

RESOLUTION NO. 24-R-39

**A RESOLUTION AUTHORIZING THE LEASE OF PROPERTY ALONG
SCHAEFER ROAD TO SER CONSTRUCTION PARTNERS, LLC.**

WHEREAS, the Texas Department of Transportation (TxDOT) is undertaking the Farm-to-Market (FM) 1518 Project and has awarded the construction contract to SER Construction Partners, LLC; and

WHEREAS, SER Construction Partners, LLC is requesting to lease property from the City of Schertz to use as a construction staging area for their equipment and materials as part of the FM 1518 project; and

WHEREAS, SER Construction Partners would pay to the City a rent of \$2,500 per month throughout the course of the project;

WHEREAS, the property is described as being a 7.5-acre tract along Schaefer Road;

WHEREAS, City Staff has recommended that the City lease the property along Schaefer Road to SER Construction Partners, pursuant to the proposal attached hereto as Exhibit A (“Agreement”).

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS THAT:

Section 1. The City Council hereby authorizes leasing the property located along Schaefer Road and authorizes the City Manager to lease the property to SER Construction Partners, LLC for an amount of **TWO THOUSAND FIVE HUNDRED DOLLARS PER MONTH** (\$2,500/month) as per Exhibit "A".

Section 2. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the City Council.

Section 3. All resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 4. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 5. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Resolution would have been enacted without such invalid provision.

Section 6. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

Section 7. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

PASSED AND ADOPTED, this ____ day of April, 2024.

CITY OF SCHERTZ, TEXAS

Ralph Gutierrez, Mayor

ATTEST:

Sheila Edmondson, City Secretary

EXHIBIT A

COMMERCIAL LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease"), dated to be effective as of April ____, 2024 (the "Effective Date"), is made by and between the **CITY OF SCHERTZ**, a Texas home-rule city ("Lessor"), and **SER CONSTRUCTION PARTNERS, LLC**, a Texas limited liability company ("Lessee").

Lessor, in consideration of the rent to be paid and the covenants and agreements to be performed by Lessee, as hereinafter set forth, does hereby LEASE, DEMISE and LET unto Lessee and Lessee hereby takes and accepts **approximately 7.5 acres of land in the Miles S Bennett Survey No. 75, Abstract 61, City of Schertz, Bexar County, Texas, as more particularly described in Exhibit "A" attached hereto and made a part hereof** (the "Land"), together with all rights, privileges, easements and appurtenances belonging to or pertaining to said Land (all of said property being hereinafter collectively called the "Premises").

The Premises are leased by Lessor to Lessee and are accepted and are to be used and possessed by Lessee upon and subject to the following terms, provisions, covenants, agreements and conditions:

1. **Term.** This Lease shall commence on March 1, 2024 (the "Commencement Date") and end at midnight on December 31, 2027 (the "Expiration Date", with the period between the Commencement Date and the Expiration Date being referred to herein as the "Term"); provided, however, that Lessee shall have the right to terminate this Lease at any time during the last twelve (12) months of the Term by providing at least thirty (30) days' notice to Lessor of its intention to so terminate.

2. **Rent.**

(a) During the Term of this Lease, Lessee covenants and agrees to pay to Lessor as rent for the Premises, on or before the first (1st) day of each month, an amount equal to Two Thousand Five Hundred and 00/100 U.S. Dollars (\$2,500.00) per month (the "Rent").

(b) **Payment of Rent.** All Rent shall be paid by Lessee to Lessor at Lessor's address specified in or pursuant to Section 19 hereof, or to such other person and/or at such other address as Lessor may direct by notice to Lessee. The Rent shall be paid without notice or demand, and without abatement, deduction or setoff, except as may be expressly herein provided.

(c) **Late Charges.** If any sums payable by Lessee to Lessor under any provisions of this Lease are not received by the fifth (5th) day after such payments are due, a late charge of Twenty-Five and No/100 Dollars (\$25.00) per day after such fifth (5th) day will be assessed against Lessee as additional rent.

3. **Title of Lessor; Condition of Premises.** Lessor represents and warrants that it owns the Premises in fee simple and that the Premises are free from encumbrances and matters which would interfere with Lessee's use of the Premises during the Term.

4. **Property Taxes; Utility Charges; Expenses.**

(a) During the Term, Lessee shall promptly pay all water and sewer charges, charges for electricity, gas (natural or propane), telephone usage and other utility charges relating to Lessee's use of the Premises (all of which are herein called "Charges") which arise and are assessed during the Term.

