
**PURCHASE AND SALE AGREEMENT
(CIVIL WORK PROJECT COMPONENT)**

between

**CITY OF PFLUGERVILLE,
a Texas home-rule municipality
as Purchaser**

and

**GRIFFIN/SWINERTON, LLC,
a Delaware limited liability company
as Seller**

DATED AS OF NOVEMBER [__], 2024

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**PURCHASE AND SALE AGREEMENT
(CIVIL WORK PROJECT COMPONENT)**

THIS PURCHASE AND SALE AGREEMENT (this "**Agreement**") is dated and entered into as of November [], 2024 (the "**Effective Date**"), between the **CITY OF PFLUGERVILLE** ("**Purchaser**" or the "**City**"), a Texas home-rule municipality, and **GRIFFIN/SWINERTON, LLC** ("**Seller**"), a Delaware limited liability company.

BACKGROUND:

1. Seller is the developer of improvements to be constructed on the land owned by the Purchaser located in the City of Pflugerville, Travis County, Texas, as more particularly described in Exhibit A attached to the Ground Lease (as hereinafter defined) (the "**Project Site**").

2. Seller responded to a Request for Qualifications/Proposals No. 2020-022 Master Developer for Downtown East Project issued by the City on September 28, 2022 and inclusive of the subsequently issued Addenda #1 through #4 (the "**RFP**") to provide development of a civic mixed-use development known as the Downtown East project (the "**Project**") on the Project Site.

3. In its response to the RFP, including a proposal submitted on November 18, 2022, answers to supplemental questions submitted on December 6, 2022, and an interview with associated presentation materials delivered on December 14, 2022 (collectively "**RFP Response**"), Seller proposed a project, more particularly described in its RFP Response.

4. Within the Seller's original RFP Response, the Project entailed the planning, designing, permitting, construction, equipping and furnishing of a new City Hall and Multigenerational Recreation Center (the "**City Facilities**"), together with all necessary horizontal site infrastructure required to prepare fully entitled development-ready pads for vertical public/civic facilities and private mixed-use development, parking facilities, and open space ("**Horizontal Site Infrastructure**") and (ii) vertical mixed-use private development either directly by Developer or indirectly by third-party real estate developers through a City-approved process ("**Vertical Development**").

5. On March 28, 2023, Seller, Purchaser and CDC-Pflugerville, L.P. ("**CDC**") entered into an Exclusive Negotiating Agreement (the "**ENA**") for the performance of certain concept refinement and due diligence activities relating to the Project, including the general design, construction, market analysis, financial feasibility, infrastructure requirements, budgetary, management, maintenance, and scheduling parameters that will serve as a guide for delivering the Project.

6. On November 28, 2023, Seller and Purchaser entered into a Preliminary Development Agreement (the "**Preliminary Development Agreement**") for the performance of certain Preliminary Development Activities (as defined therein) in furtherance of the Final Development Proposal attached thereto (the "**Final Development Proposal**").

7. The Parties have determined that the first phase of the Project ("**Phase One**") will consist of the delivery of (i) the City Facilities, (ii) the Horizontal Site Infrastructure related to the City Facilities (including utilities, roadwork, surface parking, and a plaza) as described in the Final Development Proposal, and (iii) a warm gray shell of not more than 10,500 gross square feet of retail space within the City Facilities for use as private retail, cafe and/or restaurant facilities (the "**Phase One Retail**").

8. Concurrently with the execution and delivery of this Agreement, Purchaser and Seller have executed and delivered that certain Ground Lease Agreement for the lease of the Project Site by Purchaser

to Seller (the "**Ground Lease**") and that certain License Agreement for access to offsite areas required by Purchaser for the performance of the Civil Work.

9. Purchase and Seller intend to enter into three (3) Purchase and Sale Agreements, on substantially the same terms except for scope/description of work, price, and schedule, for the three (3) Project Components (City Hall, Recreation Center, and Civil Work). For purposes of this Agreement, the Project Component is for the Civil Work Project Component.

10. Purchaser further desires to purchase the Project Component, and Seller desires to sell the Project Component to Purchaser, in accordance with the terms of this Agreement and the Ground Lease.

11. By action of the City Council of the City taken on November 12, 2024, Purchaser has authorized the execution and delivery of this Agreement.

ACCORDINGLY, in consideration of the mutual covenants and agreements set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confirmed, Purchaser and Seller hereby enter into this Agreement and do hereby agree as follows:

Article 1 Definitions, Rules of Construction

Section 1.01 Definitions of Words and Terms. Unless otherwise defined, all capitalized words and terms used herein shall have the following meanings. Any capitalized terms used herein and not defined below shall have the meaning given thereto in the Ground Lease.

"**Allowance**" means additional resources included in Seller's estimate to cover the cost of known but undefined requirements for an individual activity, work item, account or sub-account expressly identified as such in Exhibit F. There are no Allowances except as specifically identified in Exhibit D or Exhibit F. When Developer is capable of determining the actual cost associated with the Allowance, an appropriate Adjustment to the Purchase Price shall be issued as and when necessary, as reasonably determined by Seller as further described in Section 2.02(a)(iv).

"**Application for Payment**" has the meaning given in Section 2.03(b) hereof.

"**Civil Work Project Component**" means the Project Component consisting of the Civil Work, as more fully contemplated in the Final Civil Plans and Specifications approved by Purchaser pursuant to Section 4.02(a) of the Ground Lease.

