

**PARKLAND IMPROVEMENTS AGREEMENT**  
**between**  
**THE CITY OF GEORGETOWN**  
**and**

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This Parkland Improvements Agreement (the “Agreement”) is entered by and between the City of Georgetown, Texas, a Texas home-rule municipal corporation situated in Williamson County (the “City”) and \_\_\_\_\_ (the “Developer”) (each a “Party” and collectively the “Parties”), acting by and through their respective authorized officers.

**WHEREAS**, Developer owns a total of approximately \_\_\_\_\_ acres of land located in Georgetown, Williamson County, Texas, as more particularly described in the attached Exhibit “A” (the “Property”). The Developer intends to develop a \_\_\_\_\_ project on the Property (the “Project”);

**WHEREAS**, to satisfy the City’s parkland dedication requirements and as part of the Project, the Developer is required to construct the Parkland Improvements (defined herein), to convey the Developer Parkland (defined herein);

**WHEREAS**, this Agreement provides the specifications and processes for the construction and approval of the Parkland Improvements on or within the Project; and

**NOW THEREFORE**, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**Article I**  
**Definitions**

The following terms and phrases used in this Agreement have the meanings set forth below:

“Parkland” shall mean the approximately \_\_\_\_\_ acres of land generally depicted on Exhibit “B” attached hereto.

“Commencement of Construction” shall mean that: (i) the plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for the construction of the respective Parkland Improvement; (ii) all necessary permits for the initiation of construction of the respective Parkland Improvement have been issued by the applicable governmental authorities; (iii) a general contract(s) for construction has been entered into and grading of land for the respective Parkland Improvement has commenced; and (iv) PARD has issued a Notice to Proceed for the respective Parkland Improvement.

“Completion of Construction” shall mean that: (i) the respective Parkland Improvement has been substantially completed; (ii) the City has inspected the respective Parkland Improvement; and (iii) the PARD has approved and accepted the respective Parkland Improvement.

“Designated Successors and Assigns” shall mean an entity that has the financial, technical, and managerial capacity and experience to perform the duties and/or obligations of Developer under this Agreement and to which Developer assigns (in writing) all or a portion of its rights and obligations contained in this Agreement and such Designated Successor and Assign assumes in writing.

“Owners Association” shall mean a property owners association or homeowners association for the Property created by the Developer.

“Parkland Improvements” shall collectively mean those improvements listed on Exhibit “C” attached hereto.

“Parks and Recreation Department” or “PARD” shall mean the City of Georgetown's Parks and Recreation Department.

## **Article II**

### **Term**

The term of the Agreement begins on the last date of execution hereof by the Parties (the “Effective Date”) and, unless terminated in accordance with other provisions of this Agreement, continues until the Parties' obligations hereunder are completed.

## **Article III**

### **Designation of Representatives**

3.1 City Representative. The City designates the Director of the PARD as its authorized representative to act on the City's behalf with respect to this Agreement.

3.2 Developer Representative. Developer designates \_\_\_\_\_ as its authorized representative to act on the Developer's behalf with respect to this Agreement.

3.3 Change of Representative. The Parties may designate other or different representatives from time to time by written notice to the other Party.

## **Article IV**

### **Responsibilities of Developer**

4.1 Parkland Improvements. Developer shall, at no cost to the City, construct or cause to be constructed the Parkland Improvements.

4.2 Parkland Improvements Construction Schedule.

(a) Commencement of Construction. Developer shall cause Commencement of Construction of the Parkland Improvements to occur concurrently with development of the first phase of the Project.

(b) Completion of Construction. Developer shall cause Completion of Construction of the respective Parkland Improvement to occur within \_\_\_\_ days after

Commencement of Construction of the respective Parkland Improvement, subject to force majeure events and delays caused by governmental authorities.

43 Plan Approval. At least ninety (90) calendar days prior to the Commencement of Construction deadline, Developer shall submit to the City through the City's Planning Department a detailed description of each of the Parkland Improvements for review by PARD (the "Parkland Improvements Description"). The Parkland Improvements Description shall include, for each Parkland Improvement, the following information: a detailed description, purpose, size, location, construction/installation schedule, plans, specifications, construction documents, construction access, and the estimated cost of constructing each Parkland Improvement as determined by a professional engineer. The Parkland Improvements Description shall also include a site plan that provides grading, landscaping, and irrigation information, at a minimum. The Developer shall cooperate with reasonable requests of PARD for additional information. The Developer shall use only the City-approved parkland improvements description, site plan, construction plans, and specifications for the Parkland Improvements (collectively, the "Plans") for construction of the Parkland Improvements.

44 Construction Standards. All work must be performed in compliance with the codes and standards of the City in effect as of the Effective Date, including but not limited to, the Parkland Trail Design Standards, the City Code of Ordinances in effect of the Effective Date and the Unified Development Code in effect of the Effective Date (collectively, the "Standards"). All work performed under this Agreement by Developer and its contractors (the "Contractors") must also be free from design and construction defects at the time of completion. In addition, Developer shall follow all City ordinances and other rules and regulations regarding permits and approvals related to activities and construction of the Parkland Improvements, as well as those of any other governmental entity having jurisdiction over the Project.

