

EXCLUSIVE NEGOTIATING AGREEMENT

This **EXCLUSIVE NEGOTIATING AGREEMENT** ("ENA" or "Agreement") is effective as of the 28th day of March, 2023 (the "Effective Date"), by and among the **CITY OF PFLUGERVILLE, TEXAS**, a political subdivision of the State of Texas (the "City"), **GRIFFIN/SWINERTON, LLC**, a Delaware Limited Liability Company ("G/S"), and **CDC–Pflugerville, L.P.** ("CDC"). G/S and CDC are collectively referred to herein as the "Developer". The City and the Developer are collectively referred to as the "Parties" and individually as a "Party".

BACKGROUND:

A. Developer responded to Request for Qualifications/Proposals No. 2020-022 Master Developer for Downtown East Project issued by the City on September 28, 2022 and inclusive of the subsequently issued Addenda #1 through #4 (the "RFP") to provide development of a civic mixed-use development known as the Downtown East project (the "Project") on twenty-nine (29) acres of undeveloped land owned by the City and located in the City at the northwest corner of FM 685 and E. Pecan Street as shown in EXHIBIT A ("Project Site").

B. In its response to the RFP, including a proposal submitted on November 18, 2022, answers to supplemental questions submitted on December 6, 2022, and an interview with associated presentation materials delivered on December 14, 2022 (collectively "RFP Response"), Developer proposed a project, more particularly described in its RFP Response, with G/S and CDC as co-master developers.

C. Within Developer's RFP Response, G/S leads the development of the public facilities defined in the RFP i.e., a new City Hall and Multigenerational Recreation Center, and accompanied structured parking (as more fully described herein, the "City Facilities") and CDC leads the (i) public-private land development of the Project Site i.e., horizontal site infrastructure required to prepare fully entitled development-ready pads for vertical public/civic facilities and private mixed-use development, and open space ("Horizontal Site Infrastructure") and (ii) vertical mixed-use private development either directly by CDC or indirectly by third-party real estate developers through a City-approved process ("Vertical Development") (the Horizontal Site Infrastructure and Vertical Development are collectively referred to as the "Land Development").

D. Per the RFP Response, the Project defined herein includes the design, entitlements, financing, and construction required to execute the development of the Land Development and City Facilities.

E. The City has selected Developer to execute this Agreement for the performance of certain preliminary development activities and to negotiate various specific agreements that may be necessary to achieve the City's development objectives for the Project.

F. The Parties wish to establish a formal relationship between them through which the Developer will perform the concept refinement activities described in this Agreement, including developing the general design, construction, financial, budgetary, management, maintenance, and scheduling parameters that will serve as a guide for delivering the Project.

G. The Developer's willingness to self-fund and incur costs relating to the Concept Refinement Activities (as defined herein), is based on the City's willingness to reimburse Developer for such costs as provided in this Agreement.

H. The City and Developer wish to memorialize their agreement regarding these matters by executing this Agreement.

ACCORDINGLY, in consideration of the foregoing and the terms set forth in this Agreement, and for other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Parties hereby agree as follows:

Section 1. General Description of the Transaction; Preliminary Plan of Finance.

- (a) *The Horizontal Site Infrastructure.* The Parties intend that the City Facilities (as described below) will be a component of a master mixed-use development plan for the Project Site known as the Downtown East Project. CDC will be primarily responsible for the planning, platting, permitting, and development of the Land Development. As a component of the Land Development, CDC will also be primarily responsible for the design, engineering, and installation of all enabling infrastructure and entitlements necessary for the access, permitting, occupancy and operation of the City Facilities as part of the Horizontal Site Infrastructure (the "City Facilities Enabling Work"). The Parties acknowledge that the delivery model described in this Section 1(a) is only one of several delivery methods under consideration for the Land Development, and the Parties may agree to proceed with this delivery model, a variation on it, or on one or more different delivery methods for the Land Development (i.e., there may be different delivery methods for the separate components of the Land Development).

The Parties currently envision that the City or a special corporation formed and controlled by the City will enter into a master development agreement with CDC for the financing and carrying out the Land Development scope including planning, financing, construction, land disposition, and/or ongoing operations (e.g., per to be formed Covenants Conditions and Restrictions "CC&Rs") (the "Land Development Agreement") of the Project that will be subject to the final planned unit development plan to be negotiated by the Parties and approved by the City (the "PUD").

The target date for commencement of the Horizontal Site Infrastructure work is identified in the Preliminary Development Schedule attached hereto as EXHIBIT B. The actual dates for commencement and completion of the Horizontal Site Infrastructure will be further defined in the Definitive Agreement to ensure timely delivery of the City Facilities.

- (b) *The City Facilities.* The City Facilities consist of the following, each as generally described in the RFP:
- (i) An approximately 91,000 square-foot, city hall building (the "City Hall");
 - (ii) An approximately 120,000 square-foot, multi-generational recreation center (the "Recreation Center"); and
 - (iii) One or two multi-story parking garages providing approximately 850 public parking spaces to serve the City Hall and the Recreation Center (the "Public Parking Facilities").

G/S will be primarily responsible for the design and construction of the City Facilities. The Parties acknowledge that the delivery model described in this Section 1(b) is only one of several delivery methods under consideration for the City Facilities, and the Parties may agree to proceed with this delivery model, a variation on it, or on one or more different delivery methods

for the City Facilities (i.e., there may be different delivery methods for the separate components of the City Facilities). The Parties currently envision that the City or a special corporation formed and controlled by the City will enter into a ground lease with G/S for the portion of the Project Site whereupon the City Facilities will be located (the "City Facilities Lease"). Concurrently with the City Facilities Lease, the City or a special corporation formed and controlled by the City will also enter into an installment purchase agreement with G/S, for the purchase of the City Facilities (the "Installment Purchase Agreement"). Upon final completion and payment of the full purchase price for the City Facilities, the City Facilities Lease will be terminated and the City Facilities will be conveyed to the City.

The target date for commencement of construction of the City Facilities is identified in the Preliminary Development Schedule. The actual dates for commencement and completion of the City Facilities will be further defined in the Definitive Agreement.

- (c) *Preliminary Plan of Finance.* The Parties recognize that each of the City Facilities and the Land Development will be financed by distinct financing sources available to the City and the Developer, although the full cost of the Project is yet to be determined and the Parties have yet to agree upon the full sources of financing for the Project. Nevertheless, the Parties generally contemplate that (i) the City Facilities will be fully financed and/or paid for by the City and (ii) the Horizontal Site Infrastructure will be partially financed by the City up to a threshold amount, with the remainder funded by the land value capture to be realized by CDC from the Vertical Development activities and other public-private financing sources collaboratively arranged by Developer and City.

Section 2. Purpose of this Agreement; Exclusivity.

- (a) *Purpose and Scope.* The purpose and scope of this Agreement is to (i) establish the Parties' general understanding of the Project and the general roles and responsibilities of the Parties relating to the Project, and (ii) establish the terms and respective obligations of the Parties for the performance, payment and reimbursement of the Concept Refinement Activities as described herein. The Parties anticipate the final terms of their relationship will be finalized and effectuated through the execution and delivery of the Predevelopment Agreement (as defined in Section 4(d)), and thereafter, the Land Development Agreement, the City Facilities Lease, the Installment Purchase Agreement, and other agreements relating to the financing and construction of the Project (the "Definitive Agreements").

The Definitive Agreements will, collectively, contain the contractual terms for the final planning, programming, design, entitlements, development, financing/funding, construction, and as applicable, operations and acquisition of the Project. The number and breadth of the Definitive Agreements will be expanded and/or refined during the term of this Agreement as Project assumptions are vetted and refined. The Definitive Agreements will supersede and replace this Agreement. Delivery of the Definitive Agreements is contingent upon the performance and favorable outcomes of the Concept Refinement Activities. This Agreement is not a binding commitment of any of the Parties to ultimately proceed with the Project or the execution and delivery of the Definitive Agreements.

- (b) *Exclusivity.* In consideration of the mutual covenants and agreements contained herein, the sufficiency of which is hereby acknowledged, the Parties agree to work together in an exclusive and cooperative manner to undertake and pursue the successful development of the Project. Specifically, the Parties agree that during the Term of this Agreement, they shall not negotiate the development of the Project with any other person(s) or entity(ies).

- (c) *Basis for Negotiations.* The Parties recognize that the Definitive Agreements will require extensive negotiations among the Parties, the scope and detail of which cannot be sufficiently detailed in this Agreement. The basis for negotiations shall include (i) the terms of this Agreement and the outcome of the Concept Refinement Activities, and (ii) the terms of the RFP and the RFP Response, which are incorporated herein by reference, subject to any revisions made by or under this Agreement.

