

**REIMBURSEMENT AGREEMENT WITH DEVELOPER FOR
CONSTRUCTION OF PUBLIC IMPROVEMENTS BY AND BETWEEN THE CITY OF
PFLUGERVILLE AND KEDMA VENTURES LLC**

THE STATE OF TEXAS §
 § **KNOW ALL PERSONS BY THESE PRESENTS:**
COUNTY OF TRAVIS §

This Reimbursement Agreement (the "Agreement") is by and between the City of Pflugerville, a Texas municipal corporation (the "City"), and Kedma Ventures, LLC and Verdot at Pflugerville East, LLC, owners and developers of certain hereinafter described property located within the City (collectively, the "Developer"), all collectively referred to as "Parties", and is effective upon the execution of this Agreement by the Developer and the City (the "Effective Date").

WHEREAS, Pflugerville citizens approved a transportation bond proposition in November 2018 that included the design and construction of Colorado Sand Drive between Copper Mine Drive and Lone Star Ranch Boulevard (the "Project") as identified in Exhibit A "Project Vicinity Map", and

WHEREAS, The Project bisects certain real property that the Developer wishes to develop (the "Development") located within the City limits which was granted a Planned Unit Development ("PUD") by the City Council on December 10, 2019; and

WHEREAS, the PUD provides for unique design features including onsite parking along Colorado Sand Drive, specific utility assignments, a roundabout and regional detention facilities for the Development; and

WHEREAS, City is currently developing plans and specifications for the Project and has been requested by the Developer to incorporate the unique elements of the PUD including onsite parking along Colorado Sand Drive, specific utility assignments, a roundabout and regional detention facilities ("Additional Public Improvements"); and

WHEREAS, The City's Project budget did not include these Additional Public Improvements; and

WHEREAS, Developer has agreed to pay for said Additional Public Improvements that must be constructed for the Development by reimbursing the costs to the City; and

WHEREAS, the City is willing to include the design and construction of the Additional Public Improvements, and has funds appropriated and available to do so and be reimbursed by Developer.

NOW THEREFORE, for and in consideration of the premises and mutual obligations, covenants, and benefits hereinafter set forth, the Parties agree as follows:

ARTICLE I – Definitions.

The following terms and phrases used in this Agreement shall have the meanings ascribed hereto:

- 1.1. “Additional Public Improvements” shall mean the public improvements required for the Development to be incorporated into the Project as described on Exhibit “B”.
- 1.2. “Agreement” means this agreement, including any amendments hereto, between the City and Developer.
- 1.3. “Contractor” shall mean the person, firm, corporation, partnership, association, or other entity under contract with City for construction of the Additional Public Improvements under the Improvements Contract and who will construct the Additional Public Improvements.
- 1.4. “Developer/Development” shall mean that certain property owned by Developer identified herein, and as more specifically identified above in the recitals.
- 1.5. “Developer Participation Costs” shall mean actual costs incurred by the City for the design, construction, inspection, and material testing of the Additional Public Improvements, as designated on Exhibit “B”, which are the responsibility of the Developer.
- 1.6. “Final Completion” shall mean the date as agreed in the Improvements Contract and Contract Time in Section II of the City’s standard capital improvement project construction agreement for the Project.
- 1.7. “Improvements Contract” shall mean the City’s standard capital improvement project construction agreement for the Project.
- 1.8. “Project” shall mean the public improvements associated with the Colorado Sand Drive project between Copper Mine Drive and Lone Star Ranch Boulevard as described on Exhibit “A”.

ARTICLE II – Design and Construction of Additional Public Improvements.

- 2.1. Design of Additional Public Improvements. City agrees to design the Additional Public Improvements in accordance with the City’s Engineering Design Manual and Code of Ordinances. The plans and specifications for the Additional Public Improvements will be reviewed and approved by the City Engineer, or her designee. The plans and specifications for the Additional Public Improvements shall also be reviewed and approved by Developer, such approval not to be unreasonably withheld, conditioned, or delayed and Developer’s approval rights shall be limited to

any matter which (i) materially and adversely impacts the Development and/or (ii) materially and adversely effects the location or function of the Additional Public Improvements. If Developer does not approve or reject such proposed plans within five (5) business days after the City provides such plans to Developer, then the plans shall be deemed approved. The entire cost of the design, of said Additional Public Improvements shall be the responsibility and obligation of Developer, except as herein provided.

2.2. Construction of Additional Public Improvements. City agrees to construct the Additional Public Improvements in accordance with the plans and specifications approved by the City Engineer and Developer in a good, workmanlike, and diligent manner. The entire cost of the construction and inspection of said Additional Public Improvements shall be the responsibility and obligation of Developer, except as herein provided.

2.3. Contracts for Construction. City shall use its Improvements Contract with Contractor to construct the Additional Public Improvements in accordance with the approved plans and specifications. The City Engineer, or her designee, shall review and approve all plans, specifications and any other documents and cost estimates for the Project including the Additional Public Improvements, which shall be approved by City and Developer prior to delivery to Contractor. Developer shall be solely responsible for payment of the Additional Public Improvements as outlined in Article III of this Agreement.

2.4. Inspection. The City Engineer's designee shall oversee and inspect the construction of the Project and Additional Public Improvements in the same manner, and shall possess the same authority, as is provided during the construction of the Project and pursuant to the City of Pflugerville Subdivision Ordinance, as amended.

2.5. Accounting. City shall submit to Developer a complete accounting of all costs incurred by City in the design, construction and inspection of the Additional Public Improvements. City will not contribute or pay for any costs attributable to said Additional Public Improvements. City shall maintain the accounting of the Public Improvements for a period of two years from the date of completion.

2.6. Scheduling. City shall submit to Developer a schedule of all proposed critical dates for design, approval, and construction, including but not limited to bid proposal deadlines and work commencement dates, of the Additional Public Improvements. In the event that any critical date of the Additional Public Improvements shall be adjusted by more than thirty (30) days, City shall submit to Developer a revised schedule. The City anticipates that construction of the Project and Additional Public Improvements will commence within one year of the effective date of this agreement.

2.7. Indemnity. Developer agrees to protect, indemnify and save City harmless from and against all claims, demands and causes of action of every kind and character arising in favor of any third party on account of, or resulting from, the

performance of this Agreement by Developer or Developer's agents, representatives, employees, contractors, or subcontractors.

ARTICLE III – Obligations and Payments.

3.1. City Obligations. The City will invoice the Developer for the Developer Participation Costs, as designated on Exhibit "B", which shall equate to the actual costs incurred by the City for the Additional Public Improvements. Notwithstanding any provision of this Agreement to the contrary, Developer's obligation shall only be for the reimbursement of costs incurred by City. These Developer Participation Costs are estimated, at the time this Agreement, at Nine Hundred Thirty-nine Thousand Four Hundred Fifty-four Dollars (\$939,454.00). The Project will be competitively bid and the Contractor will be selected in accordance with the requirements Texas Local Government Code 252. Developer Participation Costs for construction of the Additional Public Improvements will be based on the actual bid amount and any required subsequent change orders, for the Additional Public Improvements.

3.2. Access to the Development shall remain available at all times to the Developer during construction in accordance with access points identified in the Temporary Access Easement Agreement located in Composite Exhibit "D". The Access Easement shall be executed within 60 days of the Colorado Sand Drive right-of-way being donated to the City in accordance with Section 3.2. The Access easement shall be executed prior to commencement of construction of the Project.

3.3. Developer Obligations. Developer will pay the Developer Participation Costs, as designated on Exhibit "B", and as may be amended or modified by written approval of the Developer and City, irrespective of whether the Development is constructed and completed. Developer will donate, at no cost to the City, the right-of-way and easements to support the Project as generally depicted in Exhibit "C" by means of a Special Warranty Deed and easement documents shown in Composite Exhibit "D". The City shall provide the Developer official copies of the Special Warranty Deed and easements including the metes and bounds exhibits no later than December 31, 2021. The Developer executed documents for the right-of-way and required easements shall be provided to the City no later than January 15, 2022.

3.4. Payment Procedures. Developer shall deliver to City full payment of the Developer Participation Costs as provided in this section.

