

Subdivision Name

City Case No.

Subdivision Construction Agreement

Recitals:

- A. Subdivider owns the land included in the proposed final subdivision plat of the _____
Subdivision Name _____ Subdivision, City Project No. _____
City Case No. _____
and more particularly described on the attached and incorporated **Exhibit A** (the "Property").
- B. City ordinances require Subdivider to complete various Subdivision improvements to protect the health, safety, and general welfare of the community and to limit the harmful effects of substandard subdivisions.
- C. Subdivider desires to subdivide the Property in accordance with all applicable state and local laws, rules, and regulations.
- D. This Subdivision Construction Agreement (the "Agreement") that the Subdivider has agreed to provide per the City approved Planned Development District Ordinance is authorized by and consistent with state law and the City's ordinances, regulations, and other requirements governing development of a subdivision.
- E. This document is executed to memorialize Subdivider's responsibility to provide certain improvements to the Subdivision required by the platting process ("Subdivision Improvements").
- F. The City of Bastrop will not accept the Subdivision and release the Subdivider from its obligations under this Agreement, until all applicable Subdivision Improvements have been approved and accepted by the City
- G. This Agreement requires the Subdivider to post fiscal guarantees for certain improvements, which protects the City from, at its expense, completing subdivision improvements that the Subdivider has agreed to provide per the City approved Planned Development District, Ordinance No. _____. Subdivider's fiscal surety may be used only to complete those improvements listed on the attached and incorporated **Exhibit B**.
- H. Under certain circumstances outlined in the Agreement, Subdivider can assign all of its obligations hereunder to another Subdivider through an Assignment and Assumption of this Subdivision Construction Agreement.

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IN CONSIDERATION of the mutual covenants set forth in this Agreement, the parties agree as follows:

Agreement:

- 1. Incorporate Recitals.** The above Recitals, and all defined terms therein are incorporated in this Agreement for all purposes.
- 2. Parties.** The parties to this Agreement are _____ Subdivider Name (individually and collectively, the "Subdivider") and the City of Bastrop, a Texas home-rule municipal corporation, acting through its duly authorized City Manager, or designee, (the "City").
- 3. Effective Date.** This Agreement will become effective once signed by all Parties and the effective date will be the date of the last signature.

Subdivider's Obligations

- 4. Improvements.** Subdivider covenants to construct and install, at Subdivider's expense, all Subdivision Improvements that the Subdivider has agreed to provide per the City approved Planned Development District, Ordinance No. _____ for Burleson Crossing East Subdivision, as shown on **Exhibit B**. Prior to starting construction of the Subdivision Improvements, the construction plans and specifications must be certified by Subdivider's engineer of record for the Subdivision as compliant with all applicable state and local development regulations (including environmental protections such as erosion controls and site restoration) and released for construction by the City (collectively called "Released Construction Plans"). All Subdivision Improvements must be constructed in conformance with the Released Construction Plans. Final acceptance of the Subdivision Improvements after completion is subject to inspection, certification and acceptance by the City, as being in conformance with the Released Construction Plans.
- 5. Fiscal Deposit.** Subdivider must provide and continually maintain financial guarantees in the estimated total cost to construct each improvement(s) listed in **Exhibit B** in conformance with the Released Construction Plans, as shown on **Exhibit B** to assure performance of its obligations. The guarantee can be a cash deposit, surety bond, or irrevocable letter of credit in a form acceptable to the City Attorney, or designee held by the City ("Fiscal Deposit"). The stated amount of the Fiscal Deposit is _____ Total Fiscal Amount (Spelled Out) and (____/100) (\$_____) (the "Stated Amount").

