

CHAPTER 380
ECONOMIC DEVELOPMENT AGREEMENT

BETWEEN
THE CITY OF PFLUGERVILLE, TEXAS
AND
PFLUGERVILLE CROSSING LP

This Chapter 380 Economic Development Agreement (this "*Agreement*") is entered into between **The City of Pflugerville, Texas**, a home rule city (the "*City*"), and **Pflugerville Crossing LP**, a Texas limited partnership ("*Pflugerville Crossing*"). City and Pflugerville Crossing may be referred to jointly herein as "the Parties" and individually as a "Party."

RECITALS

WHEREAS, the City Council of the City of Pflugerville, Texas finds that the City has experienced extraordinary growth in population, residential, commercial, professional and industrial areas in the past decade, which places a strain on public infrastructure and public tax dollars to respond to the accelerated growth of the community; and,

WHEREAS, the City Council of the City of Pflugerville, Texas finds that the citizens of the city desire accelerated growth of public infrastructure by recently passing public bond measures obligating tax dollars to fund the improvement of the City's roads, parks and infrastructure; and,

WHEREAS, the City Council of the City of Pflugerville, Texas finds Pflugerville Crossing has offered to, within the next three years, fund, construct to City standards, and then subsequently dedicate to the City approximately \$84 Million dollars of necessary public infrastructure (the "*Project*") to support the general public and to support its total investment in terms of a retail, residential and office development (the "*Development*") on approximately 119.29 acres of land in the corporate limits of the City of Pflugerville, as more particularly described and/or depicted on the attached **Exhibit "A"** (the "*Property*"); and

WHEREAS, the City Council of the City of Pflugerville, Texas finds Pflugerville Crossing's offer to fund the necessary public infrastructure relieves the City from future public tax dollar obligations to fund various capital improvement projects within the City, which relieves the public tax dollar from having to be burdened with these future projects; and,

WHEREAS, the City Council of the City of Pflugerville, Texas finds the Project that Pflugerville Crossing has offered to construct will include the facilities necessary to support the city's ability to provide reuse water for non-potable uses, increasing the availability and capacity of potable water resources for the citizens of the City; and,

WHEREAS, the City Council of the City of Pflugerville, Texas finds the Project will increase property values, generate increased sales tax, ad valorem property tax and hotel occupancy tax revenues and provide for a new reuse water utility to better provide for the public health and welfare for the citizens of the City and the general public at large; and,

WHEREAS, the City Council of the City of Pflugerville, Texas finds that achieving the estimated real property value and sales tax estimates provided in the Project Sunshine Proforma, in the aggregate over the 30 year term, will result in a combined, cumulative increase in sales tax revenue, ad valorem property tax revenue and hotel occupancy tax revenue for all affected governmental entities including the City, the Pflugerville Community Development Corporation, the Travis County Emergency Services District #2, Pflugerville Independent School District, Travis County Central Health District, and the State of Texas resulting in an estimated combined total in the aggregate of \$2.279 billion in revenue as follows:

<u>Entity</u>	<u>30yr aggregate Tax Revenue Estimate</u> <u>(real property & sales tax combined as applicable)</u>
Pflugerville	\$ 344,398,616
PCDC	\$ 81,130,801
PISD	\$ 525,657,802
TCESD#2	\$ 114,650,019
TC Health Dist.	\$ 43,144,900
Travis Co.	\$ 155,751,724
State of Texas	\$ 1,014,135,008
TOTAL:	\$ 2,278,868,869

WHEREAS, the City Council of the City of Pflugerville, Texas finds Pflugerville Crossing's offer includes the reimbursement of the City's professional and administrative costs associated with the creation of this program and agreement, and the City's associated project management costs expended in the management of this project in the estimated amount of \$200,000; and,

WHEREAS, the City Council of the City of Pflugerville, Texas finds Pflugerville Crossing's request for an incentive in support of this project consists of an amount calculated to be equal to only a portion of the Ad Valorem property tax and a portion of the sales tax derived from the property they are investing approximately \$600 Million dollars to improve upon, for the benefit of the citizens and the community; and,

WHEREAS, the City Council of the City of Pflugerville, Texas finds the incentives granted herein do not exceed Pflugerville Crossing's actual projected cost of funding (including all related interest, issuance fees and costs) for the accelerated construction of approximately \$84 Million dollars of necessary public infrastructure to City standards, which will then be dedicated to the City; and,

WHEREAS, the City Council of the City of Pflugerville, Texas finds that entering into this Agreement and obtaining the public infrastructure relieves property owners within the City from any funding obligation for the immediate construction of approximately \$84 Million dollars of public infrastructure. The estimated cost of such infrastructure, if funded by the city with tax dollars would cost City taxpayers more than \$150,240,000, which would require an increase in the city's ad valorem tax rate of an estimated 15 cents per \$100 valuation today. Therefore, it is in the public's best interest that the City Council obligate only an amount equal to a portion of the actual tax dollars derived from this Project and the Property to support the Project as provided in this Agreement; and,

WHEREAS, the City Council of the City of Pflugerville, Texas finds that a Resolution of the City Council should be passed reciting these findings and authorizing the City to make certain economic development grants to Pflugerville Crossing in recognition of the positive economic benefits which will accrue to the City and to the citizens through Pflugerville Crossing's efforts on the Project as more particularly described and/or depicted on the attached **Exhibit "B"**; and,

WHEREAS, the City Council of the City of Pflugerville, Texas finds the City and Pflugerville Crossing wish to embark upon the Project, whereby Pflugerville Crossing will invest or cause to be invested an amount necessary to complete the Development as closely to the preliminary designs submitted to the City as possible the *Development*); and,

WHEREAS, the City Council of the City of Pflugerville, Texas finds the "West Zone" consists of an approximate 81.15 acre area and the "East Zone" consists of an approximate 38.14 acre area, both in the corporate limits of the City of Pflugerville as depicted in **Exhibit "A"**; and

WHEREAS the City Council of the City of Pflugerville, Texas finds that the development of the Project will promote new and existing businesses, contribute to tourism and to the economic development of the City by increasing Ad Valorem taxes, hotel occupancy taxes, sales taxes and fostering the generation of sales tax and employment; and

WHEREAS, the City Council of the City of Pflugerville, Texas finds that Pflugerville Crossing agrees to develop the Project in substantial accordance with the project schedule, terms and conditions as provided for in this agreement.

NOW, THEREFORE, in consideration of the mutual benefits described in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Pflugerville Crossing agree as follows:

1.
Authority

The City's execution of this Agreement and all incentives terms and conditions herein are authorized by Chapter 380, *Texas Local Government Code* and Article III, Section 52-a of the Texas Constitution, and constitutes a valid and binding obligation of the City subject to the condition precedent that Pflugerville Crossing commences the development of the Project, and continually operates under the terms and conditions of this Agreement as specified herein. Pflugerville Crossing's execution and performance of this Agreement constitutes a valid and binding obligation of Pflugerville Crossing, and any subsequently created special purpose entity, to develop and operate under the terms and conditions of this Agreement. The City and Pflugerville Crossing acknowledge that the Parties are acting in reliance upon each other's performance of its obligations under this Agreement in making its decision to commit substantial resources and money to the Project.

2.
Definitions

As used in this Agreement, the following words or phrases shall have the following meanings:

2.1 "Act of Default or Default" means failure of either party to timely or substantially comply with one or more requirements, obligations, duties, terms, conditions or warranties, as stated in this Agreement.

2.2 "Actual Project Sales Tax" means the One Cent Sales Tax Revenue collected by the City, during each year, from all applicable retail stores, restaurants, and other business, located within the Project.

2.3 "Ad Valorem Tax Revenues" means the amount of real and personal property ad valorem taxes collected by the City on the West Zone together with the amount of ad valorem taxes collected by the City on the East Zone that are not obligated to the TIRZ.

2.4 "Ad Valorem Tax Incentive" means an amount of money paid to Pflugerville Crossing as an incentive that is an amount equal to that portion of *Ad Valorem Tax Revenues* used to calculate the *Ad Valorem Tax Incentive* which is to be paid to Pflugerville Crossing in the form of a Chapter 380 Payment, as set forth in this Agreement.

2.5 "Chapter 380 Payment(s)" means the amount(s) to be paid by the City to the Pflugerville Crossing under this Agreement as set forth in this Agreement.

2.6 “City of Pflugerville or City” means the governing municipal corporation that is legally authorized to control the area that is within the city limits of the City of Pflugerville.

2.7 “Code” means the Pflugerville Code of Ordinances in effect on January 20, 2015 and as amended during the term of this Agreement.

2.8 “Designated Successors and Assigns” shall mean (i) any entity to which Pflugerville Crossing assigns (in writing) all or a portion of its rights and obligations contained in this Agreement pursuant to Section 14.2, (ii) any entity which is the successor by merger or otherwise to all or substantially all of Pflugerville Crossing’s assets and liabilities including, but not limited to, any merger or acquisition pursuant to any public offering or reorganization to obtain financing and/or growth capital; or (iii) any entity which may have acquired all of the outstanding stock or partnership interest of Pflugerville Crossing.

2.9 “Development” shall mean the construction of the commercial, retail and residential development that will comprise the “West Zone”/Sunshine Village and the “East Zone”/SunTech Office Park upon the substantial completion of the Project.

2.10 “Effective Date” means the date this Agreement has been signed by all Parties.

2.11 “Event of Bankruptcy or Insolvency” shall mean the dissolution or termination of a party’s existence as a going business, insolvency, appointment of receiver for any part of such party’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such party and such proceeding is not dismissed within ninety (90) days after the filing thereof.

2.12 “Force Majeure” means any event in which any Party shall be delayed, hindered in or prevented from the performance of any act required under this Agreement by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, unavailability of any utility service, restrictive governmental laws or regulations, riots, insurrections, the act, the failure to act, or default of another Party or a material worsening of current conditions caused by acts of terrorism or war (whether or not declared), or severe weather occurring after the execution of this Agreement, which materially impairs a Party’s ability to perform any act required under this Agreement.

2.13 “Gross Taxable Sales” as defined by the *Texas Tax Code* and being the amount of taxable sales during a fiscal year.

2.14 “Insolvent” means failure to timely pay debts in the ordinary course of business or cannot pay all debts when and as they become due, or is insolvent within the meaning of the federal bankruptcy law.

2.15 “One Cent Sales Tax Revenue” means the total annual amount of Actual Project Sales Tax revenues collected by the City resulting from the imposition of a one percent municipal sales tax, such as that presently in effect pursuant to Section 321.101(a) and Section 321.103, *Texas Tax Code*.

2.16 “Program” means the economic development program established by the City, as authorized by Chapter 380, *Texas Local Government Code*, to promote local economic development and stimulate business and commercial activity within the City.

2.17 “Project” means the construction of infrastructure, the ingress/egress reconfigurations and the interceptor on the Property which will support the Project

2.18 “Reimbursement Term – Sales Tax” means the incentive grant calculated as a percentage of the Actual Project Sales Tax generated by the Project and received by the City for a period of thirty (30) years as provided in Section 6.2.3.

2.19 “Reimbursement Term – Ad Valorem Tax” means the incentive grant calculated as a percentage of the City’s portion of the *Ad Valorem* taxes received by the City on the West Zone for a period of thirty (30) years as provided in Section 6.2.1.

2.20 “Sales Tax Incentive” means an amount of money paid to Pflugerville Crossing as an incentive that is an amount equal to that portion of Actual Project Sales Tax used to calculate the Sales Tax Incentive under this Agreement and which is to be paid to Pflugerville Crossing in the form of a Chapter 380 Payment, as set forth in this Agreement.

2.21 “Pflugerville Crossing” means Pflugerville Crossing LP, a limited partnership organized in the State of Texas.

3. Term

This Agreement will become enforceable upon the Effective Date and will expire the earlier of: 30 years after the first incentive payment, or at the time that neither Party has any further rights, duties or obligations under this Agreement (the “*Term*”) such as when the total amount of incentive payments equal the total amount of actual costs and all related financing and interest costs expended for the infrastructure dedicated herein, whichever occurs first. Notwithstanding any other term of the agreement, all entitlements and incentives will expire after 30 years of the first incentive payment. Even though Chapter 380 Payments are, calculated and paid after taxes have been levied by and paid to the City, the Term of this Agreement will not be extended beyond 30 years of the first incentive payment.