3.4.1 Escrow Funds. Payment of the estimated Developer Participation Costs designated on Exhibit "B" totaling Nine Hundred Thirty-nine Thousand Four Hundred Fifty-four Dollars (\$939,454.00) shall be made in one lump sum payment within five (5) business days after the Effective Date of this Agreement in cash and held in escrow by BOKE, NA with offices located at 1401 McKinney St, Suite 1000, Houston, Texas 77010 ("Escrow Account") to be paid to City in accordance with terms below and per the Escrow Agreement attached hereto as Exhibit "E". If the actual Developer Participation Costs come in higher than the estimated Developer Participation

Costs after the Project is designed and competitively bid, the Developer will add the difference between the actual Developer Participation Costs and the estimated Developer Participation Costs into the Escrow Account no later than 45 days after the execution of the Construction Improvements Contract or a change order specifically related to an Additional Public Improvement is executed by the Contractor and City. If the actual Developer Participation Costs come in lower than the estimated Developer Participation Costs after the Project is competitively bid and constructed, the City will release the remaining funds from the Escrow Account to the Developer within 60 days of the Final Completion of the Project and issuance of the Project acceptance letter by the City to the Contractor.

3.4.2 Design Cost Reimbursement. The City will invoice the Developer on a regular basis for all design costs associated with the Additional Public Improvements. The Developer shall authorize release of the invoiced amount from the Escrow Account to the City within 30 days of receiving the invoice, as more particularly set forth in the Escrow Agreement.

3.4.3 Construction Cost Reimbursement. In accordance with the Improvements Contract, the Contractor is expected to submit payment applications to the City on a monthly basis for payment of work completed on the Project including the Additional Public Improvements. The City Engineer, or her designee, will review and approve the payment applications. The City will invoice the Developer, on a regular basis (but not more frequently than monthly), the Developer Participation Costs associated with the Improvements Contract which shall be paid from the Escrow Account within 30 days of receiving the invoice, as more particularly set forth in the Escrow Agreement.

3.4.4 Inspection Cost Reimbursement. The Developer shall reimburse the City for the cost of inspections of the Additional Public Improvements in the amount of 3% of the total construction cost as set forth in Section 3.1.

3.4.5. Major Delay. In the event that there is a delay in constructing the Additional Public Improvements, which delay materially and adversely impacts the Development and cannot be cured under Section 4.16, Developer shall have the right to cancel this Agreement and City shall authorize release of the remaining amount, subject to the payment of any outstanding pay applications, invoices or other Developer Participation Costs incurred prior to cancellation, held in the Escrow Account to Developer within ten (10) days of written demand therefor. Developer may, but is not obligated to, elect to complete the Additional Public Improvements upon cancellation of this Agreement.

3.5. No Liens Permitted. The City will not cause, suffer, or permit the filing, perfection, or execution of any lien or other encumbrance against the Development or

any portion thereof in connections with the construction of the Additional Public Improvements.

Article IV – Miscellaneous Provisions.

4.1. Assignment. This Agreement shall bind and benefit the respective Parties and their legal successors and shall not be assignable, in whole or in part, by any party without first obtaining written consent of the other party.

4.2. Amendment or Modification. Except as otherwise provided in this Agreement, this Agreement shall be subject to change, amendment or modification only in writing, and by the signatures and mutual consent of the Parties.

4.3. Parties in Interest. This Agreement shall be for the sole and exclusive benefit of the Parties hereto and shall not be construed to confer any rights upon any third party.

4.4. Remedies Not Exclusive. The rights and remedies contained in this Agreement shall not be exclusive but shall be cumulative of all rights and remedies now or hereinafter existing, by law or in equity.

4.5. Waiver. The failure of any party to insist in any one or more instances on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, or condition, or right with respect to further performance.

4.6. Entire Agreement. This Agreement constitutes the entire agreement between the Parties related to the subject matter of this Agreement and supersedes any and all prior agreements, whether oral or written, dealing with the subject matter of this Agreement.

4.7. Venue. This Agreement shall be performable and enforceable in the state district courts of Travis County, Texas, and shall be construed in accordance with the laws of the State of Texas.

4.8. Severability. If any term or provision of this Agreement is held to be invalid, void or unenforceable by a court of competent jurisdiction, the remainder of the terms and provisions of this Agreement shall remain in full force and effect and shall not in any way be invalidated, impaired or affected.

4.9. Notices. Any notice provided or permitted to be given under this Agreement must be in writing and may be served by (i) depositing the same in the United States mail, addressed to the party to be notified, postage prepaid, registered or certified mail, return receipt requested; or (ii) by delivering the same in person to such party, or (iii) by overnight or messenger delivery service that retains regular records of delivery and receipt; or (iv) by facsimile; provided a copy of such notice is sent within one (1) day thereafter by another method provided above.

The initial addresses of the parties for the purpose of notice under this Agreement shall be as follows:

If to City:	CITY OF PFLUGERVILLE P O BOX 589 Pflugerville, TX 78691-0589 Attention: City Manager
With copy to:	Denton Navarro Rocha Bernal & Zech, P.C. 2417 N. Main Avenue San Antonio, TX 78212 Attention: Charles Zech
If to Developer:	Kedma Ventures, LLC & Verdot at Pflugerville East, LLC 21 Oak Ave. Tenafly, NJ 07670 Attn: Yariv Bensira
With copy to:	Slusher & Rosenblum, P.A. 444 W. Railroad Ave, Suite 470 West Palm Beach, FL 33414 Attention: Mahra Sarofsky

4.10. No Joint Venture. Nothing contained in this Agreement is intended by the Parties to create a partnership or joint venture between the Parties and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either Party as an agent of the other for any purpose whatsoever. Except, as otherwise specifically provided herein, neither Party shall in any way assume any of the liability of the other for acts of the other or obligations of the other.

4.11. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which constitute one instrument.

4.12. Governmental Immunity. The City does not waive or relinquish any immunity or defense on behalf of itself, its officers, employees, Councilmembers, and agents as a result of the execution of this Agreement and the performance of the covenants and actions contained herein.

4.13. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, representatives, successors, and assigns, and the terms hereof shall run with the Property.

4.14. Legal Construction. If any provision in this Agreement is for any reason unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the parties, such unenforceability will not affect any other provision hereof, and

this Agreement will be construed as if the unenforceable provision had never been a part of this Agreement. Whenever the context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. Article and section headings in this Agreement are for reference only and are not intended to restrict or define the text of any section. This Agreement will not be construed more or less favorably between the parties by reason of authorship or origin of language.

4.15. Recitals; Exhibits. Any recitals in this Agreement are represented by the parties hereto to be accurate, constitute a part of the parties' substantive agreement, and are fully incorporated herein as matters of contract and not mere recitals. Further, any exhibits to this Agreement are incorporated herein as matters of contract and not mere exhibits.

4.16. Notice of Default; Opportunity to Cure. If one Party believes that the other Party is in Default (herein so called) of any other provision of this Agreement, the non-defaulting Party will give written notice to the other Party ("Default Notice"), specifying the event of Default and extending the defaulting Party 30 days to cure the Default (unless a longer period is provided elsewhere in this Agreement) or, if the curative action cannot reasonably be completed within 30 days, 30 days to commence the curative action and thereafter to diligently pursue the curative action to completion. This 30-day period for notice and opportunity to cure must pass before the non-defaulting Party may initiate any remedies available to the non-defaulting Party due to an alleged Default. The non-defaulting Party must mitigate any direct or consequential damages arising from any Default to the extent reasonably possible under the circumstances. The Parties agree that they will use good faith, reasonable efforts to resolve any dispute by agreement, alternative dispute resolution methods as recommended by the laws of the State of Texas, before initiating any lawsuit to enforce their respective rights under this Agreement. If the Default is not cured within the 30-day period, or if curative action is not commenced or diligently pursued in the case of curative action that cannot reasonably be completed in 30 days, the non-defaulting Party may pursue all remedies, at law or in equity, that it deems appropriate to redress such Default.

[Signatures and acknowledgments on the following pages]

Signature Page to
Agreement with Developer for Construction of Public Improvements

This Agreement has been executed by the parties as of the dates of the Acknowledgments to be effective as of the Effective Date.

Developer:

VERDOT AT PFLUGERVILLE EAST, LLC,
a Texas limited liability company

BY: VERDOT PF, LLC, a Texas limited liability company, its Member

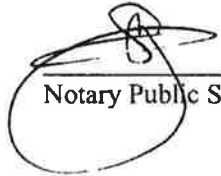
By:


Yariv Bensira, Manager

THE STATE OF New Jersey §
 §
COUNTY OF Bergen §

This instrument was acknowledged before me on November 15, 2021, by Yariv Bensira, manager of VERDOT PF, LLC, a Texas limited liability company, Member of VERDOT AT PFLUGERVILLE EAST, LLC, a Texas limited liability company, on behalf of said entities.