- (a) **Cash Deposit.** A cash deposit must be received for the full amount, held by the City, and placed in an interest bearing escrow fund and invested as if it were funds of the City. All interest earned on the cash deposit will be credited to the Subdivider. The City will maintain a balance of 100% of the cost of construction of the improvements shown on **Exhibit B**, all interest in excess of that amount may be disbursed to the Subdivider upon City's receipt of Subdivider's written request therefor. Subdivider cannot request an initial disbursement of interest until the Fiscal Deposit has been placed with the City for 365 days. Subdivider cannot request interest disbursements more frequently than once a year.
- (b) **Surety Bond.** A surety bond must: (i) be in the full Stated Amount; (ii) be a standard form acceptable to the City Attorney; (iii) be listed with the United States Treasury http://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/surety_home.htm (iv) be issued by an insurance company licensed to transact business in the state of Texas and (v) have a rating equivalent to the minimum acceptable rating established by the City's Financial Services Department in effect at the time the initial Fiscal Deposit is issued pursuant to this Agreement (the "Issuer"). During this Agreement and subject to the terms of **Section 24**, the City Attorney may revise the standard form surety bond as is reasonably considered acceptable and necessary to secure the performance of Subdivider's obligations under this Agreement. If the standard surety bond form is revised, the new form will not be required to be used until the next time the amount of the bond is adjusted, if any.
- (c) **Letter of Credit.** A letter of credit must: (i) be in the full Stated Amount; (ii) be a standard form acceptable to the City Attorney; (iii) have an expiration date no earlier than one year from the date of its issuance; and (iv) be issued by a financial institution having a rating equivalent to the minimum acceptable rating established under the City's financial institution rating system in effect at the time the initial Fiscal Deposit is issued pursuant to this Agreement (the "Issuer"). During this Agreement and subject to the terms of **Section 24**, the City Attorney may revise the standard form letter of credit as he reasonably considers acceptable and necessary to secure the performance of Subdivider's obligations under this Agreement. If the standard letter of credit form is revised, the new form will not be required to be used until the next renewal period, if any.

6. **Intentionally Deleted.**

7. **Ownership and Lien Search Certificate.** Subdivider must provide an Ownership and Lien Search Certificate prepared and signed by a title company acceptable to the City. The Ownership and Lien Search Certificate must identify who title of the Property is vested with, the legal description of the property, and must name all lienholders having current liens against the Property. The Ownership and Lien Search Certificate must be dated no more than 30 calendar days prior to the Effective Date of this Agreement. The Ownership and Lien Search Certificate must be accompanied by a Consent of Lienholder that is signed by duly qualified representatives of all lienholders identified on the Ownership and Lien Search Certificate. The Fiscal Deposit will not be accepted without the Ownership and Lien Search Certificate and the executed Consent of Lienholder, if applicable.
8. **Right of Entry.** The Subdivider hereby grants to the City, its successors, assigns, agents, contractors, and employees, a nonexclusive right and easement to enter the Property to construct, maintain, and repair such Subdivision Improvements.

City's Obligations

9. **Partial Release of Fiscal Deposit.** After accepting any improvements listed in **Exhibit B**, the City can reduce the estimated cost of the Stated Improvements, as amended, if applicable, if Subdivider is not in default under this Agreement. Notwithstanding the preceding sentence, the City shall not authorize reductions in the Stated Amount more frequently than every 90 days; nor will the Stated Amount be reduced to zero until all Subdivision Improvements have been completed.
10. **Full Release of Fiscal Deposit.** Upon Subdivider completing all Subdivision Improvements, and complying with all requirements of, as verified by the City, applicable City Specifications and Standards, in conjunction with the approved Planned Development District, Ordinance No. _____, the Fiscal Deposit will be released and thus Agreement will be terminated.
11. **Inspection and Certification.** The City agrees to inspect Subdivision Improvements during and at the completion of construction, and, if completed in accordance with the Released Construction Plans, to certify the Subdivision Improvements as complying with the Released Construction Plans. The inspections and certifications will be conducted in accordance with standard City policies and requirements. The Subdivider grants the City, its agents, employees, officers, and contractors a Right of Entry to enter the Property to perform such inspections as it deems appropriate.
12. **Notice of Subdivision Improvement Defect.** The City, will provide timely notice to the Subdivider whenever inspection reveals that any Subdivision Improvement is not constructed or completed in accordance with the Released Construction Plans or is otherwise defective, followed by written notice and period to cure, if Subdivider fails to cure the defect upon being given oral notice. The Subdivider must cure or substantially cure the defect within the time period set out in the written notice.

13. **Default.** If one of the events described in **Section 14** occur, the City may declare the Subdivider in default under this Agreement and may draw the amount they considers necessary to perform Subdivider's obligations under **Section 4**. For each improvement shown on **Exhibit B** constructed by the City, the City may draw 100% of the amount allocated in **Exhibit B** in accordance with the Released Construction Plans.
14. **Conditions of Draw on Fiscal Deposit.** The City may draw upon any financial guarantee posted in accordance with **Section 5** upon the occurrence of one or more of the following events:
- (a) Subdivider did not properly construct one or more improvements and failed to remedy the construction deficiency within the cure period;
 - (b) Subdivider did not renew or replace the Fiscal Deposit at least 45 days prior to its expiration date;
 - (c) Subdivider did not replace the Fiscal Deposit within 45 days after notice that the Issuer failed to maintain the minimum rating acceptable to the City, in accordance with **Section 5**;
 - (d) The Issuer's acquisition of the Property or a portion of the Property, through foreclosure or an assignment or conveyance in lieu of foreclosure; or
 - (e) If City elects to construct one or more of the Subdivision Improvements shown on **Exhibit B**.

