENCE N 85°50'09" E, crossing said MM JOPLIN 60 tract, along the south boundary of said COLLIN COUNTY, TEXAS tract filed for record in Clerk's File Number 20211216002537740 of the Land Records of Collin County, Texas, a distance of 887.92 back to the POINT OF BEGINNING and containing 48.334 Acres, (2,105,436 Square Feet) of land MORE OR LESS.

Exhibit B

ROADWAY PROJECT PLAN

