



**GOVERNING BOARD AGENDA ITEM
AMPHITHEATER UNIFIED SCHOOL DISTRICT NO. 10**

DATE OF MEETING: **March 27, 2019**

TITLE: **Ratification of Superintendent's Execution of Agreement with Real Estate Developer KB Home Regarding Voluntary School Impact Donation Pursuant to Governing Board Policy KLJA.**

BACKGROUND:

Governing Board policy KLJA permits the district to solicit and encourage real estate developers to contribute voluntary "educational donations" to the district to offset the impact on the district's schools of their proposed developments. Especially in the growing northern part of the District's boundaries, increased enrollment resulting from developments may result in over-enrollment, exceeding schools' physical capacity.

Presently, the State School Facilities Board (SFB) does not provide funding for school construction in growing neighborhoods if physical enrollment capacity exists elsewhere in a school district. Instead, the SFB requires districts to bus children where capacity exists or to redraw school boundaries to adjust enrollment patterns, both of which substantially interfere with the neighborhood school philosophy our district and community have long embraced.

In a proactive effort to avoid overcrowding and negative impact on the district's students, the district has entered into negotiations with real estate developers pursuant to Policy KLJA. In each case, the district has sought an educational donation per home, due at the close of escrow of each home, or the donation of land to be used for school construction.


The district concluded favorable negotiations with KB Home related to a development consisting of approximately one hundred twenty-five (125) single-family residential units on fifty-two (52) acres located at the northwest corner of La Cholla Boulevard at Overton Road. The Project will impact the enrollment at Wilson K-5 (estimated 26 students); Wilson 6-8 (estimated 28 students) and Ironwood Ridge High (estimated 16 students).

The result of this negotiation was the developer's commitment to pay the District twelve hundred dollars (\$1,200.00) for each detached single-family residential unit built on platted lots in its proposed development. An agreement has been reached with the developer and is attached for the Board's ratification.

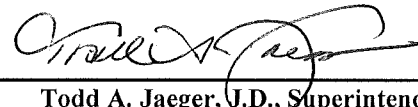
RECOMMENDATION:

This is presented for the Board's ratification, which the administration recommends.

INITIATED BY:


Michelle H. Tong, J.D.,
Associate to the Superintendent and General Counsel

Date: March 25, 2019


Todd A. Jaeger, J.D., Superintendent

Developer Donation Agreement

This Agreement (“the Agreement”) is entered into as of the _____ of March, 2019, by and between the AMPHITHEATER UNIFIED SCHOOL DISTRICT NO. 10 OF PIMA COUNTY, ARIZONA (also known as Amphitheater Public Schools), a political subdivision of the State of Arizona (“District”) and KB Home Tucson, Inc. (“Developer”).

RECITALS

A. Developer owns an interest in certain real property in Oro Valley, Arizona, which is more particularly described on “Exhibit A” attached hereto and incorporated by reference herein (the “Property”). Developer is currently developing the Property as a single family residential subdivision commonly known as Vista del Oro (the “Project”) which is located within unincorporated Pima County, Arizona.

B. High quality schools and school facilities are in the best interest of Developer’s homebuyers within the Project, who are also the present and future residents of the District;

C. The District is financially constrained in its ability to build and furnish new school facilities by the current system of school and capital funding within the State of Arizona; and

D. Voluntary financial contributions made to the District by the Developer will be utilized to mitigate the impact of the increased student population of the Project upon the District and mitigate the limitation of the District’s ability to build and furnish facilities.

AGREEMENT

Therefore, in consideration of the mutual promises and performances set forth herein and the potential impact of the Project on the resources of the District, the parties hereby agree to the following:

1. Payment of Education Donation. Developer agrees to pay the District a voluntary cash contribution totaling twelve hundred dollars (\$1,200.00) for each planned single-family residential unit (“Dwelling Unit”) in the Project which are sold to a third party.

2. Future Development Fees. The parties acknowledge that Developer’s financial contributions to the District in accordance with the terms and conditions of this Agreement are intended to satisfy any and all obligation of Developer (in connection with Developer’s development of the Project) to facilitate the acquisition, development, construction and/or improvement of any and all public school facilities within the District and to address the anticipated impact of Developer’s development of the Property on the District. Notwithstanding any provision in this Agreement, if during the development of the Project, any other governmental authority with jurisdiction imposes any development fee, impact fee, dedication

requirement or similar fee or charge per dwelling unit, the District will reduce the contribution amount per dwelling unit by the amount of the development or impact fee, if such fee is assessed to facilitate the acquisition, development, construction and/or improvement of the District's public school facilities.

3. Time and Manner of Payment. The financial for each Dwelling Unit sold by Developer, or its successors or assignees, shall be paid to District at or prior to the close of escrow for each Dwelling Unit within the Project.

4. Assignment and Succession. All of the provisions hereof shall inure to the benefit of and be binding upon the personal representatives, heirs, successors and assigns of District and Developer. Developer may assign its interest hereunder without the prior written consent of District.

5. Party Benefit. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between District and Developer. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, corporation or other entity not a party hereto (including, without limitation, any broker), and no such party shall have any right or cause of action hereunder.