The City shall provide written notice of the occurrence of one or more of the above events to the Subdivider.

15. **Procedures for Drawing on the Fiscal Deposit.** The process by which the City can draw upon the Fiscal Deposit is dependent upon the type of event that triggered the default. If the default occurred because:
- (a) improvements were not constructed properly or cured as required under **Section 14 (a)**, the City will send notice that states the specific construction deficiency and include a statement that the City intends to perform some or all of Subdivider's obligations under **Section 4** for specified improvements shown on **Exhibit B**.
 - (b) a renewal or replacement Letter of Credit is not provided at least 45 days prior to expiration, as required under **Sections 14 (b), (c) and (d)**, then within 15 days prior to expiration of such Letter of Credit the City will send a draw letter to Issuer, with a copy to Subdivider.
 - (c) the City has elected to construct Subdivision Improvements as described in **Section 14 (e)**, then the City must give notice to Issuer, with a copy to Subdivider, no less than 15 days prior to its drawing on the Fiscal Deposit.

If the City draws on the Fiscal Deposit under **Sections 14 (b) or (c)** the funds received will be converted to a Cash Deposit for the benefit of Subdivider, as if originally deposited as Cash under **Section 5 (a)**. For all circumstances, the City may draw upon the Fiscal Deposit by submitting a draft to the Issuer that complies with the terms governing such draft. Non-cash Fiscal Deposits must be surrendered upon presenting any draft that exhausts the Stated Amount of such Fiscal Deposit. The City may not draft under a Fiscal Deposit unless the City has substantially complied with all obligations to the Issuer under this Agreement and has properly completed and executed the draft in strict accordance with its terms. To draw on a cash Fiscal Deposit, the City will provide a letter of explanation to the person who posted the cash Fiscal Deposit, which meets the requirements to draw upon the City's most currently approved Letter of Credit form.

16. Use of Proceeds. If the Subdivider is in default of this Agreement, the City will invest all funds obtained by one or more draws under the Fiscal Deposit ("Escrowed Funds") in the same manner as if they were funds of the City. The City will invest such Escrowed Funds, and accrued interest thereon, until they are used by the City. All Escrowed Funds and interest accrued thereon belong to the City and the Subdivider forfeits all rights to the Escrowed Funds and accrued interest. The City will use the Escrowed Funds, and interest thereon, only to complete the improvements shown on **Exhibit B**, in conformance with the Released Construction Plans, or to correct defects in or failures of the improvements shown on **Exhibit B**. The City may, in its sole discretion, complete some or all of the improvements unfinished at the time of default, regardless of the extent to which development has taken place in the Subdivision or whether development ever commenced, and without incurring any obligation to complete any of the unfinished improvements.

17. Replacing of Fiscal.

- (A) Fiscal guarantee may be replaced with another form of fiscal guarantee upon the submittal and acceptance of either the replacement fiscal guarantee pursuant to **Section 5**.
- (B) If the Issuer has acquired all or part of the Property through foreclosure or an assignment or conveyance in lieu of foreclosure, in lieu of honoring a draft based on a **Section 14 (d)** default, the Issuer may deliver a substitute or by confirming Fiscal Deposit to the City.

General Provisions:

18. Remedies. The remedies available to the City and the Subdivider under this Agreement and the laws of Texas are cumulative in nature.

19. Third Party Rights. No person or entity who or which is not a party to this Agreement has any right of action under this Agreement. Nor does any such person or entity, other than the City, (including without limitation a trustee in bankruptcy) have any interest in or claim to Escrowed Funds drawn on the Fiscal Deposit in accordance with this Agreement.