SACHA AZOULAI
NOTARY PUBLIC OF NEW JERSEY
Commission # 60196367
My Commission Expires 03/30/2026




Notary Public Signature

(seal)

KEDMA VENTURES, LLC, a Texas limited liability company

BY: NEGBA PF, LLC, a Texas limited liability company, Its Member

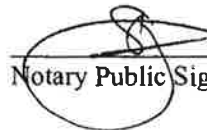
BY: NEGBA DEVELOPMENT, LLC, a Texas limited liability company, its managing member

By: 
Yariv Bensira, Manager

THE STATE OF New Jersey §
COUNTY OF Bergen §

This instrument was acknowledged before me on November 15, 2021, by Yariv Bensira, manager of NEGBA DEVELOPMENT, LLC, a Texas limited liability company, Managing Member of NEGBA PF, LLC, a Texas limited liability company, member of KEDMA VENTURES, LLC, a Texas limited liability company, on behalf of said entities.

SACHA AZOULAI
NOTARY PUBLIC OF NEW JERSEY
Commission # 60166367
My Commission Expires 03/30/2028


Notary Public Signature

Signature Page to
Agreement with Developer for Construction of Public Improvements

This Agreement has been executed by the parties as of the dates of the Acknowledgments to be effective as of the Effective Date.

City:

CITY OF PFLUGERVILLE,
a Texas municipal corporation

By:



Name: Sereniah Breland, City Manager

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 13 day of December, 2021 by Sereniah Breland, City Manager of the City of Pflugerville, Texas, a Texas municipal corporation, on behalf of said City.

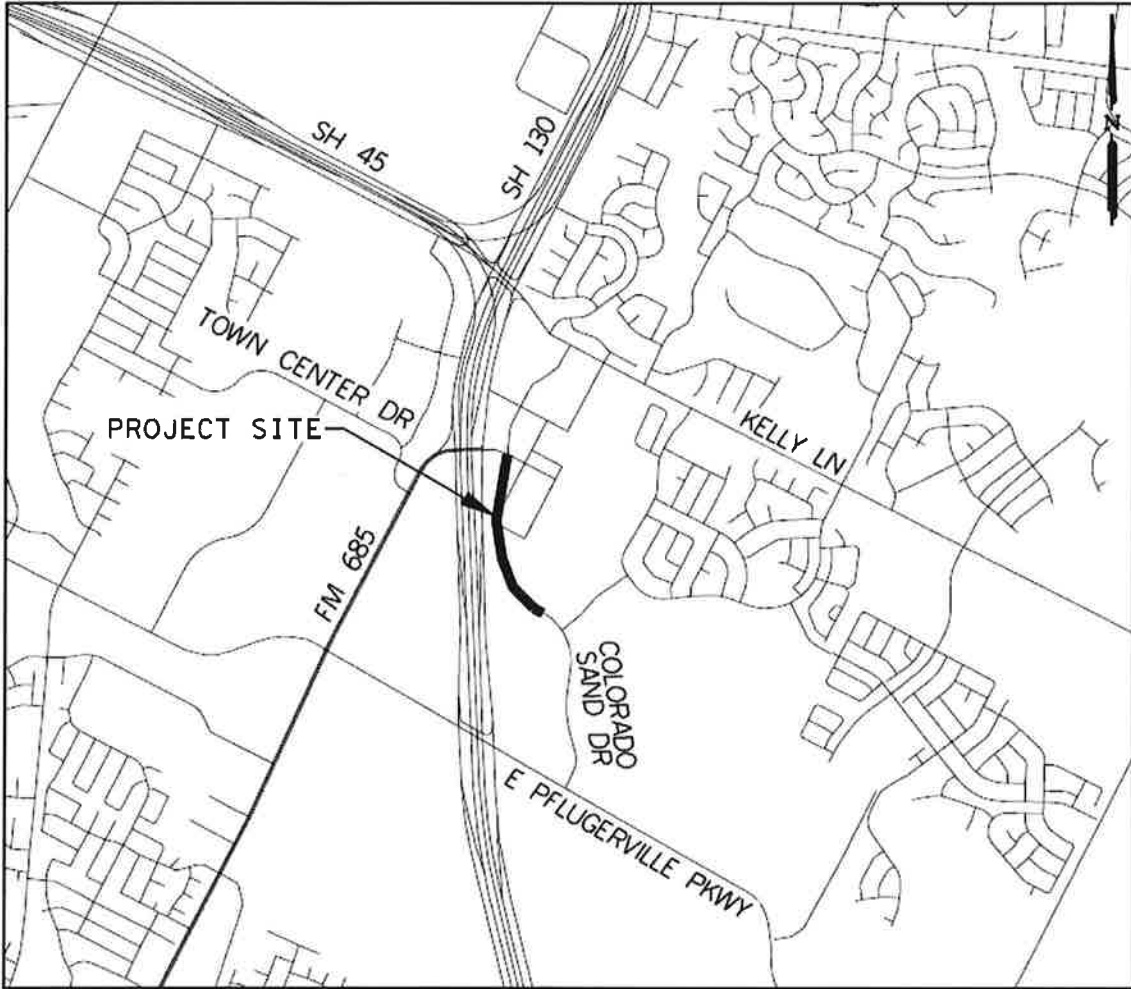
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Notary Public in and for
The State of Texas

My Commission Expires: May 22, 2025

**EXHIBIT A
PROJECT**



LOCATION MAP NOT TO SCALE

EXHIBIT B
ESTIMATED DEVELOPER PARTICIPATION COSTS

EXHIBIT B (Add Label here or within OPCC)
Additional Public Improvements Developer Participation Costs

ENGINEER'S OPINION OF ESTIMATED CONSTRUCTION COSTS		
Colorado Sand Drive - Additional Public Improvements Developer Participation Costs		
PREPARED FOR: CITY OF PFLUGERVILLE		DATE: 7/13/2021
PREPARED BY: KIMLEY-HORN AND ASSOCIATES, INC.		
ITEM NO.	DESCRIPTION	AMOUNT
CONSTRUCTION ITEMS:		
1	Additional Paving to Accommodate Developer Typical Section & Roundabout	\$ 379,304.16
2	Additional Drainage due to Additional Paving	\$ 71,544.00
3	Wastewater Line	\$ 271,014.00
4	Conduit Sleeves for Future Ductbank	\$ 31,560.00
ADDITIONAL ENGINEERING COSTS (ESTIMATED):		
1	Wastewater Line Design (per current contract)	\$ 55,350.00
CONSTRUCTION COSTS		\$ 753,422.16
ENGINEERING COSTS		\$ 55,350.00
INSPECTION FEE (3%)		\$ 22,602.66
TOTAL ADDITIONAL PROJECT COST		\$ 831,374.82
<p>Note: for estimating purposes, all construction costs include contingencies</p> <p>Total Project cost does not include preliminary engineering or technical services, utility relocations, acquisition of right-of-way, or construction engineering and administration.</p> <p>The Engineer has no control over the cost of labor, materials, equipment, or over the Contractor's methods of determining prices or over competitive bidding or market conditions. Opinions of probable costs provided herein are based on the information known to Engineer at this time and represent only the Engineer's judgment as a design professional familiar with the construction industry. The Engineer cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from its opinions of probable costs.</p>		

ENGINEER'S OPINION OF ESTIMATED CONSTRUCTION COSTS

Colorado Sand Drive - Additional Paving (With Roundabout)

PREPARED FOR: CITY OF PFLUGERVILLE
PREPARED BY: KIMLEY-HORN AND ASSOCIATES, INC.

DATE: 7/13/2021

ITEM NO.	S.P. NO.	ALT	DESCRIPTION	UNIT	ESTIMATED QUANTITY	PRICE PER UNIT	AMOUNT
ROADWAY							
	SD4		FLEX BASE (16")	CY	351	\$ 45.00	\$ 15,800.00
	TXDOT 310		PRIME COAT (MULTI OPTION)	GAL	158	\$ 4.00	\$ 632.00
	SD1		D-GR HMA TY-B PG64-22 (4")	TON	96	\$ 90.00	\$ 8,668.80
	SD1		D-GR HMA TY-C SAC-B PG70-22 (2")	TON	48	\$ 100.00	\$ 4,816.00
	TXDOT 260		8" LIME TREATED SUBGRADE	SY	790	\$ 5.00	\$ 3,950.00
	C4		VALLEY GUTTER	SY	358	\$ 90.00	\$ 32,220.00
			ROUNDAABOUT	LS	1	\$ 250,000.00	\$ 250,000.00
TOTAL BID ITEMS COST							\$ 316,086.80
CONTINGENCY & INFLATION 20%							\$ 63,217.36
TOTAL PROJECT COST							\$ 379,304.16

Total Project cost does not include preliminary engineering or technical services, utility relocations, acquisition of right-of-way, or construction engineering and administration.