4.8 Notice to Proceed. Construction shall not commence on a Parkland Improvement until PARD has issued a written "Notice to Proceed" for the applicable Parkland Improvement for which the City, in its regulatory capacity, has approved Plans. A Notice to Proceed shall be issued within three (3) calendar days after PARD has approved the Plans. If requested by the PARD, the Developer shall attend a pre-construction meeting.

4.9 Diligently Pursue. Subject to force majeure events and delays caused by governmental authorities, Developer shall diligently prosecute completion of the Parkland Improvements and coordinate all construction activity with designated PARD staff following issuance of the Notice to Proceed.

4.10 Completion. Upon completion of each Parkland Improvement, Developer shall request inspection by e-mail and/or phone, plus deliver to PARD written notice that construction of such Parkland Improvement has been completed and is ready for a final inspection. The Developer may combine requests for inspections of Parkland Improvements. The Developer shall promptly respond to the City's inspection(s) results, including correcting any deficiencies identified by PARD and/or City engineer. The Developer shall seek to correct any deficiencies within ten (10) calendar days and inform PARD in writing that the correction will require longer period to correct, if it requires reordering parts to a specific Parkland Improvement. This process will repeat until the City finds the Parkland Improvements are in conformance with the approved Plans.

4.11 Completion Notice. Following the inspection process outlined above and prior to the City's acceptance of the Parkland Improvements and the Plans, the Developer must submit in writing to the City that the Maintenance Security required by Article VI of this Agreement is in place and submit a set of construction plans for the Plans certified as "as-built" by the engineer responsible for preparing the Plans (collectively, the "Completion Notice"). The Completion Notice shall be submitted to the City not more than thirty (30) days following the City's communication to the Developer that the Parkland Improvements are in conformance with the approved Plans. The Developer shall promptly revise or add to the Completion Notice based upon the review of PARD and/or City engineer.

4.12 Parkland Conveyance. Developer will convey the Parkland to the City, at no cost to the City, not later than thirty (30) days after the Completion Deadline, solely for use as public parkland. The conveyance of the Parkland to the City must be by special warranty deed restricting the Parkland to public park use, free of all liens and encumbrances except the City Attorney-approved exceptions applicable to the Parkland, and accompanied by a title commitment having only those standard pre-printed exceptions that are part of the promulgated form of Texas title insurance policies, plus any City Attorney-approved exceptions applicable to the Parkland. Developer will pay the cost of a title insurance policy consistent with such a title commitment reflecting the then-current fair market value for the Parkland as well as the costs of recording and preparation of conveyance documents.

4.13 Costs. Developer shall be solely responsible for all costs of design and construction of the Parkland Improvements. Any increases in the actual costs of the design and construction of the Parkland Improvements, including cost increases, change orders and overruns shall be borne by Developer. Costs include, but are not limited to, landscaping costs, labor costs, site restoration and re-vegetation costs, materials costs, engineering costs, utility connection fees, permits, and inspection fees, if imposed by the City, incurred in the design and construction of the Parkland Improvements.

4.14 Construction Security: To secure the Developer's obligations to design and construct the Parkland Improvements, Developer shall provide a financial guarantee of performance in the amount of one hundred twenty five percent (125%) of the total estimated cost of constructing the Parkland Improvements (the "Construction Security"), as determined by a professional engineer and approved by the City's designated engineer. The Construction Security may be a Letter of Credit, Trust Agreement or Performance Bond in a form approved for use in the City's Development Manual. If at time the City's designated engineer determines, in his or her opinion and at his or her discretion, the cost of constructing the Parkland Improvements may exceed the Construction Security, the Developer shall provide additional Construction Security in amount equal to the additional estimated cost within thirty (30) days after notice and demand.

## **Article V**

### **Responsibilities of the City**

5.1 Cooperation. City and PARD staff shall use good faith efforts to assist Developer in securing all permits and performing inspections necessary to construct the Parkland Improvements. Developer and its Contractors shall coordinate with City staff to provide any information in the possession or control of Developer or its Contractors that is necessary or will facilitate applications for permits and approvals.

5.2 Plan Approval. Following submittal of the Plans by the Developer to the City through the Planning Department, the City shall acknowledge receipt of the Plans and provide the Developer with the results of its completeness check within ten (10) calendar days. Within thirty (30) calendar days of receipt of the Plans, City shall respond to Developer by either approving the Plans or conditionally approving the Plans subject to additional requirements or alterations mutually acceptable to Developer and PARD. Failure of PARD to respond to the submittal of the Plans within the 30-day period shall be deemed to be acceptance of same by PARD and the City. The City's review of the Plans shall repeat until it approves the Plans. PARD may request a pre-construction meeting to which the Developer shall attend.

5.3 Inspection. The City shall have the right to inspect each Parkland Improvement during and at the Completion of Construction; provided, however, that the City shall provide twenty-four hours advance notice to Developer before coming on site during active construction to allow Developer to take appropriate site safety precautions. It will be the City's intent to provide next business day inspections following the Developer's request for inspections as defined in this Agreement; however, no notice will be required prior to an inspection that is in response to the Developer's request for an inspection or to address an emergency.

