

CITY OF NORTH LAS VEGAS

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COMMERCIAL DEVELOPMENTS OFF-SITE IMPROVEMENTS AGREEMENT

EXHIBIT "A"

THIS AGREEMENT is made and entered into effective the _____ day of _____, 20____ by and between _____ whose mailing address is _____ (hereinafter referred to as "Developer"), and the CITY OF NORTH LAS VEGAS, a political subdivision of the State of Nevada (hereinafter referred to as "City"):

SUBJECT: Construction of off-site improvements consisting of:

at the following location: _____

WHEREAS, Developer has submitted a plan to the City for construction of _____; and

WHEREAS, the Director of Public Works or his authorized representative, hereinafter referred to as "Director," shall administer the provisions of this Agreement; and,

NOW THEREFORE, for and in consideration of the mutual promises herein contained and for other good and valuable consideration, the parties do hereby agree as follows:

1. OFFSITE IMPROVEMENTS:

The Developer, at its own cost, shall perform and complete all off-site work and improvements consisting of streets, street name signs, traffic signs, sewers, water systems, fire hydrants, curbs, gutters, sidewalks, street lighting, driveways, drainage, rights of way, accesses, lawns, trees, shrubs, survey monuments, reference lines or points, etc., in accordance with currently applicable ordinances, regulations, standards and specifications, or other requirements of the City in the particular circumstances of the development herein specified.

2. PLANS APPROVED BY THE DIRECTOR:

No work on improvements shall commence until improvement plans have been approved by the Director, one hundred percent (100%) of the plan check and inspection fees have been paid, and Developer's performance security or surety has been furnished to, approved by, and accepted by the City as required by this Agreement and City ordinances.

3. NOTICE TO COMMENCE CERTAIN WORKS:

The Developer shall notify the Director no less than twenty-four (24) hours in advance of the date and hour that work on any of the following items is expected to begin, and thereafter if conditions develop to delay the start of work, the Developer agrees to notify the Director of the delay not less than two (2) hours before work is scheduled to begin:

- Placing sewer, water, gas, power, telephone lines and fire hydrants.
- Backfilling of sewer, water, gas, power and telephone lines.
- Placing concrete for curb, gutter, sidewalk, valley gutters, storm drain structures, manholes, street lighting foundations and alley gutters.
- Placing Type I and II gravel base course, each lift.
- Placing base course.
- Placing asphaltic concrete, each lift.
- Placing surfacing and sealing thereof.
- Placing street lighting and burn testing.
- Placing street name signs and traffic control signs.

Should the Developer suspend work on any item longer than overnight (except during Saturday or Sunday or legal holidays) a new notification shall be made to the Director before work may begin anew of any items requiring inspection.

4. APPROVAL OF WORK AFTER INSPECTION:

- (A) Whenever the Director inspects portions of work as hereinbefore mentioned, and finds the work performed to be in a satisfactory condition for inclusion in the completed project, the Director shall issue a statement of inspection which shall permit the Developer to perform the next phase of the construction. Ordinarily, not less than one continuous block of any one of the items of work mentioned will be approved.
- (B) Inspection and approval of any item of work shall not forfeit the right of the Director to require the corrections of quality, workmanship or materials at any time during the course of work.
- (C) Nothing herein shall relieve the Developer of the responsibility for proper construction and maintenance of all improvements until the work has been accepted by the City Council for maintenance.

5. ADJUSTMENT TO EXISTING UTILITIES AND COST THEREOF:

The Developer shall provide for adjustments necessary to all existing utilities because of the work required by the Agreement, without cost to the City.

6. FULL COMPLIANCE WITH CITY REQUIREMENTS:

The Developer shall perform and complete all such improvements in accordance with the regulations, standards, specifications and ordinances of the City, and approval of the construction plans shall not be made until all street plans and profiles, street light layout, architectural arrangement of construction units, and all other such plans and specifications as may be required have been submitted to, and approved by, the various City departments concerned.

The Director shall have the right to require corrections by the Developer at any time before release of the performance security or surety, of any item or items contained in this Agreement which do not conform to City regulations, standards, specifications or ordinances, even though the plans for the item in question may have been approved by the Director.

The Developer shall start said improvements within thirty (30) days from the effective date of this Agreement or upon notification by the Director. Said improvements shall be completed prior to acceptance of the improvements for maintenance by the City and release of the performance security or surety, and such time shall be within one (1) year of the effective date of this agreement or within such other time as is approved by the Director.

In the event the Developer fails to complete said improvements within said period, the City at its option, may proceed to complete said improvements at the expense of the Developer or its performance security or surety as provided herein.

7. OTHER CONDITIONS AND REQUIREMENTS:

The Developer further agrees that, in addition to the requirements of this Agreement, all conditions, stipulations, and agreements which may be required by the Director shall be fully performed.

The Developer further agrees that all work is to be performed by a contractor holding a valid and existing license from the Nevada State Contractor's Board and a valid City business license.

