

**DEVELOPMENT AGREEMENT BETWEEN
CITY OF DENTON AND JUSTLAND DEVELOPMENT, LLC**

This Development Agreement (this “Agreement”) is made and entered into as of the _____ of _____, 2016 (the “Effective Date”), by and between the City of Denton, Texas, a Texas Municipal Corporation (the “City”), and Justland Development, LLC, a Texas limited liability company, whose principle place of business is located at 4440Brentwood Drive, College Station, Texas 77845 (“Developer”). The City and Developer are sometimes hereinafter referred to individually as “Party”, and collectively as the “Parties”.

WHEREAS, Sec. 212.071 of the Tex. Loc. Gov’t Code authorizes the City to enter into a written agreement with a developer of a subdivision or land in the city to construct public improvements related to the development of the land and to participate in the cost related to same; and

WHEREAS, Developer desires to develop approximately 8.713 Acres of land located at A0055a J. Brock Tr 27, R33446, and more commonly known as 1005 Autumn Oak Drive, Denton, Texas, and owned by Owner, as described in **Exhibit A**, which is attached hereto and incorporated by reference herein (“Property”); and

WHEREAS, the Developer desires to develop the Property as Meadow Oaks, Phase 4, a residential subdivision (the “development”) which will require either new drainage facilities or improvement of existing drainage facilities necessary to provide for the storm water drainage needs of the development; and

WHEREAS, the City owns approximately 10.57 acres of land located at A0055a J. Brock, Tr 34, 35 and 36, R33449, R33451 and R33447, more commonly known as 1100, 1022 and 1000 Ruddell St, Denton, Texas, respectively, as described in **Exhibit B**, which is attached hereto and incorporated by reference herein, and which is adjacent to the Property across Lattimore Street (“City Property”); and

WHEREAS, the additional storm water runoff from the development may adversely affect off-site property or overload existing drainage facilities and therefore drainage facilities are required on the Property in compliance with the Denton Development Code; and

WHEREAS, Developer has requested to vary the requirement for on-site drainage facilities on the Property required by the City, and the City and Developer have determined that development of joint storm water facilities is of mutual benefit; and

WHEREAS, the City and Developer agree that the City should not be responsible for any improvements above and beyond what the City would normally construct for its Ruddell Street Extension Project; and

WHEREAS, the Developer must design, construct, and maintain temporary storm water facilities and the City has directed these facilities can be constructed on the City

Property until the City can complete its Ruddell Street Extension improvements and permanent storm drainage connections are installed as described herein, and the City agrees to such design, construction, and maintenance on City Property for consideration stated herein; and

WHEREAS, the Developer has requested the City grant a temporary construction access easement across a part of its property between Ruddell St. and the Property, to provide access for construction equipment and related vehicles during construction of the development's infrastructure in order to avoid such heavy traffic from traversing through neighborhood streets, and

NOW THEREFORE, the City and Developer, in consideration of the mutual covenants and agreements of the Parties herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agree as follows:

ARTICLE I

Terms

1.01 Governing Development Regulations. (a) Development of the Property shall be governed by: (i) the Final Plat and construction plans; (ii) the Denton Development Code (the "DDC") in effect; and (iii) the Zoning Regulations for the Property within the City limits. These shall be hereinafter referred to collectively as the "Governing Regulations". The Governing Regulations shall control to the extent they do not conflict with the terms of this Agreement, in which case the Agreement controls. It is agreed and understood that no ordinance or regulation adopted by the City after the Effective Date shall in any manner impair Owner's rights under this Agreement provided that: (1) any ordinance or regulation exempted by Chapter 245 of the Texas Local Government Code may be enforced on the Property; and (2) ordinances or regulations adopted pursuant to a requirement of State or Federal law may be enforced on the Property.

1.02 Other City Ordinances. Except as expressly excluded or made inapplicable by the Governing Regulations or this Agreement, all other ordinances or criteria of the City shall apply to the Property.

