

**Platted Name
(AKA)**

COMMERCIAL DEVELOPER AGREEMENT

An agreement between the City of Southlake, Texas, hereinafter referred to as the "City", and the undersigned Developer, **DEVELOPER NAME**, hereinafter referred to as the "Developer", of **ADDITION NAME**, hereinafter referred to as "Addition" to the City of Southlake, Tarrant County, Texas, for the installation of certain community facilities located therein, and to provide city services thereto. It is understood by and between the parties that this Agreement is applicable to the Addition (a commercial development) and to the off-site improvements necessary to support the Addition.

I. GENERAL REQUIREMENTS

- A. It is agreed and understood by the parties hereto that the Developer shall employ a civil engineer licensed to practice in the State of Texas for the design and preparation of the plans and specifications for the construction of all facilities covered by this Agreement.
- B. The Developer hereby agrees to comply with all federal, state, and local laws that are applicable to development of this Addition.
- C. The Developer agrees that the completed project will be constructed in conformance with the Development Site Plan, Construction Plans and other permits or regulatory authorizations granted by the City during the development process.
- D. Building permits shall not be issued until all Public Works infrastructure is deemed substantially complete by the City, all appropriate Fire Code requirements are satisfied and street signs with street names are in place. Temporary, all-weather signs as specified in the Manual of Uniform Traffic Control Devices (MUTCD) securely fastened in the ground are acceptable until permanent street signs are installed. The Developer recognizes that Certificates of Occupancy will not be issued until the supporting public works infrastructure including permanent street signs with block numbers and regulatory signs within the Addition have been accepted by the City. This will serve as an incentive to the Developer to see that all remaining items are completed.
- E. The Developer will present to the City, in form acceptable to the City, either (1) a cash escrow, (2) Letter of Credit, or (3) performance bond and payment bond, guaranteeing and agreeing to pay an amount equal to 100% of the value of the construction cost of all public facilities (streets, sidewalks, water, sewer, drainage, and any other public infrastructure improvements) to be constructed by the Developer, and providing for payment to the City of the total remaining amounts required for the completion of the public facilities if the Developer fails to complete the work within two (2) years of the signing of this Agreement between

the City and Developer. All bonds shall be issued by a bonding company licensed to do business in the State of Texas. The Letter of Credit must meet the Requirements for Irrevocable Letter of Credit which have been incorporated herein.

The value of the performance bond, letter of credit or cash escrow will reduce at a rate consistent with the amount of work that has been completed by the Developer and accepted by the City. Performance and payment bonds, Letter of Credit or cash escrow from the prime contractor(s), hereinafter referred to as Contractor, or other entity acceptable to the City, may be accepted in lieu of Developer's obligations specified above, at the discretion of the City.

- F. Any guarantee of payment instrument (Performance Bond, Letter of Credit, etc.) submitted by the Developer or Contractor on a form other than the one which has been previously approved by the City as "acceptable" shall be submitted to the City Attorney and this Agreement shall not be considered in effect until such City Attorney has approved the instrument. Approval by the City shall not be unreasonably withheld or delayed.
- G. Any surety company through which a bond is written shall be a surety company duly authorized to do business in the State of Texas, provided that the City, through the City Manager, shall retain the right to reject any surety company as a surety for any work under this or any other Developer's Agreement within the City regardless of such company's authorization to do business in Texas. Approval by the City shall not be unreasonably withheld or delayed.
- H. The Developer agrees to furnish to the City a 2-year maintenance bond, letter of credit or cash escrow in an amount equal to 100% of the cost of construction of all public facilities (streets, sidewalks, water, sewer, drainage, and any other public infrastructure improvements). The 2-year maintenance bond, letter of credit or cash escrow will take effect on the date of final acceptance of all of the public facilities in the Addition, and shall secure all costs of maintenance of such public facilities for a period of two (2) years. The 2-year maintenance bond, letter of credit or cash escrow will be supplied to the City by the contractors performing the work, and the City will be named as the beneficiary.
- I. No work shall be initiated on or in said Addition by Developer, save and except as provided above; until the payment, performance and 2-year maintenance bond, letter of credit or cash escrow required in Paragraphs E and H have been provided to the City.
- J. It is further agreed and understood by the parties hereto that upon acceptance by the City, title to all facilities and improvements mentioned herein above which are intended to be public facilities shall be vested in the City, and Developer hereby relinquishes any right, title, or interest in and to said facilities or any part thereof. It is further understood and agreed that until the City accepts such improvements, the City shall have no liability or responsibility in connection with

any such facilities. Acceptance of the facilities for this provision and for the entire Agreement shall occur at such time that the City, through its City Manager or his duly appointed representative, provides Developer with a written acknowledgement that all facilities are complete, have been inspected and approved, and are being accepted by the City.