4. Development Standards

The Project shall be scheduled, designed and built in accordance with the plans, specifications and schedule as developed by Pflugerville Crossing and signed off by the City, acting through the City Manager; and the requirements of the Code and all other applicable law. Pflugerville Crossing commits to developing the Project and the Development using the standards developed Pflugerville Crossing commits to using the design firm of Ziegler Cooper to create a cohesive, high end development which will enhance the aesthetics and experience of a new Pflugerville Town Center. Pflugerville Crossing will include the City Manager in a minimum of three Project and Development Planning meetings: the preliminary concept planning meeting with the design firm; an interim meeting to discuss the first renderings of the Project and Development Plan; and a Final Project and Development Plan Meeting. The City sign off on the Project and Development Plan, is a condition precedent to receipt of City Incentives in this agreement. A "Material Change" is an important, significant or substantial change which, if implemented, would potentially adversely affect the overall design of the project which the city deems necessary to achieve. The parties shall establish the procedure for City sign off for any "material changes" in the Project and Development Plan. City sign off on material changes to the final Project and Development Plan are material requirements to this Agreement. Pflugerville Crossing will also work closely with the City in the platting, design and development of the final site plan.

5. City Incentives & Performance Criteria

5.1 The City is obligated to pay incentive grants to Pflugerville Crossing, for its use in accordance with this Agreement. Incentive grants are calculated as a portion of the city's actual revenue from the sources identified and described by this Agreement over a period of 30 years and is not to exceed the Reimbursement Term, subject to the conditions precedent that Pflugerville Crossing timely and fully complies with all applicable terms and conditions contained in this Agreement. Further, City's obligation to pay Pflugerville Crossing shall cease as provided in Section 3 of this agreement.

5.2 The City shall pay to Pflugerville Crossing, on February 15 of each year, the following economic development incentives:

5.2.1 *Ad Valorem* Tax Incentive. The Ad Valorem Tax Incentive will accrue from the Effective Date. Upon city acceptance of any phase of the infrastructure that requires dedication to the city upon its completion, as defined in the attached Exhibit C, and city acceptance of a bond for the off-site Ingress/egress and interceptor, the City shall begin payment to Pflugerville Crossing, the Ad Valorem Tax Incentive in accordance with this Agreement. The maximum Ad Valorem Tax Incentive shall be calculated in an

amount equal to 75% of the Ad Valorem Tax Revenues collected from the Project and the property. This amount shall be determined by using the numbers reported by the Travis Central Appraisal District. The percentage of the annual incentive will adjust to no more than 75% and reduce to no more than 50% in relation to the total amount of all incentives in the aggregate compared to the amount of the annual debt service for the infrastructure dedicated to the City, as follows:

0% - less than 125% of Debt Service =	75%
125% - less than 149% of Debt Service =	70%
150%- less than 174% of Debt Service =	65%
175%- less than 199% of Debt Service =	60%
200% or more of Debt Service =	50%

5.2.2 The East Zone of the development is subject to the Pflugerville Tax Increment Refinance Zone No. 1 ("TIRZ") and are excluded from any calculation for Ad Valorem Tax Incentive (real property only). Any incentive payments subsequently received through any agreement with the TIRZ, however, shall be credited as a payment under this Agreement, but shall be controlled by separate instrument, if any.

5.2.3 Sales Tax Incentive. The City agrees to provide a maximum annual incentive grant to Pflugerville Crossing in an amount equal to 75% of the City's 1% Sales Tax actually collected from sales that originate from the Project and the Development. This incentive grant shall be calculated each year by using the numbers reported by the Texas State Comptroller's Office. See **Exhibit D** The percentage of the Actual Project Sales Tax annual incentive will adjust to no more than 75% and reduce to no less than 50% as the amount of all incentives in the aggregate exceed the amount of annual debt service for the infrastructure dedicated to the City, as follows:

0% - less than 125% of Debt Service =	75%
125% - less than 149% of Debt Service =	70%
150%- less than 174% of Debt Service =	65%
175%- less than 199% of Debt Service =	60%
200% or more of Debt Service =	50%

5.2.4 The total amount to be paid to Pflugerville Crossing under the terms of this Agreement in the aggregate shall not exceed the project engineer's estimate for the construction of the infrastructure for this site, and all related financing and interest costs, which in any event shall not exceed \$303,535,804 for both the West and East Zones of the Project as further evidenced by the attached **Exhibit C**. The total amount of

\$303,535,804, shall include all incentive grants and any and all payments made by the TIRZ in relation to the Project.

5.2.5 The total amount to be paid to Pflugerville Crossing shall be reduced by amendment in the event refinancing of the initial private financing occurs providing for better terms, but shall not be increased, regardless of subsequent refinancing unless approved by the City Council.

5.2.6 Initial incentive grant payments due to Pflugerville Crossing under this agreement shall begin within 30 days after completion, dedication and acceptance of any phase of the Project. Interim payment amounts will be made and held in escrow until initial acceptance occurs. Upon acceptance of any phase of the Project, payments shall be paid annually on February 15 beginning on February 15 in the year following the Effective Date. All such payments shall initially be made into an escrow account held by Bank of New York as Trustee, to be established for the repayment of principal and interest on the private financing to be procured by Pflugerville Crossing. The City acknowledges the assignment by Pflugerville Crossing to its private lender (and any replacement lender) of both the Ad Valorem and Sales Tax Incentives to be paid pursuant to this Agreement. Pflugerville Crossing shall not be reimbursed for any expenses reimbursed by any agreement with the TIRZ.

6.

Pflugerville Crossing Performance Criteria, Obligations and Duties

6.1 Building the Project. Pflugerville Crossing will enter into a fully bonded (payment and performance) construction contract and anticipates commencement of construction on the Project within six (6) months after the execution of this Agreement. Pflugerville anticipates completion of the Project within three (3) years after construction begins, subject to Force Majeure and third party, governmental approvals and permits. Pflugerville Crossing agrees to construct water lines, sewer lines, roadways and other infrastructure as described on the attached Exhibits and plans/drawings. **See Exhibit C**

6.2 Corporate Entity. Pflugerville Crossing LP (“Pflugerville Crossing”) will purchase the Property for the purpose of developing the Project and the Development. This Agreement will inure to the benefit of Pflugerville Crossing.