1.03 Plat Approval. A Final Plat for all or any portion of the Property shall be filed in accordance with Sec. 35.16.12 of the Denton Development Code. Final approval of the plat is made by the Planning and Zoning Commission and cannot be appealed. The Final Plat shall be in substantial compliance with the Governing Regulations and this Agreement.

1.04 Developer's Responsibility. The Developer shall be responsible for the following:

1.04.1 Temporary Stormwater Facilities (TSF). The Developer shall design, construct and maintain the Temporary Stormwater Facilities as proposed on the "Temporary Sediment Control and Storm Drain Outfall," attached as **Exhibit C** hereto and incorporated herein, including temporary stormwater sediment removal and stormwater surface discharge systems, in locations acceptable to the City, at Developer's cost, and in accordance with the Governing Regulations and any other applicable regulations or law and as follows:

- 1.04.1.1 The TSF shall be in place until such time as construction of the permanent Ruddell St. Extension Stormwater System Project, a 2014 Bond Program project, (the City's "Ruddell Project") is completed, and the TSF is replaced with permanent connections to the Ruddell Street Extension Stormwater System ("RSS").
 - 1.04.1.2 For any portion of the TSF that is placed on City Property, the Developer must obtain an easement from the City for the use of City Property and for construction of those facilities.
 - 1.04.1.3 The Developer shall ensure that no erosion occurs or sediment is deposited on the City Property.
 - 1.04.1.4 Developer shall pay the costs of removing the TSF and related drainage pipes and restoring the City Property to the same condition as it existed prior to the execution of this Agreement once the permanent RSS is in place and a connection is made, and once the Ruddell Project is completed. Such work shall be included in the City's Ruddell Project request for proposal, with the costs being based on bid prices received for that project.
- 1.04.2 Permanent Stormwater Piping System. Developer shall design and prepare construction plans for the appropriate stormwater outfall pipes to connect the development outfall to the RSS, in a manner acceptable to the City. The Developer is responsible for the costs of construction of these pipes and the additional costs of design and construction of the affected parts of the RSS, from the point of connection of the development's stormwater system to the RSS to the point of discharge of the RSS to the main drainage channel crossing the City Property, as determined by the City and based on design costs and bid prices for the Ruddell Project.
- 1.04.3 Developer shall pay for any other additional costs to the City associated with the estimation of costs required under this Agreement, the verification of storm water computations, the design of any storm drain and stormwater facilities required by the Governing Regulations or other law, and any other reasonable costs incurred by the City to accommodate the stormwater outfall and drainage for the development.
- 1.04.4 Other Consideration. Developer agrees to the following additional consideration:
- 1.04.4.1 Developer shall provide an irrevocable bank letter of credit or other surety acceptable to the City, as that amount is determined by the City Engineer, to cover the estimated costs of the Developer Responsibilities in this Agreement other than the design,

construction, and maintenance of the TSF and the storm water outfall pipes in accordance with Section 1.06 herein.

- 1.04.4.2 Upon recording of the Final Plat, the Owner of the Property shall transfer ownership of good title in fee of Lot 1, Block D of the Property to the City free of all encumbrances, as either complete or partial consideration of the City's grant of Temporary Easement for the TSF and design, construction and negligible oversizing of a detention pond or downstream main channel improvements. In the event that oversizing more than 30% over the amount attributable to the City Property becomes necessary, Developer agrees to pay those costs. If the value of the transferred property is less than the value of the City's Temporary Easement for the TSF and design, construction and negligible oversizing of a detention pond or downstream main channel improvements, Developer shall be responsible for paying the difference in value.
- 1.04.4.3 Upon execution of this Agreement, Developer shall transfer any and all rights to any claim, whether past or future, known or unknown, if any, of the abandoned right-of-way on Lattimore Street, from the NW corner of the development southerly to the SW corner of the development, to the City.
- 1.04.4.4 Costs described herein, as included in the City's Ruddell Project construction bid, shall be deposited with the City by the Developer within thirty (30) calendar days of the bid receipt by the City. Standard City inspection fees shall be included in that amount. Final adjustment of the costs based on actual costs incurred by the City will be made within thirty (30) calendar days of completion and acceptance of said construction. Any deposited amounts in excess of the actual costs incurred shall be returned to the Developer within a reasonable time. Any deficiencies in the deposited amounts to cover the actual costs incurred shall immediately be paid by the Developer.

