

**Ordinance No. 170941  
EXHIBIT B**

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**REIMBURSEMENT AGREEMENT**

**FOR QUALIFIED OUT-OF-POCKET COSTS**

**BETWEEN CITY OF KANSAS CITY, MISSOURI AND**

**EDGEMOOR INFRASTRUCTURE & REAL ESTATE LLC**

This Reimbursement Agreement for Qualified Out-of-Pocket Costs (“**Agreement**”) is entered as of this \_\_\_\_ day of December, 2017 (the “**Effective Date**”) between the City of Kansas City, Missouri (“**City**”) and Edgemoor Infrastructure & Real Estate LLC (“**Developer**”), a Maryland limited liability company registered to do business in Missouri, for a terminal modernization program at the Kansas City International Airport (the “**Airport**”). This Agreement outlines certain terms and conditions under which Developer would finance and develop such a program.

**RECITALS**

- A. Whereas, City issued a “Request for Qualifications/Proposals for Design, Construct and Private Financing of KCI/ Request #062017” (as amended, the “**RFQ/P**”) on May 30<sup>th</sup>, 2017 to identify a potential developer for development of a single terminal Airport improvement project (the “**Project**”), and
- B. Whereas, City selected Developer for the Project and determined to advance negotiations with Developer to enter into a development agreement (the “**Development Agreement**”) for the Project, and
- C. Whereas, City and Developer have entered into that certain Memorandum of Understanding related to the Project with an Effective Date of December \_\_\_\_, 2017 which provides that the City, through the Aviation Department, will reimburse the Developer for certain Qualified Out-of-Pocket Costs in the event the Project fails to reach financial close, and
- D. Whereas, City and Developer wish to memorialize their agreement regarding payment of Developer’s Qualified Out-of-Pocket costs by executing this Agreement, and

E. Whereas, the City Council authorized the City Manager's execution of this Agreement with its passage of Ordinance No. \_\_\_\_\_.

## AGREEMENT

### I. **Qualified Out-of-Pocket Costs**

a. **Qualified Out-of-Pocket costs** means those costs incurred by Developer which are direct expenses incurred by Developer that are not increased by any dollar or percentage amount representing added profit, fee, or administrative or other charge and which have been documented by the Developer and approved by the Aviation Director. For purposes hereof, **Qualified Out-of-Pocket Costs** shall be limited to and include only those costs related to the Project and incurred by Developer for contractors (and their subcontractors), design professionals, consultants (and their subconsultants), attorneys, other architectural and engineering design professionals (including costs of preconstruction services of third party project contractor(s)), Loan principal, interest, and fees as described below, related financing costs and legal fees and other approved costs related to the Project.

b. An estimate of the total **Qualified Out-of-Pocket Costs** anticipated to be incurred under this Agreement is attached hereto as Exhibit A.

### II. **Funding of Qualified Out-of-Pocket Costs Through Financial Close**

a. Developer shall obtain a pre-construction loan or similar loan ("**Loan**") from a lending institution reasonably acceptable to the City ("**Lender**") for purposes of funding **Qualified Out-of-Pocket costs** through financial close of the Project. Developer shall advise the City as to the proposed Loan terms and shall use reasonable commercial efforts to address any comments raised by the City. The City shall acknowledge the Loan terms as documented in the agreement between the Developer and the Lender. All **Qualified Out-of-Pocket Costs** shall be paid for and funded by the Loan. Upon the date of financial close, Developer shall have funds included in the Project cost wired directly to the lending institution to pay off the full Loan amount, which shall include Loan principal, current and capitalized interest, and fees that have accrued to the Loan consistent with the terms agreed between the Developer and the Lender.

b. Developer and City shall enter into such documents as the Lender may reasonably require in issuance of the Loan, including, but not limited to an assignment of Developer's rights and obligations under this Agreement to the Lender.

