

RESOLUTION NO. R-2018-35

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS APPROVING A DEVELOPERS AGREEMENT FOR PINEY CREEK BEND SUBDIVISION BETWEEN THE CITY OF BASTROP AND KB HOMES; ATTACHED AS EXHIBIT A; AND AUTHORIZING THE CITY MANAGER TO EXECUTE ALL NECESSARY DOCUMENTS FOR THE AGREEMENT; PROVIDING FOR A REPEALING CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, The City Council has appointed the City Manager as the Chief Administrative Officer of the City; and

WHEREAS, The City Manager is responsible for the proper administration of all affairs of the City; and

WHEREAS, The City of Bastrop has interest in providing expedited housing options for its citizens; and

WHEREAS, The City of Bastrop, through Bastrop Power & Light, endeavors to provide excellent customer service by providing reliable, safe, and affordable power to its customers; and

WHEREAS, The City of Bastrop has recognized the need to execute a Developer's Agreement for the Piney Creek Bend Subdivision with KB Homes to allow for engineering and design of the electrical service to the project; and

WHEREAS, the City Council finds that a very significant public interest is served by the completion of a Developer's Agreement for the Piney Creek Bend subdivision with KB Homes.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS:

Section 1: That the City Manager is hereby authorized to execute a Developer's Agreement for the Piney Creek Bend subdivision between the City of Bastrop and the KB Homes. (Exhibit A)

Section 2: All orders, ordinances, and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 3: That this Resolution shall take effect immediately upon its passage, and it is so resolved.

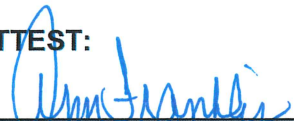
DULY RESOLVED AND ADOPTED by the City Council of the City of Bastrop this 22nd day of May 2018.

APPROVED:



Connie B. Schroeder, Mayor

ATTEST:



Ann Franklin, City Secretary

APPROVED AS TO FORM:



Alan Bojorquez, City Attorney

UTILITY CONSTRUCTION AGREEMENT

THE STATE OF TEXAS §
COUNTY OF BASTROP §

This Utility Construction Agreement (this "Agreement") is between the City of Bastrop (hereinafter "City"), a Texas home rule municipality (hereinafter "City"), and KB Home, a Texas corporation (hereinafter "Developer") to be effective as of _____, 2018 (the "Effective Date"). City and Developer may be referenced as the Parties.

RECITALS

- WHEREAS, the City, through Bastrop Power & Light, provides electric services within its boundaries; and
WHEREAS, the Developer seeks to develop approximately 37 acres near the intersection of Carter and Linden Streets within the City of Bastrop; and
WHEREAS, the development requires the installation of new electrical lines; and
WHEREAS, the Developer has contacted Bastrop Power & Light to provide electrical service to the subdivision; and
WHEREAS, a line extension fee request was provided to the City; and
WHEREAS, the Developer desires to have the city design and install the electrical lines and infrastructure, including 3 phase power to the lift station; and
WHEREAS, on March 23, 2018, Bastrop Power & Light provided a line extension fee quote (the "Quote") to the Developer; and
WHEREAS, Developer has requested the fee for Phase I of the project be paid in two (2) installments so that design work for the project could be started; and
WHEREAS, the City is willing to construct the electrical service for the property, provided that the Developer pay all costs and assumes all risks of any delay or failure to complete the project in a timely manner.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that, in consideration of the mutual promises, covenants, obligations, and benefits set forth in this Agreement, the City and the Developer agree as follows:

ARTICLE I. REPRESENTATIONS

1. Representations by Developer. The Developer represents and covenants to the City

that it will use reasonable efforts:

- (a) to execute and deliver this Agreement and that the transactions contemplated hereby have been duly authorized by the Developer;
- (b) that the representations and covenants contained in this Agreement, and the consummation of the transactions contemplated hereby, do not violate or constitute a breach of any contract or other agreement to which the Developer is a party;
- (c) the Developer has made financial arrangements sufficient to assure its ability to perform its obligations hereunder; and
- (d) the Developer will send a representative to all meetings of the City at which such presence is requested.

2. **Representations by the City.** The City represents and covenants to the Developer that it will use reasonable efforts:

- (a) to provide reasonable notice of all meetings to the Developer;
- (b) to ensure execution of the design for the project; and
- (c) install all necessary equipment in a timely manner.

ARTICLE II SCOPE OF PROJECT

1. City will contract with the Lower Colorado River Authority (LCRA) to design the electrical infrastructure needed for the project.
2. Design of the infrastructure will take approximately 6 to 8 weeks to complete.
3. Upon payment of the second installment, Bastrop Power & Light will order materials and begin coordinating with the Developer regarding construction.
4. The cost of the project includes material, labor & equipment for Phase I of the project.
5. The cost does not include joint trenching with any other party, such as communication, cable, etc.