(b) Lessee shall, before delinquency, pay all taxes and assessments levied or assessed against any of Lessee's personal property or trade fixtures placed on or about the Premises (including stored material and inventory), and upon Lessor's request, deliver to Lessor receipts from the applicable taxing authority or other evidence acceptable to Lessor to verify that the taxes have been paid. Notwithstanding anything contained herein to the contrary, Lessee shall not be required to pay any net income tax applicable to Lessor or the existing Texas franchise/gross margin tax under Chapter 171 of the Texas Tax Code.

(c) If Lessee shall default in the payment of any tax, assessment, levy, or other charge required to be paid hereunder by Lessee, Lessor shall have the right (but not the obligation) to pay the same together with any penalties and interest, in which event the amount so paid by Lessor shall be paid by Lessee to Lessor as additional Rent.

5. **Insurance.**

(a) Lessee shall, at its sole cost and expense, maintain throughout the Term a policy or policies of insurance as follows:

(i) *Commercial General Liability Insurance.* Commercial general liability insurance written the most current edition of Insurance Services Offices, Inc. ("ISO") occurrence basis form CG 00 01, with Lessor included as named insured against any and all claims for bodily and property damage occurring in or about the Premises arising from or in connection with Lessee's use or occupancy of the Premises, and as otherwise provided in the Commercial general liability insurance policy. The insurance policy or policies shall have a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence with a Two Million Dollar (\$2,000,000) general aggregate limit. The liability insurance shall be primary and not "contributing to" any insurance available to Lessor, and Lessor's insurance shall be in excess of all of Lessee's insurance.

(ii) *Workers Compensation Insurance.* Workers compensation insurance written in accordance with the laws of the State of Texas with at least the amount of the statutory coverage limits required under the laws of the State of Texas and employer's liability coverage with a limit of not less than One Million Dollars (\$1,000,000) per accident for bodily injury by accident.

(iii) *Business Automobile Liability Insurance.* Business automobile liability insurance, including liability arising out of operation of all owned, hired, and non-owned vehicles, with a combined single limit of not less than Three Hundred Thousand Dollars (\$300,000) per occurrence.

(b) In respect of all insurance policies required to be procured by Lessee hereunder, upon execution of this Lease, Lessee shall cause (i) a copy of each such policy, along with any endorsements, to be delivered to Lessor on or before the Commencement Date and (ii) a copy of each subsequent policy or policy renewal along with any endorsements at least ten (10) days prior to the expiration of the preceding policy. All certificates or policies of insurance shall specify that Lessor shall be given at least thirty (30) days prior written notice of any cancellation or non-renewal of such policy.

(c) If Lessee shall fail to obtain or maintain of any insurance required hereunder, which failure shall continue for thirty (30) days following written notice from Lessee, then Lessor shall have the right (but not the obligation) to take whatever action is necessary and to pay all appropriate premiums to obtain or maintain such insurance, in which event any amount paid for premiums by Lessor shall be paid by Lessee to Lessor as additional Rent on the due date for the next installment of Rent payable hereunder.

6. **Use; Maintenance; Alterations.**

(a) Use. Lessee may use the Premises as a construction storage and staging yard, including any activity which is necessary for or incidental to the performance of the foregoing, such as the staging, handling, and storage of machinery, equipment, vehicles, and construction materials, and as relates to the reconstruction of FM 1518 on behalf of the Texas Department of Transportation (subject to separate agreement). Lessee may also use the Premises for the following, so long as such uses are in accordance with all applicable laws and regulations: the placement and operation of a portable pugmill for the production of stabilized sand material. Lessee, at its own expense, shall obtain any and all governmental licenses and permits necessary for such use. Lessee agrees not to use or allow or permit the Premises to be used for any purpose prohibited by any law applicable to the Premises, and Lessee agrees not to commit waste or suffer or permit waste to be committed or to allow or permit any nuisance on or in the Premises.

(b) Maintenance. Lessee shall keep the Premises in good repair and condition (ordinary wear and tear excepted) and shall promptly make, at Lessee's expense, all necessary repairs thereto.

