

**AGREEMENT BETWEEN
THE CITY OF SUGAR LAND, TEXAS AND
CHIMNEYSTONE PLANNED COMMUNITY DEVELOPMENT, INC.**

This agreement ("Agreement") is entered into between the **CITY OF SUGAR LAND, TEXAS** ("City") and **CHIMNEYSTONE PLANNED COMMUNITY DEVELOPMENT, INC.** ("Chimneystone").

Background:

Chimneystone is a property owners' association created for the Chimneystone community located within the City. By Resolution No. 14-27 the City Council of the City of Sugar Land adopted a Council Policy Regarding Participation With Community-Based Organizations in Capital Improvement Projects Using 4B Corporation Funds ("Policy"). Under the Policy, on January 2, 2018 Chimneystone submitted an application to the City requesting that the Sugar Land 4B Corporation ("SL4B") assist with funding for a decorative brick perimeter fencing that will extend south along Settlers Way Blvd. from Hwy. 6 to the north side of the Frontier Dr. intersection ("Application"). The decorative brick perimeter fencing will replace approximately 1,120 linear feet of an existing wooden fence located on Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, and 19 of Block 1 of the Chimneystone Section One Plat recorded in Slide No. 386A/B, File No. 1172375 of the Fort Bend County, Texas Plat Records ("Plat") (collectively, Lot Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, and 19 are the "Lots" and individually a "Lot"). The decorative brick perimeter fencing will be located within an existing sixteen-foot public utility easement originally dedicated by the Plat and also shown on the Lots ("Public Utility Easement").

The SL4B adopted Resolution No. 2018-12-23 approving funding for a portion of the costs of the decorative brick perimeter fencing, subject to: (1) Chimneystone obtaining a "No Objection" letter from each entity with utility facilities located within the Public Utility Easement stating that the entity does not object to the decorative brick perimeter fencing being located within the Public Utility Easement; (2) each Lot owner signing a Consent to Encroachment in a form acceptable to the City; (3) Chimneystone submitting to the City: (i) written notice that it intends to proceed with the project; (ii) a "No Objection" letter from each entity with utility facilities located in the Public Utility Easement; and (iii) the signed Consent to Encroachment from each Lot owner; and (4) Chimneystone entering into this Agreement regarding the decorative brick perimeter fencing.

Chimneystone has: (1) obtained a "No Objection" letter from each entity with utility facilities located within the Public Utility Easement stating that the entity does not object to the decorative brick perimeter fencing being located within the Public Utility Easement; (2) obtained a Consent to Encroachment signed by each Lot owner in a form acceptable to the City; and (3) submitted to the City: (i) written notice that it intends to proceed with the project; (ii) a "No Objection" letter from each entity with utility facilities located in the Public Utility Easement; and (iii) the signed Consent to Encroachment from each Lot owner. Chimneystone desires to enter into this

Agreement to establish the terms of the decorative brick perimeter fencing.

Agreement:

In consideration of the promises of each, the parties agree as follows:

1. Definitions. The capitalized terms in the Background section of this Agreement have the meaning ascribed therein and apply to this Agreement. Furthermore, in this Agreement:

Improvements means the decorative brick perimeter fencing that will extend south along Settlers Way Blvd. from Hwy. 6 to the north side of the Frontier Dr. intersection, the depiction and specifications of which are shown in the attached Exhibit A, which is incorporated into this Agreement.

2. Effective Date and Term. This Agreement is effective on: (1) the latest date of the parties' signatures; or (2) the date Chimneystone provides the City with a recorded copy of the Consent to Encroachment signed by each Lot owner, filed for record in the Fort Bend County, Texas Official Public Records, whichever occurs later. This Agreement ends on the date the City makes payment to Chimneystone as provided in this Agreement.

3. Installation. Chimneystone will own and may install, maintain, and replace the Improvements within the Public Utility Easement in compliance with this Agreement, the Consent to Encroachment signed by each Lot owner, the City's ordinances, and other applicable laws and regulations. Chimneystone will enter into a contract(s) with contractor(s) to construct the Improvements. Chimneystone must obtain any permits and pay any fees required by the City or other governmental entities relating to the installation of the Improvements within the Public Utility Easement, including any permits or fees required for working in City easements.

