

**DEVELOPMENT CONTRACT
FOR
PUBLIC IMPROVEMENTS**

WHEREAS, Denton County, Texas , (the “Developer”), whose business address is 110 West Hickory Street., 2nd Floor, Denton, Texas, is the owner and developer of real property located in the corporate limits of the City of Denton being commonly described as the Denton County Jail Expansion, 127 N. Woodrow Lane, Denton, Texas 76209, and more particularly described as Final Re-plat, Lot 1R-Block A, of the Denton County Law Enforcement Center out of the J. Brock Survey Abstract No. 55 and the Hiram Sisco Survey Abstract No. 1164 located within the City of Denton, Denton County, Texas, an addition to the City of Denton, Texas (the “Development”); and

WHEREAS, Developer wishes to enter into this agreement with the City of Denton, Texas (the “City) to provide for the construction of certain public improvements are generally described as all construction located within Dedicated Utility Easements with the exception of the Natural Gas and Sanitary Sewer service lines including but not limited to Water & Storm Drainage Construction, and includes, but is not limited to, excavation and trench preparation; placement of all storm water structures including head walls, drainage structures, reinforced concrete pipe, concrete box culverts and rip rap; domestic water line construction, including pipe, valves, vaults, meters 3 inch and larger, and fire hydrants; backfilling and preparation of backfill materials for surface level construction (sod, paving etc.), and are further described in Exhibit A attached hereto and made a part hereof by reference (the “Public Improvements”), which, among other things, are necessitated by and will serve the Development; and

WHEREAS, this agreement is entered into pursuant to Subchapter C of Chapter 212 of the Texas Local Government Code as a condition of plat approval and the Public Improvements are roughly proportional to the benefits received and burdens imposed by the Development; and

WHEREAS, this agreement is required to ensure that the Public Improvements are constructed in accordance with the City’s standard specifications for public works projects, applicable

ordinances and design criteria manuals (“Standard Specifications”), and the plans and specifications prepared by Developer’s engineer, HDR Engineering (“Developer’s Engineer”) dated December 11th, 2012, which were approved by the City and are on file in the office of the City Engineer, which may be amended with the written approval of the City Engineer or his designee (the “Project Specifications”), such Standard Specifications and Project Specifications being incorporated herein by reference and herein called the “Plans and Specifications”; and

WHEREAS, the Developer understands and agrees that it is responsible for and has retained, at its sole expense, the Developer’s Engineer to design the Public Improvements in accordance with the Standard Specifications, taking into consideration the specific site conditions that may impact the Public Improvements; and

WHEREAS, the Developer shall provide for the construction of the Public Improvements by and through Satterfield & Pontikes Construction, Inc., whose address is 6220 N. Beltline Road, Suite 200, Irving, Texas 75063 (the “Contractor”), a construction contractor experienced in the construction of improvements similar to the Public Improvements, and

WHEREAS, Developer and Contractor recognize that the City has an interest in ensuring that the Public Improvements, which will, upon completion and acceptance by the City, become public property, are properly constructed in accordance with the Plans and Specifications and that payment by Developer is provided therefore; **NOW, THEREFORE**,

The Developer, Contractor, and City (the “Parties”) in consideration of their mutual promises and covenants contained herein agree as follows:

1. **Covenants of Developer and Contractor.**

- (a) **Construction.** Contractor shall construct the Public Improvements in accordance with the Plans and Specifications. Developer shall be responsible for all monies due to the Contractor for construction of the Public Improvements. In no event shall the City be responsible for payment of any of the expenses or costs to construct the Public Improvements. The City Engineer in his discretion may require the

Developer to provide security for payments to the Contractor, which may be in the form of a cash deposit with the City, a letter of credit, a dedicated construction account with a lending institution approved by the City Engineer, or other security that the City Engineer in his discretion deems adequate to ensure that the Developer does not default in its payment obligations to the Contractor.

- (b) **Authority of City Engineer, Inspections, Tests and Orders, Developer and Contractor Warranty.** All work on the Public Improvements shall be performed in a good and workmanlike manner and to the satisfaction of the City Engineer or his representative. The City Engineer shall decide all questions, which arise as to the quality and acceptability of materials furnished, work performed, and the interpretation of the Plans and Specifications and may reject any work not performed in accordance with the Plans and Specifications. The Contractor, its surety on the performance bond required herein and the Developer, warrant that the Public Improvements will be free from defects in materials and workmanship and that they will pay to remedy same for a period of two years after the completion of the Public Improvements and final acceptance by the City. This warranty shall not constitute a limitation on the duty to remedy latent defects in construction that were not known at the time of final acceptance or within said two year warranty period. The Contractor shall furnish the City Engineer or his representative with every reasonable facility for ascertaining whether or not the work performed was in accordance with the Plans and Specifications applicable thereto. Any work done or materials used without suitable inspection by the City may be ordered removed and replaced at Contractor's expense. The City Engineer or his designee shall perform periodic inspections of the work and shall perform a final inspection prior to final acceptance by the City and an inspection 30 days prior to the expiration of two years from the date of final completion and acceptance of the work by the City. Upon failure of the Contractor to allow for inspection, to test materials furnished, to satisfactorily repair, remove or replace, if so directed, rejected, unauthorized or condemned work or materials, or to follow any other request or order of the City Engineer or his representative, the City Engineer shall notify the Developer of such failure and may suspend inspections of such work until such failure is remedied. If such failure is not remedied to the satisfaction of the City Engineer, the City shall have no obligation under this agreement to approve or accept the Public Improvements and the City may withhold, suspend or revoke any permits or other approvals for the Development until such matter is remedied to the satisfaction of the City Engineer.

