

AFTER RECORDING, RETURN TO:

City Secretary
City of McKinney
P.O. Box 517
222 N. Tennessee Street
McKinney, Texas 75069

**City of McKinney, Texas
FACILITIES AGREEMENT**

(Rough Proportionality of Required Improvements)

McKinney Bluff Addition, Lots 1 and 2, Block A

THIS AGREEMENT, entered into effective the ___ day of _____, 2023, by and between **CITY OF MCKINNEY**, a Texas municipal corporation and home-rule city ("CITY"), and **MCKINNEY BLUFF, LLC**, a Texas limited liability company whose mailing address is 3317 Garden Brook Drive, Farmers Branch, Texas 75234, ("LANDOWNER") witnesseth that:

WHEREAS, Article 3 of the Unified Development Code of the City of McKinney, Texas, contained in Chapter 150 of the City's Code of Ordinances (the "Subdivision Regulations"), establishes procedures and standards for the development and subdivision of real estate and for the surveying and platting thereof, requiring the installation of adequate public facilities to serve the subject property and providing penalties for violations, among other things; and

WHEREAS, Section 301C of the Subdivision Regulations extends the application of the Subdivision Regulations to all of the area outside of the corporate limits of the CITY, but within the extra-territorial jurisdiction of the CITY ("ETJ"); and

WHEREAS, Section 302B(1)(c) of the Subdivision Regulations requires the execution of a Facilities Agreement prior to the issuance of a Development Permit for the clearing, grading, filling, dredging, or construction of public streets, utilities, or drainage, or other improvements which may affect adjacent or surrounding properties in certain circumstances described in Section 302A of the Subdivision Regulations, as amended; and

WHEREAS, the development of the two-lot subdivision to be known as the **McKinney Bluff Addition, Lots 1 and 2, Block A**, which subdivision is situated in the ETJ of the City of McKinney, involves certain pro rata reimbursements, city participation in cost, the escrow of funds in lieu of constructing improvements, and/or other nonstandard development regulations or terms, that trigger the requirement for a Facilities Agreement by and between the CITY and the LANDOWNER in accordance with Section 302A of the Subdivision Regulations, as amended; and

WHEREAS, the Subdivision Regulations also prohibit recording the Final Plat of a subdivision within the incorporated area of the City until the LANDOWNER has completed all of the public facilities required to serve the property being developed that must be dedicated to the City (“Public Improvements”) or has entered into a Facilities Agreement and guaranteed to the satisfaction of the CITY such improvements will be installed; and

WHEREAS, LANDOWNER has appealed, or requested a waiver or variance, from the requirements that the Public Improvements identified in Paragraph D, below, (the “Appealed Improvements”) must be designed and constructed before the recording of the Final Plat of the two-lot subdivision in the ETJ, to be known as the **McKinney Bluff Addition, Lots 1 and 2, Block A**, (the “Plat”) because the required design and construction of those Appealed Improvements is not roughly proportionate to the impact generated by the development proposed to be constructed on the “Property,” defined below, as required by Texas Local Government Code § 212.904; and

WHEREAS, CITY concurs that the construction of two lots designed for light industrial buildings on both lots on the Property that is being platted as the **McKinney Bluff Addition, Lots 1 and 2, Block A**, does not generate impacts roughly proportionate to require the design and construction of the Appealed Improvements but cannot unilaterally enforce the City’s zoning ordinance in the ETJ to restrict the use of the Property for two lots; and

WHEREAS, CITY and LANDOWNER desire to enter into a Facilities Agreement through a Development Agreement authorized by Section 212.172 of the Texas Local Government Code that will allow for the conditional deferral of the design and construction of the Appealed Improvements, specify the uses that can be made of the Property, and require that the Appealed Improvements be designed and constructed prior to any change or modification in the use presently proposed for the Property all as provided hereinafter below.

NOW THEREFORE, in consideration of the intent and desire of the LANDOWNER, as set forth herein, and to gain approval of the CITY to record said Plat, the LANDOWNER and CITY agree as follows:

A. PROPERTY

This Agreement is for Property located in the City of McKinney’s extra-territorial jurisdiction, containing approximately 5.186 acres of land, more or less, in the Thomas Rhodes Survey, Abstract No. 741, Collin County, Texas, at an address more commonly known as 3342 Farm to Market Road 1827, and more fully described and depicted in the Final Plat of the **McKinney Bluff Addition, Lots 1 and 2, Block A**, attached hereto as Exhibit A and fully incorporated herein by reference for all purposes allowed by law (the “Property”).

B. USES ALLOWED ON PROPERTY

The use of the Property shall be limited to a total combined floor area of eighteen thousand (18,000) square foot of warehouse or office or flexible warehouse building(s) for light industrial type uses. Subject to the foregoing restrictions and the specific limitations set forth herein, the use of the Property shall otherwise conform to the requirements of the I1 - Light Industrial District as set out in Article 2, Section 204S of the Unified Development Code of the City of McKinney, Texas, as codified in Chapter 150 of the City's Code of Ordinance through Ordinance No. 2022-11-130, enacted on November 15, 2022. However, due to the fact that the Public Improvements required to serve the full development potential of the Property are not being designed and constructed by LANDOWNER, the following permitted, accessory or temporary uses or uses permitted by a specific use permit or in compliance with use-specific criteria under the I1 - Light Industrial District as identified in the Table of Uses are prohibited:

1. Community care facility
2. Community transition facility (SUP)
3. Crisis support facility
4. Displacement shelter (SUP)
5. Arts or cultural center
6. Auto, motorcycle, truck, or boat, rental or sales (SUP)
7. Banks and financial services
8. Body art studio
9. Car wash
10. Civic club or fraternal organization
11. Clinic, medical or dental
12. College or university
13. Commercial entertainment, indoor or outdoor
14. Commercial laundry
15. Community garden (CUP)
16. Cottage industrial (CUP)
17. Country club (CUP)
18. Data center
19. Day care center (CUP)
20. Dirt or topsoil extraction, sand or gravel mining or storage (SUP)
21. Dispatch office (CUP)
22. Electric vehicle charging facility (CUP)
23. Fairgrounds or rodeo grounds
24. Farmers' market, permanent
25. Food and beverage processing
26. Fuel sales, passenger vehicles (CUP) or truck (SUP)
27. Funeral home or mortuary
28. Government facilities (city, excluding airport uses)
29. Gun range, indoor
30. Gym or fitness studio
31. Heavy machinery, rental, sales, and storage (SUP)

32. Hospital
33. Hotel or motel
34. Livestock auction
35. Microbrewery, distillery, winery or cidery
36. Motor freight terminal
37. Pawn show
38. Personal service
39. Power plant or electrical generating station
40. Radio or TV broadcast station
41. Railroad freight terminal
42. Reception or event center, indoor or outdoor
43. Recreation area, private
44. Recreational vehicles, rental or sales (SUP)
45. Recycling facility (CUP)
46. Religious assembly
47. Restaurant, brew pub, carry out and delivery only, dine-in (CUP), drive-in (CUP) or drive-through (CUP)
48. Retail sales
49. School, business or trade, public, private or parochial
50. Solar farm
51. Stable, commercial (CUP)
52. Transportation station (SUP)
53. Utility substation (SUP)
54. Caretaker's or watchman's quarters (A)
55. Electric vehicle charging station (A)
56. Helistop (A)
57. Batch plant (outdoor), temporary (T)
58. Construction field office (T)
59. Religious or philanthropic uses (T)
60. Seasonal sales (T)
61. Warming station (T)
62. Food trucks, operation sites, and food truck courts
63. Private club (SUP)
64. Wind energy conversion system (WECS) (CUP)

C. DEDICATIONS FOR PUBLIC IMPROVEMENTS

LANDOWNER hereby agrees to dedicate the following easements and rights-of-way at no cost to CITY, and reserve certain other easements or rights-of-way for future acquisition by the City, in accordance with the CITY's Subdivision Regulations and as approved by CITY Engineer.

1. THOROUGHFARES

- a. LANDOWNER shall dedicate, at no cost to CITY, that amount of right-of-way along perimeter roadways adjacent to the Property (as reflected on the

plat heretofore approved by the CITY) which dedication will yield one-half (½) of the ultimate right-of-way width that is not already dedicated by plat or legal instrument as road right-of-way at such time as the Property is platted. If platting of the Property is delayed and the perimeter roadway right-of-way described above has not previously been dedicated, LANDOWNER shall dedicate the right-of-way along perimeter roadways adjacent to the Property as required herein above upon receipt of the written request of the CITY's Engineer. Such right-of-way dedication shall include:

1. No right-of-way dedications are required at this time.
- b. LANDOWNER further agrees to provide a twenty-four foot (24') Mutual Access Easement to adjacent properties along the frontage of FM 1827.