5.4 Notification of Non-Compliance. The City will notify the Developer if an inspection reveals that any portion of a Parkland Improvement is not constructed in substantial accordance with the Plans or the Standards. However, the City is not responsible for the construction of the Parkland 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 Developer's Contractors or any subcontractors during construction; provided, however, that privity may subsequently exist after construction with the assignments of warranties to the City.

5.5 Punch List. Within fourteen (14) calendar days of receipt of the Completion Notice, the City shall respond to the Developer by either submitting a list of items still requiring completion or modification, requesting additional information, or by accepting the Completion Notice. Final approval of the Plans, including all Parkland Improvements, shall be evidenced by a letter of approval from PARD, but shall not be valid unless and until the Maintenance Security required by Article VI of this Agreement is in place. Failure to respond to a Completion Notice within the 14-day period shall be deemed approval by PARD and the City.

5.6 Maintenance. The City shall own and assume the maintenance of the Parkland and Parkland Improvements following City acceptance of the Completion Notice for the respective facility or improvement following Completion of Construction thereof.

## **Article VI**

### **Warranties and Maintenance**

6.1 Maintenance Period. Developer hereby warrants that each Parkland Improvement will be free from defects for a period of two (2) years from the date the City accepts the construction of said Parkland Improvements (the "Maintenance Period"). The Developer shall correct and repair, or cause to be corrected and repaired, any defects in materials or workmanship of an improvement in the Parkland Improvements that occurs before and during the Maintenance

Period due to any cause; provided, however, that Developer shall not be responsible for any damage, defect or repair caused by the negligence or willful misconduct of the City. Developer shall, at the time of dedication or transfer to the City of the Parkland, assign to the City, without further recourse against Developer, all warranties that Developer may have received with respect to each Parkland Improvement. All transfers of Parkland Improvements to the City under this Agreement shall include transfers of associated warranties, bonds, and guarantees.

6.2 Maintenance Security. For all Parkland Improvements, as a condition of the City's acceptance of dedication of the Parkland, and to secure the Developer's warranty obligations during the Maintenance Period, the Developer shall provide a maintenance bond, letter of credit, cash escrow, or other form of security acceptable to the City in the amount of Twenty Five Percent (25%) of the total cost of constructing all of Parkland Improvements (the "Maintenance Security"). The Maintenance Security, if a bond, must be in a form approved for use in the City's Development Manual. The Parkland Improvements must meet the Standards and Plans at the end of the Maintenance Period for the City to release the Maintenance Security.

## **Article VII**

### **Liability and Indemnification**

#### 7.1 Indemnification.

(a) DEVELOPER SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS CITY, ITS OFFICERS, APPOINTED OR ELECTED OFFICIALS, EMPLOYEES, AGENTS, ATTORNEYS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS (THE "INDEMNIFIED PARTIES"), AGAINST ALL COSTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES, EXPENSES, AND COURT COSTS), LIABILITIES, DAMAGES, CLAIMS, SUITS, ACTIONS, AND CAUSES OF ACTIONS (CLAIMS), TO THE EXTENT ARISING, DIRECTLY OR INDIRECTLY, OUT OF (A) A BREACH OF THIS AGREEMENT OR VIOLATION OF LAW BY DEVELOPER, ITS PARTNERS, MANAGERS, OFFICERS, AGENTS, EMPLOYEES, CONTRACTORS, SUCCESSORS OR ASSIGNS, (THE "DEVELOPER PARTIES"); (B) A FALSE REPRESENTATION OR WARRANTY MADE BY THE DEVELOPER PARTIES IN THIS AGREEMENT OR IN A PARKLAND IMPROVEMENT DESCRIPTION; (C) THE NEGLIGENCE, GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR BREACH OF A STANDARD OF STRICT LIABILITY BY THE DEVELOPER PARTIES IN CONNECTION WITH THIS AGREEMENT. CLAIMS TO BE INDEMNIFIED UNDER THIS ARTICLE INCLUDE BUT ARE NOT LIMITED TO CLAIMS FOR BODILY INJURY OR DEATH, OCCUPATIONAL ILLNESS OR DISEASE, LOSS OF SERVICES WAGES OR INCOME, DAMAGE DESTRUCTION OR LOSS OF USE OF PROPERTY, AND WORKERS' COMPENSATION CLAIMS. DEVELOPER'S OBLIGATIONS UNDER THIS ARTICLE ARE NOT EXCUSED IN THE EVENT A CLAIM IS CAUSED IN PART BY THE ALLEGED NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY OF THE INDEMNIFIED PARTIES OR BREACH OF ANY OF SUCH PARTIES' OBLIGATIONS UNDER THIS AGREEMENT. THE DEVELOPER'S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED UNDER THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

(b) City shall give Developer written notice of a Claim asserted against an

Indemnified Party. Developer shall assume on behalf of the Indemnified Parties and conduct with due diligence and in good faith the defense of all Claims against the Indemnified Parties. The Indemnified Parties shall have the right (but not the obligation) to participate in the defense of any claim or litigation with attorneys of their own selection without relieving Developer of any obligations in this Agreement. In no event may Developer admit liability on the part of an Indemnified Party without the written consent of the City Council.

