

PUBLIC IMPROVEMENT AGREEMENT – CONTRACTOR

(full name of contractor) hereinafter referred to as “Contractor”, hereby agrees to comply with the following conditions for consideration of performing work for Developer and further agrees to construct and install the following improvements in and/or adjacent to the following described subdivision or final development site plan in accordance with the City’s *Technical Specifications and Design Criteria Manual for Public Improvement Projects of the City of Olathe*, conditions and stipulations set out in the approval of the site development plan, and *Unified Development Ordinance* (hereinafter referred to as “UDO”) and as set forth in Sections 1 through 6. **CONTRACTOR SHALL CHECK WHICH WORK TO BE PERFORMED AS LISTED UNDER SECTIONS A THROUGH E.**

Project Name: _____

Project Number: _____

1. Time Period. All work and items must be installed within two (2) years of the date the project is approved for construction by the City Engineer, unless City Engineer notifies the Contractor in writing that the work and items shall be installed or finished within a shorter or longer time period.
2. Work to be Done. In the event that any item covered under this Agreement has not been installed, or City staff determines the item to be defective or in need of repair and replacement, then City staff shall provide notice to Contractor. Upon receipt of such notification, Contractor shall be allowed a period of fourteen (14) working days in which to remedy any and all defects. An extension may be approved in writing by City staff. If such action has not been taken within the fourteen (14) working day period or if such action fails to adequately remedy all defects as set out in the notice, then City staff may notify the bond company to order such work to be done. If the amount needed for the work or items to be installed, cleaned, repaired, or replaced is determined to be less than \$200,000, at its discretion, City staff may direct such work to be done and assess all expenses against the Contractor and the bond. City has the right to obtain three bids for doing such work; the right to order such work or items to be completed, installed, repaired, or replaced; and the right to be reimbursed by the Surety and Contractor for the costs based upon the lowest and best bid.
3. Bonds. Contractor shall provide a performance and maintenance bond and a Kansas statutory bond, in an approved form and equal to the amount of 100% of the construction cost based upon the bid tabulation sheet done for the improvement, to ensure the public improvements, landscaping, or other work required by the final development site plan will be installed, approved, paid for, and maintained during the completion of the above named project. The name of the Contractor on this Agreement, bonds, and certificate of insurance shall be identical.
4. Certificate of Insurance. For work to be done for public infrastructure within the existing public right-of-way or public easement, the undersigned shall provide a certificate of insurance naming the City of Olathe as additional insured with a general liability insurance provision of \$1,000,000 and worker’s compensation. Contractor shall indemnify, defend and hold harmless City of Olathe from and against any claims, damages, losses and expenses, arising out of or resulting from performance of the work done within the public right-of-way or easement under this Agreement.

5. Other Conditions. Contractor fully understands that:
- A. The City Engineer has been authorized by the City of Olathe to ascertain that all construction of public facilities is equal to or exceeds the minimum construction standards as set forth in the *Technical Specifications and Design Criteria Manual for Public Improvement Projects of the City of Olathe*. The project inspector shall act as a representative of the City Engineer and shall be responsible for assuring that all work involving public improvements is in conformance with the City's standard specifications. The City Engineer shall have the sole responsibility to authorize any deviation from the provisions of these standard specifications or from the approved construction drawings. The project inspector has the authority to reject defective material, inferior material, defective workmanship, and work which is not fully in conformance with the standard specifications. The inspector is not authorized to alter provisions of the specifications or to issue instructions contrary to the specifications or to make any changes in the work without the consent of the City Engineer.
 - B. The acceptance of the project shall be documented by the issuance of a project completion certificate by the City of Olathe. Said certificate shall be issued in accordance with the following:
 - (1) A determination of the City project inspector that the physical construction is complete in accordance with the contract drawings and the requirements of the City's standard specifications.
 - (2) As-built drawings denoting all changes made to the project during the course of the work have been prepared by the undersigned engineer and submitted to and verified by the City project inspector.
 - (3) Receipt of the entire inspection fee by the City's finance department from the undersigned.
 - (4) All required testing has been completed and the specified results met.
 - C. The City's project inspector will not be required to work on Saturdays or holidays without the prior approval of the City Engineer. Requests for permission to work on legal holidays shall be considered upon advance notification of a minimum of five (5) working days prior to the anticipated date of the work to be performed. Requests for permission to work on Saturday shall be received by 3:00 p.m. on the Thursday preceding. Requests for permission to work on a project past 5:00 p.m. shall be made to the project inspector by 12:00 p.m. (noon) of that day. Work on Sundays will not be allowed under any circumstance.
 - D. The project inspector's regular work schedule consists of an eight-hour work day, 8:00 a.m. to 5:00 p.m. (one hour off for lunch), Monday through Friday. The undersigned is responsible for providing compensation to City for all inspection services that occur outside of the project inspector's regular work schedule. Compensation for inspections occurring on Saturdays and holidays will need to be received in advance. A four (4) hour minimum compensation is required for these inspections. Compensation for overtime inspections occurring Monday through Friday shall be received within three (3) working days of the service rendered. An hourly rate for overtime compensation shall be established on an annual basis by the City Engineer.

