

Development Contract Checklist

Project Name: _____ Project Number: _____

Please Circle One

#1	Have you submitted three copies of the Development Contracts?	Yes	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).	Yes	No
#3	Does the Developer's name and address on page 1 exactly match the Developer information on page 8?	Yes	No
#4	Does the description of public improvements on page 1, paragraph 2 match the work described in Exhibit A?	Yes	No
#5	Does the plan information on page 1, paragraph 4 match the printed construction plans delivered?	Yes	No
#6	Does the Contractor's name and address on page 2 exactly match the Contractor information on page 9?	Yes	No
#7	Has a target completion date been added to the last paragraph on page 2?	Yes	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?	Yes	No
#9	Does each copy of the Development Contract have original signatures on pages 8 and 9?	Yes	No
#10	Have you submitted three copies of the Exhibit A (Schedule of Public Improvements)?	Yes	No
#11	Have you submitted three copies of the Performance Bond?	Yes	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?	Yes	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)?	Yes	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)?	Yes	No
#14	Does the construction activity description on page 1 of the Performance Bond match the description on page 1 of the Development Contract?	Yes	No
#15	Is the Performance Bond dated the same day as or later than the Development Contract execution date on page 8?	Yes	No
#16	Is each copy of the Performance Bond signed with original signatures on page 3?	Yes	No
#17	Has the Attest signature been signed on page 3?	Yes	No
#18	Is a Payment Bond required? (yes if total public improvement value is greater than \$25,000) <i>IF NO, PLEASE PROCEED TO QUESTION 19</i>	Yes	No
#18.a	Have you submitted three originals of the Payment Bond with original signatures?	NA	Yes No
#18.b	Does the Payment Bond value match or exceed the total public improvements value from Exhibit A?	NA	Yes 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	Yes 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	Yes No
#18.e	Is the Payment Bond dated the same day as or later than the Development Contract date?	NA	Yes No
#18.f	Is each copy of the Payment Bond signed with original signatures on page 3?	NA	Yes 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	Yes 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	Yes No
#19	Have you submitted three originals of the Power of Attorney with the Performance Bonds?	Yes	No
#20	Is each Power of Attorney dated the same as the Performance Bond?	Yes	No
#21	Have you submitted three copies of the Contractor's Certificate of Insurance?	Yes	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?	Yes	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?	Yes	No
#24	Does the Certificate of Insurance have the minimum required coverage levels for each coverage type per the City's Insurance Requirements?	Yes	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?	Yes	No
#26	Has the City been declared as an additional insured on the Certificate of Insurance for both the General and Auto Liability coverage?	Yes	No
#27	Does the Certificate of Insurance name the City as the certificate holder?	Yes	No
#28	Does the Contractor name and address on Insured match the Contractor's information on page 2 of the Development Contract?	Yes	No

EXAMPLE

Contractor:		
Address:		
Phone #:		
Fax #:		

EXHIBIT A

PROJECT & PROJECT #:		
LOCATION:	Denton Texas	

Paving:					
Description		QTY	UNIT	UNIT PRICE	TOTAL
			Paving Subtotal:		

Sanitary Sewer:					
Description		QTY	UNIT	UNIT PRICE	TOTAL
			Sanitary Sewer Subtotal:		

Water:					
Description		QTY	UNIT	UNIT PRICE	TOTAL
			Water Subtotal:		
			Overall Total Difference:	\$	-

PROJECT NO. _____

CONTRACT TYPE _____

**DEVELOPMENT CONTRACT
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 Denton being described as _____, an addition to the City of Denton, Texas (the “Development”); and

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

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

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

DEVELOPMENT CONTRACT

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

DEVELOPMENT CONTRACT

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.

DEVELOPMENT CONTRACT

- (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__.

DEVELOPER

Name: _____

By: _____

Name: _____

Title: _____

Address _____

DEVELOPMENT CONTRACT

CONTRACTOR

Name: _____

By: _____

Name: _____

Title: _____

Address _____

CITY OF DENTON, TEXAS

BY: _____
CITY MANAGER

ATTEST:
ROSA RIOS, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
AARON LEAL, CITY ATTORNEY

BY: _____

PROJECT NO. _____

CONTRACT TYPE _____

PERFORMANCE BOND

THE STATE OF TEXAS §

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF DENTON §

That _____,

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

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

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: _____

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

SURETY

BY: _____

BY: _____
ATTORNEY-IN-FACT

ATTEST:

SECRETARY

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. _____

CONTRACT TYPE _____

PAYMENT BOND

THE STATE OF TEXAS §

COUNTY OF DENTON §

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

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 ____.

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_____.

PRINCIPAL

SURETY

BY: _____

BY: _____

TITLE: _____

TITLE: _____

ADDRESS: _____

ADDRESS: _____

(SEAL)

(SEAL)

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