

ECONOMIC DEVELOPMENT AGREEMENT
SPRINGBROOK APARTMENTS
PUBLIC WASTEWATER EXTENSION
CITY OF PFLUGERVILLE, TEXAS

THIS ECONOMIC DEVELOPMENT AGREEMENT (hereinafter referred to as “Agreement”) by and between the **CITY OF PFLUGERVILLE**, Texas, a Texas home rule municipal corporation (hereafter referred to as “City”) and **SPRINGBROOK APTSP1, LP**, a Texas limited liability company (hereinafter referred to as “Springbrook”) is entered into to be effective the 19TH day of FEBRUARY, 2014 (effective date).

Whereas, Springbrook is the owner and/or developer of approximately 16.624 acres of real property out of land situated in the John Can Winkle Survey No. 70, abstract No. 787, within the City of Pflugerville, Texas, and as more particularly described on **Exhibit “A”** hereto (hereinafter referred to as the “Property”); and

Whereas, in order to facilitate commercial and industrial development of land north of the Property, a public extension of wastewater infrastructure located to the west, across the Property, that crosses under New Meister Lane must be constructed and coordinated with the owner/developer, (hereinafter referred to as the “Project”); and

Whereas, the construction of the Project shall provide wastewater connectivity within the City and promote development, job growth and economic development; and

Whereas, the City has established policies to adopt reasonable measures, as are permitted by law, to attract and promote the development of new and expanded business enterprises within the City and thereby enhance the economic stability and growth of the City; and

Whereas, the City has determined that the construction of the Project will promote the economic development and will stimulate business and commercial activity in the City; and

Whereas, in order to accelerate the construction of the Project and further enhance the project to serve the needs of the public, the City has agreed to contribute funds as an economic development reimbursement grant to reimburse Springbrook for certain infrastructure construction costs needed to expand and stimulate business and commercial activity along New Meister Lane, which is currently zoned for light industrial use; and

Whereas, by entering into an agreement to grant reimbursement funds to cover the cost of only the City’s portion of constructed infrastructure, the city accrues a cost benefit by combining a public infrastructure project with a private construction project, thus minimizing costs for mobilization of city resources;

Whereas, under authority of Section 52-a of Article III of the Texas Constitution, the Texas Legislature enacted Chapter 380, Texas Local Government Code (Chapter 380), which provides

that the governing body of a municipality may establish and provide for the administration of one or more programs, including programs for making loans and grants of public money and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality; and

Whereas, the City has taken all necessary legal action to adopt this project as an economic development program in satisfaction of Chapter 380 and this Agreement is authorized pursuant to Section 380.001(a), Texas Local Government Code, as amended, and the Grant (as defined herein) granted to Springbrook in this Agreement complies in all aspects with Section 380.001(b), Texas Government Code, as amended; and

Whereas, Springbrook has agreed to satisfy and comply with certain terms and conditions in furtherance of completion of the Project in exchange for certain grant of funding by the City;

NOW THEREFORE, for and in consideration of the promises and the agreements set forth herein, and other good and valuable consideration, the sufficiency of which is agreed and acknowledged, the City and Springbrook hereby agree as follows:

**ARTICLE 1
AUTHORITY & BINDING REPRESENTATIONS**

1. The recitals, above, are incorporated by reference herein. City's execution of this Agreement is authorized by Chapter 380, Texas Local Government Code, and by the Resolution authorizing same and shall constitute a valid and binding obligation of City to pay certain costs associated with construction of the Project as provided by this Agreement. Springbrook's execution and performance of this Agreement constitutes a valid and binding obligation of Springbrook obligating to pay certain costs of construction associated with the Project as provided by this Agreement. City acknowledges that Springbrook is acting in reliance upon City's performance of its obligations under this Agreement in making its decision to commit substantial resources to the construction of the Project, and Springbrook acknowledges that the City is acting in reliance upon Springbrook's representations and their full and complete performance of their respective obligations under this Agreement in making its decision to commit substantial resources to construction of the Project.

