

AGREEMENT
BETWEEN CITY OF PFLUGERVILLE, TEXAS AND PFLUGERVILLE COMMUNITY
DEVELOPMENT CORPORATION FOR THE ISSUANCE OF COMBINATION TAX
AND REVENUE CERTIFICATES OF OBLIGATION TO FUND CERTAIN
AUTHORIZED IMPROVEMENTS

THIS AGREEMENT (hereinafter referred to as the “Agreement”) is made and entered into as of June 15, 2023 (the “Effective Date”) by and between the City of Pflugerville, Texas, a home-rule municipality and political subdivision of the State of Texas (hereinafter referred to as the “City”) and the Pflugerville Community Development Corporation (“PCDC”), a Section 4B corporation incorporated under the Development Corporation Act of 1979 (hereinafter referred to as “PCDC”).

WHEREAS, on October 12, 2022, PCDC’s Board of Directors (the “PCDC Board”) adopted a resolution supporting and expressing an intent to contribute funding to the City’s Downtown East Project as requested by the City in support of a multi-generational recreation center and other eligible projects in an amount not to exceed \$50,000,000;

WHEREAS, on March 8, 2023, PCDC published notice in the *Pflugerville Pflag* of a public hearing regarding the expenditure of funds of PCDC in support of constructing, improving, extending, expanding, upgrading and/or developing a multi-generational recreation center as part of the City of Pflugerville’s Downtown East Project and related roads, streets and water and sewer facilities (collectively, the “PCDC Project”);

WHEREAS, as contemplated by such notice and in accordance with Section 505.159(a) of the Texas Local Government Code, the PCDC Board held a public hearing on the PCDC Project on March 22, 2023;

WHEREAS, PCDC is authorized to undertake the PCDC Project in accordance with Section 505.160(a) of the Texas Local Government Code as PCDC did not receive within 60 days of publication of such notice a petition from more than ten percent of the registered voters of the City requesting that an election be held before such projects may be undertaken;

WHEREAS, by approval of this Agreement, the PCDC Board has found in accordance with Section 505.159(a) of the Texas Local Government Code that the PCDC Project is a recreational and community facility suitable for use for athletic and entertainment purposes for the citizens of the City;

WHEREAS, in order to reduce costs and preserve PCDC's borrowing capacity, the City anticipates issuing combination tax and revenue certificates of obligation to provide funds for the PCDC Project for the benefit of PCDC;

WHEREAS, the portion of combination tax and revenue certificates of obligation issued by the City to fund the PCDC Project are herein referred to as the (“PCDC Certificates”) and are to be considered by the City as “self-supporting” obligations as a result of payments to be received by the City from PCDC under this Agreement;

WHEREAS, the issuance of the PCDC Certificates and the payment of the PCDC's associated debt service thereon require coordination and cooperative oversight between the two parties as set forth herein.

NOW, THEREFORE, for adequate mutual consideration which the parties hereby acknowledge as sufficient, the parties desire to set forth in writing the following agreed terms and conditions as follows:

1. **Statement of Intent.** The purpose of this Agreement is to provide for (i) the construction of the PCDC Project as a component of the City's Downtown East Project, (ii) the issuance of the PCDC Certificates by the City to fund the PCDC Project, and (iii) the related debt service payments to be made by PCDC to the City for debt service on the PCDC Certificates.

2. **PCDC's Duties and Responsibilities.** Subject to the conditions set out herein, the parties agree that PCDC shall pay for costs associated with design and construction of the PCDC Project through the payment of debt service on the PCDC Certificates to the City as described herein.

3. **City's Duties and Responsibilities.** The parties agree that the City shall:

- (a) issue the PCDC Certificates to provide construction proceeds for the PCDC Project in an amount not to exceed \$31,500,000 (excluding any interest earnings thereon) and shall use all construction proceeds of the PCDC Certificates only for the PCDC Project;
- (b) construct or cause to be constructed the PCDC Project in a timely and reasonable manner;
- (c) timely submit construction drawings to PCDC of the PCDC Project for PCDC's review and approval; and the parties acknowledge that PCDC's approval of such submitted construction drawings shall not be unreasonably withheld; and
- (d) apply all payments made by PCDC to the City under this Agreement for the payment of debt service on the PCDC Certificates.

4. **Payment of Amount Due by PCDC.** PCDC shall tender all debt service payments due on the PCDC Certificates as delineated in the schedule described below to the City prior to each date that such payments come due in a manner and at the times determined by the City to allow for the City to make the debt service payments on the PCDC Certificates when due.

