

THE STATE OF TEXAS §
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COUNTY OF FORT BEND §

DEVELOPMENT AGREEMENT
FALCON LANDING BLVD– NORTHERN LANES
(MOBILITY BOND PROJECT NO. 703-E)

THIS DEVELOPMENT AGREEMENT (the “Agreement”) is entered into by and between Fort Bend County, Texas (the “County”), a body politic acting herein by and through its Commissioners’ Court, and D. R. Horton – Texas, Ltd., a Texas limited partnership (“Horton”).

WHEREAS, Horton has developed an area within Fort Bend County, Texas, between Gaston Road and Willowfork Bayou (the “Property”); and

WHEREAS, the County and Horton agree the Property will benefit from the proposed improvements to the existing Falcon Landing Boulevard, being construction of the northern lanes of approximately 3,600 linear feet of concrete paving and the storm sewers to drain the north half of the 100 feet wide right-of-way, (the “Project”); and

WHEREAS, Horton agrees participate in the development of the Project by providing a percentage share of all costs associated with the Project (“Developer Contribution”) as shown on Exhibit “A” attached hereto and incorporated herein by reference, which is based on the length of frontage within the Property, approximately 527 linear feet as shown on Exhibit “B” attached hereto and incorporated herein by reference; and

WHEREAS, the County will pay for the remainder of the Project and, as a part of a previous contractual obligation, a left turn lane into the King Lakes tract (the “King tract”) as shown on Exhibit B; and

WHEREAS, the County has determined in good faith that the expenditure of funds serves a public purpose in that it aids the flow of traffic for the residents in the area of the Project; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements, and benefits to the parties hereto, County and Horton agree as follows:

1. Period of the Agreement. This Agreement becomes effective on the date signed by the County and shall remain in effect until the Project is completed and Horton has made its full Developer Contribution, or unless terminated as provided below.

2. Scope of Work. The scope of the Project shall be limited to the scope authorized by the County and as shown on the attached Exhibit “B”. The scope of the Project is for County to administer and construct the improvements to Falcon Landing Boulevard. The scope includes the design and construction of the Project and any other work necessary to complete the Project.

3. Developer's Responsibilities

- A. Horton shall fund the engineering design services for preparation of the Construction Plans for the Project. All costs and expenses associated with said engineering design services paid by Horton shall be credited to Horton's Developer Contribution.
- B. Horton shall pay the remaining portion of its Developer Contribution, being an amount reduced by the initial credit for funding the engineering design services referenced in above in Section 3. A., Horton shall pay the remaining portion of its Developer Contribution upon the earlier of the following event:
 - (1) When the subdivision section of the Property adjoining Falcon Landing is developed; or
 - (2) Three (3) years from the date of issuance of the "Notification of Completion."
- C. The unpaid portion of the Developer Contribution shall be paid with interest calculated at 2 percent (2%) per annum, which is the same effective rate paid by the County for the Project funds, with the accrual of said interest beginning thirty (30) days after the effective date of this Agreement. Interest shall continue to run until the Developer Contribution is paid in full.
- D. Horton shall not be required to make any additional improvements, through contributions or otherwise, to Greenbusch Road as a part of this Agreement or platting requirements for the Property adjoining Greenbusch Road.

4. County's Responsibilities

- A. County will pay for the remaining costs of the Project including the left turn lane into the King tract.
- B. County will incorporate the costs associated with the Project by change order to an existing contract for improvements to Falcon Landing Boulevard with Allgood Construction.
- C. County will use its best efforts to support Horton's request for approval of the County's preferred recommended drainage solution for the Horton development. If the County's preferred recommended drainage solution cannot be achieved, County will support Horton in seeking any necessary approvals to drain the Property along its current drainage path within County right-of-way.
- D. Upon completion of the Project, the County shall issue a "Notification of Completion," acknowledging that the Project has been completed.

5. PARTIES' ACKNOWLEDGEMENT OF COUNTY'S COMPLIANCE WITH
FEDERAL AND STATE CONSTITUTIONS, STATUTES AND CASE LAW AND
FEDERAL, STATE AND LOCAL ORDINANCES, RULES AND

REGULATIONS/HORTON'S WAIVER AND RELEASE OF CLAIMS FOR OBLIGATIONS IMPOSED BY THIS AGREEMENT.

A. HORTON ACKNOWLEDGES AND AGREES THAT THE CONTRIBUTION MADE BY HORTON TO COUNTY, IN WHOLE OR IN PART, DOES NOT CONSTITUTE A:

- (I) TAKING UNDER THE TEXAS OR UNITED STATES CONSTITUTION;**
- (II) VIOLATION OF THE TEXAS TRANSPORTATION CODE, AS IT EXISTS OR MAY BE AMENDED**
- (III) NUISANCE; AND/OR**
- (IV) CLAIM FOR DAMAGES AND/OR REIMBURSEMENT AGAINST COUNTY FOR A VIOLATION OF ANY FEDERAL AND/OR STATE CONSTITUTION, STATUTE AND/OR CASE LAW AND/OR FEDERAL, STATE AND/OR LOCAL ORDINANCE, RULE AND/OR REGULATION.**

B. HORTON RELEASES COUNTY FROM ANY AND ALL CLAIMS OR CAUSES OF ACTION BASED ON EXCESSIVE OR ILLEGAL EXACTIONS ARISING OUT OF OR RELATED TO THIS AGREEMENT.

C. HORTON WAIVES ANY CLAIM FOR DAMAGES AND/OR REIMBURSEMENT AGAINST COUNTY FOR A VIOLATION OF ANY FEDERAL AND/OR STATE CONSTITUTION, STATUTE AND/OR CASE LAW AND/OR FEDERAL, STATE AND/OR LOCAL ORDINANCE, RULE AND/OR REGULATION ARISING OUT OF OR RELATED TO THIS AGREEMENT.

D. THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

6. Limitations of Agreement. The parties hereto acknowledge this Agreement is limited to the Project only. Further, this Agreement does not waive or limit any of the obligations of Horton to County under any other order whether now existing or in the future arising.

7. Default. In the event Horton fails to comply with any of the provisions of this Agreement within ten (10) business days after written notice thereof from County, County shall have the following remedies as its sole and exclusive remedies:

- (a) to file this instrument in the Real Property Records of Fort Bend County as a lien and/or encumbrance against the Property; and/or
- (b) to seek specific enforcement of this Agreement.

In the event of County's default under this Agreement, Horton will be entitled to seek specific performance and/or any other remedy available to them at law or in equity.

8. Miscellaneous.

(a) Notice. Any notice required to be sent under this Agreement must be in writing and may be served by depositing same in the United States Mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such party via a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the parties shall be as follows:

If to County, to:

Fort Bend County
ATTN: Richard W. Stolleis, P.E.
County Engineer
301 Jackson Street
Richmond, Texas 77469

If to Horton, to:

D. R. Horton – Texas, Ltd.
56 Sugar Creek Center Blvd.
Suite 100
Sugar Land, Texas 77478
Attention: Chris Lindhorst
Tel. 281-566-2112
Fax 800-789-4109

With a copy to:

D. R. Horton, Inc.
4306 Miller Road
Rowlett, Texas 75088
Attention: Les Brannon
Tel. 214-607-4244
Fax 972-475-6583

(b) Assignment. This Agreement is not assignable by Horton without the prior written consent of County, which consent shall not be unreasonably withheld.

(c) Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, as allowed. Notwithstanding the foregoing, the obligations herein which burden the Property shall be released automatically as to each single-family residential lot (a "Lot") which is conveyed subsequent to the construction of a house upon such Lot. Any third party, including without limitation, any title company, grantee or lienholder shall be entitled to rely on the immediately preceding sentence to establish whether such termination has occurred with respect to a Lot.

(d) Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the parties hereto.

(e) Venue. This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Fort Bend County, Texas.

(f) Consideration. This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

(g) Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A facsimile signature will also be deemed to constitute an original if properly executed.

(h) Authority to Execute. The individuals executing this Agreement on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

(i) Savings/Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

(j) Representations. Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its counsel.

(k) Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.

(l) Sovereign Immunity. The parties agree that County has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.

(m) No Third Party Beneficiaries. Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.

(n) Attorneys' Fees. In any legal proceeding brought to enforce the terms of this Agreement, the prevailing party may recover its reasonable and necessary attorneys' fees from the non-prevailing party as permitted by Section 271.159 of the Texas Local Government Code, as it exists or may be amended.

(o) Incorporation of Recitals. The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are hereby incorporated into the body of this Agreement and adopted as findings of County and Horton and/or its authorized representatives.

(p) Developer's Warranties/Representations. All warranties, representations and covenants made by Owner in this Agreement or in any certificate or other instrument delivered by Owner to County under this Agreement shall be considered to have been relied upon by County and will survive the satisfaction of any fees and/or payments made under this Agreement, regardless of any investigation made by County or on County's behalf.

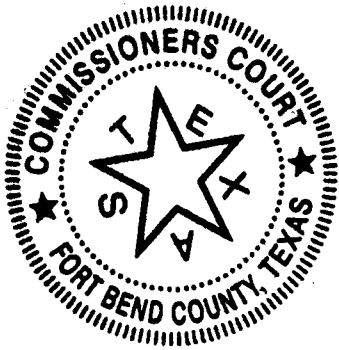
(q) References to Horton. "Horton" as used herein shall mean D. R. Horton – Texas, Ltd., its officers, partners, successors and assigns.

(r) Waiver. Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance.

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the date executed by County.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

5-14-2013
Date



FORT BEND COUNTY:

Robert E. Hebert
Robert E. Hebert, County Judge

Attest:

Dianne Wilson
Dianne Wilson, County Clerk

Approved: COUNTY PROJECT MANAGER

Richard W. Stolleis
Richard W. Stolleis, P.E.
Fort Bend County Engineer

D. R. HORTON – TEXAS, LTD.:
a Texas limited partnership

5-14-2013

Date

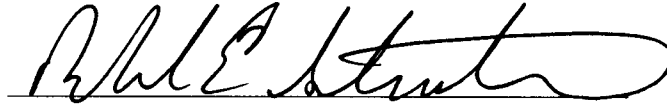
A handwritten signature in black ink, appearing to read 'Christopher Lindhorst', written over a horizontal line.

By: D. R. Horton, Inc., a Delaware
corporation, its authorized agent

Christopher Lindhorst
Division President – Houston South

Auditor's Certificate

I hereby certify that funds are available in the amount of \$ 379,609.68 to accomplish and pay the obligation of Fort Bend County under the foregoing contract.

A handwritten signature in black ink, appearing to read 'Robert Ed Sturdivant', written over a horizontal line.

Robert Ed Sturdivant, County Auditor

APPENDIX

The appendix attached to this Agreement consists of:

Exhibit "A"	Estimated Project Costs and Estimated Proration
Exhibit "B"	Project Location Map

EXHIBIT A

ESTIMATED PROJECT COSTS AND ESTIMATED PRORATION

Estimated Construction Cost	\$421,711.92
Engineering and Design Cost	<u>\$25,500.00</u>
Total Estimated Project Cost	\$447,211.92
Contingency	<u>\$20,000.00</u>
Total Estimated Project Cost (w/contingency)	\$467,211.92
Estimated Proration (527 LF of 3,562 LF)	x 0.148
Estimated Developer's Contribution	\$69,147.36

