

City of Azle

**Developer's
Agreement**

February 1, 2004

**CITY OF AZLE
DEVELOPER AGREEMENT**

FOR THE _____ [name of project]

STATE OF TEXAS

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§
§

COUNTY OF [TARRANT / PARKER]

THIS AGREEMENT is entered into on this the ___ day of _____, 20___, by and between the City of Azle, Texas (hereinafter the "City"), and _____ (hereinafter "Developer"), whose address is _____.

WHEREAS, Developer desires to develop a [single-family residential subdivision] known as _____ within the City (hereinafter the "Development"); and

WHEREAS, Developer must install certain public and private improvements to serve the Development as provided herein; and

WHEREAS, the parties to this Agreement desire to clarify the specific requirements for installation of the public and private improvements; and

WHEREAS, this Agreement shall operate as a covenant running with the land and be binding upon Developer and its representatives, officers, agents, servants, employees, successors, and assigns.

NOW, THEREFORE, the City and Developer, in consideration of the covenants and agreements contained herein, do mutually agree as follows:

1. GENERAL REQUIREMENTS

1. CONSTRUCTION OF PUBLIC IMPROVEMENTS

1. **Construction by Developer; plans.** Developer shall provide all public improvements, including streets, utilities, drainage, sidewalks, street lighting, street signs, and all other improvements required to serve the Development, whether on-site or off-site (hereinafter the "public improvements"), at no cost to the City, unless otherwise provided herein, in accordance with the City's Zoning, Subdivision and other development regulations (hereinafter the "City's development regulations") and as approved by the City Engineer or the City Engineer's agent. Developer shall submit ___ () sets of final-approved engineering plans to the City at the time of execution of this Agreement. The final-approved engineering plans shall become a part of this Agreement.

2. Developer shall employ a civil engineer licensed to practice in the State of Texas for the design and preparation of plans and specifications for the construction of the public improvements. The design plans and specifications for the public improvements shall conform with

all City development regulations and some engineering practice. Developer shall assume all responsibility for the adequacy and accuracy of the design, plans and specifications.

3 **Preconstruction conference.** Developer shall install the public improvements within all applicable time frames in accordance with the City's development regulations unless otherwise approved herein. Construction of the public improvements shall not be initiated until a Pre-Construction Conference has been held regarding the proposed construction.

4. **Review by city engineer.** The design, plans and specifications prepared by Developer's engineer shall be subject to routine review by the City Engineer or the City Engineer's agent to evaluate conformance with City standards and specifications. However, such review and evaluation shall not relieve Developer or Developer's engineer or agent of responsibility for design, construction, and maintenance of the improvements as set out in this Agreement and the City's development regulations.

5 **As-built plans.** Upon completion of construction of improvements, Developer shall deliver to the City, one (1) set of as-built plans and one (1) set of as-built reproducible plans for all public improvements constructed by Developer.

6. **Construction by Developer.** [Except as provided below] No building permits will be issued on any lot in the Development until all public improvements have been installed and inspected and a Letter of Acceptance has been issued.

A. CONSTRUCTION BONDS

1. **Bond requirements.** Prior to initiating any construction of the public improvements, the construction contractor(s) for Developer shall provide the City with one original and one quality copy of the following construction bonds:

a. **Performance bond.** A good and sufficient Performance Bond in an amount equal to one hundred percent (100%) of the total cost of the public improvements, guaranteeing the full and faithful execution of the work and performance of this Agreement and for the protection of the City against any improper construction of the work or the use of inferior materials. The Performance Bond shall guarantee completion of the public improvements within one (1) year of execution of this Agreement.

b. **Payment bond.** A good and sufficient Payment Bond in an amount equal to one hundred percent (100%) of the total cost of the public improvements, guaranteeing payment for all labor, materials and equipment used in the construction of the public improvements.

c. **Maintenance bond.** A good and sufficient Maintenance

Bond in an amount equal to one hundred percent (100%) of the total cost of the public improvements, guaranteeing the maintenance in good condition of the public improvements for a period of two (2) years after the issuance of a Letter of Acceptance by the City for the public improvements.

2. **Surety company.** Each of the above bonds shall be in a form acceptable to the City. Any surety company through which a bond is written shall be duly authorized to do business in the State of Texas, provided that the City, through its City Manager, shall retain the right to reject any surety company for any work under this Agreement regardless of such company's authorization to do business in Texas. Approval by the City shall not be unreasonably withheld or delayed.