K. On all public facilities included in this Agreement for which the Developer awards his own construction contract, Developer agrees to the following procedures:

1. Developer shall pay all applicable fees and costs prior to scheduling a pre-construction meeting, including the following:
 - a. Administrative fees equal to two percent (2%) of the cost of all public facilities (streets, sidewalks, water, sewer, drainage, and any other public infrastructure improvements) included in said agreement, based on actual bid or contract construction costs;
 - b. Inspection fees equal to three percent (3%) of the cost of all public facilities (streets, sidewalks, water, sewer, drainage, and any other public infrastructure improvements) included in said Addition, based on actual bid or contract constructions costs.
2. Developer shall also be responsible for the following fees and costs:
 - a. Cost of trench backfill density testing (95% Standard);
 - b. Any charges for re-testing as a result of failed tests;
 - c. Water usage after obtaining a fire hydrant meter from the City to be utilized for construction purposes only;
 - d. Actual charges for inspections during Saturday, Sunday, holidays and after normal working hours will be assessed to the project and payment by the Developer will be required prior to final acceptance.
3. City agrees to bear the expense of:
 - a. All nuclear density tests on the roadway subgrade (95% Standard);
 - b. Technicians time for preparing concrete cylinders;
 - c. Concrete cylinder tests and concrete coring samples;
 - d. All gradation tests required to insure proper cement and/or lime stabilization;
 - e. Soil series for cement or lime.

4. The City can delay connection of private services to public utility mains constructed under this Agreement until water mains, sanitary sewer mains and storm drain lines have been tested and accepted by the City.
- L. Both the Developer and any third party entity engaged in the construction of the Development (“Builder”) will be responsible for mowing all grass and weeds and otherwise reasonably maintaining the aesthetics of all land in said Addition. After fifteen (15) days written notice, should the Developer fail in this responsibility, the City may contract for this service and bill the Developer and Builder for reasonable costs. Such amount shall become a lien upon all real property of the Addition so maintained by the City, and not previously conveyed to other third parties, 120 days after Developer has notice of costs.

II. FACILITIES

A. STREETS

Street construction in the Addition shall be installed in conformance with the requirements and in accordance with plans and specifications to be prepared by the Developer’s engineer and released by the Director of Public Works.

1. The Developer will be responsible for the following:
 - a. Installation and two-year operational cost of street lights, which is payable to the City prior to final acceptance of the Addition; or an executed agreement with utility provider stating that no charge will be made for street lights for the two-year duration. The executed agreement must be presented to the City prior to final acceptance;
 - b. Installation of all street signs based on the Manual on Uniform Traffic Control Devices (MUTCD) as prepared by the Developer’s engineer designating the names of the streets inside the Addition, said signs to be of a type, size, color and design standard generally employed by the Developer and approved by the City in accordance with City ordinances;
 - c. Installation of all regulatory signs based on the MUTCD as prepared by the Developer’s engineer by an engineering study or direction by the Director of Public Works. It is understood that Developer may install signage having unique architectural features, however, should the signs be moved or destroyed by any means, the City is only responsible for replacement of standard signage and poles. Developer or property owner will be responsible for any additional cost for replacement of custom or unique signs.

2. All street construction will be subject to inspection and acceptance by the City. No work will begin on any street in said Addition prior to complying with the requirements contained elsewhere in this Agreement. All streets, water, sewer, drainage, and any other public infrastructure improvements which are anticipated to be installed within the street or within the street right of way will be completed prior to the commencement of street construction on the specific section of street in which the utility improvements have been placed or for which they are programmed.

The Developer hereby agrees to advise the Director of Public Works as soon as possible when any physical modifications to the alignment of public infrastructure is required after construction has been completed. The Developer agrees to cooperatively work with and assist in the coordination of such modifications in a manner that will be least disruptive to street construction and/or the integrity of surrounding public infrastructure.

B. ON-SITE WATER

The Developer hereby agrees to install water facilities to serve all lots shown on the final plat of the Addition in accordance with plans and specifications to be prepared by the Developer's engineer and released by the City for construction and in accordance with Ordinance No. 170, as amended, and any other local, state and federal regulations. The Developer shall be responsible for all construction costs, materials and engineering. In the event that certain public water lines are to be oversized to comply with the City's Water Master Plan, the City will reimburse the Developer for the oversize cost greater than the cost of an 8" line.

