

SUBDIVISION CONSTRUCTION AGREEMENT

Date: _____

Subdivision: _____

STATE OF TEXAS

COUNTY OF WILLIAMSON

This Subdivision Construction Agreement (the "**Agreement**") is made and entered into by and between _____, (the "**Subdivider**") and the City of Georgetown, Texas, (the "**City**"), hereinafter collectively referred to as the "**Parties**".

WHEREAS, the Subdivider owns the tract of real property described in Document No(s). _____ of the Official Public Records of Williamson County, Texas, and desires to subdivide the Property pursuant to the proposed Final Plat of " _____ " (the "**Subdivision**"), which is attached hereto as "**Exhibit A**" and made a part hereof; and

WHEREAS, the City's Unified Development Code requires Subdivider to either construct all of the Subdivision's public improvements or post fiscal surety prior to City's approval the Subdivision's Final Plat; and

WHEREAS, Subdivider has elected to post fiscal surety in lieu of full construction of all public improvements prior to Final Plat approval; and

WHEREAS, the City desires to set forth the Subdivider's responsibility for the construction of the Subdivision's public improvements; and

WHEREAS, the Subdivider desires to set forth the City's responsibility to accept the constructed public improvements for maintenance.

NOW, THEREFORE, the Parties agree as follows:

I. Subdivider's Obligations

A. **Public Improvements**. The Subdivider shall design and construct the public improvements required to comply with the City's Unified Development Code, the City Construction Specifications and Standards Manual, the City Drainage Criteria Manual, and all other applicable City specifications, standards and regulations (collectively, the "**Standards**") and the construction plans for the public improvements approved by the City's Development Engineer (the "**Plans**"), which are attached as **Exhibit "B"** to this Agreement and by this reference incorporated within it; the improvements shown in said Plans shall hereinafter be collectively referred to as the "**Public Improvements**".

- B. Completion. The Public Improvements must be constructed in accordance with the Standards and the Plans and be free from design and construction defects. Upon completion of the Public Improvements, the Subdivider will provide the City with a complete set of construction plans for the Public Improvements (24" x 36" on digital file) certified "as built" by the engineer responsible for preparing the approved Plans.
- C. Security for Design and Construction of Public Improvements. The estimated cost of constructing the Public Improvements in accordance with the Plans, which has been determined by a professional engineer and approved by the City's Development Engineer, (the "**Cost Estimate**") is set forth in **Exhibit "C"** attached to this Agreement and by this reference incorporated within it. To secure the Subdivider's obligations to design and construct the Public Improvements, the Subdivider shall provide a financial guarantee of performance in the amount of One Hundred Twenty Five Percent (125%) of the Cost Estimate (the "**Security**"). The Security must be in a form approved by the City Attorney.
- D. Increase in Security. If at any time the City's Development Engineer determines, in his or her opinion and at his or her discretion, the cost of constructing the Public Improvements may exceed the Security, the Subdivider shall provide an updated Cost Estimate prepared by a professional engineer within thirty (30) days after notice and demand, for approval by the Development Engineer; if the approved, updated Cost Estimate demonstrates that the cost of constructing the Public Improvements may exceed the Security, the Subdivider shall provide additional Security in an amount equal to the additional estimated cost within thirty (30) days after the Development Engineer's approval of the updated Cost Estimate.
- E. Restriction on Sale, Transfer or Conveyance of Lots. In the event that the Public Improvements are not constructed to meet the Standards and Plans, and the required Security has expired, the Subdivider shall not sell, transfer, or convey any of the lots in the Subdivision until sufficient Security has been posted with the City for the completion of the construction and/or correction and repair of defects in materials or workmanship.
- F. Warranty for Maintenance Period. The Subdivider warrants the Public Improvements will be free from defects for a period of two (2) years from the date the City accepts the construction of the Public Improvements (the "**Maintenance Period**"). The Subdivider shall correct and repair, or cause to be corrected and repaired, any defects in materials or workmanship of the Public Improvements that occur before and during the Maintenance Period due to any cause.
- G. Security for Maintenance of Public Improvements. As a condition of the City's acceptance of dedication of any of the Public Improvements, and to secure the Subdivider's warranty obligations during the Maintenance Period, the Subdivider shall provide a "**Maintenance Bond**" in the amount of Ten Percent (10%) of the total cost of constructing the Public Improvements. The Maintenance Bond must be in a form approved for use by the City Attorney. The Public Improvements must meet the Standards and Plans at the end of the Maintenance Period in order for the City to release the Maintenance Bond.