The Engineer has no control over the cost of labor, materials, equipment, or over the Contractor's methods of determining prices or over competitive bidding or market conditions. Opinions of probable costs provided herein are based on the information known to Engineer at this time and represent only the Engineer's judgment as a design professional familiar with the construction industry. The Engineer cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from its opinions of probable costs.

ENGINEER'S OPINION OF ESTIMATED CONSTRUCTION COSTS

Colorado Sand Drive - Additional Project Costs for Developer Related Upgrades

PREPARED FOR: CITY OF PFLUGERVILLE
PREPARED BY: KIMLEY-HORN AND ASSOCIATES, INC.

DATE: 7/13/2021

ITEM NO.	DESCRIPTION	UNIT	ESTIMATED QUANTITY	PRICE PER UNIT	AMOUNT
TRUNK LINE CURRENT ESTIMATE:					
559S-A5FTX3FT	CONC BOX CULV (5 FT X 3 FT)	LF	557	\$ 600.00	\$ 334,200.00
510-AR18INRCP	RC PIPE (CL III)(18 IN) (DO NOT CONSIDER, 18" MIN TRUNK DIAMETER)	LF		\$ 75.00	\$ 0.00
510-AR24INRCP	RC PIPE (CL III)(24 IN)	LF	309	\$ 96.00	\$ 29,664.00
510-AR30INRCP	RC PIPE (CL III)(30 IN)	LF	524	\$ 110.00	\$ 57,640.00
510-AR42INRCP	RC PIPE (CL III)(42 IN)	LF	67	\$ 185.00	\$ 12,395.00
				SUBTOTAL:	\$ 433,899.00
TRUNK LINE BASE ESTIMATE:					
559S-A4FTX3FT	CONC BOX CULV (4 FT X 3 FT)	LF	557	\$ 525.00	\$ 292,425.00
510-AR18INRCP	RC PIPE (CL III)(18 IN) (DO NOT CONSIDER, 18" MIN TRUNK DIAMETER)	LF		\$ 75.00	\$ 0.00
510-AR18INRCP	RC PIPE (CL III)(18 IN)	LF	309	\$ 75.00	\$ 23,175.00
510-AR24INRCP	RC PIPE (CL III)(24 IN)	LF	524	\$ 96.00	\$ 50,304.00
510-AR36INRCP	RC PIPE (CL III)(36 IN)	LF	67	\$ 125.00	\$ 8,375.00
				SUBTOTAL:	\$ 374,279.00
				TOTAL BID ITEMS COST	\$ 59,620.00
				CONTINGENCY & INFLATION 20%	\$ 11,924.00
				TOTAL PROJECT COST	\$ 71,544.00

Note: for estimating purposes, all construction costs include contingencies

Total Project cost does not include preliminary engineering or technical services, utility relocations, acquisition of right-of-way, or construction engineering and administration.

The Engineer has no control over the cost of labor, materials, equipment, or over the Contractor's methods of determining prices or over competitive bidding or market conditions. Opinions of probable costs provided herein are based on the information known to Engineer at this time and represent only the Engineer's judgment as a design professional familiar with the construction industry. The Engineer cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from its opinions of probable costs.

ENGINEER'S OPINION OF ESTIMATED CONSTRUCTION COSTS

Colorado Sand Drive - Additional Project Costs for Developer Related Upgrades

PREPARED FOR: CITY OF PFLUGERVILLE
PREPARED BY: KIMLEY-HORN AND ASSOCIATES, INC.

DATE: 7/13/2021

ITEM NO.	S.P. NO.	ALT	DESCRIPTION	UNIT	ESTIMATED QUANTITY	PRICE PER UNIT	AMOUNT
Wastewater							
	510-AWW8Dia.		8-INCH Wastewater Pipe (PVC DR26)	LF	1510	\$ 100.00	\$ 151,000.00
	510-AWW12Dia.		12-INCH Wastewater Pipe (PVC DR26)	LF	60	\$ 150.00	\$ 9,000.00
	506S-M4WW		4" Diameter Precast Manhole	EA	7	\$ 5,000.00	\$ 35,000.00
			Post-Construction CCTV	LF	1570	\$ 6.50	\$ 10,205.00
	506S-EDM4WW		Extra Depth of Manhole, 4' Dia.	VF	50	\$ 350.00	\$ 17,500.00
	509S-1		Trench Excavation Safety Protective System	LF	1570	\$ 2.00	\$ 3,140.00
TOTAL BID ITEMS COST							\$ 225,845.00
CONTINGENCY & INFLATION 20%							\$ 45,169.00
TOTAL PROJECT COST							\$ 271,014.00

Total Project cost does not include preliminary engineering or technical services, utility relocations, acquisition of right-of-way, or construction engineering and administration.

The Engineer has no control over the cost of labor, materials, equipment, or over the Contractor's methods of determining prices or over competitive bidding or market conditions. Opinions of probable costs provided herein are based on the information known to Engineer at this time and represent only the Engineer's judgment as a design professional familiar with the construction industry. The Engineer cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from its opinions of probable costs.

ENGINEER'S OPINION OF ESTIMATED CONSTRUCTION COSTS

Colorado Sand Drive - Conduit Costs at Driveways/Cross Streets to Accommodate Future Duct Bank

PREPARED FOR: CITY OF PFLUGERVILLE
PREPARED BY: KIMLEY-HORN AND ASSOCIATES, INC.

DATE: 7/13/2021

ITEM NO.	S.P. NO.	ALT	DESCRIPTION	UNIT	ESTIMATED QUANTITY	PRICE PER UNIT	AMOUNT
CONDUIT							
	TXDOT 618		CONDT (PVC) (SCH 40) (2")	LF	1052	\$ 10.00	\$ 10,520.00
	TXDOT 618		CONDT (PVC) (SCH 40) (4")	LF	1052	\$ 15.00	\$ 15,780.00
TOTAL BID ITEMS COST							\$ 26,300.00
CONTINGENCY & INFLATION 20%							\$ 5,260.00
TOTAL PROJECT COST							\$ 31,560.00

Note: for estimating purposes, assume that 4-4" and 4-2" conduits will be used in duct bank. Future duct bank will be installed by others, However, the City will install conduits at driveways and cross streets for future connections

Total Project cost does not include preliminary engineering or technical services, utility relocations, acquisition of right-of-way, or construction engineering and administration.

The Engineer has no control over the cost of labor, materials, equipment, or over the Contractor's methods of determining prices or over competitive bidding or market conditions. Opinions of probable costs provided herein are based on the information known to Engineer at this time and represent only the Engineer's judgment as a design professional familiar with the construction industry. The Engineer cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from its opinions of probable costs.

EXHIBIT C
RIGHT-OF-WAY AND EASEMENTS LOCATIONS

**COMPOSITE EXHIBIT D
SPECIAL WARRANTY DEED
TEMPORARY DRAINAGE EASEMENT AGREEMENT
TEMPORARY ACCESS EASEMENT**

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

SPECIAL WARRANTY DEED

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF TRAVIS §

That **VERDOT AT PFLUGERVILLE EAST, LLC** and **KEDMA VENTURES, LLC**, whose address is 21 Oak Ave., Tenaflly, NJ 07670 (collectively, "Grantor"), for and in consideration of the sum of TEN and NO/100 DOLLARS (\$10.00) and other good and valuable consideration paid by the **CITY OF PFLUGERVILLE, TEXAS**, a home-rule municipality located in Travis County, Texas ("Grantee"), whose mailing address is P.O. Box 589, Pflugerville, Travis County, Texas 78691, the receipt and sufficiency of which consideration are hereby acknowledged and confessed, has GRANTED, SOLD AND CONVEYED, and by these presents does GRANT, SELL AND CONVEY, unto, Grantee, the property depicted on Exhibit "A", attached hereto and incorporated herein by reference ("Property") subject to all of the reservations, exceptions and other matters set forth or referred to herein.

Reservations from Conveyance and Exceptions to Conveyance and Warranty: All matters of official record or visible and apparent on the ground, to the extent the same are valid, subsisting, and affect the Property; taxes for the current year (prorated as of the date of this deed), which Grantee assumes and agrees to pay, and subsequent tax assessments for the current year and prior years due to change in land usage, ownership, or both, the payment of which Grantee assumes; and all zoning laws, regulations and ordinances of municipal and/or other governmental authorities, if any, but only to the extent that they are still in effect, relating to the hereinabove described Property.

TO HAVE AND TO HOLD the Property, together with, all and singular, the rights and appurtenances thereto in anywise belonging, unto Grantee, and Grantee's successors or assigns, forever; and Grantor does hereby bind Grantor, and Grantor's successors and assigns, to WARRANT AND FOREVER DEFEND, all and singular, the Property unto Grantee and Grantee's successors and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof, by through or under Grantor, but not otherwise, except as to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty.