(c) Alterations. Except as provided herein, Lessee shall make no improvements or alterations to the Premises ("Alterations") without Lessor's prior written consent. Notwithstanding the foregoing sentence, Lessor hereby consents to (i) the installation of temporary fencing to secure the Premises, (ii) the placement of aggregate base or similar soil stabilizing material upon the Premises in areas approved by Lessor in writing, and (iii) the installation of equipment and related appurtenances necessary for the connection of commercial water, sewer, and electrical services to the Premises for use by Lessee.

7. **Utility Services.** No utility services are being provided to Lessee by Lessor under this Lease. Lessee shall be permitted, but shall have no obligation, to establish, at its sole expense, commercial utility services at the Premises for its use hereunder, including, without limitation, water, sewer, and electrical services.

8. **Condemnation.** If the whole or substantially the whole of the Premises should be taken for any public or quasi-public use under any governmental law, ordinance, or regulation or by right of eminent domain or should be sold to the condemning authority under threat of condemnation (each, a “Taking”), then this Lease shall terminate as of the date of such Taking. If there occurs a Taking of a portion of the Premises such that the remainder of the Premises shall not, in Lessee’s reasonable opinion, be adequate and suitable for the conduct of Lessee’s business, then Lessee may, at its option, terminate this Lease by delivering written notice thereof to Lessor within thirty (30) days after the Taking, in which case this Lease shall terminate as of the date of such Taking. In case of a Taking of a portion of the Premises and this Lease is not terminated as set forth above, this Lease shall remain in full force and effect; provided that the Rent payable hereunder shall be reduced by an amount representing that part of such Rent allocable to the portion of the Premises taken by the Taking. Lessor shall in no event be obligated to restore or reconstruct the remaining Premises to their former condition. Nothing contained herein shall be construed as a waiver by the Lessee of any claim which it may have against the condemning authority for taking all or any part of the Premises. Lessee shall have the right to file a separate claim against the condemning authority for moving expenses.

9. **Indemnification.**

(a) To the fullest extent permitted by law, Lessee expressly agrees to indemnify, protect, defend and hold harmless Lessor and Lessor’s agents, directors, officers, and employees from all claims, losses, costs, damages and expenses (including but not limited to attorneys’ fees) resulting or arising or alleged to arise from any and all injuries or death of any person or damage to any property caused by an act, omission or negligence of Lessee or Lessee’s directors, officers, employees, agents, invitees, customers or guests, which occurs during the term of this Lease on the Premises, except to the extent it is caused in whole or in part by the negligence or willful misconduct of Lessor, or its agents, directors, officers, employees, invitees and contractors.

(b) To the fullest extent permitted by law, Lessor expressly agrees to indemnify, protect, defend and hold harmless Lessee and Lessee’s agents, partners, directors, offices, employees, invitees and contractors from all claims, losses, costs, damages and expenses (including but not limited to attorneys’ fees) resulting or arising or alleged to arise from any and all injuries or death of any person or damage to any property caused by any act, omission or negligence of Lessor, or of Lessor’s agents, directors, officers, employees and contractors, which occurs during the term of this Lease on or about the Premises, except to the extent caused in whole or in part by the negligence or willful misconduct of Lessee, or its agents, directors, officers, employees, invitees, and contractors.

10. **Surrender upon Termination.** Upon the expiration or earlier termination of this Lease, Lessee shall surrender possession of the Premises and deliver the Premises to Lessor in as good repair and condition as at the commencement of Lessee’s occupancy, reasonable wear and tear excepted. Lessee shall remove any signs installed by Lessee, and, at Lessor’s option, any Alterations constructed without Lessor’s consent, as provided in Section 6(c), if applicable. Lessee shall remove any and all stockpiles of material, inventory, equipment, and other personal property upon the expiration or earlier termination of this Lease. Lessee shall repair any damage to the Premises resulting from Lessee’s removal of any signs, Alterations, or personal property as

provided hereunder. Notwithstanding anything contained herein to the contrary, in the event that Lessee places aggregate base or other similar soil stabilizing material upon the Premises during the Term, Lessee shall have the right, but not the obligation, to remove such material upon the expiration or earlier termination of this Lease.

11. **Assignment and Subleasing.** Lessee may not, without the prior written consent of the Lessor, which consent may be given or withheld in Lessor's sole discretion, assign this Lease or sublet the Premises or any portion thereof except to an affiliated entity wholly-owned by Lessee or to an affiliated entity under common ownership and control with Lessee (an "Affiliate"). Lessee shall not be released from any obligation or liability hereunder as a result of an assignment or sublease.