6.3 Building the Development. Pflugerville Crossing plans to invest or cause to be invested, approximately \$600,000,000 to construct the Development as per the plan described in Section 4 of this Agreement. Such construction is anticipated to commence upon substantial completion of the Project and is expected to be completed by March 21, 2020, subject to force majeure and third party governmental approvals and permits. As a condition precedent to receipt of City incentives in this agreement, Pflugerville Crossing

agrees to initiate construction of the high density commercial buildings in Phase 1 in the West Zone prior to construction in the less dense phases. See **Exhibit B**

6.4 Administrative Advance. Prior to beginning construction, Pflugerville Crossing shall pay the City a one-time payment in the amount of \$200,000 as payment in advance of administrative expenses in connection with the City's legal, engineering and/or other professional expenses expended and to be expended to evaluate, negotiate and manage this Agreement, the Project and the Development.

6.5 Water Reuse. Pflugerville Crossing agrees to use water reuse systems if they are made reasonably accessible by the City.

6.6 Expenditures. Pflugerville Crossing agrees to use Pflugerville, and specifically the Property as its situs for Gross Taxable Sales in connection with all payments for permissible expenses relating to the Project and the Development. Further, all other agreements for improvement or construction activities that take place on the Property shall be required to provide for the situs of all payments for permissible expenses to likewise use the Property as the location for the collection and payment of construction related sales tax.

7.

Pflugerville Crossing's Covenants & Warranties

7.1 Pflugerville Crossing makes the following covenants and warranties to City, and agrees to timely and fully perform or cause to be performed, the following obligations and duties throughout the duration of the Project

7.1.1 Pflugerville Crossing is authorized to do business and are in good standing in the State of Texas and shall remain in good standing in the State of Texas during the Term of this Agreement.

7.1.2 The execution of this Agreement has been duly authorized by Pflugerville Crossing's board of directors, and the individual signing this Agreement is the managing director of the Pflugerville Crossing, empowered to execute such Agreement and bind the company, said authorization, signing and binding effect is not in contravention of any law, rule or regulation, or of the provisions of Pflugerville Crossing's company agreement, or of any agreement or instrument to which Pflugerville Crossing is a party or by which it may be bound, such authority to be evidenced by a company resolution provided to the City on or before the Effective Date.

7.1.3 No litigation or governmental proceeding is pending or, to the knowledge of Pflugerville Crossing or Pflugerville Crossing's officers, threatened against or affecting Pflugerville Crossing that may result in any material adverse change in Pflugerville Crossing's business, properties or operation. No consent, approval or authorization of or registration or declaration with any governmental authority is required

in connection with the execution of this Agreement or the transactions contemplated hereby.

7.1.4 There are no bankruptcy proceedings or other proceedings currently pending or contemplated, and Pflugerville Crossing has not been informed of any potential involuntary bankruptcy proceedings.

7.1.5 To its current, actual knowledge, Pflugerville Crossing has acquired and maintained all necessary rights, licenses, permits and authority to carry on its business in Pflugerville, Texas, and will continue to use its best efforts to maintain all necessary rights, licenses, permits and authority. Pflugerville Crossing will cause its general contractor to obtain all necessary permits and other governmental approvals required for the construction and operation of the Infrastructure Project.

7.1.6 Pflugerville Crossing shall timely and fully comply with all of the terms and conditions of this Agreement.

7.1.7 Throughout the term of this Agreement, Pflugerville Crossing shall, at its expense, maintain in full force and effect, insurance in the types and amounts required by the Code.

7.1.8 Employment of Undocumented Workers. During the term of this Agreement, Pflugerville Crossing agrees not to knowingly employ any undocumented workers. In accordance with Section 2264.052 of the Texas Government Code, if Pflugerville Crossing is finally convicted of a violation under 8 U.S.C. Section 1324a(f), Pflugerville Crossing shall repay the amount of the public subsidy incentives paid under this Agreement with interest.

7.1.9 Pflugerville Crossing shall comply with and conform to all local ordinances and shall maintain its eligibility to contract with the City, by certifying they do not have an existing delinquent financial liability, lien or judgment owed to the City, Travis County, Williamson County, the state of Texas or any other political subdivision of the state as provided by Chapter 38 of the City Ordinances.

7.1.10 Pflugerville Crossing shall carry, or cause the general construction Contractor to carry, the following insurance coverage throughout the duration of the Infrastructure Project:

Type of Insurance	Amount of Insurance	Provisions
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Commercial General (Public) Liability to include coverage for: Premises/Operations Products/ Completed Operations Independent Contractors Personal Injury Contractual Liability	1,000,000 per occurrence, 2,000,000 general aggregate Or 2,000,000 combined single coverage limit	City to be listed as additional insured and provide 30 days notice of cancellation or material change in coverage City to be provided a waiver of subrogation City prefers that insurer be rated B+V1 or higher by A.M. Best or A or higher by Standard & Poors
Business Auto Liability	1,000,000 combined single limit	City to be provided a waiver of subrogation
Workers' Compensation & Employers Liability	Statutory Limits 1,000,000 each accident	City to be provided a waiver of subrogation

8. Suspension of Payments

8.1 The City obligations under this Agreement, under the following circumstances, will be suspend or end and all future payment obligations shall automatically cease unless the City ratifies the obligations in this Agreement:

8.1.1 In the Event of Bankruptcy or Insolvency on the part of Pflugerville Crossing; or

8.1.2 Any Act of Default if not cured as provided for in Section 11.1.

9. Reporting and Monitoring

9.1 Pflugerville Crossing agrees to the following reporting and monitoring provisions:

9.1.1 Until the dedication to and acceptance by the City of the Project infrastructure, the City shall, at City's sole expense upon forty-five (45) days' prior written notice to Pflugerville Crossing and during normal business hours, but in any event not more than two (2) times per calendar year, have the right to audit and inspect Pflugerville Crossing records and books and all other relevant records related to each of the economic development considerations and incentives and performance requirements, as stated in this Agreement, but the confidentiality of such records and information shall be maintained by City unless disclosure of such records and information shall be required by a court order. This provision shall remain in effect so long as Pflugerville Crossing or its designated Successors and Assigns asserts it is entitled to any payment from City under this Agreement.