7.2 Notice of Claim. Developer shall give notice of any Claim made against any of the Developer Parties, a Contractor, or a vendor, related to the Parkland Improvements, Developer shall provide written notice of such claim to the City Attorney within five (5) calendar days of the date that Developer or any of its employees, agents, or representatives first have actual (not constructive) notice of the Claim. Notification from Developer shall include the names and addresses of the person, firm, corporation, or other entity making the Claim and, if known, the basis and alleged amount of the Claim.

7.3 Contractor Indemnity. Developer shall require all its Contractors to indemnify City as provided in this Article.

## **Article VIII Insurance; Bonds**

8.1 Insurance. Developer shall require its Contractors to procure and maintain in full force and effect for the duration of this Agreement insurance coverages in accordance with the insurance requirements as set forth in Exhibit "D" attached hereto.

8.2 Payment/Performance Bonds. Developer shall also require performance and payments bonds from its Contractors in the full amounts of its contract sum(s) for the Parkland Improvement(s).

## **Article IX Default**

9.1 Events of Default. The following are Events of Default under this Agreement:

- (a) Developer's failure to design the Parkland Improvements as required to comply with the Standards and Plans;
- (b) Developer's failure to construct the Parkland Improvements as required to comply with the Standards and Plans or within the timeframe required by this Agreement;
- (c) Developer's failure to provide the City with a complete set of construction plans for each Parkland Improvement, certified "as built" by the engineer responsible for preparing the approved Plans and such failure continues for a period of 10 business days following issuance of such certified "as built" plans;
- (d) Developer's failure to comply with the warranty that the Parkland

Improvements will comply with the Standards and Plans during the Maintenance Period, or failure to post and maintain the Maintenance Security as required by this Agreement;

- (e) Developer's failure to provide additional Construction Security within thirty (30) days after written notice and demand;
- (f) The acquisition of the Property by any creditor of Developer through foreclosure or an assignment or conveyance in lieu of foreclosure; and/or
- (g) Developer's failure to comply with any other term, condition or provision of this Agreement.

An Event of Default may be cured under Article X.

9.2 Notice of Default and Intent to Draw. The City shall provide written notice of default and intent to draw on the Construction Security or Maintenance Security, as applicable, to Developer with a copy of the notice to any surety, lender, or trustee. The notice will identify the Event of Default and the City shall provide written notice of such default and an opportunity for Developer to cure the default as set forth in Article X. Upon default, or if Developer fails to cure the default as allowed by City, the City shall be entitled to draw the amount necessary to perform the Developer's obligations under this Agreement up to the total amount of Construction Security and/or Maintenance Security, as applicable. The City may, at its option and discretion, accept substitute security instead of, or in addition to, drawing on the Construction Security and/or Maintenance Security.

9.3 Use of Construction Security and/or Maintenance Security.

- (a) The City may use the Construction Security and/or Maintenance Security for the purpose of completing the Parkland Improvements in accordance with the Standards and Plans or to correct, repair or reconstruct the Parkland Improvements to achieve compliance with the Standards and Plans.
- (b) The City may, at its option and in its discretion, complete some or all the unfinished Parkland Improvements at the time of default, regardless of the extent to which development has taken place or whether development ever commenced, without incurring any obligation to complete any of the unfinished Parkland Improvements.
- (c) The City's draw on the Construction Security and/or Maintenance Security and use of Construction Security and/or Maintenance Security to complete, correct, repair, or reconstruct the Parkland Improvements is not an acceptance of the dedication of the Parkland Improvements. The acceptance of the Parkland Improvements is specifically and expressly conditioned on the delivery to the City of Parkland Improvements constructed to comply with the Standards and Plans or the express order of acceptance by the City



Council.

- (d) Construction Security proceeds and/or Maintenance Security 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.
- (e) 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.
- (f) The City will release the Construction Security, and the Escrowed Funds, if any, within thirty (30) days following acceptance of all the Parkland Improvements by the City if Maintenance Security for all the Parkland Improvements has been provided by Developer. If a Maintenance Security has not been provided within thirty (30) days following acceptance of the Parkland Improvements, the Construction Security, and the Escrowed Funds, if any, shall be reduced to an amount that is 25% of the total cost of the construction of the Parkland Improvements.
- (g) For all Parkland Improvements, upon the expiration of the Maintenance Period, if there are no existing defects in or failures of said Parkland Improvements the Developer is required to correct, repair or reconstruct, the City's designated engineer will recommend release of the Maintenance Security and/or the remaining Construction Security and/or the remaining Escrowed Funds. The City will release the Maintenance Security and/or the remaining Construction Security and/or remaining Escrowed Funds within thirty (30) days after the City's designated engineer's recommendation.
- (h) The Developer has no claim or rights under this Agreement to Construction Security proceeds, Maintenance Security proceeds, or Escrowed Funds, to the extent used by the City.