B. COSTS

1. Developer costs.

a. Developer agrees to pay the following fees prior to initiating construction:

i. Construction inspection fees in the sum of \$_____ (representing 4% of the construction costs for the water, sewer, street, and drainage improvements, or if in the City's ETJ, the estimated actual costs of inspections, if greater than 4%.

ii. \$_____ for engineering consulting expenses for the City.

iii. \$_____, based on _____ acres in the Development, for a pro rata share of previously constructed downstream drainage improvements. Payment is due prior to initiating construction of the public improvements for the Development.

iv. Fees set by public utility companies (e.g. TxU Gas Company, Southwestern Bell Telephone Company, TxU Electric Company, etc.) for the required costs of main installations, street lighting, etc.

b. Developer shall also pay \$_____ plat fees in accordance with Section _____ of the Azle City Code prior to filing the plat in the plat records.

c. Developer shall pay an additional charge of \$_____ per hour for inspections on Saturdays, Sundays, holidays, and after normal working hours.

2. **City costs.** The City agrees to pay the following:

3. **Reimbursement for Off-Site Utilities.** In accordance with Ordinance 729, the City of Azle shall collect a pro rata share of the costs

associated with the construction of off-site utilities. The following methods shall be used in levying the fees necessary to reimburse the Developer for connections made to the off-site main lines:

a. Water: The cost of construction of off-site mains, as provided by the Developer and approved by the City Engineer, shall be divided by the linear footage and a per foot charge shall be collected based on a front foot rule. Total Off-site Construction Cost \$ _____. Linear Footage _____ \$/ft _____

b. Sanitary Sewer: The cost of construction of off-site mains, as provided by the Developer and approved by the City Engineer, shall be divided by the acreage served by that specific main line and a per acre charge shall be collected. Total Off-site Construction Cost \$ _____ Acreage Served _____ \$/Ac _____

D. FINAL ACCEPTANCE OF PUBLIC IMPROVEMENTS

1. **Final and substantial completion.** The City will not issue a Letter of Acceptance for the public improvements until they are completely constructed (Final Completion) to the satisfaction of the City Engineer or his agent. However, upon substantial completion, a "punch list" of outstanding items shall be presented to Developer's contractors indicating those outstanding items and deficiencies that need to be addressed for Final Completion of the Development.

2. **Title vests in the City.** Developer agrees to deliver to the City clear and unencumbered title to all public improvements. Upon issuance of a Letter of Acceptance, title to all improvements for the Development shall be vested in the City and Developer relinquishes any right, title or interest in and to such improvements or any part thereof. It is understood and agreed that the City shall have no liability or responsibility in connection with such improvements until the Letter of Acceptance is issued.

2. FACILITIES TO BE INSTALLED

A. STREETS

1. **General requirements.** Streets and alleys that service the Development shall be designed in accordance with the requirements of Chapter 17.44 of the City of Azle Municipal Code (specifically, Section 17.44.050 "Streets" and 17.44.060 "Alleys"). Construction shall conform to the plans and specifications prepared by Developer's engineer.

2. **Lights.** Developer is responsible for installation and two-year operation cost of street lights, payable to the City prior to the Letter of Acceptance; and

3. **Street Signs.** The City will purchase and install all street name signs in the Development and will bill Developer for the cost. Developer must pay this bill before the Letter of Acceptance is issued by the City. Street names shall have a maximum of twelve (12) characters. Developer may install signs having unique

architectural features; however, should the signs be moved or destroyed by any means, the City shall only be responsible for replacement with standard signs.

4. Traffic control or regulatory signs shall be installed by Developer where required based upon an engineering study performed by Developer's engineer. All such signs shall comply with the requirements of the Texas Manual on Uniform Traffic Control Devices.

5. **Utilities.** All water, sanitary sewer, and storm drainage utilities that are anticipated to be installed within the street right-of-way will be completed before the commencement of street construction on the specific section of the street in which the utility improvements have been placed or for which they are planned. Developer agrees to advise the City Manager or the City Manager's designee as quickly as possible if a need arises to realign a line or service and to work cooperatively with the City to make such utility change in a manner that will be least disruptive to street construction or stability.

B. UTILITIES AND EASEMENTS

1. **Water.** Developer shall construct all required onsite and offsite water mains, valves, fire hydrants and other improvements necessary to serve the Development in accordance with the plans and specifications prepared by Developer's engineer. No water service shall be provided to the Development prior to the issuance of a Letter of Acceptance, except that the City agrees to provide temporary water service to individual lots at the Developer's request and expense, for construction, testing, dust control and irrigation purposes only.

2. **Sanitary sewer.** Developer shall construct all required onsite and offsite sanitary sewer mains, manholes and other improvements necessary to serve the Development in accordance with the plans and specifications prepared by Developer's engineer.