10.
Pflugerville Crossing's Liability

10.1 Until the dedication to and acceptance by the City of the Project infrastructure, should Pflugerville Crossing fail to timely or substantially comply with any one or more of the material requirements, obligations, duties, terms, conditions or warranties of this Agreement, such failure shall be an Act of Default by Pflugerville Crossing and, if not cured and corrected within ninety (90) days after written notice from the City to do so, the City as its sole and exclusive remedies, may cease making any further economic payments pursuant to this Agreement until such Act of Default is cured and if such Act of Default is not subsequently cured within ninety (90) days after the initial ninety (90) day period, the City may terminate this Agreement upon written notice to Pflugerville Crossing and Pflugerville Crossing shall be deemed to have forfeited all rights, obligations, costs, and currently owed or future rebates and any other currently owed or future benefits or incentives associated with this Agreement. Pflugerville Crossing shall not be liable to City for any alleged consequential damages. Notwithstanding the above, if such Act of Default is such a matter that cannot be cured by reasonably diligent efforts within ninety (90) days, then such occurrence shall not be an Act of Default so long as Pflugerville Crossing promptly initiates and diligently and continuously attempts to cure the same, even if the same is not cured within said ninety (90) day period.

10.2 In the event of unforeseeable third party delays or Force Majeure and upon a reasonable showing by Pflugerville Crossing that it has immediately and in good faith commenced and is diligently and continuously pursuing the correction, removal or abatement of such delays by using its diligent, good faith efforts, City may consent to and excuse any such delays, which consent and excuse shall not be unreasonably withheld.

10.3 Any delay for any amount of time by City in providing notice of Default to Pflugerville Crossing shall in no event be deemed or constitute a waiver of such Default by City of any of its rights and remedies available in law or in equity.

10.4 Any waiver granted by City to Pflugerville Crossing of an Act of Default shall not be deemed or constitute a waiver of any other existing or future Act of Default by Pflugerville Crossing or of a subsequent Act of Default of the same act or event by Pflugerville Crossing.

10.5 After any Event of Default and the continuance thereof after notice and the expiration of the cure period specified in Section 11.1, the City may, at its option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due and owing to the City from Pflugerville Crossing, regardless of whether the amount due arises pursuant to the terms of this Agreement or otherwise, and regardless of whether or not the debt has been reduced to judgment by a court.

10.6 Upon notice that the Infrastructure Project is no longer operational as provided for in this Agreement, except for temporary closures due to casualty, repairs, renovations or expansion, all incentives provided for in this agreement shall terminate upon written notice to Pflugerville Crossing and Pflugerville Crossing shall be deemed to have forfeited all rights, obligations, costs, and future rebates and any other future benefits or incentives associated with this Agreement.

**11.
City's Liability Limitations**

Should the City fail to timely or substantially comply with any one or more of the requirements, obligations, duties, terms, conditions or warranties of this Agreement, such failures shall be an Act of Default by City and City shall have ninety (90) days to cure and remove the Default upon receipt of written notice to do so from Pflugerville Crossing. Pflugerville Crossing specifically agrees that City shall only be liable to Pflugerville Crossing for the amount of the money grants it is required to convey to Pflugerville Crossing, attorney fees and costs of court and shall not be liable to Pflugerville Crossing for any alleged or actual consequential damages. It is further specifically agreed that City shall only be required to pay the amounts solely out of its portion of the Actual Project Sales Tax and the *Ad Valorem* Tax Revenues on the Property and this Project.

**12.
Responsibility Assignment**

If, during the term of the Infrastructure Project, Pflugerville Crossing sells all or substantially all of the Property to a Designated Successor or Assign, such Designated Successor or Assign shall assume all of the rights and obligations of Pflugerville Crossing under this Agreement. Upon such assignment by Pflugerville Crossing, Pflugerville Crossing shall no longer be liable for the assigned rights and obligations and the City shall look solely to the Designated Successor or Assign for performance.

**13.
Miscellaneous Provisions**

13.1 Changes in Law. If, during the Term of this Agreement, State law applicable to municipal sales taxes or *Ad Valorem* taxes changes and, as a result, the Chapter 380 Payments differ from the amount which would have been paid to Pflugerville Crossing under the laws in effect as of the Effective Date, then the City, in its sole discretion, may adjust the Chapter 380 Payments utilizing whatever discretionary taxes and revenues are legally available to the City to be allocated to the Chapter 380 Payments. The foregoing does not require the City to use funds from other sources and/or sources that are not within the City's discretion to allocate to the Project in order to achieve the same economic benefits to both Parties, which would have resulted if the law had not changed.

13.2 Complete Agreement/Amendment. This Agreement represents a complete agreement of the parties and supersedes all prior written and oral matters related to this Agreement. This Agreement may be canceled, changed, modified or amended, in whole or in part, only by the written and recorded agreement by the City and Pflugerville Crossing or a Designated Successor or Assign.

13.3 Mutual Assistance/Good Faith. The City and Pflugerville Crossing each agree to act in good faith and to do all things reasonably necessary or appropriate to expeditiously carry out the terms and provisions of this Agreement, and to aid and assist the other in carrying out such terms and provisions in order to put the other in the same condition contemplated by this Agreement, regardless of any changes in public policy, the law or taxes or assessments attributable to the Property.

13.4 Representations and Warranties. The Parties represent and warrant to one another that the Program and this Agreement are within their authority, and that they are duly authorized and empowered to enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction.