12. **Lessor's Right of Access.** Lessor or Lessor's representatives shall have the right at all reasonable times during the Term upon twenty-four (24) hours advance written notice to Lessee (except in the event of an emergency during normal business hours, in which oral notice shall be sufficient or if the emergency is at times other than normal business hours, no prior notice shall be required) to enter upon any part of the Premises for the purpose of determining whether the conditions and covenants contained in this Lease are being kept and performed by Lessee or to show the Premises to prospective purchasers and/or tenants. In the exercise of its rights pursuant to this Section 12, Lessor shall use its good faith efforts to not unreasonably interfere with Lessee's use and enjoyment of the Premises.

13. **Holding Over by Lessee.** It is agreed that any holding over by Lessee of the Premises after the expiration of the Term of this Lease without Lessor's prior written consent shall operate and be construed as a tenancy from month-to-month, which may be terminated upon thirty (30) days written notice by either Lessor or Lessee, on the terms and conditions of this Lease, and Lessee agrees to continue to pay Rent in the same amount as set forth in Section 2(a) hereof.

14. **Non-Disturbance Agreement.** Lessor hereby represents and warrants to Lessee that the Premises are not presently encumbered by any mortgage or deed of trust lien. This Lease shall not be subject or subordinate to any mortgage or deed of trust lien which hereafter encumbers the Premises unless Lessor obtains a non-disturbance agreement from the holder of such mortgage or deed of trust in form, scope and substance reasonably satisfactory to Lessee and containing commercially reasonable and customary provisions, wherein such holder agrees not to disturb Lessee's possession of the Premises (subject to the terms, conditions and provisions of this Lease) so long as Lessee is not in default or breach of this Lease, and in which event Lessee must agree to attorn to the holder of such mortgage or deed of trust.

15. **Events of Default.** The following events shall each be deemed to be an "Event of Default" by Lessee under this Lease:

(a) Lessee shall fail to pay any installment of any monetary payment obligation hereby reserved and such failure shall continue for a period of fifteen (15) days after written notice thereof given by Lessor to Lessee.

(b) Lessee shall fail to comply with any term, provision or covenant of this Lease, other than a monetary payment obligation, and shall not cure such failure within thirty (30)

days after written notice thereof from Lessor to Lessee, provided that, if Lessee, during such thirty (30) day period, takes action to cure such default but is unable, by reason of the nature of the work involved, to cure the same within such period, and if Lessee continues such work thereafter diligently and without unnecessary delays, Lessee shall not be in default hereunder until the expiration of a period of time as may be reasonably necessary to cure such default.

(c) Lessee shall file a petition under any section or chapter of the United States Bankruptcy Code, as amended, or under any similar law or statute of the United States or any State thereof or shall be adjudged bankrupt or insolvent in proceedings thereunder and such adjudication shall not be set aside or stayed within sixty (60) days thereafter.

(d) A receiver or trustee shall be appointed for all or substantially all of the assets of Lessee and such receivership or trustee shall not be removed by Lessee within sixty (60) days thereafter.

(e) Lessee shall abandon the Premises without notifying Lessor and taking reasonable measures to secure the Premises.

16. **Remedies upon Default.** Lessor shall have the right, following an Event of Default, to exercise or pursue any rights or remedies as may be available at law or in equity.

(a) Following an Event of Default, exercise by Lessor of any one or more available remedies shall not be deemed to be an acceptance or surrender of the Premises by Lessee, whether by agreement or operation of law, it being understood that such surrender can be affected only by the written agreement of Lessor and Lessee.

(b) Following an Event of Default, Lessee shall also be liable for and shall pay to Lessor in addition to any sums provided to be paid above: reasonable broker's fees incurred by Lessor in connection with reletting the whole or any part of the Premises, limited to the charges related to or prorated for that portion of the Term then remaining; the costs of removing and storing Lessee's or other occupant's property; the cost of repairing any damage caused by Lessee to the Premises; and all other reasonable expenses incurred by Lessor in enforcing Lessor's remedies.

(c) If following an Event of Default Lessor terminates this Lease or Lessee's right to possession of the Premises (without terminating the Lease), Lessor shall use good faith reasonable efforts to mitigate Lessor's damages by re-letting the Premises following Lessee's vacancy thereof, on such terms and conditions as Lessor in its good faith and judgment may determine (including, without limitation, a term different than the term of this Lease, rental concessions, alterations and repair of the Premises) and otherwise in accordance with applicable law.