II. City's Obligations

- A. Inspection and Approval. The City will inspect the Public Improvements during and at the completion of construction. If the Public Improvements are completed in accordance with the Plans and the Standards, the City will approve the Public Improvements and accept the Public Improvements by issuing an “**Acceptance Letter**” from the City’s Development Engineer in the form attached hereto as **Exhibit “D”**.
- B. Notice of Defect. The City will notify the Subdivider if an inspection reveals that any portion of the Public Improvements is not constructed in accordance with the Plans or the Standards or is otherwise defective. However, the City is not responsible for the construction of the Public Improvements, the quality of the material, or the construction methods utilized. In addition, the City is not responsible for making continuous on-site inspections of the construction work and the City has no privity with or responsibility for the construction contractor or any subcontractors.
- C. Events of Default. Events of Default under this Agreement are:
- 1) Subdivider’s failure to design the Public Improvements as required to comply with the Standards and Plans;
 - 2) Subdivider’s failure to construct the Public Improvements as required to comply with the Standards and Plans;
 - 3) Subdivider’s failure to provide the City with a complete set of construction plans for the Public Improvements, certified "as built" by the engineer responsible for preparing the approved Plans;
 - 4) Subdivider’s failure to comply with the warranty that the Public Improvements will comply with the Standards and Plans during the Maintenance Period;
 - 5) Subdivider’s failure to provide additional Security within thirty (30) days after notice and demand;
 - 6) The acquisition of the Property or a portion of the Property by the issuer of the Security or other creditor through foreclosure or an assignment or conveyance in lieu of foreclosure; and/or
 - 7) Subdivider’s failure to comply with any other material provision of this Agreement.
- D. Notice of Default and Intent to Draw. The City shall provide notice of default and intent to draw on the Security or Maintenance Bond, as applicable, to Subdivider with a copy of the notice to any Surety, lender, or Trustee. The notice will identify the event of default and City may, in its sole discretion, provide an opportunity for Subdivider to cure the default. Upon default, or if Subdivider fails to cure the default as expressly allowed by City, the City shall be entitled to draw the amount necessary to perform the Subdivider's obligations under this Agreement up to the total amount of Security and/or Maintenance Bond, as applicable. The City may, at its option and discretion, accept substitute security instead of, or in addition to, drawing on the Security and/or Maintenance Bond.

E. Use of Security and/or Maintenance Bond.

- 1) The City may use the Security and/or Maintenance Bond for the purpose of completing the Public Improvements in accordance with the Standards and Plans or to correct, repair or reconstruct the Public Improvements to achieve compliance with the Standards and Plans.
- 2) The City may, at its option and in its discretion, complete some or all of the unfinished Public Improvements at the time of default, regardless of the extent to which development has taken place in the Subdivision or whether development ever commenced, without incurring any obligation to complete any of the unfinished Public Improvements.
- 3) The City's draw on the Security and/or Maintenance Bond and use of Security and/or Maintenance Bond to complete, correct, repair, or reconstruct the Public Improvements is not an acceptance of the dedication of the Public Improvements. The acceptance of the Public Improvements is specifically and expressly conditioned on the delivery to the City of Public Improvements constructed to comply with the Standards and Plans or the express order of acceptance by the City Council, and the Public Improvements shall not be considered accepted by the City without the City's issuance of an executed duly-authorized Acceptance Letter.
- 4) Security proceeds and/or Maintenance Bond proceeds obtained by the City pursuant to one or more draws shall be maintained by the City in an account or accounts until such funds, together with accrued interest thereon, if any, ("**Escrowed Funds**") are disbursed by the City.
- 5) The City shall disburse the Escrowed Funds as Public Improvements are completed, corrected, repaired or reconstructed by the City, or in accordance with the terms of a written construction contract between the City and a third party for the construction of the Public Improvements.
- 6) The City will release the Security, and the Escrowed Funds, if any, within thirty (30) days following acceptance of the Public Improvements by the City when a Maintenance Bond has been provided by Subdivider.
- 7) Upon the expiration of the Maintenance Period, if there are no existing defects in or failures of the Public Improvements the Subdivider is required to correct, repair or reconstruct, the City's Development Engineer will recommend release of the Maintenance Bond and/or the remaining Security and/or the remaining Escrowed Funds. The City will release the Maintenance Bond and/or the remaining Security and/or remaining Escrowed Funds within thirty (30) days after the City's Development Engineer's recommendation.
- 8) The Subdivider has no claim or rights under this Agreement to Security proceeds, Maintenance Bond proceeds, or Escrowed Funds, to the extent used by the City.

