

REIMBURSEMENT AGREEMENT

THIS REIMBURSEMENT AGREEMENT (“**Agreement**”) is made and entered into this ____ day of _____, 2023 (“**Effective Date**”), by and between the **CITY OF MOBILE, ALABAMA**, a Municipal Corporation in the State of Alabama (“**Lessor**”) and **FDS MOBILE AL, LLC**, a Delaware limited liability company (“**Lessee**”).

RECITALS

WHEREAS, pursuant to that certain Ground Lease and Project Agreement dated April 18, 2023, by and between Lessor and Lessee (the “**Lease**”), Lessee ground leases from Lessor approximately 2.55 acres of real property located in the City of Mobile, State of Alabama, as more particularly described in Exhibit A attached hereto (the “**Property**”).

WHEREAS, Lessor and Lessee desire to relocate a water line located on the Property in accordance with the plans attached hereto as Exhibit B (the “**Plans**”).

WHEREAS, Lessee has engaged its contractor to perform the relocation work set forth on Exhibit C attached hereto (the “**Scope of Work**”).

WHEREAS, Lessor agrees that it will benefit from the completion of the Scope of Work and therefore agrees to share the cost of the Scope of Work with Lessee on the terms set forth herein.

In consideration of the Recitals, which are incorporated by reference, the representations, covenants and warranties contained herein, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties, intending to be bound legally, agree as follows:

AGREEMENT

ARTICLE I

COVENANTS AND AGREEMENTS

Section 1.01 Reimbursement and Payment Obligations. Lessor and Lessee agree that the cost of the Scope of Work, as set forth in an agreement entered into between Lessee and its contractor, is approximately \$1,159,100.06. Upon completion of the Scope of Work in accordance with the Plans and pursuant to the Scope of Work, and promptly after receipt from Lessee’s contractor of

the final cost of the Scope of Work, Lessee shall submit an invoice to Lessor for an amount equal to sixty-five percent (65%) of the costs of the Scope of Work and Lessor shall pay the invoiced amount to Lessee within thirty (30) days of receipt of such invoice.

The parties agree that the total cost attributed to the Scope of Work may upon completion increase or decrease according to the final actual quantities. Lessor will pay prior approved cost overruns and change orders not caused by (i) Contractor negligence, or (ii) additional work designed to benefit Lessee only. Lessee may, if necessary, utilize change orders consistent with the Public Works law to respond to unanticipated conditions while using commercially reasonable efforts to ensure that prices are fair and reasonable. All change orders and cost overruns that affect the Lessor reimbursement amount will be submitted to Lessor for consideration 10 days prior to any work set forth in such change order or cost overrun being performed and if Lessor fails to respond within such 10 day period, such change order or cost overrun shall be deemed approved. The foregoing notwithstanding, in an emergency circumstance, Lessor shall respond to a change order or cost overrun request within 24 hours, and a failure to do so shall be deemed approval of such change order or cost overrun.

ARTICLE II

GENERAL PROVISIONS

Section 2.01 Final Expression; Modifications. Each party hereto acknowledges that this writing is intended as a final expression and a complete and exclusive statement of the terms of this Agreement. This Agreement supersedes all prior agreements and understandings, both written and oral, between the parties with respect to this Agreement.

Section 2.02 Benefit and Assignment. This Agreement is binding upon and inures to the benefit of each party hereto, and their respective successors and assigns.

Section 2.03 Severability. The invalidity or unenforceability of any one or more phrases, sentences, clauses or sections contained in this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement, or any part thereof.

Section 2.04 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama without regard to its conflict of laws principles. Any action, suit or proceeding arising out of this Agreement shall be brought exclusively in federal or state court having jurisdiction in Mobile County, Alabama, and the Parties agree that such courts are the most convenient forum for resolution of any such action and further agree to submit to the jurisdiction of such courts and waive any right to object to venue in such courts.

Section 2.05 Waiver of Jury Trial. THE PARTIES HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE

TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY RELATING TO THIS AGREEMENT WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY.

Section 2.06 No Third Party Beneficiaries. The provisions of this Agreement are only intended for the benefit of the parties hereto. This Agreement is not intended for the benefit of any other third party and shall not confer any rights to any creditor, lender or other person to whom any debts, liabilities or obligations are owed by any of the parties hereto.

