

ARTICLE I
Definitions

The following terms and phrases used in this Agreement shall have the meanings ascribed hereto:

- 1.01. "Agreement" means this agreement, including any amendments hereto, between the City and Developer.
- 1.02. "Contractor" shall mean the person, firm, corporation, partnership, association, or other entity awarded the contact by Developer for the construction and installation of the Improvements.
- 1.03. "Improvements" shall mean _____ lineal feet of _____ inch _____ line to be constructed parallel to _____ Street, south of the intersection of _____ Street and _____ Street and north of the intersection of _____ Street and _____ Street.

ARTICLE II
Construction of Improvements

- 2.01 Construction of Improvements. Developer agrees to construct the Improvements in accordance with the plans and specifications approved by the Director of Engineering & Planning, and as fully set forth in Exhibit "A" hereto. No change in the construction plans shall be made by Developer without the prior written consent of the Director of Engineering & Planning. The entire cost of the construction of the Improvements shall be the responsibility and obligation of Developer, except as herein provided.
- 2.02. Contracts for Construction. Developer shall contract with a qualified Contractor to construct the Improvements in accordance with the approved plans and specifications. The Director of Engineering & Planning shall review all contract documents and costs estimates, and shall approve the Contractor prior to the award of the contract. Developer shall be solely responsible for payment of the work as it is completed, and shall make all payments in a timely manner to the Contractor, sub-contractors, and other parties involved in the construction of the Improvements.
- 2.03. Performance, Payment and Maintenance Bonds. Developer shall post within the City faithful performance, payment, and maintenance bonds for construction of the Improvements to ensure completion of the project. The bond must be executed by a corporate surety in accordance with Chapter 2253, Texas Government Code.

- 2.04. Inspection. The Director of Engineering & Planning shall periodically inspect the construction of the Improvements in the same manner, and shall possess the same authority, as is provided during the construction of subdivision improvements pursuant to the City of Tomball Subdivision Ordinance, as amended.
- 2.05. Insurance. The Contractor awarded the contract to construct the Improvements shall be required to carry Worker’s Compensation Insurance on his employees and public liability and property damage insurance on his equipment and employees. The public liability insurance shall be not less than five hundred thousand dollars (\$500,000.00) per person and one million dollars (\$1,000,000.00) per occurrence, with property damage insurance of not less than five hundred thousand dollars (\$500,000.00). In addition, City shall be furnished with Certificates of Insurance and shall be named an additional named insured on such Certificates, and City shall be notified within ten calendar days of any cancellation of such insurance.
- 2.06. Accounting. Developer shall submit to City a complete accounting of all costs incurred by Developer in the construction of the Improvements. City will not contribute or pay for any costs incurred by Developer which was not approved by City prior to it being incurred. Developer shall maintain the accounting on this project for a period of two years from the date of acceptance by the City, and the City may inspect the Developer’s books and records related to the project at any time with reasonable notice.
- 2.07. Indemnity. Developer agrees to protect, indemnify and save City harmless from and against all claims, demands and causes of action of every kind and character arising in favor of any third party on account of, or resulting from, the performance of this Agreement by Developer or Developer’s agents, representatives, employees, contractors, or subcontractors.

**ARTICLE III.
City Obligations**

- 3.01. Oversized Improvements. The City agrees to pay to Developer the construction costs of oversizing the Improvements, not to exceed _____-Thousand _____-Hundred _____ Dollars and No Cents (\$_____.00), as identified and described in Exhibit “B” attached hereto and made a part hereof.
- 3.02. Payment to Developer. Exhibit “B” attached hereto designates the proportional split in costs for construction of the Improvements. City shall deliver to Developer full payment of the City’s share of the costs of construction of the Improvements following submittal and review of documentation showing final, actual construction costs paid by the Developer. The Director of

Engineering & Planning shall review the construction documents, conduct a final inspection on the Improvements, noting any required corrections or repairs, and make a recommendation to City Council on acceptance of the Improvements. Upon action by City Council accepting such Improvements, the City will pay to Developer the City's share of the costs. Any additional costs above those enumerated, or above the amounts described in Exhibit "B" must be approved by the City prior to being incurred.

- 3.03 Credit of Drainage Impact Fees to Developer. The proposed _____ acre development, situated in the M_____ Drainage Basin of the City of Tomball, Harris County, Texas, as depicted on Exhibit A, identified on the construction plans. In accordance to the City's Code of Ordinances, Chapter 82, Section 156, the development is subject to a drainage impact fee of \$_____ per acre. As a result of the developer constructing a portion of the City's unimproved M_____ Drainage Channel associated with the _____ acres, the development will be credited the cost of channel construction up to the full drainage impact fee assessment of the _____ acres totaling \$_____. Any construction costs exceeding the drainage impact fee assessment shall be at the expense of the Owner.

ARTICLE IV Miscellaneous Provisions

- 4.01 Assignment. This Agreement shall bind and benefit the respective Parties and their legal successors and shall not be assignable, in whole or in part, by any party without first obtaining written consent of the other party.
- 4.02 Amendment or Modification. Except as otherwise provided in this Agreement, this Agreement shall be subject to change, amendment or modification only in writing, and by the signatures and mutual consent of the Parties.
- 4.03. Parties in Interest. This Agreement shall be for the sole and exclusive benefit of the Parties hereto and shall not be construed to confer any rights upon any third party.
- 4.04. Remedies Not Exclusive. The rights and remedies contained in this Agreement shall not be exclusive, but shall be cumulative of all rights and remedies now or hereinafter existing, by law or in equity.
- 4.05. Waiver. The failure of any party to insist in any one or more instances on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, or condition, or right with respect to further performance.
- 4.06. Entire Agreement. This Agreement constitutes the entire agreement between the Parties related to the subject matter of this Agreement and supersedes any and all

City Secretary

DEVELOPER:

Authorized Signature, Name, and Title:
