

**Engineering
Development Review
Instruction Manual
For
Development
Contracts**

January 2019

Introduction:

This instruction manual is to serve as a guide in completion of the City of Denton Development Contract.

Development Contract:

All projects and permits that involve the construction of public improvements require a Development Contract (also referred to as the 3-way contract). The 3-way contract is an agreement that is executed by the Developer, Contractor and the City. The building permit cannot be issued until 3-way contracts are executed by all parties. Contract can take up to 2 weeks to process and longer if Developer or Contractor wants to make changes to standard contracts. Therefore, the sooner the Developer and Contractor can be lined up and begin this process, the sooner the City can process this contract and allow the release of the filing of the plat or issuance of the permit.

Contents:

1. Development Contract & Bond Instructions
2. Insurance Requirements
3. Example of an acceptable Development Contract

Questions:

If you have any questions pertaining to completion of the Development Contracts, please do not hesitate to contact Development Services at 940-349-8541.

Development Contract & Bond Instructions

The following pages are detailed instructions on how to put assemble a complete Development Contract package and how to complete the principal forms of the Development Contracts:

- **The Development Contract**
- **The Performance Bond**
- **The Payment Bond**

Insurance Requirements Instructions

The following pages identify what the minimum insurance coverage the City requires the Contractor to have to do business in the City of Denton during the term of the Development Contract.

DEVELOPMENT CONTRACT & BOND INSTRUCTIONS

Applicability of Development Contracts

Development contracts are required if a project involves the construction of public improvements, which generally includes construction or alteration of the following items:

- Sidewalk in public ROW or public easements.
- City streets including curb and gutter.
- Drainage facilities in public ROW or public easements. Excavation and alterations to channels are also included in this item.
- New sanitary sewer facilities in public ROW or public easements.
- New water supply facilities in public ROW or public easements.
- Earthwork in public ROW or public easements.
- Traffic signals and pedestrian buttons.

Certain items are typically performed by City forces and not considered public improvements for the purposes of requiring development contracts, which may include the following:

- Water service taps onto existing water mains (including taps for fire lines and water meter boxes).
- Water meter installations. All meters are installed by the City.
- Relocation of existing fire hydrants.
- Relocation of existing water meters.
- Installation of a new fire hydrant on an existing water main.
- Sewer service taps onto existing sanitary sewer mains.
- Sewer service taps into existing sanitary sewer manholes.
- Patching of existing streets where water, fire or sewer taps are made onto existing mains.

Required submittals

A complete development contract package includes:

- Data and Files:
 - Cover Letter
 - Signed and sealed construction plans, uploaded to your Development Contract Project number in ProjectDox.
 - If the public improvements are associated only with a permit under review by building inspections then the construction plans with Building Inspections approval stamp will be required.
 - Cost Estimates –Exhibit A (Itemized list of public improvements)
 - Shop Drawings (for all public infrastructures)
- Development Contract Package
 - Development Contract Checklist
 - Development Contract Forms
 - Performance Bond
 - Payment Bond (only required for improvements valued \$25,000 or more)
 - Power of Attorney (document typically provided by your bond agent)
 - Certificate of Insurance

Instructions: Development Contract Package

- Engineering Inspection Fee
- Developers Aid-to-Construct (if applicable)

EXHIBITS:

2. A copy of the contractor's bid or an engineer's estimate (Exhibit A) must be attached to the bond or escrow to document that the bond or escrow is for a sufficient amount. The bid or estimate must have a line item breakdown of the public improvements showing the unit cost, and quantity. Items in the breakdown should be clearly separated into one of five areas: Water, Sewer, Drainage, Paving or Sidewalk. An example of the contractor's bid or engineer's estimate is shown in the "Example Exhibit A" PDF file on the City of Denton website. Additionally, it is highly recommended to submit the Exhibit A to City staff for a brief review before acquiring bonds in order to ensure the accuracy of the development contract package.

DEVELOPMENT CONTRACTS:

3. The development contract and bond or escrow must be filled out in triplicate. Each document must have original signatures. The 3 originals of all documents (except insurance certificates, which can be copies) should be submitted to:

City of Denton
Development Services
215 W. Hickory Street
Denton, TX 76201

4. Please date the documents prior to submitting them to the City. Bonds or escrows are to be dated on the same day or later than the development contract. Also, in the case of Performance or Payment Bonds, the Power of Attorney is to be dated the same day as the bonds. The simplest thing to do is use the same date in all blanks.
5. The development contract checklist must be completed, signed, dated and returned with the other development contract documents. Submittals may be rejected without a completed, signed, development contract checklist.
6. Applicant will fill in the Contract Type and Project No. blanks in the upper right hand corner of the contracts as defined by Exhibit A.
7. All construction of public improvements (including streets, sidewalk, utilities, drainage, etc.) requires development contracts to be executed prior to construction of those improvements and/or filing a plat.
8. Anticipated duration of the City's internal review of Development Contracts is approximately 5 business days; greater if the applicant must revise and resubmit documents. An additional 7 days is allocated for execution through the Legal Department and City Manager's Office.

BONDS:

9. A performance bond from the contractor is required in all cases on the City's Performance Bond form. However, when the value of the public improvements will be less than \$15,000, an escrow agreement may be substituted for the performance bond. When public improvements will exceed \$25,000 a payment bond from the contractor is also required on the City's Payment Bond form. The Resident Agent of Surety for the Payment Bond must be located in one of the following counties: Denton, Tarrant, Dallas, Wise, Collin, Grayson, Rockwall or Cooke.
10. An affidavit of payment is required on all public improvement construction projects that are not covered by a Payment Bond prior to completion and acceptance of the improvements.
11. Bonds are to be issued by a treasury listed security licensed to do business in the State of Texas. The amount of the bonds must be within the underwriting limits stated in the treasury list for that security.

PUBLIC WORKS INSPECTION & FEE:

12. The engineering inspection fee amount will be tabulated during the review process of the contract package; it will be 3.5% of the improvement total. The engineering inspection fee is calculated from the bonded amount, which should ideally match the value of "Exhibit A". The fee is payable by check at Development Service Center 215 W. Hickory Street. The project or permit number must be indicated on the check so the payment can be applied properly. The applicant will be notified of this number and the fee amount(s) by email after the entire development contract package is received and processed for execution.
13. A pre-construction meeting may be required, as determined by the Public Inspections Department, after all development contract materials are submitted, approved and processed through the City of Denton Legal Department and City Manager's Office. Email notification will be sent to the applicant with additional instructions at the appropriate time.

CERTIFICATE OF INSURANCE:

14. Insurance coverage requirements are available from the City website. “Contractor’s Insurance” is the critical section of the generic insurance requirements available at the city website (direct link above). Proof of railroad protective insurance, umbrella liability insurance and owner’s protective liability insurance is not typically required. The submitted copy of the contractor’s insurance certificate must include:
- I. Name the City of Denton as Certificate Holder and list the City of Denton as an additional insured on the General Liability and Automobile Liability policies. If Umbrella or Excess Liability coverage is required for the project the City must also be named as an additional insured.
 - II. Have an expiration date that will cover the time estimated to complete construction of the public improvements covered by the contract. At a minimum, the expiration date of the insurance certificate will be at least 60 days from the date the contract documents are submitted to the City.
 - III. Include a waiver of subrogation in regards to the Workers Compensation policy in favor of the City of Denton.
 - IV. Wording in the cancellation section of the certificate must state that said policy shall not be cancelled, non-renewed or materially changed without 30 days advance written notice being given to the Owner, except when the policy is being cancelled for non-payment of premium, in which case 10 days advance written notice is required.
 - V. Endeavoring to mail written notice is not acceptable. The statement that failure to mail such notice shall pose no obligation or liability upon the company, its agents or representative is not to be included on the certificate.

Please reference the development contract process timeline in order to allocate an adequate amount of time for each task.

INSURANCE REQUIREMENTS

CONTRACTOR'S INSURANCE:

Without limiting any of the other obligations or liabilities of the CONTRACTOR, during the term of the contract the CONTRACTOR and each subcontractor at their own expense shall purchase and maintain the herein stipulated minimum insurance with companies duly approved to do business in the State of Texas and satisfactory to the OWNER. Certificates of each policy shall be delivered to the OWNER before any work is started, along with a written statement from the issuing company stating that said policy shall not be cancelled, nonrenewed or materially changed without 30 days advance written notice being given to the OWNER, except when the policy is being cancelled for nonpayment of premium, in which case 10 days advance written notice is required. Prior to the effective date of cancellation, CONTRACTOR must deliver to the OWNER a replacement certificate of insurance or proof of reinstatement. A model Certificate of Insurance is illustrated in Appendix A.2. Coverage shall be of the following types and not less than the specified amounts:

- (a) worker's compensation as required by Texas law, with the policy endorsed to provide a waiver of subrogation as to the OWNER; employer's liability insurance of not less than \$100,000 for each accident, \$100,000 disease-each employee, \$500,000 disease-policy limit.
- (b) Commercial general liability insurance, including independent contractor's liability, completed operations and contractual liability, covering, but not limited to, the liability assumed under the indemnification provisions of this contract, fully insuring CONTRACTOR'S (or subcontractor's) liability for injury to or death of OWNER'S employees and third parties, extended to include personal injury liability coverage with damage to property of third parties, with minimum limits as set forth below:

General Aggregate	\$1,000,000
Products – Components/Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$ 600,000
Each Occurrence	\$ 600,000
Medical Expense (any one person)	\$ 5,000

The policy shall include coverage extended to apply to completed operations, asbestos hazards (if this project involves work with asbestos) and XCU (explosion, collapse and underground) hazards. The completed operations coverage must be maintained for a minimum of one (1) year after final completion and acceptance of the work, with evidence of same filed with OWNER.