The Developer shall maintain, protect and take care of all work until its completion and final acceptance by the City. Maintenance of any inhabited area of the development shall include, but not be limited to, sweeping of the streets and keeping the gutters free of dirt and debris.

During move-in, construction and move-off, the Developer shall keep the site free and clear from dangerous accumulation of rubbish and debris and shall maintain sufficient and proper barricades, lights, etc., in accordance with the latest manual of the placement of traffic control devices accepted by the Department of Public Works. Also, after excavation or placement of gravel, if the subgrade and/or gravel base material is left exposed and in the opinion of the Director is not properly maintained thus causing either a rough riding surface or a dust problem, the Director may require the Developer to do whatever is necessary to provide an adequate travelway. If a detour is needed, the Director shall determine to what extent the detour shall be maintained, which shall include the placing of temporary paving, if the detour is to be used for an extended period of time.

Final acceptance of the work will not be made by the City until the area subject to this Agreement and adjacent property has been cleared, to the satisfaction of the Director, of all rubbish, surplus materials and equipment resulting from the contractor's operations.

8. MAP REQUIREMENTS ON COMPLETION OF IMPROVEMENTS:

Upon completion of all the improvements within the City right of way required hereby, and prior to release of any performance security or surety, the Developer shall furnish the Director with an as-built map which shall accurately indicate, by lettered dimensions, the locations of all manholes, the location, size and depth of all sewer mains, underground water, power, gas and other lines, with street plans and profiles for the same, including laterals and "Y"s for connection of house service lines.

9. REQUIREMENTS OF PERFORMANCE BOND OR OTHER SECURITY:

The Developer shall furnish, without cost to the City, a surety and performance bond, cash deposit with cash in lieu of bond agreement, or other form of security or surety established by City ordinance to be a proper form of performance security or surety. The security or surety furnished shall be in favor of the City for an amount which will cover the full cost of said improvements plus contingencies as established by City ordinance, shall be approved and accepted by the City, and shall be conditioned upon the Developer completing the improvements within the prescribed period. In the event the Developer fails to complete the improvements within the prescribed period and the City exercises its option to complete the improvements, said performance security or surety shall be used for the payment of the costs of completion of said improvements.

If the construction or installation of any improvements or facilities for which such security or surety is furnished are not completed within the time period established in this agreement, or as prescribed by the Director, or if such construction is not in accordance with applicable regulations, standards, specifications and ordinances of the City, then in any of such events, the City may, at its option, proceed to complete or remove said improvements at the expense of the Developer using any of the pledged security or surety furnished pursuant to this Agreement and ordinances relating to such security or surety.

Any application for release of the performance security or surety upon the completion of the improvements by the Developer shall not be granted unless accompanied by a written certificate from the Director stating that all requirements have been completed in accordance with the terms of this Agreement.

10. WARRANTY:

The Developer is responsible should any original or developed defect(s) or failure(s) appear within a period of one year from the date of acceptance of the work by the City. The Developer shall, at its own expense, make good such defects and failures and make all replacements and adjustments required, within thirty (30) days after being notified by the City to do so. All repairs shall be subject to the approval of the Director.

11. CERTIFICATE OF OCCUPANCY:

No certificates of occupancy, temporary or permanent, shall be granted until such time as the off-site improvements have been completed to the satisfaction of the Director, in accordance with this Agreement and the terms of the performance security or surety.

Upon signing of this Agreement by the parties hereto, upon the furnishing of the performance security or surety and approval and acceptance thereof by the City, and upon compliance with the provisions of this Agreement, the City will, by its proper authority, accept said off-site improvement plans of the Developer.

12. NO THIRD PARTY BENEFICIARY:

Any inspections or subsequent approvals undertaken by the City pursuant to express or implied terms of this Agreement are undertaken solely to insure compliance with the terms of this Agreement and are not undertaken for the benefit of any individual or group of individuals as members of the public. It is not intended by any of the provisions of any part of this Agreement to create in the public, or any member thereof, a third party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement. Provisions in this Agreement dealing with inspections, approvals or changes requested or made do not expand the City's general law duties.

13. INDEPENDENT CONTRACTOR:

The Developer agrees that it is (they are) independent contractor(s) and not in any way a regular or temporary employee(s) of the City of North Las Vegas, and that there will not be:

- (A) Withholding of income taxes by the City;
- (B) Industrial insurance coverage provided by the City on behalf of Developer or Developers employees or agents;
- (C) Participation or contribution by either the independent contractor(s) or the City to the Public Employees Retirement System with respect to the subject matter of this Agreement;
- (D) Participation in group insurance coverage provided by City;
- (E) Accumulation of vacation leave or sick leave; or
- (F) Unemployment compensation coverage provided by the City or State of Nevada at the termination of this Agreement.

14. INDEMNIFICATION:

Developer agrees to indemnify, to defend and hold harmless the City from and against any and all lawsuits, claims, demands, payments, suits, actions, recoveries and/or judgments of any and every nature and description brought or recovered by reason of any act or omission of the Developer in the performance of its work under this Agreement.