20. **Indemnification.** Subdivider covenants to fully indemnify, save, and hold harmless the City of Bastrop, its officers, employees, and agents (collectively called "Indemnitees") from, and against, all claims, demands, actions, damages, losses, costs, liabilities, expanses, and judgments recovered from or asserted against Indemnitees on account of injury or damage to person [including without limitation, Workers' Compensation and Death Claims], or property loss or damage of any kind whatsoever, to the extent any damage or injury may be incident to, arise out of, be caused by, or be in any way connected with, either proximately or remotely, wholly or in part, the construction, existence, use, operation, maintenance, alteration, repair, or removal of any Improvement installed by or on behalf of Subdivider in the Property; the performance of this Agreement; an act or omission, negligence, or misconduct on the part of Subdivider, or any of its agents, servants, employees, contractors, patrons, guests, licensees, invitees, or other persons entering upon the Property under this Agreement, whether authorized with the expressed or implied invitation or permission of Subdivider (collectively called "Subdivider's Invitees"); including any injury or damage resulting, proximately or remotely, from the violation by Subdivider or Subdivider's Invitees of any law, ordinance, or governmental order of any kind, including any injury or damage in any other way arising from or out of the use of the Improvements on the Property or the Property itself by any person, whether authorized to use the Improvements. Subdivider covenants and agrees that if the City or any other Indemnitee is made a party to any litigation against Subdivider or any litigation commenced by any party, other than Subdivider, relating to this Agreement, Subdivider shall, upon receipt of reasonable notice regarding commencement of litigation, at its own expense, investigate all claims and demands, attend to their settlement or other disposition, defend the City in all actions with counsel acceptable to City, and pay all charges of attorneys and all other costs and expenses of any kind arising from any liability, damage, loss, claims, demands, and actions.
21. **No Waiver.** No waiver of any provision of this Agreement will be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement executed by duly authorized representatives of each party. The failure at any time to enforce this Agreement or any covenant by the City, the Subdivider, or the Issuer, their respective heirs, successors or assigns, whether any violations thereof are known, does not constitute a waiver or estoppel of the right to do so.
22. **Attorney's Fees.** If either party sues to enforce the terms of this Agreement, the prevailing party, plaintiff or defendant, is entitled to recover its costs, including reasonable attorney's fees, court costs, and expert witness fees, from the other party. If the court awards relief to both parties, each will bear its own costs in their entirety.

27. **Release.**

- A. **Upon Completion.** Upon accepting all Subdivision Improvements, the City agrees: (i) to provide a recordable release to the Subdivider and the Issuer releasing the Subdivider and Subdivider's heirs and successors, and the Property from all provisions of this Agreement and (ii) to return the Fiscal Deposit to the Issuer.

- B. **Upon Vacation of Plat.** Upon receipt of notice of Vacation of Plat under the City's usual process for same, the City agrees: (i) to provide a recordable release to the Subdivider and the Issuer releasing the Subdivider and Subdivider's heirs and successors and the Property from all provisions of this Agreement and (ii) to return the Fiscal Deposit to the Issuer.

28. **Captions Immaterial.** The numbering, order, and captions or headings of the paragraphs of this Agreement are for convenience only and must not be considered in construing this Agreement.

29. **Entire Agreement.** This Agreement contains the entire agreement between the parties and correctly sets forth the rights, duties, and obligations of each to the other as of the Effective Date.

30. **Modification and Amendment.** This Agreement may only be modified, amended, or terminated upon the filing of a written modification, amendment, or termination document in the Official Public Records of Travis County, Texas. Such document will be executed, acknowledged, and approved by (a) the Director of the Development Services Department or assignee, or successor department; (b) all the Owners of the Property at the time of the modification, amendment, or termination; (c) the Subdivider; and (d) any mortgagees holding first lien security interests on any portion of the Property.

31. **Authorization to Complete Blanks.** By signing and delivering this Agreement to the appropriate official of the City, the Subdivider authorizes completion of this Agreement by filling in the Effective Date below.

32. **Binding Agreement.** The execution and delivery of this Agreement and the performance of the transactions contemplated thereby have been duly authorized by all necessary corporate and governmental action of the City. Further, the execution and delivery of this Agreement and the performance of the transactions contemplated thereby have been duly authorized by all necessary corporate action of both the Subdivider and Issuer. This Agreement has been duly executed and delivered by each party, and constitutes a legal, valid, and binding obligation of each party enforceable in accordance with the terms as of the Effective Date. These representations and agreements are for the benefit of the Issuer, and have been relied on by the Issuer in issuing the Fiscal Deposit.

Executed by the parties to be Effective on _____, 20__.

SUBDIVIDER:

Subdivider Name _____
Company Type (ex: a limited liability company) _____

By: _____
Name: Printed Signer Name _____
Title: Signer Title _____

STATE OF TEXAS

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COUNTY OF TRAVIS

Before me _____, a Notary Public on this day personally appeared _____, as _____, known to me personally or through valid photo identification to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, 20__.

Notary Public, State of Texas

CITY OF BASTROP, a Texas Home-Rule municipal corporation

By: _____
_____ Managing Engineer
Or Designee

Delegated by: _____
Director Development Services
Department

STATE OF TEXAS

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COUNTY OF BASTROP

Before me _____, a Notary Public on this day personally appeared _____, Managing Engineer or Designee of Development Services Department as delegated by _____, Interim Director for the Development Services Department of the City of Bastrop, a Texas municipal corporation, on behalf of the corporation.