### **III. Documentation and Approval of Qualified Out-of-Pocket Costs**

a. On or about the 25<sup>th</sup> day of each month, Developer shall provide City's Aviation Director with documentation detailing the services and related Qualified Out-of-Pocket Costs that Developer expects to be performed in the following month and which shall be subject to City approval under Section III.b below.

b. Within five (5) business days after City's receipt of Developer's documentation under Section III.a, City's Aviation Director shall approve Qualified Out-of-Pocket Costs in its reasonable discretion, which shall not be unreasonably withheld, conditioned, or delayed. Loan costs shall not be subject to rejection by the City if such costs are consistent with the loan documents entered into between Developer and Lender. In the event the Aviation Director rejects any Qualified Out-of-Pocket Costs documented in accordance with Section III.a, the Aviation Director shall provide Developer with written notice giving reason for the rejection and any additional information needed by the Aviation Director to approve the cost. In such case, and in Developer's discretion, the services related to the rejected Qualified Out-of-Pocket Costs will not be performed until after financial close of the Project or will be performed by Developer at its own cost. For the avoidance of doubt, any Qualified Out-of-Pocket Costs rejected by the City shall be expressly excluded from any draw request under the Loan. Any and all City-approved Qualified Out-of-Pocket Costs shall be a reimbursement obligation of City pursuant to Section IV below.

c. On the 20<sup>th</sup> day of each subsequent month, Developer shall provide City's Aviation Director with a spreadsheet (and backup documentation upon request) detailing the actual Qualified Out-of-Pocket Costs incurred through the end of the immediately preceding calendar month.

### **IV. City's Obligation to Reimburse Developer for Qualified Out-of-Pocket Costs**

a. In the event the parties fail to achieve financial close of the Project for any reason, other than as set forth in Section IV.b below, City shall reimburse Developer, including all documented Loan-related financing costs, for Developer's Qualified Out-of-Pocket Costs incurred by Developer from and after September 22, 2017 through the date City notifies Developer that it will no longer pursue the Project. Reimbursement of any and all City-approved Qualified Out-of-Pocket Costs shall not be subject to set-off, deductions, abatement, reduction or withholding for any reason by the City, provided the City receives all Instruments of Service (defined below) in accordance with Section IV.c. Payment by City under this Section IV.a shall be made to Developer within thirty (30) calendar days after Developer furnishes to City the Instruments of Service and any other documents required under Section IV.c.

b. City shall have no obligation to reimburse Developer for Qualified Out-of-Pocket Costs in the event the Project fails to achieve financial close due to Developer's fraudulent act or willful misconduct.

c. Developer shall grant or cause to be granted to City and its agent an irrevocable nonexclusive license to use, reproduce and distribute the instruments of service prepared by Developer's architect or other design professionals in connection with the Project (the "Instruments of Service"). Instruments of Service shall include any drawings, specifications, models, renderings or other materials prepared in connection with the Project, as well as any other documents related to the Project for which the City has an obligation to reimburse the Developer, as prepared by Developer's contractors, consultants, attorneys, and other such entities.

d. Developer hereby irrevocably directs City to make any payments under this Reimbursement Agreement to the Lender, a Blocked or Lock-Box Account in which the Lender has a first-priority, perfected security interest, or alternatively as the Lender may direct. Developer and City agree and acknowledge that City will not accept any redirection of payments without Lender's written consent.

## **V. Termination**

Upon full repayment of the Loan, this Agreement shall automatically terminate, without further instrument or action, and shall be of no force or effect.

## VI. Miscellaneous

- a. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.
- b. Applicable Law. The applicable laws of Missouri shall govern the validity, construction and effect of this Agreement. All disputes arising under or relating to this Agreement shall be filed, maintained, and resolved in accordance with the laws of the State of Missouri without regard to its conflict of law rules.
- c. Assignment. Neither party to this Agreement shall be permitted to assign or transfer its rights under this Agreement without the consent of the other party, except that Developer may assign or transfer its interest under this Agreement to an affiliate or subsidiary entity of Developer or as otherwise required by Section II.b.
- d. Amendments. This Reimbursement Agreement may not be varied, amended or supplemented and any obligation, right, power or remedy shall not be waived except by an agreement in writing signed by duly authorized representatives of City and Developer and with Lender's prior written consent.
- e. Notices. A notice or communication under this Agreement by either party to the other shall be sufficiently given or delivered if dispatched by hand, national courier services, or by registered or certified mail, postage prepaid, addressed as follows:

If to City:

Pat Klein  
Director, Aviation Department  
601 Brasilia Avenue  
Kansas City, Missouri  
Telephone: (816) 243-3107  
Facsimile: (816) 243-

With a copy to:

Galen P. Beaufort  
Senior Associate City Attorney  
City Attorney's Office  
2800 City Hall  
414 East 12<sup>th</sup> Street  
Kansas City, Missouri 64106  
Telephone: (816) 513-3122  
Facsimile: (816) 513-2716

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If to Developer:

Edgemoor Infrastructure & Real Estate LLC  
7500 Old Georgetown Rd.  
Bethesda, MD 20814  
Attn: Geoffrey Stricker  
Facsimile: (301) 272-1912  
Telephone: (301) 272-2990

With a copy to:

Edgemoor Infrastructure & Real Estate LLC  
7500 Old Georgetown Rd., 3<sup>rd</sup> Floor  
Bethesda, MD 20814  
Attn: Frank J. Baltz  
Facsimile: (301) 272-1916  
Telephone: (301) 272-8181

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

DEVELOPER:

EDGEMOOR INFRASTRUCTURE & REAL ESTATE  
LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

CITY:

CITY OF KANSAS CITY, MISSOURI

By: \_\_\_\_\_

Name: Troy M. Schulte

Title: City Manager

APPROVED AS TO FORM:

By: \_\_\_\_\_

Name: Galen P. Beaufort

Title: Senior Associate City Attorney

**CERTIFICATION OF AVAILABILITY OF FUNDS**

I hereby certify that there is a balance, otherwise unencumbered, to the credit of the appropriation to which the foregoing expenditure is to be charged, and a cash balance, otherwise unencumbered, in the treasury, to the credit of the fund from which payment is to be made, each sufficient to meet the obligation hereby incurred.

\_\_\_\_\_  
Randall J. Landes

Director of Finance

**EXHIBIT A**  
**ESTIMATED QUALIFIED OUT-OF-POCKET COSTS**



## Qualified Out-Of-Pocket Expense Estimate

DESIGN-BUILD COSTS	0	1	2	3	4	5	6	7	8	9	10	11	Total
	Nov. '17	Dec. '17	Jan. '18	Feb. '18	Mar. '18	Apr. '18	May '18	Jun. '18	Jul. '18	Aug. '18	Sept. '18	Oct. '18	
SOM Team	\$745,000	\$1,086,000	\$1,668,000	\$1,705,000	\$1,940,000	\$2,015,000	\$2,100,000	\$2,120,000	\$2,120,000	\$2,120,000	\$2,175,000	\$2,175,000	\$19,819,000
Geotech	\$50,000	\$100,000	\$100,000										\$250,000
Existing Conditions Surveying	\$35,000	\$35,000	\$35,000										\$105,000
Traffic Study	\$75,000	\$75,000	\$75,000										\$150,000
Parking Study	\$50,000	\$50,000	\$50,000										\$100,000
Underground Investigation	\$20,000	\$20,000	\$40,000	\$40,000									\$100,000
Asbestos Abatement		\$50,000		\$50,000	\$50,000								\$100,000
Co-location Office		\$50,000	\$50,000	\$25,000	\$25,000	\$25,000							\$75,000
Office Expense	\$7,500	\$7,500	\$7,500	\$7,500	\$7,500	\$7,500	\$7,500	\$7,500	\$7,500	\$7,500	\$7,500	\$7,500	\$82,500
Travel	\$45,000	\$45,000	\$45,000	\$45,000	\$45,000	\$45,000	\$45,000	\$45,000	\$45,000	\$45,000	\$45,000	\$45,000	\$495,000
Vehicles & Transportation	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$55,000
Information Technology	\$10,000	\$10,000	\$10,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$70,000
Clerk/Weitz/Clarison Preconstruction	\$100,000	\$200,000	\$200,000	\$250,000	\$250,000	\$300,000	\$300,000	\$350,000	\$350,000	\$350,000	\$400,000	\$400,000	\$3,050,000
Cost through Referendum	\$750,000												\$0
													\$0
													\$750,000
cumulative	\$750,000	\$1,047,500	\$1,683,500	\$2,285,500	\$2,132,500	\$2,402,500	\$2,462,500	\$2,532,500	\$2,532,500	\$2,587,500	\$2,637,500	\$2,637,500	\$25,351,500
	\$1,797,500	\$3,481,000	\$5,766,500	\$7,899,000	\$10,196,500	\$12,599,000	\$15,061,500	\$17,594,000	\$20,126,500	\$22,714,000	\$25,351,500	\$25,351,500	

