

STATE OF TEXAS

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COUNTY OF TRAVIS

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DEVELOPER PARTICIPATION CONTRACT

This Developer Participation Contract (the “*Agreement*”) is entered into this ____ day of _____ 2022 (the “*Effective Date*”) by and between the City of Pflugerville, Texas, a Texas home-rule municipality (the “*City*”) and QT SOUTH, LLC, a Texas limited liability company (the “*Developer*”). The City and the Developer are also referred to herein collectively as the “*Parties*” and individually as “*Party*.”

WHEREAS, the Developer is the developer of the QuikTrip No. 4147 (the “*Development*”), being one or more subdivisions located within the City, and the Developer is the current owner of that certain real property described in Exhibit 1 platted as Lot 1, Block A of the QuikTrip 4147 Final Plat and made a part of the Development;

WHEREAS, the Developer has constructed a wastewater line which has been sized for capacity above the Developer’s intended use of the Development (the “*Project*”); and

WHEREAS, said wastewater line was included within the inspection of the subdivision improvements for QuikTrip CON1905-02 and accepted by the City on March 31, 2021; and

WHEREAS, the City required the Developer to oversize the overall scope of the Project and related infrastructure to include Phase III of the SH 130 Commerce Center (the “*City Improvements*”) to increase capacity of the infrastructure for the benefit of other anticipated development in the area; and

WHEREAS, in connection with the Development and in accordance with this Agreement, the City desires to pay for the costs incurred by the Developer and directly attributable to the costs of permitting, bidding, insuring, and constructing the City Improvements, as set forth herein; and

WHEREAS, the Parties agree that the cost of the *City Improvements* shall be \$29,592.00; and

WHEREAS, the Parties agree that the City Improvements are for the oversizing of the wastewater facilities to increase capacity to anticipate future development in the area, and Section 212.072(c) of the Texas Local Government Code allows participation by the City at a level not to exceed one hundred percent (100%) of the total costs of the City Improvements without complying with the competitive bidding procedure of Chapter 252 of the Local Government Code; and

WHEREAS, the City has determined the Developer’s construction of the City Improvements is an economic benefit to the citizens of the City, therefore, this Agreement is in

the best interest of the citizens of the City.

NOW, THEREFORE, for and in consideration of the above and foregoing recitals and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and the Developer do hereby agree as follows:

Section 1. Incorporation of Recitals. The above and foregoing recitals are true and correct and are incorporated herein and made a part hereof for all purposes.

Section 2. Term. This Agreement shall be effective as of the date of execution of this Agreement by the last of the Parties to do so (the “*Effective Date*”). This Agreement shall remain in full force and effect from the Effective Date until the City and the Developer have completed their respective obligations hereunder or until this Agreement has been earlier terminated by the mutual agreement of the City and the Developer in writing.

Section 3. Improvements. The Project and City Improvements, as described and defined in the Recitals above (collectively hereinafter referred to as the “*City-Developer Project Improvements*”) has been constructed by the Developer. The Developer has constructed the City-Developer Project Improvements as described in this Agreement in accordance with and subject to (i) the zoning for the Development, (ii) all federal, state, and local ordinances, laws, statutes, standards, rules, regulations, codes, orders, directives, permits, plans or policies, including, without limitation, the City of Pflugerville, Texas, and any other governmental entity or agency having jurisdiction over the Development, and (iii) all of the terms and conditions of this Agreement.

Section 4. Reimbursement. Subject to all of the terms and conditions of this Agreement, the City shall reimburse the Developer for the \$29,592.00, such amount being the costs incurred by the Developer in completing the City Improvements, as detailed in Exhibit 2 attached hereto (the “*City Improvement Costs*”). The City shall pay the City Improvement Costs to the Developer within thirty (30) days after the Effective Date of this Agreement.