(d) Lessor's rights and remedies under this Lease are cumulative and none shall exclude any other rights and remedies available either in law or in equity.

17. **Lessor Default.** Lessor shall be in default hereunder if Lessor fails to perform any of its obligations hereunder within thirty (30) days after written notice from Lessee specifying such failure; provided that, if such failure cannot reasonably be cured within the said thirty (30) days,

Lessor shall not be in default if Lessor commences to cure such failure within said thirty (30) day period and shall thereafter with reasonable diligence and good faith proceed to cure such default.

18. **Quiet Enjoyment.** Provided no Event of Default has occurred and is then continuing, Lessee shall at all times during the Lease Term peaceably and quietly enjoy the Premises without any disturbance from Lessor or from any other person claiming by, through, or under Lessor.

19. **Notices.** Any notice or communication required or permitted in this Lease shall be given in writing, sent by (a) personal delivery, with proof of delivery, (b) nationally recognized overnight courier service with proof of delivery (e.g. Federal Express), or (c) United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed as provided below or to such other address or to the attention of such other person as shall be designated from time to time in writing by the applicable party and sent in accordance herewith.

To Lessor: City of Schertz, Texas
 1400 Schertz Parkway
 Schertz, Texas 78154

To Lessee: SER Construction Partners, LLC
 3636 Pasadena Boulevard
 Pasadena, Texas 77503
 Attn: Miguel A. Ramos

Notice provided by United States mail shall be effective three (3) days after such notice is deposited in the United States mail postage prepaid and address a provided above. Notice given in any other manner shall be effective when received.

20. **Time of the Essence.** All of the duties, covenants, obligations and agreements of each party hereunder, and all acts and things done or provided to be done by each party hereunder, shall be fully and punctually kept, performed and complied with by the obligated party, time being of the essence in the performance of this Lease by each party.

21. **Brokers.** Lessor and Lessee each warrant to the other that it has not dealt with any broker or agent in connection with this Lease.

22. **Authority.**

(a) Lessee warrants and represents that (i) Lessee is a duly organized and existing legal entity, authorized to do business in and in good standing with the State of Texas, (ii) Lessee has full right and authority to execute, deliver and perform this Lease and all consents or approvals required of third parties (including but not limited to its members) for the execution, delivery and performance of this Lease have been obtained, (iii) the person executing this Lease on behalf of Lessee is authorized to do so and (iv) upon request by Lessor, such person shall deliver to Lessor satisfactory evidence of his/her authority to so execute this Lease on behalf of Lessee.

(b) Lessor warrants and represents that (i) Lessor has full right and authority to execute, deliver and perform this Lease and all consents or approvals required of third parties

(including, but not limited to, its governing body) for the execution, delivery and performance of this Lease have been obtained, (ii) the person executing this Lease on behalf of Lessor is authorized to do so and (iii) upon request by Lessee, such person shall deliver to Lessee satisfactory evidence of his/her authority to so execute this Lease on behalf of Lessor.

23. **Estoppel Certificates.**

(a) Lessee agrees at any time and from time to time, upon not less than thirty (30) days' prior written notice by Lessor, to execute, acknowledge and deliver, without charge, to Lessor, or to any person designated by Lessor, a statement in writing certifying that this Lease is unmodified (or if there have been modifications, identifying the same by the date thereof and specifying the nature thereof), that Lessee has not received any notice of default or notice of termination of this Lease (or if Lessee has received such a notice, that it has been revoked, if such be the case), that to the knowledge of Lessee no event of default exists hereunder by Lessor (or if any such event of default does exist, specifying the same and stating that the same has been cured, if such be the case), that Lessee to its knowledge has no claims or offsets against Lessor hereunder (or if Lessee has any such claims, specifying the same), and the dates to which the Rent and the other sums and charges payable by Lessee hereunder have been paid.

(b) Lessor agrees at any time and from time to time, upon not less than thirty (30) days' prior written notice by Lessee, to execute, acknowledge and deliver, without charge, to Lessee, or to any person designated by Lessee, a statement in writing stating that this Lease is unmodified (or if there be modifications, identifying the same by the date thereof and specifying the nature thereof), that no notice of default or notice of termination of this Lease has been served on Lessee (or if Lessor has served such notice, that the same has been revoked, if such be the case), that to Lessor's knowledge no event of default exists under this Lease by Lessee (or if any such event of default does exist, specifying the same), that Lessor to its knowledge has no claims or offsets against Lessee hereunder (or if Lessor has any such claims, specifying the same), and the date to which the Rent has been paid by Lessee.

24. **Memorandum of Lease.** Neither Lessor nor Lessee shall file this Lease for record in the Office of the County Clerk of Bexar County, Texas, or in any other public place without the written consent of the other.

25. **Lessee's Environmental Covenants.** Lessee shall, at Lessee's sole cost and expense, comply with all laws, ordinances, rules and regulations promulgated by all federal, state, county, municipal bodies and agencies having jurisdiction, which laws, ordinances, orders, rules and regulations relate to the business of Lessee and the effect of that business on the use, condition, structure or occupancy of the Premises.

(a) Without limiting the foregoing, the term "Hazardous Waste Law" shall mean any provision of federal, state or local law or regulation or common law, in effect on the date hereof (and as thereafter amended from time to time) or hereafter enacted or imposed, pertaining to health, safety or environmental protection, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by Superfund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act of 1976, and the Texas Water Code and the Texas Solid Waste Disposal Act. The term

“environment” means any surface or groundwater, drinking water supply, land, surface or subsurface strata, or the ambient air. The term “release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment.

(b) Lessee agrees to indemnify Lessor and its successors and assigns against and agrees to defend and hold Lessor and its successors and assigns harmless from any claim, obligations, liability, loss, damage, or expense (including without limitation, attorney’s fees and court costs), of whatever kind or nature, contingent or otherwise, known or unknown, accruing after the Commencement Date of the Lease, (i) that is incurred or imposed based upon any Hazardous Waste Law and that arises out of any act or omission of Lessee that causes the release of any hazardous substance into the environment, or (ii) that otherwise arises from the breach by Lessee of any representation, warranty, or covenant made by Lessee in the Lease relating to the use, storage, or disposal of hazardous materials.

(c) To the extent permitted by law, Lessor agrees to indemnify Lessee and its successors and assigns against and agrees to defend and hold Lessee and its successors and assigns harmless from any claim, obligations, liability, loss, damage, or expense (including without limitation, attorney’s fees and court costs), of whatever kind or nature, contingent or otherwise, known or unknown, accruing prior to the Commencement Date of the Lease, (i) that is incurred or imposed based upon any Hazardous Waste Law and that arises out of any act or omission of Lessor, its employees, agents, representatives, contractors, or invitees, that causes the release of any hazardous substance into the environment, or (ii) that otherwise arises from Lessor’s ownership, use, and operation of the Premises prior to the Commencement Date.

(d) Prior to the Commencement Date, Lessee may procure a Phase One environmental report covering the Premises, prepared by a reputable company which is licensed to prepare such report and regularly issues such reports (the “**Baseline Environmental Report**”). In the event that the Baseline Environmental Report indicates the existence of hazardous substances upon the Premises or suggests that a Phase Two environmental report or further testing of the Premises is warranted or advised, Lessor shall, at its sole expense, either: (i) terminate this Lease, whereupon thereafter all parties hereto or mentioned herein shall be released and relieved of further obligations, liabilities or claims hereunder; or (ii) promptly cause a Phase Two environmental report or additional testing to occur, at Lessor’s expense, and provide to Lessee a copy of such Phase Two report or written evidence of the results of such additional testing, as the case may be (the “**Additional Environmental Information**”). In the event that Lessor proceeds under clause (ii) of the preceding sentence and any such Additional Environmental Information indicates the existence or occurrence of any matter or condition for which Lessor has agreed to indemnify Lessee under Section 25(c) hereof, Lessee shall, as its sole and exclusive option, either: (i) request, in a written notice delivered to Lessor within twenty (20) days after Lessee’s receipt of the Additional Environmental Information, that Lessor, at its expense, promptly use commercially reasonable efforts to cause such matter or condition to be remedied, including, without limitation, the removal of any hazardous substances from the Premises and agree to postpone the Commencement Date of this Lease until such date that Lessor has so remedied any such matter or condition; or (ii) terminate this Lease, whereby Lessor shall thereafter return to Lessee all sums advanced to Lessor by Lessee under this Lease prior to the Commencement Date, if any, and

thereafter all parties hereto or mentioned herein shall be released and relieved of further obligations, liabilities or claims hereunder.