4. Maintenance. After construction and installation, Chimneystone must maintain and keep the Improvements in good condition and repair and in compliance with the Consent to Encroachment signed by each Lot owner, the City's ordinances, and other laws.

5. City Reimbursement for Improvements. Upon completion of the Improvements, Chimneystone will submit to the City:

- (a) Copies of all required permits obtained for installation of the Improvements;
- (b) Copies of receipts showing that all the contractor(s) have been paid a total amount of at least \$152,106.00;
- (c) A letter from the Chimneystone Board President warranting that the Improvements have been completed according the requirements of this Agreement; and
- (d) Photographs of the completed Improvements.

The City will make one payment of \$75,000.00 to Chimneystone within 30 days of the City's review and approval of the documents and photographs listed above.

7. Termination.

- (a) If Chimneystone fails to substantially begin work to install the Improvements within 60 days of the effective date of this Agreement, the City's city manager may terminate this Agreement by giving Chimneystone at least 10 days' written notice of termination prior to the date of termination.
- (b) The City may terminate this Agreement as provided in this paragraph if Chimneystone fails to comply with any provision of this Agreement. The City will give Chimneystone notice of the default in writing citing the terms of the Agreement that have been breached and what action Chimneystone must take to cure the default. If Chimneystone fails to cure the default as specified in the notice within 30 days after receiving the notice (or such longer period as may be necessary provided that Chimneystone promptly begins curing the default and diligently continues such efforts to completion), the City's city manager may terminate this Agreement by written notice to Chimneystone, specifying the date of termination.

8. Notices. All notices required under this Agreement must be in writing and may be sent by: (a) delivering the notice in person; (b) depositing the notice in the U. S. Mail, certified or registered, return receipt requested, postage prepaid; (c) by depositing the notice with Federal Express or another nationally recognized courier service for next day delivery; or (d) sending the notice by telefax with confirming copy sent by mail. Notice is deemed effective when received by the Party to be notified. All notices must be sent or delivered to the following addresses or as the City or Chimneystone may hereafter designate by written notice:

City: City of Sugar Land
2700 Town Center Boulevard North
Sugar Land, Texas 77479
Attn: City Manager

Chimneystone: Chimneystone Planned Community Development, Inc.
c/o Creative Management Co.
8323 Southwest Freeway, Suite 330
Houston, Texas 77074
Attn: Christi Keller, Association Manager

9. Binding Agreement. This Agreement is binding on Chimneystone, its successors, assigns and grantees.

10. Law Governing and Venue. This Agreement is governed by the law of the State of Texas and a lawsuit may only be prosecuted on this Contract in a court of competent jurisdiction

located in or having jurisdiction in Fort Bend County, Texas.

11. Entire Agreement. This Agreement represents the entire agreement between the City and Chimneystone and supersedes all prior negotiations, representations, or contracts, either written or oral. This Agreement may be amended only by written instrument signed by both parties.

12. Severability. If a court finds or rules that any part of this Agreement is invalid or unlawful, the remainder of the Agreement continues to be binding on the parties.