- (c) Comprehensive automobile and truck liability insurance, covering owned, hired and non-owned vehicles, with a combined bodily injury and property damage minimum limit of \$600,000 per occurrence; or separate limits of \$250,000 for bodily injury (per person), \$500,000 bodily injury (per accident) and \$100,000 for property damage. Such insurance shall include coverage for loading and unloading hazards.

POLICY ENDORSEMENTS AND SPECIAL CONDITIONS:

- (a) Each insurance policy to be furnished by CONTRACTOR shall include the following conditions by endorsement to the policy:
 - (1) name the OWNER as an additional insured as to all applicable coverage;
 - (2) each policy shall require that 30 days prior to the cancellation, nonrenewal or any material change in coverage, a notice thereof shall be given to OWNER by certified mail. If the policy is cancelled for nonpayment of premium, only 10 days written notice to OWNER is required;
 - (3) the term "Owner" shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of the OWNER and individual members, employees and agents thereof in their official capacities, and/or while acting on behalf of the OWNER;
 - (4) the policy phrase "other insurance" shall not apply to the OWNER where the OWNER is an additional insured on the policy; and
 - (5) all provisions of the contract concerning liability, duty and standard of care together with the indemnification provision shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

- (b) Insurance furnished by the CONTRACTOR shall be in accordance with the following requirements:
 - (1) any policy submitted shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent of the insurance requirements to be fulfilled by CONTRACTOR. The OWNER'S decision thereon shall be final;
 - (2) all policies are to be written through companies duly licensed to transact that class of insurance in the STATE OF TEXAS; and
 - (3) all liability policies required herein shall be written with an "occurrence" basis coverage trigger.

- (c) CONTRACTOR agrees to the following:
 - (1) CONTRACTOR hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against the OWNER, it being the intention that the insurance policies shall protect all parties to the contract and be primary coverage for all losses covered by the policies;
 - (2) Companies issuing the insurance policies and CONTRACTOR shall have no recourse against the OWNER for payment of any premiums or assessments for any deductibles, as all such premiums and deductibles are the sole responsibility and risk of the CONTRACTOR;
 - (3) approval, disapproval or failure to act by the OWNER regarding any insurance supplied by the CONTRACTOR (or any subcontractors) shall not relieve the CONTRACTOR of full responsibility or liability for damages and accidents as set forth in the contract documents. Neither shall the bankruptcy, insolvency or denial of liability by the insurance company exonerate the CONTRACTOR from liability; and
 - (4) no special payments shall be made for any insurance that the CONTRACTOR and subcontractors are required to carry; all are included in the contract price and the contract unit prices.

Any of such insurance policies required under this section may be written in combination with any of the others, where legally permitted, but none of the specified limits may be lowered thereby.

Example of an Acceptable Development Contract

The following is an example of an acceptable Development Contract. Please correspond item number on checklist with respective documents that follow to identify what exactly needs to be filled in the blanks to ensure correctness.

A major reason construction commencement is delayed is due to incorrect/incomplete Development Contracts being submitted to Engineering Development Review. The goal of this example is to assist in completion of your Development Contract correctly the first time.

Legend

#1 – Checklist Item

#1 – Item on Document that Corresponds to Item on Development Contract Checklist

X3 - Number of Originals Required (ie. 3 Copies)

Development Contract Checklist

Project Name: Courts of Bonnie Brae

Project Number: FP17-0001

Please Circle One

#1	Have you submitted three copies of the Development Contracts?		<input checked="" type="radio"/> Yes	<input type="radio"/> No
#2	Is each copy of the Development Contract marked with the Project Number and Type? The type is defined by the Exhibit A for each type of improvement (DR, PV, SW and/or UT).		<input checked="" type="radio"/> Yes	<input type="radio"/> No
#3	Does the Developer's name and address on page 1 exactly match the Developer information on page 8?		<input checked="" type="radio"/> Yes	<input type="radio"/> No
#4	Does the description of public improvements on page 1, paragraph 2 match the work described in Exhibit A?		<input checked="" type="radio"/> Yes	<input type="radio"/> No
#5	Does the plan information on page 1, paragraph 4 match the printed construction plans delivered?		<input checked="" type="radio"/> Yes	<input type="radio"/> No
#6	Does the Contractor's name and address on page 2 exactly match the Contractor information on page 9?		<input checked="" type="radio"/> Yes	<input type="radio"/> No
#7	Has a target completion date been added to the last paragraph on page 2?		<input checked="" type="radio"/> Yes	<input type="radio"/> No
#8	Has the execution date been completed on page 8 with a date prior to or the same as the Performance and Payment Bond dates?		<input checked="" type="radio"/> Yes	<input type="radio"/> No
#9	Does each copy of the Development Contract have original signatures on pages 8 and 9?		<input checked="" type="radio"/> Yes	<input type="radio"/> No
#10	Have you submitted three copies of the Exhibit A (Schedule of Public Improvements)?		<input checked="" type="radio"/> Yes	<input type="radio"/> No
#11	Have you submitted three originals of the Performance Bond?		<input checked="" type="radio"/> Yes	<input type="radio"/> No
#11.a	Does the Contractor's name and address on page 1 of the Performance Bond the same as the Contractor's information on page 2 of the Development Contract?		<input checked="" type="radio"/> Yes	<input type="radio"/> No
#12	Does the Performance Bond value match or exceed the total public improvements value from Exhibit A (both the written word and the numerical)?		<input checked="" type="radio"/> Yes	<input type="radio"/> No
#13	Is the referenced contract date on page 1 of the Performance Bond the same as the execution date of the Development Contracts (page 8)?		<input checked="" type="radio"/> Yes	<input type="radio"/> No
#14	Does the construction activity description on page 1 of the Performance Bond match the description on page 1 of the Development Contract?		<input checked="" type="radio"/> Yes	<input type="radio"/> No
#15	Is the Performance Bond dated the same day as or later than the Development Contract execution date on page 8?		<input checked="" type="radio"/> Yes	<input type="radio"/> No
#16	Is each copy of the Performance Bond signed with original signatures on page 3?		<input checked="" type="radio"/> Yes	<input type="radio"/> No
#17	Has the Attest signature been signed on page 3?		<input checked="" type="radio"/> Yes	<input type="radio"/> No
#18	Is a Payment Bond required? (yes if total public improvement value is greater than \$25,000) IF NO, PLEASE PROCEED TO QUESTION 19		<input checked="" type="radio"/> Yes	<input type="radio"/> No
#18.a	Have you submitted three originals of the Payment Bond with original signatures?	NA	<input checked="" type="radio"/> Yes	<input type="radio"/> No
#18.b	Does the Payment Bond value match or exceed the total public improvements value from Exhibit A?	NA	<input checked="" type="radio"/> Yes	<input type="radio"/> No
#18.c	Is the referenced contract date on page 1 of the Payment Bond the same as the date of the Development Contracts?	NA	<input checked="" type="radio"/> Yes	<input type="radio"/> No
#18.d	Does the construction activity description on page 1 of the Payment Bond match the description on page 1 of the Development Contract?	NA	<input checked="" type="radio"/> Yes	<input type="radio"/> No
#18.e	Is the Payment Bond dated the same day as or later than the Development Contract date?	NA	<input checked="" type="radio"/> Yes	<input type="radio"/> No
#18.f	Is each copy of the Payment Bond signed with original signatures on page 3?	NA	<input checked="" type="radio"/> Yes	<input type="radio"/> No
#18.g	Does the Contractor's name and address on page 1 of the Payment Bond the same as the Contractor's information on page 2 of the Development Contract?	NA	<input checked="" type="radio"/> Yes	<input type="radio"/> No
#18.h	Is the Resident Agent of Surety for the Payment Bond located in one of the following counties: Denton, Tarrant, Dallas, Wise, Collin, Grayson, Rockwall or Cooke?	NA	<input checked="" type="radio"/> Yes	<input type="radio"/> No
#19	Have you submitted three originals of the Power of Attorney with the Performance Bonds?		<input checked="" type="radio"/> Yes	<input type="radio"/> No
#20	Is each Power of Attorney dated the same as the Performance Bond?		<input checked="" type="radio"/> Yes	<input type="radio"/> No
#21	Have you submitted three copies of the Contractor's Certificate of Insurance?		<input checked="" type="radio"/> Yes	<input type="radio"/> No
#22	Does the Certificate of Insurance have all required coverage types (General Liability, Auto Liability, and Workers Compensation) per the City's Insurance Requirements?		<input checked="" type="radio"/> Yes	<input type="radio"/> No
#23	Does the Certificate of Insurance have an expiration date that will cover the time estimated to complete construction OR an expiration date of at least 60 days from the date the contract documents are submitted to the City AND include the required cancellation wording?		<input checked="" type="radio"/> Yes	<input type="radio"/> No
#24	Does the Certificate of Insurance have the minimum required coverage levels for each coverage type per the City's Insurance Requirements?		<input checked="" type="radio"/> Yes	<input type="radio"/> No
#25	Does the Certificate include a waiver of subrogation in favor of the City been added to the Certificate of Insurance for both the General and Auto Liability coverage?		<input checked="" type="radio"/> Yes	<input type="radio"/> No
#26	Has the City been declared as an additional insured on the Certificate of Insurance for both the General and Auto Liability coverage?		<input checked="" type="radio"/> Yes	<input type="radio"/> No
#27	Does the Certificate of Insurance name the City as the certificate holder?		<input checked="" type="radio"/> Yes	<input type="radio"/> No
#28	Does the Contractor name and address on Insured match the Contractor's information on page 2 of the Development Contract?		<input checked="" type="radio"/> Yes	<input type="radio"/> No