The RFP and the RFP Response collectively highlight the key terms, conditions, and plans for the Project as they are known or envisioned by the Parties as of the date of this Agreement. The Parties anticipate the ultimate terms of Definitive Agreements may evolve as the Project development plans progress and as key assumptions are vetted. The Parties agree to act in good faith to negotiate the Definitive Agreements required to effect the real estate transactions and any other Project-related agreements described in this Agreement or deemed advantageous by the Parties with respect to the development of the Project during the Term of this Agreement.

Section 3. Collaboration and Communication between the Parties.

- (a) *Collaboration of the Parties.* The Parties agree to work in a collaborative manner to timely achieve completion of the Concept Refinement Activities. The Parties agree to work cooperatively and diligently to procure and pursue the development of the Project in accordance with the terms of this Agreement.
- (b) *General Description of Collaborative Process.* The Parties contemplate that:
- (i) The City shall participate with the Developer as to all or portions (via subdivided new parcels) of the Project Site to enable Project execution and completion;
 - (ii) the Parties will negotiate and agree on a guaranteed maximum price ("GMP") for the City Facilities and the timing of subsequent periodic installment/milestone payments by the City to either directly fund or refinance/acquire completed City Facilities per the GMP;
 - (iii) The Developer and its team of planning, architecture and engineering professionals, finance specialists, lenders, contractors, and other necessary consultants ("Development Team") will work in a highly collaborative manner with the City and its consultants, and Pflugerville community stakeholders through the planning, programming, design, community outreach, entitlements, financing/funding, and construction phases of the development process for the Project;
 - (iv) Upon the City's acceptance of the Final Development Proposal (as defined hereafter) and the satisfaction of the conditions described in Section 4(d)(i), one or more Definitive Agreements for the Land Development may be entered into between the City and the Developer with then established performance requirements for development costs, schedule, and financing and investment criteria for the Land Development;
 - (v) Upon the City's acceptance of the Final Development Proposal (as defined hereafter) and the satisfaction of the conditions described in Section 4(d)(ii), one or more Definitive Agreements for the City Facilities may be entered into between the City and Developer; and

- (vi) Subject to the City's obligation to reimburse the Developer for Reimbursable Concept Refinement Costs (as defined hereafter), the Developer will secure and/or provide 100% of the financing/funding for all Concept Refinement Costs.
- (c) *Weekly Meetings and Project Updates.* Developer shall keep the City informed as to the progress of all Concept Refinement Activities, weekly, at minimum. These meetings will cover relevant Project topics including but not limited to project administration, project financing (sources of uses of public and private funds), technical issues (entitlements, planning, design, programming and construction scope, costs, schedule, etc.), real estate market and financial metrics, and community outreach. The Developer and the City agree to reasonably and timely cooperate with one another in connection with the Project, the performance of the Concept Refinement Activities, and the granting of any required approvals by the City.
- (d) *Designated Representatives; Key Personnel.*
 - (i) Designated Representatives. For ease of communication and accountability, each of the Parties shall identify a primary point-of-contact for purposes of coordinating all matters relating to the Project and the Concept Refinement Activities as contemplated in this Agreement (each such person being a "Designated Representative"). The Designated Representatives or their designees shall participate in regularly scheduled planning and progress meetings relating to the Concept Refinement Activities, and will coordinate all communication, requests, reviews, and approvals relating to such matters. Each Designated Representative shall actively involve and make all members of such Party's project team available to participate in regularly scheduled planning and progress meetings, and for all other purposes set forth in this Agreement.
 - (ii) Project Teams. The Parties agree that in order to facilitate an efficient working relationship throughout the performance of the Concept Refinement Activities, G/S will serve as the lead for the City Facilities and CDC as lead for the Land Development. The Developer will actively involve and make available other members of the Development Team to participate in regularly scheduled planning and progress meetings with the City and its designated project team ("City Project Team"), where the City will similarly actively involve and make available the members of City Project Team, to be held regularly through the design and construction phases of the Project. The Development Team will present ideas, concepts, and ultimately plans, specifications, a budget, and other proposals to the City Project Team, in an effort to provide updates on progress and to solicit input, feedback, and when appropriate, decisions and/or approvals on material matters pertaining to the development and delivery of the Project.

Key Personnel. The Developer and the City shall use reasonable efforts to have the Key Personnel perform their respective responsibilities identified in this Agreement. In the event of any changes regarding any of the Key Personnel, other individuals of substantially equivalent seniority, experience and qualifications will be assigned to fulfill such responsibilities. The Parties shall provide written notice to the other Party of changes in its Key Personnel and their respective responsibilities and Developer shall furnish to the City information on the seniority, experience and qualifications of any additional or substituted individuals "Key Personnel" for the Developer means Korin Crawford and Roger Torriero (of G/S) and Greg Weaver and Fei Dai (of CDC) of the Developer; for the City means Sereniah Breland of the City; and for the

construction contractor means Tim Kretzschmar, and their respective successors from time to time.

Section 4. Timing and Sequencing of Concept Refinement Activities; Final Development Proposal.

- (a) *General.* The Project activities prior to the Definitive Agreements will generally be conducted in two phases described herein as the "Concept Refinement Phase" and the "Predevelopment Phase."
- (i) Concept Refinement Phase. The Concept Refinement Phase includes the performance of the Concept Refinement Activities pursuant to the terms of this Agreement. During the Concept Refinement Phase, the Parties will establish a comprehensive City-approved development concept and feasibility plan, with the Final Development Proposal (as defined below) by Developer, as its main outcome.
- (ii) Predevelopment Phase. Following the City's approval of the Final Development Proposal, the parties will enter into a predevelopment agreement, whereby the Predevelopment Phase will commence (the "Predevelopment Agreement"). EXHIBIT E attached hereto contains a summary of the envisioned scope of work and key terms for the Predevelopment Agreement. Additionally, the Predevelopment Agreement will include a refined scope, schedule and budget for the Predevelopment Phase, and will detail the Parties' respective obligations during the Predevelopment Phase. The Predevelopment Phase will generally contemplate the following activities:
- A. The Parties' negotiation of the principal business and legal terms for the Definitive Agreements;
 - B. The preparation of a definitive plan of finance for each of the City Facilities and the Land Development, including detailed sources and uses for each thereof;
 - C. The preparation of the PUD and a definitive master plan for the Land Development;
 - D. Preparation of the preliminary plans and specifications for the City Facilities and a GMP for each of the City Facilities.
- (b) *Preliminary Development Schedule.* EXHIBIT B attached hereto (the "Preliminary Development Schedule") establishes general timelines and milestones for the performance of the Concept Refinement Activities and Predevelopment Phase Activities, as well as target dates for the delivery of the Predevelopment Agreement and a Final Development Proposal (as defined below) and the negotiation, execution and delivery of Definitive Agreements. Subject to the terms of this Agreement, the Parties agree to allocate sufficient staff resources and exercise good faith efforts to perform their respective obligations in a manner that will enable the Parties to achieve the milestones described in the Preliminary Development Schedule. However, the Parties also recognize and agree that the successful completion of the Project activities is contingent on facts and circumstances not yet known to the Parties or beyond their reasonable control, and the Parties may mutually agree to revise the Preliminary Development Schedule from time to time due to changing circumstances or force majeure.

As the Party primarily responsible for the Project activities, the Developer shall keep the City apprised of any delays in the performance of the Project activities.

- (c) *Final Development Proposal.* The Concept Refinement Phase will culminate in the preparation and delivery of a final development proposal by the Developer (the "Final Development Proposal"), which will:
- (i) summarize the outcomes of all feasibility and due diligence work,
 - (ii) propose principal real estate, business and legal terms for the Definitive Agreements, including the Predevelopment Agreement (the "Deal Terms"),
 - (iii) include a high-level project budget estimate for the design and construction of the City Facilities, inclusive of all hard costs and soft costs, and
 - (iv) include a high-level development budget estimate for the design and installation of all Horizontal Site Infrastructure, inclusive of all hard costs and soft costs, and allocating such costs between the City Facilities and private uses.

The purpose of the Final Development Proposal is to ensure that the Parties principally agree on the preliminary feasibility of the Project and the Deal Terms prior to continuing in earnest with the Predevelopment Phase Activities. Following the City's acceptance of the Final Development Proposal, the Parties will proceed with the execution and delivery of Predevelopment Agreement as described in Section 4(a)(ii) above.

The City shall have no obligation to accept the Final Development Proposal; however, the Developer has no obligation to perform the Predevelopment Phase activities unless and until the City timely approves the Final Development Proposal in writing and the Predevelopment Agreement has been executed and delivered by the Parties. If the City disapproves of the Final Development Proposal or fails to approve the Final Development Proposal within forty-five (45) days from Developer's submission of the Final Development Proposal, the Developer may terminate this agreement pursuant to Section 8(c) hereof.

Section 5. Roles and Responsibilities of the Parties.

- (a) *General Responsibilities of the Developer.* Subject to the City's reimbursement obligations set forth in Section 6, the Developer will be responsible for the payment and performance of all of the Concept Refinement Activities, as described in Section 5(b) below, including the services required for the deliverables. The Developer will be responsible for the selection, contractual engagement, and supervision of the Development Team. The City shall have the right to approve the selection, engagement, and or replacement of the individual members of Development Team, which approval shall not be unreasonably withheld, conditioned or delayed. Thereafter, the Developer and the Development Team will perform the Concept Refinement Activities.
- (b) *Description of Concept Refinement Activities.* The concept refinement activities to be performed by the Developer under this Agreement are described below (the "Concept Refinement Activities"):
- (i) Developing the Final Development Proposal, including a detailed budget of costs for the Predevelopment Phase;

- (ii) Preparation of a preliminary conceptual master plan and preliminary conceptual Project Site infrastructure design informed by the market, financial, technical, construction cost, and schedule studies defined within these Concept Refinement Activities;
 - (iii) Program verification for the City Facilities for cost estimating purposes;
 - (iv) In coordination with City staff, preparing a community engagement plan and conducting up to two community engagement meetings for purposes of receiving community and stakeholder input regarding the Project;
 - (v) Preliminary feasibility due diligence level technical studies for traffic, parking, and floodplain to inform Main Street alignment, bridge design, and grading for the Project Site;
 - (vi) To the extent deemed necessary by the Developer, preparing detailed assessments of the Project Site, including but not limited to boundary/topographical surveys, soil borings and geotechnical testing, landscape peer review, flood plain, transportation, egress, ingress, parking, water analysis, civil engineering analysis, and/or environmental site assessments;
 - (vii) Developing a preliminary financial model and plan of finance demonstrating the preliminary financial feasibility of the Project, and working with the City to identify the mix of public and private financing sources within the City's established budgetary or financial limits based on projected tax and other revenue sources derived from the Project and/or other funding sources; and
 - (viii) Preparing a detailed development schedule for each of the Horizontal Site Infrastructure and the City Facilities, including target dates by which the Parties will agree on final terms for the Definitive Agreements, City approval of a PUD and the Master Plan for the Land Development, and the City's approval of the City Facilities Preliminary Plans and Specifications (as defined in EXHIBIT E (b)(ii)(B)) and a GMP.
- (c) *Roles and Responsibilities of the City.*
- (i) General. The City recognizes that its participation, review, evaluation, and input is necessary in order for the Developer to conduct the Concept Refinement Activities. The City agrees to dedicate adequate staff and resources toward participation in the Predevelopment Activities as it deems appropriate or as reasonably requested by the Developer.
 - (ii) Review and Response to Submittals. Certain work product of the Developer derived from the Concept Refinement Activities will be submitted to the City for review, comment, and approval, as the Developer deems reasonably appropriate and necessary (collectively, the "Submittals"). Any Submittals for which the City's approval is legally required under the existing rules, regulations, codes, and ordinances of the City relating to land development (the "City Legal Requirements") shall be subject to City review and approval in accordance with such City Legal Requirements. Nothing in this Agreement shall constitute a waiver of the City Legal Requirements or the City's non-ministerial obligations under State law, and the Developer shall ultimately be

responsible for ensuring that such Submittals conform to any and all City Legal Requirements.

Any Submittals that are not subject to the City Legal Requirements but for which the City's review and comment is nevertheless deemed reasonably necessary or appropriate by the Developer, shall not be subject to formal City approval. However, the City may elect, in its reasonable judgment, to provide informal comments and input to such Submittals as so requested by the Developer.

EXHIBIT C attached hereto (the "City Review Schedule") summarizes the general schedule and timing of review (and to the extent legally required, approval) for the various Submittals. In the event of a conflict between the City Review Schedule and the City Legal Requirements, the City Legal Requirements shall prevail.

- (iii) Timely Response to Information Requests. To the extent permitted by State law, at the request of the Developer, the City agrees to timely provide to the Developer any relevant data, surveys, documentation and information in possession of the City and which, in the reasonable judgment of the City is reasonably necessary or appropriate in connection with the Developer's performance of the Concept Refinement Activities.
 - (iv) Timely Issuance of Public Financing. The City hereby agrees to use its reasonable efforts to issue public securities in accordance with then existing law in a timely manner as necessary to finance the City Facilities as contemplated by this Agreement, subject in all respects to the future discretion of the City Council to take the requisite actions for the issuance of such public securities.
 - (v) Acquisition of Off-Site Parcels Required for Main Street Extension. The City agrees to use its reasonable efforts to acquire certain parcels property located adjacent to the Project Site as may be necessary for the extension of Main Street to FM 685. This includes entering into negotiations with landowners and making fair offers in good faith.
 - (vi) AHJ and Utility Approvals. The City will provide reasonable assistance to the Developer with all contacts, meetings, and approvals with all Authorities Having Jurisdiction ("AHJs") in connection with the Concept Refinement Activities, including but not limited to TxDOT, FEMA, TCQ, the Army Corps of Engineers, AT&T, Oncor Energy, the State Fire Marshall, the Texas Department of Licensing and Regulations.
- (d) *Right of Entry*. During the Term of this Agreement, Developer shall have the non-exclusive, irrevocable (except on a termination of this Agreement in accordance with the terms and conditions hereof) right to enter the Project Site (the "Right of Entry") upon twenty-four (24) hours' prior written notice to the City for the sole and limited purpose of conducting inspections, tests, examinations, surveys, studies, and appraisals (the "Authorized Purposes"), subject to the terms, conditions, and covenants set forth herein.

All investigations and activities of the Developer shall be performed as part of the Concept Refinement Activities, at the Developer's cost and expense as Concept Refinement Costs. The Developer shall keep the Project Site free and clear of any liens and claims that may arise as a result thereof. If any such lien or claim shall at any time be filed, the Developer shall cause the same to be discharged of record or fully bonded in accordance with State law within ten (10) days after the Developer receives written notice thereof. Upon completion of the Developer's

activities or investigations on the Project Site, the Developer will restore any disturbed surface of the Project Site as close as reasonably possible to the condition of the Project Site immediately prior to the performance of such activities.

The Developer shall conduct its activities in compliance with all applicable laws and regulations relating to the environment and its protection at all times. The Developer is responsible for all activities of the Developer and any member of the Development Team, and their respective subcontractors or representatives or invitees brought onto to the Project Site (collectively, "Developer Representatives"). The Developer shall not bring, or permit any Developer Representatives to bring, any hazardous materials onto the Project Site. Further, upon any Developer Representative encountering any previously unknown or potentially hazardous material on the Project Site, the Developer shall immediately cease any activities impacted by the discovery, secure the affected area, and notify the City immediately.

The Developer will indemnify, defend and hold the City harmless from any and all obligations, losses, injuries, damages, claims, liens, costs, expenses, demands, liabilities, penalties, and reasonable investigation costs, including but not limited to reasonable attorneys' fees and costs (collectively, the "Claims") for personal injury, death or damage to or destruction of property or improvements, to the extent caused in whole or in part by, or attributable to, any willful misconduct or other unlawful, negligent or reckless act or omission of the Developer Representatives, in the exercise of rights granted to the Developer hereunder. However, the foregoing indemnity shall not cover or apply to any claims, liabilities or causes of action for personal injury, death or damage to or destruction of property or improvements which arise (i) out of the mere discovery of, or the locating or identifying of, any pre-existing condition on, under or emanating from the Project Site including, but not limited to, any contamination on, under or emanating from the Project Site, so long as the Developer Representatives do not exacerbate any such pre-existing condition and if they do then Developer's liability will be limited to the extent of the damage caused by such exacerbation and (ii) the negligent or reckless acts or omissions of the City or any of its representatives..

- (e) *Insurance.* Prior to any entry by the Developer upon the Project Site, the Developer shall provide the City with evidence of the insurance described in EXHIBIT F attached hereto.

Section 6. Concept Refinement Costs; Reimbursement.

- (a) *General.* The Developer shall be responsible for the payment of all Concept Refinement Costs (as defined below) out of its own funds but subject to reimbursement as provided herein; provided, however, that City may elect to fund all or any portion of the Concept Refinement Costs prior to when reimbursement is due under Section 6(c). The Concept Refinement Activities shall be performed directly by Developer or by third parties engaged by Developer.
- (b) *Concept Refinement Costs Budget.* The Developer has prepared a detailed budget and schedule of its estimated Concept Refinement Costs, which is attached hereto as EXHIBIT D (the "Concept Refinement Costs Budget"). The Concept Refinement Costs Budget includes a detailed line item budget of the Concept Refinement Costs for the Concept Refinement Activities and the preparation of a Final Development Proposal. The Concept Refinement Costs Budget may be amended or revised by the mutual agreement of the Parties. The Developer may reallocate amounts between budget line items, except for the Developer's overhead, which will be fixed.

