

THE STATE OF TEXAS §
 §
 §
 COUNTY OF FORT BEND §

**DEVELOPMENT AGREEMENT
 (KATY WESTPARK)**

THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered into by and between Fort Bend County, Texas (hereinafter referred to as "the County"), a body politic acting herein by and through its Commissioners' Court and RJ Westpark HS, LLC, an Idaho limited liability company authorized to conduct business in the State of Texas, (hereinafter referred to as "Owner").

WHEREAS, Beechnut Street ("Beechnut") is a public road maintained by the County that currently adjoins land owned by Owner (the "Owner Property"); and

WHEREAS, County proposes to make certain improvements to Beechnut, including expansion to a four-lane boulevard for a length of approximately six hundred eighteen linear feet (618 LF) adjacent to Owner Property, as shown on Exhibit "A" attached hereto and incorporated herein for all purposes (the "Project"); and

WHEREAS, Owner proposes to develop Owner Property adjacent to a portion of the improved Beechnut; and

WHEREAS, County and Owner agree that Owner Property will substantially benefit from the construction of the Project; and

WHEREAS, County and Owner agree to jointly participate in the construction of the Project under the terms agreed to herein; and

WHEREAS, Owner may elect to develop a portion of the Project concurrently with the development of the Owner Property, which portion includes the construction of the improvements depicted and shaded on Exhibit B attached hereto and made a part hereof (the "Owner Portion"); and

WHEREAS, County has investigated and determined that it would be advantageous and beneficial to County and its citizens to participate in the construction of the Project, as provided herein; and

NOW, THEREFORE, in consideration of the covenants and conditions contained in this Agreement, County and Owner agree as follows:

1. Owner's Responsibilities. Owner hereby agrees to perform the following:

(a) Provide to County, within thirty (30) days of the final execution of this Agreement, either:

- (I) Funding for the cost of the Project in the amount of \$309,000, which will satisfy in full all obligations of the Owner Property relative to the Project; or
- (II) A letter of credit to the County in the amount of \$309,000 (the "LC"). The LC shall extend until the completion of the Project by the County (or other third party) or Owner's completion of the Owner's Portion and acceptance by the County. Owner may terminate the LC at any time if it provides the \$309,000 contemplated in the previous subsection to County. If the Owner does not complete the Owner Portion, the LC shall be payable at the time the Project is bid in an amount equal to \$309,000 minus the funds Owner has expended on construction to complete the Owner Portion.

(b) Prepare and submit to County for approval, a plat of the proposed subdivision of Owner Property with dedication of right of way for public use, including the proposed right turn lane within the Owners Property.

(c) Owner retains the right to construct the Owner Portion prior to the completion of the Project by County.

3. County's Responsibilities. The County hereby agrees to construct the Project, including a right turn lane at the northwest corner of the proposed school site, within the Fort Bend County Construction Limits as shown in Exhibit A

(a) Schedule for construction has not been determined.

(b) The Owner funding will be available to County for the construction costs associated with the Project, and County shall, in its sole discretion, be entitled to use, at any time, all or a portion of the Owner funds to construct the Project directly or jointly as a part of a larger Beechnut-related project with a third party such as municipal utility district or a private developer.

(c) If Owner constructs the Owner Portion, prior to the County undertaking the Project, County will refund the full amount of \$309,000 received without accrued interest to Owner.

4. Disclaimer/Waiver of Damages/Liability.

(a) Owner acknowledges and agrees that County is not providing any guarantee, representation and/or warranty, and County hereby disclaims any guarantee, representation and/or warranty, of any work performed by County, or their agents, employees, representatives, contractors, subcontractors and/or designees, in connection with the construction of the Project, in whole or in part.

(b) Owner acknowledges and agrees that County shall in no way be liable for any damages, if any, which may be sustained by the Owner and/or Owner Property, resulting, in whole or in part, directly or indirectly, from County's failure to complete the construction of the Project.

(c) Owner hereby releases County, its officers, agents, representatives and employees, from and against, and waives any and all rights to, any and all claims and/or demands for damages (personal or property), injury (including death), it/they may have with regard to the construction and/or completion of the Project and/or any other act and/or omission relating, directly or indirectly, to the Project, in whole or in part, as provided in this Agreement, except to the extent any such claims arise due to, or damages are caused by, the negligence, breach of this Agreement or willful misconduct of County or its authorized officers, agents, representatives or employees

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

(a) OWNER ACKNOWLEDGES AND AGREES THAT THE CONTRIBUTION MADE BY OWNER 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) OWNER 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) OWNER 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 Owner to County under any other order whether now existing or in the future arising.