Section 2.07 Notices. All notices, demands, requests, consents and other communications required or relating to this Agreement shall be effective only if in writing, and shall be personally delivered (by courier, overnight delivery service or otherwise), or shall be mailed United States registered or certified mail, return receipt requested, postage prepaid, to the other respective party at its address below, or at such other address as such other party shall designate by written notice. Any official courier or delivery service receipt or U. S. Postal Service delivery receipt shall constitute conclusive proof of such delivery.

If to Lessor:

City of Mobile, Alabama
205 Government Street
Fourth Floor
Mobile, Alabama 36602
Attn: Real Estate Department

If to Lessee:

FDS Mobile AL, LLC
c/o FD Stonewater, LLC
1001 19th Street N, Suite 1401
Arlington, VA 22209
Attn: Claiborne Williams
Email:
cwilliams@fdstonewater.com

With copies to:

City of Mobile, Alabama
205 Government Street
Ninth Floor
Mobile, Alabama 36602
Attn: Legal Department

With copies to:

FDS Mobile AL, LLC
c/o FD Stonewater, LLC
1001 19th Street N, Suite 1401
Arlington, VA 22209
Attn: General Counsel
Email :
perickson@fdstonewater.com;
hsimmons@fdstonewater.com

Section 2.08 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute only one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or in electronic (i.e., "pdf" or "tif") format shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 2.09 No Warranty. Lessee specifically disclaims all warranties, including but not limited to any implied warranty that the Scope of Work performed, and the relocated water line, is suitable for a particular purpose, and Lessee shall have no liability to Lessor in connection with the Scope of Work or any defects, latent or apparent, therein. Lessee, however, shall use commercially reasonable efforts to cooperate with Lessor to cause Lessee's contractor to remedy defects, if any, in the Scope of Work.

[signature pages follow]

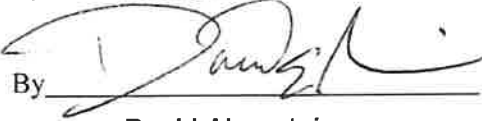
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

LESSEE :

FDS MOBILE AL, LLC

By: FDS Mobile Investors 1, LLC, its Managing Member

By: FDS Management, LLC, its Managing Member

By 

Name: David Alperstein

Title: Principal

LESSOR:

CITY OF MOBILE, ALABAMA, a Municipal
Corporation in the State of Alabama

Name: _____

Its: _____

Date: _____

Attested by City Clerk:

**EXHIBIT A
PROPERTY**

LOT "A", MOBILE CIVIC CENTER SUBDIVISION

Prepared by Wattier Surveying October 13, 2022

STATE OF ALABAMA

COUNTY OF MOBILE

COMMENCING AT A NAIL & DISK (WATTIER) IN THE CONCRETE SIDEWALK AT THE SOUTHWEST CORNER OF LOT 2, BLOCK 13 AS SHOWN ON THE LAND DISPOSAL MAP, EAST CHURCH STREET AREA, FIRST ADDITION, AS RECORDED IN MAP BOOK 18, PAGE 108, AS REVISED AND RE-RECORDED IN MAP BOOK 19, PAGE 133, OF THE RECORDS IN THE OFFICE OF THE JUDGE OF PROBATE, MOBILE COUNTY, ALABAMA; THENCE RUN SOUTH 81°-57'-11" EAST ALONG THE RIGHT-OF-WAY LINE OF SOUTH LAWRENCE STREET A DISTANCE OF 6.17 FEET TO A CAPPED REBAR (WATTIER); THENCE RUN SOUTHEASTWARDLY ALONG THE NORTH RIGHT-OF-WAY LINE OF CANAL STREET (VARIABLE R/W) AND ALONG THE ARC OF A CURVE TO THE LEFT (HAVING A DELTA OF 72°-24'-17", A RADIUS OF 72.12 FEET, A CHORD BEARING OF SOUTH 55°-58'-32" EAST, AND A CHORD LENGTH OF 85.19 FEET) AN ARC DISTANCE OF 91.13 FEET TO A CAPPED REBAR; THENCE RUN EASTWARDLY ALONG SAID NORTH RIGHT-OF-WAY LINE AND ALONG THE ARC OF A CURVE TO THE LEFT (HAVING A DELTA OF 05°-27'-42", A RADIUS OF 613.16 FEET, A CHORD BEARING OF NORTH 85°-05'-29" EAST, AND A CHORD LENGTH OF 58.43 FEET) AN ARC DISTANCE OF 58.45 FEET TO A CAPPED REBAR (WATTIER) AT THE POINT OF BEGINNING OF THE FOLLOWING DESCRIBED PARCEL: THENCE RUN NORTHWESTWARDLY ALONG THE ARC OF A CURVE TO THE RIGHT (HAVING A DELTA OF 99°-24'-30", A RADIUS OF 25.00 FEET, A CHORD BEARING OF NORTH 47°-56'-08" WEST, AND A CHORD LENGTH OF 38.14 FEET) AN ARC DISTANCE OF 43.38 FEET TO A CAPPED REBAR (WATTIER); THENCE RUN NORTH 01°-46'-07" EAST A DISTANCE OF 225.18 FEET TO A NAIL & DISK (WATTIER) IN ASPHALT; THENCE RUN NORTHEASTWARDLY ALONG THE ARC OF A CURVE TO THE RIGHT (HAVING A DELTA OF 90°-00'-00", A RADIUS OF 25.00 FEET, A CHORD BEARING OF NORTH 46°-46'-07" EAST, AND A CHORD LENGTH OF 35.36 FEET) AN ARC DISTANCE OF 39.27 FEET TO A NAIL & DISK (WATTIER) IN ASPHALT; THENCE RUN SOUTH 88°-13'-55" EAST A DISTANCE OF 393.14 FEET TO A CAPPED REBAR (WATTIER); THENCE RUN SOUTH 01°-46'-07" WEST A DISTANCE OF 12.40 FEET TO A CAPPED REBAR (WATTIER); THENCE RUN SOUTH 88°-13'-53" EAST A DISTANCE OF 28.49 FEET TO A NAIL & DISK (WATTIER) IN CONCRETE ON THE WEST RIGHT-OF-WAY LINE OF SOUTH CLAIBORNE STREET (VARIABLE R/W); THENCE RUN SOUTH 06°-05'-45" WEST ALONG SAID WEST RIGHT-OF-WAY LINE A DISTANCE OF 7.62 FEET TO A

CONCRETE MONUMENT; THENCE RUN SOUTH 05°-46'-27" WEST ALONG SAID WEST RIGHT-OF-WAY LINE A DISTANCE OF 229.94 FEET TO A NAIL & DISK (WATTIER) IN CONCRETE; THENCE RUN NORTH 88°-13'-53" WEST A DISTANCE OF 226.90 FEET TO A CAPPED REBAR (WATTIER); THENCE RUN WESTWARDLY ALONG THE ARC OF A CURVE TO THE LEFT (HAVING A DELTA OF 115°-39'-19", A RADIUS OF 472.69 FEET, A CHORD BEARING OF SOUTH 85°-56'-28" WEST, AND A CHORD LENGTH OF 95.99 FEET) AN ARC DISTANCE OF 96.15 FEET TO A CAPPED REBAR (WATTIER) ON THE NORTH RIGHT-OF-WAY LINE OF CANAL STREET (VARIABLE R/W); THENCE RUN WESTWARDLY ALONG SAID NORTH RIGHT-OF-WAY LINE AND ALONG THE ARC OF A CURVE TO THE RIGHT (HAVING A DELTA OF 03°-31'-15", A RADIUS OF 654.32 FEET, A CHORD BEARING OF SOUTH 80°-23'-37" WEST, AND A CHORD LENGTH OF 40.20 FEET) AN ARC DISTANCE OF 40.21 FEET TO A CAPPED REBAR (WATTIER); THENCE RUN WESTWARDLY ALONG SAID NORTH RIGHT-OF-WAY LINE AND ALONG THE ARC OF A CURVE TO THE RIGHT (HAVING A DELTA OF 03°-43'-38", A RADIUS OF 613.16 FEET, A CHORD BEARING OF SOUTH 80°-29'-49" WEST, AND A CHORD LENGTH OF 39.88 FEET) AN ARC DISTANCE OF 39.89 FEET TO THE POINT OF BEGINNING. THE DESCRIBED PARCEL CONTAINS 2.55 ACRES, MORE OR LESS.

