



City of San Angelo
Department of Public Works
Subdivision Performance Agreement

OWNER/DEVELOPER OF PROPOSED SUBDIVISION:

(Name of person or entity owning subdivision)

(Street or P.O. Box)

(City, State, Zip Code)

A final plat was approved by the San Angelo Planning Commission on _____ *(date)* for the following described real property (hereinafter the “Development”):

_____, more fully described and depicted on **Exhibit “A”** attached hereto.
(Property/Legal Description)

I. GUARANTEE OF PERFORMANCE

Owner agrees that the Director of Planning and Development Services (“Planning Director”) of the City of San Angelo (“City”) may retain possession of the plat without recording same for a maximum period of three (3) years from date of plat approval by which time Owner will have completed all site improvements (“Site Improvements”) required pursuant to Chapter 12, Exhibit “C” of the City of San Angelo Code of Ordinances (“Code”) and as conditioned with the approved plat, and same will have been accepted by the City; or, until Owner has submitted herewith one of the below described forms of security payable to the City guaranteeing that all such Site Improvements will be constructed within three (3) years of the date of plat approval. Owner acknowledges and agrees that approval of the plat shall expire after three (3) years from date of approval unless all Site Improvements have been completed and accepted by the City and the plat is recorded prior to expiration of that time period.

Attached as **Exhibit “B”** is a cost estimate of the amount that it would cost the City to construct the Site Improvements (the “Cost Estimate”). The Cost Estimate includes an inflation factor based upon a locally recognized construction cost index, approved by the Department of Public Works. The form of the guarantee of performance shall be one or a combination of the following:

- (1) A performance bond, meeting the requirements set out in Chapter 12, Exhibit “C”, Chapter 6, Section II of the Code, substantially in the form as the bond instrument on file with the Department of Public Works or as approved by the City Attorney, in an amount equal to the Cost Estimate for uncompleted and unaccepted Site Improvements. Upon completion of the required Site Improvements and their acceptance by the Department of Public Works, the performance bond will be considered satisfied and released to the surety company by the City.
- (2) Cash or cashier's check in the full amount of the Cost Estimate for uncompleted and unaccepted Site

Improvements deposited with the Finance Department. Upon completion of the required Site Improvements and their acceptance by the Department of Public Works, the amount will be refunded to the Owner by the City.

- (3) An irrevocable standby letter of credit drawable in the State of Texas on a federally insured commercial bank and meeting the requirements set forth in Chapter 12, Exhibit "C", Chapter 6, Section II of the Code and which will be substantially in the form of the sample letter of credit on file in the Department of Public Works or as approved by the City Attorney, in an amount equal to the Cost Estimate for uncompleted and unaccepted Site Improvements. Upon completion of the required Site Improvements and their acceptance by the Department of Public Works, the irrevocable standby letter of credit will be considered satisfied and released to the bank by the City.

Owner agrees to provide performance guarantees as necessary to ensure uninterrupted coverage for the benefit of City for a minimum three (3) year and ninety (90) day period from the date of plat approval, or until all Site Improvements are completed and accepted by City, whichever occurs first. However, any individual performance guarantee may provide for a shorter term so long as a new, extended or substitute guarantee is provided to ensure uninterrupted coverage during the entire three (3) year and ninety (90) day period, or until all Site Improvements are completed and accepted by City, whichever occurs first. Periodically until the expiration of three (3) years from the date of plat approval, the City Engineer shall review the Cost Estimate as it relates to any uncompleted Site Improvements outstanding at that date to determine the adequacy of any provided performance guarantee. Should the City Engineer conclude that the sum set out in such performance guarantee is inadequate to provide for construction of the uncompleted Site Improvements, he/she may require a substitute guarantee or an additional suitable guarantee of performance in a form required under Chapter 12, Exhibit "C", Chapter 6 of the Code replacing or supplementing the original guarantee to secure the revised Cost Estimate of the Site Improvements. Likewise, performance guarantees may be partially released or substituted for a new performance guarantee for completed and accepted segments of required Site Improvements pursuant to Chapter 12, Exhibit "C", Chapter 6, Section III of the Code.

Should such necessary additional or substitute guarantee fail to be provided within thirty (30) days of the request for same, the City shall refuse to accept a performance guarantee under any form which is related to the plat of a subdivision in which Owner has a principal or subsidiary interest. Likewise, should an approved guarantee of performance be posted, and the proposed plat recorded in the Plat Records of Tom Green County, Texas, and all Site Improvements not be completed and accepted by City upon expiration of the time periods referred to herein, the City shall refuse to accept a performance guarantee, under any form, which is related to a plat in which Owner has a principal or subsidiary interest. Such a plat once it has been approved by the Planning Commission may be recorded only in the manner prescribed in Chapter 12, Exhibit "C", Chapter 6 of the Code.

II. AGREEMENT RUNS WITH THE LAND

This Agreement is intended to run with the land the subject of the Development. Notwithstanding anything to the contrary herein, in addition to the requirement for a performance bond, irrevocable standby letter of credit, and/or cash or cashier's check deposit for security to guarantee completion and acceptance of the Site Improvements before the plat is recorded, as hereinbefore stated, the Owner and Owner's heirs, administrators, executors, successors and assigns, or subsequent purchasers having any right, title or interest in the Development, or any part of such property, shall be liable to the City for completion of all Site Improvements guaranteed by Owner under this Agreement, except for Site Improvements accepted by the City within the time provided herein. The Owner's obligations under this Agreement may not be assigned without the express written approval of the City. The City's written approval may not be withheld if the Owner's assignee explicitly assumes all obligations of the Owner under this Agreement.