III. Miscellaneous

- A. Covenants, Restrictions, and Conditions. The covenants, restrictions, and conditions included in this Agreement will operate as covenants running with the land and will be binding upon the Subdivider and the Subdivider's legal representatives, heirs, successors, and permitted assigns.
- B. Remedies. The remedies available to the City and the Subdivider under this Agreement and Texas law are cumulative in nature.
- C. No Third-Party Beneficiaries. This Agreement shall not be construed as affording any rights or benefits to anyone other than City and Subdivider. No third-party, including without limitation a trustee in bankruptcy, shall have any interest in or claim to posted Security and/or Security proceeds.
- D. Indemnification. **The Subdivider shall indemnify and hold the City harmless from and against all claims, demands, costs, and liability of every kind and nature, including reasonable attorney's fees, for the defense of such claims and demands, arising from any breach on the part of Subdivider of any provision in this Agreement, or from any act or negligence of Subdivider or Subdivider's agents, contractors, employees, tenants, or licensees in the construction of the Public Improvements. The Subdivider further agrees to indemnify and defend the City, if the City is named as a defendant in an action arising from any breach on the part of Subdivider of any provision in this Agreement or from any act or negligence of Subdivider or Subdivider's agents, contractors, employees, tenants, or licensees in the construction of the Public Improvements.**
- E. No Waiver. The waiver of any provision of this Agreement will not constitute a waiver of any other provision, nor will it constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement. The City's failure to enforce any provision of this Agreement will not constitute a waiver or estoppel of the right to do so.
- F. Successors and Assigns. This Agreement is binding on the Subdivider and the heirs, successors, and permitted assigns of the Subdivider and on any person acquiring an ownership interest in the Property through the Subdivider. The Subdivider's obligations under this Agreement may not be assigned without the written approval of the City; provided the City's approval shall not be unreasonably withheld if the Subdivider's assignee expressly assumes all obligations of the Subdivider under this Agreement. An assignment shall not be construed as releasing the Subdivider from Subdivider's obligations under this Agreement and Subdivider's obligations hereunder shall continue notwithstanding any assignment approved pursuant to this Paragraph unless and until the City executes and delivers to the Subdivider a written release. The City agrees to release the Subdivider, if the Subdivider's assignee expressly assumes the Subdivider's obligations under this Agreement and has posted the Security and/or Maintenance Bond required by this Agreement. The City may assign some or all of its rights under this Agreement and any such assignment shall be effective upon notice to the Subdivider.

G. Notice. Any notice under this Agreement must be in writing and will be effective when personally delivered or three (3) days after deposit in the U.S. Mail, postage prepaid, certified with return receipt requested, and addressed as follows:

Subdivider:

City:

Planning Director
City of Georgetown, Texas
P.O. Box 409
Georgetown, Texas 78627

with a copy to:

Development Engineer
City of Georgetown, Texas
P.O. Box 409
Georgetown, Texas 78627

The Parties may change their respective addresses for notice to any other location in the United States in accordance with the provisions of this Paragraph.

H. Severability. If any provision of this Agreement is held by a court to be illegal, invalid, or otherwise unenforceable, such illegality, invalidity, or unenforceability shall not affect the validity of any other provision and the rights of the Parties will be construed as if such provision was never part of this Agreement.

I. Jurisdiction and Venue. This Agreement concerns real property located in Williamson County, Texas, and shall be governed and construed under Texas law. Venue for any action arising under this Agreement shall be exclusively in Williamson County, Texas.

J. Captions Immaterial. The captions or headings of the paragraphs of this Agreement are for convenience only and shall not be considered in construing this Agreement.

K. Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof. Any oral representations or modifications concerning this Agreement shall be of no force or effect, except a subsequent written modification executed by both Parties. NO OFFICIAL, EMPLOYEE, OR AGENT OF THE CITY HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO AMEND, MODIFY, OR OTHERWISE CHANGE THIS AGREEMENT, EXCEPT PURSUANT TO SUCH EXPRESS AUTHORITY AS MAY BE GRANTED BY THE CITY COUNCIL.

This Agreement is executed as of the dates set forth below and is effective upon approval by the City of the final plat for the Subdivision.

THE CITY OF GEORGETOWN:

By: _____
Wesley Wright, Development Engineer

Date: _____

ATTEST:

Robyn Densmore, City Secretary

APPROVED AS TO FORM:

Charlie McNabb, City Attorney

SUBDIVIDER:

By: _____

Name: _____

Title: _____

Date: _____

ACKNOWLEDGEMENT

STATE OF TEXAS
COUNTY OF WILLIAMSON

This instrument was acknowledged before me on the _____ day of _____,
20__ by _____, in the capacity stated herein.

Notary Public – State of Texas