SUBJECT TO THE FOLLOWING AREA RESERVED TO GRANTOR (DESCRIBING A PORTION OF THE ACCESS EASEMENT):

COMMENCING AT A NAIL & DISK (WATTIER) IN THE CONCRETE SIDEWALK AT THE SOUTHWEST CORNER OF LOT 2, BLOCK 13 AS SHOWN ON THE LAND DISPOSAL MAP, EAST CHURCH STREET AREA, FIRST ADDITION, AS RECORDED IN MAP BOOK 18, PAGE 108, AS REVISED AND RE-RECORDED IN MAP BOOK 19, PAGE 133, OF THE RECORDS IN THE OFFICE OF THE JUDGE OF PROBATE, MOBILE COUNTY, ALABAMA; THENCE RUN SOUTH 81°-57'-11" EAST ALONG THE RIGHT-OF-WAY LINE OF SOUTH LAWRENCE STREET A DISTANCE OF 6.17 FEET TO A CAPPED REBAR (WATTIER); THENCE RUN SOUTHEASTWARDLY ALONG THE NORTH RIGHT-OF-WAY LINE OF CANAL STREET (VARIABLE R/W) AND ALONG THE ARC OF A CURVE TO THE LEFT (HAVING A DELTA OF 72°-24'-17", A RADIUS OF 72.12 FEET, A CHORD BEARING OF SOUTH 55°-58'-32" EAST, AND A CHORD LENGTH OF 85.19 FEET) AN ARC DISTANCE OF 91.13 FEET TO A CAPPED REBAR; THENCE RUN EASTWARDLY ALONG SAID NORTH RIGHT-OF-WAY LINE AND ALONG THE ARC OF A CURVE TO THE LEFT (HAVING A DELTA OF 05°-27'-42", A RADIUS OF 613.16 FEET, A CHORD BEARING OF NORTH 85°-05'-29" EAST, AND A CHORD LENGTH OF 58.43 FEET) AN ARC DISTANCE OF 58.45 FEET TO A CAPPED REBAR (WATTIER) AT THE POINT OF BEGINNING OF THE FOLLOWING DESCRIBED PARCEL: THENCE RUN NORTHWESTWARDLY ALONG THE ARC OF A CURVE TO THE RIGHT (HAVING A DELTA OF 99°-24'-30", A RADIUS OF 25.00 FEET, A CHORD BEARING OF NORTH 47°-56'-08" WEST, AND A CHORD LENGTH OF 38.14 FEET) AN ARC DISTANCE OF 43.38 FEET TO A CAPPED REBAR (WATTIER); THENCE RUN NORTH 01°-46'-07" EAST A DISTANCE OF 225.18 FEET TO A NAIL & DISK

(WATTIER) IN ASPHALT; THENCE RUN NORTHEASTWARDLY ALONG THE ARC OF A CURVE TO THE RIGHT (HAVING A DELTA OF $82^{\circ}-44'-22''$, A RADIUS OF 25.00 FEET, A CHORD BEARING OF NORTH $43^{\circ}-08'-18''$ EAST, AND A CHORD LENGTH OF 33.05 FEET) AN ARC DISTANCE OF 36.10 FEET; THENCE RUN SOUTH $01^{\circ}-46'-07''$ WEST A DISTANCE OF 176.63 FEET; THENCE RUN SOUTH $12^{\circ}-26'-41''$ WEST A DISTANCE OF 44.36 FEET; THENCE RUN SOUTH $20^{\circ}-31'-55''$ EAST A DISTANCE OF 57.64 FEET TO THE NORTH RIGHT-OF-WAY LINE OF SAID CANAL STREET; THENCE RUN WESTWARDLY ALONG SAID NORTH RIGHT-OF-WAY LINE AND ALONG THE ARC OF A CURVE TO THE RIGHT (HAVING A DELTA OF $00^{\circ}-36'-26''$, A RADIUS OF 613.16 FEET, A CHORD BEARING OF SOUTH $82^{\circ}-03'-25''$ WEST, AND A CHORD LENGTH OF 6.50 FEET) AN ARC DISTANCE OF 6.50 FEET TO THE POINT OF BEGINNING. THE DESCRIBED PARCEL CONTAINS 0.13 ACRE (5,721 SQUARE FEET), MORE OR LESS.

