



November 13, 2019

James Kerby
Kerby Ventures, LLC

RE: Professional Expense Reimbursement Agreement ("Reimbursement Agreement") for
Lakeside Meadows Development

Dear Mr. Kerby,

This letter is to memorialize an agreement between the City of Pflugerville, Texas ("City"), a municipal corporation, and Kerby Ventures, LLC, a limited liability company (collectively the "Parties"). This Reimbursement Agreement is made in connection with joint effort of the Parties to encourage economic development within the City through the development of a multi-phase vertical and horizontal mixed-use development district located on Pflugerville Parkway, south to Pecan Street, generally centered between SH130 and Weiss Lane in Pflugerville Texas consisting of approximately 420 acres.

Kerby Ventures, LLC intends to request economic incentives (the "Economic Incentives") from the City, the Pflugerville Economic Development Corporation, and/or other existing and to be formed instrumentalities of the City (the "City Affiliates") in support of and in connection with the development of the Project. The Project is anticipated to increase employment, job opportunity, ad valorem real property values and associated tax revenue, retail sales and associates sales tax revenue. The City anticipates incurring professional and consultant expenses in connection with negotiating definitive documents in connection with the Economic Incentives (the "Economic Incentive Agreements") and taking such steps as may be necessary and appropriate in connection with the effectuation of the Economic Incentive Agreements.

To reimburse the City in connection with all actual third-party professional, engineering, land planning, financial, and legal consultants and other expenses incurred by the City or a City Affiliate in connection with (i) review of plans, programs, land use design, infrastructure development and any fiscal or funding analysis or methods for the Project, and (ii) the negotiation and effectuation of the terms and conditions of the Economic Incentive Agreements ("Reimbursable Costs"), Kerby Ventures, LLC hereby agrees to reimburse the City for all Reimbursable Costs in an amount up to [\$150,000] (the "Reimbursement Cap"). Concurrently with the execution of this Reimbursement Agreement, Kerby Ventures, LLC shall deposit with the City an amount equal to \$25,000, such amount which shall be kept in an account controlled by the City but such sums which shall not be commingled with any other funds of the City (the "Reimbursement Account"). The City, acting by and through the City Finance Department, shall independently account for the funds held in the Reimbursement Account, such funds which shall only be utilized for Reimbursable Costs or for costs and expenses otherwise approved by Kerby Ventures, LLC. The City shall pay invoices within 10 days of receipt of the same and upon payment, simultaneously reimburse itself for the costs from sums held in the Reimbursement Account. All invoices for services provided in support of the Project and proof of payment for the prior month and a statement of account balance for the Reimbursement Account will be provided to Kerby Ventures, LLC on or before the 5th day of each month. At any time that the Reimbursement Account balance reduces below \$10,000, Kerby



Ventures, LLC shall deposit sufficient funds to return the balance of the account to \$25,000 or to an amount agreed to by the City and Kerby Ventures, within 10 business days of written demand therefor.

The Parties acknowledge and agree that the execution of this Reimbursement Agreement and the performance required by this Reimbursement Agreement by any party or legal counsel does not establish an attorney-client relationship between legal counsel representing City and any City Affiliate and Kerby Ventures or any representative thereof. The attorneys of Denton, Navarro, Rocha Bernal, & Zech, P.C. serve as City Attorney. The firm does not represent any other parties in this transaction. Kerby Ventures acknowledges that it has its own legal counsel and that the Parties shall ultimately rely on their own legal counsel's advice in connection with any and all matters in connection with this project.

The Parties further agree that any legal invoices (such as those from the City's out-sourced City-Attorney's Office) will have redactions, as necessary and determined by the City Attorney's Office, to preserve the attorney-client communication and attorney work product privileges. All time spent on this project by the City Attorney's Office shall be incurred as follows: Name Partners of the Firm shall be charged at the rate of \$325 per hour. All other Partner and Senior Associates shall be charged at \$265 per hour. Associates shall be charged at \$215 per hour and all paralegal time spent on the project shall be billed at the rate of \$125 per hour. All expenses are charged at actual cost. To the extent City Attorney anticipates incurring travel costs in connection with its representation of the City and City Affiliates with respect to this Project, the City Attorney shall receive prior written approval from Kerby Ventures, LLC prior to incurring such costs and expenses. This Reimbursement Agreement excludes any other fees or expenses incurred by the City for any other legal work for the City. This Reimbursement Agreement only applies to the work performed in connection with the Project.

This Reimbursement Agreement may be terminated by either Party at any time for convenience with prior written notice; provided, however, that all costs incurred prior to termination shall be reimbursed by Kerby Ventures, LLC to City. Any funds remaining in the Reimbursement Account after the Project is determined complete or this Reimbursement Agreement is terminated shall be refunded to Kerby Ventures, LLC, without cost, within 30 days of demand (provided that in the event of a termination by Kerby Ventures, LLC, the notice of termination shall also serve as such written demand). In such an event, the City shall make a demand for final invoices from all third-parties and shall pay all invoices for services up to the date of termination or completion and shall refund any remaining balance in the Reimbursement Account to Kerby Ventures, LLC. Kerby Ventures, LLC shall remain obligated to fund the Reimbursement Account to reimburse city for all costs incurred prior to completion or termination, regardless of cause for termination or balance of the account at the time of termination. The ability to enforce the full and complete reimbursement of all professional costs paid by the city from Kerby Ventures, LLC shall survive any termination of this Reimbursement Agreement.

The Parties agree that the intent of this Reimbursement Agreement is to minimize tax dollars expended in support of a private developer's project, properly placing the risk of loss in the project development on the developer; while at the same time, agreeing that best efforts will be expended by the Parties to incorporate such investment into calculations for incentives in order to form the development itself, including in the form of incentives used to accelerate and promote the Project.



This Reimbursement Agreement shall be effective upon execution by the Parties and the transfer of funds by Kerby Ventures, LLC to City as contemplated herein. This Reimbursement Agreement may be executed in one or more counterparts, the combination of which shall constitute a single Reimbursement Agreement. The Parties may execute this Reimbursement Agreement via electronic signature delivered by email, and a copy of this Reimbursement Agreement shall be enforceable as if it is an original.

If the foregoing terms are acceptable, please execute this letter in the space provided below and please return this letter with payment of the initial deposit amount to the attention of the City Manager.

Sincerely,
City of Pflugerville, Texas

Sereniah Breland
City Manager

ACKNOWLEDGED AND AGREED:

James Kerby
Kerby Ventures, LLC