

LICENSE AGREEMENT

This **LICENSE AGREEMENT** (this "**Agreement**") is dated and entered into as of November [], 2024 (the "**Effective Date**"), between the **CITY OF PFLUGERVILLE** ("**Licensor**"), a Texas home-rule municipality, and **GRIFFIN/SWINERTON, LLC**, a Delaware limited liability company ("**Licensee**" and, together with Licensor, each a "**Party**" and collectively, the "**Parties**").

BACKGROUND:

1. Licensor is the owner of property identified on EXHIBIT A (the "**Licensed Areas**").
2. Licensor, as lessor, and Licensee, as lessee, have entered into that certain Ground Lease Agreement dated as of even date herewith (as the same may be hereafter amended, modified, supplemented, restated and/or replaced, the "**Ground Lease**"). Capitalized terms used but not defined in this Agreement shall have the meanings given such terms in (or by reference in) the Ground Lease. Pursuant to the Ground Lease, Licensor leased to Licensee certain real property and interests therein, on which the Leased Premises, the Parties intend for Licensee to design, develop, construct, furnish and equip the City Facilities and Horizontal Site Infrastructure (as is more particularly described and defined in the Ground Lease).
3. In order to complete the Project (as is more particularly described and defined in the Ground Lease), it is necessary that Licensee be granted access to enter onto and access the Licensed Areas to design, develop, construct, and install certain portions of the Horizontal Site Infrastructure, in accordance with the terms set forth herein and in the Ground Lease
4. **ACCORDINGLY**, for and in consideration of Ten and No/100 Dollars (\$10.00) in hand paid by each party hereto to the other, the premises, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged by the parties hereto, Licensee and Licensor do hereby covenant and agree as follows:

1. License Conveyed. Subject to the terms and conditions of (or referenced in) this Agreement, the Ground Lease, and all matters of record and apparent and visible easements and rights of way, Licensor hereby grants and conveys to Licensee (the "**License**") a temporary, non-exclusive construction license to allow Licensee to enter onto and use, and to allow the Lessee Responsible Parties to enter onto, and use, the Licensed Areas. Such license is granted to Licensee and the Lessee Responsible Parties for the sole and exclusive purposes of the design, development, construction, and installation of the Horizontal Site Infrastructure. All construction activities related to this License shall be performed by Licensee and the Lessee Responsible Parties in accordance with the terms of the Ground Lease. The temporary license conveyed herein shall commence on the Effective Date and automatically terminate upon the earlier to occur of (i) Substantial Completion of the Horizontal Site Infrastructure and in accordance with the terms of the Ground Lease, or (ii) the earlier termination of the Ground Lease in accordance with its terms, in each case without any further action by Licensor (the "**License Term**").

2. General Terms and Conditions.

- (a) *Nature of License.* Licensee hereby covenants and agrees that it shall only be permitted enter onto and use, and to allow the Lessee Responsible Parties to enter onto and use, the licensed areas as set forth herein solely for the express purposes and uses described in this Agreement and for no other uses unless and until, and then solely to the extent mutually and specifically agreed to in writing by Licensor. Other than the recording of the Memorandum of Lease in the Real Property Records, neither this Agreement nor any memorandum or other instrument encumbering the Licensed Areas shall be recorded in the Real Property Records.

(b) *Insurance.* Without limiting any of Licensee's other obligations herein or under the Ground Lease, prior to Licensee having the right to commence the above-described activities on the Licensed Areas, Licensee hereby acknowledges and agrees that Licensee, its contractors, and subcontractors shall obtain and shall at all times thereafter maintain policies of insurance as described and in accordance with EXHIBIT E of the Ground Lease.

(c) *Applicability of Ground Lease.* The terms, conditions and requirements set forth in this Agreement with respect to the License shall be in addition to, and not in limitation of (unless expressly otherwise provided herein or in the Ground Lease), the terms, conditions and requirements set forth in the Ground Lease applicable to the performance of Project Work.

3. Environmental Regulations. Licensee shall conduct its activities in compliance with applicable laws and regulations relating to the environment and its protection at all times. Licensee is responsible for all items it brings to the Licensed Areas, including hazardous materials, and all such items brought to the Licensed Areas by any Lessee Responsible Parties, or by other entities subject to direction of Licensee. Any hazardous materials brought onto the Project Site or Licensed Areas by Licensee shall be in compliance with applicable laws and regulations relating to the environment and its protection at all times. Upon encountering any previously unknown potentially hazardous material, or other materials potentially contaminated by hazardous material, Licensee shall immediately stop any activities Licensee impacted by the discovery, secure the affected area, and notify Licensor immediately.