"**Conditions to Payment**" has the meaning given in Section 2.03(b) hereof.

"**Contingency**" means Seller's contingency for the development of the Project Component in the amount set forth in the Schedule of Values attached as EXHIBIT D hereto and in the Development Budget attached as EXHIBIT C to the Ground Lease. The Contingency is a fund to pay Project Component costs that are not the Purchaser's responsibility. Seller may use the Contingency at the reasonable discretion of Seller for Project Component costs and may reallocate savings from other line items to the Contingency.

"**Default Termination**" has the meaning given in Section 2.04(a) hereof.

"**Default Termination Purchase Price**" means, as of the Termination Date, an amount determined pursuant to the following formula equal to *the sum of*: (i) all Qualified Project Costs, *plus* (ii) all Deferred

PDA Costs payable under this PDA Amendment, *less* (iii) amounts payable by any surety under Seller's Payment and Performance Bonds as determined by the Construction Monitor, *and less* (iv) the amount of any Installment Payments previously paid by Purchaser to Seller.

"Delinquent Interest Rate" means a per annum rate of interest equal to the lesser of (a) twelve percent (12%) or (b) the then highest lawful contract rate which Seller is authorized to pay, and Purchaser is authorized to charge, under the laws of the State with respect to the relevant obligation.

"Deferred PDA Costs" means the costs, overhead, and fee that accrued under the PDA Amendment ("**PDA Amendment** ") dated concurrently herewith between Purchaser and Seller.

"Effective Date" has the meaning given in the Preamble hereof.

"Final Payment" is the final Installment Payment payable to Seller on the Acceptance Date.

"GMP" or **"Guaranteed Maximum Price"** is the total cost identified in the Schedule of Values, subject to Adjustments for Modifications and Compensable Delays as provided in the Lease, which the total Purchase Price is guaranteed not to exceed. The GMP is subject to the express conditions and assumptions set forth in EXHIBIT F attached hereto. In the event of any conflict between this Agreement and EXHIBIT F, EXHIBIT F will control. Nothing in this Agreement or its exhibits is intended to create a line-item guaranty (only the total GMP for the Civil Works Project Component is guaranteed), and Seller may, in its sole and absolute discretion, allocate any savings from any individual line item or the Seller's contingency, except allowances, to any Project Component costs for any work required by the Approved Plans for the Project Component.

"Ground Lease" has the meaning given in Recital 8 hereof.

"Installment Payment(s)" has the meaning given in Section 2.03(a) hereof.

"Liquidated Damages" means Purchaser's claim for liquidated damages resulting from Seller's failure to achieve Substantial Completion of the Project Component by the scheduled Substantial Completion Date, as adjusted for Permitted Delays, reflected in the Project Component Construction Schedule attached as EXHIBIT E. Liquidated Damages shall accrue in an amount equal to \$3,000.00 for each day from and after the expiration of the scheduled Substantial Completion Date, as adjusted for Permitted Delays, up to and including the date of Substantial Completion; provided, however, that the total amount of Liquidated Damages payable by Seller shall not exceed \$810,000.00 in the aggregate. Liquidated Damages are the sole and exclusive remedy of Purchaser for delays in completion of the Project Component.

"Non-Default Termination" has the meaning given in Section 2.04(b) hereof.

"Non-Default Termination Fee" means the amount payable to Seller upon a Non-Default Termination set forth in EXHIBIT C attached hereto as of the immediately preceding scheduled payment, as consideration for the early termination of this Agreement.

"Non-Default Termination Purchase Price" means, as of the Termination Date, an amount equal to (i) the sum of all Qualified Project Costs, all Deferred PDA Costs payable under this Agreement, and the Non-Default Termination Fee according to EXHIBIT C attached hereto, *less* (ii) the amount of any Installment Payments previously paid by Purchaser to Seller.

"Purchase Price" has the meaning given in Section 2.02 hereof.

"Purchaser" means City of Pflugerville, Texas, a Texas home-rule municipality.

"Qualified Project Costs" means, as of the Termination Date, any and all documented costs which have been actually incurred (A) by Architect under the Design Services Agreement and other consultants retained by Seller for design services performed with respect to the Civil Work Project Component in accordance with the terms thereof as of the date of termination; (B) by Construction Contractor under the Construction Agreement for construction services performed with respect to the Civil Work Project Component in accordance with the terms thereof as of the date of termination, and for which conditional lien waivers have been received from such payees (including, without limitation, the Construction Contractor); and (C) by Seller for any and all costs incurred as of the date of termination consistent with the costs included in Schedule of Values (including the purchase/rental and installation of FF&E), not to exceed GMP.

"Schedule of Values" means a detailed statement attached as EXHIBIT D outlining the portions of the Purchase Price that allocates values for the various parts of the Civil Work Project Component and is also used as the basis for submitting and reviewing Installment Payments.

"Seller" means Griffin/Swinerton, LLC, a Delaware limited liability company, together with its permitted successors and assigns.

"State" means the State of Texas.