2. UTILITIES

LANDOWNER shall dedicate all easements, at no cost to CITY, specifically including, but not limited to, easements for water, sanitary sewer and storm water drainage to provide service to the Property in accordance with CITY standards, at such time as the Property is platted. If platting of the Property is delayed and the easements described herein have not previously been dedicated, LANDOWNER shall dedicate the easements as required herein upon receipt of the written request of the CITY's Engineer.

- a. A fifteen foot (15') wide water easement running along the western boundary of the Property, as more particularly depicted in the Plat attached hereto as Exhibit "A" and incorporated herein by reference for all purposes allowed by law.

D. CONDITIONAL DEFERRAL OF CONSTRUCTION OF CERTAIN PUBLIC IMPROVEMENTS UNTIL FURTHER DEVELOPMENT OCCURS

1. LANDOWNER has appealed, or requested a waiver or variance, from the requirements of Section 301E of the Subdivision Regulations that the LANDOWNER shall design and construct certain Public Improvements because the LANDOWNER's portion of the costs required for such Public Improvements exceed the amount that is roughly proportionate to the proposed development to be constructed on the Property as set forth in Paragraph B, above, and that such exactions exceed the limits allowed by Texas Local Government Code § 212.904.
2. CITY agrees that the required exactions exceed the impacts of the two lots to be constructed on the Property as set forth in Paragraph B, above, and hereby determines that LANDOWNER is conditionally relieved of the obligation to design and construct the following Public Improvements, at no cost to CITY, as required by Section 301E of the Subdivision Regulations:

- a. The requirement to construct a minimum twenty-four foot (24') wide concrete curb and gutter pavement section of Farm to Market Road 1827, including the associated street lighting, sidewalks, underground drainage systems, and other appurtenances; and
 - b. The requirement to construct on-site and, if necessary off-site, underground storm drainage facilities to capture storm water drainage upon and across the Property; and
 - c. The requirement to construct a minimum sixteen-inch (16") diameter water line along Farm to Market Road 1827, including approximately four (4) miles of offsite sixteen-inch (16") to twenty-four-inch (24") minimum diameter water lines and appurtenances capable of supplying adequate domestic and fire flow to and through the Property from the nearest City of McKinney water line; and
 - d. The requirement to construct a minimum eight-inch (8") diameter sanitary sewer line to the Property together with approximately three (3) miles of offsite fifteen-inch (15") to thirty-inch (30") minimum diameter sanitary sewer lines capable of serving the property from the nearest City of McKinney sewer line.
3. Notwithstanding the foregoing, at such time as the Property is further subdivided or replatted or the use of the Property is altered, changed, increased, expanded or enlarged from the uses identified in Paragraph B above, ("Change in Conditions") the conditional relief or deferral afforded to the LANDOWNER from the requirements of Section 301E of the Subdivision Regulations as enunciated in Paragraph No. 2 of this Paragraph D shall terminate and the LANDOWNER shall be required to promptly, and no later than sixty (60) days after such Change in Conditions occurs to, conform to all CITY development ordinances then applicable to the Property. However, the Property could be replatted to incorporate additional adjacent raw undeveloped land into the Property without terminating the conditional relief or deferral afforded to the LANDOWNER by and through Paragraph No. 2 of this Paragraph D provided that there is no other Change in Condition associated with the Property or the additional adjacent raw undeveloped land incorporated into the Property by such replat. In addition, LANDOWNER reserves the right to seek a modification of, or an amendment to, this Agreement in advance of any Change in Conditions proposed by LANDOWNER to avoid the termination of the conditional relief or deferral afforded to the LANDOWNER by and through this Agreement.
4. At such time as the Property or any part or portion of the Property is connected to the City's potable water system and/or sanitary sewer system, LANDOWNER shall pay all then applicable tap fees, connection fees, meter fees, impact fees, pro rata fees and/or service fees as may be required by CITY

regardless of the name by which such fees and charges may be called subject to the requirements of state law.