C. ON-SITE SANITARY SEWER FACILITIES

The Developer hereby agrees to install sanitary sewage collection facilities to service lots as shown on the final plat of the Addition. Sanitary sewer facilities will be installed in accordance with the plans and specifications to be prepared by the Developer's engineer and released by the City. Further, the Developer agrees to complete this installation in accordance with Ordinance No. 440, as amended, and any other local, state and federal regulations. The Developer shall be responsible for all construction costs, materials, engineering, permits and impact fees. In the event that certain public sanitary sewer lines are to be oversized to comply with the City's Wastewater Master Plan, the City will reimburse the Developer for the oversize cost greater than the cost of an 8-inch line.

D. DRAINAGE

The Developer hereby agrees to install drainage facilities to service all lots as shown on the final plat of the Addition in accordance with the plans and

specifications to be prepared by Developer's engineer and released by the City for construction. The Developer also agrees to adhere to Ordinance No. 605, as amended. The Developer hereby agrees to fully comply with all EPA, TCEQ and FEMA requirements relating to the planning, permitting and management of storm water which may be in force at the time that development proposals are being presented for approval to the City. The Developer hereby agrees to comply with all provisions of the Texas Water Code.

The Developer agrees to provide a maintenance agreement to the City for any underground detention facilities proposed with this development. The Developer or property owner of record shall be responsible for the operation and maintenance of all underground detention facilities in accordance with said maintenance agreement.

E. EROSION CONTROL

The Developer agrees to comply with Ordinance No. 946, as amended, regarding erosion and sediment control during construction of the Addition. The Developer also agrees to comply with the Texas Commission on Environmental Quality TPDES General Permit No. TXR150000, and all other applicable local, state and federal ordinances, regulations and laws.

The Developer agrees to keep the streets and storm drain systems (MS4) free from soil build-up by using soil control measures, such as those included in the NCTCOG STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION, Division 1000 EROSION AND SEDIMENT CONTROL to prevent soil erosion. It will be the Developer's responsibility to present to the Director of Public Works a Storm Water Pollution Prevention Plan (SWPPP) and/or erosion control plan that will be implemented for this Addition. When in the opinion of the Director of Public Works there is sufficient soil build-up on the streets or other drainage areas and notification has been given to the Developer, the Developer will have seventy-two (72) hours to clear the soil from the affected areas. If the Developer does not remove the soil from the affected areas within 72 hours, the City may remove the soil build-up either by contract or by City forces and place the soil within the Addition at the Developer's expense. All expenses must be paid to the City prior to acceptance of the Addition.

Developer or its contractors must commence final stabilization of any disturbed areas immediately after completion of all soil disturbing activities. The TDPDES General Permit No. TXR150000 defines final stabilization as when all soil-disturbing activities at the site have been completed and a uniform (i.e., evenly distributed, without large bare areas) perennial vegetative cover with a density of at least 70% of the native background vegetative cover for the area has been ESTABLISHED on ALL unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.

Where construction activity on a portion of the site has temporarily ceased, and earth disturbing activities will be resumed within 21 days, temporary erosion control and stabilization measures are not required on that portion of the site, except as provided below. Erosion control and stabilization measures must be initiated as soon as practicable in semi-arid areas and areas experiencing droughts by the 14th day after construction activity.

After final stabilization has been established on all disturbed areas of the Addition and all permanent erosion control measures have been installed and working effectively, the Developer shall request final acceptance of the project to the Director of Public Works. Inspection of the site will be required to ensure that the erosion control plan has been properly installed and the permanent erosion control measures will prevent soil erosion from the newly created lots from washing into the street right-of-way, drainage-way or other private property.

F. USE OF PUBLIC RIGHT OF WAY

It is agreed by and between the City and Developer that the Developer may provide unique amenities within public right-of-way, such as landscaping, irrigation, lighting, patterned concrete, etc., for the enhancement of the Addition. The Developer agrees to maintain these amenities until such responsibility is turned over to the property owner. The Developer and his successors and assigns understand that the City shall not be responsible for the replacement of these amenities under any circumstances and further agrees to indemnify and hold harmless the 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 with regard to these improvements and the Developer shall, at his own cost and expense, defend and protect the City against all such claims and demands.

