

**DEVELOPMENT AGREEMENT
FOR PUBLIC IMPROVEMENTS**

WHEREAS, _____, (the "Developer"), whose business address is _____, is the owner and Developer of real property located in the corporate limits of the City of Corinth being described as _____, an addition to the City of Corinth, Texas (the "Development"); and

WHEREAS, Developer wishes to enter into this Agreement with the City of Corinth, Texas (the "City") to provide for the construction of certain Public Improvements generally described as _____ and as further described in the "Construction Documents prepared by Developer's Engineer, _____ ("Developer's Engineer") dated _____, a copy of which is attached hereto as Exhibit "A" and made a part hereof, (the "Construction Documents") which are necessitated by and will serve the Development; and

WHEREAS, Developer will provide to City a detailed cost analysis of the Public Improvements broken down into categories for Water, Wastewater, Streets, and Storm Drain, Street Lights and Signs, and, if applicable, Park or other Public Improvements, which, when received, shall be attached to this Agreement as Exhibit "B"; and

WHEREAS, this Agreement is required to ensure that the Public Improvements are constructed in accordance with the provisions of the City's Unified Development Code (the "UDC"), applicable ordinances, design criteria and Engineering Standards Manuals and the Construction Documents which were approved by the City and are on file in the Public Works Department, which may be amended with the written approval of the Director of Public Works or his designated representative (the "Director of Public Works"); and

WHEREAS, Developer understands and agrees that Developer is responsible for and has retained at its sole expense, the Developer's Engineer to design the Public Improvements in accordance with the Construction Documents, taking into consideration the specific site conditions that may impact the Public Improvements; and

WHEREAS, Developer has contracted for the construction of the Public Improvements with _____, whose address is _____ (the "Contractor"), a contractor experienced in the construction of improvements similar to the Public Improvements; and

WHEREAS, Developer and Contractor recognize that City has an interest in ensuring that the Public Improvements, which will, upon completion and acceptance by City, become public property, are properly constructed and paid for in accordance with the approved Construction Documents;

NOW, THEREFORE, Developer, Contractor, and City (the “Parties”) in consideration of their promises and covenants contained herein agree as follows:

SECTION 1. INCORPORATION OF RECITALS

All of the recitals in the Preamble are incorporated herein.

SECTION 2. COVENANTS OF DEVELOPER AND CONTRACTOR.

A. Contractor shall construct the Public Improvements in accordance with the approved Construction Documents, the UDC, design criteria, engineering standards manuals and other City ordinances, and all other rules, regulations and local, state, or federal laws; and complete the Public Improvements on or before the date established in the contract between Developer and Contractor, which shall be not later than two (2) years following the date of approval of the Construction Documents.

B. Contractor shall perform all work on the Public Improvements in a good and workman like manner and to the satisfaction of the Director of Public Works. The Director shall decide all questions, which arise as to the quality and acceptability of materials furnished, work performed, and the interpretation of the Construction Documents related to Public Improvements and may reject any work not performed in accordance with the Construction Documents.

C. Developer shall construct, or have constructed, the Improvements described herein or made part of this Agreement in the form of approved Construction Documents. Contractor, its surety and Developer warrant that the Public Improvements will be free from defects in materials and workmanship and that they will pay to remedy same for a period of **two (2)** years after the completion of the Public Improvements and final acceptance by City. This warranty shall not constitute a limitation on the duty to remedy latent defects in construction that were not known at the time of final acceptance or within said **two (2)** year warranty period.

D. Developer shall pay all claimants supplying labor and material to it and/or a subcontractor in the prosecution of the work provided in said contract between Developer and Contractor.

E. Any work done or materials used without suitable inspection by City may be ordered removed, and replaced at Contractor’s expense. The Director of Public Works shall perform periodic inspections of the work and shall perform a final inspection prior to final acceptance by City and an inspection within 90 days prior to the expiration of the two year period from the date of final acceptance of the work by City.

F. Developer agrees to:

1. Require its Contractor to give 48 hours’ notice to City’s Inspectors of intent to commence construction so that City inspection personnel will be available; and to require the Contractor to allow the construction to be subject to inspection at any and all times by City inspection forces, and not to install or relocate any sanitary sewer, storm drain, or water pipe unless a City inspector is present and gives consent to proceed, and to make such laboratory tests

of materials being used as may be required by City; and

2. To delay connections of buildings to service lines of sewer and water mains constructed under this Agreement until the sewer and water mains and service lines have been completed to the satisfaction of the Director of Public Works.

