**381 ECONOMIC DEVELOPMENT RULES**

**Article I**

**Definitions**

For purpose of these Rules, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

“Bankruptcy or Insolvency” shall mean the dissolution or termination of a Builder’s existence as a going business, insolvency, appointment of receiver for any part of such Builder’s property and such appointment is not terminated within one hundred twenty (120) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such Builder and such proceeding is not dismissed within one hundred twenty (120) days after the filing thereof.

“Builders” shall mean any home builder, its successors and assignees, that constructs new homes in any designated Fort Bend County Assistance District and meets the qualifications for a Direct Payment Permit from the State.

“CAD” shall mean Fort Bend County Assistance Districts Nos. 7, 8, 9, 10, 11 & 12.

“County” shall mean Fort Bend County, Texas.

“Direct Payment Permit” also referred to herein as a “Texas Direct Payment Permit” shall mean that permit issued by the State authorizing Builders to self assess and pay applicable state and local use taxes directly to the State related to selected portions of the Builders’ taxable purchases. Texas Rule 3.288 of the Texas Administrative Code defines the requirements and responsibilities of the Texas Direct Payment Permit holders along with any amendments, permutations, or recodifications of such Code or Rules whether renaming such permits or otherwise modifying such provisions.

“Effective Date” shall mean the date of adoption of these Rules by Commissioner’s Court.

“Expiration Date” shall mean the 10th anniversary of the Effective Date unless these Rules are extended by Commissioner’s Court, in which case the Expiration Date shall mean the date of expiration of such extended period.

“Grant Period” shall mean consecutive six (6) month periods during the term of this Agreement, except that the first Grant Period shall begin on the Effective Date and continue through and include the last day of the sixth (6th) full month following the Effective Date.

“Impositions” shall mean all taxes, assessments, use and occupancy taxes, charges, excises, licenses and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on the Builders or any property or any business owned by the Builders within the County.

“Payment Request” shall mean a written request from the Builder to the County for payment of a Use Tax Grant accompanied by the Use Tax Certificate for the applicable Grant Period.

“State” shall mean the Office of the Texas Comptroller, or its successor.

“Taxable Items” shall have the same meaning assigned by Sections 151.010 and 151.0101, Tex.Tax Code, as amended.

“Use Tax” shall mean the County Assistance District two percent (2%) use tax imposed by the CAD pursuant to Chapter 323 of the Texas Tax Code, attributed to the purchase of Taxable Items by Builders associated with the issuance of Builder’s Texas Direct Payment for Taxable Items used or consumed in the CAD.

“Use Tax Certificate” shall mean a certificate or other statement in a form reasonably acceptable to the County setting forth the Builder’s accrual and payment of Use Tax imposed by and received by the CAD from the State, for the use of Taxable Items by Builder in the CAD for the applicable Grant Period which are to be used to determine Builder’s eligibility for a Use Tax Grant, together with such supporting documentation required herein, and as County may reasonably request. (See **Texas Comptroller of Public Accounts FORM 01-919**, attached hereto and fully incorporated herein)

“Use Tax Grants” shall mean semi-annual economic development grants to be paid by the County to the Builder, each in the amount equal to twenty five percent (25%) of the Use Tax Receipts received by the County for the applicable Grant Period, to be paid as set forth herein. The amount of each Use Tax Grant shall be computed by multiplying the Use Tax receipts received by the County for a given Grant Period by the percentage less any administrative fee charged to the County by the State for collection of the Use Taxes pursuant to Tax Code Section 323.503 or other applicable law.

“Use Tax Receipts” shall mean the County’s receipts from the State from the collection of the Use Tax attributed to the issuance of Builder’s Texas Direct Payment for Taxable Items used or consumed in the CAD.

**Article II**

**Term**

These Rules shall begin on the date of adoption by Commissioner’s Court (the “Effective Date”) and continue until the Expiration Date, unless sooner terminated as provided herein. These Rules shall automatically extend for one additional period of five (5) years upon the expiration of the initial term of ten (10) years, unless the County provides written notice to the Builder to terminate at least ninety (90) days prior to the expiration of the initial term.

