

**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 TODD McELHANEY DESIGN BUILD, (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:               543 WILLIAM  
  D FITCH  
  COLLEGE STATION, TX, 77845  
  TODD McELHANEY  
  ARCHITECT & BUILDER

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 13th day of May, 2020.

**CITY OF BRYAN:**

**HOMEBUILDER:**

Kean Register  
Kean Register, City Manager

[Signature]  
Signature

**ATTEST:**

Mary L Stratta  
Mary Lynne Stratta, City Secretary



MATHEW COLEMAN, PROJECT COORDINATOR  
Printed Name and Title

**APPROVED AS TO FORM:**

Janis Hampton  
Janis K. Hampton, City Attorney

[Signature]  
Frank Clark, Business Liaison  
and Special Projects Manager

## Certificate Of Completion

Envelope Id: CBA6EAAFAB9D418DA31E816D660DB4DF

Status: Completed

Subject: Please DocuSign: Ch 380 Home Builder Incentive Program Agreement - Todd McIlhane Design

Source Envelope:

Document Pages: 4

Signatures: 3

Envelope Originator:

Certificate Pages: 5

Initials: 0

Christina Cabrera

AutoNav: Enabled

Stamps: 1

PO BOX 1000

Envelopeld Stamping: Enabled

PO BOX 1000

Time Zone: (UTC-06:00) Central Time (US &

Bryan, TX 77805

Canada)

ccabrera@bryantx.gov

IP Address: 47.218.96.54

## Record Tracking

Status: Original

Holder: Christina Cabrera

Location: DocuSign

5/11/2020 1:26:26 PM

ccabrera@bryantx.gov

## Signer Events

Janis Hampton

jhampton@bryantx.gov

Security Level: Email, Account Authentication  
(None)

## Signature

*Janis Hampton*

## Timestamp

Sent: 5/11/2020 1:29:15 PM

Viewed: 5/11/2020 2:41:58 PM

Signed: 5/11/2020 2:42:07 PM

Signature Adoption: Pre-selected Style

Using IP Address: 198.183.241.123

## Electronic Record and Signature Disclosure:

Accepted: 5/11/2020 2:41:58 PM

ID: 9f49b10b-a553-4ef2-b434-69b1526c1bfc

Kean Register

kregister@bryantx.gov

Security Level: Email, Account Authentication  
(None)

*Kean Register*

Sent: 5/11/2020 2:42:09 PM

Viewed: 5/12/2020 11:24:09 PM

Signed: 5/12/2020 11:24:16 PM

Signature Adoption: Pre-selected Style

Using IP Address: 50.24.145.92

## Electronic Record and Signature Disclosure:

Accepted: 5/12/2020 11:24:09 PM

ID: 4f05b5b7-b67e-4f23-bc80-50a844966c87

Mary L Stratta

mstratta@bryantx.gov

Security Level: Email, Account Authentication  
(None)

*Mary L Stratta*

Sent: 5/12/2020 11:24:17 PM

Viewed: 5/13/2020 11:05:13 AM

Signed: 5/13/2020 11:05:39 AM



Signature Adoption: Pre-selected Style

Using IP Address: 69.5.213.79

## Electronic Record and Signature Disclosure:

Accepted: 5/13/2020 11:05:13 AM

ID: 4abbb8ce-ab8b-4955-9294-5201f2c591c9

## In Person Signer Events

## Signature

## Timestamp

## Editor Delivery Events

## Status

## Timestamp

## Agent Delivery Events

## Status

## Timestamp

**Intermediary Delivery Events**

**Status**

**Timestamp**

**Certified Delivery Events**

**Status**

**Timestamp**

**Carbon Copy Events**

**Status**

**Timestamp**

Carmen Mulvaney  
cmulvaney@bryantx.gov



Sent: 5/13/2020 11:05:42 AM  
Viewed: 5/13/2020 1:20:02 PM

Security Level: Email, Account Authentication  
(None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

**Witness Events**

**Signature**

**Timestamp**

**Notary Events**

**Signature**

**Timestamp**

**Envelope Summary Events**

**Status**

**Timestamps**

Envelope Sent  
Certified Delivered  
Signing Complete  
Completed

Hashed/Encrypted  
Security Checked  
Security Checked  
Security Checked

5/13/2020 11:05:42 AM  
5/13/2020 11:05:42 AM  
5/13/2020 11:05:42 AM  
5/13/2020 11:05:42 AM

**Payment Events**

**Status**

**Timestamps**

**Electronic Record and Signature Disclosure**

## **ELECTRONIC RECORD AND SIGNATURE DISCLOSURE**

From time to time, City of Bryan (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

### **Getting paper copies**

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

### **Withdrawing your consent**

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

### **Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

### **All notices and disclosures will be sent to you electronically**

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

### **How to contact City of Bryan:**

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: [citysecretaryweb@bryantx.gov](mailto:citysecretaryweb@bryantx.gov)

### **To advise City of Bryan of your new email address**

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at [citysecretaryweb@bryantx.gov](mailto:citysecretaryweb@bryantx.gov) and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

### **To request paper copies from City of Bryan**

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to [citysecretaryweb@bryantx.gov](mailto:citysecretaryweb@bryantx.gov) and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

### **To withdraw your consent with City of Bryan**

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:



- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to [citysecretaryweb@bryantx.gov](mailto:citysecretaryweb@bryantx.gov) and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

### **Required hardware and software**

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

### **Acknowledging your access and consent to receive and sign documents electronically**

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to ‘I agree to use electronic records and signatures’ before clicking ‘CONTINUE’ within the DocuSign system.

By selecting the check-box next to ‘I agree to use electronic records and signatures’, you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify City of Bryan as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by City of Bryan during the course of your relationship with City of Bryan.