G. City shall not be responsible for any costs that may be incurred by Developer in the relocation of any utilities that are or may be in conflict with any of the public improvements to be installed hereunder.

H. Developer agrees to provide, at its expense, all necessary rights of way and easements across property owned by Developer and required for the construction of the current and future improvements provided for by this Agreement.

I. Developer shall make all of Developer's and Contractor's records, including financial, related to the construction of the Public Improvements available for inspection by City.

J. Developer agrees that City's specifications for public and private improvements are minimum standards only and Developer shall retain an Engineer for purposes of review of City specifications. If, in the engineer's opinion, additional technical design requirements (in addition to City specifications) are required to design the Public Improvements sufficient for local conditions, Developer will include such design requirements in the specifications for the Public Improvements. **City shall be expressly named as an intended third party beneficiary in the contract between Developer and Engineer.**

SECTION 3. BREACH

A. Upon breach of this Agreement by Developer or failure of Contractor to allow for inspection, to test materials furnished, to satisfactorily repair, remove or replace, if so directed, rejected, unauthorized or condemned work or materials, or to follow other request or orders of the Director of Public Works, the Director shall notify Developer and Contractor of such breach or failure and may suspend inspections of such work, put a hold on construction or withhold building permits until such breach or failure is remedied. If such breach or failure is not remedied to the satisfaction of the Director of Public Works, City shall have no obligation under this Agreement to approve or accept the Public Improvements and City may withhold, suspend, or revoke any permits or other approvals for the Development until such matter is remedied to the satisfaction of the Director of Public Works. City also is entitled to pursue all other remedies at law or in equity.

B. City may utilize the Developer's bonds submitted for public improvements if, at the end of two years from the date the Construction Plans were approved, the public improvements have not been completed and accepted.

C. City may utilize Developer's bonds to cause the completion of the construction of the public improvements or to cause the payment of costs for construction of same before the expiration of 2 years if Developer breaches this Agreement, becomes insolvent, bankrupt, or fails to pay costs of construction.

SECTION 4. INSURANCE

Contractor shall provide for insurance in form and in substance that meets the City's standard insurance requirements for public works projects, with such insurance primary to City, City, its officers and employees shall be named as additional insured. These insurance requirements are on file in the office of the Director of Public Works and are incorporated herein by reference.

SECTION 5. BONDS

A. Developer shall execute a performance bond in favor of City equal to 110% of the total costs in the Public Improvement Cost analysis in Exhibit "B" ensuring completion of the Public Improvements in accordance with the approved Construction Documents and warning against defects in materials and workmanship for a period of two years from the date of final acceptance by City.

B. Developer shall execute a payment bond in favor of City insuring against claims from suppliers and subcontractors equal to 110% of the Public Improvement Cost analysis in Exhibit "B".

C. Contractor/Developer shall provide a Maintenance Bond prior to completion of the project and final acceptance by City. The Maintenance Bond shall be equal to 110% of the Public Improvement Cost Analysis attached hereto as Exhibit "B".

D. The bonds described in this Section shall be executed by a corporate surety authorized to do business in the state of Texas in accordance with Chapter 2253 of the Texas Government Code and shall be on City's standard form and shall contain a local resident agent for service of process. Contractor may be a co-obligee on the performance and payment bonds with regard to Contractor's obligations.

SECTION 6. AMENITIES

A. City and Developer recognize that the Addition may incorporate a number of unique amenities and aesthetic improvements such as ponds, aesthetic lakes, unique landscaping, walls, and may incorporate specialty signage and accessory facilities. Developer agrees to accept responsibility for the construction and maintenance of all such aesthetic or specialty items such as walls, vegetation, signage, landscaping, street furniture, and pond and lake improvements until such responsibility is turned over to a property owners' association.

B. Developer may provide unique amenities within public right-of-way, such as landscaping, irrigation, lighting, etc., for the enhancement of the development. Developer agrees to maintain these amenities until such responsibility is turned over to a property owners' association. Developer understands that City shall not be responsible for the replacement of these amenities under any circumstances and further agrees to indemnify and hold harmless City from any and all damages, loss or liability of any kind whatsoever by reason of injury to property or third person occasioned by its use of the public right-of-way with regard to these improvements and Developer shall, at his own cost and expense, defend and protect City against

all such claims and demands.

SECTION 7. RETAINAGE: FINAL PAYMENTS; ACCEPTANCE

A. As security for the faithful completion of the Public Improvements, Developer and Contractor agree that Developer shall retain 10 percent of the total dollar amount of the contract price until final approval or acceptance of the Public Improvements by City. Developer shall thereafter pay Contractor the retainage, only after Contractor has furnished to Developer and City satisfactory evidence including an affidavit that all indebtedness has been paid, that all indebtedness connected with the work and all sums of money due for labor, materials, apparatus, fixtures or machinery furnished for and used in the performance of the work have been paid or otherwise satisfied. In addition, Contractor shall provide Developer a consent to final payment from the payment bond surety, and shall provide City a copy.

B. Upon proper completion of the Public Improvements in accordance with this Agreement, City agrees to accept the Public Improvements. Upon completion and final acceptance of the Public Improvements by City, the Public Improvements shall become the property of City free and clear of all liens, claims, charges or encumbrances of any kind. If, after acceptance of the Public Improvements, any claim, lien, charge or encumbrance is made, or found to exist, against the Public Improvements, or land dedicated to City, to which they are affixed, Developer and Contractor shall, upon notice by City, promptly cause such claim, lien, charge or encumbrance to be satisfied and released or promptly post a bond with City in the amount of such claim, lien, charge or encumbrance, in favor of City, to insure payment of such claim, lien, charge or encumbrance.

C. Prior to final acceptance of the Addition, Developer shall provide to City one mylar copy and one blue line copy Record Drawings of the Addition and a CD in CAD 2000 or later format, showing the improvements as actually constructed. The drawings will be stamped and signed by a registered professional civil engineer. In addition, Developer shall provide electronic files showing the grading plan and drainage area map; the plan and profile of the sanitary sewer, storm drain, roadway and waterline; all lot lines, and tie into the City of Corinth GIS Monuments

SECTION 8. CITY'S APPROVAL OF PLANS

A. Approval by the Director of Public Works or other City employee of any plans, designs or specifications submitted by Developer pursuant to this Agreement shall not constitute or be deemed to be a release of the responsibility and liability of Developer, its engineer, employees, officers or agents for the accuracy and competency of their design and specifications. Further approval shall not be deemed to be an assumption of such responsibility and liability by City for any defect in the design and specifications prepared by the Engineer, its officers, agents, or employees, it being the intent of the parties that approval by the Director of Public Works signifies City's approval on only the general design concept of the improvements to be constructed.

B. In this connection, Developer shall for a period of 10 years after the acceptance by City of the completed construction project, indemnify and hold harmless City, its officers, agents,

servants and employees, from any loss, damage, liability or expense on account of damage to property and injuries, including death, to any and all persons which may arise out of any defect, deficiency or negligence of the Engineer's designs and specifications incorporated into any improvements constructed in accordance therewith, and Developer shall defend at his own expense, any suits or other proceedings brought against City, its officers, agents, servants or employees, or any of them, on account thereof, to pay all expenses and satisfy all judgments which may be incurred by or rendered against them or any of them in connection herewith.