For purposes hereof, "Concept Refinement Costs" are limited to and include only (i) the Third Party Costs set forth in the Concept Refinement Budget and actually incurred or expensed by the Developer for contractors (and their subcontractors), design professionals, consultants (and their subconsultants), other architectural and engineering design professionals (including costs of preconstruction services of third party project contractor(s)) (collectively, "Third Party Costs"), and (ii) the Developer's fixed overhead costs as set forth in the Concept Refinement Costs Budget, in an amount not to exceed the total sum of the Concept Refinement Costs Budget, as the same may be amended from time to time. The fixed fee of the Developer described in the Concept Refinement Costs Budget (EXHIBIT D, Item 29) shall accrue but shall not become payable under this Agreement, and therefore is not included as part of the Concept Refinement Costs.

- (c) *Reimbursement by the City.* The City agrees to reimburse the Developer for its Reimbursable Concept Refinement Costs (defined below), subject to and in accordance with the terms of this Agreement, upon the first to occur of (i) the execution and delivery of Definitive Agreements for each of the Land Development and the City Facilities (in each case only to the extent allocable to each thereof, as provided below), or (ii) the earlier termination of this Agreement, but only to the extent required in Section 8.

The Parties will work in good faith to mutually determine and document the amount of Reimbursable Concept Refinement Costs allocable to each of the Land Development and the City Facilities and payable with respect thereto. Such determination will take into account the input of the City's financial advisors and bond counsel for purposes of ensuring compliance with all applicable State laws regarding the use of public funds, as well as federal laws and regulations relating to the use of amounts paid from the proceeds of federally tax-exempt municipal securities.

- (d) *Reimbursable Concept Refinement Costs.* The City's reimbursement obligation is expressly limited to the payment of those Concept Refinement Costs and Interest (as defined hereafter) that meet the conditions and requirements set forth below, and which are not otherwise expressly excluded as set forth below ("Reimbursable Concept Refinement Costs"):

- (i) All Third Party Costs shall be limited to those costs generally described in the Concept Refinement Costs Budget, and must be evidenced by documentation satisfactory to the City demonstrating that such costs were actually incurred by Developer, such as contracts, subcontracts, invoices, work orders, receipts, and evidence of payment. The Developer shall have sole responsibility for keeping and preserving all records and correspondence for purposes of documenting payment.
- (ii) Notwithstanding the Developer's right to reallocate amounts among line items within the Concept Refinement Costs Budget, the City shall not be required to pay any Concept Refinement Costs that are not reflected as a line item in the Concept Refinement Costs Budget, unless expressly approved by the City in writing in the City's sole discretion; provided, however, that Developer may use its contingency line item for Project costs that are not reflected as a line item in the Concept Refinement Costs Budget (as well as reallocating the contingency to other line items in the Concept Refinement Costs Budget).
- (iii) Third Party Costs is inclusive of legal expenses incurred and reasonably necessary in connection with the performance of the Concept Refinement Activities. However, the City shall not be responsible for any legal costs or expenses of the Developer relating

to the preparation or negotiation of this Agreement or any Definitive Agreements, or the enforcement thereof.

- (e) *Interest on Reimbursable Concept Refinement Costs.* All Third Party Costs that Developer funds or incurs will accrue simple interest at an annual rate of 6.5% ("Interest") from the date the Third Party Costs were incurred through the date of City's payment of such Third Party Costs.
- (f) *Monthly Expense Reports.* The Developer shall deliver to the City on a monthly basis commencing on the fifteenth (15th) day of each calendar month (or the immediately following business day) beginning on the first full month after the Effective Date, a report (each an "Expense Report") detailing all Concept Refinement Costs incurred or applied since the Effective Date (in the case of the first Expense Report) or all Concept Refinement Costs since the last Expense Report. The Expense Report will provide an accounting of the incurred and/or expended Concept Refinement Costs of the prior calendar month on a line item basis matching the Concept Refinement Costs Budget format shown in EXHIBIT D. The Expense Report may also include a narrative summary of any financial commitments for third-party services that have accrued but not applied against the Concept Refinement Costs Budget to date. Within thirty (30) calendar days following the expiration of the Term or earlier termination of this Agreement, Developer shall deliver to the City the final Expense Report. The provisions of the immediately preceding sentence will survive the expiration or earlier termination of this Agreement.

Section 7. Instruments of Service.

- (a) *Ownership of Instruments of Service.* All instruments of service prepared by the Developer and the Development Team in connection with the performance of the Concept Refinement Activities (the "Instruments of Service"), shall be and remain the property of the Developer until and unless the City reimburses the Developer for its Reimbursable Concept Refinement Costs in accordance with Section 6(c) above. "Instruments of Service" shall include any drawings, specifications, models, renderings, professional studies, professional reports, or other proprietary materials prepared in connection with or as part of the Concept Refinement Activities. However, "Instruments of Service" shall expressly exclude, and the City shall retain all rights to (irrespective of payment or nonpayment) any and all work product of the City, including any contracts, agreements, plans, notes, research, reports, summaries, concepts, and ideas conceived, developed, or prepared directly by or through the joint participation of the City and its representatives, that is not customarily deemed as "work made for hire" (collectively, "City Work Product"). The Developer hereby waives and releases all rights relating to the City's continued use and ownership of any City Work Product.
- (b) *Transfer of Instruments of Service.* Immediately upon the City's reimbursement of the Developer for its Reimbursable Concept Refinement Costs and Interest in accordance with Section 6(c) above, all of the Developer's right, title, and interest, including licenses, in and to all Instruments of Service, whether or not used or accepted by the City, shall immediately become the property of the City without any further evidence of transfer or assignment. However, to the extent that the City determines that further documentation or assurances are necessary to evidence the transfer, assignment, or licensing of any Instruments of Service, the Developer shall fully cooperate with the City and use all reasonable and lawful means to deliver written documentation or assurances, including those to be executed by the Developer Team, to evidence the transfer, assignment, or licensing of the Instruments of Service to the City.

The obligation of the City to pay the Developer for its Reimbursable Concept Refinement Costs is expressly limited to the extent of the Developer's ability to lawfully grant or cause to be granted such Instruments of Service to the City, and only to the extent of Developer's interest therein. City acknowledges that Developer will typically only receive licenses to Instruments of Service prepared by the Development Team, and that assignment of such licenses (if that is the only right that Developer has to such Instruments of Service) will satisfy Developer's obligation to grant such Instruments of Service to City. The Developer's obligation to assign, transfer, or license the Instruments of Service to the City shall not be limited or reduced due to any reduction in the amount of Reimbursable Concept Refinement Costs due to any offset for the City's damages arising out of a default by the Developer as provided in Section 8(a)(iii).

Section 8. Term and Termination.

- (a) *Termination for Cause.*
 - (i) *Notice of Default.* If either Party materially fails to comply with any of its obligations under this Agreement, the other Party (the "Noticing Party") may provide the defaulting Party (the "Defaulting Party") written notice of default describing the default and approximate date(s) of occurrence and other relevant circumstances as well as a requested remedy to reasonably cure commensurate with the seriousness of the default.
 - (ii) *Opportunity to Cure.* Upon receiving a notice of default, the Defaulting Party shall have thirty (30) calendar days to reasonably cure the default to the reasonable satisfaction of the Noticing Party. However, if the default is of such nature that it cannot be reasonably cured within thirty (30) days, then the Defaulting Party shall have an additional ninety (90) calendar days to cure the default, during which it must diligently pursue actions to cure said default, evidenced by weekly written updates to the Noticing Party. The Noticing Party may also in their sole discretion extend the cure period for such additional amount of time that they determine to be reasonably necessary. If the Defaulting Party fails to cure the default to the reasonable satisfaction of the Noticing Party within the cure period described above, the Noticing Party may provide written notice to the Defaulting Party of its election to terminate this Agreement, and termination shall take effect immediately upon delivery of such notice; however, the City's payment obligations described in Sections 8(a)(iii)(A) and 8(a)(iii)(B)(2) below shall survive termination; provided however the Defaulting Party may initiate dispute resolution procedures in Section 9(h) prior to termination by Noticing Party. The City shall use all reasonable and lawful means to pay such Concept Refinement Costs and Interest within 30 days of termination and receipt of the final Predevelopment Expense Report.
 - (iii) *Reimbursement of Concept Refinement Costs.*
 - A. *Termination by Developer.* If Developer terminates this Agreement under this section, the City agrees to reimburse the Developer, and Developer agrees that its damages shall be limited to, the amount of Reimbursable Concept Refinement Costs incurred prior to the City's receipt of notice of termination plus Interest through the date of payment, less any offsetting costs, damages, or expenses of the City arising out of any concurrent default of the Developer.

