

COST PARTICIPATION AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF WILLIAMSON §

KNOW ALL BY THESE PRESENTS:

THIS COST PARTICIPATION AGREEMENT (“Agreement”) is entered into between **WILLIAMSON COUNTY**, a Texas political subdivision (the “**County**”), and **SCOTT FELDER HOMES, LLC**, a Texas limited liability company, its successors and assigns, (“**Developer**”). In this Agreement, the County and Developer are sometimes individually referred to as “**Party**” and collectively referred to as “**Parties**”.

RECITALS

WHEREAS, the County is in the process of making roadway improvements to County Road 110 (the “**CR 110 Project**”) in Williamson County, Texas; and

WHEREAS, Developer desires to construct a wastewater line within the County Road 110 right-of-way extending generally from the intersection of Toscana Trace and County Road 110 to the intersection of University Boulevard and County Road 110 (the “**Wastewater Line Project**”); and

WHEREAS, the County and Developer desire to allow HNTB, the County’s CR 110 Project engineer, to oversee the construction of both the CR 110 Project and the Wastewater Line Project; and

WHEREAS, Developer desires to reimburse the County for all costs associated with the HNTB oversight of the Wastewater Line Project; and

WHEREAS, Developer agrees to contract with James Construction Company (“**Contractor**”), the low bidder for the CR 110 Project, to construct the Wastewater Line Project in conjunction with the CR 110 Project and to provide to the County acceptable security to ensure that Developer’s failure to perform under its contract with Contractor would not adversely affect the CR 110 Project; and

WHEREAS, the purpose of this Agreement is to establish each Party’s rights, duties and obligations.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, the Parties agree as follows:

I.

TERMS

A. Recitals. The Recitals above are incorporated herein.

B. Developer Participation. Developer agrees to contract with Contractor to construct the Wastewater Line Project and to perform under the contract with Contractor, including timely

payment of all costs incurred thereunder relating to the construction of the Wastewater Line Project (the “**Developer Costs**”). Additionally, Developer shall reimburse the County for all costs incurred by the County for construction oversight of the Wastewater Line Project by HNTB, including, but not limited to, all costs incurred by the County related to construction phase services for plan revisions and submittal reviews. These sums shall be due and owing to the County within ten (10) days of written notice to Developer, which notice will include reasonable support documentation for the amount due and payable. If Developer fails to perform under its contract with Contractor, including failure to timely pay the Developer Cost, but following any notice and cure period provided in the contract, the County shall have the right, but not the obligation, to step in to the contract with Contractor for the Wastewater Line Project (the “**Step In Right**”). In the event the County exercises the Step In Right, the County shall provide written notice to Developer and Contractor, whereupon Developer shall, within fourteen (14) days after such notice: (i) assign the contract with Contractor for the Wastewater Line Project; and (ii) either deposit into escrow (pursuant to an escrow agreement reasonably acceptable to the Parties) or post a letter of credit in an amount equal to 110% of the amount then-owed under the contract with Contractor upon which the County will draw to fund completion of the Wastewater Line Project.

C. County Participation. The County agrees to allow for the construction of the Wastewater Line Project within the County Road 110 right-of-way in conjunction with the CR 110 Project. Additionally, the County agrees, subject to the conditions stated in subsection B. above, to allow and cause HNTB to oversee Contractor’s construction of the Wastewater Line Project.

II.

GENERAL PROVISIONS

A. Severability. The provisions of this Agreement are severable and, if any provision of this Agreement is held to be invalid for any reason by a court or agency of competent jurisdiction, the remainder of this Agreement shall not be affected and this Agreement shall be construed as if the invalid portion had never been contained herein.

B. Cooperation. The Parties agree to cooperate at all times in good faith to effectuate the purposes and intent of this Agreement.

C. Entire Agreement. Except as otherwise expressly provided herein, this Agreement contains the entire agreement of the Parties regarding the subject matter hereof and supersedes all prior or contemporaneous understandings or representations, whether oral or written, regarding such subject matter.

D. Amendments. Any amendment of this Agreement shall be in writing and shall be effective if signed by the authorized representatives of the Parties.

E. Assignment. Developer may not assign all or part of its rights and obligations to a third party without the express written consent of the County (which consent shall not be unreasonably withheld, conditioned, or denied).

F. Termination. In the event Developer elects not to proceed with the Wastewater Line Project as contemplated by this Agreement, Developer shall notify the County in writing of such

election, and this Agreement and the obligations on the part of both parties shall thereafter be deemed terminated and of no further force or effect.

G. Applicable Law; Venue. This Agreement shall be construed in accordance with Texas law. Venue for any action arising hereunder shall be in Williamson County, Texas.

H. Force Majeure. The Parties shall not be deemed in violation of this Agreement if prevented from performing any of their obligations hereunder by reasons for which they are not responsible or circumstances beyond their control. However, notice of such impediment or delay in performance shall be timely given, and all reasonable efforts undertaken to mitigate its effects.

I. Counterparts. Effect of Partial Execution. This Agreement may be executed simultaneously in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute the same instrument.

J. Authority. Each Party represents and warrants that it has the full right, power and authority to execute this Agreement.

K. Notices. Notices provided hereunder shall be sufficient if forwarded to the other party by hand-delivery or via U.S. Postal Service, postage prepaid, to the address of the other Party shown below:

County:

Williamson County
Attn: County Judge Bill Gravell, Jr.
710 S. Main Street, Suite 101
Georgetown, Texas 78626

Developer:

Scott Felder Homes, LLC
Attn: Steve Krasoff
6414 River Place Boulevard, Suite 100
Austin, Texas 78730

With copy to:

Scott Felder Homes, LLC
Attn: James Edward Horne
7143 Valburn Drive
Austin, Texas 78731

L. No Joint Venture. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture between the Parties.

(Signatures on following page)

IN WITNESS WHEREOF, the Parties have executed and attested this Agreement by their officers thereunto duly authorized.

WILLIAMSON COUNTY, TEXAS

By: _____
Bill Gravell, Jr., County Judge

Date: _____

Attest:

Nancy Rister, County Clerk

SCOTT FELDER HOMES, LLC

By: Steve Krasoff
Steve Krasoff, President

Date: 1/29/19

STATE OF TEXAS §
COUNTY OF WILLIAMSON §

On this ____ day of _____, 2019, before me, the undersigned notary public, personally appeared Bill Gravell, Jr., County Judge of Williamson County, Texas, known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein stated.

Notary Public, State of Texas

STATE OF TEXAS Travis §
COUNTY OF ~~WILLIAMSON~~ §

On this 29 day of January, 2019, before me, the undersigned notary public, personally appeared Steve Krasoff, President of Scott Felder Homes, LLC, known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein stated.

Michelle A Thomas
Notary Public, State of Texas