SECTION 9. INDEMNIFICATION

DEVELOPER COVENANTS AND AGREES TO INDEMNIFY AND DOES HEREBY INDEMNIFY, HOLD HARMLESS AND DEFEND CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS OR SUITS FOR PROPERTY DAMAGE OR LOSS AND/OR PERSONAL INJURY, INCLUDING DEATH, TO ANY AND ALL PERSONS, OF WHATSOEVER KIND OR CHARACTER, WHETHER REAL OR ASSERTED, (INCLUDING, WITHOUT LIMITATION, REASONABLE FEES AND EXPENSES OF ATTORNEYS, EXPERT WITNESSES AND OTHER CONSULTANTS), ARISING OUT OF OR IN CONNECTION WITH, DIRECTLY OR INDIRECTLY, THE CONSTRUCTION, MAINTENANCE, OCCUPANCY, USE, EXISTENCE OR LOCATION OF SAID IMPROVEMENT OR IMPROVEMENTS, AND SHALL FURTHER BE LIABLE FOR INJURY OR DAMAGE TO CITY PROPERTY, ARISING OUT OF OR IN CONNECTION WITH ANY AND ALL ACTS OR OMISSIONS OF DEVELOPER, ITS OFFICERS, AGENTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, LICENSEES, INVITEES, OR TRESPASSERS. DEVELOPER AGREES TO INDEMNIFY THE CITY, ITS OFFICERS AND EMPLOYEES FOR ANY DAMAGES, CLAIMS OR LIABILITIES ARISING FROM THE NEGLIGENT ACT OR OMISSION, OR OF THE CONCURRENT NEGLIGENT ACT OR OMISSION, OF THE CITY, ITS OFFICERS AND EMPLOYEES; PROVIDED THAT DEVELOPER'S OBLIGATION UNDER THIS SECTION AND SECTION 8.B. SHALL SURVIVE THE TERM OF THE AGREEMENT.

SECTION 10. MISCELLANEOUS PROVISIONS

- A. The provisions of this Agreement shall control over any conflicting provisions of any Contract between Developer and Contractor as to the construction of the Public Improvements.
- B. Developer acknowledges and agrees that there is reasonable nexus between the demands created by Developer and the Public Improvements, and that the costs associated with the construction and dedication of land for the Public Improvements is roughly proportional to the benefits received and the burdens imposed by the Development. Developer shall indemnify and hold City harmless against any claim by it or others claiming through it, that the required Public Improvements and associated dedication of land are unlawful exactions.
- C. The parties agree that this Agreement shall be enforceable in Denton County, Texas, and if legal action is necessary in connection therewith, exclusive venue shall lie in Denton County, Texas. The terms and provisions of this Agreement shall be construed in accordance with the

laws and court decisions of the State of Texas. The failure of either party to insist, in any one or more instances, on the performance of any of the terms of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term or right with respect to further performance.

D. The covenants in this Agreement shall run with the land and shall be binding upon all successors, heirs and assignees of the Developer and Contractor and City

E. Prior to final acceptance, Developer shall pay all applicable fees, including the total cost of street signs.

SECTION 11.SPECIAL PROVISIONS

This section is reserved for and is appropriate for detailing any pro-rata payments, City participation in community facilities, or other payments for future facilities, variances or waiver granted to the UDC and any other particular aspects of this proposed Development. (DEVELOPER TO INCLUDE AND CITY TO REVIEW AND APPROVE). If none exist, leave this section blank.

APPROVED this _____ day of _____, 2013.

DEVELOPER:

Company Name: _____

Authorized Signatory Printed: _____

Signature: _____ Title: _____

Address: _____

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be the person whose name is subscribed to the forgoing instrument, and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS ____ day of _____, 20__.

Notary Public in and for the State of Texas

My commission expires: _____

CONTRACTOR

Company Name: _____

Authorized Signatory Printed: _____

Signature: _____ Title: _____

Address: _____

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be the person whose name is subscribed to the forgoing instrument, and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS ____ day of _____, 20__.

Notary Public in and for the State of Texas

My commission expires: _____

CITY OF CORINTH, TEXAS

City Manager

ATTEST:

City Secretary

EXHIBIT B

Check items associated with the project being undertaken; checked items must be included as Exhibits to this Agreement.

<u>Included</u>	<u>Exhibit</u>
<input type="checkbox"/>	Location Map
<input type="checkbox"/>	Exhibit B-1: Water Improvements
<input type="checkbox"/>	Water Estimate
<input type="checkbox"/>	Exhibit B-2: Sewer Improvements
<input type="checkbox"/>	Sewer Estimate
<input type="checkbox"/>	Exhibit B-3: Paving Improvements
<input type="checkbox"/>	Paving Estimate
<input type="checkbox"/>	Exhibit B-4: Storm Drain Improvements
<input type="checkbox"/>	Storm Drain Estimate
<input type="checkbox"/>	Exhibit B-5: Street Lights and Signs Improvements
<input type="checkbox"/>	Street Lights and Signs Estimate
<input type="checkbox"/>	Exhibit B-6: Special Provision Exhibit for Amenities (if applicable)