CITY OF BRYAN, TEXAS
CHAPTER 380 HOME BUILDER INCENTIVE PROGRAM AGREEMENT

The City of Bryan, Texas, a Texas Home Rule Municipality, (hereinafter "City") acting by and through its City Manager in accordance with the authority delegated pursuant to Resolution No. 3754 passed and approved on March 27, 2018, and Gerard Construction, (Company Name, hereinafter "Home Builder"), hereby enter into a Chapter 380 Agreement for Home Builder Incentive Program ("Agreement") as follows:

SECTION I
THE PROJECT

A. **Term.** The term of this Agreement shall begin upon execution by both parties and shall continue for a period of 18 months, unless terminated sooner as provided herein.

B. **Terms and Conditions Incorporated.** All terms, definitions, and conditions of Resolution No. 3754, are incorporated herein.

C. **The Project.** The Project location and description, for which Incentives are granted is described in the application submitted by Home Builder.

SECTION II
INCENTIVES

A. New Home Builders in full compliance with the requirements of this Program may be eligible for Grant Payments and Waiver of Fees as follows (Select applicable):

1. **Fee Waiver.**
   a) The City may waive building permit fees.
   b) The City may waive tap fees (Water and Sewer) in the City of Bryan service area as follows:
      (i) **In a new subdivisions:** City may waive tap fees (Water and Sewer) for domestic use for ¾ inch water meters (up to $400) and 4-inch sewer taps (up to $350). This waive of TAP fees will not apply to irrigation meters.
      (ii) **In existing subdivisions and infill development:** Waiver of Tap fees is limited to the base fee only and will not include long side taps.

The City will keep a running total of all fees waived for Homebuilder pursuant to this Agreement.

SECTION III
CONDITIONS FOR ELIGIBILITY

A. **Single Family Improvements.** Fee Waivers may only be granted under this Agreement for new single family, detached residential dwelling of 2,000 – 3,000 square feet, heated and cooled area, of site built construction.

B. **Payments Subject to Appropriation of Funds.** All payments or expenditures made by the City under this Agreement are subject to the City's appropriation of funds for such payments or expenditures to be paid in the budget year for which they are made. In the event the City does not appropriate funds in any fiscal year for payments due or expenditures under this Agreement, the City shall not be liable to Homebuilder for such payments or expenditures unless and until

appropriation of said funds is made; provided, however, that Homebuilder in its sole discretion, shall have the right but not the obligation to terminate this Agreement.

SECTION IV
COVENANTS AND WARRANTIES

A. **Home Builder's Covenants, Warranties, Obligations and Duties.** Home Builder agrees to timely and fully comply with all of the terms and conditions of this Agreement Any false or substantially misleading statement contained in Homebuilder's application or failure to timely and fully perform as required in this Agreement shall be an Act of Default by Home Builder. Failure to comply with any one covenant or warranty shall constitute an Act of Default by Home Builder.

1. Home Builder is authorized to do business and is in good standing in the State of Texas and shall remain in good standing in the State of Texas during the Term of this Agreement.

2. The execution of this Agreement has been duly authorized by Home Builder's general partner, and the individual signing this Agreement is the manager of the general partner, empowered to execute such Agreement and bind the partnership.

3. No litigation or governmental proceeding is pending or, to the knowledge of Home Builder or Home Builder's officers, threatened against or affecting Home Builder that may result in any material adverse change in Home Builder's business, properties or operation.

4. There are no bankruptcy proceedings or other proceedings currently pending or contemplated, and Home Builder has not been informed of any potential involuntary bankruptcy proceedings.

5. To its current, actual knowledge, Home Builder has acquired and maintained all necessary rights, licenses, permits and authority to carry on its business in Bryan, Texas, and will continue to use its best efforts to maintain all necessary rights, licenses, permits and authority.

SECTION V
BREACH, RECAPTURE AND TERMINATION

A. **Breach**. It shall be a breach of this Agreement by the Home Builder if:

1. A slab inspection is not performed and passed within 90 days of obtaining building permit.

2. In the event of a breach, Homebuilder shall be notified in writing it is in breach. Homebuilder will have thirty (30) days in which to cure the breach. In the event the breach is uncured, this agreement may be terminated and the City is entitled to payment from Homebuilder equal to the running total of fees that have been waived pursuant to this Agreement.

B. **Termination.** City, under the following circumstances and at its sole discretion, may suspend its obligations under this Agreement or terminate this Agreement and all future payment obligations shall automatically cease upon any one of the following events, which are an Act of Default:

1. The appointment of a receiver of Home Builder, or of all or any substantial part of its property, and the failure of such receiver to be discharged within sixty (60) days thereafter.

2. The adjudication of Home Builder as a bankrupt.

3. The filing by Home Builder of a petition or an answer seeking bankruptcy, receivership, reorganization, or admitting the material allegations of a petition filed against it in any bankruptcy or reorganization proceeding.

SECTION VI
MISCELLANEOUS PROVISIONS

A. Miscellaneous.

1. Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the parties to it and their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns. Homebuilder shall not assign this Agreement without the prior written approval of the City Manager.

2. Relationship of the Parties. This Agreement will not be construed as establishing a partnership or joint venture, joint enterprise, express or implied agency, or employer-employee relationship between the parties. Neither the City, nor its past, present, or future officers, elected officials, employees or agents, assume any responsibility or liability to any third party in connection with the development of the Project or the design, construction or operation of any portion of the Project.

3. Notices. Any notices sent under this Agreement shall be deemed served when delivered via certified mail, return receipt requested to the addresses designated herein or as may be designated in writing by the parties. Notice shall be given to the following:

If to City: Kean Register
City Manager
P.O. Box 1000
Bryan, Texas 77805

If to Builder: Gerard Construction
Michael Patrarella
1505 S. College
Bryan, TX 77801

Either party may designate a different address at any time upon written notice to the other party.

4. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective while this Agreement is in effect, such provision shall be automatically deleted from this Agreement and the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby, and in lieu of such deleted provision, there shall be added as part of this Agreement a provision that is legal, valid and enforceable and that is as similar as possible in terms and substance as possible to the deleted provision.

5. Texas Law to Apply. This Agreement shall be construed under and in accordance with the laws of the State of Texas and the obligations of the parties created hereunder are performable by the parties in the City of Bryan, Texas. Venue for any litigation arising under this Agreement shall be in a court of appropriate jurisdiction in Brazos County, Texas.

6. Sole Agreement. This Agreement constitutes the sole and only Agreement of the Parties hereto respecting the subject matter covered by this Agreement, and supersedes any prior understandings or written or oral agreements between the parties.

7. Amendments. No amendment, modification or alteration of the terms hereof shall be binding unless the same shall be in writing and dated subsequent to the date hereof and duly executed by the parties hereto.

8. Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any and all other legal remedies. Said rights and remedies are provided in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

9. No Waiver. City's failure to take action to enforce this Agreement in the event of Home Builder's default or breach of any covenant, condition, or stipulation herein on one occasion shall not be treated as a waiver and shall not prevent City from taking action to enforce this Agreement on subsequent occasions.

10. Incorporation of Recitals. The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement.

11. Headings. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs.

Executed and effective on this the 4th day of February, 2020.

CITY OF BRYAN:

Kean Register, City Manager

ATTEST:

Mary Lynne Stratta, City Secretary

APPROVED AS TO FORM:

Janis K. Hampton, City Attorney

Frank Clark, Business Liaison
and Special Projects Manager

HOMEBUILDER:

Signature

Kelly Adams VP
Printed Name and Title