- E. All improvements shall be inspected during the course of construction by the City Engineer or a duly authorized representative and all costs in connection with such inspection shall be paid by the undersigned. Such project inspection fee shall equal four and one half (4.5) percent of the total cost paid to the undersigned for the improvements made. Such fee shall be determined by filing a copy of the contract proposal form between the undersigned and developer along with all associated change orders verifying contract cost adjustments with the City Engineer. The four and one half (4.5) percent fee does not include the cost of overtime inspections. Payment based upon original contract amount and associated change orders shall be made to the City of Olathe in the form of cash or a certified check and shall be made before construction is allowed to begin. The final payment based upon all subsequent change orders shall be paid prior to the final acceptance by City.
 - F. For the first-time contractor, Contractor shall provide the City Engineer with a copy of the certificate of its entity (i.e. corporation, Limited Liability Company, limited partnership) from the Secretary of State. The name of the Contractor as set out in the certificate shall be identical to the name set out in this Agreement, insurance and bonds. If Contractor is a sole proprietor, then the name of the developer followed by the term "D.B.A." and the name of the business, if applicable, shall be listed on this Agreement and bonds.
 - G. If any provision of the project, or any portion thereof, contained in this Agreement is held to be unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.
 - H. The provisions of this Agreement shall bind the undersigned, its partners, successors, executors, administrators, and assigns.
 - I. Contractor further agrees to provide City with detailed plans for the project. Said plans shall be approved by the City Engineer prior to the start of construction. Before the start of the work, City shall be presented a copy of the contract proposal, this Agreement executed by the undersigned, and all certificates of insurance, performance and maintenance bond and statutory bond as required by the City. The undersigned's Engineer shall be required to perform construction staking prior to the start of work in accordance with the approved contract drawings and shall perform periodic checks of all elevations of the project as the construction progresses to assure conformance to the contract drawings.
 - J. Erosion control measures shall be installed to prevent migration of silt or other materials from the site. All disturbed areas will be temporarily seeded as required. The installation, construction, and design of the erosion control measures and seeding shall be in accordance with the latest edition of the *Technical Specification and Design Criteria Manual for Public Improvement Projects of the City of Olathe*.
 - K. Should other improvements not listed in this contract be required or should those listed need to be stated more clearly and accurately, then they will be set forth on an addendum marked Exhibit "A", attached hereto and incorporated by reference as if fully set forth herein.
6. Contractor agrees, at the sole expense of the undersigned, to construct and install the following improvements within two (2) years from the date of approval by City of the aforementioned plans or as otherwise directed.