ARTICLE III PAYMENT

The hereby Parties agree:

1. the Quote provided to Developer is merely a rough estimate and nonbinding in nature;

2. the Quote for the project as of March 23, 2018, is \$308,512.50;
3. the first installment of \$154,265.25 will be paid upon execution of the Agreement;
4. the remainder of the fee owed shall be paid upon completion of the electrical infrastructure design;
5. at the time of the Quote, the second installment is estimated to be \$154,265.25;
6. as reflected in the Quote, the City reserves the right to alter the Quote, and/or vacate the Quote at any time and for any reason.

ARTICLE IV DEFAULT

1. **Default by the Developer.** If the Developer defaults hereunder, the City may:
 - (a) terminate this Agreement without thereby incurring any liability to the Developer whatsoever;
 - (b) pursue all other legal or equitable remedies; and
 - (c) recover from the Developer all expenses incurred in pursuing its legal rights hereunder, including reasonable attorneys' fees.
2. **Default by City.** If the City defaults hereunder, the Developer may, as its sole remedy, seek a writ of mandamus from a court of competent jurisdiction compelling and requiring the City and its Officers to observe and perform their obligations under this Agreement.

ARTICLE V MISCELLANEOUS

1. **Severability.** If any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect, this invalidity, illegality, or unenforceability will not affect any other provision, and this Agreement will be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.
2. **Entire Agreement.** This Agreement contains the entire agreement of the Parties. There are no other promises or conditions in any other agreement either oral or written. This Agreement supersedes any prior written agreements between the Parties.
3. **Assignability.** This Agreement may not be assigned in whole or in part by the Developer without the prior written consent of the City.
4. **Notice.** Any notice, communication, request, reply, or advice (severally and collectively referred to as "**Notice**") given under this Agreement must be in writing. Notice may be given or served: (i) by depositing it in the United States Mail, postage paid, certified with return receipt requested, and addressed to the party to be notified;

or (ii) by personally delivering it to the party to be notified. Notice deposited in the mail will be effective three days after such deposit. Notice given in any other manner will be effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties will be, until changed as provided below, as follows:

City: City of Bastrop
Lynda Humble
City Manager
1311 Chestnut Street
Bastrop, Texas 78602

with a copy to: Alan Bojorquez
Bojorquez Law Firm
12325 Hymeadow Dr.
Ste. 2-100
Austin, TX 78750

Developer: KB Home – Austin Division
John Zinsmeyer
Vice President Planning/Development
10800 Pecan Park Blvd.
Ste. 200
Austin, TX 78750

The parties may change their respective addresses for purposes of notice by giving at least five (5) days written notice of the new address to the other party. If any date or any period provided in this Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period will be extended to the next business day.

5. **Captions.** The captions used in this Agreement are for convenience only and do not construe or limit the meaning of the language contained in this Agreement.
6. **Applicable Law.** This Agreement will be construed and interpreted under the laws of the State of Texas and the obligations of the parties are performable in Bastrop County, Texas.
7. **Parties at Interest.** This Agreement is for the exclusive benefit of the parties and it will never be construed to confer a benefit on a third party.
8. **Term.** Except as otherwise provided herein, this Agreement will be in force from the date of execution for a term of two (2) years, or until the transactions contemplated hereby are consummated, whichever first occurs.
9. **Force Majeure.** If the City is rendered unable, in whole or in part, by force majeure to carry out any of its obligations under this Agreement, then those obligations, to the extent affected by force majeure and to the extent that due diligence is being used to remedy the inability and to resume performance at the earliest practicable time, will be suspended during the continuance of the inability, but for no longer. The term 'force

majeure' includes, without limitation, acts of God; strikes, lockouts, or other industrial disturbances; acts of the public enemy; orders of any kind of the Government of the United States or of the State of Texas or any civil or military authority; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accidents to machinery, pipelines or canals; and any other incapacities of the City, whether similar to those enumerated or otherwise, which are not within the control of the City, and which the City could not have avoided by the exercise of due diligence and care. The settlement of strikes and lockouts will be entirely within the discretion of the City, and the requirement that any force majeure be remedied with all reasonable dispatch does not require the settlement of strikes and lockouts by acceding to the demand of the opposing party or parties when the settlement is unfavorable, in the judgment of the City.

10. **Counterparts.** This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. Facsimile or electronic transmission of executed signatures are agreed and deemed to constitute fully enforceable and binding originals.

IN WITNESS WHEREOF, the undersigned Parties have executed this Agreement on the dates indicated below.

Signature Page(s) follow.

CITY OF BASTROP

Lynda Humble, City Manager

Date

Attest:

City Secretary

Date

KB HOMES

Developer

Date

John Zinsmeyer, Vice President Planning/Development