EDGEWOOD COSTS	0	1	2	3	4	5	6	7	8	9	10	11	Total
	Nov. '17	Dec. '17	Jan. '18	Feb. '18	Mar. '18	Apr. '18	May '18	Jun. '18	Jul. '18	Aug. '18	Sept. '18	Oct. '18	
Travel	\$15,000	\$15,000	\$15,000	\$15,000	\$15,000	\$15,000	\$15,000	\$15,000	\$15,000	\$15,000	\$15,000	\$15,000	\$165,000
Environmental Assessment *													\$0
Community Relations	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$220,000
Insurance Advisors										\$50,000	\$50,000	\$50,000	\$150,000
Technical Advisors										\$50,000	\$50,000	\$50,000	\$150,000
Rating Agency										\$100,000	\$100,000	\$100,000	\$300,000
Legal Costs	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$1,100,000
Financial Advisors	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$275,000
Consultants	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$220,000
Cost through Referendum	\$200,000												\$0
													\$0
													\$200,000
cumulative	\$200,000	\$165,000	\$165,000	\$165,000	\$165,000	\$165,000	\$165,000	\$165,000	\$165,000	\$165,000	\$165,000	\$165,000	\$2,330,000
	\$365,000	\$530,000	\$695,000	\$860,000	\$1,025,000	\$1,190,000	\$1,355,000	\$1,520,000	\$1,785,000	\$2,075,000	\$2,365,000	\$2,365,000	

SUMMARY	0	1	2	3	4	5	6	7	8	9	10	11	Total
	Nov. '17	Dec. '17	Jan. '18	Feb. '18	Mar. '18	Apr. '18	May '18	Jun. '18	Jul. '18	Aug. '18	Sept. '18	Oct. '18	
Design-Build	\$750,000	\$1,047,500	\$1,683,500	\$2,285,500	\$2,132,500	\$2,402,500	\$2,462,500	\$2,532,500	\$2,532,500	\$2,587,500	\$2,637,500	\$2,637,500	\$25,351,500
Edgemoor	\$200,000	\$165,000	\$165,000	\$165,000	\$165,000	\$165,000	\$165,000	\$165,000	\$165,000	\$165,000	\$165,000	\$165,000	\$2,365,000
Subtotal	\$950,000	\$1,212,500	\$1,848,500	\$2,450,500	\$2,297,500	\$2,467,500	\$2,567,500	\$2,697,500	\$2,697,500	\$2,797,500	\$2,877,500	\$2,927,500	\$27,716,500
Financing Costs	\$1,935,542	\$12,615	\$23,398	\$37,692	\$51,094	\$65,459	\$80,436	\$95,763	\$111,498	\$127,817	\$144,603	\$161,680	\$3,089,180
Total Monthly Costs	\$2,885,542	\$1,225,115	\$1,871,898	\$2,488,192	\$2,348,594	\$2,527,959	\$2,647,936	\$2,723,263	\$2,808,998	\$2,925,317	\$3,022,103	\$3,089,180	\$30,564,095
Total Cumulative Costs	\$2,885,542	\$4,110,656	\$5,982,554	\$8,470,746	\$10,819,340	\$13,347,299	\$15,995,235	\$18,718,498	\$21,527,496	\$24,452,813	\$27,474,915	\$30,564,095	

\* NOTE: Assumes that KCI Aviation Department contracts the environmental assessment; starting November 8th.