**Article III**

**Economic Development Grants**

(A) *Use Tax Grants*. Subject to the continued satisfaction of all the terms and conditions of these Rules by the Builder, the County agrees to provide Builder with semi annual Use Tax Grants. The Use Tax Grants shall be paid within thirty (30) days after receipt of Payment Request following the end of each Grant Period. Each Payment Request shall be submitted to the County no later than thirty (30) days following the end of the applicable Grant Period, beginning with the first Grant Period.

(B) *Adjustment Notification*. The Builder shall promptly notify the County in writing of any adjustments found, determined or made by the Builder, the State or by an audit that results, or will result, in either a refund or reallocation of Use Tax receipts or the payment of Use Tax or amounts reported by the Builder as subject to this Assessment. Such notification shall also include the amount of any such adjustment in Use Tax or Use Tax Receipts.

(C) *Amended Returns*. In the event Builder files an amended use tax return, or report with the State, or if additional Use Tax is due and owing by Builder to the State, as determined or approved by the State, affecting Use Tax Receipts for a previous Grant Period, then the Use Tax Grant payment for the Grant Period immediately following such State approved amendment shall be adjusted accordingly (i.e., up or down, depending on the facts) provided the County has received Use Tax Receipts attributed to such adjustment. As a condition precedent to payment of such adjustment, Builder shall provide the County with a copy of any such amended use tax report or return, and the approval thereof by the State. Copies of any amended use tax return or report or notification from the State that additional Use Tax is due and owing by the Builder to the State, as determined by the State, affecting Use Tax Receipts for a previous Grant Period shall be provided to the County with the Payment Request for the next Grant Period.

(D) *Refunds and Underpayments of Use Tax Grants*. In the event the State determines that the County erroneously received, for the benefit of the County Use Tax receipts, or that the amount of Use Tax Receipts paid to the Builder exceeds (or is less than) the correct amount of Use Tax for a previous Grant Period, for which the Builder has received a Use Tax Grant, the Builder shall, within sixty (60) days after receipt of notification thereof from the County specifying the amount by which such Use Tax Grant Exceeded the amount to which the Builder was entitled pursuant to such State determination, adjust (up or down, depending on the facts) the amount claimed due for the Use Tax Grant payment for the Grant Period immediately following such State determination. If the Builder does not adjust the amount claimed due for the Use Tax Grant payment for the Grant Period immediately following such State determination the County may, at its option, adjust the Use Tax Grant payment for the Grant Period immediately following such State determination. If the adjustment results in funds to be paid back to the County, the Builder shall repay such amount to the County within sixty (60) days after receipt of such State determination. As a condition precedent to payment of such refund, the County shall provide the Builder with a copy of such determination by the State. The provision of the Section shall survive termination of these Rules.

(E) *Use Grant Payment Termination, Suspension*. The payment of the Use Tax Grants shall terminate on the effective date of termination of the Direct Payment Permit or on the date of determination by the State or other appropriate agency or court of competent jurisdiction that the Use Tax associated with the Direct Payment Permit was incorrectly paid to the County (the “Comptroller Challenge”). In the event the State seeks to invalidate the payment of Use Tax to the County associated with the Direct Payment Permit the payment of Use Tax Grants by the County hereunder shall be suspended until such Comptroller Challenge is resolved in whole favorably to the County. In such event, the Builder shall not be required to return or refund Use Tax Grants previously received from the County provided the builder is actively defending against and/or contesting the Comptroller Challenge and Builder promptly informs the County in writing of such Builder actions and with copies of all documents and information related thereto. In the event the Comptroller Challenge is not resolved favorable to the County, then the obligation to pay the Use Tax Grants shall terminate and the Builders shall refund all Use Tax Grants received by the Builder from the County that relate to the Comptroller Challenge, which refund shall be paid to the County within sixty (60) days after the date that the County is required to repay Use Tax Receipts.

(F) *Grant Limitations*. Under no circumstances shall County obligations hereunder be deemed to create any debt with the meaning of any constitutional or statutory provision. Further, the County shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by the Builder. None of the County’s obligations under these Rules shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

(G) *Current Revenue*. The Use Tax Grants made hereunder shall be paid solely from lawfully available funds pursuant to Texas Constitution Article III, Section 52-a, and Texas Local Government Code Chapter 381. Consequently, notwithstanding any other provision of this Agreement, the County shall have no obligation or liability to pay any Use Tax Grants except as allowed by law. The County shall not be required to pay any Use Tax Grants if prohibited under federal or state legislation or a decision of a court of competent jurisdiction.