(e) No later than thirty (30) days after any termination or expiration of this Lease, Lessee, at its expense, shall provide Lessor with a Phase One environmental report covering the Premises prepared by a reputable company which is licensed to prepare such report and regularly issues such reports (the “**Final Environmental Report**”). In the event that the Final Environmental Report indicates that a Phase Two environmental report or further testing of the Premises is warranted or advised, Lessee, at its expense, promptly shall cause such additional report or such additional testing to occur and promptly shall provide to Lessor a copy of such Phase Two environmental report or written evidence of the results of such further testing, as the case may be; provided, however, that if a Phase Two environmental report is produced at the inception of the Lease, as described in Section 25(d) hereof, then the cost of any subsequent Phase Two environmental report, as required under this Section 25(e), shall also be borne by Lessor. If any such Phase Two report or any such testing indicates the existence or occurrence of any matter or condition for which Lessee has agreed to indemnify Lessor under this Lease, then Lessee, at its expense, promptly shall cause such matter or condition to be remedied, including, without limitation, the removal of any hazardous substances from the Premises.

26. **Miscellaneous.**

(a) Severability. If any term or provision of this Lease or the application thereof to any person or circumstance shall be to any extent invalid and unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby.

(b) No Merger. There shall be no merger of this Lease or of the leasehold estate hereby created with the fee estate in the Premises or any part thereof by reason of the fact that the same person may acquire or hold, directly or indirectly, this Lease or the leasehold estate hereby created or any interest in this Lease or in such leasehold estate as well as the fee estate in the Premises or any interest in such fee estate.

(c) Gender. Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

(d) Entire Agreement. This Lease sets forth the entire agreement between the parties and no amendment or modification of this Lease shall be binding or valid unless expressed in a writing executed by both parties hereto.

(e) Section Headings. The section headings contained in this Lease are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several sections hereof.

(f) Binding Effect. All of the covenants, agreements, terms and conditions to be observed and performed by the parties hereto shall be applicable to and binding upon their respective heirs, personal representatives, successors and, to the extent assignment is permitted hereunder, their respective assigns.

(g) Applicable Law. This Lease shall be governed by and construed in accordance with the laws of the State of Texas.

(h) Relationship of Lessor-Lessee. Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third person to create the relationship of principal and agent, partnership, joint venture, or any other association between Lessor and Lessee other than the landlord-tenant relationship described herein.

(i) Holidays. If the day on which Rent or any other payment due hereunder is payable, or on which any other obligation of any party hereto becomes due, falls on a Saturday, Sunday or on a legal holiday in the state where the Premises are located, the date for payment or performance of such obligation shall be the next day which is not a Saturday, Sunday or legal holiday in the state where the Premises are located.

(j) Counterparts. This Lease may be executed in one or more identical counterparts which may be disassembled and aggregated to form one and the same instrument.

(k) No Third-Party Beneficiaries. This Lease inures to the sole and exclusive benefit of Lessor and Lessee, and their respective successors, legal representatives and permitted assigns, and confers no benefit on any third party.

(l) Survival. All obligations of Lessor and Lessee that shall have accrued under this Lease prior to the expiration or earlier termination hereof shall survive such expiration or termination to the extent the same remain unsatisfied as of the expiration or earlier termination of this Lease. Lessor and Lessee further expressly agree that all provisions of this Lease which contemplate performance after the expiration or earlier termination hereof shall survive such expiration or earlier termination of this Lease.

IN WITNESS WHEREOF, Lessor and Lessee have executed this Lease on the date first written above.

LESSOR:

CITY OF SCHERTZ, TEXAS,
a Texas home-rule city

By: _____
Name:
Title:

LESSEE:

SER CONSTRUCTION PARTNERS, LLC,
a Texas limited liability company

By: _____
Name:
Title:

EXHIBIT "A"

DESCRIPTION OF PREMISES

Being a 7.5-acre tract of land, more or less, in the Miles S Bennett Survey No. 75, Abstract 61, City of Schertz, Bexar County, Texas, as depicted in Exhibit "B" hereof, and being a portion of the 13.07-acre tract of land described in the General Warranty Deed to the City of Schertz under County Clerk's File No. 20240001326 of the Real Property Records of Bexar County, Texas.

EXHIBIT "B"

DEPICTION OF PREMISES

The following sketch is not necessarily drawn to scale and is provided only to aid in the identification of the boundaries of the Leased Premises.