G. AMENITIES

It is agreed by and between the City and Developer that the Addition may incorporate a number of unique amenities and aesthetic improvements in common areas of the Addition such as ponds, aesthetic lakes, unique landscaping, walls, patterned concrete, specialty signage and accessory facilities. The Developer shall be responsible for the construction and maintenance of all such aesthetic or specialty items such as walls, vegetation, signage, landscaping, street furniture, pond and lake improvements until such responsibility is turned over to the property owner.

H. START OF CONSTRUCTION

Before the construction of the streets, water, sewer, streets or drainage facilities can begin, the Developer must do the following:

1. Execute a Developer Agreement;
2. Schedule and attend a pre-construction meeting between Developer and City and including all Contractors, major Sub-Contractors, Utilities and appropriate Government Agencies;
3. Furnish to the City a list of all subcontractors and suppliers which will be providing greater than \$1,000 of work in the Addition;
4. Submit for approval by the City the payment and performance bonds and 2-year maintenance bond or acceptable alternate security naming the City as beneficiary;
5. Submit at least two (2) - 22"x34" (full size) sets and five (5) - 11"x17" (half size) scalable sets of construction plans to be stamped "Released for Construction" by the Director of Public Works plus any additional sets needed for the developer and contractor;
6. Pay all fees required to be paid to the City;
7. Furnish to the City a policy of general liability insurance, naming the City as co-insured, prior to commencement of any work. All insurance must meet the **Requirements of Contractor's Insurance** attached hereto and incorporated herein.

III. GENERAL PROVISIONS

A. INDEMNIFICATION

DEVELOPER COVENANTS AND AGREES TO INDEMNIFY AND DOES HEREBY INDEMNIFY, HOLD HARMLESS AND DEFEND CITY, ITS OFFICERS, AGENTS, SERVANTS 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 BY DEVELOPER, DEVELOPER'S AGENTS, CONTRACTORS AND SUBCONTRACTORS, 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, AND SUBCONTRACTORS. THIS OBLIGATION TO INDEMNIFY SHALL APPLY TO ALL CLAIMS THAT ARISE FROM EVENTS THAT OCCUR PRIOR

TO THE TIME THE CITY ACCEPTS THE ADDITION, REGARDLESS OF WHETHER ANY SUCH DAMAGES, CLAIMS OR LIABILITIES ARE CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENT ACT OR OMISSION, OR OF THE CONCURRENT NEGLIGENT ACT OR OMISSION, OF THE CITY, ITS OFFICERS AND EMPLOYEES, AND SHALL CONTINUE FOR TWO YEARS AFTER THE CITY ACCEPTS THE ADDITION.

- B. Venue of any action brought hereunder shall be in Fort Worth, Tarrant County, Texas.
- C. Approval by the Director of Public Works or other City employee of any plans, designs or specifications submitted by the Developer pursuant to this Agreement shall not constitute or be deemed to be a release of the responsibility and liability of the Developer, his engineer, employees, officers or agents for the accuracy and competency of their design and specifications. Such approval shall not be deemed to be an assumption of such responsibility and liability by the City for any defect in the design and specifications prepared by the consulting engineer, his officers, agents, servants or employees, it being the intent of the parties that approval by the Director of Public Works signifies the City's approval on only the general design concept of the improvements to be constructed. In this connection, the Developer shall for a period of two (2) years after the acceptance by the City of the completed construction project, indemnify and hold harmless the 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 the Developer shall defend at his own expense any suits or other proceedings brought against the 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.
- D. This Agreement or any part herein, or any interest herein, shall not be assigned by the Developer without the express written consent of the City Manager, which shall not be unreasonably withheld or delayed.
- E. On all facilities included in this Agreement for which the Developer awards his or her own construction contract, the Developer agrees to employ a construction contractor who is approved by the City, and whose approval shall not be unreasonably withheld or delayed, said contractor to meet City and statutory requirements for being insured, licensed and bonded to do work in public projects and to be qualified in all respects to bid on public projects and to be qualified in all respects to bid on public projects of a similar nature.
- F. Work performed under the Agreement shall be completed within two (2) years from the date thereof. In the event the work is not completed within the two (2)

year period, the City may, at its election, draw on the performance bond, Letters of Credit, or other security provided by Developer and complete such work at Developer's expense, provided however, that if the construction under this Agreement shall have started within the two (2) year period, the City may agree to renew the Agreement with such renewed Agreement to be in compliance with the City policies in effect at that time.