## **Article X**

### **Event of Default; Cure/Remedy**

10.1 Event of Default. If Developer fails to properly or timely fulfill its obligations under this Agreement, the City shall notify Developer in writing of the Event of Default. Developer shall have thirty (30) calendar days from receipt of such notice in which to cure any such Event of Default. If the Event of Default cannot be reasonably cured within said thirty (30) day period, and Developer has diligently pursued such remedy as shall be reasonably necessary to cure the Event of Default, then the Parties may (but are not required to) agree in writing to an extension of the period in which the Event of Default must be cured.

10.2 Remedies. If, however, Developer has not cured the Event of Default as specified in

the written notice or any extension within the time provided, or if Developer dissolves, becomes inactive, voluntarily files for bankruptcy or take other actions to protect it from its creditors, then the City shall have the right to draw on the Construction Security or Maintenance Security as set forth in Section 9.2 and/or to pursue any other remedy available under the law. Any termination shall be made by sending a written Notice of Termination to the Developer.

10.3 Suspension of Work. At any time without prior notice for health and safety reasons, and at any other time with thirty (30) calendar days prior notice, the City may suspend the work or any portion of the work by written notice to Developer stating the date on which Developer shall resume the work. Developer shall resume the work on the date stated in the City's notice. Developer shall receive an extension of time to perform equal to the time work is suspended.

10.4 Survival of Terms. Notwithstanding anything to the contrary in this Agreement, the obligations of Developer under Article VI of this Agreement pertaining to the required Maintenance Security shall survive termination and Developer shall continue to be obligated to obtain and maintain same in accordance with the terms of Section VI of this Agreement.

## **Article XI.**

### **Condition of Premises; Disclaimer of Warranties**

Neither the City nor any agent, employee, or representative of the City is authorized to make or has made any warranties or representations of any kind or character, expressed or implied, with respect to the physical condition of the Parkland or any Parkland Improvement or its fitness or suitability for any particular use.

## **Article XII**

### **Miscellaneous Provisions**

12.1 Cooperation. The City and Developer each agree to execute such further documents or instruments as may be necessary to evidence their agreements hereunder or enable the fulfillment of their respective obligations hereunder, provided in either case the terms of this Agreement are not modified or amended thereby. In the event of any third-party lawsuit or other claim relating to the validity of this Agreement or any part hereof or any actions taken hereunder by any Party, the City and Developer agree to cooperate in the defense of such suit or claim, and to use their respective best efforts to resolve the suit or claim without diminution in their respective rights and obligations under this Agreement while allowing each Party to effect the benefits of this Agreement to it.

12.2 Exhibits, Headings, Construction, and Counterparts. All schedules and exhibits referred to in or attached to this Agreement are incorporated into and made a part of this Agreement for all purposes. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs. Wherever appropriate, words of the masculine gender may include the feminine or neuter, and the singular may include the plural, and vice-versa. The Parties acknowledge that each of them has been actively and equally involved in the negotiation of this Agreement. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting party will not be employed in interpreting this Agreement or any exhibits hereto. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which will together constitute the same instrument.

12.3 Entire Agreement. This Agreement constitutes the sole and only agreement between the Parties and supersedes any prior understandings written or oral agreements between the Parties with respect to this subject matter.

12.4 Applicable Law and Venue. The interpretation, performance, enforcement and validity of this Agreement are governed by the laws of the State of Texas. Exclusive venue shall be in the state district court of Williamson County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

12.5 Independent Contractor. It is understood and agreed by, and between the Parties that each Party, in satisfying the conditions of this Agreement, is acting independently, and that each Party assumes no responsibility or liabilities to any third party in connection with these actions. All duties and obligations of each Party shall be in the capacity of an independent contractor, and not as an agent or employee of the other Party.

12.6 Notice. Any notice given under this Agreement must be in writing and may be given: (i) by depositing it in the United States mail, certified, with return receipt requested, addressed to the party to be notified and with all charges prepaid; or (ii) by depositing it with Federal Express or another delivery service guaranteeing “next day delivery”, addressed to the party to be notified and with all charges prepaid; or (iii) by personally delivering it to the party, or any agent of the party listed in this Agreement. Notice by United States mail will be effective on the earlier of the date of receipt or three (3) days after the date of mailing. Notice given in any other manner will be effective when received. Courtesy copies shall be sent by email to each party as available. For purposed of notice, the addresses of the Parties will, until changed as provided below, be as follows:

**City:**

City of Georgetown  
P.O. Box 409  
Georgetown, Texas 78627  
Attn: City Manager

City of Georgetown  
P.O. Box 409  
Georgetown, Texas 78627  
Attn: Parks and Recreation Director

City of Georgetown  
P.O. Box 409  
Georgetown, Texas 78627  
Attn: City Attorney

**Developer:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The Parties may change their respective addresses to any other address within the United States of America by giving at least five (5) days' written notice to the other Party. The Developer may, by giving at least five (5) days' written notice to the City, designate additional Parties to receive copies of notices under this Agreement.