13.5 Release and Indemnification. THE CITY SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE ACTS OR OMISSIONS OF PFLUGERVILLE CROSSING PURSUANT TO THIS AGREEMENT. PFLUGERVILLE CROSSING HEREBY WAIVES ALL CLAIMS AGAINST CITY, ITS OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO IN THIS SECTION AS "CITY") FOR DAMAGE TO ANY PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON ARISING AT ANY TIME AND FROM ANY CAUSE OTHER THAN THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY. PFLUGERVILLE CROSSING DOES HEREBY INDEMNIFY AND SAVE HARMLESS THE CITY FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, ATTORNEY'S FEES AND COSTS OF INVESTIGATION) AND ACTIONS OF ANY KIND BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY ARISING FROM PFLUGERVILLE CROSSING'S BREACH OF ANY OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, OR BY REASON OF ANY ACT OR OMISSION ON THE PART OF PFLUGERVILLE CROSSING, ITS OFFICERS, DIRECTORS, SERVANTS, AGENTS, EMPLOYEES, REPRESENTATIVES, SUBCONTRACTORS, LICENSEES, SUCCESSORS OR PERMITTED ASSIGNS IN THE PERFORMANCE OF THIS AGREEMENT (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY). IN THE EVENT OF JOINT OR CONCURRENT NEGLIGENCE OF BOTH THE CITY AND PFLUGERVILLE CROSSING, THE RESPONSIBILITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY AND WITHOUT

WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. IF ANY ACTION OR PROCEEDING SHALL BE BROUGHT BY OR AGAINST CITY IN CONNECTION WITH ANY SUCH LIABILITY OR CLAIM, PFLUGERVILLE CROSSING SHALL BE REQUIRED, ON NOTICE FROM CITY, TO DEFEND SUCH ACTION OR PROCEEDINGS AT PFLUGERVILLE CROSSING EXPENSE, BY OR THROUGH ATTORNEYS REASONABLY SATISFACTORY TO THE CITY. THE PROVISIONS OF THIS SECTION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

13.6 Force Majeure. All obligations of Pflugerville Crossing and City shall be subject to events of "Force Majeure" as defined in Section 2.12.

13.7 Binding Effect. This Agreement will be binding on and inure to the benefit of the Parties and their respective successors and assigns.

13.8 Termination. If Pflugerville Crossing elects not to proceed with the development of the Infrastructure Project as contemplated by this Agreement, Pflugerville Crossing will notify the City in writing, and this Agreement and the obligations of all Parties will be deemed terminated and of no further force or effect as of the date of such notice, except those that expressly survive the termination hereof, if any.

13.9 Notice. Any notice or other communication ("*Notice*") given under this Agreement must be in writing, and may be given: (i) by depositing the Notice in the United States Mail, postage paid, certified, and addressed to the Party to be notified with return receipt requested; (ii) by personal delivery of the Notice to the Party, or an agent of the Party; (iii) overnight delivery service providing proof of receipt; or (iv) by confirmed facsimile, provided that a copy of the Notice is also given in one of the manners specified in (i), (ii) or (iii). Notice deposited in the mail in the manner specified will be effective two (2) business days after deposit. Notice given in any other manner will be effective only if and when received by the Party to be notified. For the purposes of Notice, the addresses of the Parties will, until changed as provided below, be as follows:

Owner: Pflugerville Crossing LP
Attn: Managing Director
700 Louisiana, Suite 3950
Houston TX 77002

With a copy to:

Gray Reed & McGraw, P.C.
1300 Post Oak Blvd.,
Suite 2000
Houston, Texas 77056

City: City of Pflugerville

Attn: City Manager
100 East Main St., Ste. 300
P.O. Box 589
Pflugerville, TX 78691
Phone: 512-990-6101
Fax: 512-990-4364

With a copy to:

City Attorney
100 East Main St., Ste. 300
P.O. Box 589
Pflugerville, TX 78691

All Parties may designate a different address at any time by giving Notice to the other Parties.

13.10 Interpretation. Each of the Parties have been represented by counsel of their choosing in the negotiation and preparation of this Agreement. In the event of any dispute regarding the interpretation of this Agreement, this Agreement will be interpreted fairly and reasonably and neither more strongly for or against any Party based on draftsmanship.

13.11 Relationship of the Parties. This Agreement will not be construed as establishing a partnership or joint venture, joint enterprise, express or implied agency, or employer-employee relationship between the parties.

13.12 Applicable Law. This Agreement is made, and will be construed and interpreted, under the laws of the State of Texas and venue will lie in Travis County, Texas. No Party to this Agreement waives or relinquishes any immunity or defense on behalf of itself, its officers, employees, agents or representatives as a result of the approval or execution of this Agreement.

13.13 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, it is the intention of the Parties that the remainder of this Agreement not be affected and it is also the intention of the Parties that, in lieu of each 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.

13.14 Paragraph Headings. The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the paragraphs.

13.15 No Third Party Beneficiaries. This Agreement is not intended to nor shall it be interpreted to confer any rights, privileges or causes of action upon any third party.

13.16 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument. A facsimile or electronic signature will be deemed to be an original signature for all purposes.

EXECUTED to be effective as of the 28th day of January 2015.

OWNER:

PFLUGERVILLE CROSSING LP
A Texas limited partnership

By: Pflugerville Crossing GP LLP
Its general partner

By: Scott Mann, President
Scott Mann, President

Date: 1/28/15

CITY:

**THE CITY OF PFLUGERVILLE,
TEXAS,**
a Home-Rule Municipal Corporation

By: Brandon Wade
Name: Brandon Wade
Title: City Manager

Date: 1-28-2015

Exhibit D
AGREEMENT FOR DISCLOSURE OF CONFIDENTIAL
TAX INFORMATION

This agreement is entered into between the City of Pflugerville, Texas (hereafter the "City") and (business name) (hereinafter the "Taxpayer") for the purposes indicated herein.

I, _____, _____ (title), and the duly authorized agent of (business name), a vendor doing business at Name and Address of Facility do hereby stipulate and agree as follows:

I hereby authorize the Texas Comptroller's Office to release and disclose any and all Sales and Use tax information relating to the operation of the above referenced taxpayer's business location to the City. I understand and agree that this release will be made by the Comptroller's Office to the City on an ongoing monthly basis beginning on the date this Agreement is executed. This Agreement waives any and all rights with respect to the parties regarding the confidentiality of tax information under Sections 111.006, 151.027, Tax Code, or other state law.

The City agrees that it will use the tax information disclosed by the Comptroller pursuant to this Agreement solely and exclusively for the purposes of calculating payments to be made pursuant to a Ch. 380 Economic Development Agreement between the City and Pflugerville Crossing LP dated effective _____ 2015.