3. **Drainage.** Developer agrees to construct all required on-site and off-site drainage facilities necessary to serve the Development in accordance with the plans and specifications prepared by Developer's engineers. Developer agrees to comply with all applicable EPA, TNRCC, and other state, federal, and local requirements relating to the planning, permitting, and management of storm water.

C. SIDEWALKS

1. **General requirements.** Sidewalks shall be designed in accordance with Chapter 17.44 of the City of Azle Municipal Code (specifically, Sec. 17.44.080 "Sidewalks"). Specifically, Developer will be required to install sidewalks at the following locations:

2. **Construction.** The sidewalks shall be constructed as follows:

3. **Timeframe for completion.** These required sidewalks shall be constructed by _____.

D. FENCES

1. **General requirements.** Fences shall be installed by Developer as required by Section 17.44-160 L of the City of Azle Municipal Code and in accordance with Chapter 15.48 of the City of Azle Municipal Code. Specifically, Developer will install fences at the following locations:

2. **Construction.** The fences shall be constructed as follows:

3. **Timeframe for completion.** These required fences shall be constructed within _____ (____) days of the City's issuance of the first building permits in the Development.

E. AMENITIES

It is understood that the Development may incorporate a number of unique amenities and aesthetic improvements such as ponds and lakes, unique landscaping, walls, street furniture, etc., and may incorporate specialty signs and accessory facilities. Developer agrees to accept responsibility for the construction and maintenance of all such amenities until _____. Only those amenities or specialty items listed in this section may be constructed within the public right-of-way. The City shall not be responsible for the replacement of these items under any circumstances. Developer, its successors and assigns, agree to indemnify and hold harmless the City from any and all damage, loss or liability of any kind whatsoever by reason of injury to property or third persons occasioned by the location of these amenities within the public right-of-way, and Developer, its successors and assigns, shall defend and protect the City against all such claims and demands.

3. MISCELLANEOUS PROVISIONS

A. **PUBLIC FACILITIES TO BE PROVIDED BY THE CITY**

The City makes no guarantee that water supply or wastewater treatment capacity will be available at any particular time or place, it being fully understood by both parties hereto that the ability of the City to supply water and wastewater services is subject to the City's water and wastewater system capacity. The City shall be the sole judge of the availability of such

capacity to supply such water and/or wastewater services, provided, however, that the City will use its best efforts to ensure that said water supply and wastewater treatment capacity is available.

B. EROSION CONTROL

During construction of the Development and after the streets have been installed, Developer agrees to keep the streets free from soil build-up. Developer agrees to use soil control measures such as hay bales, silt screening, hydromulch, etc., to prevent soil erosion. It will be Developer's responsibility to present to the City Engineer a soil control development plan that will be implemented for this Development. When, in the opinion of the City Engineer, there is sufficient soil build-up on the streets or other drainage areas, the City shall give written notice to Developer, and Developer will have seventy-two (72) hours to clear the soil from the streets or affected areas. If Developer does not remove the soil from the streets within seventy-two (72) hours, the City may cause the soil to be removed either by contract or City forces and place the soil within the Development at Developer's expense. All expenses must be paid to the City prior to acceptance of the Development.

C. MOWING

Developer shall be responsible for mowing all grass and weeds and otherwise reasonably maintaining the aesthetics of all land and lots in the Development which have not been sold or leased to third parties. The City may abate the nuisance, charge the costs to Developer, and assess a lien against the property if Developer violates Article IV of Chapter 8.04 of the City of Azle Municipal Code.

D. LAW COMPLIANCE

Developer agrees to comply with all federal, state, and local laws and all development regulations that are applicable to this Development.

E. VENUE

Venue for any action brought hereunder shall be in [Tarrant / Parker] County, Texas.

F. ASSIGNMENT

This Agreement or any part hereof or any interest herein shall not be assigned by Developer without the express written consent of the City Manager, which consent shall not be unreasonably withheld.

G. WAIVER

Developer expressly acknowledges that by entering into this Agreement, Developer, its successors, assigns, vendors, grantees, and/or trustees, shall never construe this Agreement as waiving any of the requirements of the City's Zoning or Subdivision regulations or any other ordinance of the City, except as herein agreed upon.

H. AMENDMENTS

This Agreement may be changed or modified only with the written consent of Developer and of the City Council of the City.

I. LIENS AND ASSESSMENTS

In the event Developer fails to comply with any of the provisions of this Agreement, the City shall be authorized to cease issuance of any further Certificates of Occupancy or Building Permits on property owned by Developer, and the City shall be further authorized to file this instrument in the Mechanic's Lien records of [Tarrant / Parker] County as a Mechanic's Lien against Developer's property; and, in the alternative, the City shall be authorized to levy an assessment against Developer's property for any improvements made by the City in accordance with applicable state law.