Section 1.02 Rules of Construction. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following rules of construction apply in construing the provisions of this Agreement:

- (a) All references in this Agreement to exhibits, articles, paragraphs, subparagraphs, sections, subsections and other subdivisions refer to the exhibits, articles, paragraphs, subparagraphs, sections, subsections and other subdivisions of this Agreement unless expressly provided otherwise. Titles appearing at the beginning of any subdivisions are for convenience only and do not constitute any part of such subdivisions and will be disregarded in construing the language contained in such subdivisions. The words "this Agreement", "herein", "hereof", "hereby", "hereunder" and words of similar import refer to this Agreement as a whole and not to any particular subdivision unless expressly so limited. The phrases "this paragraph" and "this subparagraph" and similar phrases refer only to the paragraphs or subparagraphs hereof in which such phrases occur. The word "or" is not exclusive, and the word "including" (in its various forms) means "including without limitation." Pronouns in masculine, feminine and neuter genders will be construed to include any other gender, and words in the singular form will be construed to include the plural and vice versa, unless the context clearly otherwise requires. References to any constitutional, statutory or regulatory provision means such provision as it exists on the Effective Date and any future amendments thereto or successor provisions thereof.
- (b) Unless the context clearly otherwise requires or unless otherwise expressly provided herein, the terms defined in this Agreement which refer to a particular agreement, instrument or document also refer to and include all renewals, extensions, supplements, modifications, amendments and restatements of such agreement, instrument or document; provided that paragraph will be construed to authorize any such renewal, extension, supplement, modification, amendment or restatement.
- (c) This Agreement has been reviewed and revised by legal counsel for both Seller and Purchaser, and no presumption or rule that ambiguities will be construed against the drafting party will apply to the interpretation or enforcement of this Agreement.

- (d) The relationship between Purchaser and Seller hereunder at all times will remain solely that of buyer and seller, respectively, and will not be deemed a partnership or a joint venture.
- (e) Time is of the essence for each provision of this Agreement for which time is an element.
- (f) If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision 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.

Section 1.03 Prior Agreements. This Agreement has been negotiated based upon 'Seller's initial proposal to Purchaser, the ENA, the Preliminary Development Agreement and the Final Development Proposal (collectively, the "**Prior Agreements**"). The Prior Agreements collectively highlight the key terms, conditions, and plans for the Project as they are known and envisioned by the Parties as of the Effective Date. The Parties have agreed, concurrently with the execution and delivery of this Agreement, to amend the Preliminary Development Agreement to provide for the continuing payment of certain predevelopment fees and costs of Seller (the ("**PDA Amendment**"). To the extent of any conflict between this Agreement and the PDA Amendment, the PDA Amendment shall control.

Article 2

Ground Lease; Purchase of Project

Section 2.01 Agreement to Purchase the Project. Subject to and in accordance with the terms of this Agreement, Seller hereby agrees to sell to Purchaser, and Purchaser hereby agrees to purchase from Seller, the Civil Work Project Component, as the same shall be designed, developed, constructed, furnished and equipped by Seller, in accordance with the terms of the Ground Lease.

Section 2.02 Project Component Purchase Price. The purchase price for the Civil Work Project Component shall be equal to the total amount provided in the Approved Development Budget for the Civil Work Project Component pursuant to Section 4.03(c) of the Ground Lease (i.e., the GMP under this Agreement), as the same may be adjusted as set forth in this Section 2.02 (the "**Purchase Price**").

- (a) *Adjustments.* The Purchase Price shall be subject to the following adjustments (the "**Adjustments**"):
 - (i) Permitted Cost Overruns. The Purchase Price shall be adjusted upward in an amount equal to any Permitted Cost Overruns as provided in Section 2.02(b) below.
 - (ii) Cost Savings Adjustment. The Purchase Price shall be adjusted downward as follows: as of the Acceptance Date, an amount equal to (i) 50% of any unused Contingency. Such Adjustment shall take effect upon Final Completion and be reflected in the Final Payment.
 - (iii) Purchaser Offset Adjustment. The Purchase Price shall be adjusted downward in an amount equal to any unpaid Rent. Such Adjustment shall take effect upon Final Completion and be reflected in the Final Payment.
 - (iv) Allowance Adjustments. The GMP includes certain amounts as Allowances, which will be adjusted (upward or downward) to reflect the actual cost, and these Allowance adjustments will adjust the Purchase Price (upward or downward).

- (v) Liquidated Damages. The Purchase Price shall be adjusted downward in an amount equal to any Liquidated Damages owed by Seller.

No Adjustment shall become effective until such Adjustment shall have been approved in writing by the Parties pursuant to a "**Purchase Price Adjustment Addendum**" in the form attached hereto as EXHIBIT B.

- (b) *Upward Adjustments for Permitted Cost Overruns*. In the case of any upward adjustment for Permitted Cost Overruns as described in Section 2.02(a)(i) above, Seller shall submit to Purchaser and the Construction Monitor a proposed Purchase Price Adjustment Addendum, together with such relevant documentation supporting such cost increases. Purchaser shall diligently and in good faith review such proposed Adjustment to come to a determination as to whether the proposed Adjustment is justified in accordance with the terms of the Ground Lease. Purchaser shall notify Seller in writing of its approval or disapproval of such proposed Adjustment within fourteen (14) calendar days after receipt thereof; provided, however, that Purchaser's approval of any such proposed Adjustment shall not be unreasonably withheld.

Section 2.03 Payment of the Purchase Price.

- (a) *Installment Payment Schedule*. The Purchase Price shall be paid to Seller by Purchaser in installment payments as set forth in an installment payment schedule prepared in accordance with this Section 2.03(a). (the "**Installment Payments**").

Attached hereto as EXHIBIT A is a preliminary installment payment schedule, which has been prepared by the Parties based upon the Preliminary Development Budget. Upon Purchaser's approval of the Approved Development Budget pursuant to Section 4.03(c) of the Ground Lease, the Parties agree to work together in good faith to revise the preliminary installment payment schedule to conform to the Approved Development Budget (the "**Final Installment Payment Schedule**"). When preparing the Final Installment Payment Schedule, the Parties agree to adjust individual Installment Payment amounts in a manner reasonably consistent with cost adjustments associated with each applicable milestone. Each Party shall evidence their approval of the Final Installment Payment Schedule by affixing their signature thereto, and shall replace EXHIBIT A and become a part of this Agreement.

- (b) *Installment Payments*. Installment Payments shall be made in accordance with the Final Installment Payment Schedule (as the same may hereafter be updated pursuant to a Purchase Price Addendum), subject to the satisfaction of the conditions set forth in Section 2.03(c) (the "**Conditions to Payment**"). Seller shall submit an application for an Installment Payment no later than 5th day of the month, together with all certificates and supporting documentation required to satisfy the Conditions to Payment (an "**Application for Payment**"), and any other supporting documentation reasonably requested by Purchaser in writing for the purpose of confirming the Conditions to Payment. If Purchaser determines that Seller's Application for Payment is lacking the necessary certifications and supporting documentation to evidence satisfaction of the Conditions to Payment (as indicated by Purchaser to Seller in writing), Purchaser shall be granted such additional amount of time to review such Application for Payment after receipt of such additional information or supporting documentation. If Purchaser determines that the Seller has failed to meet the Conditions to Payment, Purchaser shall notify Seller of such determination in writing within ten (10) calendar days of Purchaser's receipt of such completed Application for Payment, and shall include a detailed explanation of the reasons for Seller's determination. If Purchaser determines that Seller has met the Conditions to Payment, Purchaser shall notify Seller of such determination in writing, and Purchaser shall have ten (10) calendar days to remit the Installment Payment to Seller. Installment

Payments shall be delivered by Purchaser to an account or accounts designated by Seller. Any Installment Payments that are not timely made will bear interest at the Default Interest Rate on all overdue amounts (with interest accruing from the date the payment was due until the payment is made).

- (c) *Conditions to Payment.* Purchaser's obligation to make any Installment Payment shall be subject to satisfaction of the following conditions by Seller:
- (i) Seller's Certificate. Seller shall have certified in writing to Purchaser that as of the date of the Installment Payment, (A) Seller is not in default under the terms of this Agreement or the Ground Lease; (B) to Seller's knowledge, no event or circumstance has occurred or is continuing which would constitute an "Event of Default" under the Ground Lease with the giving of notice or the passage of time or both; (C) all representations and warranties of Seller under the Ground Lease are true and correct in all material respects as of the date of such Installment Payment; (D) to Seller's knowledge, the actual progress of design and construction compared to the Construction Schedule attached as EXHIBIT E is accurately reported and there are no foreseeable unreported delays to achieving Substantial Completion on or before the (adjusted) Target Completion Date; and (F) the Civil Work Project Component conforms to the Approved Plans and the Design Requirements and all applicable Legal Requirements in all material respects.
 - (ii) Certificate of Construction Monitor. The Construction Monitor shall have certified in writing to Purchaser that as of the date of the Installment Payment, (A) the Civil Work Project Component conforms to the Approved Plans and the Design Requirements in all material respects; and (B) to Construction Monitor's knowledge, there are no unreported delays to Substantial Completion on or before the (adjusted) Target Completion Date.
 - (iii) Seller's Performance. As of the date of the Installment Payment, Seller shall not be in default under its obligations hereunder or under the Ground Lease in any material respect.
 - (iv) Adverse Proceedings. As of the date of the Installment Payment, there shall exist no pending or threatened actions, suits, claims, or proceedings caused by Seller or any Lessee Responsible Party that could adversely affect the operation or value of the Project Site, the completion of the Civil Work Project Component, or Seller's ability to perform its obligations under this Agreement or under the Ground Lease.
 - (v) Final Payment. The Final Payment for the Civil Work Project Component shall be payable on the date of Final Completion of the Civil Work Project Component, subject to the satisfaction of the terms and conditions set forth in Section 5.02(e) of the Ground Lease. If the Final Payment is not timely made, then it will bear interest at the Default Interest Rate (with interest accruing from the date the payment was due until the payment is made).

Section 2.04 Termination Prior to Completion.

- (a) *Default Termination.* If, pursuant to Section 3.02(b) hereof, Purchaser terminates this Agreement, and Purchaser, as "Lessor" under the Ground Lease terminates the Ground Lease pursuant to Section 9.02(b)(i) thereof (a "**Default Termination**"), Purchaser agrees to pay to Seller an amount equal to the Default Termination Purchase Price. However, if Purchaser terminates the Ground Lease due to a default arising out of the Seller's fraud, bad faith, or willful misconduct, the Purchaser shall have no obligation to pay any of the Deferred PDA Costs due under this Agreement. Seller shall submit an application for payment of the Default Termination Purchase Price within

thirty (30) calendar days after the Termination Date listing (i) all Qualified Project Costs incurred as of the Termination Date, (ii) all Deferred PDA Costs due under this Agreement, and (iii) any Installment Payments previously paid to Seller, together with all certificates and supporting documentation evidencing the Qualified Project Costs, and any other supporting documentation reasonably requested by Purchaser in writing for purposes of verifying the amount of Qualified Project Costs. If Purchaser determines that Seller's application for payment is lacking the necessary certifications and supporting documentation to verify the amount of Qualified Project Costs (as indicated by Purchaser to Seller in writing), Purchaser shall be granted such additional amount of time to review such application for payment after receipt of such additional information or supporting documentation. Purchaser shall notify Seller in writing of its determination, within ten (10) calendar days after Purchaser's receipt of Seller's application for payment, whether: (A) any of the items identified Seller's application for payment are not Qualified Project Costs or such costs cannot be verified, including an explanation of the reasons for Purchaser's determination (in which case, Seller shall revise and resubmit its application for payment), or (B) all items identified in Seller's application for payment are Qualified Project Costs. Purchaser shall have ten (10) calendar days after notifying Seller in writing of its confirmation of Seller's application for payment to remit the Default Termination Purchase Price to Seller. The Default Termination Purchase Price shall be delivered by Purchaser to an account or accounts designated by Seller. Payment of the Default Termination Purchase Price by Purchaser in accordance with this Section 2.04(a) shall discharge and satisfy all remaining payment obligations of Purchaser hereunder.

- (b) *Non-Default Termination.* If Purchaser, as "Lessor" under the Ground Lease, terminates the Ground Lease pursuant to Section 9.06(b)(ii) or Section 9.06(c) thereof, this Agreement shall automatically terminate simultaneously with the termination of the Ground Lease (a "**Non-Default Termination**"), and Purchaser agrees to pay to Seller the Non-Default Termination Purchase Price, which obligation shall expressly survive termination. Seller shall submit an application for payment of the Non-Default Termination Purchase Price within thirty (30) calendar days of the Termination Date, listing (i) all Qualified Project Costs incurred as of the Termination Date, (ii) the Non-Default Termination Fee, and (iii) any Installment Payments previously paid to Seller, together with all certificates and supporting documentation evidencing the Qualified Project Costs, and any other supporting documentation reasonably requested by Purchaser in writing for purposes of verifying the amount of Qualified Project Costs. If Purchaser determines that Seller's application for payment is lacking the necessary certifications and supporting documentation to verify the amount of Qualified Project Costs (as indicated by Purchaser to Seller in writing), Purchaser shall be granted such additional amount of time to review such application for payment after receipt of such additional information or supporting documentation. Purchaser shall notify Seller in writing of its determination, within ten (10) calendar days after Purchaser's receipt of Seller's application for payment, whether: (A) any of the items identified in Seller's application for payment are not Qualified Project Costs or such costs cannot be verified, including an explanation of the reasons for Purchaser's determination (in which case, Seller shall revise and resubmit its application for payment), or (B) all items identified in Seller's application for payment are Qualified Project Costs. Purchaser shall have ten (10) calendar days after notifying Seller in writing of its confirmation of Seller's application for payment to remit the Non-Default Termination Purchase Price to Seller. The Non-Default Termination Purchase Price shall be delivered by Purchaser to an account or accounts designated by Seller. Payment of the Non-Default Termination Purchase Price by Purchaser in accordance with this Section 2.04(b) shall discharge and satisfy all remaining payment obligations of Purchaser hereunder.
- (c) For the avoidance of doubt, the obligation of the Purchaser to pay the Default Termination Purchase Price or the Non-Default Termination Purchase Price (as the case may be) in accordance with this Section 2.04 shall survive termination of this Agreement and the Ground Lease.

Article 3
Defaults and Remedies

Section 3.01 Seller's Remedies. If Purchaser fails to make any Installment Payments (including the Final Payment) when due in accordance with the terms of this Agreement (and expressly subject to Purchaser's right to suspend payment pursuant to Section 3.02(a) hereof), and after Seller, as "Lessee" under the Ground Lease, has submitted to and participated in the dispute resolution procedures set forth in Section 4.08 of the Ground Lease with respect to any such nonpayment, then Seller shall be entitled to terminate this Agreement and the Ground Lease by giving Purchaser written notice thereof, and/or seek a writ of mandamus if appropriate and allowed under such circumstances to compel Purchaser to make such payments then due under the terms of this Agreement. If Seller elects to terminate this Agreement pursuant to this Section 3.01, Seller shall be entitled to submit an application for payment of the Non-Default Termination Purchase Price pursuant to Section 2.04(b) hereof, and if Purchaser shall fail to pay such Non-Default Termination Purchase Price in accordance with Section 2.04(b), then Seller shall be entitled to seek a writ of mandamus if appropriate and allowed under such circumstances to compel Purchaser to pay such Non-Default Termination Purchase Price or seek any other remedies available at law or in equity to recover the Non-Default Termination Purchase Price; provided, however, that Seller's remedies shall expressly exclude, and Seller shall not be entitled to seek or recover loss of profits or incidental, indirect, exemplary, punitive, special or consequential damages of any kind other than the Non-Default Termination Purchase Price plus interest at the Default Interest Rate on all overdue amounts (with interest accruing from the date the payment was due until the payment is made).