- (c) **Insurance.** Contractor shall provide for insurance in form and in substance in accordance with the City's standard insurance requirements for public works projects, which are on file in the Office of the City Engineer and which are incorporated herein by reference.
- (d) **Means and Methods of Construction.** The means and methods of construction shall be such as Contractor may choose; subject, however, to the City's right to reject the Public Improvements for which the means or method of construction does not, in the judgment of the City Engineer, assure that the Public Improvements are constructed in accordance with Plans and Specifications.
- (e) **Books and Records.** All of the Developer's and the Contractor's books and other records related to the construction of the Public Improvements shall be available for inspection by the City.
- (f) **Performance Bonds.** The Contractor shall execute a performance bond in the full amount of the cost to construct the Public Improvements in favor of the City ensuring completion of the Public Improvements in accordance with the Plans and Specifications and warranting against defects in materials and workmanship for a period of two years from the date of final acceptance by the City as provided in 1(b) herein. The performance bond shall be executed by a corporate surety authorized to do business in Texas in accordance with Chapter 2253 of the Texas Government Code, shall be on the City's standard form, and shall contain a local resident agent for service of process. The Developer may be a co-obligee on the performance bond with regard to the Contractor's obligations.
- (g) **Payment Bonds.** The Contractor shall execute a payment bond in the full amount of the cost to construct the Improvements in favor of the City ensuring against claims from suppliers and subcontractors. The payment bond shall be executed by a corporate surety authorized to do business in Texas in accordance with Chapter 2253 of the Texas Government Code, shall be on the City's standard form, and shall contain a local resident agent for service of process. The Owner may be a co-obligee on the payment bond.
- (h) **Retainage: Final Payments.** As security for the faithful completion of the Public Improvements, Contractor and Developer agree that the Developer shall retain five (5) percent of the total dollar amount of the contract price until after final approval or acceptance of the Public Improvements by the City. The Developer shall thereafter pay the Contractor the retainage, only after Contractor has furnished to the Developer satisfactory evidence including an affidavit that all indebtedness has been paid, that all indebtedness connected with the work and all sums of money due for labor, materials, apparatus, fixtures or

machinery furnished for and used in the performance of the work have been paid or otherwise satisfied. In addition, Contractor shall provide Developer with a consent to final payment from the payment bond surety.

- (i) **Encumbrances.** Upon completion and final acceptance of the Public Improvements by the City, the Public Improvements shall become the property of the City free and clear of all liens, claims, charges or encumbrances of any kind. If, after acceptance of the Public Improvements, any claim, lien, charge or encumbrance is made, or found to exist, against the Public Improvements, or land dedicated to the City, to which they are affixed, the Developer and Contractor shall upon notice by the City promptly cause such claim, lien, charge or encumbrance to be satisfied and released or promptly post a bond with the City in the amount of such claim, lien, charge or encumbrance, in favor of the City, to ensure payment of such claim, lien, charge or encumbrance.
- (j) **Indemnification.** To the extent permitted by law, the Developer and Contractor shall and hereby do indemnify, defend and save harmless, the City, its officers, agents and employees from all suits, actions or claims of any character, name and description brought for or on account of any injuries or damages received as sustained by any person, persons or property on account of the operations of the Contractor, his agents, employees or subcontractors; or on account of any negligent act or fault of the Contractor, his agents, employees or subcontractors in construction of the improvements; and shall pay any judgment, with costs, which may be obtained against the City growing out of such injury or damage.
- (k) **Agreement Controlling.** The provisions of this agreement shall control over any conflicting provision of any contract between the Developer and Contractor as to the construction of the Public Improvements.

2. **Covenants of City of Denton.** Upon proper completion of the Public Improvements in accordance with this agreement, the City agrees to accept the Public Improvements.

3. **Nexus and Rough Proportionality.** The Developer acknowledges and agrees that there is a reasonable nexus between the demands created by the Development and the Public Improvements, and that the costs associated with the construction and dedication of land for the Public Improvements is roughly proportional to the benefits received and the burdens imposed by the Development. The Developer shall indemnify and hold the City harmless against any claim by it or others claiming through it, that the required Public Improvements and associated dedication of land are unlawful exactions.