G. The City is an exempt organization under Section 151.309, Tax Code, and the facilities constructed under this Agreement will be dedicated to public use and accepted by the City upon acknowledgement by the City of completion under Paragraph 1.F.

1. The purchase of tangible personal property, other than machinery or equipment and its accessories, repair, and replacement parts, for use in the performance of this Agreement is, therefore, exempt from taxation under Chapter 151, Tax Code, if the tangible property is:

- a. necessary and essential for the performance of the Agreement; and
- b. completely consumed at the job site.

2. The purchase of a taxable service for use in the performance of this Agreement is exempt if the service is performed at the job site and if:

- a. this Agreement expressly requires the specific service to be provided or purchased by the person performing the Agreement; or
- b. the service is integral to the performance of the Agreement.

H. Prior to final acceptance of the Addition, the Developer shall provide to the City two (2) copies of Record Drawings of the Addition, showing the facilities as actually constructed.

Such drawings shall be stamped and signed by the registered professional engineer of record. In addition, the Developer shall provide electronic files of the drawings in a format acceptable to the City. The project coordinate system must tie to the State Plane Coordinate System.

IV. OTHER ISSUES

A. OFF-SITE DRAINAGE

B. OFF-SITE SANITARY SEWER

C. OFF-SITE WATER

D. SIDEWALK ESCROW FEE

E. DOWN STREAM CRITICAL STRUCTURE FEE

F. DETENTION

G. PARK FEES

H. TREE PRESERVATION ORDINANCE

All construction activities shall comply with Ordinance No. 585-D, as amended, and Ordinance No. 585-B, as amended, which pertain to Tree Preservation requirements and as may be amended by the City Council. Such conditions include, but are not limited to, proper posting of tree protection warning signs and tree protection measures to be maintained throughout the duration of the project.

SIGNED AND EFFECTIVE on the date last set forth below.

DEVELOPER: _____

By: _____

Title: _____

Address: _____

STATE OF TEXAS

COUNTY OF TARRANT

On _____, before me, _____, Notary Public, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

(SEAL)

My commission expires: _____

CITY OF SOUTHLAKE, TEXAS

By: _____
Mayor

ATTEST:

City Secretary

Date: _____

City Attorney

Date: _____

SAMPLE

REQUIREMENTS FOR IRREVOCABLE LETTER OF CREDIT

1. The Letter of Credit must have duration of at least one year.
2. The Letter of Credit may be substituted for utility security deposits exceeding \$10,000.00. The City reserves the right to specify the face amount of the letter of credit.
3. The Letter of Credit must be issued by a FDIC insured bank in a form acceptable to the City of Southlake. The City reserves the right to approve/disapprove the bank issuing the Letter of Credit.
4. The Letter of Credit must be issued by a bank that has a minimum capital ratio of six (6%) percent, and has been profitable for each of the last two consecutive years.
5. The customer must provide the City with supporting financial information on the bank to allow the City to ascertain requirements are met. Suitable financial information would be the previous two (2) years December 31 Call Reports submitted to the FDIC and audited financial statements.
6. Partial drawings against Letter of Credit must be permitted.
7. The City must be able to draft on sight with proof of amount owed.
8. The customer pays any and all fees associated with obtaining Letter of Credit.
9. Expiring Letter of Credit must be replaced by a substitute Letter of Credit at least 30 days prior to the expiration date on the Letter of Credit held by the City.

REQUIREMENTS FOR CONTRACTOR'S INSURANCE

Contractor's Insurance

1. Without limiting any of the other obligations or liabilities of the CONTRACTOR, during the term of the Contract, the CONTRACTOR shall purchase and maintain the following minimum insurance coverages with companies duly approved to do business in the State of Texas and satisfactory to the CITY. In this section "Project" shall mean the public facilities to be constructed by Developer or under Developer's contract with a CONTRACTOR. Coverages shall be of the following types and not less than the specified amounts:

- a. Workers' compensation as required by Texas law, with the policy endorsed to provide a waiver of subrogation as to the CITY; employer's liability insurance of not less than the minimum statutory amounts.
- b. Commercial general liability insurance, including premises- operations; 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 CITY's employees and third parties, extended to include personal injury liability coverage with damage to property of third parties, broad form property damage, with minimum limits as set forth below:

General Aggregate	\$2,000,000
Bodily Injury.....	\$1,000,000 Each Occurrence
Property Damage	\$1,000,000 Each Occurrence
Products-Components/Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
	(With Employment Exclusion deleted)
Each Occurrence	\$1,000,000
Contractual Liability:	
Bodily Injury.....	\$1,000,000 Each occurrence
Property Damage.....	\$1,000,000 Each occurrence

