



construction after all costs have been determined. The County will return any unused contribution funds to the Owner if the project is under budget or request payment for additional funds if the costs are over the initial contribution amount.

3. Owner's Obligations

(a) The Owner will donate any necessary property for right of way for the Project; and

(b) The Owner is responsible for forty-four percent (44%) of all costs associated with design and construction of Bryan Road based on the property frontage, payable with each plat submitted for approval based on the number of single family lots included in the plat and a cost per lot calculation.

(I) The general plan for this area contains approximately two hundred twenty-six (226) single family residential lots.

(II) Upon receiving bids for the Project, the County will determine the amount of the Owner's share of the Project by dividing the total cost per the bid by 226 to get the per lot cost. Based on the current estimates, this per lot cost will be \$5,170.69 per lot.

(III) After construction is complete, the County will provide an accounting of the Project and determine if there are any changes to the per lot cost due to total construction cost or a change to the number of lots.

(IV) If the per lot cost goes down, a refund will be provided to the Owner. If the per lot cost goes up, the Owner will provide an additional payment for the difference to the County.

(V) As the Owner submits future plats for approval, payment based on the per lot cost plus interest (based on the interest for the Mobility Bonds, currently estimated at 3.75% per year, beginning at the substantial completion date of the Project) will be submitted to the County prior to the County approving the plat until ninety percent (90%) of the lots receive plat approval. Upon ninety percent of the (90%) of the lots receiving plat approval, the remaining amount will be due from the Owner to the County.

(VI) The Owner may pay the balance early to eliminate future interest costs.

(c) Owner shall be responsible for maintenance of the sidewalk constructed for the Project along and adjacent to the Owner's Property. Owner shall transfer the maintenance obligation through an agreement with a home/property owners' association or to the applicable municipal utility district that contains Owner's Property. In no event shall County be responsible for maintenance of any sidewalks installed along the Owner's Property under this Agreement.

**4. 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.**

5. Limitations of Agreement. The parties hereto acknowledge this Agreement is limited to the development of Owner Property 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.

6. 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.

7. 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:

KB Home Lone Star, Inc.  
Attention: Douglas Howard  
11314 Richmond Avenue  
Houston, TX 77082

(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.

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

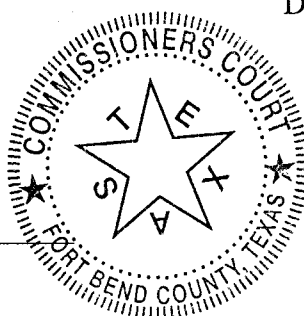
FORT BEND COUNTY:

  
\_\_\_\_\_  
KP George, County Judge


4-23-2019  
Date

Attest:

  
\_\_\_\_\_  
Laura Richard, County Clerk



Approved:

  
\_\_\_\_\_  
J. Stacy Slawinski, P.E., County Engineer

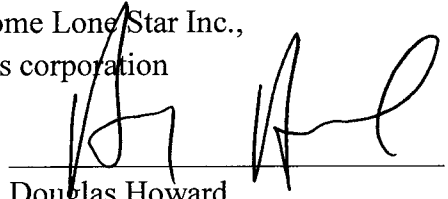
Approved as to legal form:

  
\_\_\_\_\_  
Marcus D. Spencer, First Assistant County Attorney

OWNER:

KB Home Lone Star Inc.,  
a Texas corporation

By:

  
\_\_\_\_\_  
Douglas Howard

Date:

04/08/2019

# EXHIBIT A