The City acknowledges in this Agreement that PCDC's payments on the PCDC Certificates relate solely to its pro-rata share of any certificates of obligations issued for the Downtown East Project and that PCDC shall have no liability for any certificates of obligations or other debt issued by the City for portions of the facility or related development that are not included within the PCDC's share thereof comprising the PCDC Project. PCDC's obligations

under this Agreement shall not exceed the required principal amount of the PCDC Certificates plus the interest due thereon.

Attached hereto as Exhibit "A" is a schedule showing the required amounts and payment dates for all scheduled debt service due on the PCDC Certificates. The City shall provide PCDC with all other information necessary for PCDC to comply with its payment obligations under this Agreement, including wiring instructions for payments. In the event the City subsequently issues debt to refund the PCDC Certificates, the City shall provide an updated debt service schedule for Exhibit "A" hereto and all references to "PCDC Certificates" in this agreement shall be deemed to include such refunding debt; provided that any such refunding must produce a net present value debt service savings unless otherwise agreed by PCDC.

The City acknowledges that PCDC's payments under this Agreement will be subject to annual fiscal year appropriations and budgeting by the PCDC, as approved by the City Council, in order to remain compliant with existing obligations of PCDC. In particular, PCDC's payment obligations under this Agreement are subordinate in all respects to PCDC's existing 2017 Loan and Security Agreement and the accompanying Promissory Note and any other secured obligations of PCDC now or hereafter outstanding.

5. **Term of Agreement.** The term of this Agreement shall begin on the Effective Date and shall remain in full force and effect until all of the obligations required herein shall have been satisfied.

6. **General Provisions.** The following general provisions shall apply to this Agreement:

- (a) **Cooperation.** The City and PCDC agree to cooperate with each other in good faith at all times to effectuate the purposes and intent of this Agreement.
- (b) **Entire Agreement.** This Agreement contains the entire agreement of the parties and supersedes all prior and contemporaneous understandings or representations, whether oral or written, respecting the subject matter hereof.
- (d) **Amendments.** Any amendment hereof must be in writing and signed by the authorized representative(s) for each party.
- (c) **Certification of Essential Function and Interest.** The parties acknowledge that (i) the services specified in this Agreement are necessary and essential for activities that are properly within the statutory functions and programs of the affected local home-rule municipal government, and (ii) the proposed arrangements serve the interest of efficient and economical administration of the affected local home-rule municipal governments.

- (g) **Applicable Law.** This Agreement shall be construed under and in accordance with the laws of the State of Texas.
- (h) **Assignment.** Neither party may assign its rights and obligations under this Agreement.
- (i) **Other Necessary Actions and Instruments.** The parties agree that each will take such other and further actions and execute such other and further consents, authorizations, instruments or documents as are necessary or incidental to effectuate the purposes of this Agreement.
- (j) **No Third-Party Beneficiaries.** Except as set forth herein, nothing herein shall be construed to confer upon any person or entity other than the parties hereto any rights, benefits or remedies under or by reason of this Agreement. For the avoidance of doubt, the owners of the PCDC Certificates or any other debt obligations of the City shall not be considered third-party beneficiaries to this Agreement.
- (k) **No Joint Venture, Partnership, or Agency.** This Agreement shall not be construed in any form or manner to establish a partnership, joint venture or agency, express or implied, nor any employer-employee or borrowed servant relationship by and among the parties hereto.
- (l) **Venue.** Venue for any suit arising hereunder shall be in Travis County, Texas.
- (m) **Duplicate Originals.** This Agreement may be executed in duplicate originals, each of equal dignity.

7. **Representations and Warranties by PCDC.** PCDC warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the State of Texas and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement, and the individual executing the Agreement on behalf of PCDC has been duly authorized to act for and bind PCDC.

8. **Franchise Tax Certification.** PCDC certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the *Texas Tax Code*, or that it is exempt from the payment of such taxes, whichever is applicable.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the authorized representatives of the City and PCDC have executed this Agreement on the dates set forth below.

CITY OF PFLUGERVILLE, TEXAS

By: 
Mayor

Date Signed: 5/24/23

ATTEST:

By: 
City Secretary

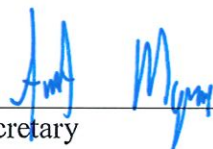
Date Signed: 5/24/23

PFLUGERVILLE COMMUNITY DEVELOPMENT CORPORATION

By: 
President

Date Signed: 5/29^{PM}/2023

ATTEST:

By: 
Secretary

Date Signed: 5-19-2023

EXHIBIT "A"

Debt Service Schedule for PCDC Certificates