E. CONDITIONAL VARIANCES ALLOWED UNTIL FURTHER DEVELOPMENT OCCURS

1. For so long a period of time as the conditional deferral of designing and constructing the Public Improvements identified in Paragraph D are in effect and allowed, the following conditional variances to the then currently adopted edition of the Subdivision Regulations are permitted **provided that the LANDOWNER indemnify and holds the CITY harmless from and against any and all claims arising out of or in any way related to the following conditional variances requested by LANDOWNERS:**
 - a. The LANDOWNERS will not be required to install roadway improvements that are capable of providing adequate public and emergency services access intended for the safe, efficient, and orderly development of the City to all or any part of the Property, as required by Section 301E of the Subdivision Regulations.
 - b. The LANDOWNER will not be required to install a water system that is capable of furnishing the domestic flow and fire flow and pressures intended to provide sufficient fire protection for the safe, efficient and orderly development of the City to all or any part of the Property, as required by Section 301E of the Subdivision Regulations.
 - c. The LANDOWNER will not be required to install a sanitary sewer system that is capable of servicing the domestic wastewater flow intended for the safe, efficient, and orderly development of the City to all or any part of the Property, as required by Section 301E of the Subdivision Regulations.
 - d. The LANDOWNER will be allowed to use a properly permitted on-site sewerage facility (OSSF) that conforms to all requirements of the Texas Commission on Environmental Quality, Collin County (OSSF permitting authority), and the CITY.
 - e. The LANDOWNER will not be required to collect drainage in an underground storm water system intended for the safe, efficient, and orderly development of the City to all or any part of the Property, as required by Section 301E of the Subdivision Regulations.
2. Notwithstanding the foregoing, at such time as the Property is further subdivided or replatted or the use of the Property is altered, changed, increased, expanded or enlarged from the uses identified in Paragraph B above, or the zoning on that portion of the Property which is situated within the City's corporate limits is changed to a more intense use, the conditional

variances afforded to the LANDOWNER as enunciated in Paragraph No. 1 of this Paragraph E shall terminate and the LANDOWNER shall be required to promptly, and no later than sixty (60) days after such Change in Conditions occurs to, conform to all CITY development ordinances then applicable to the Property. However, the Property could be replatted to incorporate additional adjacent raw undeveloped land into the Property without terminating the conditional relief or deferral afforded to the LANDOWNER by and through Paragraph No. 2 of Paragraph D of this Agreement provided that there is no other Change in Condition associated with the Property or the additional adjacent raw undeveloped land incorporated into the Property by such replat. In addition, LANDOWNER reserves the right to seek a modification of, or an amendment to, this Agreement in advance of any Change in Conditions proposed by LANDOWNER to avoid the termination of the conditional relief or deferral afforded to the LANDOWNER by and through this Agreement.

F. CITY DEVELOPMENT ORDINANCES

If LANDOWNER decides to develop the Property, LANDOWNER shall develop the Property in accordance with the standards as set forth in the City of McKinney zoning, subdivision and land development ordinances that are applicable in the ETJ or pursuant to this Agreement, including but not limited to provisions as to drainage, erosion control, pro rata payments, storm water, tree preservation, impact fees, Street Design Standards, Public Improvements Policy and construction standards except as herein specifically agreed to the contrary.

G. NO WAIVER

LANDOWNER expressly acknowledges that by entering into this Agreement, LANDOWNER, their successors, assigns, vendors, grantees, and/or trustees, shall not construe any language contained herein or in any Exhibits as waiving any of the requirements of the Subdivision Regulations or any other ordinance of the CITY except as herein specifically agreed.

H. VARIANCES

It is expressly acknowledged that only those variances to the Subdivision Regulations or other applicable CITY ordinances specifically stipulated in this Agreement are granted by CITY for this subdivision and/or development.

I. INDEMNITY AND HOLD HARMLESS AGREEMENT

LANDOWNER, their successors, assigns, vendors, grantees, and/or trustees does hereby agree to fully indemnify, protect and hold CITY harmless from all third-party claims, suits, judgments, and demands, including its reasonable attorney's fees, arising out of the sole or concurrent negligence of LANDOWNER, and only to the extent or percentage attributable to

LANDOWNER, in the subdividing, development, or construction of public improvements, including the negligent maintenance thereof. LANDOWNER shall not be responsible for or be required to indemnify CITY from CITY'S own negligence. LANDOWNER, their successors, assigns, vendors, grantees, and/or trustees do hereby further agree to fully indemnify, protect and hold CITY harmless from and against any and all claims arising out of or in any way related to the CITY's approval and granting and/or termination of the conditional deferrals and conditional variances requested by LANDOWNER and set out in Paragraphs D and F above. The indemnity contained in this Paragraph shall expire five (5) years from the date of termination of this Agreement.

J. WITHHOLDING APPROVALS AND PERMITS

In the event LANDOWNER fails to comply with any of the provisions of this Agreement, CITY shall be authorized to withhold any plat approvals and/or requests for permits associated with any development on the Property that conflicts with the provisions of Paragraph B of this Agreement or which requires compliance to Paragraphs D.3, D.4, or E.2 of this Agreement.

K. ROUGH PROPORTIONALITY AND WAIVER OF CLAIMS.

LANDOWNER has been represented by legal counsel in the negotiation of this Agreement and been advised, or has had the opportunity to have legal counsel review this Agreement and advise LANDOWNER, regarding LANDOWNER's rights under Texas and federal law. LANDOWNER hereby waives any requirement that the CITY retain a professional engineer, licensed pursuant to Chapter 1001 of the Texas Occupations Code, to review and determine that the exactions required by the CITY as a condition of approval for the development of this Property are roughly proportional or roughly proportionate to the proposed development's anticipated impact. (These exactions may include but are not limited to the making of dedications or reservations of land, the payment of fees, the construction of facilities, and the payment of construction costs for public facilities.) LANDOWNER specifically reserves their right to appeal the apportionment of municipal infrastructure costs in accordance with Tex. Loc. Gov't Code § 212.904. **However, notwithstanding the foregoing, LANDOWNER hereby releases the City from any and all liability under Tex. Loc. Gov't Code § 212.904 regarding or related to the cost of any municipal infrastructure improvements required for the development of the Property.**

It is the intent of this Agreement that the provision for roadway and utility improvements made herein constitutes a proportional allocation of LANDOWNER's responsibility for roadway and utility improvements for the Property. LANDOWNER hereby waives any federal constitutional claims and any statutory or state constitutional takings claims under the Texas Constitution and Chapter 395 of the Tex. Loc. Gov't. Code. LANDOWNER further releases CITY

from any and all claims based on excessive or illegal exactions; it being agreed that LANDOWNER's infrastructure contribution(s) (after receiving all contractual offsets, credits and reimbursements as well as the conditional deferrals and conditional variances granted herein) is roughly proportional or roughly proportionate to the demand that is placed on the roadway and utility systems by LANDOWNER's Property. LANDOWNER further acknowledges that the benefits of platting have been accepted with full knowledge of potential claims and causes of action which may be raised now, and in the future, and LANDOWNER acknowledges the receipt of good and valuable consideration for the release and waiver of such claims. **LANDOWNER shall indemnify and hold harmless CITY from any claims and suits of third parties, including but not limited to LANDOWNER's successors, assigns, grantees, vendors, trustees or representatives, brought pursuant to this Agreement or the claims or types of claims described in this paragraph.**

L. CONTINUITY

This Agreement shall be a covenant running with the land, and be binding upon LANDOWNER, their successors, heirs, assigns, grantees, vendors, trustees, representatives, and all others holding any interest now or in the future.

M. ASSIGNABILITY

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

N. TERM

Pursuant to Section 212.172 of the Texas Local Government Code this Agreement may be valid for a term of up to forty-five (45) years unless earlier terminated by breach or pursuant to the specific provisions of Paragraphs D or E of this Agreement.

O. GENERAL PROVISIONS

1. LANDOWNER agrees that construction shall not begin on any proposed building improvements prior to City Council approval of this Agreement.
2. LANDOWNER agrees that all coordination required with public and/or private utility agencies to eliminate conflicts with proposed street grades or underground improvements shall be the responsibility of LANDOWNER. Likewise, coordination with agencies requiring special conditions (i.e., railroads and the Texas Department of Transportation) shall be the responsibility of LANDOWNER.

3. CITY agrees to record said Plat at such time as the Plat complies with the requirements set forth by the Subdivision Regulations of CITY, and has been approved in the manner described therein.

CITY OF MCKINNEY

By: _____
PAUL G. GRIMES
City Manager

Date Signed: _____

ATTEST:

EMPRESS DRANE
City Secretary

LANDOWNER:

MCKINNEY BLUFF, LLC,
a Texas limited liability

By: _____
Name: _____
Title: _____

Date Signed: _____

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 _____, 2023.

Notary Public _____ County, Texas
My commission expires _____

THE STATE OF TEXAS,
COUNTY OF COLLIN

This instrument was acknowledged before me on the ____ day of _____, 2023, by _____ in his/her capacity as _____ of **MCKINNEY BLUFF, LLC**, a Texas limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes set forth therein.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE ____ DAY OF _____, 2023.

Notary Public _____ 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

FINAL PLAT OF PROPERTY

