

DEVELOPER PARTICIPATION AGREEMENT

This Agreement is entered into this _____ day of _____, 2019 between the City of Georgetown, Texas (“City”) and Pulte Homes of Texas, L.P., a Texas limited partnership (“Developer”).

WHEREAS, Chapter 212 of the Local Government Code allows a municipality to enter an agreement with a developer of land to construct public improvements (“Improvements”) related to the development, and;

WHEREAS, the Improvements cannot include the construction of buildings, and the municipality may not participate at a level that would exceed one hundred (100) percent of the total project cost for portions of the Improvements the municipality would not otherwise be solely responsible for anyway, and;

WHEREAS, Developer is planning to construct single family residential development in Georgetown, Texas (“Project”), subject to the approval of the City; and

WHEREAS, City requests that Developer construct Improvements required to meet the water demands of the proposed development as described in Exhibit “A,” attached hereto and incorporated herein, and;

WHEREAS, the City and Developer agree that it is in the best interest of both entities to enter into a participation agreement to complete the Project.

NOW THEREFORE, in consideration of the foregoing premises and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

DEVELOPER RESPONSIBILITIES

1. Developer shall be responsible for the entire up-front expense of the Improvements associated with the Project including all engineering and construction services.

2. Developer shall be responsible for providing signed and sealed engineering construction drawings for the Improvements, along with legal descriptions and exhibits of all easements necessary to construct Improvements prior to commencement of the first phase of the Project.

3. The Improvements for the Project shall be publicly bid in accordance with all rules and regulations of the City.

4. The Improvements shall be built to the plans and specifications for the construction of such public improvements if and as approved and accepted by the City, prior final acceptance/occupancy of any single-family residences located within the Project limits.

5. The Developer will designate a contact person available to answer questions on behalf of Developer.

CITY RESPONSIBILITIES

1. The City shall be responsible and liable for obtaining all required easements and rights of entry.
2. The City shall review and inspect the Improvements for completion promptly upon receipt of request of Developer, and shall promptly accept the Improvements when properly completed in accordance with the approved plans and ordinances. Within 90 days of completion of the Project and acceptance of the Improvements by the City, the City shall reimburse Developer for the full amount of the costs for the Improvements as long as the total costs for easement acquisition, engineering design, and construction do not exceed the budgeted \$1,050,000.00. Should total costs exceed the budgeted amount, the developer will receive impact fee reimbursement, on an annual basis, for the portion of the impact fees attributable to the Improvements paid by the Project until the overage amount is fully reimbursed.
3. The City will designate a contact person available to answer questions on behalf of the City. The contact person for this Agreement is Wesley Wright, Systems Engineering Director. The secondary contact person for this Agreement is Travis Baird, Real Estate Services Manager.
4. Upon completion of the Project, the City will own and maintain the Improvements.

MISCELLANEOUS TERMS

1. Indemnity

The Developer must indemnify, hold harmless, and defend the City, its officers, agents and employees, from and against liability for any claims, liens, suits, demands, and/or actions for damages, injuries to persons (including death), property damage (including loss of use), and expenses, including court costs and attorneys' fees and other reasonable costs arising out of the Developer's work and activities conducted in connection with this Contract, including all causes of action based upon common, constitutional, or statutory law, or based in whole or in part upon negligent or intentional acts or omissions of Developer, its officers, agents, employees, sub-contractors, licensees, invitees, and other persons.

Developer must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of its officers, agents, employees, sub-contractors, licensees, invitees and other persons, as well as their property, while in the vicinity where the work is being done. The City is not liable or responsible for the negligence or intentional acts or omissions of the Developer, its officers, agents, employees, sub- contractors, licensees, invitees, and other persons.

The City assumes no responsibility or liability for harm, injury, or any damaging events, which are directly or indirectly attributable to premise defects, whether real or alleged, which may now exist or which may hereafter arise upon the premises, responsibility for all such defects being expressly assumed by the Developer. The Developer agrees that this indemnity provision applies to all claims, suits, demands, and actions arising from all premise defects or conditions over which Developer has dominion and control, but not otherwise.

The City and Developer must provide the other prompt and timely notice of any event covered which in any way affects or might affect the Developer or City, and the City has the right to compromise and defend the same to the extent of its own interests.

2. Venue and Choice of Law

Venue for any cause of action arising under this Agreement is Williamson County, Texas. This Agreement is governed by the laws of the State of Texas both as to interpretation and performance. This Agreement shall, in any dispute over its meaning or application, be interpreted fairly and reasonably, and not more strongly for or against either party.

3. Assignment

The Developer may not assign in whole or in part any rights, duties, obligations or interest arising from this Agreement without the City's prior written consent.

4. Amendment or Modification

This Agreement, including schedules and attachments, constitutes the entire agreement of the parties. Any statements, promises, or agreements made by either party or its agent, which are not contained in this Agreement, are of no effect. This Agreement may not be amended or modified except by both parties' written consent.

5. Compliance with Laws, Charter, Ordinances

Developer, its agents, employees and subcontractors must comply with all applicable federal and state laws, the charter and ordinances of the City of Georgetown, and with all applicable rules and regulations promulgated by local, state and national boards, bureaus and agencies. Developer must obtain all necessary permits and licenses required in completing the work contracted for in this Agreement.

6. Notice

All notices must be in writing, hand-delivered or mailed by certified mail, to the other party.

IN WITNESS HEREOF, the parties have executed this Agreement.

CITY OF GEORGETOWN

By: _____
Dale Ross
Mayor

Date: _____

ATTEST:

By: _____
Shelley Nowling
City Secretary

APPROVED AS TO FORM:

By: _____
Charlie McNabb
City Attorney

PULTE HOMES OF TEXAS, L.P.,
a Texas limited partnership

By: Pulte Nevada I LLC,
a Delaware limited liability company,
its General Partner

By: _____

Name: _____

Title: _____

Date: _____