4. Indemnity. **The terms and conditions of Article 8 of the Ground Lease (entitled "Indemnity by Lessee"), including without limitation Licensee's obligations under the Ground Lease to indemnify, defend and hold harmless Licensor and the Indemnitees (as defined therein) with respect to certain matters set forth therein, are incorporated in this Agreement by reference as if set forth in full herein, as the same apply to the performance of the activity contemplated herein, the default by Licensee under this Agreement and any other matters related to or arising from this Agreement. The provisions of or referenced in this Section 4 shall survive the expiration of the License Term or earlier termination of this Agreement.**

5. Condition of the Licensed Areas. IT IS UNDERSTOOD AND AGREED THAT THE LICENSED AREAS ARE BEING LICENSED HEREUNDER "AS IS", "WHERE-IS" WITH ANY AND ALL FAULTS AND LATENT AND PATENT DEFECTS WITHOUT ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY BY LICENSOR. LICENSOR HAS NOT MADE AND DOES NOT HEREBY MAKE, AND HEREBY SPECIFICALLY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR CHARACTER WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE LICENSED AREAS, ITS CONDITION (INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY REGARDING SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE), COMPLIANCE WITH ENVIRONMENTAL LAWS OR OTHER LAWS, OR ANY OTHER MATTER OR THING RELATING TO OR AFFECTING THE LICENSED AREAS OR THE PROJECT, AND LICENSOR HEREBY DISCLAIMS AND RENOUNCES ANY OTHER REPRESENTATION OR WARRANTY AS OF THE EFFECTIVE DATE.

LICENSEE ACKNOWLEDGES AND AGREES THAT IT IS ENTERING INTO THIS AGREEMENT WITHOUT RELYING UPON ANY REPRESENTATION, WARRANTY, STATEMENT OR OTHER ASSERTION, ORAL OR WRITTEN, MADE BY LICENSOR OR ANY REPRESENTATIVE OF LICENSOR OR ANY OTHER PERSON ACTING OR PURPORTING TO ACT FOR OR ON BEHALF OF LICENSOR WITH RESPECT TO THE PROPERTY BUT RATHER IS RELYING UPON ITS OWN EXAMINATION AND INSPECTION OF THE PROJECT SITE AND THE LICENSED AREAS. LICENSEE HEREBY EXPRESSLY ACKNOWLEDGES THAT IT HAS BEEN AFFORDED A REASONABLE OPPORTUNITY TO EXAMINE AND INSPECT, AND HAS REASONABLY

INSPECTED AND EXAMINED THE PROJECT SITE AND THE LICENSED AREAS TO THE EXTENT DEEMED NECESSARY BY LICENSEE IN ORDER TO ENABLE LICENSEE TO EVALUATE THE PROJECT SITE AND THE LICENSED AREAS. LICENSEE REPRESENTS THAT IT IS RELYING SOLELY ON ITS OWN EXPERTISE AND THAT OF LICENSEE'S CONSULTANTS. LICENSEE HAS CONDUCTED SUCH INSPECTIONS AND INVESTIGATIONS OF THE PROJECT SITE AND THE LICENSED AREAS AS LICENSEE HAS DEEMED NECESSARY OR APPROPRIATE, INCLUDING, BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, THE SQUARE FOOTAGE OF THE PROJECT SITE AND THE LICENSED AREAS, IMPROVEMENTS AND INFRASTRUCTURE, IF ANY, DEVELOPMENT RIGHTS AND EXACTIONS, EXPENSES ASSOCIATED WITH THE PROJECT SITE AND THE LICENSED AREAS, TAXES, ASSESSMENTS, PERMISSIBLE USES, TITLE EXCEPTIONS, WATER OR WATER RIGHTS, TOPOGRAPHY, UTILITIES, SUBDIVISION AND ZONING OF THE PROJECT SITE AND THE LICENSED AREAS, SOIL CONDITIONS AND THE ADEQUACY OF THE SOIL FOR ANY PARTICULAR FOUNDATION SYSTEM, SUBSOIL, THE PURPOSES FOR WHICH THE LICENSED AREAS ARE TO BE USED, DRAINAGE, BUILDING LAWS, RULES OR REGULATIONS, HAZARDOUS MATERIALS OR ANY OTHER MATTERS AFFECTING OR RELATING TO THE PROJECT SITE OR THE LICENSED AREAS. LICENSEE HEREBY WAIVES AND RELINQUISHES ALL RIGHTS AND PRIVILEGES ARISING OUT OF, OR WITH RESPECT OR IN RELATION TO, ANY REPRESENTATIONS, WARRANTIES OR COVENANTS, WHETHER EXPRESS OR IMPLIED, THAT MAY HAVE BEEN MADE OR GIVEN, OR THAT MAY HAVE BEEN DEEMED TO HAVE BEEN MADE OR GIVEN, BY LICENSOR WITH RESPECT TO THE LICENSED AREAS.