#1 X 3

PROJECT NO. _____

#2

CONTRACT TYPE _____

**DEVELOPMENT CONTRACT
FOR
PUBLIC IMPROVEMENTS**

#3

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

#4
#14
#18d

WHEREAS, Developer wishes to enter into this agreement with the City of Denton, Texas (the “City) to provide for the construction of certain public improvements generally described as the _____ as further described in Exhibit A attached hereto and made a part hereof by reference (the “Public Improvements”), which, among other things, are necessitated by and will serve the Development; and

WHEREAS, this agreement is entered into pursuant to Subchapter C of Chapter 212 of the Texas Local Government Code as a condition of plat approval and the Public Improvements are roughly proportional to the benefits received and burdens imposed by the Development; and

WHEREAS, this agreement is required to ensure that the Public Improvements are constructed in accordance with the City’s standard specifications for public works projects, applicable ordinances and design criteria manuals (“Standard Specifications”), and the plans and specifications prepared by Developer’s engineer, _____ (“Developer’s Engineer”) dated _____, which were approved by the City and are on file in the office of the City Engineer, which may be amended with the written approval of the City Engineer or his designee (the “Project

#5

DEVELOPMENT CONTRACT

Specifications”), such Standard Specifications and Project Specifications being incorporated herein by reference and herein called the “Plans and Specifications”; and

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

WHEREAS, the Developer shall provide for the construction of the Public Improvements by _____ and through _____, whose address is _____ (the “Contractor”), a construction contractor experienced in the construction of improvements similar to the Public Improvements, and

WHEREAS, Developer and Contractor recognize that the City has an interest in ensuring that the Public Improvements, which will, upon completion and acceptance by the City, become public property, are properly constructed in accordance with the Plans and Specifications and that payment by Developer is provided therefor; NOW, THEREFORE,

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

1. **Covenants of Developer and Contractor.**

- (a) **Construction.** Contractor shall construct the Public Improvements in accordance with the Plans and Specifications and complete the Public Improvements on or before _____. Developer shall be responsible for all monies due to the Contractor for construction of the Public Improvements. In no event shall the City be responsible for payment of any of the expenses or costs to construct the Public Improvements. The City Engineer

#6
#11a
#18g
#28

#7

DEVELOPMENT CONTRACT

in his discretion may require the Developer to provide security for payments to the Contractor, which may be in the form of a cash deposit with the City, a letter of credit, a dedicated construction account with a lending institution approved by the City Engineer, or other security that the City Engineer in his discretion deems adequate to ensure that the Developer does not default in its payment obligations to the Contractor.

- (b) **Authority of City Engineer, Inspections, Tests and Orders, Developer and Contractor Warranty.** All work on the Public Improvements shall be performed in a good and workmanlike manner and to the satisfaction of the City Engineer or his representative. The City Engineer shall decide all questions, which arise as to the quality and acceptability of materials furnished, work performed, and the interpretation of the Plans and Specifications and may reject any work not performed in accordance with the Plans and Specifications. The Contractor, its surety on the performance bond required herein and the 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 years after the completion of the Public Improvements and final acceptance by the 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 year warranty period.

The Contractor shall furnish the City Engineer or his representative with every reasonable facility for ascertaining whether or not the work performed was in accordance with the Plans and Specifications applicable thereto. Any work

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done or materials used without suitable inspection by the City may be ordered removed and replaced at Contractor's expense.

The City Engineer or his designee shall perform periodic inspections of the work and shall perform a final inspection prior to final acceptance by the City and an inspection 30 days prior to the expiration of two years from the date of final completion and acceptance of the work by the City. Upon failure of the 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 any other request or order of the City Engineer or his representative, the City Engineer shall notify the Developer of such failure and may suspend inspections of such work until such failure is remedied. If such failure is not remedied to the satisfaction of the City Engineer, the City shall have no obligation under this agreement to approve or accept the Public Improvements and the City may withhold, suspend or revoke any permits or other approvals for the Development until such matter is remedied to the satisfaction of the City Engineer.

- (c) **Insurance.** Contractor shall provide for insurance in form and in substance in accordance with the City's standard insurance requirements for public works projects, which are on file in the Office of the City Engineer and which are incorporated herein by reference.
- (d) **Means and Methods of Construction.** The means and methods of construction shall be such as Contractor may choose; subject, however, to the City's right to reject the Public Improvements for which the means or method

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of construction does not, in the judgment of the City Engineer, assure that the Public Improvements are constructed in accordance with Plans and Specifications.

- (e) **Books and Records.** All of the Developer's and the Contractor's books and other records related to the construction of the Public Improvements shall be available for inspection by the City.
- (f) **Performance Bonds.** The Contractor shall execute a performance bond in the full amount of the cost to construct the Public Improvements in favor of the City ensuring completion of the Public Improvements in accordance with the Plans and Specifications and warranting against defects in materials and workmanship for a period of two years from the date of final acceptance by the City as provided in 1(b) herein. The performance bond shall be executed by a corporate surety authorized to do business in Texas in accordance with Chapter 2253 of the Texas Government Code, shall be on the City's standard form, and shall contain a local resident agent for service of process. The Developer may be a co-obligee on the performance bond with regard to the Contractor's obligations.
- (g) **Payment Bonds.** The Contractor shall execute a payment bond in the full amount of the cost to construct the Improvements in favor of the City insuring against claims from suppliers and subcontractors. The payment bond shall be executed by a corporate surety authorized to do business in Texas in accordance with Chapter 2253 of the Texas Government Code, shall be on the City's standard form, and shall contain a local resident agent for service of process. Owner and Developer may be co-obligees on the payment bond.

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- (h) **Retainage: Final Payments.** As security for the faithful completion of the Public Improvements, Contractor and Developer agree that the Developer shall retain ten (10) percent of the total dollar amount of the contract price until after final approval or acceptance of the Public Improvements by the City. The Developer shall thereafter pay the Contractor the retainage, only after Contractor has furnished to the Developer 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 with a consent to final payment from the payment bond surety.
- (i) **Encumbrances.** Upon completion and final acceptance of the Public Improvements by the City, the Public Improvements shall become the property of the 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 the City, to which they are affixed, the Developer and Contractor shall upon notice by the City promptly cause such claim lien, charge or encumbrance to be satisfied and released or promptly post a bond with the City in the amount of such claim, lien, charge or encumbrance, in favor of the City, to ensure payment of such claim, lien, charge or encumbrance.
- (j) **INDEMNIFICATION.** **THE DEVELOPER AND CONTRACTOR SHALL AND HEREBY DO INDEMNIFY, DEFEND AND SAVE**

DEVELOPMENT CONTRACT

HARMLESS, THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS OR CLAIMS OF ANY CHARACTER, NAME AND DESCRIPTION BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED AS SUSTAINED BY ANY PERSON, PERSONS OR PROPERTY ON ACCOUNT OF THE OPERATIONS OF THE CONTRACTOR, HIS AGENTS, EMPLOYEES OR SUBCONTRACTORS; OR ON ACCOUNT OF ANY NEGLIGENT ACT OF FAULT OF THE CONTRACTOR, HIS AGENTS, EMPLOYEES OR SUBCONTRACTORS IN CONSTRUCTION OF THE IMPROVEMENTS; AND SHALL PAY ANY JUDGMENT, WITH COSTS, WHICH MAY BE OBTAINED AGAINST THE CITY GROWING OUT OF SUCH INJURY OR DAMAGE.

- (k) **Agreement Controlling.** The provisions of this agreement shall control over any conflicting provision of any contract between the Developer and Contractor as to the construction of the Public Improvements.
2. **Covenants of City of Denton.** Upon proper completion of the Public Improvements in accordance with this agreement, the City agrees to accept the Public Improvements.
3. **Nexus and Rough Proportionality.** The Developer acknowledges and agrees that there is a reasonable nexus between the demands created by the Development 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

DEVELOPMENT CONTRACT

the burdens imposed by the Development. The Developer shall indemnify and hold the 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.

4. **Venue and Governing Law.** The Parties herein 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.

5. **Successor and Assigns.** This contract shall be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns.

Executed in triplicate this, _____ day of _____, 20_17.

#8
#13
#15
#18c
#18e

DEVELOPER

Name: _____

By: John Smith ← #9 X3

Name: _____

Title: _____

Address _____

#3

DEVELOPMENT CONTRACT

CONTRACTOR

Name: _____

By: Jack Smith ← #9 x3

Name: _____

Title: _____

Address _____

#6

#9 x3

CITY OF DENTON, TEXAS

BY: _____
CITY MANAGER

ATTEST:
ROSA RIOS, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
AARON LEAL, CITY ATTORNEY

BY: _____

EXHIBIT A ← #10 x3

PUBLIC IMPROVEMENTS

Project Description				
PROJECT: DENTON OFFICE ADDITION				
LOCATION: 100 SOMEPLACE STREET DENTON, TX 76209				
Project Estimate				
DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL PRICE
Sidewalk at Road X				
4" – 3000 PSI Reinforced Concrete 5' Sidewalk	730	SF	3.65	\$2,664.50
Storm Sewer				
Connection to Existing	1	EA	850	\$850.00
18" Class III RCP	35	LF	55	\$1,925.00
Sanitary Sewer				
Connection to Existing	1	EA	1100	\$1100.00
8" SDR-35 PVC	28	LF	55	\$1540.00
Paving				
6" concrete street pavement	5000	SY	50	\$250,000
8" lime stabilized subgrade	5600	SY	5	\$28,000
Drainage				
18" RCP	600	LF	25	\$15,000
21" RCP	500	LF	30	\$15,000
4' sq junction box	5	EA	5000	\$25,000
GRAND TOTAL				\$341,079.50

#4

June 2012

Exhibit Prepared by:
The Construction Group
 123 Construction Drive
 Denton, Texas 76201

#12
 #18
 #18b

PROJECT NO. _____

#2

CONTRACT TYPE _____

#11 x3

PERFORMANCE BOND

THE STATE OF TEXAS §

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF DENTON §

That _____

#11a

of _____ County, Texas, hereinafter called Principal and _____

a Corporation organized under the laws of the State of _____ and authorized to do

business in the State of Texas, hereinafter called "Surety", are held and firmly bound unto the City of

Denton, Texas, a Municipal Corporation, in Denton County, Texas, hereinafter called "City" in the

penal sum of _____ (\$ _____) dollars, lawful money

#12

of the United States, for the payment of which sum well and truly to be made we bind ourselves, our

heirs, executors, administrators, and successors, jointly and severally, and firmly by these presents:

THE Condition of this Obligation is such that:

WHEREAS, the Principal entered into a certain contract with Owner, dated the

_____ day of _____, 20____, in the proper performance of

#13

which the City of Denton, Texas, has an interest, a copy of which is hereto attached and made a part

hereof, for the construction of: _____

#14

PERFORMANCE BOND

NOW, THEREFORE, if the Principal shall well, truly, and faithfully cause to be performed and fulfilled all of the undertakings, covenants, terms, conditions, and agreements of said Contract in accordance with the Plans, Specifications, and Contract Documents during the original term thereof, and any extension thereof which may be granted, with or without notice to the surety, and during the life of any guaranty required under the Contract, which is incorporated, as if written word for word herein, and shall also well and truly cause to be performed and fulfilled all the covenants, terms and conditions and agreements of any and all authorized modifications of said Contract that may hereafter be made including, without limitation, to remedy and pay for any defects in material and workmanship or damage to other work or facilities which shall appear within two years from the date of final completion notice of which modifications to the surety being hereby waived; then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, further, that if any legal action be filed on this bond, venue shall lie in Denton County.

AND, that said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract, or to the work performed thereunder, or the Plans, Specifications, Drawings, etc., accompanying the same shall in any wise affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract, or to the work to be performed thereunder.

PERFORMANCE BOND

IN WITNESS WHEREOF, this instrument is executed in triplicate, each one of which shall be deemed an original, this the _____ day of _____, 20_____.

PRINCIPAL

#8
#15
#20

SURETY

BY: Jack Smith
Jack Smith

BY: Tony Smith
ATTORNEY-IN-FACT Tony Smith

ATTEST:

Julie Smith
SECRETARY Julie Smith

#16 x3

#17

NOTE: POWER OF ATTORNEY OF SURETY MUST BE ATTACHED. DATE OF BOND MUST NOT BE PRIOR TO DATE OF CONTRACT DATE OF POWER OF ATTORNEY. CERTIFICATION MUST NOT BE PRIOR TO DATE OF CONTRACTOR BOND.

Effective December 1st, 2003

PROJECT NO. _____

#2

CONTRACT TYPE _____

#18 X3

PAYMENT BOND

THE STATE OF TEXAS §

COUNTY OF DENTON §

#18g

KNOW ALL MEN BY THESE PRESENTS: That _____

_____ of the City of _____

County of _____, and the State of _____,

as principal, and _____

authorized under the laws of the State of Texas to act as surety on bonds for principals, are held

and firmly bound unto The City of Denton, OWNER, in the penal sum of

_____ dollars (\$) _____) for the payment whereof, the

#18b

said Principal and Surety bind themselves and their heirs, administrators, executors, successors

and assigns, jointly and severally, by these presents:

WHEREAS, the Principal has entered into a certain written contract with the Owner,

dated the _____ day of _____ 20 ____.

#18c

#18d

to which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall pay all claimants supplying labor and material to him or a subcontractor

PAYMENT BOND

in the prosecution of the work provided for in said contract, then this obligation shall be void, otherwise to remain in full force and effect;

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of the Texas Government Code, Chapter 2253 (Vernon, as currently amended), and all liabilities on this bond shall be determined in accordance with said provisions to the same extent as if they were copied at length herein.

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract, or to the work performed thereunder, or the plans, specifications, or drawings accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work to be performed thereunder.