Section 3.02 Purchaser's Remedies. If an "Event of Default" shall have occurred and be continuing on the part of Seller as "Lessee" under the Ground Lease beyond any applicable cure periods therefor, Purchaser will have the option to do and perform any one or more of the following in addition to, and not in limitation of, any other remedy or right permitted by law or in equity by this Agreement or by the Ground Lease:

- (a) Purchaser may suspend its obligation to pay the Purchase Price or any portion thereof until such "Event of Default" under the Ground Lease has been cured to the satisfaction of Purchaser, but the amount withheld is limited to an amount reasonably necessary to protect Purchaser from the Event of Default;
- (b) After Purchaser has submitted to and participated in the dispute resolution procedures set forth in Section 4.08 of the Ground Lease with respect to any such Event of Default, Purchaser may terminate this Agreement simultaneously with the Ground Lease pursuant to Section 9.06(b)(i) thereof, without any further obligation to pay the Purchase Price or any portion thereof other than the Default Termination Purchase Price pursuant to and in accordance with to Section 2.04(a) hereof (which payment obligation shall survive termination of this Agreement and the Ground Lease).

Section 3.03 No Waiver. No delay or omission by either Party in exercising any right or power accruing upon non-compliance or failure to perform by the other Party under any of the provisions of this Agreement will impair any such right or power or be construed to be a waiver thereof. A waiver by either Party of any of the covenants or conditions to be performed by the other Party will be in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought, and any such waiver will not be construed as a waiver of any succeeding breach or non-performance of the same or other covenants and conditions hereof.

Section 3.04 Appropriation of Funds. By its approval and execution of this Agreement, the City Council of Purchaser has appropriated current revenues or other legally available funds of Purchaser in the

amount of \$35,006,707 (the "**Appropriated Amount**") for the payment of the amounts due to Seller under the Ground Lease and the PSAs. Seller shall not be required to perform any Work with respect to which funds have not been lawfully appropriated.

Article 4 Representations and Warranties

Section 4.01 Representations and Warranties of Seller. Seller hereby represents and warrants to Purchaser as follows:

- (a) *Organization and Authority.* Seller is a Delaware limited liability company, and has been duly organized, is validly existing, is in good standing in the state in which it was formed, and is qualified to do business in the State. Seller has the full right, power and authority and has obtained any and all consents required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby. This Agreement has been authorized and duly executed and delivered by Seller and constitute, or will constitute, as appropriate, legal, valid and binding obligations of Seller, enforceable in accordance with their terms.
- (b) *Conflicts and Pending Actions.* There is no agreement to which Seller is a party or that is binding on Seller which is in conflict with this Agreement. There is no action or proceeding pending or, to Seller's knowledge, threatened against Seller, which challenges or impairs Seller's ability to execute or perform its obligations under this Agreement or against or with respect to the Project Site.
- (c) *Notices.* Seller has not received any written notices from any governmental agencies or authorities or from any other parties (i) of any conditions, defects or inadequacies with respect to the Project Site (including health hazards or dangers, nuisance or waste), which, if not corrected, would prohibit the issuance of a Certificate of Occupancy by the City of Pflugerville, (ii) with respect to any violation of any applicable Legal Requirements, (iii) of any proceedings which could cause the change, redefinition or other modification of the zoning classification of the Project Site or access thereto from any public right-of-way. Seller shall promptly notify Purchaser of any violations or conditions of which Seller receives notice (whether written or oral).
- (d) *No Foreign Person.* Seller is neither a "foreign person" nor a "foreign corporation" as those terms are defined in Section 1445 of the Internal Revenue Code of 1986, as amended.
- (e) *Litigation.* There is no pending or, to Seller's knowledge, threatened, judicial, municipal or administrative proceedings with respect to, or in any manner affecting the Project Site or any improvements located therein, or in which Seller is or will be a party, including proceedings for or involving tenant evictions, collections, condemnations, eminent domain, alleged building code, zoning or environmental violations, or personal injuries or property damage alleged to have occurred on the Project Site or by reason of the construction of any improvements thereon or the use and operation of the Project Site which in any way challenges, affects or would challenge or affect the continued authorization of the ownership, construction, use, leasing, management, maintenance, and operation of the Project Site.
- (f) *ERISA.* Seller is not an employee benefit plan subject to the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"), or Section 4975 of the Internal Revenue Code of 1986, as amended (the "**Code**"), Seller's assets do not constitute "plan assets" within the meaning of the "plan asset regulations" (29.C.F.R. Section 2510.3-101), and Seller's sale of the Project Site to Purchaser will not constitute or result in a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code.

- (g) *Prohibited Persons and Transactions.* Seller is currently in compliance with, and shall at all times during the term of this Agreement (including any extension thereof) remain in compliance with, the regulations of the Office of Foreign Assets Control ("OFAC") of the Department of the Treasury (including those named on OFAC's Specially Designated Nationals and Blocked Persons List) and any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action relating thereto.
- (h) *HB 1295.* Seller has delivered, unless exempted under applicable law, the Certificate of Interested Parties Form 1295 ("**Form 1295**") and certification of filing generated by the Texas Ethics Commission's electronic portal, signed by an authorized agent, prior to the execution of this Agreement by Purchaser and Seller. Seller and Purchaser understand that none of Purchaser or Purchaser's representatives or consultants have the ability to verify the information included in Form 1295, and none of Purchaser or Purchaser's representatives or consultants have an obligation, nor have undertaken any responsibility, for advising Seller with respect to the proper completion of Form 1295 other than, with respect to Purchaser, providing the identification numbers required for the completion of Form 1295.
- (i) *No Boycott of Israel.* Seller hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement. The foregoing verification is made solely to comply with Section 2271.002, Texas Government Code, as amended, and to the extent such section does not contravene applicable State or federal law. As used in the foregoing verification, (A) "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and (B) "affiliate" to mean an entity that controls, is controlled by, or is under common control with Seller and exists to make a profit.
- (j) *No Business with Sanctioned Regimes or Foreign Terrorist Organizations.* Seller represents that neither it 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, as amended, 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>, or
<https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>.
- The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal law and excludes the Seller and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Seller understands "affiliate" to mean any entity that controls, is controlled by, or is under common control with the Seller and exists to make a profit.
- (k) *No Boycotts Against Energy Companies.* To the extent this Agreement constitutes a contract for goods or services for which a written verification statement is required under Section 2274.002 (as