1.04 City's Responsibilities. The City agrees to the following:

- 1.05.1 For consideration herein, City will provide a Temporary Stormwater Easement to the Developer for the TSF and a Temporary Construction Access Easement on the City Property within ten (10) days of the approval of the Final Plat, as depicted in **Exhibits D and E**. These Easements shall not be exclusive and the City retains the right to perform activities not required by the TSF or stormwater outfall. Such Temporary Stormwater Easement will expire and revert back to the City once the TSF is removed. Such Temporary Construction Access Easement will expire and revert back to the City upon City acceptance of the development's public infrastructure.
- 1.05.2 City shall include the construction of items in the Ruddell Project roadway bid as described in this Agreement.

1.05.3 City shall estimate the costs of design, construction and removal of temporary stormwater facilities to be paid for by the Developer in satisfaction of the Developer Responsibilities as described in this Agreement, based on bid prices received by the City for the Ruddell Street Extension Project and related work.

1.05.4 City shall verify drainage computations provided by the Developer for stormwater from the development and shall design the RSS to accommodate the development's storm water.

1.06 Performance Bond or Letters of Credit. Pursuant to Sec. 212.073 of the Texas Local Government Code, the Developer shall present to the City either a cash escrow, Letters of Credit or performance bond and payment bond acceptable to the City guaranteeing and agreeing to pay an amount equal to 100% of the value of the construction cost of all of the facilities to be constructed by the Developer, and providing for payment to the City of such amounts, up to the total remaining amounts required for completion if the Developer fails to complete the work within two (2) years of the signing of this Agreement between the City and Developer. All bonds shall be issued by a Best-rated bonding company. All Letters of Credit must meet the Requirements for Irrevocable Letter of Credit attached hereto and incorporated herein.

1.06.1 The Developer agrees to furnish or to cause its contractor to furnish to the City maintenance bonds, letters of credit or cash escrow amounting to 100% of the cost of construction of underground utilities and 100% of the construction cost for paving. These maintenance bonds, letters of credit or cash escrow will be for a period of two (2) years and will be issued prior to the final City Acceptance. The maintenance bonds, letters of credit or cash escrow will be supplied to the City by the contractors performing the work, and the City will be named as the beneficiary if the contractors fail to perform any required maintenance.

1.06.2 Until performance and payment bonds, Letters of Credit or cash escrow required in this Agreement have been furnished as required, no approval of work on the facilities shall be given by City and no work shall be initiated on said facilities by Developer, save and except as provided above.

1.07 Regulation. Except as may be provided by the Governing Regulations, this Agreement or as otherwise agreed to in writing by the Parties, all facilities shall be built in accordance with the applicable requirements of the City, County, or International Fire Code 2012. All facilities necessary to support the proposed Development shall be designed by a professional engineer licensed in the State of Texas. Plans and specifications shall conform to the criteria contained in Denton's Criteria Manuals. The Developer will be responsible for the design, construction, and maintenance of facilities on the Property. Developer shall obtain, at Developer's expense, all necessary permits, licenses and easements.

1.08 Dedication of Improvements. Any easements for facilities obtained by Developer shall be assigned and dedicated to the City, if not taken in the City's name, prior to acceptance of the improvements.