STUDY GUIDE

STUDIES IN THE HISTORY OF THE



OUTLINE



US Army Corps of Engineers
Mobile District

Author's Address:
 Fujitsu Consulting
 1111A Central Ex.
 Chicago, IL 60601
 P. 773.677.6000
 Oleg@fjc.fujitsu.com

DEVELOPER
P.O. Box 1000
1101 N. 1st St.
Albuquerque, NM 87103
(505) 243-1000

CONTRACT INFORMATION
 • on the drawing
 • on the information
 • on the contract
 • on the contract

CHRY. BENTON
1635 W. 10th St.
St. Paul, Minn. 55102
763/271-1171

CONTACT:
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UTILITY PLAN

CG-0



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kids. I'm
not a
parent.

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Jan 11/15

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— 1948 —

PHASE II UTILITY
PLANNING PROFILE
- CALIFORNIA BT.
Page 1
03-2

EXHIBIT C SCOPE OF WORK

FD | STONEWATER

USACE Mobile - Price Proposal to City of Mobile

CO #: N/A - Utility Reroute (Revision 3)

October 18, 2023

Item	Description	Quantity	Unit	Unit Cost	Cost
	Construction Costs:				
1	Water Main and Bends	1	LS	\$ 640,737	\$ 640,737
2	Sanitary Sewer Line	1	LS	\$ 140,968	\$ 140,968
3	Traffic Control	6	WKS	\$ 2,670	\$ 16,020
4	Trenching	38	LF	\$ 682	\$ 25,916
5	Sidewalk Replace (at FDS LOD only)	3180	SF	\$ 7.90	\$ 25,122
6	Entrance Drive Replace (at FDS LOD only)	535	SF	\$ 15.75	\$ 8,426
7	Curb and Gutter Replace (at FDS LOD only)	309	LF	\$ 19.80	\$ 6,118
8	Asphalt Replace	4743	SF	\$ 13.00	\$ 61,659
9	Landscape Repairs Allowance	1	ALLOW	\$ 40,000	\$ 40,000
10	Sanitary Sewer Line Reduction	1	LS	\$ (36,750)	\$ (36,750)
11	Claiborne Street Cut/Excavation/Repair	1	LS	\$ 19,500	\$ 19,500
12	Linestop (ilo insert/valve)	1	EA	\$ 59,603	\$ 59,603
13	Concrete Jersey Barriers (12 month rental)	1	LS	\$ 43,415	\$ 43,415
14	Hard Cost Subtotal	1	LS		\$ 1,050,734.45
15	Construction Contingency	1	PCT	3.00%	\$ 31,522.03
16	Builder's Risk Insurance*	1	PCT	0.67%	\$ 7,039.92
17	GC Bond, Subguard, Liability Insurance	1	PCT	2.40%	\$ 25,222.88
18	GC Fee and General Conditions	1	PCT	4.00%	\$ 44,580.77
19	Subtotal Cost of the Work	1	LS		\$ 1,159,100.06
20	Other FDS Costs	1	LS	\$ -	EXCLUDED
21	FDS Project Management Fees	1	PCT	6.00%	EXCLUDED
22	City Pro-Rated Share	1	PCT	65.00%	\$ 753,415.04
23	FDS Pro-Rated Share	1	PCT	35.00%	\$ 405,685.02
24	Total Cost (to City of Mobile)				\$ 753,415.04

EXCLUSIONS/QUALIFICATIONS:

- The price above is based on the Mott MacDonald "COM Civic Center Utility Relocation 09-19-23 SIGNED" PDF. To the best of our knowledge, the City receive ALDOT approval on (and a special permit agreement for) this plan set on 10/5/23.
- The price above EXCLUDES the repair/removal/abatement of any unforeseen existing utilities or existing conditions not shown on plans.
- The price above excludes and sidewalk or curb/gutter work along Claiborne Street except where it is adjacent to the FDS/USACE leased parcel.
- Per request from Sam Matheny (Volkert, Inc) on 10/18/23 the HCB Add/Alt cost of \$46,227 to provide concrete jersey barriers (ilo barrels) for 12 months along Claiborne Street has been included in the pricing above.

Please provide written approval of this proposal. Thank you.
Sincerely,

Claiborne Williams

Claiborne Williams - Partner, FD Stonewater

1001 N 19th Street
Suite 1401
Arlington, VA 22209

703.547.7650 (cell)
914.470.4011 (fax)
www.fdstonewater.com