Section 5. Indemnity. Developer covenants and agrees to **FULLY DEFEND, INDEMNIFY AND HOLD HARMLESS** the City and the elected officials, the officers, employees, representatives, and volunteers of the City, individually or collectively, in both their official and private capacities (the City and such elected officials, and officers, employees, representatives, and volunteers of the City each being a “*Pflugerville Person*” and collectively the “*Pflugerville Persons*”), from and against any and all costs, claims, liens, harm, damages, losses, expenses, fees, fines, penalties, proceedings, judgments, actions, demands, causes of action, liability, and suits, of any kind and nature whatsoever made upon any Pflugerville Person, whether directly or indirectly, to the extent arising out of, resulting from, or relating to: (1) the services and work provided by the Developer under or in connection with this Agreement; (2) representations or warranties by Developer under this Agreement; and/or (3) any other act or omission under or in performance of this Agreement by Developer, or any owner, officer, director, manager, employee, agent, representative, consultant, contractor, subcontractor, licensee, or concessionaire of Developer, or any other

person or entity for whom Developer is legally responsible, and their respective owners, officers, managers, employees, directors, agents, and representatives (the “*Claims*”). Developer shall promptly advise the City in writing of any Claims against any Pflugerville Person or Developer related to or arising out of Developer’s activities under this Agreement and shall see to the investigation and defense of such Claims at Developer’s sole cost and expense. The Pflugerville Persons shall have the right, at the Pflugerville Persons’ option and at its own expense, to participate in such defense without relieving Developer of any of its obligations hereunder. The provisions of this defense, indemnity, and hold harmless obligation, and any other defense, indemnity, and hold harmless obligation set forth in this Agreement, shall survive the termination or expiration of this Agreement.

Section 6. Conflict of Interest.

A. Developer acknowledges that it is informed that the Charter of the City of Pflugerville and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 11.06 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a “prohibited financial interest” in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a Party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

B. Pursuant to the subsection above, Developer warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Developer further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City’s Ethics Code.

C. In addition, Developer warrants and certifies that it has filed a Texas Ethics Commission Certificate of Interested Parties (Form 1295).

Section 7. Miscellaneous.

A. **Force Majeure.** “Force Majeure” includes acts of God, acts of the public enemy, war, blockades, insurrection, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, tornados, hurricanes, arrests and restraints of government and people, explosions, governmental delays, shortages of labor and/or materials, unforeseen environmental conditions and/or endangered species, and any other incapacities of either Party to carry out its obligations under this Agreement.

If, because of Force Majeure any Party is delayed in carrying out its obligations under this Agreement or is rendered unable, wholly or in part, to carry out its obligations under this Agreement, then such Party shall give to the other Party prompt written notice of the Force Majeure event with reasonable full details concerning it. Upon delivery of such notice, the obligation of the Party giving the notice, so far as it is affected by the Force Majeure, shall be suspended during, but not longer than, the continuance of the Force Majeure. Any Party who is affected by an event of Force Majeure shall use all possible diligence to remove the Force Majeure as quickly as possible, but its obligation shall not be deemed to require the settlement of any strike, lockout, or other labor difficulty contrary to the wishes of the Party involved or so affected.

B. **Inspection.** Intentionally left blank.

C. **Independent Contractor.** Developer is an independent contractor, and Developer shall accomplish all of its obligations and services provided for herein in such capacity, and under no circumstances shall this Agreement be construed as one of agency, partnership, joint venture, joint enterprise, or employment between the Parties; provided always, however, that the obligations and services of Developer hereunder shall be provided in a manner consistent with all applicable standards and regulations governing the same. The City shall have no control or supervisory powers as to the detailed manner or method of Developer's performance of the subject matter of this Agreement. All officers, employees, personnel, contractors, subcontractors, agents, and representatives supplied or used by Developer in connection with the obligations set forth in this Agreement shall be deemed officers, employees, personnel, contractors, subcontractors, agents, and representatives of Developer and shall not be considered officers, employees, personnel, contractors, subcontractors, agents, and representatives of the City for any purpose whatsoever. Developer shall be solely responsible for the compensation of all such persons, for the withholding of income, social security and other payroll taxes and for the coverage of all workers' compensation benefits, as and to the extent applicable.

