

Development Agreement

Center Stage, Off-site Sewer Improvements

The State of Texas

County of Tarrant

WHEREAS, **GS-PG Keller Center Stage Owner, LLC**, a Delaware limited liability company, hereinafter called "Developer", is the owner of the following described property and desires to make certain improvements to Center Stage, a proposed addition to the City of Keller, Texas

WHEREAS, the said Developer has requested the City of Keller, a municipal corporation of Tarrant County, Texas, hereinafter called "City", to provide approvals and cooperative arrangements in connection with said improvements:

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That said Developer, **GS-PG Keller Center Stage Owner, LLC**, and JR Thulin, its duly authorized officer, and the City, acting herein by and through Mark Hafner, its City Manager, for and in consideration of the covenants and agreements herein performed and to be performed, do hereby covenant and agree as follows regarding assurance of construction of sewer facilities, summary of infrastructure (development) amounts, assurance payments to the City, payment of impact fees, and miscellaneous provisions relating to the acceptable completion of said construction according to the plans for Elan Keller Offsite Sanitary Sewer Improvements, approved by the City in November 2021.

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1.00 Assurance of Infrastructure Construction

1.10 Employment of Contractors

In accordance with this agreement, the Developer agrees to employ a general contractor or contractors in accordance with the conditions set forth in Section 4.00 for work for which the Developer is providing as stated herein and indicated in the Summary of Infrastructure (Development) Assurance Amounts, Section 2.20 on page 4 of this agreement.

1.11 Payment of Developer Infrastructure Assurance Fees

Payment of all Developer Assurance Fees shall be provided prior to construction release for the Elan Keller Offsite Sanitary Sewer Improvements.

1.12 Payment of Miscellaneous Construction Costs

It is further agreed and understood that additional costs may be required of the Developer to cover such additional work, materials and/or other costs as may be made necessary by conditions encountered during construction and within the scope of this project.

1.13 Compliance with Tree Preservation Ordinance

The Developer is responsible to fully comply with the City's Tree Preservation Ordinance during all phases of construction. The developer shall submit a tree protection plan showing the measures of tree protection to be employed during construction prior to any site work on the project.

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2.00 Infrastructure (Development) Improvement Costs

The following improvement costs have been developed using the Developer's approved construction plans and recommendations by the City in accordance with the construction guidelines set forth by the City:

2.10 Sanitary Sewer Improvements

The distribution of costs between the City and the Developer for all sanitary sewer improvements are as follows:

During construction, the City of Keller Public Works Department will reimburse the City's proportionate share of project costs to the Developer via a monthly draw. Developer will submit evidence of project costs to the City for review and payment within 30 days of City's receipt of the draw request. The City will hold a 10% retainage on all draw requests until project completion. Within 30 days of final completion and acceptance of the project by the City of Keller Public Works Department, the City shall reimburse the Developer the sum of the retained funds. The project cost sharing ratio is based on the Development's expected sanitary sewer flow contributions and the expected flow contributions from future and current development in offsite areas will be served by the new sewer to alleviate capacity deficits in the existing sewer system. The Center Stage development is expected to contribute 27% of the flow and is responsible for 27% of the cost. The remaining 73% of the flow is expected to be from existing and future offsite development served by the new sewer. The City is responsible for the remaining 73% of the cost. The total project cost is \$2,597,044.00. Based on the percentages and cost for the construction of the sewer, the Development is responsible for \$701,201.88 and the City is responsible for \$1,895,842.12 of the project costs.

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2.20 Sanitary Sewer Improvements Cost Summary

The distribution of costs between the City and the Developer for all water and sanitary sewer improvements are as follows:

OFFSITE IMPROVEMENTS:

	Full Project Cost	Developer's Participation	City Participation
Sanitary Sewer Facilities	\$2,597,044.00	\$701,201.88	\$1,895,842.12
Total Construction Cost	\$2,597,044.00	\$701,201.88	\$1,895,842.12

FEEES TO BE PAID PRIOR TO PRE-CONSTRUCTION MEETING:

	Percentage of Construction Cost	Construction Cost	Final Fee Amount
Sanitary Sewer Inspection Fee*	4%	\$ 701,201.88	\$ 28,048.08

*Sewer Inspection Fee assessed on the Development's portion of the project cost.

RECOMMENDED:

Chad Bartee, P. E.
City Engineer

Date

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4.00 Miscellaneous Provisions

4.10 Bonds

The Developer agrees to require the contractor(s) to furnish the City with a two (2) year maintenance bond in the name of the City, subject to City approval, for one hundred percent (100%) of the contract price of the sanitary sewer improvements. The maintenance bond(s) shall be submitted and approved prior to acceptance of the improvements.

4.20 Public Liability

The Developer shall further require the contractor(s) to secure Public Liability Insurance. The amount of Insurance required shall include Public Liability, Bodily Injury and Property Damage of not less than \$100,000 one person, \$300,000 one accident and \$100,000 property damage. The minimum requirements for automobile and truck public liability, bodily injury and property damage shall also include not less than \$100,000 one person, \$300,000 one accident, and \$100,000 property damage.

The Contractor shall provide Worker's Compensation Insurance in accordance with the most recent Texas Workers' Compensation Commission's rules.

4.30 General Indemnity Provisions

The Developer shall waive all claims, fully release, indemnify, defend and hold harmless the City and all of its officials, officers, agents, consultants, employees and invitees in both their public and private capacities, from any and all liability, claims, suits, demands or causes of action, including all expenses of litigation and/or settlement which may arise by injury to property or person occasioned by

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error, omission, intentional or negligent act of Developer, its officers, agents, consultants, employees, invitees, or other person, arising out of or in connection with the Agreement, or on or about the property, and Developer will, at its own cost and expense, defend and protect the City and all of its officials, officers, agents, consultants, employees and invitees in both their public and private capacities, from any and all such claims and demands. Also, Developer agrees to and shall indemnify, defend and hold harmless the City and all of its officials, officers, agents, consultants, employees and invitees in both their public and private capacities, from and against any and all claims, losses, damages, causes of action, suit and liability of every kind, including all expenses of litigation, court costs and attorney fees for injury to or death of any person or for any damage to any property arising out of or in connection with this Agreement or any and all activity or use pursuant to the Agreement, or on or about the property. This indemnity shall apply whether the claims, suits, losses, damages, causes of action or liability arise in whole or in part from the intentional acts or negligence of developer or any of its officers, officials, agents, consultants, employees or invitees, whether said negligence is contractual, comparative negligence, concurrent negligence, gross negligence or any other form of negligence. The City shall be responsible only for the City's sole negligence. Provided, however, that nothing contained in this Agreement shall waive the City's defenses or immunities under Section 101.001 et seq. of the Texas Civil Practice and Remedies Code or other applicable statutory or common law.

4.31 Indemnity Against Design Defects

Approval of the City Engineer or other City employee, official, consultant, employee, or officer of any plans, designs or specifications submitted by the Developer under this Agreement shall not constitute or be deemed to be a

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release of the responsibility and liability of the Developer, its engineer, contractors, employees, officers, or agents for the accuracy and competency of their design and specifications. Such approval shall not be deemed to be an assumption of such responsibility or liability by the City for any defect in the design and specifications prepared by the consulting engineer, his officers, agents, servants, or employees, it being the intent of the parties that approval by the City Engineer or other City employee, official, consultant, or officer signifies the City's approval of only the general design concept of the improvements to be constructed. In this connection, the Developer shall indemnify and hold harmless the City, its officials, officers, agents, servants and employees, from any loss, damage, liability or expense on account of damage to property and injuries, including death, to any and all persons which may arise out of any defect, deficiency or negligence of the engineer's designs and specifications incorporated into any improvements constructed in accordance therewith, and the Developer shall defend at his own expense any suits or other proceedings brought against the City, its officials, officers, agents, servants or employees, or any of them, on account thereof, to pay all expenses and satisfy all judgments which may be incurred by or rendered against them, collectively or individually, personally or in their official capacity, in connection herewith.

4.32 Approval of Plans

The Developer and City agree that the approval of plans and specifications by the City shall not be construed as representing or implying that improvements built in accordance therewith shall be free of defects. Any such approvals shall in no event be construed as representing or guaranteeing that any improvement built in accordance therewith will be designed or built in a good and workmanlike manner. Neither the City nor its elected officials, officers, employees, contractors

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and/or agents shall be responsible or liable in damages or otherwise to anyone submitting plans and specifications for approval by the City for any defects in any plans or specifications submitted, revised, or approved, in the loss or damages to any person arising out of approval or disapproval or failure to approve or disapprove any plans or specifications, for any loss or damage arising from the non-compliance of such plans or specifications with any governmental ordinance or regulation, nor any defects in construction undertaken pursuant to such plans and specifications.

4.33 Venue

Venue of any action brought hereunder shall be in Fort Worth, Tarrant County, Texas.

4.40 Dedication of Infrastructure Improvements

Upon final acceptance of Elan Keller Offsite Sanitary Sewer Improvements the public sanitary sewer facilities shall become the property of the City.

4.50 Assignment

This contract, any part hereof, or any interest herein shall not be assigned by the Developer without written consent of the City Manager, said consent shall not be unreasonably withheld, and it is further agreed that such written consent will not be granted for the assignment, transfer, pledge and/or conveyance of any refunds due or to be come due to the Developer except that such assignment, transfer, pledge and/or conveyance shall be for the full amount of the total of all such refunds due or to become due hereunder nor shall assignment release assignor or assignee from any and all Development assurances and responsibilities set forth herein.

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IN TESTIMONY WHEREOF, the City of Keller has caused this instrument to be executed in duplicate in its name and on its behalf by its City Manager, attested by its City Secretary, with the corporate seal of the City affixed, and said Developer has executed this instrument in duplicate, at Keller, Texas this the _____ day of _____, 2022.

GS-PG Keller Center Stage Owner, LLC,
a Delaware limited liability company

City of Keller, Texas

JR Thulin
Vice President
600 E. Las Colinas Blvd.
Suite 2100
Irving, TX 75039

Mark Hafner
City Manager

ATTEST:

Kelly Ballard
City Secretary

Date

APPROVED AS TO FORM AND LEGALITY:

L. Stanton Lowry
City Attorney

Date

Distribution of Originals: Developer
City Secretary

Distribution of Copies: Finance Department
Public Works Department
Community Development Department
Parks and Recreation Department
Development Services Division