Given under my hand and seal of office this ____ day of _____, 20____.

Notary Public, State of Texas

EXHIBIT LIST:

Exhibit A - Property Description

Exhibit B - Subdivision Improvements

**IF THERE IS A Lienholder
shown on the Lien Search Certificate
Use the **Consent of Lienholder** form
Next Document attached**

**All highlighted areas must be filled in with correct
information. I suggest leaving the highlighting.**

**If Lien Search Certificate shows no
lienholder delete this page and the
Consent of Lienholder form and go
straight to Exhibit List page.**

**CONSENT OF LIENHOLDER TO
Execution of Subdivision Construction Contract**

STATE OF TEXAS §
COUNTY OF BASTROP §

Whereas, _____ Subdivider Name _____, is the Owner ("Owner") of the following described property:

That tract of land situated in Bastrop County, Texas described in the attached and incorporated **EXHIBIT "A"** ("Property"), and

Whereas, _____ Bank Name _____ is the lienholder ("Lienholder") of the Property under the terms and conditions of the following described documents:

Deed of Trust dated _____ Date _____, _____ Subdivider Name _____, to
from _____ Trustee Name _____, Trustee, securing the payment of one promissory note of even
date in the original principal amount of \$ _____, payable to
_____ Bank Name _____. Deed of Trust of record in Document Number
_____ Deed of Trust Number _____, of the Official Public Records of Bastrop County, Texas.

Whereas, Owner has executed a Subdivision Construction Agreement with the City of
Bastrop ("City") governing installation of Improvements in the
_____ Subdivision Name _____

("Development"), and;

NOW THEREFORE, in consideration of \$10 the Lienholder agrees as follows:

_____ Bank Name _____ consents to the execution of the Subdivision
Construction Agreement and the rights and obligations of Subdivider set out therein, and
subordinates all of its liens on this Property to the rights and interests of the City in the
Subdivision Construction Agreement, its successors and assigns, and any foreclosure of its liens will
not extinguish City's rights and interests in the Subdivision Construction Agreement.

_____ Bank Name _____ affirms that the undersigned has the authority to bind
the Lienholder, and that all corporate acts necessary to bind the Lienholder have been taken.

Executed on _____, 20____.

Bank Name _____,
Bank Type _____

By: _____
Name: Printed Lienholder Name _____
Title: Lienholder Title _____

STATE OF Notary State §
COUNTY OF Notary County §

Before me _____, Notary Public, on this day personally appeared _____, Printed Lienholder Name, known to me personally or through valid photo identification to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that s/he executed the same for the purposes and consideration expressed.

Given under my hand and seal of office this _____ day of _____, 20__.

[SEAL]

Notary Public, State of Notary State

EXHIBIT A:
METES AND BOUNDS DESCRIPTION OF PROPERTY

**EXHIBIT B:
Subdivision Improvements**

External Subdivision Improvements and Internal Subdivision Improvements are collectively referenced as the "Subdivision Improvements".

External Subdivision Improvements. Subdivider and City agree the following improvements located outside the boundaries of the Subdivision are required in connection with the approval and development of the Subdivision (collectively, the "External Subdivision Improvements"). Subdivider agrees to deliver a financial guarantee acceptable in form and substance to the Fiscal Surety Office in an amount equal to Subdivider's pro-rata share of the estimated cost to construct and install the External Subdivision Improvements, in the amount listed below, as follows:

Description of Improvement(s)	Estimated Cost of Completion
a) Water Quality Pond(s)	\$ _____
b) Erosion and Sedimentation Controls	\$ _____
c) Restoration	\$ _____
d) Sidewalks	\$ _____
e) Parkland	\$ _____

Internal Subdivision Improvements. Subdivider and City agree the following improvements located inside the boundaries of the Subdivision are required in connection with the approval and development of the Subdivision (collectively, the "Internal Subdivision Improvements"). Subdivider agrees to deliver a financial guarantee acceptable in form and substance to the Fiscal Surety Office in an amount equal to the Estimated Cost of Completion listed below, as follows:

Description of Improvement(s)	Estimated Cost of Completion
a) Water Quality Pond(s)	\$ _____
b) Erosion and Sedimentation Controls	\$ _____
c) Restoration	\$ _____
d) Sidewalks	\$ _____
e) Parkland	\$ _____

TOTAL \$ 0.00

AFTER RECORDING, RETURN TO:

City of Bastrop
Planning and Development
211 Jackson Street
Bastrop, Texas 78602