D. **Non-Assignment.** Neither Party shall have the authority to or shall assign, convey, pledge, or otherwise transfer in any manner this Agreement, or any of the privileges, rights, or duties set forth herein, to any other person or entity, without the express prior written approval and consent of the other Party. Notwithstanding the foregoing, the City acknowledges that the Developer's obligations to construct the City-Developer Project improvements may be performed by the Contractor pursuant to a construction contract, but same shall not constitute an assignment nor a violation of this provision. Any assignment, conveyance, pledge, or other transfer in violation of this provision shall be null and void *ab initio* and cause for immediate termination (no period of cure) by the other Party.

E. **No Third-Party Beneficiary.** This Agreement and each of its provisions are solely for the benefit of the Parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity.

F. **Survival.** Except as otherwise provided for in this Agreement, all obligations and responsibilities arising prior to the expiration or termination of this Agreement allocating

If to the Developer, to: QT South LLC
Attn: Mike Ward
2007 Sam Bass Road.
Suite 100
Round Rock, TX 78681
Phone: 512.814.4315
E-mail: mward@quiktrip.com

With copies to: QTR Corporation
Attn: Corporate Counsel
4705 S. 129th E. Ave
Tulsa, OK 74134

K. **Conflict of Laws and Venue.** The laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Agreement; and, with respect to any conflict of law provisions, the Parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Agreement. In the event of any action under this Agreement, exclusive venue for all causes of action shall be instituted and maintained in a state district court located in Travis County, Texas.

L. **Entire Agreement.** This Agreement supersedes all previous agreements regarding the matters set forth herein, and constitutes the entire understanding of the Parties. Developer shall be entitled to no other benefits than those specified herein. No changes, amendments, or alterations shall be effective unless in writing and signed by both Parties.

M. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision is not a part hereof, and the remaining provisions hereof shall remain in full force and effect. In lieu of any illegal, invalid, or unenforceable provision herein, the Parties shall seek to negotiate a provision as similar in its terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

N. **Applicable Laws.** This Agreement and all of its terms and conditions are subject to applicable laws, ordinances, rules, regulations, and codes, including, without limitation, the City Charter of the City of Pflugerville, Texas. Further, Developer acknowledges that the City of Pflugerville may not enter into a contract with a company for goods and services unless the contract contains a written verification from the company that; (i) it does not Boycott Israel; and (ii) will not Boycott Israel during the term of the contract. (Texas Government Code Chapter 2270). By entering into this Agreement, Developer verifies that it does not Boycott Israel, and agrees that during the term of this Agreement will not Boycott Israel as that term is defined in the Texas Government Code Section 808.001, as amended.

O. **Authority.** The undersigned officers and/or agents of the Parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the Parties hereto.

P. **Effective Date.** This Agreement shall be effective upon the date of the last of the Parties to sign below, as reflected by the date of signing.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the City and Developer have executed this Agreement.

CITY:

DEVELOPER:

CITY OF PFLUGERVILLE, TEXAS
a home-rule municipality

QT South, LLC
A Texas limited liability company

By: _____
Sereniah Breland
City Manager
Date of signing: _____

By: Michael Z. Ward
Michael Z. Ward
Real Estate Manager
Date of signing: 2/21/2022

ATTEST:

By: _____
Trista Evans
City Secretary

EXHIBIT 1

Lot 1, Block A of QUIKTRIP 4147 FINAL PLAT, a subdivision of record in document number 202100068 in the Official Public Records of Travis County, Texas

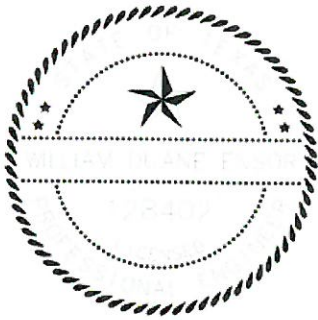
EXHIBIT 2

City Improvements Estimate

Quik Trip #4147 - Pflugerville, TX

Phase III Sanitary Sewer Main - Materials Cost Difference

Utilities - Sanitary Sewer Main	Quantity	Unit	Unit Cost	Total
8" PVC Sewer	2,466	LF	\$30.00	\$73,980.00
10" PVC Sewer	2,466	LF	\$42.00	\$103,572.00
Increased Cost from 8" to 10" PVC Sewer				\$29,592.00



[Handwritten Signature]

07-19-2021