7. Default. In the event Owner fails to comply with any of the provisions of this Agreement within sixty (60) business days after Owner's receipt of written notice thereof from County, County shall have the following remedies in addition to County's other rights and remedies, at law or in equity:

(a) to file this instrument in the Real Property Records of Fort Bend County as a lien and/or encumbrance against Owner and/or the Owner Property; and/or

(b) to refuse to accept any portion of any public improvements on the Owner Property and/or associated with the development of the Owner Property; and/or

(c) to refuse to finally accept the Owner Property and/or any portion thereof; and/or

(d) to seek specific enforcement of this Agreement.

In the event of County's default under this Agreement, Owner will be entitled to seek any 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 Engineering
Attention: County Engineer
301 Jackson Street
Richmond, Texas 77469

With a copy to:

Fort Bend County
Attention: County Judge
401 Jackson Street
Richmond, Texas 77469

If to Owner, to:

RJ Westpark HS, LLC
Attention: Jason Kotter, Manager
918 W. Idaho
Boise, ID 83702

(b) Assignment. This Agreement is not assignable by Owner 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.

(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 the Owner and/or its authorized representatives.

(p) Owner'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.

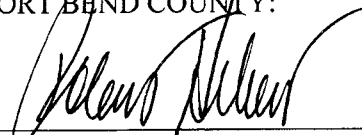
(q) Indemnification. The parties agree that the Indemnity provisions set forth in Paragraphs 4 and 5 herein are conspicuous, and the parties have read and understood the same.

(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.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

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

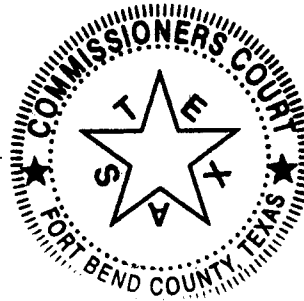
FORT BEND COUNTY:


Robert E. Hebert, County Judge

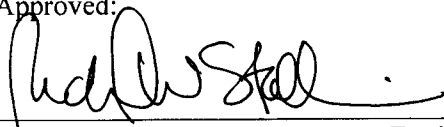
2-28-2017
Date

Attest:


Laura Richard, County Clerk



Approved:

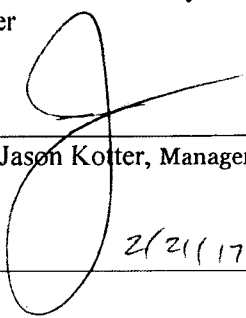

Richard W. Stolleis, P.E., County Engineer

Approved as to legal form:


Marcus D. Spencer, First Assistant County Attorney

RJ WESTPARK HS, LLC,
an Idaho limited liability company

By: The Charter School Fund RJ, LLC,
an Idaho limited liability company
Its: Manager

By: 

Jason Kotter, Manager

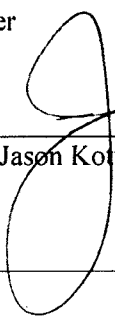
Date:  2/21/17

EXHIBIT A

1. Project: Beechnut Road Expansion
 2. Date: 2/16/2017
 3. Drawn: [Name]
 4. Checked: [Name]
 5. Approved: [Name]
 6. Scale: 1" = 40'
 7. Sheet: 1 of 1
 8. Project Location: 20055 Beechnut Road, Richmond, Texas 77407
 9. Project Description: Expansion of Beechnut Road from Station 0+00 to Station 0+100
 10. Project Status: Final Design

1. Project: Beechnut Road Expansion
 2. Date: 2/16/2017
 3. Drawn: [Name]
 4. Checked: [Name]
 5. Approved: [Name]
 6. Scale: 1" = 40'
 7. Sheet: 1 of 1
 8. Project Location: 20055 Beechnut Road, Richmond, Texas 77407
 9. Project Description: Expansion of Beechnut Road from Station 0+00 to Station 0+100
 10. Project Status: Final Design