No responsibility for validity of real estate title assumed by attorney preparing this instrument unless a written title opinion is rendered.

Signature page to follow.

GRANTEE:

CITY OF PFLUGERVILLE, TEXAS,

a Texas home-rule municipality

By: 

Sereniah Breland, City Manager

ATTEST:



Trista Evans, City Secretary

THE STATE OF TEXAS §

§

COUNTY OF TRAVIS §

This instrument was acknowledged before me on December 13, 2021, by Sereniah Breland, City Manager of the City of Pflugerville, Texas, a Texas home-rule municipality, on behalf of said municipality.

(seal)




Notary Public Signature

After recordation please return to:

City of Pflugerville
Attn: Sereniah Breland, City Manager
P.O. Box 589
Pflugerville, Texas 78691

EXHIBIT A

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

TEMPORARY DRAINAGE EASEMENT AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

GRANT OF EASEMENT:

VERDOT AT PFLUGERVILLE EAST, LLC and KEDMA VENTURES, LLC (“Grantor”, whether one or more), for the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, does hereby grant, sell and convey unto **THE CITY OF PFLUGERVILLE, TEXAS**, a home rule city located in Travis County, Texas (“Grantee”), an easement and right-of-way (“Easement”) upon and across the parcels of real property of Grantor which are more particularly described on Exhibit “A”, attached hereto and incorporated herein by reference (collectively, “Easement Tract”).

TO HAVE AND TO HOLD the same to Grantee and its successors and assigns, together with the right and privilege at any and all times to enter the Easement Tract, or any part thereof, for the purpose of construction, operation, maintenance, replacement, upgrade, and repair of the improvements which are constructed and installed therein or thereon by Grantee under the terms of this Easement.

Grantor does hereby covenant and agree to WARRANT AND FOREVER DEFEND title to the Easement herein granted, unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, subject to the matters set forth herein.

CHARACTER OF EASEMENT:

The Easement is an easement in gross.

PURPOSE OF EASEMENT:

The Easement shall be used for public drainage purposes, including placement, construction, installation, replacement, repair, maintenance, relocation, removal, and operation of a drainage channel, detention pond and related drainage facilities, and related appurtenances, or making connections thereto.

DURATION OF EASEMENT:

The Easement shall be perpetual until released by Grantee as set forth herein. Grantor hereby binds Grantor and Grantor's heirs, legal representatives, successors and assigns, to warrant and forever defend the Easement unto Grantee, its successors and assigns, against any person whomsoever lawfully claiming or to claim the same or any part thereof.

EXCLUSIVENESS OF EASEMENT:

The Easement shall be exclusive, and Grantor covenants that Grantor will not convey any other easement or conflicting rights within the Easement Tract.

SURFACE USE:

Grantor hereby retains, reserves, and shall continue to enjoy the use of the surface of the Easement Tract for any and all purposes which do not interfere with or prevent the use by Grantee of the Easement herein granted. Grantee has the right to trim and cut down trees and shrubbery and to remove other improvements and structures to the extent reasonably necessary to prevent interference with the operation or repairs to Grantee's facilities in the Easement Tract.

ENTIRE AGREEMENT:

This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representation or modification concerning this instrument shall be of no force and effect except for any subsequent modification in writing, signed by the party to be charged.

BINDING EFFECT:

This agreement shall bind and inure to the benefit of the respective parties hereto, their heirs, legal representatives, successors and assigns.

ASSIGNABILITY:

This Easement and the rights of Grantee hereunder may be assigned by Grantee so long as the assignee utilizes the Easement as contemplated herein.

RELEASE AND AMENDMENT:

Upon Grantor's written request and construction of additional capacity drainage improvements, designed in accordance with City of Pflugerville Code of Ordinances and Engineering Design Manual requirements and approved by the City of Pflugerville, Grantee shall execute a termination or amendment to the Easement as necessary to accommodate the development of Grantor's adjacent property.

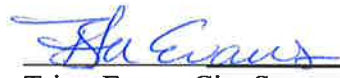
AGREED AND ACCEPTED:

GRANTEE:

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


By: 
Sereniah Breland, City Manager

ATTEST:


Trista Evans, City Secretary

THE STATE OF TEXAS §
 §
COUNTY OF Travis §

This instrument was acknowledged before me on December 13, 2021, by Sereniah Breland, City Manager of the City of Pflugerville, Texas, a Texas home-rule municipality, on behalf of said municipality.


Notary Public Signature

(seal)



EXHIBIT "A"

EASEMENT TRACT

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

TEMPORARY ACCESS EASEMENT AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

GRANT OF EASEMENT:

THE CITY OF PFLUGERVILLE, TEXAS, a home rule city located in Travis County, Texas (“Grantor”), for the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, does hereby grant, sell and convey unto **VERDOT AT PFLUGERVILLE EAST, LLC** and **KEDMA VENTURES, LLC** (collectively, “Grantee”), an easement and right-of-way (“Easement”) upon and across the parcels of real property of Grantor which are more particularly described on Exhibit “A”, attached hereto and incorporated herein by reference (collectively, “Easement Tract”).

TO HAVE AND TO HOLD the same to Grantee and its successors and assigns, together with the right and privilege at any and all times to enter the Easement Tract, or any part thereof, for the purpose of access to the adjacent property owned by Grantee under the terms of this Easement.

Grantor does hereby covenant and agree to **WARRANT AND FOREVER DEFEND** title to the Easement herein granted, unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, subject to the matters set forth herein.

CHARACTER OF EASEMENT:

The Easement is an easement in gross.

PURPOSE OF EASEMENT:

The Easement shall be used for construction access to the adjacent property owned by Grantee until such time as public roads are made available to access same.

DURATION OF EASEMENT:

The Easement shall be perpetual until released by Grantee as set forth herein. Grantor hereby binds Grantor and Grantor's heirs, legal representatives, successors and assigns, to warrant and forever defend the Easement unto Grantee, its successors and assigns, against any person whomsoever lawfully claiming or to claim the same or any part thereof.

EXCLUSIVENESS OF EASEMENT:

The Easement shall be non-exclusive.

SURFACE USE:

Grantor hereby retains, reserves, and shall continue to enjoy the use of the surface of the Easement Tract for any and all purposes which do not interfere with or prevent the use by Grantee of the Easement herein granted.

ENTIRE AGREEMENT:

This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representation or modification concerning this instrument shall be of no force and effect except for any subsequent modification in writing, signed by the party to be charged.

BINDING EFFECT:

This agreement shall bind and inure to the benefit of the respective parties hereto, their heirs, legal representatives, successors and assigns.

ASSIGNABILITY:

This Easement and the rights of Grantee hereunder may be assigned by Grantee so long as the assignee utilizes the Easement as contemplated herein.


RELEASE AND AMENDMENT:

Upon Grantor's written request following the completion of construction of Colorado Sand Drive between Copper Mine Drive and Lone Star Ranch Boulevard, Grantee shall execute a termination to the Easement.


In witness whereof, this instrument is executed this ___ day of _____, 2021.

GRANTOR:

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

By: 
Sereniah Breland, City Manager

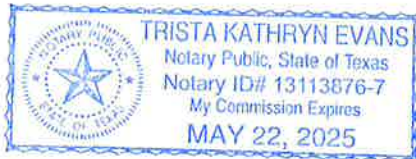
ATTEST:


Trista Evans, City Secretary

THE STATE OF TEXAS §
 §
COUNTY OF Travis §

This instrument was acknowledged before me on December 13, 2021, by Sereniah Breland, City Manager of the City of Pflugerville, Texas, a Texas home-rule municipality, on behalf of said municipality.

(seal)




Notary Public Signature

EXHIBIT "A"

EASEMENT TRACT

EXHIBIT E
ESCROW AGREEMENT

ESCROW AGREEMENT

THIS Escrow Agreement (this “**Agreement**”) made and entered into as of this ____ day of _____, 2021 by and among Verdot at Pflugerville East, LLC and Kedma Ventures, LLC (together, the “**Developer**”), City of Pflugerville, Texas (the “**City**”), and BOKF, N.A., as Escrow Agent, a national banking association organized and existing under the laws of the United States of America (the “**Escrow Agent**”).

RECITALS

A. The Developer and the City have entered into that certain Reimbursement Agreement with Developer for Construction of Public Improvements by and between the City of Pflugerville and Verdot at Pflugerville East, LLC and Kedma Ventures, LLC, on or about even date herewith (the “**Reimbursement Agreement**”). All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Reimbursement Agreement.

