

AGREEMENT BETWEEN
THE CITY OF PFLUGERVILLE
AND
CORNERSTONE AT KELLY LANE LLC

City: The City of Pflugerville

Address: Dan Franz, P.E., City Engineer, P.O. Box 589, Pflugerville, Texas 78691-0589

Developer: Cornerstone at Kelly Lane, LLC, a Texas limited liability company

Address: Attn: Larry Mellenbruch, Manager
P.O. Box 1199
Bastrop, Texas 78602

The Project: Colorado Sand Drive Project Alternative Bid Design Supplement

The Project Location: Travis County Texas

RECITALS

Whereas, the CITY has proposed to the Colorado Sand roadway project, (the “Project”); and

Whereas, the Project proposed by the CITY includes a 2 lane section of Colorado Sand Drive ; and 2 lane Sections of Autumn Slate and Copper Mine Drive; and

Whereas, DEVELOPER is the owner or real property that is located within close proximity to the proposed Project; and

Whereas, DEVELOPER has requested that CITY instruct Friese and Associates, Inc., (the “Project Engineer”) to prepare a bid alternate to the construction plans in the project bid documents for the construction of a 4 lane Section Colorado Sand Drive, instead of the planned 2 lane section, between Kelly Lane and Copper Mine Drive(the “Bid Alternate”);

Whereas; the costs to prepare the Bid Alternate is not to exceed \$10,619.00 without prior approval; and

Whereas, the City and Developer desire to formalize the agreements set out in the Letter Agreement between the Parties dated October 29, 2012 and Attached hereto as **Exhibit “A”**:

NOW THEREFORE THE CITY AND THE DEVELOPER AGREE AS SET FORTH BELOW:

ARTICLE 1
Acknowledgements and Agreements

- 1.1 Recitals adopted. The recitals set out above are adopted in this Agreement for all purposes.
- 1.2 DEVELOPER acknowledges and agrees that the fee Project Engineer's Fee. prepare the Bid Alternate is not to exceed \$10,619.00 without prior approval
- 1.3 DEVELOPER acknowledges and agrees that but for DEVELOPER's request that the Project Engineer's prepare the Bid Alternate, the CITY would not incur the \$10,619.00 fee.
- 1.4 DEVELOPER agrees to reimburse CITY the full amount of the Project Engineer's Fee for preparation of the Bid Alternate, in the amounts set out in the "City of Pflugerville-Colorado Sand Budget Summary" that is included in the Scope of Services & Compensation Colorado Sand Drive-Supplemental Agreement #1, both of which are Attached hereto as **Exhibit "B"**.
- 1.5 DEVELOPER agrees to pay full amount of Invoice from CITY as reimbursement for services within ten days of receipt.
- 1.6 The Parties agree that the total amount of reimbursement shall not exceed \$10,619, without written approval of both Parties.
- 1.7 DEVELOPER acknowledges its approval of **Exhibit "B"**.
- 1.8 The Parties agree that the mutual promises and agreements contain herein provide legally sufficient consideration to form a binding contract between the Parties.

ARTICLE 2

The Bid

- 2.1 The Parties agree that the CITY shall select a Contractor in accordance with the laws of Texas said contractor having submitted a "Bid Alternate bid," with its bid on the Project.
- 2.2 The Parties agree that, provided that the DEVELOPER has reimbursed the CITY in full for the preparation of the Bid Alternate, within ten days of selection of the contractor, but before letting the contract, the CITY shall provide a copy of the Bid Alternate bid to DEVELOPER.
- 2.3 The Parties agree that the DEVELOPER shall have ten days from the date of receipt of the Bid Alternate bid DEVELOPER shall advise the CITY if DEVELOPER approves the Bid Alternate bid.
- 2.4 Should DEVELOPER approve the Bid Alternate bid, the Parties shall enter into a separate agreement that shall provide the terms by which the CITY shall let the Bid Alternate bid and the DEVELOPER's reimbursement to the CITY the full amount of such Bid Alternate bid.
- 2.5 Nothing in this Agreement shall obligate either Party to accept, approve or otherwise contract for the Bid Alternate bid.

**ARTICLE 3
SUCCESSORS AND ASSIGNS**

- 3.1 This CONTRACT shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and their assigns, however, DEVELOPER may not assign this CONTRACT without CITY's prior written consent.

**ARTICLE 4
DAMAGES AND ATTORNEY'S FEES**

- 4.1 In the event of abreach of a material term of this Agreement by one Party, the total amount that the other Party may recover is \$10,619.00, plus attorney's fees and court costs.

**ARTICLE 5
VENUE AND GOVERNING LAW**

- 5.1 Venue of any court action brought directly or indirectly by reason of this CONTRACT shall be in Travis County, Texas. This CONTRACT is made and is to be performed in Travis County, Texas, and is governed by the laws of the State of Texas.

**ARTICLE 6
ENTIRE AGREEMENT**

- 6.1 This CONTRACT embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in this CONTRACT, and except as otherwise provided herein, cannot be modified without written agreement of the parties to be attached to and made a part of this CONTRACT.
- 6.2 This Agreement is effective as of the date of signature by the CITY's Manager and is executed in two original copies of which one is to be retained by the CITY ENGINEER and one to be delivered to the DEVELOPER.

Signature page to follow:

DEVELOPER

By: Cornerstone at Kelly Lane, LLC

By: _____

Name: Larry Mellenbrundch

Title: _____

Date: _____

CITY OF PFLUGERVILLE, TEXAS

By: _____

Name: Brandon Wade

Title: City Manager

Date: _____

**END OF DOCUMENT
EXHIBITS "A" and "B" ATTACHED:**

EXHIBIT A
LETTER AGREEMENT DATED OCTOBER 29, 2012

EXHIBIT B
COLORADO SANDS SUPPLEMENTAL AGREEMENT ONE