B. *Termination by the City.* If the City terminates the agreement, the City's obligation to pay Concept Refinement Costs shall be dependent on the materiality of the Developer's breach, as follows:

1. *Bad Acts.* In the event of a termination due to a default arising out of Developer's fraud, bad faith, or willful misconduct, the City shall have no obligation to pay any Concept Refinement Costs or Interest to Developer; however, the City reserves the right to pay fair value, in light of the circumstances, to the Developer or any member of the Development Team in exchange for the transfer, assignment, or licensing of any Instruments of Service.
2. *Other Material Default.* In the event of a termination due to a material default other than that described in subparagraph (1) above, the City agrees (i) to reimburse Developer all of its Third Party Costs incurred up to the Developer's receipt of notice of default, without Interest and (ii) that its damages are limited to an amount equal to Developer's fixed overhead; provided that the foregoing limitation on damages shall not apply with respect to the Developer's indemnity obligations under Section 5(d).

(b) *Termination for Convenience by the City.*

- (i) *Notice of Termination.* If the City determines in its sole discretion to terminate this Agreement for its convenience at any time, it shall have the right, with thirty (30) calendar days' written notice to Developer, to terminate this Agreement. Termination shall take effect immediately upon the expiration of the thirty (30) day notice period; however, the City's payment obligations described in paragraph (ii) below shall survive termination.
- (ii) *Reimbursement of Concept Refinement Costs.* If the City terminates for convenience, the City agrees to reimburse Developer for the amount of Reimbursable Concept Refinement Costs incurred up to the Developer's receipt of notice of termination, plus Interest through the date of payment. The City shall use all reasonable and lawful means to pay such Reimbursable Concept Refinement Costs and Interest within thirty (30) calendar days of termination and receipt of the final Predevelopment Expense Report.

(c) *Termination by Failure to Approve Final Development Proposal.*

- (i) *Failure to Approve Final Development Proposal.* The Developer may terminate this Agreement by giving written notice to the City if (A) the City does not approve in writing the Final Development Proposal within forty-five (45) days of Developer's submission of the Final Development Proposal to City, or (B) the Developer is unable to deliver a Final Development Proposal to the City on or before September 30, 2023 due to the City's failure to timely perform its responsibilities under this Agreement. Termination shall take effect immediately upon the delivery of such notice; however, the City's payment obligations described in paragraph (ii) below shall survive termination.

- (ii) *Reimbursement of Concept Refinement Costs.* If the Developer terminates this Agreement because the City fails to approve the Final Development Proposal, the City agrees to reimburse Developer its Concept Refinement Costs incurred up to the date of the Developer's delivery of notice of termination, plus Interest through the date of payment. The City shall use all reasonable and lawful means to pay such Concept Refinement Costs and Interest within 30 days of termination and receipt of the final Predevelopment Expense Report.

Section 9. General Provisions.

- (a) *Representations and Warranties.* Each Party represents and warrants to the other Party all of the following:
 - (i) The Party has all requisite power and authority to enter into this Agreement and consummate the transactions set forth herein, and by proper action has duly authorized the execution and delivery of this Agreement and the consummation of the transaction set forth herein, and no permission, approval, or consent by any additional third parties or governmental authorities is required for the Party to enter into and consummate this Agreement.
 - (ii) This Agreement is a valid obligation of the Party and is binding upon and enforceable against the Party in accordance with its terms.
 - (iii) The consummation by the Party of this Agreement and the Project set forth herein do not, and will not, constitute a violation of any order, rule or regulation of any court or of any federal, state, or municipal regulatory body, administrative agency, or other governmental body having jurisdiction over the Party.
- (b) *Confidentiality of Information and Negotiations.*
 - (i) If the Developer provides information to the City, in whatever form or medium, concerning the operations or affairs of the Developer or member of the Development Team, whether developed prior to or on or after the Effective Date, that is generally considered under the law to be of a confidential or privileged nature and is marked as "Confidential" plainly on the face of any such document or information, the City agrees that it will keep confidential and not disclose any such information submitted by Developer in the course of the negotiations ("Confidential Information") except for disclosures:
 - A. in the process of discussions, meetings or conferences with its officers, agents, employees and representatives who reasonably need to know this information for purposes of evaluating, approving or effecting the transactions contemplated hereby;
 - B. in response to a legal process or as otherwise required by law, including the Texas Public Information Act (the "Act") with prompt written notice being delivered to Developer regarding such disclosure, or as otherwise required by any order of a legal authority under applicable law; or
 - C. in any manner to which Developer affirmatively consents.

- (ii) Subject to any third-party rights under the Act, the City and Developer agree that neither shall have the right to require the other to disclose attorney-client privileged communications or work product.
 - (iii) The City shall use reasonable efforts to provide prompt written notice to Developer of any request received by the City pursuant to the Act or by any competent legal authority requesting Confidential Information or information collected, assembled or maintained for the City and to which the City has contractual access, for the purpose of providing Developer an opportunity to seek to protect such information from disclosure. Under the Act, documents collected, assembled or maintained for the City and to which the City has access under the terms of a contract may be deemed public information, subject to the exceptions in the Act. The City makes no representation as to how the Attorney General of Texas will rule on any public information request but agrees to reasonably cooperate with Developer in asserting exemption claims under the Act, provided any extensive briefing or analysis of documentation will be the responsibility of the Developer.
 - (iv) Upon reasonable request of the Developer, the City shall reasonably cooperate with the Developer and shall give the Developer the opportunity to submit briefings to the Office of the Texas Attorney General in the manner provided by the Texas Public Information Act.
 - (v) The terms of this Section 9(b) will survive the expiration or earlier termination of this Agreement but will be superseded by the terms of the Definitive Agreements, if fully executed.
- (c) *Limitations of this Agreement.* The execution of this Agreement by the Parties shall not be construed as an offer or an acceptance by any of the Parties to proceed with the execution of any Definitive Agreements. Execution of this Agreement is limited to the purposes described in Section 2(a) hereof, reserving final discretion to each Party. Final terms relating to the Project shall be established only in Definitive Agreements executed by the Parties.
- (d) *The City's Right to Obtain Information and to Consult with Others.* The City reserves the right to obtain information concerning the transaction described by this Agreement from any person, entity, or group.
- (e) *Assignment.* The Developer shall not assign (it being agreed that for purposes of this Agreement, assignment includes, without limitation, a merger, dissolution, sale, pledge or other hypothecation or transfer of stock or ownership interests in any other form of business entity interests or sale of assets), mortgage, pledge or otherwise transfer their respective interests in this Agreement without the prior written consent of the City, which consent may be withheld in the City's sole and absolute discretion. However, Developer may assign its interest in this Agreement to an entity that directly or indirectly controls, is controlled by, or is under common control with Developer ("Affiliate") with prior notice to the City. In such a case, the City's consent to said assignment may not be unreasonably withheld, conditioned, or delayed and such consent shall be conditioned upon (i) Developer demonstrating such Affiliate has comparable or greater financial standing, professional expertise and development capabilities as Developer as of the Effective Date, and (ii) the execution and delivery by such Affiliate of an instrument in form and substance reasonably satisfactory to the City evidencing its full assumption of the Developer's obligations hereunder. The Party who assigns this Agreement shall provide the other Party with a copy of the assignment.

- (f) *Notices.* Formal notices, demands and communications between the Parties will be sufficiently given if, and will not be deemed given unless delivered personally, dispatched by certified mail, postage prepaid, return receipt requested, or sent by a nationally recognized express delivery or overnight courier service, to the office of the Parties shown as follows, or such other address as the Parties may designate in writing from time to time:

To G/S: Griffin/Swinerton, LLC
Attn: Korin Crawford and Roger Torriero
5707 Southwest Pkwy #200
Austin, TX 78735
kcrawford@griffinswinerton.com; rtorriero@griffinholdings.net

To CDC: CDC-Pflugerville, L.P.
Attn: Greg Weaver and Fei Dai
4550 Mueller Blvd.,
Austin, TX 78723
Email: gweaver@catellus.com; fdai@catellus.com

CDC-Pflugerville, L.P.
Attn: Bill Hosler
2000 Powell Street, Suite 500
Emeryville, CA 94608
Email: bhosler@catellus.com

To the City: City of Pflugerville
Attn. City Manager
PO Box 589
Pflugerville, Texas 78691-0589
citymanager@pflugervilletx.gov

Such written notices, demands, and communications will be effective on the date shown on the delivery record as the date delivered (or the date on which delivery was refused) or in the case of registered mail four (4) Business Days following deposit of such instrument in the United States Mail. "Business Day" means Monday through Friday, except for state or federal holidays. Notices delivered by email to the email addresses provided above shall also be deemed to have been delivered but only if receipt is personally and affirmatively acknowledged in writing by the recipient.

