

[INSERT HEB LETTERHEAD]

August \_\_, 2022

City of Forney  
Attn: Karl Zook – City Engineer  
101 Main Street East  
P.O. Box 826  
Forney, Texas 78701

RE: Reimbursement Agreement (this “**Agreement**”) by and between the City of Forney, Texas (the “**City**”), and H-E-B, LP, a Texas limited partnership (“**HEB**”), pertaining to certain costs to be incurred by the City on behalf of HEB, pertaining to the development and construction of a public railroad crossing (the “**Crossing**”) across that certain railroad track operated by Union Pacific Railroad (“**Union Pacific**”), adjacent to that certain 18.432 acre property owned by HEB, more or less located at the SEC of E. Broad Street and FM 548 in Forney, Kaufman County, Texas

To Whom it May Concern:

As you know, the City has submitted an application and certain renderings of the Crossing (such materials and any related material provided to Union Pacific in furtherance thereof referred to herein as the “**Crossing Application**”) to Union Pacific for Union Pacific’s review and approval. Union Pacific has indicated that it will require the City to pay certain expenses related to Union Pacific’s review of the Crossing Application.

HEB and the City agree as follows:

1. Subject to the terms, provisions, and conditions of this Agreement, HEB hereby agrees to reimburse the City for all actual costs and expenses (the “**Costs**”) incurred by the City to Union Pacific with respect to Union Pacific’s review of the Crossing Application, subject to the Reimbursement Limitation (as defined below). Upon receipt by the City of any invoice, bill, or other document evidencing any Costs, the City shall provide a copy of such documentation to HEB with a request for reimbursement of the Costs as provided therein. HEB shall reimburse the City for any such Costs within thirty (30) days after receipt of such documentation and request for reimbursement from the City. Notwithstanding anything in this Agreement to the contrary, in the event that the Costs exceed the aggregate amount of Fifty Thousand and No/100 Dollars (\$50,000.00), HEB shall have the continuing right in its sole and absolute discretion to terminate this Agreement at any time, by providing written notice to the City (the “**Cost Termination Notice**”) of such election. In the event that, HEB issues a Cost Termination Notice, the City shall withdraw the Crossing Application, and HEB shall not be liable for any Costs incurred after the date of the Cost Termination Notice.

2. Each of the undersigned represents and warrants that he or she is authorized to enter into this Agreement and bind HEB or the City, as the case may be, to the terms, provisions and conditions hereof, and that upon mutual execution and delivery, this Agreement shall be binding upon and be enforceable against HEB and the City in accordance with its terms.

3. Notices under this Agreement may be given by email, U.S. Postal Service, personal delivery or courier, as the giver of the notice may elect, and shall be deemed duly given and received for all purposes on the first to occur of actual receipt or the second business day following the date the notice is transmitted, addressed to the other party at the addresses set forth below (or to such other address as HEB or the City may designate to each other from time to time by written notice):

If to HEB: H-E-B, LP  
3890 W. Northwest Highway, Suite 300  
Dallas, Texas 75220  
Attn: Larry Miller  
Telephone: (214) 252-5935

With copy to: Golden Steves & Gordon LLP  
200 E. Basse Rd., Suite 200  
San Antonio, TX 78209  
Attn: Ami Gordon  
Telephone: (210) 745-3700  
Email: agordon@goldensteves.com

If to the City: City of Forney – City Manager’s Office  
101 Main Street East  
Forney, TX 75126  
Attn: Charles W. Daniels  
Telephone: (972) 552-6450  
Email: cdaniels@forneytx.gov

With copy to: City of Forney – City Attorney’s Office  
101 Main Street East  
Forney, TX 75126  
Attn: Jennifer Barnes Smith  
Telephone: 972.552.6580  
Email: jsmith@forneytx.gov

4. This Agreement shall be binding upon HEB and the City and their respective successors and assigns, and shall inure to the benefit of HEB and the City and their respective successors and assigns. No amendment, addition to or other modification of this Agreement shall be admissible, enforceable or effective unless it is set forth in a writing duly executed by the City and HEB.

5. Notwithstanding anything herein to the contrary, neither party shall have any obligation to enter into any agreement except as determined by each such party in its respective sole discretion. The City will deliver to HEB copies of the reports, notices, studies, drawings, specifications and other relevant documents provided by Union Pacific with respect to the Crossing Application within five (5) days following the City’s receipt thereof, and keep HEB updated on the status of the Crossing Application.

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If this accurately reflects our agreement on this subject, please execute a copy of this Agreement in the space provided below and return it to me for my files. This Agreement may be executed in counterparts and delivered electronically, including via DocuSign.

[Signature Page follows]

Sincerely,

**H-E-B, LP,**  
a Texas limited partnership

By: \_\_\_\_\_  
Name: Benjamin R. Scott  
Title: Vice President of Real Estate

The foregoing is agreed to and accepted by the City on August \_\_\_\_, 2022.

**CITY OF FORNEY, TEXAS,**

By: \_\_\_\_\_  
Name: Charles W. Daniels  
Title: City Manager