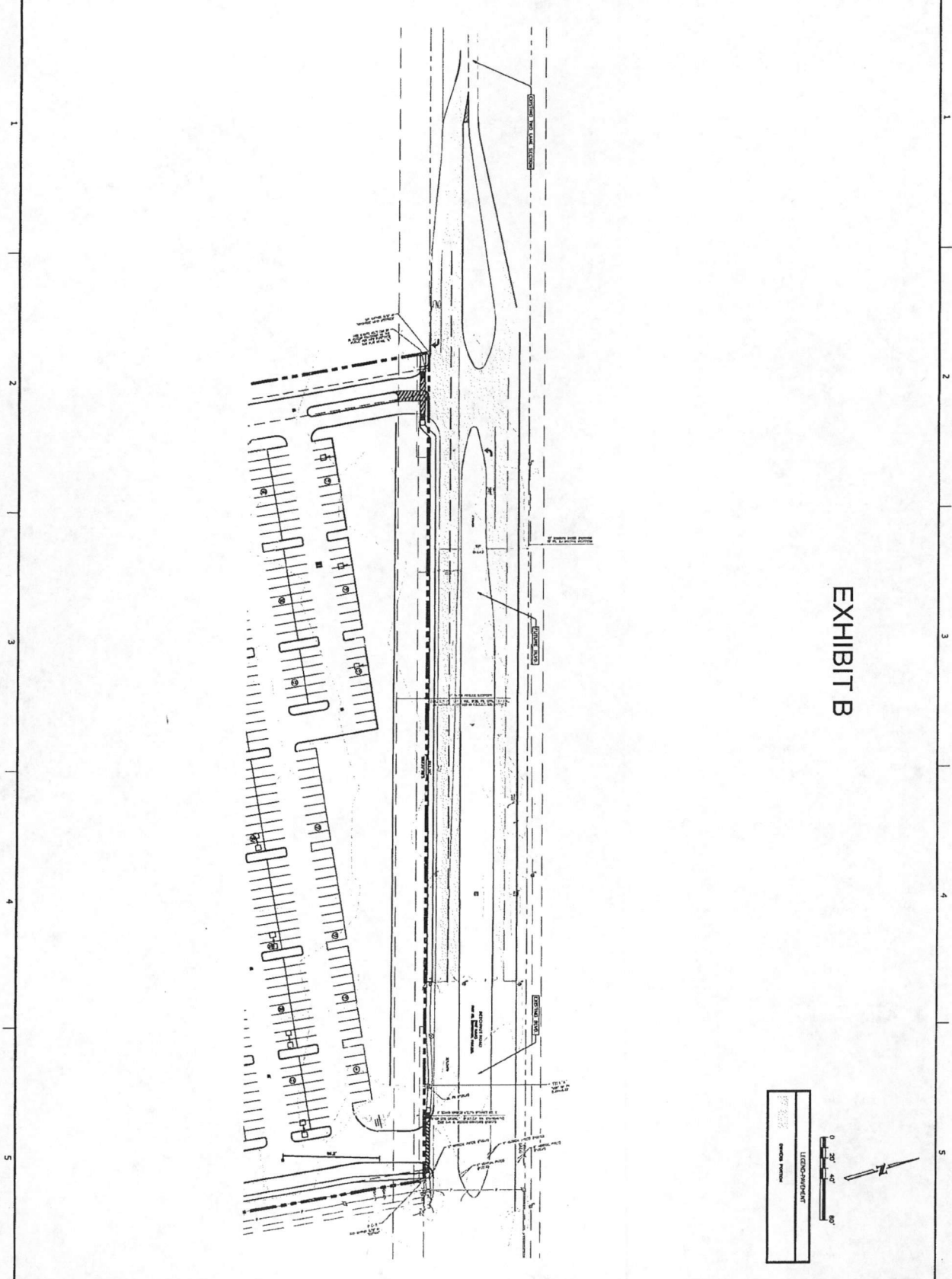
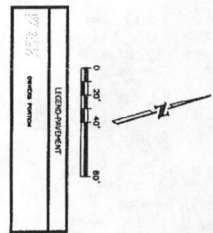


EXHIBIT B



CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

R.J. Westpark HS LLC
Boise, ID United States

Certificate Number:
2017-169600

Date Filed:
02/21/2017

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

Fort Bend County, Texas

Date Acknowledged:

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

Development Agreement
Development Agreement - offsite work

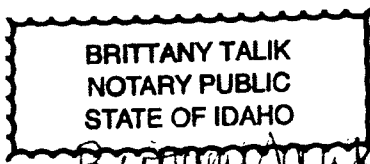
4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO Interested Party.



6 AFFIDAVIT

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.



AFFIX NOTARY STAMP / SEAL ABOVE

Signature of authorized agent of contracting business entity

Sworn to and subscribed before me, by the said Jason Kotter, this the 21st day of February, 20 17, to certify which, witness my hand and seal of office.

Brittany Talik
Signature of officer administering oath

Brittany Talik
Printed name of officer administering oath

Notary Public
Title of officer administering oath

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

Certificate Number:
2017-169600

Date Filed:
02/21/2017

Date Acknowledged:
02/28/2017

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

R.J. Westpark HS LLC
Boise, ID United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

Fort Bend County, Texas

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

Development Agreement
Development Agreement - offsite work

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO Interested Party.



6 AFFIDAVIT

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.

Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said _____, this the _____ day of _____,
20_____, to certify which, witness my hand and seal of office.

Signature of officer administering oath

Printed name of officer administering oath

Title of officer administering oath