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

- 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 \$1,000,000 per occurrence; or separate limits of \$500,000 for bodily injury (per person), and \$500,000 for property damage. Such insurance shall include coverage for loading and unloading hazards.
- d. Property Insurance (Builder's All Risk)
 - i. CONTRACTOR shall purchase and maintain, at all times during the term of its Contract with the Developer property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial contract price, plus value of subsequent contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance

shall be maintained, unless otherwise in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than the CITY has an insurable interest in the property required by this paragraph to be covered, whichever is later. This insurance shall include interests of the CITY, the CONTRACTOR, Subcontractors and Sub-Subcontractors in the Project.

- ii. Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for CONTRACTOR's services and expenses required as a result of such insured loss.
 - iii. If the insurance required by this paragraph requires deductibles, the CONTRACTOR shall pay costs not covered because of such deductibles.
 - iv. This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.
- e. OWNER'S Protective Liability Insurance:
- i. CONTRACTOR shall obtain, pay for and maintain at all times during the prosecution of the work under the contract between the CONTRACTOR and the Developer, a CITY's protective liability insurance policy naming the CITY as insured for property damage and bodily injury, which may arise in the prosecution of the work or CONTRACTOR's operations under the contract.
 - ii. Coverage shall be on an "occurrence" basis, and the policy shall be issued by the same insurance company that carries the CONTRACTOR's liability insurance with a combined bodily injury and property damage minimum limit of \$1,000,000 per occurrence.
- f. "Umbrella" Liability Insurance:

The CONTRACTOR shall obtain, pay for and maintain umbrella liability insurance during the term of the Contract between the CONTRACTOR and the Developer, insuring CONTRACTOR for an amount of not less than **\$5,000,000 per occurrence combined** limit for bodily injury and property damage that follows form and applies in excess of the primary liability coverages required herein above. The policy shall provide "drop down" coverage where underlying primary insurance coverage limits are insufficient or exhausted.

Policy Endorsements

1. Each insurance policy to be furnished by CONTRACTOR shall include the following conditions by endorsement to the policy:
 - a. name the CITY as an additional insured as to all applicable policies;
 - b. each policy shall require that 30 days prior to cancellation, non-renewal or any material change in coverage, a notice thereof shall be given to CITY by certified mail. If the policy is canceled for nonpayment of premium, only 10 days written notice to CITY is required;
 - c. the term "CITY" shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of the CITY and individual members, employees and agents thereof in their official capacities, and/or while acting on behalf of the CITY;
 - d. the policy phrase "other insurance" shall not apply to the CITY where the CITY is an additional insured on the policy.

Special Conditions

1. Insurance furnished by the CONTRACTOR shall be in accordance with the following requirements:
 - i. 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 CITY's decision thereon shall be final;
 - ii. all policies are to be written through companies duly licensed to transact that class of insurance in the State of Texas; and
 - iii. all liability policies required herein shall be written with an "occurrence" basis coverage trigger.
2. CONTRACTOR agrees to the following:
 - i. **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 CITY, 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;**
 - ii. companies issuing the insurance policies and CONTRACTOR shall have no recourse against the CITY 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;
 - iii. approval, disapproval or failure to act by the CITY 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 or this Agreement. Neither shall be bankruptcy, insolvency or denial of liability by the insurance company exonerate the CONTRACTOR from liability;
 - iv. deductible limits on insurance policies exceeding \$10,000 require approval of the CITY;
 - v. any of such insurance policies required under this paragraph may be written in combination with any of the others, where legally permitted, but none of the specified limits may be lowered thereby;
 - vi. prior to commencement of operations pursuant to this Contract, the Developer or the Developer's CONTRACTOR shall furnish the CITY with satisfactory proof that he has provided adequate insurance coverage in amounts and by approved carriers as required by this Agreement;
 - vii. CONTRACTOR shall provide notice of any actual or potential claim or litigation that would affect required insurance coverages to the CITY in a timely manner;
 - viii. CONTRACTOR agrees to either require its Subcontractors to maintain the same insurance coverage and limits as specified for the CONTRACTOR or coverage of Subcontractors shall be provided by the Contract; and
 - ix. Prior to the effective date of cancellation, CONTRACTOR shall deliver to the CITY a replacement certificate of insurance or proof of reinstatement.