**ARTICLE 2
THE PROJECT**

1. The Project is an extension of wastewater facilities west through the Property and across New Meister Lane as described in **Exhibit "B"** attached hereto.
2. Project costs include all costs to be incurred for sewer, erosion and sedimentation, and related improvements.
3. The Parties agree to perform the following obligations and roles associated with the implementation of this Agreement:

- a. Springbrook agrees:
 - i. To serve as the Project Manager of the Project.
 - ii. To submit a complete application to the City for the construction of the public improvements for the extension of wastewater facilities as shown on Exhibit "B" within 30 days of this Agreement and commence construction of the extension within 60 days after City approval of all plans and issuance of any required permits, subject to Force Majeure. Construction shall be complete within 150 days of commencing construction and subject to Force Majeure.
 - iii. Upon completion and acceptance by the City of Pflugerville, to dedicate this constructed public improvements to the City of Pflugerville.

- b. City of Pflugerville agrees;
 - i. To serve as Fiscal Agent to fund the project.
 - ii. In addition to the City's monetary contribution, the City shall waive all inspection and permitting fees associated with the Project.
 - iii. Upon City formal acceptance of the project and after a 2 year warrant bond expiration in accordance with the City of Pflugerville Unified Development Code Project Acceptance, the City will assume all responsibility for the Project and hold Springbrook harmless for said Project.

ARTICLE 3 ECONOMIC INCENTIVES

1. The City and Springbrook agree that this Agreement established a program for economic development as required by Chapter 380 of the Texas Local Government Code and that the Grant of funds by the City to reimburse Springbrook for costs of the Project will be paid in the form of an Economic Development Grant pursuant to Chapter 380.

2. The City agrees to contribute the projected Project costs to complete the Project as summarized below:
 - a. City of Pflugerville wastewater extension (Exhibit B)
 - i. City will fund \$147,387 for construction (provided estimate by Cunningham-Allen)
 - ii. City will fund \$17, 010.88 for design of wastewater extension (fee proposal provided by Cunningham-Allen)

Total Project Participation: \$164,397.88

3. The City's projected Grant amount represents the City's anticipated total cost toward the project. In any event, the City's Grant provided herein shall not exceed 110% of the City's projected Project costs (\$180,837.67). In the event that the actual construction

costs for the Project segment (**Exhibit B**) exceeds the total projected Project costs shown in paragraph 2, subpart a, Springbrook may seek additional grant funding. Springbrook shall not be obligated to provide any funding within the City funded portion of the project as illustrated on Exhibit B.

4. Upon completion of design of the Project in accordance with paragraph 2, subpart a, item ii., Springbrook will send the City an invoice and proof of payment for reimbursement of design engineer funds. The City will review the invoice and provide formal comments on the invoice OR process the invoice for payment within 30 days of receipt of the invoice.
5. Upon completion of construction of the Project (**Exhibit B**) in accordance with paragraph 2, subpart a, item i., Springbrook will send the City an invoice and proof of payment for reimbursement of construction funds. The City will review the invoice and provide formal comments on the invoice OR process the invoice for payment within 30 days of receipt of the invoice.

ARTICLE 4 TERM

1. In no event will the term of this Agreement exceed two (2) years.

ARTICLE 5 MISCELLANEOUS

1. Successor and Assigns. This Agreement shall be binding upon and inure to the benefit to the respective legal representatives, successors, assigns, heirs and devisees of the parties. No party may convey or assign its interest in this Agreement to any person or entity without consent of the other parties. All assignees will be subject to all of the obligations, covenants and conditions applicable to the assignor under this Agreement. Upon an assignment of a party's entire interest under this Agreement, the other parties shall recognize the assignee as the assignor's proper successor, the assignee shall have all of the assigned rights, benefits and obligations of assignor under and pursuant to this Agreement, and assignor shall be relieved of all of its obligations under this Agreement that relate to acts or omissions which occur or accrue following the effective date of such conveyance or assignment.
2. Severability. If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible, the remainder of this Agreement shall be given the intent manifested by the portion held invalid or inoperative. The failure by any party to enforce against any other party any term or provision of this Agreement shall be deemed not to be a waiver of such party's right to enforce against any other party the same or any other such term or provision. In the even any provisions of this Agreement are illegal, invalid

or unenforceable under present or future laws, then in that event, it is the intention to the parties that the remainder of this Agreement shall not be affected. It is also the intention of the parties to this Agreement that in lieu of each clause and provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement which is legal, valid or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

3. Governing Law. This Agreement shall be governed, construed, applied, and enforced in accordance with the laws of the State of Texas, and shall be performable with venue in Travis County, Texas.
4. Amendments. This Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought.
5. Time. Time is of the essence in the performance of this Agreement.
6. Attorney Fees. Should any party employ attorneys to enforce any of the provisions hereof, the party losing in any final judgment agrees to pay to the prevailing party all reasonable costs, charges and expenses, including reasonable attorneys' fees, expended or incurred in connection therewith.
7. Notices. All notices hereunder must be in writing and shall be deemed delivered on the day personally delivered or on the third day from the day sent by registered mail or certified mail, return receipt requested with the U.S. Postal Service, or on the day after the day sent by national overnight courier, to the parties at the following addresses, or at such other addresses as shall be specified by notice.

