

EXHIBIT

"A"

THE STATE OF TEXAS

§

CITY OF ROUND ROCK

§

KNOW ALL BY THESE PRESENTS:

§

COUNTY OF WILLIAMSON

§

COUNTY OF TRAVIS

§

§

DEVELOPER PARTICIPATION AGREEMENT

WHEREAS, City of Round Rock (the "City") and Ryan Sanders Baseball, LP (the "Developer") desire to enter into this Developer Participation Agreement ("Agreement") for infield and outfield turf improvements at the Convention Center Complex (Dell Diamond); and,

WHEREAS, Texas Local Government Code (the "Code"), Subchapter C, §212.071 *et seq.* authorizes municipalities with a population of 5,000 or more to make a contract with a developer in the municipality to construct public improvements without complying with the competitive bidding procedure in Chapter 252 of the Code; and,

WHEREAS, pursuant to §212.072, a developer shall construct the improvements and a municipality with population of less than 1.8 million may participate in its costs at a level not to exceed thirty percent (30%) of the total contract price;

NOW THEREFORE, this Agreement is made by and between the City and the Developer.

1. The City and Developer agree to participate in the cost of the reconstruction of the grass portions of the infield and outfield at Dell Diamond (hereinafter referred to as the "Project").

2. The Developer, at its sole cost and expense, shall prepare and submit all reconstruction cost bids to the City for review and acceptance prior to the execution of a contract for the Project. Developer shall not execute any change orders that increase the costs of reconstruction without the prior approval of the City.

3. The Project shall comply with applicable city, state, and federal requirements.

4. Pursuant to §212.073 of the Code, the Developer shall at its sole cost and expense, execute a performance bond for the improvements to ensure completion of the Project. The bond shall be in an amount equal to one hundred twenty-five percent (125%) of the total cost of the improvements, and the estimate and bond shall be subject to the approval of the City. The bond shall be executed by a corporate surety in accordance with Chapter 2253 of the Government

Code.

5. Upon completion of the Project to the City's satisfaction, the City shall pay to the Developer the amount of thirty percent (30%) of the sum of the original contract cost and any approved change orders for the Project, not to exceed \$130,000. In no event, shall the City's payment exceed thirty percent (30%) of the total cost of the Project or \$130,000, whichever is less.

6. This Agreement is being executed and delivered, and is to be performed, under the laws of the State of Texas which shall govern the validity, construction, enforcement and interpretation of the Agreement, unless otherwise specified herein.

7. In the event that judicial action is necessary for the interpretation or enforcement of any of the covenants or conditions contained herein, the City and the Developer agree and consent to the jurisdiction of the District Courts and the County Courts at Law of Williamson County, Texas, and the United States District Court for the Western District of Texas (Austin Division), and acknowledge that such courts shall constitute proper and convenient forums for the resolution of any actions between the City and the Developer with respect to the subject matter hereof, and agree that such courts shall be exclusive forums for the resolution of any actions between the City and the Developer with respect to the subject matter hereof.

8. If any provision in this Agreement is held to be illegal, invalid or unenforceable under present or future laws, other provisions shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, a provision as similar in terms to such illegal, invalid or unenforceable provision shall govern.

9. This Agreement sets forth the entire understanding and agreement of the parties. All other oral agreements by the parties hereto are hereby merged into this Agreement, which shall not be amended or altered except by a written document signed by the parties hereto. This Agreement is separate and distinguishable from and shall not constitute an amendment of, or modification to, any other Agreement between the parties.

10. If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret any provision of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees, costs of court and reasonable costs incurred to maintain such action, from the other party, which fees may be set by the Court in the trial of such an action or may be enforced in a separate action brought for that purpose, and which fees shall be in addition to any other relief which may be awarded.

11. This Agreement shall inure only to the benefit of the parties hereto. No other person or entity shall be considered a beneficiary of this Agreement.

12. The City shall have the right to terminate this Agreement and the City shall have no further obligation to reimburse the Developer if the Developer either (i) fails to commence the Project within twelve (12) months of the effective date hereof, or (ii) fails to complete the Project within eighteen (18) months of the effective date hereof.

13. Notices provided for hereunder shall be directed as follows:

(a) Notices to the City shall be directed to:

Steve Norwood, City Manager
City of Round Rock
221 East Main Street
Round Rock, TX 78664

(b) Notices to the Developer shall be directed to:

N. Reese Ryan, CEO
Ryan Sanders Baseball, LP
3400 East Palm Valley Boulevard
Round Rock, TX 78664

14. This Agreement shall be effective upon proper execution by all parties hereto.

[Signatures appear on the following page.]

IN WITNESS WHEREOF, City and Services Provider have executed this Agreement on the dates indicated.

City of Round Rock, Texas

Ryan Sanders Baseball, LP

By: _____
Printed Name: _____
Title: _____
Date Signed: _____

By: _____
Printed Name: _____
Title: _____
Date Signed: _____

Attest:

By: _____
Sara L. White, City Clerk

For City, Approved as to Form:

By: _____
Stephan L. Sheets, City Attorney