- (g) *Injunctive Relief.* The Parties represent and acknowledge that the covenants in this Agreement are reasonably necessary for the protection of the interests of the Parties. The Parties agree that any breach of these covenants by the breaching Party may result in irreparable damage and injury to the non-breaching Party, and that the non-breaching Party may be entitled to injunctive relief in any court of competent jurisdiction; subject, however, to the limitations set forth in Section 9(i) below.
- (h) *Resolution of Disputes.* Upon written notice from one Party to the other regarding an alleged or actual default by another Party, or a dispute over the interpretation or applicability of any provision of this Agreement, the Parties shall meet to make a good faith effort to resolve the dispute. The notice shall specify the Party's intent to dispute any action or inaction of the other party and the nature of and material facts underlying the dispute. Within fourteen (14) calendar

days of delivery of the notice, the Parties' designated representatives and other key team members shall meet in person or over videoconference and attempt to resolve the dispute.

If the dispute is not resolved to the reasonable satisfaction of the Party raising the dispute, then within fourteen (14) calendar days of the meeting, such Party may formally present the matter in writing to the chief executive officer of the other Party, which writing shall contain a detailed briefing of the dispute and the requested resolution of it. Within thirty (30) calendar days of delivery of the notice, an executive officer of the receiving Party shall meet in person or over videoconference with an executive officer of the Party who raised the dispute and attempt to resolve the dispute, after which, the receiving Party will, within fourteen (14) calendar days, deliver to the Party who raised the dispute a written proposal for resolution of the dispute, and the receiving Party shall consider the written proposal in good faith.

If the foregoing process does not resolve the dispute and mediation is acceptable to both Parties, the Party raising the dispute may elect to seek resolution of the dispute by mediation through the Dispute Resolution Center of Austin, Texas as the provider of mediators for mediation as described in the TEX. CIV. PRAC. AND REM. CODE, Section 154.023. Unless both Parties are satisfied with the result of the mediation, the mediation will not constitute a final and binding resolution of the dispute. All communications within the scope of the mediation will remain confidential as described in TEX. CIV. PRAC. AND REM. CODE, Section 154.073, unless the Parties agree in writing to waive confidentiality.

If the process described does not resolve the dispute and the parties do not agree to mediation, or if the non-binding mediation process does not resolve the dispute, the parties will be entitled to pursue any other remedy available under this Agreement. Neither party will pursue such a remedy without first exhausting the foregoing process; provided, however, that either Party may exercise its rights of terminate under Section 8 hereof without undergoing mediation.

- (i) *Limitation on Remedies.* In no event shall either party be liable, whether in contract or tort or otherwise, to the other party for loss of profits, delay damages, punitive damages, exemplary damages, indirect damages, or for any special incidental or consequential loss or damage of any nature arising at any time or from any cause whatsoever.
- (j) *Joint and Several Liability of the Developer.* Developer acknowledges and agrees that (i) if there is an uncured material breach by G/S and/or CDC that City may terminate this Agreement in its entirety in accordance with Section 8(a) and neither G/S nor CDC shall have any right or interest hereunder independent of the other; and (ii) G/S and CDC shall be jointly and severally liable for any and all of the duties and obligations of the Developer under the indemnity provisions of Section 5(d), but not otherwise.
- (k) *Capacity.* NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, THE CITY'S ACTIONS IN EXECUTING THIS AGREEMENT AND ITS OBLIGATIONS UNDER THIS AGREEMENT ARE A GOVERNMENTAL FUNCTION.
- (l) *Amendment or Modification to this Agreement.* This Agreement may be amended, modified and/or restated only by a written instrument adopted by all of the Parties and signed by the duly authorized representatives of the Parties hereto.

(m) *Rules of Interpretation.*

- (i) Consideration. For and in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties executing this Agreement hereby agree to the terms and conditions contained herein, as it may from time to time be amended according to its terms.
- (ii) Entire Agreement. This Agreement, and those agreement and documents expressly incorporated herein by reference, constitutes the entire agreement of the Parties. No other agreement, statement, or promise that is not contained in this Agreement shall be binding except a subsequent written amendment or supplement to this Agreement signed by both Parties.
- (iii) Captions. Captions at the beginning of each Section of this Agreement are for reference only and will in no way define or interpret any provision hereof.
- (iv) Construction. Common nouns and pronouns and any variations thereof shall be deemed to refer to masculine, feminine, non-binary, or neuter gender, singular or plural, as the identity of the person, persons or other reference in the context requires. Every covenant, term and provision of this Agreement shall be construed simply according to its fair meaning and not strictly for or against any Party. Any reference to the Act or other statutes, laws, or regulations, forms or schedules shall include the amendments, modifications, supplements, or replacements thereof. The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole, as the same may from time to time be amended, modified or supplemented and not to any particular section, subsection or clause contained in this Agreement. Whenever used herein, "or" shall include both the conjunctive and disjunctive, "any" shall mean "one or more," and "including" shall mean "including without limitation."
- (v) Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any Party shall not preclude or waive the right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the Parties may have by law, statute, ordinance or otherwise, except to the extent limited by Section 9(i) above.
- (vi) Relationship of Parties; No Third-Party Beneficiaries. The City and Developer are not partners or joint venturers, nor is either the principal or agent of the other, and nothing herein will be construed to create any such relationship between the City and Developer, or to render either the City or Developer liable for any obligations of the other. The only beneficiaries of this Agreement are the City and Developer. There are no third-party beneficiaries.
- (vii) Severability. If any provision of this Agreement or the application thereof to any person or circumstances becomes invalid or unenforceable to any extent, the application of such provision to other persons or circumstances and the remainder of this Agreement will not be affected thereby and will be enforced to the greatest extent permitted by law.
- (viii) Waivers. The failure of any Party to seek redress for violation of or to insist upon the strict performance of any agreement or condition of this Agreement shall not prevent a

subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

- (n) *Governing Law; Venue.* This Agreement will be governed by and construed in accordance with the laws of the State of Texas. The obligations of the Parties are performable in Pflugerville, Texas, and venue for any dispute arising hereunder will lie exclusively in the state district courts located in Travis County, Texas.
- (o) *Additional Assurances.* The provisions of this Agreement shall be self-operative and shall not require further agreement by the Parties except as may be herein specifically provided to the contrary; provided, however, at the request of a Party, the other Party shall execute such reasonable additional instruments and take such reasonable additional actions as the requesting Party may deem necessary to effectuate this Agreement.
- (p) *Successor and Assigns.* This Agreement will be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns.
- (q) *State Law Matters.* In addition to the terms provided herein, the Parties agrees to the terms and conditions contained in the State Law Addendum attached hereto as EXHIBIT G.
- (r) *Appropriation of Funds.* By its approval of this Agreement, City Council has appropriated current revenues of the City in the amount of \$900,235 (the "Appropriated Amount") for the payment of Reimbursable Concept Refinement Costs and Interest due to the Developer under this Agreement. If for any reason the Reimbursable Concept Refinement Costs and Interest payable under this Agreement exceed the Appropriated Amount, the City shall use all reasonable and lawful means to either (i) cause such additional amounts to be appropriated for payment from the City's then current revenues, or (ii) establish a sinking fund wherein it shall deposit lawfully available funds sufficient for the payment of such additional amounts. The Developer shall not be required to perform any Concept Refinement Activities with respect to which funds have not been lawfully appropriated.
- (s) *Counterparts; e-Signatures.* This Agreement may be signed in as many counterparts as may be convenient or required. It shall not be necessary that the signature and acknowledgment of, or on behalf of, each party, or that the signature and acknowledgment of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than a single counterpart containing the respective signatures and acknowledgment of, or on behalf of, each of the parties hereto. Any signature and acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures and acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature and acknowledgment pages. The Parties agree that digital or facsimile signatures shall be given the same legal effect as original signatures, and the Parties hereby agree to accept delivery of digital signatures by e-mail in "pdf" form, or *via* DocuSign, Adobe Sign, or any similar means of digital delivery.

(Signature Page Follows)

The undersigned have signed and delivered this Exclusive Negotiating Agreement to be effective as of the Effective Date.

GRIFFIN/SWINERTON, LLC,
a Delaware limited liability company

By: _____
Roger Torriero, Principal

By: _____
Korin Crawford, Executive Vice President

CDC – PFLUGERVILLE, L.P.,
a Delaware limited partnership

By: _____
Greg Weaver, Vice President

CITY OF PFLUGERVILLE, TEXAS,
A Texas home-rule municipality

By: _____
Sereniah Breland, City Manager

**EXHIBIT A
PROJECT SITE**

The Project Site is approximately twenty-nine (29) acres of undeveloped land owned by the City and located in the City at the northwest corner of FM 685 and E. Pecan Street as shown below:



EXHIBIT B
PRELIMINARY DEVELOPMENT SCHEDULE

ITEM	TARGET DATE / DURATION
Concept Refinement Phase:	
Apr – Oct 2023 6 months (est.)	
Notice to Proceed	Apr 3, 2023 (Mon)
Final Development Proposal -- submission to City	August 15, 2023
Final Development Proposal -- review by City	45 days
City Bond Issuance(s)	6 months
TxDOT Approval of Main Street – 685 Intersection	6 months
Floodplain/Bridge/Creek Determinations	6 months
City Council Action	TBD
Predevelopment Phase:	
Nov 2023 – Oct 2024 12 months (est.)	
Master Plan / PUD Approval	9-12 months
Deal Terms	9-12 months
City Acquisition of Main Street Parcels – btw Railroad and Site	9-12 months
City Facilities: Schematic Design, Design Development, GMP	10-12 months
Definitive Agreements Phase:	
Nov 2024 – Oct 2026 24 months (est.)	
City Bond Issuance(s)	12 months
Land Development Agreement (LDA) – CDC	Nov 2024
Construction Documents & Horizontal Construction	18-24 months
Development Agreement(s) (DAs) – Griffin Swinerton	Nov 2024
Construction Documents – City Hall	6 months
City Hall Construction	18 months
Construction Documents – Recreation Center	6 months
Recreation Center Construction	18 months
Vertical Development	24+ month
Note:	
[A.] The preliminary Project milestones identified in this Exhibit B are anticipated to change as the Project scope, budget, and schedule are further clarified during the Concept Refinement Phase. The actual schedule and dates for commencement and completion of the Project will be further defined in the Definitive Agreements.	
[B.] The work to be performed under the Definitive Agreements Phase will be coordinated between G/S and CDC.	

EXHIBIT C
CITY REVIEW SCHEDULE

The City will follow the development review schedule as outlined:

- (a) Subdivision Review – 15 business day review of initial submittal, 10 business day review for update submittals.
- (b) Construction Plan Review (public infrastructure) – 20 business day review of initial and update submittals .
- (c) Site Development Review – 15 business day review of initial submittal, 10 business day review for update submittals.
- (d) Building Plan Review – 20 business day review of initial and update submittals.

EXHIBIT D
CONCEPT REFINEMENT COSTS BUDGET

EXHIBIT D: CONCEPT REFINEMENT COSTS BUDGET
MARCH 21, 2023



#	Budget Item	Firm	Total	Comment
DESIGN & ENGINEERING				
1	Architectural - Concept Master Plan	Perkins & Will	180,000	Not to exceed amount
2	Civil Engineering, Infrastructure Design	GarzaEMC	111,650	Utilities, storm/drainage, floodplain, grading
3	Dry Utility Coordination	Bay and Assoc.	20,000	Allowance
4	City Hall: Program Validation	LPA	20,000	per proposal - program verification, concept development
5	Rec Center: Program Validation	BRS / FGMA	45,000	per proposal - program verification, concept development
6	Landscape Architecture Peer Review	LPA	10,000	Allowance: planting, plaza, parks, street lighting, furniture
7	Renderings and Related Visuals	TBD	10,000	
8	Traffic Studies: Main Street	HDR	40,000	FM 685 intersections, etc.
9	Parking, Transportation	Walker Consultants	10,000	Shared/Demand based parking
10	Geotechnical Investigations - Update	Braun Intertec	12,000	Update City's Report w Creek/Bridge Borings, Staking
11	Structural: Bridge Peer Review	Pickett, Kelm & Assoc.	10,000	Allowance
12	Survey, Topology, Mapping	n/a	NIC	Using City's existing survey
13	Environmental: Phase 1 ESA	n/a	NIC	Using City's existing Phase 1
14	Environmental: Other, Stream Mitigation	Horizon Environmental	2,500	Jurisdictional water/wetlands // budget per proposal
15	Arborist	n/a	NIC	Possibly in the next phase
16	Fire Flow Testing	n/a	NIC	Possibly in the next phase
MISCELLANEOUS CONSULTANTS				
17	Real Estate Market Update		30,000	Per proposal
18	Public Financing, Bond Advisory		NIC	
19	Community Engagement		10,000	
20	Legal		25,000	
OTHER EXPENSES				
21	Reimbursables Allowance		10,000	
22	Contingency		74,615	
23	Insurance \$10/\$1000		9,002	\$10/\$1000 relative to all costs per Item 32
24	SUBTOTAL - THIRD PARTY		\$629,767	
25	Not-to-Exceed Interest (@ 6.5% annual)		20,467	NTE amt at 6-months - actual based on monthly draws
26	TOTAL		\$650,235	
DEVELOPMENT MANAGEMENT				
27	Pre-Construction & Cost Estimating	Swinerton/Byrne	75,000	Infrastructure, City Hall, Rec Center
28	Developer Fixed Overhead	Griffin Swinerton, Catellus	175,000	
29	Developer Fixed Fee (At-Risk)	Griffin Swinerton, Catellus	275,000	
30	SUBTOTAL		\$525,000	
31	GRAND TOTAL		\$1,175,235	
32	CONTINGENT CITY FISCAL IMPACT - ENA [Items 26, 27, 28]		\$900,235	
NOTES:				
A.	Budget items 24, 27, and 28 are deemed Concept Refinement Costs as set forth in Section 6(b) of this Agreement.			
B.	Budget item 25 is deemed Interest as set forth in Section 6(e) of this Agreement.			

Source: Griffin Swinerton, Catellus - March 2023

EXHIBIT E
SUMMARY PREDEVELOPMENT AGREEMENT SCOPE AND KEY TERMS

- (a) Scope of Work. Under the Predevelopment Agreement, the Developer intends to perform the activities generally described below to facilitate the preparation and execution of the Definitive Agreements (collectively, the "Predevelopment Activities"):
- (i) Working with the City to develop a financial model demonstrating the financial feasibility of the Project within the City's established budgetary or financial limits based on projected tax and other revenue sources derived from the Project and/or other funding sources;
 - (ii) Preparing separate detailed development and construction schedules for the Land Development and the City Facilities;
 - (iii) Preparing contracts with all professionals, consultants, and contractors for the performance of such planning, design, engineering, market and financial analysis, community outreach, and generally development-related services necessary to negotiate and execute the Definitive Agreements;
 - (iv) Further refinement of the conceptual designs for both the Land Development and the City Facilities, including without limitation, confirmation of the size of the Project in gross square feet, the number of parking spaces, value engineering of the Project based upon and as necessary to satisfy budget targets and/or Project Site constraints established in the Concept Refinement Phase as part of the Final Development Proposal, and preliminary activities related to obtaining all government entitlements and approvals for the Project;
 - (v) Assessing the feasibility of captured water, solar, and other sustainable features in the design of the Project;
 - (vi) Preparing the Land Development Design Documents, and preliminary construction pricing and preliminary development analysis for the Land Development necessary to negotiate and execute the Definitive Agreements for the Land Development;
 - (vii) Working with the City to seek final approval of the PUD in accordance with all City Legal Requirements (as defined hereafter);
 - (viii) Periodically preparing and refining cost estimates for the Project;
 - (ix) Pro forma analysis related to the development, construction, and financing/funding of the Project;
 - (x) Preparing the Preliminary City Facilities Plans and Specifications, preliminary construction pricing and preliminary bidding, and a preliminary schedule of values for the City Facilities as necessary to deliver a GMP for the City Facilities and negotiate and execute the Definitive Agreements for the completion of construction documents and related construction of the City Facilities;
 - (xi) Further refining and negotiating the terms of Developer's financing required for the Project in alignment with the public financing sources that the City will make available to the Project; and

- (xii) Preparing a proposal and framework for mixed-use governance regime whereby the interests of the ultimate users of the Land Development will be governed, including common area maintenance, assessments, and architectural review.
- (b) *Conditions to Execution of Definitive Agreements.* The Predevelopment Agreement will set forth the required activities and terms for the negotiation, preparation, execution and delivery of the Definitive Agreements; however, delivery of the Definitive Agreements shall be subject to the satisfaction of the conditions described below. The Parties recognize that delivery of the Definitive Agreements may not take place simultaneously, and it is anticipated that the Definitive Agreements for the Land Development will precede the Definitive Agreements for the City Facilities.
 - (i) Definitive Agreements Relating to the Land Development. The Parties' decision to proceed with the execution and delivery of the Definitive Agreements for the Land Development is conditioned upon successful completion and agreement among the Parties of the following:
 - A. The completion of all due diligence and site feasibility work for the Land Development to the mutual satisfaction of the Parties, as more fully described in this Agreement;
 - B. City approval of the PUD and acceptance of a definitive master plan for the Land Development;
 - C. The City shall have approved the preliminary drawings, conceptual designs, schematic designs, specifications, and design development for the Land Development (collectively referred to as the "Land Development Design Documents") prepared by CDC under the Predevelopment Agreement,
 - D. The Parties' mutual acceptance of a preliminary plan of finance for the Land Development based upon the development budget prepared by CDC under the Predevelopment Agreement, and the Parties' securing acceptable financing for all Land Development costs for which they are responsible; and
 - E. The Parties' mutual acceptance of a final development schedule for the work of the Horizontal Site Infrastructure (subject to change by the Parties from time to time as needed); and
 - F. All necessary approvals and entitlements for the commencement of the work of the Land Development in accordance with the development schedule shall have been obtained by the Developer; provided that the Parties acknowledge and agree that some approvals and entitlements may be obtained after the execution and delivery of the Definitive Agreements as provided therein.
 - (ii) Definitive Agreements Relating to the City Facilities. The Parties' decision to proceed with the execution and delivery of the Definitive Agreements for the construction of the City Facilities is conditioned upon successful completion and agreement among the Parties of the following:
 - A. The completion of all due diligence and site feasibility work for the City Facilities to the mutual satisfaction of the Parties, as more fully described in this Agreement;

- B. The City shall have approved at a minimum the complete Design Development phase documents for the City Facilities (the "City Facilities Preliminary Plans and Specifications") prepared by G/S under the Predevelopment Agreement;
- C. A guaranteed maximum price ("GMP") for each component of the City Facilities shall have been prepared by G/S and approved by the City, supported by a preliminary schedule of values for each component of the City Facilities summarizing all hard and soft costs in reasonably sufficient detail;
- D. The Parties' mutual acceptance of a final plan of finance for the full financing of the City Facilities by the City, based upon the GMP and schedule of values prepared by G/S, and the City's securing acceptable financing for the completion of the City Facilities;
- E. The Parties' mutual acceptance of a final construction schedule for each component of the City Facilities; and
- F. All necessary approvals, and entitlements for the commencement of construction of the City Facilities in accordance with the construction schedule shall have been obtained by the Developer.

(c) *Exclusive Negotiating Agreement Terms applicable to Predevelopment Agreement.* The following provisions of this Agreement shall be incorporated into the Predevelopment Agreement in the same manner as they apply to the Exclusive

Section	Description
Section 2(b)	Exclusivity
Section 2(c)	Basis for Negotiations
Section 3	Collaboration and Communication between the Parties
Section 5(d)	Right of Entry
Section 5(e)	Insurance
Section 7	Instruments of Service
Section 9(b)	Confidentiality of Information and Negotiations
Section 9(d)	City's Right to Information; Consult with Others
Section 9(e)	Assignment
Section 9(h)	Resolution of Disputes
Section 9(i)	Limitation on Remedies
Section 9(n)	Governing Law; Venue
Section 9(q)	State Law Matters
Section 9(r)	Appropriation of Funds

EXHIBIT F
INSURANCE REQUIREMENTS

- (a) Qualifying Insurers. All insurance policies shall be obtained from insurers authorized to do insurance business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code, having an A.M. Best Rating of A-VII or better.
- (b) Required Liability Insurance Coverage and Limits.
- (i) Workers' Compensation Insurance with statutory limits, and Employer's Liability Insurance with limits of not less than \$1,000,000:
- | | |
|-------------------------------------|-------------|
| Employers Liability - Each Accident | \$1,000,000 |
| Employers Liability - Each Employee | \$1,000,000 |
| Employers Liability - Policy Limit | \$1,000,000 |
- (ii) Commercial General Liability Insurance with limits of not less than:
- | | |
|---------------------------------|-------------|
| Each Occurrence Limit | \$1,000,000 |
| Personal & Advertising Injury | \$1,000,000 |
| General Aggregate | \$2,000,000 |
| Products - Completed Operations | \$1,000,000 |
- (iii) Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 combined single limit of liability per accident for Bodily Injury and Property Damage; and
- (iv) Umbrella/excess liability insurance with limits of not less than \$2,000,000, per occurrence. Such umbrella coverage will be excess over and at least as broad as the underlying coverage as required for Employer's Liability, Commercial General Liability and Business Auto Liability under subsections (i), (ii) and (iii) foregoing, respectively. Inception and expiration dates will be the same as the underlying policies. Drop down coverage will be provided for reduction or exhaustion of underlying aggregate limits and will provide a duty to defend for any insured.
- (c) Endorsements. All Insurance Policies (with the exception of workers' compensation and employer's liability) will be endorsed and name City of Pflugerville, Texas as additional insureds for liability caused in whole or in part by Developer's acts or omissions with respect to its on-going operations up to the actual liability limits of the required insurance policies maintained by Developer. Commercial General Liability Additional Insured status, including ongoing and completed operations coverage, will be submitted with the certificates of insurance required above. Commercial General Liability and Business Auto Liability will include primary and non-contributory coverage in favor of the City.
- (d) Waivers of Subrogation. Developer hereby waives and will cause each contractor or subcontractor to waive all rights of subrogation against the City. All Insurance Policies required hereunder will be endorsed to provide a waiver of subrogation in favor of the City. The waivers set forth above shall extend to the agent of each such person and their respective contractors and employees.

EXHIBIT G
STATE LAW MATTERS

- (a) *State Law Limitations and Prevailing Laws Applicable to the City.* The City is a local government corporation organized under the laws of the State of Texas. The Parties expressly agree that following provisions shall control over any conflicting provisions contained in this Agreement.
- (i) No Liens on Public Property. No provision of the Agreement purporting to grant to Developer (A) a security interest or lien against the real or personal property of the City; or (B) a contractual right or power of attorney to take control over or otherwise handle or dispose of the property of the City, shall be of force and effect.
 - (ii) Court Costs. No provision of this Agreement requiring the City to pay court costs, costs of suit, or attorney fees incurred by Developer or any other person in enforcing or interpreting the terms of this Agreement shall be of force and effect, except as otherwise expressly permitted by the laws of the State of Texas.
 - (iii) Open Records. Any obligation of the City under this Agreement to (A) keep the terms and provisions of this Agreement confidential; and/or (B) not disclose the terms of this Agreement, shall be binding on the City only to the extent permitted by law, including without limitation Chapter 552 of the Texas Government Code or any successor law or other similar statutory provisions (the "Texas Public Information Act"). the City agrees that it shall notify Developer upon receipt of a request for release of this Agreement or any terms hereof to any member of the public pursuant to the Texas Public Information Act, and the City shall give Developer the opportunity to submit briefings to the Office of the Texas Attorney General in the manner provided by the Texas Public Information Act.
 - (iv) Privileges and Immunities. No provision of this Agreement shall constitute, nor is it intended to constitute, a waiver of any other exemptions, privileges or immunities of the City under the constitution and laws of the State of Texas.
 - (vi) No Violation of Prevailing Law. the City shall not be required to perform any act or refrain from performing any act under this Agreement if that performance or non-performance would constitute a violation of the constitution or laws of the State.
- (b) *Representations and Certifications of Developer.*
- (i) Interested Parties Disclosure. To the extent that this Agreement is a contract with a value of \$100,000 or more, prior to entering into this Agreement, and unless otherwise exempt therefrom, Developer must file a certificate of Interested Parties Form 1295 (a "1295 Certification") with the Texas Ethics Commission through its electronic portal in accordance with Section 2252.908, Texas Government Code, as amended, and has delivered evidence of filing to the City. Developer acknowledges that the City has no obligation, and have not undertaken any responsibility, for advising Developer with respect to the completion of its 1295 Certification, except for the provision of the contract identification numbers and description of services.
 - (ii) Verifications Required for Contracts for Goods or Services. To the extent this Agreement constitutes a contract for goods or services for which a written verification statement is required under Sections 2252.152, 2271.002 and 2274.002, Texas Government Code, as

amended, by submitting a bid, the bidder does hereby verify that it and its parent company, wholly- or majority- owned subsidiaries, and other affiliates:

- A. Do not boycott energy companies and, will not boycott energy companies during the term of this Agreement. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, as amended, to the extent Section 2274.002, Texas Government Code does not contravene applicable Texas or federal law. As used in the foregoing verification, "boycott energy companies" has the meaning provided in Section 809.001 of the Texas Government Code.
- B. Do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and are authorized to agree in such contracts not to discriminate against a firearm entity or firearm trade association during the term of such contracts. "Discriminate against a firearm entity or firearm trade association" has the meaning provided in section 2274.001(3) of the Texas Government Code. "Firearm entity" and "firearm trade association" have the meanings provided in section 2274.001(6) and (7) of the Texas Government Code.
- C. Do not boycott Israel and are authorized to agree in such contracts not to boycott Israel during the term of such contracts. "Boycott Israel" has the meaning provided in section 808.001 of the Texas Government Code.
- D. Unless affirmatively declared by the United States government to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization, are not identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under section 2252.153 or section 2270.0201 of the Texas Government Code

As used in the foregoing verifications, "affiliate" to mean an entity that controls, is controlled by, or is under common control with the bidder within the meaning of SEC Rule 405, 17 C.F.R. 230.405 and exists to make a profit.