4. **Venue and Governing Law.** The Parties herein agree that this agreement shall be enforce able in Denton County, Texas, and if legal action is necessary in connection therewith, exclusive venue shall lie in Denton County, Texas. The terms and provisions of this agreement shall be construed in accordance with the laws and court decisions of the State of Texas.
5. **Successor and Assigns.** This contract shall be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns.

Executed in triplicate this, 11 day of December, 2012.

DEVELOPER

Name: Denton County, Texas

By: _____

Name: Mary Horn

Title: Denton County Judge

Address: 110 West Hickory Street, 2nd Floor
Denton, Texas 76201

**APPROVED AS TO LEGAL FORM:
ASSISTANT DISTRICT ATTORNEY**

BY: _____

CONTRACTOR

Name: Satterfield & Pontikes Construction, Inc.

By: Jason Haralson

Name: Jason Haralson

Title: Senior Vice President

Address: 6220 N. Beltline Road, Suite 200
Irving, Texas 75063

APPROVED:

Denis G. Ducran

Denis G. Ducran

General Counsel

Date: 11/29/12

CITY OF DENTON, TEXAS

BY: _____
GEORGE C. CAMPBELL, CITY MANAGER

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
ANITA BURGESS, CITY ATTORNEY

BY: _____

EXHIBIT 'A'

Quote To: City Of Denton
 Phone:
 Fax:
 Attention: City Of Denton

Job Name: Denton County Jail Expansion
 City: Denton
 Bid Date: 9/12/12
 Addendums Rec. #1, #2, #3
 Date of Plans: 9/4/12
 Revision Date: None

Bid Based on Civil Drawings Only

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
**** PUBLIC WATER ****					
1	Connect To Existing	1.00	EACH	1,400.00	1,400.00
2	Cut & Plug Exist.	1.00	EACH	850.00	850.00
3	Remove Exist. Water Line	626.00	LF	11.00	6,886.00
4	16" Steel Casing	56.00	LF	94.00	5,264.00
5	Cut in Tee	1.00	EACH	4,200.00	4,200.00
6	4" PVC DR 18	20.00	LF	21.00	420.00
7	6" PVC DR 18	28.00	LF	21.00	588.00
8	8" PVC DR 18	814.00	LF	21.00	17,094.00
9	4" Gate Valve	1.00	EACH	800.00	800.00
10	6" Gate Valve	3.00	EACH	850.00	2,550.00
11	8" Gate Valve	5.00	EACH	1,200.00	6,000.00
12	Fire Hydrant	3.00	EACH	2,550.00	7,650.00
13	Remove Exist. Fire Hydrant	2.00	EACH	600.00	1,200.00
14	Fittings	1.00	LS	2,100.00	2,100.00
15	2" Deadhead Irrigation	1.00	EACH	2,100.00	2,100.00
16	3" Metron Meter & Vault	1.00	EACH	13,000.00	13,000.00
17	Concrete Cap	34.00	LF	33.00	1,122.00
18	Trench Safety / LF	862.00	LF	1.00	862.00
19	Testing / LF	862.00	LF	1.00	862.00
PUBLIC WATER SUBTOTAL					\$74,948.00
**** PUBLIC STORM ****					
1	Connect To Existing	2.00	EACH	1,300.00	2,600.00
2	18" RCP Class III	70.00	LF	34.00	2,380.00
3	24" RCP Class III	25.00	LF	45.00	1,125.00
4	36" RCP Class III	9.00	LF	73.00	657.00
5	Concrete Collar	8.00	EACH	400.00	3,200.00
6	2 - 10'x4' RCB Precast	528.00	LF	724.00	382,272.00
7	12'x24' Concrete Junction Box	1.00	EACH	26,000.00	26,000.00
8	2 - 10'x4' Wingwall	1.00	EACH	11,000.00	11,000.00
9	Grouted Rock Rip Rap	126.00	SY	110.00	13,860.00
10	Trench Safety / LF	632.00	LF	1.00	632.00
PUBLIC STORM SUBTOTAL					\$443,726.00
GRAND TOTAL					\$518,674.00

EXHIBIT 'B'

Quote To: City Of Denton

Job Name: Denton County Jail Expansion

City: Denton

Bid Date: 9/12/12

Phone:

Addendums Rec.: #1, #2, #3

Fax:

Date of Plans: 9/4/12

Attention: City Of Denton

Revision Date: None

Bid Based on Civil Drawings Only

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
	**** EARTHWORK ****				
1	Channel Grading	1.00	LS	10,000.00	10,000.00
	EARTHWORK SUBTOTAL				\$10,000.00

NOTES:

All costs associated with grading activities at the swale, on South side of Troy Lagrone Street