1.09 City shall not, in any case, be liable for any additional cost because of delays in beginning, continuing or completing construction; changes in the price or cost of materials, supplies, or labor; unforeseen or unanticipated cost because of topography, soil, subsurface, or other site conditions; differences in the calculated and actual per linear feet of pipe or materials needed for the facilities; Developer's decision as to the contractors or subcontractors used to perform the work; or any other reason or cause, specified or unspecified, relating to the construction of the oversized facilities.

1.10 City shall have access to inspect Developer's books and other records related to this Agreement. To determine the actual cost of the facilities, City shall have the right to inspect any and all records of Developer, its agents, employees, contractors or subcontractors and shall have the right to require Developer to submit any necessary information, documents, invoices, receipts or other records to verify the actual cost of the facilities.

1.11 Recording; Notice to Third parties. This Agreement shall be recorded in the real property records of each county in which any part of the Property is located. By recording this Agreement in the Denton County Deed Records, the Developer hereby places all third parties on notice that the Property is subject to the requirements as described herein.

1.12 Default. Notwithstanding anything herein to the contrary, no Party shall be deemed to be in default hereunder until the passage of thirty (30) business days after receipt by such party of notice of default from the other Party. Upon the passage of thirty (30) business days without cure of the default, such Party shall be deemed to have defaulted for all purposes of this Agreement. In the event of a non-cured default, the non-defaulting Party shall have all the rights and remedies available under applicable law, including the right to institute legal action to cure any default, to enjoin any threatened or attempted violation of this Agreement, or to enforce the defaulting Party's obligations under this Agreement by specific performance.

1.13 INDEMNITY/HOLD HARMLESS. BECAUSE PROCEEDING IN THIS MANNER IS AN OPTION REQUESTED BY THE DEVELOPER TO MOVE FORWARD WITH ITS DEVELOPMENT WITHOUT ONSITE DRAINAGE FACILITIES, DEVELOPER AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY, ITS EMPLOYEES, OFFICERS, OFFICIALS, AGENTS, SUCCESSORS, AND ASSIGNS FROM ANY AND ALL COSTS DEVELOPER MAY INCUR AS A CONSEQUENCE OF PROCEEDING IN THIS MANNER AND AGREES TO ASSUME ALL RISKS ARISING THEREFROM. DEVELOPER ADDITIONALLY AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY, ITS EMPLOYEES, OFFICERS, OFFICIALS, AGENTS, SUCCESSORS AND ASSIGNS FROM ANY AND ALL DAMAGES, CLAIMS OR LIABILITY OF ANY KIND WHATSOEVER AND BROUGHT BY ANY PARTY OR THIRD PARTY, ASSOCIATED WITH DENIAL OF ANY REQUESTED PERMIT OR CERTIFICATE OF OCCUPANCY OR WITH THE CONSTRUCTION OF ANY IMPROVEMENTS CONTEMPLATED HEREIN, INCLUDING BUT NOT LIMITED TO PERSONAL INJURY OR DEATH.

1.14 Rough Proportionality. Developer stipulates to the nexus and proportionality of the public improvements made subject of this Agreement, regardless of whether they were known, quantified or anticipated at the time this Agreement was executed.

ARTICLE II

Miscellaneous

2.01 Assignment. As of the Effective Date, Developer owns the Property. Developer may assign its rights and obligations under this Agreement to any third party (ies) after having first obtained the prior written consent of the City hereto; provided however that a written copy of said assignment shall be delivered to the City. Notwithstanding the above, no prior written consent shall be required for Developer to sell, lease, grant interests in or rights to or otherwise transfer or encumber portions of the Property that it owns, together with the assignment of all development rights and obligations relating to such portions of the Property that it owns contained in this Agreement. The terms of this Agreement shall be covenants running with the land and binding on successors and assigns.

2.02 Amendments. This Agreement may be amended at any time by mutual written agreement of the City and Developer.

2.03 Cooperation. The Parties agree to execute and deliver all such other and further documents or instruments and undertake such other and further actions as are or may become necessary or convenient to effectuate the purposes and intent of this Agreement.

