

Effective December 1st, 2003

PROJECT NO. _____

CONTRACT TYPE _____

THE STATE OF TEXAS §

**ESCROW AGREEMENT
IN LIEU OF PERFORMANCE BOND**

**Development Contract
(Improvements of \$15,000 or Less)**

CITY OF DENTON §

WHEREAS, _____, hereafter referred to as “Owner”, has undertaken to develop property within the City of Denton, Texas, or it’s extraterritorial jurisdiction; and

WHEREAS, Owner has, pursuant to the ordinances of the City of Denton, Texas, hereafter referred to as “City”, executed a development contract to insure that any and all streets, water and sewer lines, drainage facilities or other improvements which are to be dedicated to the public, hereafter referred to as “Improvements”, are constructed and completed in accordance with the specifications, standards and ordinances of the City; and

WHEREAS, Owner wishes to receive building permits for said property prior to the completion and approval or acceptance of the Improvements by the City; and

WHEREAS, in order to receive such building permits Owner may, where the cost of the Improvements is \$15,000 or less, instead of posting a performance bond, escrow cash money with a bank as escrow agent in an amount not less than the amount necessary to insure completion of said Improvements, and to fully protect the City against defects in materials and workmanship;

NOW, THEREFORE, OWNER, City and _____
_____, hereafter called "Escrow Agent", agree as follows:

1. **Amount.** Owner, as a condition to receiving building permits for property located at _____
_____ shall deposit the sum of _____
(\$ _____), in cash money, with Escrow Agent, said sum being in an amount, as determined by the City, necessary to insure completion of all improvements which are to be dedicated to the public, and to fully protect the City against defects in materials and workmanship; said improvements being more particularly described in that certain development contract dated the _____ day of _____, 20_____, between the City, Owner and Owner's Contractor, to which reference is made herein.

2. **Notice of Deposit.** No building permits shall be issued by City for the property herein described until Escrow Agent notifies City, in writing, that cash money, in the amount specified herein, has been deposited in an escrow account with Escrow Agent.

3. **Release of Funds.** Escrow Agent shall not release any or all of the escrowed funds until the City Engineer authorizes the Escrow Agent, in writing, to release such funds as provided for herein as follows:

- (a) the City Engineer shall authorize the release of all the escrowed funds when all improvements are completed and approved in accordance with provisions of the development contract and after 2 years has expired from the date of final completion and acceptance of the work by the City and no defects in materials

and workmanship have been discovered; the determination of which shall be made by the City Engineer whose judgment shall be binding on all parties hereto.

- (b) The City Engineer shall inform the escrow agent, in writing, with a copy to the owner, that the owner is in default under his Development Contract with the City by either failing to complete the improvements in accordance with the terms and conditions of the Development Contract or that the City Engineer has determined that there are defects in materials and workmanship in the improvements.

Whereupon, the escrow agent will immediately, without further demand, claim, or notice, release to the City through the City Engineer, the amount necessary, as specified by the City Engineer, to remedy the default.

3. **Notices.** Any notice to be sent, or required to be sent or given under this agreement shall be sent to the address of the parties hereto, as follows:

CITY: Engineering Administrator
City of Denton @ City Hall East
601 E. Hickory, Suite B
Denton, TX 76205

OWNER: _____

ESCROW AGENT: _____

4. **Fees.** Owner agrees to pay any and all fees or costs charged by the Escrow Agent in connection with this agreement.

5. **Nonliability of Escrow Agent.** The Escrow Agent shall have no responsibility except for the safekeeping and delivery of the amounts deposited in the Escrow Account in accordance with this agreement. The Escrow Agent shall not be liable for any act done or omitted to be done under this agreement or in connection with the amounts deposited in the Escrow Account except as a result of the Escrow Agent's gross negligence or willful misconduct. If any question, dispute or disagreement arises among any one or more of the parties hereto and/or any other party with respect to the funds deposited in the Escrow Account, the proper interpretation of this agreement, the duties of the Escrow Agent hereunder or the rights of the parties to this agreement, the Escrow Agent shall not be required to act and shall not be held liable for refusal to act until the question or dispute is settled, and the Escrow Agent has the absolute right at its discretion to do either or both of the following:

- (a) withhold and/or stop all further performance under this agreement until the Escrow Agent is satisfied, by receipt of a written document in form and substance satisfactory to the Escrow Agent and executed and binding upon all interested parties hereto (who may include the subscribers), that the question, dispute, or disagreement has been resolved; or
- (b) file a suit in interpleader and obtain by final judgment rendered by a court of competent jurisdiction, an order binding all parties interested in the matter.

6. **Successors and Assigns.** This agreement shall be binding upon the successors and assigns of the parties hereto.

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7. **Venue.** The parties hereto agree that if any legal action is necessary in connection with this agreement, exclusive venue shall lie in Denton County, Texas.

IN WITNESS WHEREOF, the said City, Owner, and Escrow Agent have signed this instrument this _____ day of _____, 20 _____.

BY: _____ BY: _____
Owner ESCROW AGENT

BY: _____
City Representative