CITY OF SUGAR LAND

**CHIMNEYSTONE PLANNED COMMUNITY
DEVELOPMENT, INC.**

Allen Bogard, City Manager

By: James Moore
Title: President

Date: _____

Date: 12/28/18

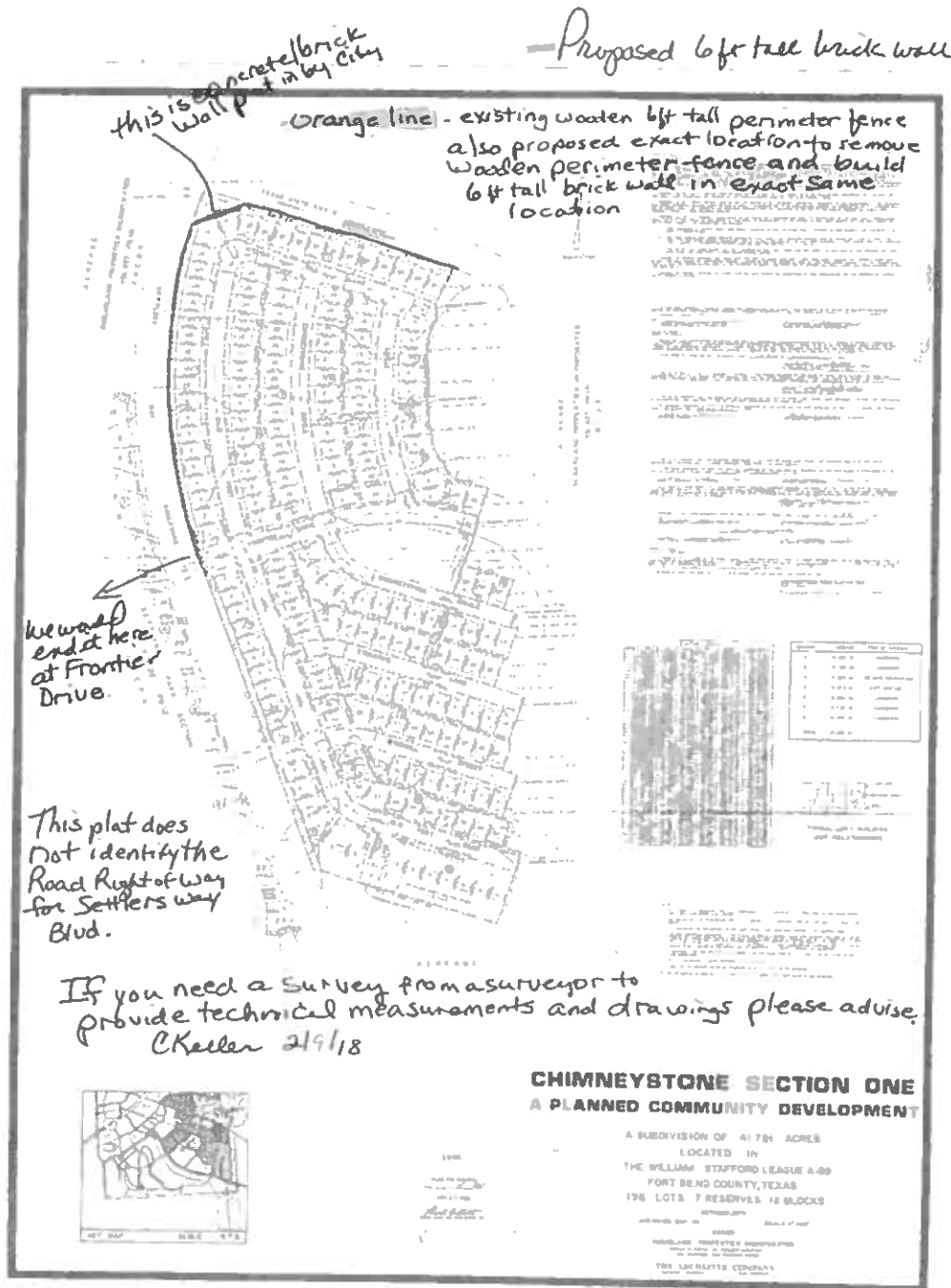
ATTEST:

Glenda Gundermann, City Secretary

Approved as to Form:

DAnn Shea Smith

EXHIBIT A (Improvements)



DESCRIPTION

- Construction of single brick perimeter fence with columns approximately every 14', fence to be approximately 1,160 linear feet
- Work to include: Demolish and removal of approximately 1,160 linear feet of existing fence.

SCOPE OF WORK:

- Demolish and removal of wooden fence in resident's backyard. Temporary fencing to be put in place as work progresses
- Brick columns to be approximately 6 ½' tall with poured concrete foundation with rebar for support and spaced approximately every 14'
- Single brick panels to be approximately 6' tall and approximately 13' long with metal angle for support