2.04 Litigation. In the event of any third-party lawsuit or other claim relating to the validity of this Agreement or any action taken by the parties hereunder, Developer and the City agree to cooperate in the defense of such suit or claim, and to use their respective best efforts to resolve the suit or claim without diminution of their respective rights and obligations under this Agreement.

2.05 Governmental Powers; Waiver of Immunity. It is understood that by execution of this Agreement, the City does not waive or surrender any of its governmental powers, immunities or rights. Nothing in this section shall waive any claims, defenses or immunities that the City has with respect to suits against the City by persons or entities not a party to this Agreement.

2.06 Applicable Law and Venue. This Agreement shall be interpreted in accordance with the laws of the State of Texas. Venue shall be in Denton County, Texas.

2.07 Attorney's Fees. If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing Party shall be entitled to recover reasonable attorney's fees from the other Party. The amount of fees recoverable under this paragraph may be set by the court in the trial of the underlying action or may be enforced in a separate action brought for that purpose, and any fees recovered shall be in addition to any other relief that may be awarded.

2.08 Notices. Any notice to be given hereunder by any Party to another Party shall be in writing and may be affected by personal delivery or by sending said notice by registered or certified mail, return receipt requested, to the address set forth below. Notice shall be deemed given when deposited with the United States Postal Service with sufficient postage affixed.

Any notice mailed to the City shall be addressed to:

City of Denton
c/o Director of Engineering
215 E. McKinney St.
Denton, Texas 76201

With a Copy to:

Denton City Attorney's Office
Denton City Hall Main
215 E. McKinney St.
Denton, Texas 76201

Any notice mailed to Developer shall be addressed to:

Justland Development LLC
c/o _____
4440 Brentwood Dr.
College Station, Texas 77845

Any party may change the address for notice to it by giving notice of such change in accordance with the provisions of this section.

2.09 Entire Agreement. This Agreement, together with any exhibits attached hereto, constitutes the entire agreement between the Parties and supersedes any prior or contemporaneous oral or written understandings or representations of the Parties with respect to the subject matter herein contained.

2.10 Severability. If any sentence, section, subsection, clause, phrase, part or provision of this Agreement be declared by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect the same shall not affect any other provisions of this Agreement as a whole, or any part thereof, other than the part declared to be invalid, illegal or unenforceable.

2.11 Interpretation. This Agreement shall be liberally construed to effectuate the purposes set forth herein and to sustain the validity hereof. Wherever required by the context, the singular shall include the plural, and the plural shall include the singular. Each defined term herein may be used in its singular or plural form whether or not so defined.

2.12 Authority. The City represents and warrants that this Agreement has been approved and duly adopted by the City Council of the City in accordance with all applicable public meeting and public notice requirements (including, but not limited to, notices required by the Texas Open Meetings Act) and that the individual executing this Agreement on behalf of the City has been authorized to do so. Developer represents and warrants that this Agreement has been approved by appropriate action of Developer and that the individual executing this Agreement on behalf of Developer has been authorized to do so. Developer further represents and warrants that the lien holder of record, if any, has consented to terms of the agreement.

The Parties hereto have executed this Agreement as of _____ day of _____, 2016.

DEVELOPER:

JUSTLAND DEVELOPMENT LLC

BY: _____
ITS: _____

THE CITY OF DENTON, TEXAS:

By: _____
HOWARD MARTIN
INTERIM CITY MANAGER

THE STATE OF TEXAS }
COUNTY OF DENTON }

This instrument was acknowledged before me on the _____ day of _____, 2016, by _____.

Notary Public, State of Texas

THE STATE OF TEXAS }
COUNTY OF DENTON }

This instrument was acknowledged before me on the _____ day of _____, 2016, by Howard Martin, Interim City Manager, on behalf of the City of Denton, Texas.

Notary Public, State of Texas

APPROVED AS TO LEGAL FORM:
ANITA BURGESS, CITY ATTORNEY

BY: _____