III. UNCONTROLLABLE DELAYS

However, should the completion of Site Improvements be delayed by reason of strikes, riots, acts of God, acts of the public enemy, injunction or other court action, or any other cause similar to those enumerated beyond control of Owner, Owner shall be entitled to an extension of time equal to the time of such delay, which extension of time is to be fixed finally by written certificate made by the City Manager. It is expressly declared that no such allowance of time will be made unless claimed by Owner and allowed and certified in writing by the Planning Director at the end of each period of such delay.

IV. INDEMNITY

OWNER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS CITY AND ITS OFFICIALS, EMPLOYEES AND AGENTS (COLLECTIVELY REFERRED TO AS "INDEMNITEES") AND EACH OF THEM FROM AND AGAINST ALL LOSS, COSTS, PENALTIES, FINES, DAMAGES, CLAIMS, EXPENSES (INCLUDING ATTORNEY'S FEES) OR LIABILITIES (COLLECTIVELY REFERRED TO AS "LIABILITIES") BY REASON OF ANY INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR DESTRUCTION OR LOSS OF ANY PROPERTY ARISING OUT OF, RESULTING FROM, OR IN CONNECTION WITH (I) THE PERFORMANCE OR NON-PERFORMANCE OF THE OBLIGATIONS CONTEMPLATED BY THIS AGREEMENT WHICH IS OR IS ALLEGED TO BE DIRECTLY OR INDIRECTLY CAUSED, IN WHOLE OR IN PART, BY ANY ACT, OMISSION, DEFAULT OR NEGLIGENCE (WHETHER ACTIVE OR PASSIVE) OF OWNER OR ITS EMPLOYEES, AGENTS OR SUB-CONTRACTORS (COLLECTIVELY REFERRED TO AS "DEVELOPER"), REGARDLESS OF WHETHER IT IS, OR IS ALLEGED TO BE, CAUSED IN WHOLE OR PART (WHETHER JOINT, CONCURRENT OR CONTRIBUTING) BY ANY ACT, OMISSION, DEFAULT OR NEGLIGENCE (WHETHER ACTIVE OR PASSIVE) OR STRICT LIABILITY OF THE INDEMNITEES, OR ANY OF THEM OR (II) THE FAILURE OF OWNER TO COMPLY WITH ANY OF THE PARAGRAPHS HEREIN OR THE FAILURE OF OWNER TO CONFORM TO STATUTES, ORDINANCES, OR OTHER REGULATIONS OR REQUIREMENTS OF ANY GOVERNMENTAL AUTHORITY, FEDERAL, STATE OR LOCAL, IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT.

V. GENERAL TERMS

1. Conflict with Code. In the event of conflict between the terms of this Agreement and the Code, the Code shall control to the extent of the conflict.
2. Severability. If any provision(s) of this Agreement is held in whole or part, to be invalid, void or unlawful by any administrative agency or court of competent jurisdiction, then such provision(s) will be deemed severable from the remainder of this Agreement, will in no way affect, impair or invalidate any other provision contained in the Agreement and the Parties will use their commercially reasonable efforts to amend this Agreement to make the unlawful provision compliant with applicable law so as to preserve the rights and obligations of the Parties.
3. Governing Law. This Agreement, including any one or more forms of performance guarantee posted hereunder, shall be governed by the laws of the State of Texas without regard to conflicts of law principles thereof, and performance and venue shall lie in Tom Green County, Texas.
4. Amendments. None of the terms and provisions of this Agreement may be waived, altered, modified, or amended except by a written agreement signed by an authorized representative of each Party.
5. Waiver. No action taken pursuant to this Agreement should be deemed to constitute a waiver of compliance with any representation, warranty, covenant or agreement contained in this Agreement and will not operate or be

construed as a waiver of any subsequent breach, whether of a similar or dissimilar nature.

6. **Forfeiture.** Should Owner cease to do business in this state, file a petition in bankruptcy, or repudiate this Agreement prior to completion of all required Site Improvements, Owner agrees that any amounts secured by a posted performance guarantee shall be forfeited and released to City to ensure completion of the Site Improvements.

Signatures on following page.

EXECUTED on the ____ day of _____, 20__.

OWNER:

BY: _____
(Name/Title/Address)

STATE OF TEXAS §

COUNTY OF TOM GREEN §

This instrument was acknowledged before me on the ____ day of _____, 20__, by _____.

Notary Public, State of Texas

ACCEPTED BY THE CITY OF SAN ANGELO, TEXAS:

Kevin Pate, City Engineer

STATE OF TEXAS §

COUNTY OF TOM GREEN §

This instrument was acknowledged before me on the ____ day of _____, 20__, by Kevin Pate, as City Engineer for the City of San Angelo, Texas.

Notary Public, State of Texas

Aaron Vannoy, Director of Planning & Development Services

STATE OF TEXAS §

COUNTY OF TOM GREEN §

This instrument was acknowledged before me on the ____ day of _____, 20 __, by Aaron Vannoy, as Director of Planning & Development Services for the City of San Angelo, Texas.

Notary Public, State of Texas

Theresa James, City Attorney

STATE OF TEXAS §

COUNTY OF TOM GREEN §

This instrument was acknowledged before me on the ____ day of _____, 20 __, by Theresa James, as City Attorney for the City of San Angelo, Texas.

Notary Public, State of Texas

EXHIBIT "A"
PLAT/LEGAL DESCRIPTION

EXHIBIT "B"
COST ESTIMATE

Property/Legal Description _____

TYPE OF SITE IMPROVEMENTS:

ESTIMATED COST

1) Water: _____ \$ _____

2) Sewer: _____ \$ _____

3) Streets: _____ \$ _____

4) Alley: _____ \$ _____

5) Storm Drainage: _____ \$ _____

6) Other: _____ \$ _____

TOTAL: \$ _____

Public Works: _____

Date: _____