If to the City:

City of Pflugerville
Attention: City Manager
100 East Main Street
P.O. Box 589
Pflugerville, Texas 78691-0589

With Copy to:
City Attorney
P.O. Box 589
Pflugerville, Texas 78691-0589

If to Springbrook:

CESM Investments, LLC
Attn: Taylor Stone, Managing Partner
3419 Westminster, Suite 205
Dallas, Texas 75205

8. Construction. The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any

ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

9. Counterpart Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all such counterparts shall constitute one Agreement.
10. Representation and Warranties by Springbrook. If Springbrook is a limited partnership or limited liability company, Springbrook as the case may be, warrants, represents, covenants and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its formation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement, and the individual executing the Agreement on behalf of Springbrook, as the case may be, has been duly authorized to act for and bind Springbrook, as the case may be.
11. Payment of Debt or Delinquency to the State or Political Subdivision of the State. Pursuant to Chapter 38, City of Pflugerville Code of Ordinances, Springbrook as the case may be, agrees that any payments owing to City under the Agreement may be applied directly toward any debt or delinquency that Springbrook, as the case may be, owes City of Pflugerville, State of Texas or any political subdivision of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.
12. Texas Family Code Child Support Certification. Springbrook certifies that the limited partners or members are not delinquent in child support obligations and therefore is not ineligible to receive the award of or payments under this Agreement and acknowledges that the Agreement may be terminated if this certification is inaccurate and any such inaccuracy is not rectified within thirty (30) days of written notice specifying such inaccuracy.
13. Notice and Cure Periods. No party may terminate this Agreement unless (i) such party provides written notice by certified mail, return receipt requested (a "Notice") to each other party specifying a material default in the performance of a material covenant or obligations by one of the other parties (such party being referred to herein as or the "Defaulting Party") under this Agreement and (ii) such failure is not (a) excused by the occurrence of an event of Force Majeure or (b) cured by the Defaulting Party within (90) days after Notice thereof, or if such failure cannot be cured within such ninety (90) day period, the Defaulting Party has commenced remedial action to cure such failure (and continued to diligently and timely pursue the completion of such remedial action); provided, however, that (A) if such failure arises from a violation of law, then such default shall not give rise to the termination of this Agreement so long as the Defaulting Party acts in accordance with a plan of action to cure such default, which plan of action is approved by a governmental entity within one hundred and eighty (180) days after receipt by the Defaulting Party of such Notice; provided, however that the Defaulting Party shall endeavor to cause such plan to provide for cure of such default within one hundred and eighty (180) days; or (B) if such default arises from the violation of law resulting from a change in law, or a change in the interpretation or enforcement of law, by a governmental entity, then such default shall not give rise to the termination of this Agreement so long as the Defaulting Party acts in accordance with a commercially reasonable plan of action to

cure such default prepared by such Defaulting Party and delivered to the other parties hereto.

14. Force Majeure. Force Majeure means if the operations contemplated by this Agreement are prevented or interrupted by Act of God, weather, fire, war, strikes, delays in permitting of construction of improvements required by any applicable governmental authority, or any other cause whatsoever beyond the commercially reasonable control of the parties hereto, the affected obligations hereunder shall be suspended until the parties are able to perform such obligations in the matter envisioned herein.
15. Mutual Assistance. The City and Springbrook will each do all things reasonably necessary and appropriate to carry out the terms and provisions of this Agreement.
16. Exhibits. All exhibits to this Agreement are incorporated by reference for all purposes as if fully set forth herein.