CONTRACTOR SHALL CHECK THE WORK TO BE DONE:

- A. Curbs and Gutter. No street shall be paved unless provisions are made for the concurrent installation of concrete curbing and guttering along each side-edge of the pavement. The installation, construction, and design of the curbs and gutter herein required shall be in accordance with the *Technical Specifications and Design Criteria Manual for Public Improvement Projects of the City of Olathe.*

Sidewalks. Concrete sidewalks shall be installed in conformity with the provisions of Chapter 18.68.310 of the *UDO*. Required sidewalks shall be constructed for each premise prior to the issuance of a certificate of occupancy. The installation, construction, and design of the required sidewalks shall be in accordance with the *Technical Specifications and Design Criteria Manual for Public Improvement Projects of the City of Olathe.*

Pavement.

1. All streets shall be paved with asphaltic concrete of a uniform thickness as required.
2. The installation, construction, and design of pavement as set forth in the approved plans shall be in accordance with the *Technical Specifications and Design Criteria Manual for Public Improvement Projects to the City of Olathe.*

Street Signs. Metallic street name signs shall be erected on metallic posts on not less than two corners of each intersection. It shall be the responsibility of the undersigned to order the installation of the signs and make payment for the installation to the City's Public Works Department prior to completion of the street improvement. The cost for the materials and labor involved for this work shall be determined by the Public Works Department. The type of sign, its location and its erection shall be in accordance with the provisions of the *Manual on Traffic Control Devices* to the extent applicable and shall be acceptable to the City Engineer.

- B. Water Mains. Water mains shall be installed and constructed in such a manner that every lot or parcel of land shall be served by means of a connection within its own frontage. The installation, construction, and design of water mains shall be in accordance with the *Technical Specifications and Design Criteria Manual for Public Improvement Projects of the City of Olathe.*

Fire Hydrants. Fire hydrants shall be installed and located at intervals of approximately _____* feet in a manner permitting connection of a 10-foot to 20-foot, non-flexible steamer hose connection with a fire truck standing on the pavement. The installation, construction, and design of the hydrants shall be in accordance with the *Technical Specifications and Design Criteria Manual for Public Improvement Projects of the City of Olathe.* *As determined by the Fire Marshal.

- C. Sanitary Sewers. Sanitary sewers shall be installed and constructed in such a manner that every lot or parcel of land to be served thereby shall be served by means of a house connection within its own frontage. The installation, construction and design of the sanitary sewers shall be in accordance with the *Technical Specifications and Design Criteria Manual for Public Improvement Projects of the City of Olathe.*

D. Storm Sewers. A storm sewer system shall be constructed throughout the entire subdivision which shall be separate and independent of the sanitary sewer system and which shall provide an efficient outlet to an acceptable receiving watercourse. No street shall be paved unless provision is made for the concurrent installation and construction of storm sewers for the full length of the street pavement. The installation, construction and design of the storm sewers shall be in accordance with the *Technical Specifications and Design Criteria Manual for Public Improvement Projects of the City of Olathe*.

E. Street Lights and Public Utilities.

1. If during construction of the improvements, it becomes apparent that additional easements must be granted; they shall not be less than five (5) feet in width and be established where practicable at the rear of each lot and along such other lot lines as to provide continuity of alignment from block to block.
2. All utility distribution lines, for telephone, gas, and electric service to be installed shall be placed underground within easements or dedicated public ways.
3. The installation of street lights and public utilities shall be the responsibility of the undersigned. In situations where payment is required for the underground installation of service lines for these facilities, and such costs are not paid for these facilities, and such costs are not paid through the City's franchise agreement or similar agreements between the City and the public utilities, such cost shall be paid by the undersigned.
4. All street lights shall be constructed in accordance with the technical specifications.

Said improvement shall be done in accordance with the plan approved by the City Engineer. Other items as set out in the development plan, not listed above that are required or should those listed above need to be stated more clearly and accurately, then they will be set forth on an addendum marked Exhibit "A," attached hereto and incorporated by reference as if fully set forth herein or as set forth in the site development plans and other matters as approved by the City Planner or City Engineer.

IN WITNESS WHEREOF, the parties hereto have set their hands this _____ day of _____, 20____.

Company Name

Address

By _____

Title

Phone

Cell Phone

Email Address

ATTEST:

By _____

Title

CITY OF OLATHE, KANSAS

By _____

City Engineer