(H) *Indemnification.* The Builder agrees to sign the **Indemnification Agreement** attached hereto and incorporated herein for all purposes.

**Article IV**

**Conditions to the Economic Development Grant**

The obligation of the County to provided the Use Tax Grants shall be conditioned upon the continued compliance with and satisfaction of each of the terms and conditions of these Rules by the Builder and each of the conditions set forth in this Article.

(A) *Good Standing*. The Builder shall not have an uncured breach or default of these Rules or a Related Policy beyond any applicable notice and cure period.

(B) *Payment Request*. The Builder shall, as a condition precedent to the payment of each Use Tax Grant, timely provide the County with the applicable Payment Request.

(C) *Use Tax Receipts*. County shall have received the actual Use Tax Receipts for the Grant Period for which payment of the Use Tax Grant is requested.

(D) *Direct Payment Permit*. The Builder shall issue its Texas Direct Exemption Certificate to specific suppliers or vendors that provide large quantities of building materials or other tangible personal property. The builder shall have provided the County with a true and correct copy of its Texas Direct Payment Permit, which permit shall be kept in full force and effect throughout the term of the Agreement.

(E) *Use Tax Certificate*. As a condition to the payment of each Use Tax Grant hereunder, the County shall have timely received a Use Tax Certificate for the applicable Grant Period for which payment of a Use Tax Grant is requested. The County shall have no duty to calculate the Use Tax Receipts or determine the entitlement of the Builder to any Use Tax Grant, or pay any Use Tax Grant during the term of this Agreement until such time as the Builder has provided a Use Tax Certificate and a Payment Request for the applicable Grant Period. The County may, but is not required to, provide Builder with a form for the Use Tax Certificate required herein. At the request of the County, the Builder shall provide such additional documentation as may be reasonably requested by the County to evidence, support and establish the Use Tax Receipts (including Use Tax paid directly to the State pursuant to a direct payment permit) received by the County from the State. The Payment and the accompanying Use Tax Certificate shall at a minimum contain, include or be accompanied by the following:

(1) A copy of all Texas Direct Payment Permit and self-assessment Use Tax returns and reports, Use Tax audit assessments or credits, including amended Use Tax returns or reports, filed by the Builder of the applicable Grant Period showing Use Tax paid directly to the State related to Builder’s operation for such Grant Period pursuant to the Direct Payment Permit; and

(2) Information concerning any refund or credit received by the Builder of Use Tax paid by the Builder which has previously been reported by the Builder as Use Tax paid for a previous Grant Period during the term of this agreement.

(3) Schedules, which show the amount of total purchase of Taxable Items by the Builder for the applicable Grant Period, and the amount of Use Tax accrued and paid to the State pursuant to the Direct Payment Permit a result of the purchase of Taxable Items by the Builder for the applicable Grant Period which amounts are all contained on the Texas Direct Payment Use Tax return.

County agrees to the extent allowed by law to maintain the confidentiality of every Use Tax Certificate.

**Article V**

**Termination and Offsets**

(A) *Termination*. These Rules terminate on the Expiration Date, and may, prior to the Expiration Date, be terminated upon any one or more of the following:

(1) by vote of Commissioner’s Court;

(2) upon written notice by the County, if Builder suffers an event of Bankruptcy or Insolvency; or

(3) upon written notice of County or Builder, if any subsequent Federal or State legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable.

(B) *Offsets*. The County may at its option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due to the County from the Builder regardless of whether the amount due arises pursuant to the terms of these Rules, a related policy or otherwise and regardless of whether or not the debt due the County has been reduced to judgment by a court.

**Article VI**

**Notice**

*Notice*. Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below (or such other address as such party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered or sent via fax.

If intended for County, to: With a copy to:

Attn: Roy Cordes Richard Morrison

Fort Bend County Attorney Smith, Murdaugh, Little & Bonham, L.L.P.

401 Jackson St. 2727 Allen Parkway, Ste. 1100

Richmond, Texas 77469 Houston, Texas 77019

281-341-4555 713/652-6500

281-341-4557 *fax* 713/652-6515 *fax*

If intended for the Builder:

Attn: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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