B. The Developer and the City desire that BOKF, N.A. act as Escrow Agent to hold Escrow Funds (defined below) in accordance with the terms of this Agreement.

AGREEMENT

NOW, THEREFORE, the Developer, the City, and Escrow Agent agree to the terms of this Agreement as follows:

1. Commencement of Duties. Simultaneously with the execution and delivery of this Agreement, the Developer shall transfer to the Escrow Agent the aggregate sum of FIVE HUNDRED THOUSAND Dollars (\$500,000.00) (the “**Escrowed Funds**”). Upon receipt of the Escrowed Funds and after the parties’ submission of all documentation required by the Escrow Agent to comply with the Bank Secrecy Act, the duties and obligations of each of the parties to this Agreement will commence.

2. Operation of the Escrow. With respect to any requested disbursement in the form of Exhibit A, the Developer and the City (i) certify they have reviewed any wire instructions set forth in such written disbursement direction to confirm such wire instructions are accurate, (ii) agree to indemnify and hold harmless the Escrow Agent from and against any and all claim, demand, loss, liability, or expense sustained, including but not limited to attorney fees, and expenses resulting directly or indirectly as a result of making the disbursement requested, and (iii) agree they will not seek recourse from the Escrow Agent as a result of losses incurred by it for making the disbursement in accordance with the disbursement direction.

3. Escrowed Funds/Disbursement of Escrowed Funds.

(a) Upon receipt of the Escrowed Funds, the Escrow Agent shall hold the Escrowed Funds in escrow pursuant to the terms of this Agreement. Until such time as the Escrowed Funds shall be distributed by the Escrow Agent as provided herein, unless the Escrow Agent is otherwise directed in writing in a joint written investment direction signed by the Developer and the City, the

Escrowed Funds shall be invested and reinvested by the Escrow Agent in in the _____ fund. The parties hereto acknowledge that the Escrow Agent does not have a duty nor will it undertake any duty to provide investment advice. In no case will the Escrow Agent assume any discretionary responsibility for investments

(b) The Escrow Agent shall be entitled to sell or redeem any such investment as necessary to make any distributions required under this Agreement and shall not be liable or responsible for any loss resulting from any such sale or redemption.

(c) Income, if any, resulting from the investment of the Escrowed Funds shall be retained by the Escrow Agent and shall be considered, for all purposes of this Agreement, to be part of the Escrowed Funds.

(d) Subject to the provisions of this Agreement, as the Project progresses, but in no event more than once per month, Escrow Agent shall release the City, or, if directed by the City to the Contractor, the costs for the completed portion of the Additional Public Improvements. All Escrowed Funds held pursuant hereto shall be disbursed by Escrow Agent to the City or its Contractor in response to "Draw Requests" (as hereinafter defined). In order to obtain a disbursement by Escrow Agent of the Escrowed Funds, the City shall present to the Developer and Escrow Agent a letter notifying Escrow Agent and Developer to whom the funds are to be paid (whether to City or Contractor), along with the information described below in this subsection (d) (the "Draw Request"). The Draw Requests shall include the following documents:

(i) A properly executed "Contractor's Affidavit and Waiver of Lien" in form reasonably acceptable to Developer and Escrow Agent (the "**Contractor's Affidavit**"), together with a sworn certificate executed by the respective contractor having performed the construction work for which disbursement is sought listing all persons or companies having furnished labor, materials or supplies in connection with the performance of such construction work. The Contractor's Affidavit shall be dated and effective as of a date that is on or after the date of the Contractor's invoice for payment for such construction work.

(ii) A properly executed contractor's "application for payment" from the respective contractor having performed the construction work for which disbursement is sought, for the amount requested as the draw, with all necessary supporting information, including, without limitation, paid invoices for materials or supplies, paid invoices for equipment rental and stating the percentage of completion;

(iii) An engineer's "Certification" of approval and percentage of work completed from the engineer who prepared the plans on which the work is based; and

(iv) Any other documentation that supports the amount requested in the Draw Request.

(e) With respect to each Draw Request, Escrow Agent shall verify that, as a condition to each disbursement to City hereunder, City has deducted from the applicable Draw Request a retainage equal to ten percent (10%) of the applicable cost of the Additional Public Improvements until thirty (30) days after final completion of the Additional Public Improvements, and in accordance with applicable Texas law.

(f) Upon receipt of the Draw Request, the Developer shall have ten (10) business days to review it for conformance with the requirements of the Reimbursement Agreement. Failure of the Developer to object to the Draw Request within said ten (10) business day period shall be deemed to be an acceptance of the Draw Request as submitted.

(g) If the Developer has not objected to any item included as part of the Draw Request within ten (10) business days after receiving same, Escrow Agent will prepare and release escrow checks to the City at the City's request or wire transfer amounts in the amount of such Draw Request within two (2) business days of the date on which a Draw Request is actually approved or is deemed approved.

(h) Within thirty (30) days after (i) all Draw Requests (including one designated by the City as the final Draw Request) have been paid in full by Escrow Agent to the City (or Contractor), and (ii) Escrow Agent has received a Certificate of Final Completion, Escrow Agent will disburse all remaining Escrowed Funds and all accrued interest to the City or Developer as provided in the Reimbursement Agreement.

4. Duties of the Escrow Agent. The Escrow Agent shall have no duties or responsibilities other than those expressly set forth in this Agreement, and no implied duties or obligations shall be read into this Agreement against the Escrow Agent. The Escrow Agent has no fiduciary or discretionary duties of any kind. The Escrow Agent is not a party to, or bound by, the Reimbursement Agreement or any other agreement among the other parties hereto, and the Escrow Agent's duties shall be determined solely by reference to this Agreement. The Escrow Agent shall have no duty to enforce any obligation of any person, other than as provided herein. The Escrow Agent shall be under no liability to anyone by reason of any failure on the part of any party hereto or any maker, endorser or other signatory of any document or any other person to perform such person's obligations under any such document.

5. Liability of the Escrow Agent; Indemnification. The Escrow Agent acts hereunder as a depository only. The Escrow Agent is not responsible or liable in any manner for the sufficiency, correctness, genuineness or validity of this Escrow Agreement or with respect to the form of execution of the same. The Escrow Agent shall not be liable for any action taken or omitted by it, or any action suffered by it to be taken or omitted, in good faith, and in the exercise of its own best judgment, and may rely conclusively and shall be protected in acting upon any order, notice, demand, certificate, opinion or advice of counsel (including counsel chosen by the Escrow Agent), statement, instrument, report or other paper or document (not only as to its due execution and the validity and effectiveness of its provisions, but also as to the truth and acceptability of any information therein contained) which is believed by the Escrow Agent to be genuine and to be signed or presented by the proper person(s). The Escrow Agent shall not be held liable for any error in judgment made in good faith by an officer or employee of the Escrow Agent unless it shall be proved that the Escrow Agent was grossly negligent in ascertaining the pertinent facts or acted intentionally in bad faith. The Escrow Agent shall not be bound by any notice of demand, or any waiver, modification, termination or rescission of this Agreement or any of the terms hereof, unless evidenced by a writing delivered to the Escrow Agent signed by the proper party or parties and, if the duties or rights of the Escrow Agent are affected, unless it shall give its prior written consent thereto. In no event shall the Escrow Agent be liable for incidental, indirect, special, consequential or punitive damages or penalties (including, but not limited to lost profits), even if the Escrow Agent has been advised of

the likelihood of such damages or penalty and regardless of the form of action. The Escrow Agent shall not be responsible for delays or failures in performance resulting from acts beyond its control, including without limitation acts of God, strikes, lockouts, riots, acts of war or terror, epidemics, governmental regulations, fire, communication line failures, computer viruses, power failures, earthquakes or other disasters. The Escrow Agent shall not be obligated to take any legal action or commence any proceeding in connection with the Escrowed Funds, any account in which Escrowed Funds are deposited, this Agreement or any other agreement, or to appear in, prosecute or defend any such legal action or proceeding.

The Escrow Agent may consult legal counsel in the event of any dispute or question as to the construction of any provisions hereof or its duties hereunder, and it shall incur no liability and shall be fully protected in acting in accordance with the opinion or instructions of such counsel.

The Escrow Agent shall not be responsible, may conclusively rely upon and shall be protected, indemnified and held harmless by Developer and City, acting jointly and severally, for the sufficiency or accuracy of the form of, or the execution, validity, value or genuineness of any document or property received, held or delivered by it hereunder, or of the signature or endorsement thereon, or for any description therein; nor shall the Escrow Agent be responsible or liable in any respect on account of the identity, authority or rights of the persons executing or delivering or purporting to execute or deliver any document, property or this Agreement.