PAYMENT BOND

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this _____ day of _____ 20_____.

#18e

PRINCIPAL

SURETY

BY: Jack Smith

BY: Tony Smith

TITLE: _____

TITLE: _____

ADDRESS: _____

ADDRESS: _____

(SEAL)

(SEAL)

The name and address of the Resident Agent of Surety is:

#18h

ABC
Casualty & Surety
Company

POWER OF ATTORNEY ← #19 X3

AUorne)-In Fact No. #####

Certilkute No 000000#####

KNOW ALL MEN BY THESE PRESENTS: That **ABC Casualty and Surety Company and add other company names as applicable...**

o hcrchy make . tonslilute and : ppnir

of the City of Charlotte . State nt North Carolina . Their lluc and la\|oful Atlorncy(sl-in-Fact. cah in their separate capacity if more than one is named above. to ign. cxe<:ute. seal and acknowledge any and all honds. rcc-ognitan es. condition;! undertaking' and other writings obligatory in the nature thereof on behalf of the Comp;mics in their business Of guaranteeing rbe fidelily of persons. guaraniCL'ing the perfonnancce oi' contracts and executing or guaranteeing bonds and undertakings required or permitted in <llY actions or proceedings Hllowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and thcil corporate <als 10 he hcicto at'fixed.this _____ 20th _____ da) of _____ October _____ * 2016 .

EXECUTION AND NOTARY SECTION

POWER OF ATTORNEY VERBIAGE BY SURETY COMPANY

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Companies this **30th** day of **April**, 20**11**.

#20

SIGNATURE AND COMPANY SEALS



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:	
	PHONE (A/C No. Ext.):	FAX (A/C No.):
	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
	INSURER A:	NAIC #
The Contractor Group ← #28 123 Construction Drive Denton, Texas 76201		

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSTR	TYPE OF INSURANCE	ADDITIONAL INSURER	POLICY NUMBER	POLICY EFF. DATE (MM/DD/YYYY)	POLICY EXP. DATE (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GENL AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC		(Insurer assigned Identifier)	10/01/2016	02/28/2018	EACH OCCURRENCE 1,000,000 CLAIMS TO RESERVE 1,000,000 PREMIUMS (See schedule) 5,000 PERSONAL & ADV INJURY 800,000 GENERAL AGGREGATE 1,000,000 PRODUCTS-COMPLETE ADULT 1,000,000
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS		(Insurer assigned Identifier)	10/01/2016	02/28/2018	COMBINED SINGLE LIMIT 1,000,000 BODILY INJURY (per limit) 900,000 AUTO LIABILITY (per limit) 900,000 AUTO LIABILITY (per limit) 900,000 AUTO LIABILITY (per limit) 900,000
O	OTHER LIABILITIES EXCESS UAS ceo TeNnON		(Insurer assigned Identifier)	10/01/2016	02/28/2018	EACH OCCURRENCE \$ CUMULATIVE \$ 1,000,000
C	WORKERS COMPENSATION EMPLOYERS' LIABILITY (See schedule for details)		(Insurer assigned Identifier)	10/01/2016	02/28/2018	X(1)A)ii; 1000 7,000,000

ENDORSEMENTS: A Waiver of Subrogation. The General Liability and Automobile Liability policies as required by written contract. General liability policy evidence herein is primary and non-contributory to other insurance available to an Additional Insured but only in accordance with the policy's provisions as set forth in the policy's provisions. A Waiver of Subrogation is granted in favor of Certificate Holder in accordance with the policy provisions of the General Liability, Automobile Liability and Workers Compensation policies as required by written contract. Should General Liability, Automobile Liability and Workers Compensation policies be cancelled before the expiration date of the policy, the Certificate Holder shall be notified in writing. The Certificate Holder shall be notified in writing of the cancellation of the policy. The Certificate Holder shall be notified in writing of the cancellation of the policy. The Certificate Holder shall be notified in writing of the cancellation of the policy.

ENDORSEMENTS: A Waiver of Subrogation. The General Liability and Automobile Liability policies as required by written contract. General liability policy evidence herein is primary and non-contributory to other insurance available to an Additional Insured but only in accordance with the policy's provisions as set forth in the policy's provisions. A Waiver of Subrogation is granted in favor of Certificate Holder in accordance with the policy provisions of the General Liability, Automobile Liability and Workers Compensation policies as required by written contract. Should General Liability, Automobile Liability and Workers Compensation policies be cancelled before the expiration date of the policy, the Certificate Holder shall be notified in writing. The Certificate Holder shall be notified in writing of the cancellation of the policy. The Certificate Holder shall be notified in writing of the cancellation of the policy. The Certificate Holder shall be notified in writing of the cancellation of the policy.

CITY OF DENTON City of Denton Attn: Greg Blackstone 001 A Texas Street Denton, TX 76209	28 26	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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