**Springbrook AptsP1, LP
A Texas Limited Partnership**

By: CESM Springbrook Apts GP, LLC
A Texas Limited Liability Company
Its General Partner

By: Taylor Stone
Name: Taylor Stone
Title: President

Date: 2/19/2014

CITY OF PFLUGERVILLE, TEXAS

By: _____
Name: Brandon Wade
Title: City Manager

Date: _____

EXHIBIT A

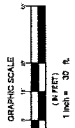
EXHIBIT A

Legal Description

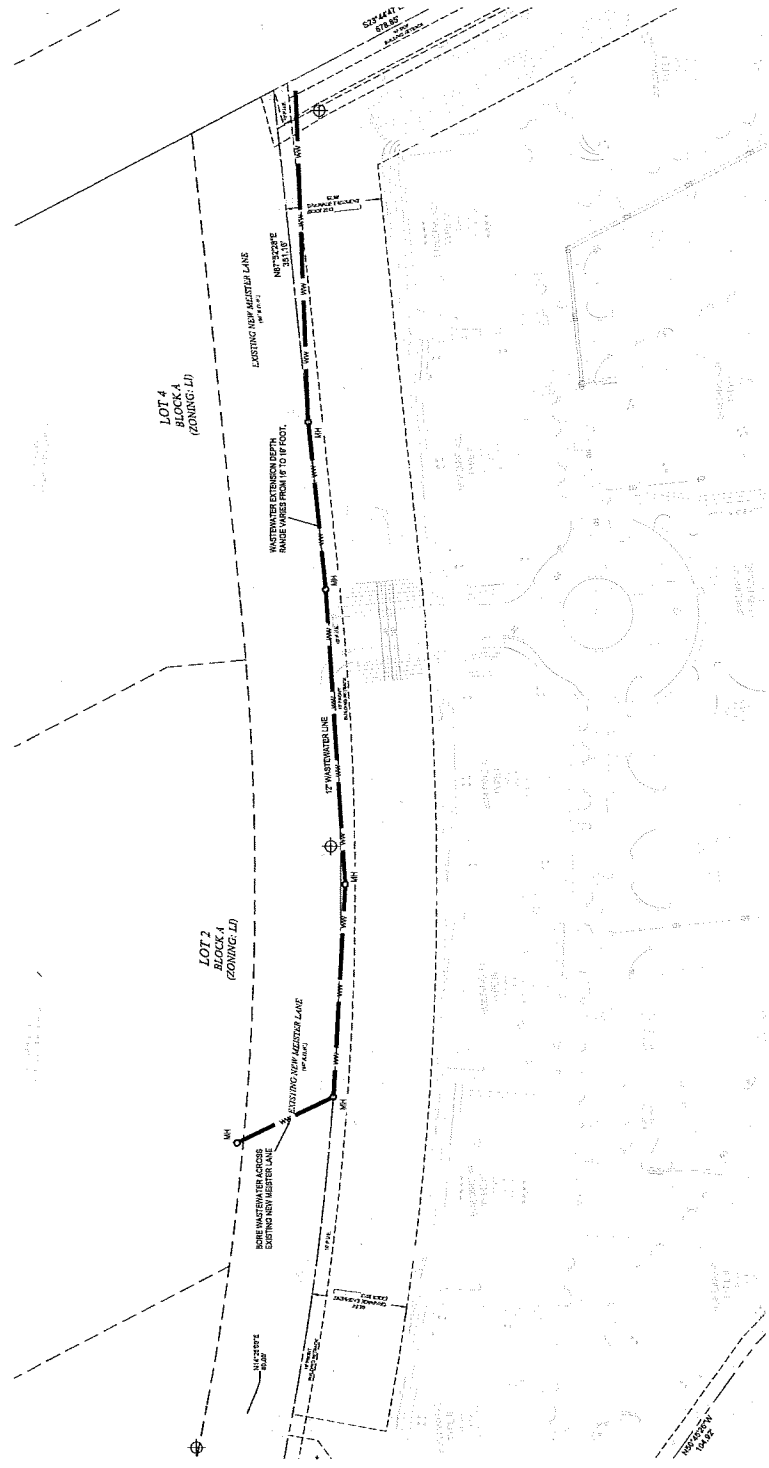
Lot 1, SPRINGBROOK APARTMENTS PHASE I, a subdivision in Travis County, Texas, according to the map or plat thereof recorded under Document No. 201300162, of the Official Public Records of Travis County, Texas.