6. Miscellaneous Terms and Conditions.

a. Recitals Incorporated. The recitals set forth above are accepted by the parties to be true and correct and are incorporated herein by this reference.

b. Headings. The descriptive headings of the sections of this Agreement are inserted by convenience only and shall not control or affect the meaning or construction of any of the Agreement's provisions.

c. Exhibits. Any exhibit attached to this Agreement shall be deemed to have been incorporated in this Agreement by this reference with the same force and effect as if it were fully set forth in the body of the Agreement.

d. Entire Agreement. This Agreement and the attached exhibit constitutes the entire agreement between the parties pertaining to the subject matter of the Agreement. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are superseded and merged in this Agreement. This Agreement shall be governed by the laws of the State of Arizona and is also subject to A.R.S. 38-511.

e. Counterparts. This Agreement may be executed in any number of counterparts. Each such counterpart hereof shall be deemed an original, but all counterparts shall constitute one agreement.

f. Representations. Each of the parties represents and warrants to the other that it is duly formed and validly existing in the state of its formation and is good

standing in the State of Arizona; that it has full power and authority to enter into and carry out the provisions of this Agreement and all documents and instruments contemplated hereunder; that doing so will not violate or be in conflict with any law, rule, regulation or order of any agreement to which it is a party or under which it is bound; that this Agreement has been authorized by all necessary action and is the valid and binding obligation of such party.

g. Further Acts. Each of the parties to this Agreement shall promptly and expeditiously execute and deliver all of such documents and perform all of such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

h. Notices. All notices, requests, demand or other communications ("Notices") required or permitted by this Agreement shall be in writing and served by personal delivery, recognized overnight courier service, electronically confirmed telecopy with a follow-up by regular United States Mail, or by deposit in the United States mail, certified mail, return receipt requested, postage prepaid, addressed to the party to receive the same as follows:

If to the District: Legal Department
 Amphitheater Public Schools
 701 West Wetmore Road
 Tucson, Arizona 85705

If to Owner: KB Home Tucson, Inc.
 c/o Amy McReynolds, Division President
 201 N. Bonita Avenue – Suite 135
 Tucson, AZ 85745

All Notices shall be effective upon delivery and shall be deemed delivered on the date when actually received, whether notice is given by personal delivery, recognized overnight courier service, electronically confirmed telecopy or by mail. Any party may designate a difference person or entity or change the place to which any Notice shall be given as provided in this Agreement, which Notice shall be effective after the same is actually received by the other party.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first above written.

DISTRICT:

**AMPHITHEATER UNIFIED SCHOOL DISTRICT
NO. 10 OF PIMA COUNTY, ARIZONA,**
A political subdivision of the State of Arizona

By: Michelle Tong
Name: Michelle Tong

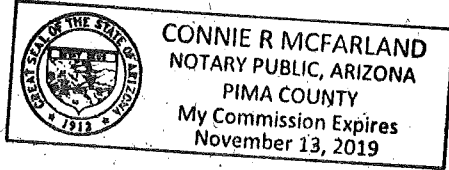
Its: Associate to the Superintendent and General Counsel

STATE OF ARIZONA)
) ss.
County of Pima)

The foregoing instrument was acknowledged before me this 25th day of March, 2019 by Michelle Tong, the Associate to the Superintendent and General Counsel of Amphitheater Unified School District No. 10 of Pima County, Arizona, on behalf of the District.

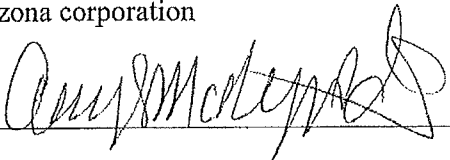
Connie R McFarland
Notary Public

My commission expires:



DEVELOPER:

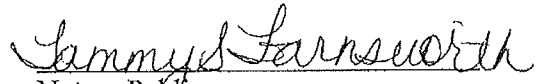
KB Home Tucson, Inc.
An Arizona corporation

By:  (signature)

Name: Amy McReynolds
Its: Division President

STATE OF ARIZONA)
) ss.
County of Pima)

The foregoing instrument was acknowledged before me this 18 day of March, 2019
by Amy McReynolds, the Division President of
KB Home Tucson, Inc., an Arizona corporation.


Notary Public

My commission expires: 10/12/19

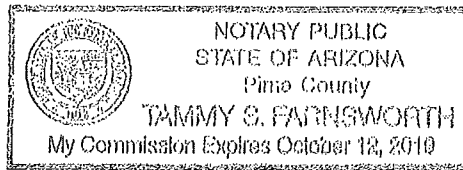


EXHIBIT "A"

LEGAL DESCRIPTION OF REAL PROPERTY

The Project Site is a portion of the NE ¼ of Section 21, T12S, R13E, and is more particularly located at the immediate northwest corner La Cholla Boulevard and Overton Road. The Site consists of four (4) contiguous parcels of land (Assessors Parcel Nos. 225-04-002A, 225-04-002C, 225-04-003P, and 225-04-008B), totaling approximately 50.7 acres in gross area.