

EXHIBIT
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THE STATE OF TEXAS

COUNTY OF WILLIAMSON

KNOW ALL MEN BY THESE PRESENTS:

DEVELOPER PARTICIPATION AGREEMENT

WHEREAS, the City of Round Rock (the "City") and D.R. Horton, (the "Developer") desire to enter into this Developer Participation Agreement ("Agreement") for certain public improvements associated with the Turtle Creek Subdivision; and

WHEREAS, Vernon's Texas Codes Annotated, Local Government Code, Subchapter C, § 212.071 et. seq. authorizes municipalities with a population of 5,000 or more to make a contract with a developer for the developer to construct public improvements related to the development and for the municipality to participate in their cost;

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

1. The City and the Developer agree to participate in the construction of certain median improvements on A.W. Grimes Blvd. as shown on the Construction Plans for Median Improvements to A.W. Grimes Boulevard (the "Plans"), as prepared on 11/16/12 by Waeltz & Prete, Inc., Civil Engineers, on file with the City of Round Rock Transportation Department and made a part of this Agreement for all purposes (hereinafter referred to as the "A.W. Grimes Project").

2. The Developer, at its sole cost and expense, shall construct the A.W. Grimes Project pursuant to the specifications in the Plans, in conjunction with the construction of the subdivision improvements for the Turtle Creek Subdivision, Phase 6 and 7 (the "Subdivision Project"). Construction of the A. W. Grimes Project shall be complete and accepted by the City prior to the recordation of any final plat in the Turtle Creek Subdivision.

3. Any amendments or change orders to the Plans or A.W. Grimes Project must be approved in advance by the City. Any amended Plans for the A.W. Grimes Project shall comply with all applicable city, state, and federal requirements, including the City's Design and Construction Standards described in §8.106 of the Round Rock Code of Ordinances.

4. Prior to commencement of construction of the A.W. Grimes Project, the Developer, at its sole cost and expense, shall execute a performance bond for the construction of the improvements to ensure completion of the A.W. Grimes Project. The bond shall be in an amount equal to 125% of the construction costs of all improvements shown in the Plans, as estimated by the City, and the estimate and the bond shall be subject to the approval of the City. The bond shall be executed by a corporate surety in accordance with chapter 2253, Government Code.

5. Prior to commencement of construction of the A.W. Grimes Project, the Developer shall conduct a preconstruction conference with the City, the Developer's engineer, the Developer's contractor, and any other affected party. The City shall inspect the construction of the A.W. Grimes Project and all other public improvements shown in the Plans. The Developer shall insure that the City and its agents have the right to enter upon the construction site of the A.W. Grimes Project and all other public improvements shown in the Plans, for any purpose. Upon completion of the A.W. Grimes Project and acceptance thereof by the City, the City shall pay to the Developer a single lump sum payment in the amount of up to and no more than TWO HUNDRED AND THIRTY THOUSAND DOLLARS (\$230,000) (the "A.W. Grimes Project Reimbursement"). The A.W. Grimes Reimbursement is less than 30% of the total construction costs for the public improvements to the Subdivision Project. For purposes of this Agreement, completion of the A.W. Grimes Project shall occur after the Developer has provided a two-year warranty bond for the A.W. Grimes Project, and the City's Transportation Department has issued an acceptance letter for the A.W. Grimes Project. The inspection and acceptance shall be in accordance with § 8.705 of the Round Rock Code of Ordinances and the warranty bond shall be in accordance with § 8.706 of the Round Rock Code of Ordinances.

6. After the City has accepted the A.W. Grimes Project, the Developer shall submit a written request to the City for payment of the lump sum referred to above. Said written request will include all invoices related to the construction of the A.W. Grimes Project. Conditioned upon review and approval by the City's Finance Department, and within thirty (30) calendar days of receipt of the above-described invoices, the City shall pay to the Developer the A.W. Grimes Project Reimbursement.

7. As additional consideration to the Developer to undertake the obligations set forth herein, the City hereby waives any obligation on the part of the Developer to pay any inspection fees provided for in § 8.116 of the Round Rock Code of Ordinances associated with the construction of the A.W. Grimes Project.

8. The maximum amount of reimbursement to the Developer by the City shall be \$230,000.00 or the actual costs of the A.W. Grimes Project, whichever amount is less.

9. 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 this Agreement, unless otherwise specified herein.

10. 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 that venue is proper in Williamson County, Texas.

11. 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 as may be possible and be legal, valid and enforceable shall govern.

12. 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.

13. 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.

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

15. If the Developer commences construction of the Project, but fails to achieve completion of the Project within one year after the effective date hereof, the City may utilize the bond provided for herein to complete the Project and any other public improvements shown in the Plans

16. If the Developer fails to commence construction of the Project within 18 months after the effective date of hereof, the City shall have the right to terminate this Agreement and the City shall have no further obligation to reimburse Developer.

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

- (a) Notices to the City shall be directed to:
City Manager
City of Round Rock
221 East Main Street
Round Rock, TX 78664

With a photocopy to:
Transportation Director
City of Round Rock
2008 Enterprise Drive
Round Rock, TX 78664

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

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

DEVELOPER:
D.R. HORTON

By: _____

CITY OF ROUND ROCK, TEXAS

By: _____

Alan McGraw, Mayor

Dated: _____

ATTEST:

Sara White, City Clerk