EXHIBIT B

SPRINGBROOK APARTMENTS



LEGEND	
PROPERTY LINE	EXISTING UTILITY
EXISTING ELECTRICAL	FIRE HYDRANT
EXISTING OVERHEAD ELEC.	WATER VALVE
EXISTING CONDUIT	MANHOLE (60MM)
EXISTING TREE (TO REMAIN)	MANHOLE (150MM)
EXISTING TREE (REMOVAL)	WATER
EXISTING UTILITY	WASTEWATER
PROPOSED UTILITY	STONE DOWER
WATER VALVE	
MANHOLE (60MM)	
MANHOLE (150MM)	
WATER	
WASTEWATER	
STONE DOWER	



WASTEWATER EXTENSION EXHIBIT



Cummingham | Allen, Inc.
Engineers & Planners
10000 Springbrook Lane
Springbrook, AL 36082
www.cumminghamallen.com
TYPE REC NO. E-234
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7/16/2013



Cunningham | Allen

July 17, 2013

Mr. Dan Franz, P.E.
City of Pflugerville
201-B East Pecan St
Pflugerville, TX 78660

Engineer's Opinion of Probable Cost
Ref: Springbrook Apartments Phase 1 and Phase 2 Plat
Case#:
CAI #: 579,0101
Dear Mr. Franz,

In providing opinions of probable construction cost, it is understood that Cunningham Allen, Inc. has no control over the cost or availability of labor, equipment or materials, or over market conditions or the Contractor's method of pricing, and that Cunningham Allen, Inc. opinions of probable construction costs are made on the basis of Cunningham Allen, Inc. professional judgment and experience. Cunningham Allen, Inc. makes no warranty, express or implied, that the bids or the negotiated cost of the work will not vary from Cunningham Allen, Inc. opinion of probable construction cost. The line is assumed to be inside of the right-of-way per preliminary assignment and no disturbance of pavement and/or utility relocations have been taken in consideration.

UNIT PRICE BID SCHEDULE						
<u>Bid Item</u>	<u>Item Description</u>	<u>COP Specificati on Item</u>	<u>Estimated Quantity</u>	<u>Unit</u>	<u>Bid Unit Price</u>	<u>Bid Price</u>
WASTEWATER IMPROVEMENTS						
1	Standard Pre-cast Manhole w/Pre-cast Base, 4' Dia.	WW-04	5	EA	\$4,000.00	\$ 20,000.00
2	Extra Depth Manhole, 4' Dia.	-	50	VF	\$350.00	\$ 17,500.00
3	Pipe, 12" Dia. PVC SDR-26 Type (16'-19' deep), Including Excavation and Backfill	-	707	LF	\$90.00	\$ 63,630.00
4	20" WSP Casing Bored W/ 12" PVC Pipe	-	75	LF	\$520.00	\$ 39,000.00
5	Trench Excavation Safety Protective Systems (all depths)	-	707	LF	\$1.00	\$ 707.00
8	Construction Staking	-	1	LS	\$2,000.00	\$ 2,000.00
TOTAL WASTEWATER IMPROVEMENTS						\$ 142,837.00

Cunningham | Allen, Inc. • Engineers • Surveyors • Planners

3103 Bee Cave Road, Suite 202 • Austin, Texas 78746-5580 Tel: (512) 327-2946 • Fax: (512) 327-2973 • www.cunningham-allen.com

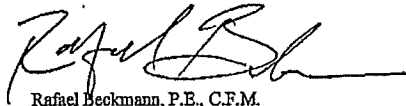
TBPE Firm Registration #: F-284

<u>Bid Item</u>	<u>Item Description</u>	<u>COP Specificati on Item</u>	<u>Estimated Quantity</u>	<u>Unit</u>	<u>Bid Unit Price</u>	<u>Bid Price</u>
EROSION CONTROLS						
1	Rock Berm	EC-03	50	LF	\$ 25.00	\$ 1,250.00
2	Silt Fence for Erosion Control	EC-02	900	LF	\$ 2.00	\$ 1,800.00
3	Non-Native Seeding for Erosion Control Method, Hydro Mulch		1,500	SY	\$ 1.00	\$ 1,500.00
TOTAL FOR EROSION CONTROLS					\$	4,550.00

Total Opinion of Probable Construction cost \$ 147,387.00

Sincerely,

Cunningham-Allen, Inc.



Rafael Beckmann, P.E., C.F.M.
 Project Engineer