12.7 Successor and Assigns. Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors and assigns.

12.8 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

12.9 Amendment. The Parties may not amend this Agreement, except in a written agreement executed by authorized representatives of the Parties.

12.10 Waiver. The Parties may not waive any provision in this Agreement, except pursuant to a written waiver executed by the Parties. A waiver made in writing on one occasion is effective only in that instance and only for the purpose it is given and is not to be construed as a waiver on any future occasion or against any other Party.

12.11 No Recourse. No recourse shall be had against any elected official, director, officer, attorney, agent, or employee of the City, whether in office on the Effective Date of this Agreement or after such date, for any claim based upon this Agreement.

12.12 No Joint Venture, Partnership Agency. This Agreement will not be construed in any form or manner to establish a partnership, joint venture or agency, express or implied, nor any employer-employee or borrowed servant relationship by and among the Parties.

12.13 Assignment. (a) Except as provided in (b) below, No Party may assign any of its rights under this Agreement, either voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law, or any other manner, except with the prior written consent of the other Parties not to be unreasonably withheld conditioned or delayed. Any purported assignment of rights or delegation of performance in violation of this Section is void.

(b) This Agreement shall run with the land; provided however, that the provisions contained herein which are the individual requirements or benefit to (as the case may be) of the Developer may be assigned to Designated Successors and Assigns. Developer shall provide the City thirty (30) days prior written notice of any such assignment. Upon such assignment or partial assignment, Developer shall be fully released from any and all obligations under this Agreement and shall have no further liability with respect to this Agreement for the part of the Project so assigned.

(c) Any sale of a portion of the Property or assignment of any right hereunder shall not

be deemed a sale or assignment to a Designated Successor or Assign unless the conveyance or transfer instrument effecting such sale or assignment expressly states that the sale or assignment is to a Designated Successor or Assign.

12.14 Authority to Execute. Each Party warrants and represents to the other that the person signing this Agreement on its behalf is authorized to do so, that it has taken all action necessary to approve this Agreement, and that this Agreement is a lawful and binding obligation of the Party, except as may be limited by applicable bankruptcy, insolvency, or similar laws affecting creditor's rights, or with respect to City's governmental immunity under the Constitution and laws of the State of Texas.

12.15 Amendment. This Agreement may be amended by the mutual written agreement of the Parties.

*(Signature pages to follow)*

Executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**CITY:**

**CITY OF GEORGETOWN, TEXAS**

By: \_\_\_\_\_

Kimberly Garrett, Parks and Recreation Director

ATTEST:

By: \_\_\_\_\_

Robyn Densmore, City Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_

Skye Masson, City Attorney

STATE OF TEXAS                   §

§

COUNTY OF WILLIAMSON §

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_, by  
Kimberly Garrett, Parks and Recreation Director of the City of Georgetown, Texas, a home-rule  
city, on behalf of the City.

(SEAL)

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

Executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**DEVELOPER:**

\_\_\_\_\_  
\_\_\_\_\_

**By:** \_\_\_\_\_  
\_\_\_\_\_

**By:** \_\_\_\_\_  
\_\_\_\_\_

State of TEXAS                    §  
   §  
County of \_\_\_\_\_ §

          This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_, by  
\_\_\_\_\_, authorized signatory of \_\_\_\_\_, on behalf of said  
entity.

(SEAL)

\_\_\_\_\_  
Notary Public  
My Commission expires: \_\_\_\_\_

**EXHIBIT A**  
**PROPERTY**



**EXHIBIT B**  
**PARKLAND**

**EXHIBIT C**  
**PARKLAND IMPROVEMENTS**

## EXHIBIT D

### INSURANCE REQUIREMENTS

1. CONTRACTOR shall purchase and maintain insurance in the types and amounts indicated below for the duration of the Agreement (unless a longer duration is specified), which shall include items owned by the City of Georgetown, Texas ("OWNER") in the care, custody and control of CONTRACTOR prior to and during the term of the Contract and all warranty periods. Failure to purchase and maintain the required insurance shall be grounds for Termination of the Agreement or Suspension of the Work by OWNER. Except for the Worker's Compensation policy, the other insurance policies required by the Agreement to be obtained by CONTRACTOR must state that OWNER, its officials, directors, employees, representatives, and volunteers are added as additional insureds with regard to operations and activities by or on behalf of the named insureds performed under contract with OWNER. The additional insured status must cover completed operations as well, and the policy covering completed work must remain in effect until the expiration of the statute of repose.

2. CONTRACTOR must complete and forward the required Certificates of Insurance to OWNER before the Agreement is executed as verification of coverage required below. CONTRACTOR shall not commence Work until the required insurance is obtained and until such insurance has been reviewed by OWNER. Approval of insurance by OWNER shall not relieve or decrease the liability of CONTRACTOR hereunder and shall not be construed to be a limitation of liability on the part of CONTRACTOR. CONTRACTOR must also complete and forward the required Certificates of Insurance to OWNER whenever a previously identified policy period has expired as verification of continuing coverage.

3. Contractor's insurance coverage is to be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better, except for hazardous material insurance which shall be written by companies with A.M. Best ratings of A- or better.

4. All endorsements naming the OWNER as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall indicate: City of Georgetown, 808 Martin Luther King, Jr. Street, Georgetown, Texas 78626, ATTN: Contract Manager.

5. The "other" insurance clause shall not apply to the OWNER where the OWNER is an additional insured shown on any policy. It is agreed that the CONTRACTOR's insurance shall be considered primary with respect to any insurance or self-insurance carried by OWNER. The CONTRACTOR'S insurance shall apply separately to each insured against whom a claim is made and/or lawsuits brought, except with respect to the limits of insurer's liability.

6. If insurance policies are not written for amounts specified below, CONTRACTOR shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

7. OWNER shall be entitled, upon request and without expense, to receive certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy

provisions are established by law or regulations binding upon either of the Parties hereto or the underwriter on any such policies.

8. OWNER reserves the right to review the insurance requirements set forth during the effective period of this Agreement and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by OWNER based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as CONTRACTOR.

9. CONTRACTOR shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Agreement or as required in the Agreement.

10. CONTRACTOR shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

11. The policies must contain the following language: "This policy shall not be cancelled, materially changed, or not renewed until after thirty (30) days prior written notice has been given to OWNER." In addition, CONTRACTOR shall provide OWNER thirty (30) days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Agreement.

12. If OWNER-owned property is being transported or stored off-Site by CONTRACTOR, then the appropriate property policy will be endorsed for transit and storage in an amount sufficient to protect OWNER's property.

13. The insurance coverages required under this contract are required minimums and are not intended to limit the responsibility or liability of CONTRACTOR.

14. Without limiting any of the other obligations or liabilities of the CONTRACTOR, the CONTRACTOR shall require each Subcontractor performing work under the Agreement, at the Subcontractor's own expense, to maintain during the term of the Agreement, the same stipulated minimum insurance including the required provisions and additional policy conditions as shown above. As an alternative, the CONTRACTOR may include its Subcontractors as additional insureds on its own coverage as prescribed under these requirements. The CONTRACTOR's certificate of insurance shall note in such event that the Subcontractors are included as additional insureds and that CONTRACTOR agrees to provide Workers' Compensation for the Subcontractors and their employees. The CONTRACTOR shall obtain and monitor the certificates of insurance from each Subcontractor in order to assure compliance with the insurance requirements. The CONTRACTOR must retain the certificates of insurance for the duration of the Agreement plus five (5) years and shall have the responsibility of enforcing these insurance requirements among its subcontractors. The OWNER shall be entitled, upon request and without expense, to receive copies of these certificates.

B. Business Automobile Liability Insurance. Provide coverage for all owned, non-owned and hired vehicles in an amount not less than \$1,000,000 combined single limit per accident for bodily injury and property damage. The policy shall contain the following endorsements in favor of OWNER:

- Waiver of Subrogation endorsement TE 2046A;
- 30 day Notice of Cancellation endorsement TE 0202A; and
- Additional Insured endorsement TE 9901 B.
- Provide coverage in the following types and amounts:
- A minimum combined bodily injury and property damage limit of \$1,000,000 per occurrence. No aggregate shall be permitted for this type of coverage.

Such insurance shall include coverage for loading and unloading hazards.

C. **Workers' Compensation and Employers' Liability Insurance.** Coverage shall be consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Section 401). CONTRACTOR shall assure compliance with this Statute by submitting two (2) copies of a standard certificate of coverage (e.g. ACCORD form) to Owner's Representative for every person providing services on the Project as acceptable proof of coverage. The required Certificate of Insurance must be presented as evidence of coverage for CONTRACTOR. Workers' Compensation Insurance coverage written by the Texas Workers Compensation Fund is acceptable to OWNER. CONTRACTOR's policy shall apply to the State of Texas and include these endorsements in favor of OWNER:

- Waiver of Subrogation, form WC 420304; and
- 30 day Notice of Cancellation, form WC 420601.

The minimum policy limits for Employers' Liability Insurance coverage shall be the minimum amounts required to meet the statutory requirements of Texas Labor Code, Section 401.011(44), or the following, whichever is greater:

- \$1,000,000 bodily injury per accident, and
- \$1,000,000 bodily injury by disease policy limit; and
- \$1,000,000 bodily injury by disease each employee; and
- \$1,000,000 Employer's Liability.

CONTRACTOR has the option to self-insure in accordance with applicable law and OWNER approval.

D. **Commercial General Liability Insurance.** The Policy shall contain the following provisions (to the extent available):

- Blanket contractual liability coverage for liability and indemnifications

assumed under the Agreement and all contracts relative to this Project.

- Completed Operations/Products Liability until the end the statute of repose period.
- Explosion, Collapse and Underground (X, C & U) coverage.
- Independent Contractor's coverage.
- Aggregate limits of insurance per project, endorsement CG 2503.
- OWNER listed as an additional insured, endorsement CG 2010.
- 30 day notice of cancellation in favor of OWNER, endorsement CG 0205.
- Waiver of Transfer of Recovery Against Others in favor of OWNER, endorsement CG 2404 fully insuring CONTRACTOR'S or Subcontractor's liability for bodily injury and property damages with a combined bodily injury (including death) and property damage minimum limit of:

\$1,000,000 per occurrence

\$2,000,000 general aggregate

\$2,000,000 products and completed operations aggregate Coverage shall be on an "occurrence" basis.

E. Intentionally Omitted.

F. Umbrella Liability Insurance. The CONTRACTOR shall obtain, pay for, and maintain umbrella liability insurance during the contract term, insuring the CONTRACTOR (or subcontractor) for an amount not less than \$1,000,000 that provides coverage at least as broad and applies in excess of and follows the form of the primary liability coverages required hereunder. The policy shall provide "drop down" coverage where underlying primary insurance coverages limits are insufficient or exhausted.

## **PERFORMANCE AND PAYMENT BONDS**

### *A. General.*

1. Bonds, when required by the Agreement or by Chapter 2253 of the Texas Government Code, shall be executed on forms furnished by or acceptable to OWNER. All bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

### *B. Performance Bond.*

1. If the estimated cost of constructing the Parkland Improvements exceeds \$100,000, CONTRACTOR shall furnish OWNER with a Performance Bond in the form set out by OWNER. The Performance Bond shall be effective for the term of the Agreement and through all warranty period(s).

2. If the estimated cost of constructing the Parkland Improvements exceeds \$25,000 but is less than or equal to \$100,000, CONTRACTOR shall furnish OWNER with a Performance Bond in the form set out by OWNER, unless the original estimated time for Completion of Construction is 60 Calendar Days or less, in which case CONTRACTOR can agree to the following terms and conditions for payment in lieu of providing a Performance Bond: no money will be paid to CONTRACTOR until completion and acceptance of the Work by OWNER; CONTRACTOR shall be entitled to receive 95% of the estimated cost of construction of the Parkland Improvements following Final Completion, and the remaining 5% of the Contract Amount following the one year warranty period.

3. If the estimated cost of constructing the Parkland Improvements is less than or equal to \$25,000, CONTRACTOR will not be required to furnish a Performance Bond.

4. If a Performance Bond is required to be furnished, it shall extend for the one year warranty period, or longer if the warranty periods are longer.

### *C. Payment Bond.*

1. If the estimated cost of constructing the Parkland Improvements exceeds \$25,000, CONTRACTOR shall furnish OWNER with a Payment Bond in the form set out by OWNER.

2. If the estimated cost of constructing the Parkland Improvements is less than or equal to \$25,000, CONTRACTOR will not be required to furnish a Payment Bond; provided that no money will be paid to CONTRACTOR until completion and acceptance of the Work by OWNER.

*D. Power of Attorney.* Each bond shall be accompanied by a valid Power-of-Attorney (issued by the surety company and attached, signed and sealed with the corporate embossed seal, to the bond) authorizing the attorney in fact who signs the bond to commit the company to the terms of the bond, and stating any limit in the amount for which the attorney can issue a

single bond.

*E. Bond Indemnification.* The process of requiring and accepting bonds and making claims thereunder shall be conducted in compliance with Tex. Gov't Code, Chapter 2253. IF FOR ANY REASON A STATUTORY PAYMENT OR PERFORMANCE BOND IS NOT HONORED BY THE SURETY, THE CONTRACTOR SHALL FULLY INDEMNIFY AND HOLD THE OWNER HARMLESS OF AND FROM ANY COSTS, LOSSES, OBLIGATIONS OR LIABILITIES IT INCURS AS A RESULT.

*F. Furnishing Bond Information.* OWNER shall furnish certified copies of the payment bond and the related Agreement to any qualified person seeking copies who complies with Tex. Gov't Code, §2253.026.

*G. Claims on Payment Bonds.* Claims on payment bonds must be sent directly to the CONTRACTOR and his surety in accordance with Tex. Gov't Code § 2253.041. All Payment Bond claimants are cautioned that no lien exists on the funds unpaid to the CONTRACTOR on such Contract, and that reliance on notices sent to the OWNER may result in loss of their rights against the CONTRACTOR and/or his surety. The OWNER is not responsible in any manner to a claimant for collection of unpaid bills, and accepts no such responsibility because of any representation by any agent or employee.

*H. Payment Claims when Payment Bond not Required.* The rights of Subcontractors regarding payment are governed by Tex. Prop. Code, §§53.231 - 53.239 when the estimated cost of constructing the Parkland Improvements is less than \$25,000.00. These provisions set out the requirements for filing a valid lien on funds unpaid to the CONTRACTOR as of the time of filing the claim, actions necessary to release the lien and satisfaction of such claim.

*I. Minimum Standards for Sureties.* Sureties shall be listed on the US Department of the Treasury's Listing Approved Sureties stating companies holding Certificates of Authority as acceptable sureties on Federal Bonds and acceptable reinsuring companies (Department Circular 570).