6. Liens. The terms and conditions set forth in the Ground Lease with respect to Licensee's obligations to conduct all activity in a lien-free and good and workmanlike manner, and to prohibit, to release, remove, discharge, bond against, and to prevent the enforcement or foreclosure of, Liens on the Leased Premises shall also apply to the Licensed Areas and such terms and conditions are incorporated in this Agreement by reference as if set forth in full herein. Notice is hereby given that no Liens shall attach to or affect the interest of Licensor in and to the Licensed Areas. If any "Lien" or notice thereof shall at any time be filed in the Licensed Areas, then Licensee shall cause the same to be bonded or discharged of record, within thirty (30) days after the date of receipt of written notice from the Licensor identifying the Lien. "**Lien**" shall mean any mechanic's, material men's or other liens against all or any portion of the Licensed Areas by reason of work, labor, services or materials supplied or claimed to have been supplied to the Licensor, its agents, employees, contractors or subcontractors, or anyone employed by any of them, in connection with the exercise by Licensee of any of its rights hereunder, or the performance by Licensee of any of its obligations hereunder. As available, Licensee shall provide to the Licensor copies of lien waivers executed by the contractors for activities conducted in the Licensed Areas.

7. Successors. Each and all of the covenants and conditions of this Agreement shall be binding on and shall inure to the benefit of the heirs, successors, executors, administrators, assigns and personal representatives of the respective Parties. References herein to "Licensor" shall mean the Person who is the owner at the time in question of the Leased Premises, whether singular or plural in number, and whether named in this Agreement as Licensor or having become the successor in interest of the named Licensor, or the successor of a successor, whether by assignment, foreclosure, or other transfer, and whether intentional or inadvertent or by operation of law. References herein to "Licensee" shall mean the person named as Licensee in this Agreement, whether singular or plural in number, or the Person who at the time in question is the successor in interest of Licensee, or the successor of a successor, whether by assignment, foreclosure, or other transfer, and whether intentional or inadvertent or by operation of law; it does not, however, include any Person claiming under any assignment or sublease or other transfer prohibited by the Ground Lease, and this definition does not alter the provisions of the Ground Lease relating to assignment, subletting or other transfers.

8. Assignment. Licensee shall not have the right to assign or transfer this Agreement or any interest herein or any right or privilege appurtenant hereto or to sublease the License or any portion thereof, without the prior written approval of Licensor, which may be granted or withheld at Licensor's sole and absolute discretion, and any assignment, transfer or sublease in violation of the foregoing provisions shall be void and of no force and effect.

9. Relationship of the Parties. The relationship between Licensor and Licensee pursuant to this Agreement at all times will remain solely that of licensor and licensee and will not be deemed a partnership or a joint venture.

10. Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is found by a court of competent jurisdiction to be invalid, illegal, void or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, or the application of such term or provision of this Agreement to other situations, but such term or provision, or the application thereof to a particular situation, shall be deemed modified to the extent necessary in the court's opinion to render such term or provision (or application thereof) enforceable, and the rights and obligations of the Parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the Parties herein set forth; provided, however, if the applicable term or provision so invalidated, voided or determined unenforceable, as deemed modified, would deprive either Licensor or Licensee of material benefits derived from this Agreement, or make performance under this Agreement unreasonably difficult, then Licensor and Licensee will meet and confer and will make good faith efforts to amend or modify this Agreement in a manner that is mutually acceptable to Licensor and Licensee.

11. Counterparts. This Agreement may be executed simultaneously in two or more counterparts deliverable in electronic "pdf" format, each of which shall be deemed original and all of which, when taken together, shall constitute one and the same document

12. Notices. As used in this Agreement, notice includes but is not limited to the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver and appointment. Any notice or communication required or permitted under this Agreement shall be given in writing in the manner, and in accordance with the requirements, set forth in the Ground Lease.

13. Governing Law; Venue. The laws of the State of Texas and the rules and regulations issued pursuant thereto shall govern the validity, construction, enforcement, and interpretation of this Agreement, without regard to conflict of law provisions. Subject to Section 4.08 of the Ground Lease, any claims, disputes and other matters in question arising out of or relating to this Lease, or the breach hereof, shall be decided by proceedings instituted and litigated in a State court of competent jurisdiction sitting in Austin, Texas, and the Parties hereto expressly consent to the venue and jurisdiction of such court.

(Signature page follows)

IN WITNESS WHEREOF, Licensor and Licensee have caused this Agreement to be duly executed by their duly authorized officers as of the day and year first above written.

LICENSOR:

CITY OF PFLUGERVILLE, TEXAS, a Texas home-rule municipality

By: _____
Sereniah Breland, City Manager

LICENSEE:

GRIFFIN/SWINERTON, LLC, a Delaware limited liability company

By: _____
Roger Torriero, Principal

By: _____
Korin Crawford, Executive Vice President

EXHIBIT A

Licensed Areas

[See depiction of shaded areas identified as 1B and 1C below]