In the event that the Escrow Agent shall become involved in any arbitration or litigation relating to the Escrowed Funds, the Escrow Agent is authorized to comply with any decision reached through such arbitration or litigation.

The Escrow Agent agrees to accept and act upon instructions or direction pursuant to the Escrow Agreement sent by unsecured email, facsimile transmission or other similar unsecured electronic methods, provided, however, that the instructions or directions shall be signed by a person or persons listed in Schedule I of this Escrow Agreement. The Escrow Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Escrow Agent's reliance upon and compliance with such instructions.

Developer and City, jointly and severally, hereby agree to indemnify the Escrow Agent and each director, officer, employee, attorney, agent and affiliate of the Escrow Agent for, and to hold it harmless against, any loss, liability, or expense incurred in connection herewith without gross negligence or willful misconduct on the part of the Escrow Agent, including without limitation legal or other fees arising out of or in connection with its entering into this Agreement and carrying out its duties hereunder, including without limitation the costs and expenses of defending itself against any claim of liability in the premises or any action for interpleader. The Escrow Agent shall be under no obligation to institute or defend any action, suit, or legal proceeding in connection herewith, unless first indemnified and held harmless to its satisfaction in accordance with the foregoing, except that the Escrow Agent shall not be indemnified against any loss, liability or expense arising out of its own gross negligence or willful misconduct as finally determined by a court of competent jurisdiction, subject to no further appeal. Such indemnity shall survive the termination or discharge of this Agreement or resignation of the Escrow Agent.

6. The Escrow Agent's Fee. Escrow Agent shall be entitled to fees and expenses for its regular services as Escrow Agent as set forth in Exhibit B. Additionally, Escrow Agent is entitled to

fees for extraordinary services and reimbursement of any out of pocket and extraordinary costs and expenses, including, but not limited to, attorneys' fees. Escrow Agent shall have a first lien upon all Escrowed Funds for the purposes of paying its fees and expenses. All of the Escrow Agent's compensation, costs and expenses shall be paid by Developer. Any fees and expenses shall be payable from and may be deducted by Escrow Agent from interest and/or principal of any monies held in Escrowed Funds by Escrow Agent.

7. Security Interests. No party to this Escrow Agreement shall grant a security interest in any monies or other property deposited with the Escrow Agent under this Escrow Agreement, or otherwise create a lien, encumbrance or other claim against such monies or borrow against the same.

8. Dispute. In the event of any disagreement between the undersigned or the person or persons named in the instructions contained in this Agreement, or any other person, resulting in adverse claims and demands being made in connection with or for any papers, money or property involved herein, or affected hereby, the Escrow Agent shall be entitled to refuse to comply with any demand or claim, as long as such disagreement shall continue, and in so refusing to make any delivery or other disposition of any money, papers or property involved or affected hereby, the Escrow Agent shall not be or become liable to the undersigned or to any person named in such instructions for its refusal to comply with such conflicting or adverse demands, and the Escrow Agent shall be entitled to refuse and refrain to act until: (a) The rights of the adverse claimants shall have been fully and finally adjudicated in a Court assuming and having jurisdiction of the parties and money, papers and property involved herein or affected hereby, or (b) All differences shall have been adjusted by agreement and the Escrow Agent shall have been notified thereof in writing, signed by all the interested parties.

9. Resignation of Escrow Agent. Escrow Agent may resign or be removed, at any time, for any reason, by written notice of its resignation or removal to the proper parties at their respective addresses as set forth herein, at least 30 days before the date specified for such resignation or removal to take effect; upon the effective date of such resignation or removal:

(a) All cash and other payments and all other property then held by the Escrow Agent hereunder shall be delivered by it to such successor Escrow Agent as may be designated in writing by the Developer and the City, whereupon the Escrow Agent's obligations hereunder shall cease and terminate;

(b) If no such successor Escrow Agent has been designated by such date, all obligations of the Escrow Agent hereunder shall, nevertheless, cease and terminate, and the Escrow Agent's sole responsibility thereafter shall be to keep all property then held by it and to deliver the same to a person designated in writing by the Developer and the City or in accordance with the directions of a final order or judgment of a court of competent jurisdiction.

(c) Further, if no such successor Escrow Agent has been designated by such date, the resigning or removed Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor agent. In such instance, the resigning or removed Escrow Agent may pay into court all monies and property deposited with Escrow Agent under this Agreement.

10. Notices. All notices, demands and requests required or permitted to be given under the provisions hereof must be in writing and shall be deemed to have been sufficiently given, upon

receipt, if (i) personally delivered, (ii) sent by telecopy and confirmed by phone or (iii) mailed by registered or certified mail, with return receipt requested, delivered as follows:

If to City: CITY OF PFLUGERVILLE
P O BOX 589
Pflugerville, TX 78691-0589
Attention: City Manager

With copy to: Denton Navarro Rocha Bernal & Zech, P.C.
2417 N. Main Avenue
San Antonio, TX 78212
Attention: Charles Zech

If to Developer: Kedma Ventures, LLC &
Verdot at Pflugerville East, LLC
21 Oak Ave.
Tenafly, NJ 07670
Attn: Yariv Bensira

With copy to: Slusher & Rosenblum, P.A.
444 W. Railroad Ave, Suite 470
West Palm Beach, FL 33414
Attention: Mahra Sarofsky

If to the Escrow Agent BOKF, N.A.
Attn. Corporate Trust
1401 McKinney St Suite 1000
Houston, TX 77010

11. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Texas without regard to the principles of conflicts of law.

12. Binding Effect; Benefit. This Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the parties hereto.

13. Modification. This Agreement may be amended, modified or terminated at any time by a writing executed by the Developer, the City and the Escrow Agent.

14. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law. The parties hereto agree that the transactions described herein may be conducted and related documents may be stored by electronic means.

15. Headings. The section headings contained in this Agreement are inserted for convenience only, and shall not affect in any way, the meaning or interpretation of this Agreement.

16. Severability. This Agreement constitutes the entire agreement among the parties and supersedes all prior and contemporaneous agreements and undertakings of the parties in connection herewith. No failure or delay of the Escrow Agent in exercising any right, power or remedy may be, or may be deemed to be, a waiver thereof; nor may any single or partial exercise of any right, power or remedy preclude any other or further exercise of any right, power or remedy. In the event that any one or more of the provisions contained in this Agreement, shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, then to the maximum extent permitted by law, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement.

17. Earnings Allocation; Tax Matters; Regulatory Compliance. The parties hereto agree that, for tax reporting purposes, all interest or other income, if any, attributable to the Escrowed Funds or any other amount held in escrow by the Escrow Agent pursuant to this Agreement shall be allocable to the Developer. The Developer and the City agrees to provide the Escrow Agent completed Forms W-9 (or Forms W-8, in the case of non-U.S. persons) and other forms and documents that the Escrow Agent may reasonably request (collectively, "**Tax Reporting Documentation**") at the time of execution of this Agreement. Additionally, the parties hereto agree that they will provide any information reasonably requested by the Escrow Agent to comply with the USA Patriot Act of 2001, as amended from time to time, and the Bank Secrecy Act of 1970, as amended from time to time (together the "**Acts**"), which information will be used to verify the identities of the parties to ensure compliance with the terms of such Acts. The parties hereto understand that if such Tax Reporting Documentation is not so certified to the Escrow Agent, the Escrow Agent may be required by the Internal Revenue Code, as it may be amended from time to time, to withhold a portion of any interest or other income earned on the investment of monies or other property held by the Escrow Agent pursuant to this Escrow Agreement.

[SIGNATURE PAGES FOLLOW]

DEVELOPER:

VERDOT AT PFLUGERVILLE EAST, LLC, a Texas limited liability company

BY: VERDOT PF, LLC, a Texas limited liability company, its Member

By: _____
Yariv Bensira, Manager

KEDMA VENTURES, LLC, a Texas limited liability company

BY: NEGBA PF, LLC, a Texas limited liability company, its Member

BY: NEGBA DEVELOPMENT, LLC, a Texas limited liability company, its Managing Member

By: _____
Yariv Bensira, Manager

CITY:

CITY OF PFLUGERVILLE, a Texas municipal corporation

By: 
Name: Sereniah Breland, City Manager

ESCROW AGENT:

BOKF, N.A., a national banking association

By: _____
Name: _____
Its: _____

EXHIBIT A
FORM OF JOINT WRITTEN INSTRUCTIONS

BOKF, N.A. as the Escrow Agent
Attn. Corporate Trust
1401 McKinney St, STE 1000
Houston, Texas 77010

RE: Escrow Agreement (this "Agreement") made and entered into as of this _____, 2021 by and among Verdot at Pflugerville East, LLC and Kedma Ventures, LLC (together, the "**Developer**"), City of Pflugerville, Texas (the "**City**"), and BOKF, N.A., as Escrow Agent, a national banking association organized and existing under the laws of the United States of America (the "**Escrow Agent**").

Pursuant to Section 3 of the above-referenced Escrow Agreement, the Developer and the City hereby instruct the Escrow Agent to disburse the amount of \$ (Insert Amount) from the Escrowed Amount to the City, as provided below:

(Insert Wire Instructions)

City of Pflugerville, Texas

By: _____
Name:
Title:
Date:

Kedma Ventures, LLC & Verdot at Pflugerville East, LLC

By: _____
Name:
Title:
Date:

EXHIBITB



ESCROW AGENT FEE SCHEDULE

Acceptance Fee:

No Charge

Annual Escrow Account Setup/Administration Fee:

\$1,500.00

For ordinary administrative services by Escrow Agent – includes daily routine account management; cash transaction processing (including wire and check processing); disbursement of funds in accordance with the agreement; and online access to trust account statements. This fee is payable in advance, with the first installment due at the time of Escrow Agreement funding/execution.

Fee is based on the following assumptions:

- **Number of Escrow Accounts to be established: One (1)**
- **Number of Deposits to Escrow Account: One (1)**
- **Number of Withdrawals from the Escrow Fund: TBD**

Charges for performing extraordinary or other services not contemplated at the time of the execution of the transaction or not specifically covered elsewhere in this schedule will be determined by appraisal in the amounts commensurate with the service provided.

Services not included in this Fee Schedule, but deemed necessary or desirable by you, may be subject to additional charges based on a mutually agreed upon fee schedule.

Our proposal is subject in all aspects to review and acceptance of the final financing documents which sets forth our duties and responsibilities.

**Schedule 1
BOKF, NA
Corporate Trust**

SECURITY SCHEDULE

**Telephone Number(s) for Call-Backs and
Person(s) Designated to Confirm Funds Transfer Instructions and
Execute Instructions, and Other Documents in Connection with this
Escrow Agreement**

If to the Developer:

	<u>Name</u>	<u>Telephone Number</u>	<u>Signature Identification</u>
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____

If to the City:

	<u>Name</u>	<u>Telephone Number</u>	<u>Signature Identification</u>
1.	_____	_____	<u>Severiah Ireland</u>
2.	_____	_____	_____
3.	_____	_____	_____

**FIRST AMENDMENT TO REIMBURSEMENT AGREEMENT WITH DEVELOPER
FOR CONSTRUCTION OF PUBLIC IMPROVEMENTS BY AND BETWEEN THE CITY
OF PFLUGERVILLE AND KEDMA VENTURES LLC**

THE STATE OF TEXAS §
 § KNOW ALL PERSONS BY THESE PRESENTS:
COUNTY OF TRAVIS §

This First Amendment to Reimbursement Agreement With Developer for Construction of Public Improvements by and between the City of Pflugerville and Kedma Ventures LLC (the "Amendment") is by and between the City of Pflugerville, a Texas municipal corporation (the "City"), and Kedma Ventures, LLC and Verdoot at Pflugerville East, LLC, owners and developers of certain hereinafter described property located within the City (collectively, the "Developer"), all collectively referred to as "Parties", and is effective upon the execution of this Agreement by the Developer and the City (the "Effective Date").

WHEREAS, on or about December 13, 2021, Developer and the City entered into that certain Reimbursement Agreement with Developer for Construction of Public Improvements by and between the City of Pflugerville and Kedma Ventures LLC (the "Agreement"); and

WHEREAS, all capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Agreement; and

WHEREAS, Developer has requested certain additional roadway, drainage, and sewer design changes to the Additional Public Improvements (the "Additional Scope"); and

WHEREAS, the Additional Scope shall result in additional Developer Participation Costs to be born by Developer; and

WHEREAS, Developer and the City wish to amend the Agreement to reflect the additional Developer Participation Costs attendant to the Additional Scope.

NOW THEREFORE, for and in consideration of the premises and mutual obligations, covenants, and benefits hereinafter set forth, the Parties agree as follows:

1. Article III, Sections 3.1 shall be amended to reflect that the Developer Participation Costs are estimated to increase in the amount of Forty-four Thousand Nine Hundred Five Dollars and no/100 (\$44, 905.00) for an estimated total of Nine Hundred Eighty-four Thousand, Three Hundred Fifty-nine Dollars and no/100 (\$984,359.00) in accordance with the Professional Services Supplemental Agreement #3 for Colorado Sand Dr attached hereto as Exhibit "F-1" and the Addendum to Attachment A Supplemental Agreement #3 Scope of Services attached hereto as Exhibit "F-2."

2. Except as expressly amended herein, the Agreement shall continue in full force and effect, in accordance with its terms, without any waiver, amendment or other modifications of any provision thereof. Developer and City hereby ratify and confirm their respective obligations under the Agreement as modified herein.

3. This Amendment may be executed in multiple counterparts, each of which shall be considered an original, but all of which constitute one instrument.

[Signatures and acknowledgments on the following pages]


Signature Page to
First Amendment to Reimbursement Agreement

This Amendment has been executed by the parties as of the dates of the Acknowledgments to be effective as of the Effective Date.

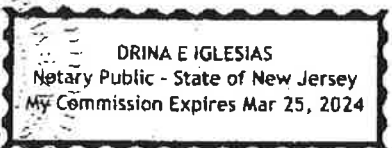
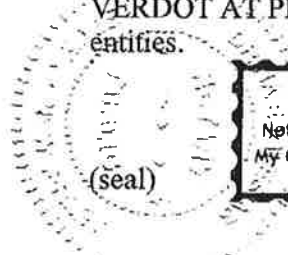
Developer:

VERDOT AT PFLUGERVILLE EAST, LLC, a Texas limited liability company

BY: VERDOT PF, LLC, a Texas limited liability company, its Member

By: 
Yariv Bensira, Manager
THE STATE OF New Jersey §
COUNTY OF Bergen §

This instrument was acknowledged before me on June 17, 2022 by Yariv Bensira, manager of VERDOT PF, LLC, a Texas limited liability company, Member of VERDOT AT PFLUGERVILLE EAST, LLC, a Texas limited liability company, on behalf of said entities.

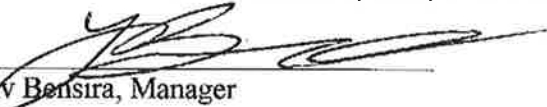



Notary Public Signature

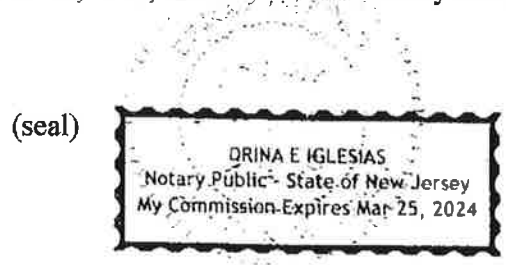
KEDMA VENTURES, LLC, a Texas limited liability company

BY: NEGBA PF, LLC, a Texas limited liability company, Its Member

BY: NEGBA DEVELOPMENT, LLC, a Texas limited liability company, its managing member

By: 
Yariv Bensira, Manager
THE STATE OF New Jersey §
COUNTY OF Bergen §

This instrument was acknowledged before me on June 17, 2022 by Yariv Bensira, manager of NEGBA DEVELOPMENT, LLC, a Texas limited liability company, Managing Member of NEGBA PF, LLC, a Texas limited liability company, member of KEDMA VENTURES, LLC, a Texas limited liability company, on behalf of said entities.




Notary Public Signature

Signature Page to
First Amendment to Reimbursement Agreement

This Amendment has been executed by the parties as of the dates of the Acknowledgments to be effective as of the Effective Date.


City:

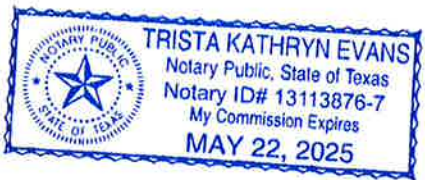
CITY OF PFLUGERVILLE,
a Texas municipal corporation

By: 
Name: Sereniah Breland, City Manager

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 21 day of July, 2027 by Sereniah Breland, City Manager of the City of Pflugerville, Texas, a Texas municipal corporation, on behalf of said City.
(SEAL)


Notary Public in and for
The State of Texas



My Commission Expires: May 22, 2025