added by Senate Bill 13 in the 87th Texas Legislative Session), Texas Government Code, as amended, Seller hereby verifies that it and its parent company, wholly- or majority- owned subsidiaries, and other affiliates, if any, do not boycott energy companies and, will not boycott energy companies during the term of this Agreement. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, as amended, to the extent Section 2274.002, Texas Government Code does not contravene applicable Texas or federal law. As used in the foregoing verification, "boycott energy companies" shall mean, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company:

- (i) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or
- (ii) does business with a company described by (A) above.

As used in the foregoing verification, "affiliate" to mean an entity that controls, is controlled by, or is under common control with Seller and exists to make a profit.

- (l) *Prohibition on Discrimination against the Firearms Industry.* To the extent this Agreement constitutes a contract for goods or services for which a written verification statement is required under Section 2274.002 (as added by Senate Bill 19 in the 87th Texas Legislative Session), Texas Government Code, as amended, Seller hereby verifies that it and its parent company, wholly- or majority- owned subsidiaries, and other affiliates, if any:

- (i) do not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association; and
- (ii) will not discriminate during the term of this Agreement against a firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association.

Section 4.02 Purchaser's Representations. Purchaser hereby represents to Seller as follows:

- (a) *Organization and Authority.* Except to the extent that Purchaser's payment obligations in respect of the Purchase Price may be subject to future appropriation in subsequent fiscal years, Purchaser has the full right and authority and has obtained any and all consents or approvals required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby. This Agreement has been authorized and properly executed and constitute, or will constitute, as appropriate, the valid and binding obligation of Purchaser, enforceable in accordance with their terms.
- (b) *Conflicts and Pending Action.* There is no agreement to which Purchaser is a party or to Purchaser's knowledge binding on Purchaser which is in conflict with this Agreement. There is no action or proceeding pending or, to Purchaser's knowledge, threatened against Purchaser which challenges or impairs Purchaser's ability to execute or perform its obligations under this Agreement.
- (c) *No Federal Funds.* No portion of the Purchase Price is being paid from federal funds.

Section 4.03 Survival of Representations and Warranties. The representations and warranties set forth in this Article 4: (a) are made as of the date of this Agreement, and (b) shall survive the termination of this Agreement, if applicable.

Article 5 Miscellaneous Provisions

Section 5.01 Notices. Except as otherwise provided herein, it shall be sufficient service of any notice, request, demand, authorization, direction, consent, waiver or other paper required or permitted by this Agreement to be made, given or furnished to or filed with the following Persons, if the same shall be delivered in person or duly mailed by first-class mail, postage prepaid or duly transmitted by telecopy, at the following addresses or telecopy numbers:

(a) To Purchaser at:

City of Pflugerville
Attention: City Manager
PO Box 589
Pflugerville, Texas 78691-0589
Email: citymanager@pflugervilletx.gov

With a copy to: Winstead PC
Attn: Jeff Nydegger
601 W 6th Street, Ste. 900
Austin, Texas 78701
Email: jnyegger@winstead.com

(b) To Seller at:

Griffin/Swinerton, LLC
Attention: Korin Crawford and Roger Torriero
5707 Southwest Pkwy #200
Austin, Texas 78735
Email: kcrawford@griffinswinerton.com; rtorriero@griffinholdings.net

With a copy to: The Rodarti Group
Attn: Keith Davis
7700 Irvine Center Drive, Ste. 180
Irvine, CA 92618
Email: kdavis@constructionriskmanagers.com

Section 5.02 Parties Bound. This Agreement will be binding upon and inure to the benefit of the parties to this Agreement and their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns.

Section 5.03 Severability. If any terms or provisions of this Agreement or the application of any terms or provisions of this Agreement to a particular situation, are held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Agreement or the application of such terms or provisions of this Agreement to other situations, will remain in full force and effect unless amended or modified by mutual consent of the parties; provided that, if the invalidation, voiding or unenforceability would deprive either Purchaser or Seller of material benefits derived from this Agreement, or make

performance under this Agreement unreasonably difficult, then Purchaser and Seller will meet and confer and will make good faith efforts to amend or modify this Agreement in a manner that is mutually acceptable to Purchaser and Seller.

Section 5.04 Amendment. No amendment, modification, or alteration of the terms of this Agreement will be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.

Section 5.05 Successors and Assigns. This Agreement will be binding upon and inure to the benefit of Purchaser and Seller and their respective successors and permitted assigns. Seller shall not have the right to assign or transfer any interest herein or any right or privilege appurtenant hereto without the prior written consent of Purchaser, which may be granted or withheld at Purchaser's sole and absolute discretion.

Section 5.06 No Third Party Beneficiaries. Purchaser and Seller hereby renounce the existence of any third party beneficiary to this Agreement and agree that nothing contained herein will be construed as giving any other Person third party beneficiary status.

Section 5.07 Correction of Technical Errors. If, by reason of inadvertence, and contrary to the intention of Purchaser and Seller, errors are made in this Agreement in the legal descriptions or the references thereto or within any exhibit with respect to the legal descriptions, in the boundaries of any parcel in any map or drawing which is an exhibit, or in the typing of this Agreement or any of its exhibits or any other similar matters, the parties by mutual agreement may correct such error by memorandum executed by them without the necessity of amendment of this Agreement.

Section 5.08 Governing Law and 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. All claims, disputes and other matters in question arising out of or relating to this Agreement, or the breach thereof, 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. Any provision included or incorporated herein by reference that conflicts with said laws, rules and regulations shall be null and void and shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise.

Section 5.09 No Waiver of Sovereign Immunity. NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED TO WAIVE THE SOVEREIGN IMMUNITY OF PURCHASER. PURCHASER IS ENTERING INTO THIS AGREEMENT IN ITS GOVERNMENTAL FUNCTION AND CAPACITY SOLELY AS A PURCHASER OF REAL PROPERTY, AND THIS AGREEMENT DOES NOT CONSTITUTE AN EXERCISE OF PURCHASER'S REGULATORY POWERS (E.G., REGULATORY APPROVALS OR IN ANY OTHER REGULATORY CAPACITY OF PURCHASER). SELLER ACKNOWLEDGES THAT PURCHASER CANNOT CONTRACT IN ANY MANNER REGARDING THE EXERCISE, AND NOTHING CONTAINED IN THIS AGREEMENT CONSTITUTES PURCHASER'S EXERCISE OF ITS REGULATORY POWERS OR A WAIVER OF ITS SOVEREIGN IMMUNITY PROTECTIONS.

Section 5.10 Counterparts; e-Signatures. This Agreement may be signed in as many counterparts as may be convenient or required. It shall not be necessary that the signature and acknowledgment of, or on behalf of, each party, or that the signature and acknowledgment of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. The Parties agree that delivery of digital signatures shall be given the same legal effect as original signatures, and the Parties hereby agree to accept electronic delivery of digital signatures by e-mail in "pdf" form, or via DocuSign, Adobe Sign, or any similar means of digital delivery.

(Signature Page Follows)

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

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

By: _____
Sereniah Breland, City Manager

GRIFFIN/SWINERTON, LLC, a Delaware limited liability company, as Seller

By: _____
Roger Torriero, Principal

By: _____
Korin Crawford, Executive Vice President

EXHIBIT A

INSTALLMENT PAYMENT SCHEDULE

EXHIBIT B

FORM OF PURCHASE PRICE ADJUSTMENT ADDENDUM

(appears on immediately following page)

PURCHASE PRICE ADDENDUM NO. ____

This Purchase Price Addendum No. ____ (this "Addendum") is executed as of _____, 20____, pursuant to that Purchase and Sale Agreement dated as of November [__], 2024 between the **CITY OF PFLUGERVILLE** ("**Purchaser**" or the "**City**"), a Texas home-rule municipality, and **GRIFFIN/SWINERTON, LLC** ("**Seller**"), a Delaware limited liability company (the "**PSA**"). Capitalized terms used herein and not otherwise defined shall have the meaning given thereto in the PSA.

- (i) The original Purchase Price for the Civil Work Project Component (as determined in the Approved Installment Payment Schedule) was \$35,006,707 (the "**Original Purchase Price**").
- (ii) Since the Effective Date of the PSA, the Parties have previously approved the following adjustments to the Original Purchase Price:

[If no previous Adjustments have been approved, replace the following table with "None".]

ADJUSTMENT DATE	ADJUSTMENT TYPE ¹	ADJUSTMENT AMOUNT

- (iii) By Signing below the Parties hereby approve of the following Adjustments to the Purchase Price:

ADJUSTMENT TYPE	ADJUSTMENT AMOUNT

- (iv) The total adjusted Purchase Price, taking into account the Adjustments described above, is equal to \$_____.
- (v) The Approved Installment Payment Schedule attached as EXHIBIT A to the PSA is hereby replaced with the updated Approved Installment Payment Schedule attached hereto as EXHIBIT A.

(Signature Page Follows)

¹ Adjustment types include: Lessor Modification Adjustments, Compensable Delay Adjustments, Sales Tax Adjustments, Ad Valorem Tax Adjustments, and Cost Savings Adjustments.

This Purchase Price Addendum No. ___ is approved as of the date first set forth above:

CITY OF PFLUGERVILLE, as Purchaser

By: _____
Sereniah Breland, City Manager

GRIFFIN/SWINERTON, LLC, as Seller

By: _____
Roger Torriero, Principal

By: _____
Korin Crawford, Executive Vice President

EXHIBIT A TO PURCHASE PRICE ADDENDUM
UPDATED INSTALLMENT PAYMENT SCHEDULE

INSTALLMENT PAYMENT	
1	\$[_____]
2	\$[_____]
3	\$[_____]
4	\$[_____]
5	\$[_____]
6	\$[_____]
7	\$[_____]
8	\$[_____]
9	\$[_____]
10	\$[_____]
Final	\$[_____]

EXHIBIT C

NON-DEFAULT TERMINATION FEE SCHEDULE

PERIOD	NON-DEFAULT TERMINATION FEE

EXHIBIT D

SCHEDULE OF VALUES/GMP

(appears on immediately following page)

EXHIBIT E

CIVIL WORK PROJECT COMPONENT CONSTRUCTION SCHEDULE

(appears on immediately following page)

EXHIBIT F

DEVELOPER C&AS

(appears on immediately following page)