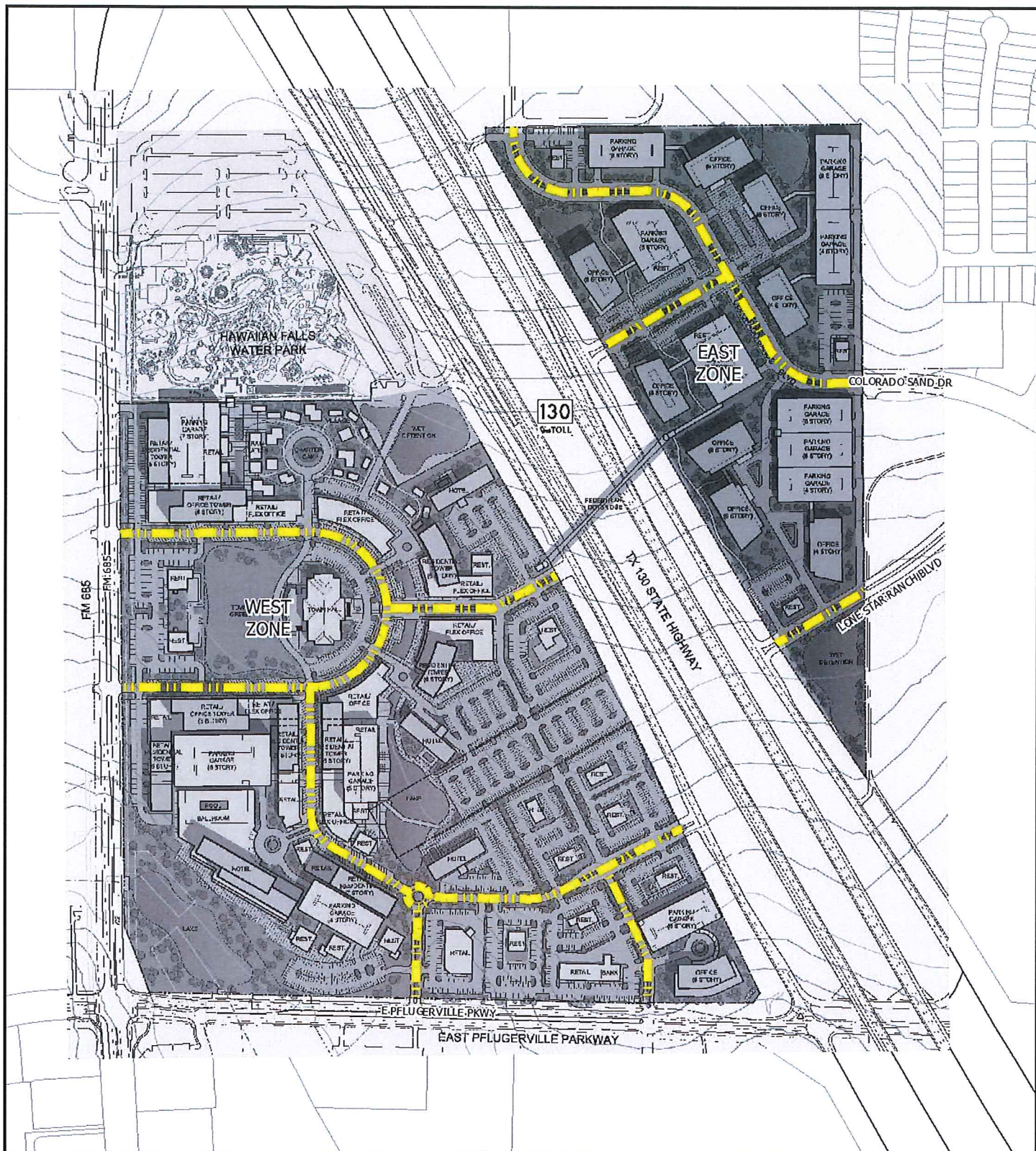
This Agreement is entered into in or with regard to property located in Pflugerville, Travis County, Texas and Texas law will apply to its interpretation and enforcement.

SIGNED AND AGREED TO on this _____ day of _____ 2015.

Name
Title
On Behalf of the City

Name
Title
On behalf of the Taxpayer

Texas Taxpayer Identification No.



**Overall Phasing:
Public Roads**

Legend

- Public_Roads
- West Zone
- East Zone

0 375 750 Feet



When required the City of Pflugerville complies with Texas Local Government Code for public notifications. All notification addresses are derived from tax rate information that is certified annually.

where quality meets life
PFLUGERVILLE
TEXAS

Locator Map

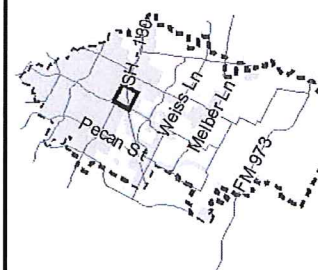


Exhibit A

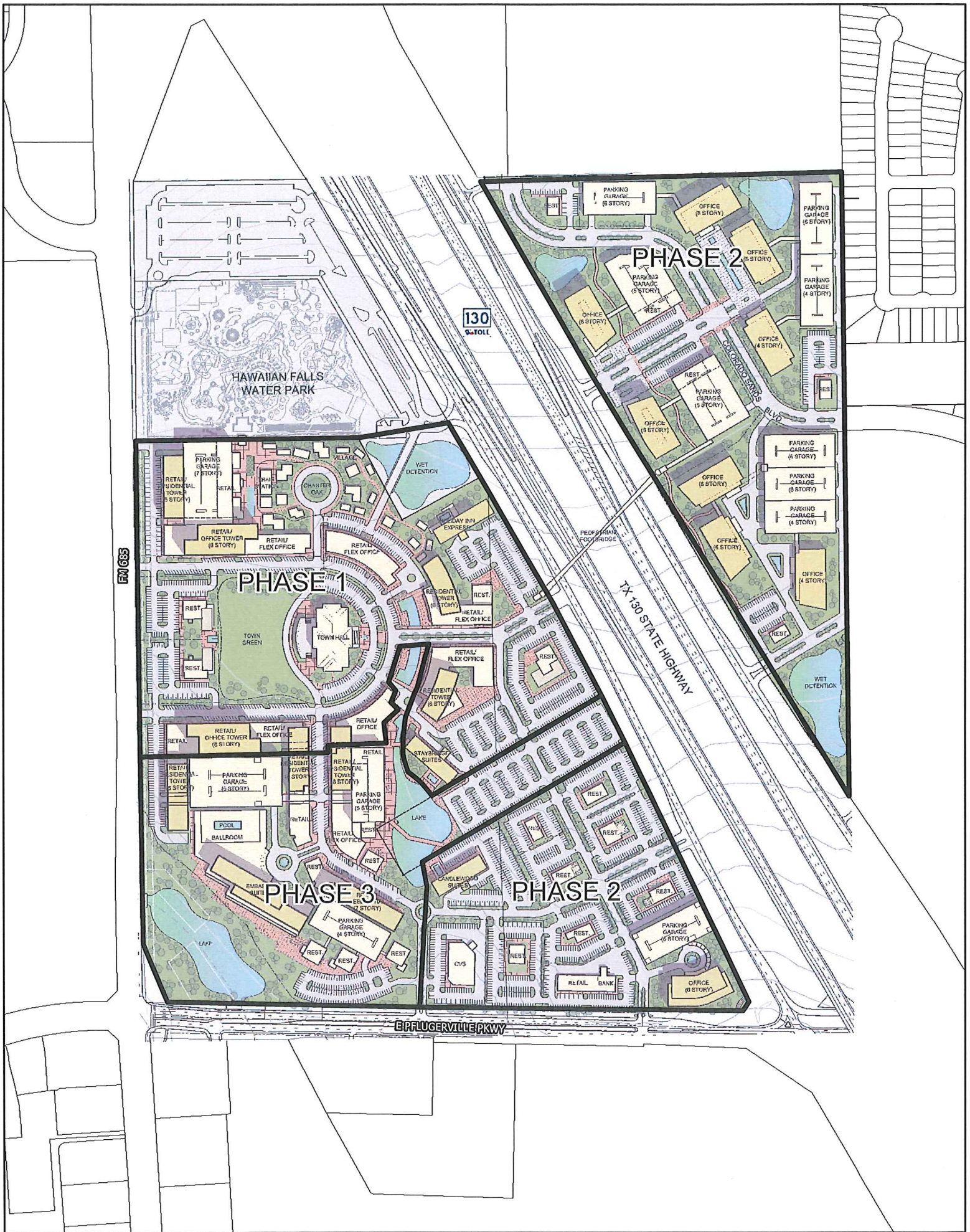


EXHIBIT B

Exhibit C
Project Descriptions
And
Engineer's Opinion of Construction Cost

Project 1. West Campus On-site Improvements. \$32,045,000

Design and Construction of all streets west of State Highway 130 to be dedicated to the City as shown on Exhibit A, including all water, wastewater, reuse water, drainage, and other appropriate supporting public infrastructure projects.

Project 2. East Campus On-site Improvements, Including External Connecting Infrastructure. \$13,395,000

Design and Construction of all streets east of State Highway 130 to be dedicated to the City as shown on Exhibit A, including all water, wastewater, reuse water, drainage, and other supporting public infrastructure projects, including Colorado Sand Drive north of the Development to its current southern terminus, and including Colorado Sand Drive south of the Development to its current northern terminus, and including necessary water, wastewater, reuse water, drainage, and other supporting public infrastructure projects.

Project 3. Texas Department of Transportation Roadway Improvements, and Pflugerville Parkway Roadway Improvements. \$8,169,000

Design and Construction of all roadway traffic mitigation improvements, including traffic signals, turn lanes, and appropriate utility adjustments, to existing Texas Department of Transportation facilities on FM 685 (from Pflugerville Parkway to SH 130), and SH 130 Frontage Roads (both north and southbound between FM 685 and Pflugerville Parkway). Design and Construction of a new SH 130 Southbound Frontage Road entrance ramp reversal to exit ramp (including all necessary toll improvements). Construction of a new northbound SH 130 Frontage Road Turn Around Bridge to southbound SH 130 Frontage Road. Design and Construction of all roadway traffic mitigation improvements, including traffic signals, turn lanes, and appropriate utility adjustments on Pflugerville Parkway (from FM 685 to SH 130).

Project 4. Wilbarger Wastewater System Improvements. \$12,129,000

Design and Construction of the West SH 130 Interceptor, Phase 1 and Phase 2 Projects and of a new Central Wastewater Treatment Plant Lift Station to provide wastewater improvements to the Development as illustrated on Exhibit 5.2 of the City of Pflugerville Wastewater Master Plan and Capital Improvement Plan.

Project 5. Reclaimed Water Infrastructure. \$4,770,000

Design and Construction of the reclaimed water pumping and treatment facilities at the wastewater treatment plant to provide a system of up to 0.750 mgd of reclaimed water as illustrated on Figure 8.4 of the Draft Reclaimed Water Master Plan for the City of Pflugerville. And, Design and Construction of the reclaimed water mains necessary to provide reclaimed water service to Service Area 1, Service Area 3, and a portion of Service Area 4 as illustrated on Figure 8.2 of the Draft Reclaimed Water Master Plan for the City of Pflugerville to provide reclaimed water service to the Development (both west of SH 130 and east of SH 130) and including utility extension and adjustments necessary to extend the system westward from the Development along Pflugerville Parkway to Pfluger Farm Lane and to the area of the Highland Park Wastewater Lift Station.

Project 6. Environmental Mitigation Bank for Corps Permitted Stream. \$600,000

Mitigation funding to be provided to a fund as directed by the US Army Corps of Engineers to provide mitigation for stream wetlands within the Development.

Project 7. Water and Wastewater Impact Fees, and Other Public Facility Improvements \$12,450,000

Funds to be paid to the City of Pflugerville associated with Water and Wastewater Developmental Impact Fees, and other Public Facility Improvements as mutually agreed by the parties.

Project Total Estimated Cost: \$83,558,000 (minimum)

Notes:

1. The above costs may increase or decrease depending upon regulatory agency review and approval comments including but not limited to the City of Pflugerville, TxDOT, TCEQ, Texas Historic Commission, and the US Army Corps of Engineers.
2. The above costs are meant to be the engineer's opinion of most probable construction cost as prepared on August 28, 2014. These figures are estimates, and funds may be moved between Projects listed above with the advance approval of the Pflugerville City Manager.