J. CONTINUITY

This Agreement shall be a covenant running with the land and shall be binding upon Developer, its successors, heirs, assigns, grantees, trustees and/or representatives.

K. SEVERABILITY

The provisions of this Agreement are severable and, in the event any word, phrase, sentence, paragraph, section or other provision of this Agreement, or the application thereof to any person or circumstance, shall ever be determined by a court of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, the remainder of this Agreement shall remain in full force and effect and the application thereof to any other person or circumstance shall not be affected thereby. The invalid, illegal or unenforceable provision shall be rewritten by the parties to this Agreement to accomplish the parties' original intent as nearly as possible.

L. TERMINATION AND RELEASE

Upon the satisfactory completion by Developer and final acceptance by the City of all requirements of this Agreement, this Agreement shall terminate and the City will execute a release of covenant to Developer, its assigns, successors, grantees, trustees and/or representatives and the City shall file said release in the [Tarrant / Parker] County Deed Records.

M. HOLD HARMLESS AGREEMENT

1. **LIABILITY FOR DESIGN.** APPROVAL BY THE CITY ENGINEER OR OTHER CITY EMPLOYEE OF ANY PLANS, DESIGNS OR SPECIFICATIONS SUBMITTED BY DEVELOPER PURSUANT TO THIS CONTRACT SHALL NOT CONSTITUTE OR BE DEEMED TO BE AN ASSUMPTION OF RESPONSIBILITY AND LIABILITY BY THE CITY OR A RELEASE OF THE RESPONSIBILITY AND LIABILITY

OF DEVELOPER, ITS ENGINEER, EMPLOYEES, OFFICERS OR AGENTS FOR THE ACCURACY AND COMPETENCY OF THEIR DESIGN AND SPECIFICATIONS FOR THE PUBLIC IMPROVEMENTS, IT BEING THE INTENT OF THE PARTIES THAT APPROVAL BY THE CITY ENGINEER SIGNIFIES THE CITY'S APPROVAL OF ONLY THE GENERAL DESIGN CONCEPT OF THE IMPROVEMENTS TO BE CONSTRUCTED. IN THIS CONNECTION, DEVELOPER SHALL FOR A PERIOD OF TWO (2) YEARS AFTER THE ACCEPTANCE BY THE CITY OF THE PUBLIC IMPROVEMENTS, INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES, FROM ANY LOSS, DAMAGE, LIABILITY, CLAIM, OBLIGATION, PENALTY, CHARGE, COST OR EXPENSE INCLUDING PROPERTY DAMAGE, PERSONAL INJURY OR DEATH TO ANY AND ALL PERSONS WHICH MAY ARISE OUT OF ANY DEFECT, DEFICIENCY OR NEGLIGENCE OF THE DEVELOPER'S ENGINEER'S DESIGNS, PLANS AND SPECIFICATIONS INCORPORATED INTO ANY OF THE IMPROVEMENTS, WHETHER OR NOT SUCH LOSS, DAMAGE, LIABILITY, CLAIM, OBLIGATION, PENALTY, CHARGE, COST OR EXPENSE IS CAUSED IN PART BY THE CITY, ITS OFFICERS, AGENTS, SERVANTS OR EMPLOYEES, AND THE DEVELOPER SHALL DEFEND AT ITS OWN EXPENSE ANY SUITS OR OTHER PROCEEDINGS BROUGHT AGAINST THE CITY, ITS OFFICERS, AGENTS, SERVANTS OR EMPLOYEES OR ANY OF THEM, ON ACCOUNT THEREOF, AND SHALL PAY ALL EXPENSES (INCLUDING WITHOUT LIMITATION REASONABLE FEES AND EXPENSES OF ATTORNEYS, EXPERT WITNESSES AND CONSULTANTS) AND SATISFY ALL JUDGMENTS WHICH MAY BE INCURRED BY OR RENDERED AGAINST THEM IN CONNECTION HEREWITH.

2. LIABILITY FOR CONSTRUCTION, USE, ETC. DEVELOPER COVENANTS AND AGREES TO INDEMNIFY AND DOES HEREBY INDEMNIFY, HOLD HARMLESS AND DEFEND THE 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 THE PUBLIC IMPROVEMENTS, WHETHER OR NOT CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENCE OF THE CITY, ITS OFFICERS, AGENTS, SERVANTS OR EMPLOYEES, 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, SERVANTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, LICENSEES, INVITEES, OR TRESPASSERS.

In Witness Whereof, each of the parties hereto has caused this Agreement to be executed by its undersigned duly authorized representative as of the date hereinabove first mentioned.

[Developer]

CITY OF AZLE

By: _____ By: _____
Title: _____ City Manager

Attest:

Attest:
