CITY OF POST FALLS
408 SPOKANE STREET
POST FALLS, IDAHO 83854

CONSTRUCTION IMPROVEMENT AGREEMENT FOR PUBLIC IMPROVEMENTS

THE CITY OF POST FALLS (hereinafter the "City"), 408 Spokane Street, Post Falls, Idaho, 83854 and _____ (hereinafter the "Developer"), enter into this Agreement effective the _____day of _____ 20___, respecting the development of _____ the Project, affecting the public rights of way or other public systems, equipment or property within the City of Post Falls. This Agreement provides for dedication and construction of public improvements intended for ownership or maintenance by the City of Post Falls and other purveyors to support the development in accordance with ordinances of the City of Post Falls

WHEREAS, the Developer is the Owner of the real property which is the subject of the Agreement (hereinafter the "Property") is located in the City of Post Falls and is described as set forth on Attachment A, which is incorporated herein by reference: (Legal Description of External Boundaries of Lands Subject to Agreement).

WHEREAS, no construction of public improvements shall be allowed until plans are approved by the City Engineer as authorized by the City Council, as appropriate, until Engineering inspection and other fees indicated herein are pre-paid in full, until this Construction Improvement Agreement has been approved by City Council, Mayor or City Engineer, as appropriate, and until this Agreement has been signed, and necessary proof of insurance or surety has been provided; and

WHEREAS, Title 18, Zoning, of the Post Falls City Code requires certain improvements to be provided by the owner prior to occupancy of structures built within a development project or acceptance of public improvements for maintenance; and

WHEREAS, the City of Post Falls has adopted site development standards which require landowners to do work in the public rights of way in order to complete their site development work; and

WHEREAS, development of inclusive lots must be provided with survey monuments, street surfacing, curbs and gutters, drainage systems, sidewalks, street name signs, street lighting, public water supply, fire hydrants and sanitary sewer system, among others; and

WHEREAS, no Certificates of Occupancy shall be issued until all improvements as outlined in this agreement and necessary for public health and safety are constructed and substantially complete; and,

WHEREAS, the Owner is deemed to have satisfied the zoning requirements of the project when all improvements required have been constructed pursuant to an approved Construction Improvement Agreement, or if allowed by the city thru a bond furnished in an amount equaling 150% of the cost of constructing such improvements pursuant to an approved Construction Improvement Agreement; and

WHEREAS, The Developer seeks the City's agreement to enter in a Contract to construct and install the improvements listed in Attachment B in accordance with all terms, covenants and conditions of the Agreement and the Developer's approved construction plans and specifications which are incorporated herein by reference. Any unique terms or conditions of improvement status, including any accelerated or delayed improvement obligations shall be set forth in the Attachments.

NOW, THEREFORE, in consideration of mutual promises and covenants contained herein, and upon representations made in application documents and presentations before the City's deliberative bodies, the parties agree as follows:

ARTICLE I

GENERAL PROVISIONS

1.01 ***APPLICATION OF ARTICLE***

Unless this Agreement expressly provides otherwise, all provisions of this Article applies to every part of this Agreement.

1.02 ***PERMITS, LAWS AND FEES***

The Developer shall acquire and maintain in good standing all permits, licenses, approvals and other requirements necessary to its performance under this Agreement. All actions taken by the Developer under this Agreement shall comply with all applicable statues, ordinances, rules and regulations. The Developer shall pay all fees pertaining to its performance under this Agreement in accordance with this Agreement or with laws applicable to actions contemplated. Applicable fees shall be required by Post Falls Municipal Code and resolutions adopted by the City Council implementing Code requirements.

All work that is to be performed within the public rights-of-way or that is to be completed on items to be owned, operated or maintained by the City of Post Falls shall be done by a public works contractor licensed to perform said work on projects to comply with the City's ordinances; and

1.03 ***RELATIONSHIP OF PARTIES***

Neither by entering into this Agreement, nor by doing any act hereunder, may the Developer, or any contractor or subcontractor of the Developer, be deemed an agent, employee, or partner of the city, nor otherwise associated with the City other than in the case of Developer, as an independent contractor. The Developer and its contractors and subcontractors shall not represent themselves to be agents, employees or partners of the City, or otherwise associated with the city other than, in the case of the Developer, as an independent contractor. The Developer shall notify all its contractors and subcontractors of the provision of this section.

1.04 ***ENGINEER'S RELATION TO THE CITY***

Notwithstanding any other agreement, an engineer retained by the Developer to perform the work required to be completed by the Developer under this Agreement shall not be deemed an agent, employee, partner or contractor of the City, or otherwise associated with the City. The parties agree that the engineer retained by the Developer to supervise the construction and inspection of the Project is doing so for the benefit of the Developer and that the City is a third party beneficiary. The Developer shall require the Engineer's duties to include responsible and in-charge, fair, honest, and competent inspection of the work undertaken pursuant to this Agreement in accordance with standards of practice in the engineering profession.

1.05 ***DEVELOPER'S RESPONSIBILITY***

The Developer shall be ultimately responsible for the faithful performance of all terms, covenants and conditions of the Agreement, notwithstanding the Developer's delegation to another of the actual performance of any term, covenant or conditions hereof. The Developer shall notify all contractors, subcontractors, or agents providing professional services of conditions and requirements of this agreement.

1.06 ***ALLOCATION OF LIABILITY***

The Developer shall indemnify and hold the City harmless from any claim, action, or demand arising from any act or omission related to Developer's performance of duties pursuant to this Agreement. The liability assumed by the Developer pursuant to this section includes, but is not limited to, claims for labor and materials furnished for the construction of the improvements. Developer acknowledges that the work on the Project will take place on lands, which may be owned or otherwise subject to control by the City. Developer shall provide insurance in amounts sufficient to satisfy the obligations of the City pursuant to the Idaho Tort Claims Act, but in no case less than one million dollars ($1,000,000) per occurrence. City shall be named as an additional insured respecting the premises and conduct of the work on the project including coverage for comprehensive general liability, premises liability and automobile liability. The required evidence of insurance shall be attached hereto as Attachment E.

1.07 ***DISCLAIMER OF WARRANTY***

Notwithstanding this Agreement or any action taken by any person hereunder, neither the city nor any City officer, agent or employee warrants or represents the fitness, suitability or merchantability of a property, plan, design, material, workmanship or structure for any purpose.

1.08 ***NON-DISCRIMINATION***

In performing its obligations under this Agreement, the Developer shall not discriminate against any person on the basis of race, creed, color, national origin, sex, marital status, or age.

1.09 ***COST OF DOCUMENTS***

All plans, reports, drawings, or other documents that this Agreement requires to be provided to the City by the Developer shall be furnished at the Developer's expense free of copyright.

1.10 ***PUBLIC UTILITIES***

A. Any public utility service contemplated by this Agreement shall be provided only to areas where the service is allowed by applicable law. All utility service shall conform to the rules, regulations and tariffs of the State of Idaho to the extent they may apply.

B. If the State of Idaho or other agency having authority disallows any utility service to be provided by the city or any utility following execution of this Agreement, requirements of this Agreement relating to the disallowed service shall be deleted from the requirements of the Developer under this Agreement. The disallowance shall not be grounds for any claim, action or demand against the City.

C. The Developer shall bear all cost associated with the installation of all Public Utilities, including street lights. These installation costs shall be paid at the time of execution of this Agreement and not be passed on to the city unless provided for otherwise within an appendix to this agreement.

D. The Developer shall be responsible to pay either the sewer cap, water cap and hook-up fees or confirm that those fees have been paid by the previous property owner prior to connection to the City sewer or water system as part of the installation of the public improvements.

1.11 ***TIME IS OF THE ESSENCE***

Unless otherwise expressly provided herein, time is of the essence of each and every term, covenant, and condition of this Agreement.

1.12 ***ASSIGNMENTS***

A. Except insofar as Subsection B of this section specifically permits assignments, any assignment by the Developer or any delegation of duties under this Agreement shall be void and any attempt by the Developer to assign or delegate any duty under this Agreement shall constitute a default entitling the City to invoke any remedy available to it under Section 1.13.

B. The Developer may assign or delegate its duties under this Agreement:

1. To the extent that applicable codes require that assignments of contract rights be allowed;

2. To contractors and subcontractors, or to partnerships, limited liability companies or corporations in which the Developer may have a substantial interest, subject to Section 1.05, provided that performance guaranties can be provided or maintained;

3. As expressly permitted in writing by the City. The City will not unreasonably deny assignment if security of performance is maintained on a comparable basis.

1.13 ***DEFAULT – CITY'S REMEDIES***

A. The City may declare the Developer to be in default:

1. 1. If the Developer is adjudged bankrupt, makes a general assignment for the benefit of creditors, suffers a receiver to be appointed on account of insolvency, takes advantage of any law for the benefit of insolvent debtors; or

2. Except as provided in subsections 3 and 4 below, if the Developer has failed in any measurable way to perform its obligations under this Agreement, except if delayed by an act or omission of the City, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, strikes, labor disputes, shortage of materials, sabotage or freight embargoes, provided the City gives the Developer notice of the failure to perform and the Developer fails to correct the failure within twenty-eight (28) days of receiving the notice; or if the failure requires more than twenty-eight (28) days to cure, the Developer fails within twenty-eight (28) days of receiving the notice to commence and proceed with diligence to prosecute the cure. All such notices to the Developer shall be in writing by certified mail, return receipt requested.

3. If the Developer fails to continue with sustained effort in accordance with the approved Construction Schedule, while working in the existing public traveled or developed rights of way, and the City provides twenty-four (24) hours notice of this default and the Developer fails to correct the failure within that time period.

4. If the actions of the Developer have created a public hazard or conditions deemed an emergency by the City, the City may declare the Developer in default without providing prior notice and opportunity to cure.

B. Upon a declaration of default, and failure to cure under section 1.13.A.2, the City may do any one or more of the following:

1. Perform any act required of the Developer under this Agreement, including drawing surety and construction of all or any part of the improvements after giving formal notice in writing to the Developer.

2. Developer shall be liable to the City for any costs thus incurred. The City may deduct any cost incurred from the surety or any payments then or thereafter due the Developer from the City whether under this Agreement or otherwise. No advance notice shall be required by the City to the Developer to correct actions to remedy any items that fall under Section 1.13A4.

3. Exercise its rights under any provision of this Agreement, or any performance or warranty guaranty securing the Developer's obligations under this Agreement.

4. Pursue any appropriate judicial remedy including, but not limited to, an action for specific performance, injunction, and civil penalties. City shall be entitled to its attorney's fees in any enforcement action necessary to enforce the terms of this Agreement.

1.14 ***NON-WAIVER***

The failure of the city at any time to enforce a provision of this Agreement shall in no way constitute a waiver of the provision, nor in any way affect the validity of this Agreement or any part hereof, or the right of the City thereafter to enforce each and every provision hereof.

1.15 ***INTERPRETATION***

A. Each document incorporated by reference here in is an essential part of this Agreement and any requirement, duty or obligation stated in one document is as binding as if stated in all. All documents shall be construed to operate in a complementary manner and to provide for a complete project. Unless stated otherwise in express terms, the duties to complete the Project in compliance with the approved plans, such that part or all of it can be accepted for public maintenance, is the sole responsibility of the Developer.

B. If the terms of any of the documents and amendments thereto comprising this Agreement conflict, the conflict shall be resolved by giving the conflicting documents and amendments thereto the following order of preference:

1. Documents, appendixes or sections titled "Special Provisions"

2. Article II of this Agreement, titled **"*Improvement Construction Standards and Procedures"*** and Article III of this Agreement titled **"*Final Acceptance of Improvements".***

3. Article I of this Agreement titled **"*General Provisions".***

4. Any other documents incorporated by reference herein.

1.16 ***EFFECT OF STANDARD SPECIFICATIONS***

The Design Standards of the City of Post Falls, Idaho Standards for Public Works Construction and any standards required by Federal or State regulatory agencies are incorporated by reference herein as minimum construction standards for performance under this Agreement, except where this Agreement specifically provides otherwise.

1.17 ***AMENDMENT***

The parties may amend this Agreement only by written agreement, which shall be attached as an appendix hereto.

1.18 ***JURSIDICTION – CHOICE OF LAW***

Any civil action arising from this Agreement shall be brought in the District Court of the First Judicial District; venue shall be in Kootenai County. The law of the State of Idaho shall govern the rights and duties of the parties under this Agreement.

1.19 ***SEVERABILITY***

Any provision of this Agreement that may be declared invalid or otherwise unenforceable by a Court of competent jurisdiction shall not affect the validity or enforceability of any other part of this Agreement, so long as the remainder of the Agreement is reasonably capable of completion.

1.20 ***INTEGRATION***

This instrument, including Appendixes and any writings incorporated by reference herein, embody the entire Agreement of the parties. This Agreement shall supersede all previous communications, representations or agreements, whether written or oral, between the parties hereto.

1.21 ***DEFINITIONS***

Unless this Agreement expressly provides otherwise, the following definitions shall apply herein:

A. "Improvements" mean all work, which the Developer is required to perform by this Agreement.

B. "City Improvements" means improvements which are to be dedicated to the City, or which are to be operated and controlled by a City-owned utility.

C. "Private Utility Improvement" means improvements owned, maintained and operated by a private utility or by a private owner or owner's association.

C. "City" for the purpose of administering this Agreement, means the City of Post Falls, or its chief executive or his/her administrative designee.

D. "Acceptance", by the City means a determination that an improvement meets City construction standards and does not refer to the City accepting a dedication of the improvement by the Developer.

E. "Final Acceptance" by the City means that the City is satisfied that ***all*** improvements required by this Agreement and Title 18 of the Post Falls Municipal Code, or as a result of the procedures required thereby, have been constructed in a satisfactory manner to comply with the specifications.

1.22 ***APPROVALS AND CONSENTS***

Wherever in the Agreement consents or approvals of either party are required, they shall not be unreasonably withheld. Nothing in this provision shall compromise the general police power authority in the City in matters governmental in nature.

1.23 ***ATTORNEY FEES***

Should either party need to resort to Court proceedings to interpret or enforce provisions of this Agreement, the prevailing party in any such action shall be entitled to recovery of its reasonable attorney fees.

ARTICLE II

IMPROVEMENT CONSTRUCTION STANDARDS AND PROCEDURES

2.01 ***RECORDING***

Developer shall be solely responsible for acquisitions of property, including the preparation and recordation of documents for any and all easements or rights-of-way necessary for the completion of improvements as outlined in this agreement.

2.02 ***PERFORMANCE GUARANTY***

A. The Developer shall guarantee, for the sole benefit of the City that the Developer will perform all of its obligations not yet completed under this Agreement. The guaranty shall be in one of the forms specified by Post Falls Municipal Code as described in paragraphs 2.03, 2.04 and 2.05. During the term of this Agreement, the Developer may, with the written consent of the City; substitute for a performance guaranty submitted under this section another guaranty in the required amount and in one of the forms specified herein. The City may choose to not release surety less than 25% of the surety amount until all final project items are complete – including final as-builts and certification.

B. The City Engineer may require a guaranty be established prior to any work within the existing rights of way.

C. Amount of Guaranty: The guaranty shall be in an amount equal to 150% (one hundred fifty percent) of the estimated cost of all improvements, not including those to be constructed by private utilities. The estimated cost shall be determined as follows. The Developer shall submit for the City Engineer's approval a cost estimate for each improvement required by this Agreement. Before submitting the cost estimate, the Developer's engineer shall have prepared, documented and certified each cost estimate. The estimated cost of all improvements shall be the sum of the estimated cost as approved by the City Engineer. The estimated total costs of the improvements to be owned, operated and maintained by the City of Post Falls; utilities to be owned, operated and maintained by a utility other than the City of Post Falls; and other improvements for which surety is required as submitted by the Developer and approved by the City Engineer are depicted on Attachment C for purposes of calculation of surety requirements which accord with the requirements of ordinances of the City of Post Falls. Evidence of such surety shall be attached hereto and be labeled Attachment

D. All guarantees shall include the City's standard "Evergreen Clause" or automatic renewal language, as follows:

"This type of surety is for an initial term that expires on _____. This type of surety shall automatically be extended without amendment for one year from the present or any future expiration date unless the issuing bank notifies the beneficiary in writing sent certified mail, return receipt requested, or by personal service, at least sixty (60) days prior to any expiration date that this letter of credit will not be renewed.

E. If the Developer is not in default under this Agreement, the City may allow a proportionate reduction in amount of the performance guaranty in increments not less than 25% of the surety amount, or the amount secured and the current estimated cost of the work remaining to be performed under this Agreement; provided, however, that the amount of the performance guaranty, or the amount secured thereby always shall be greater than or equal to the amount of the warranty guaranty required by Section 3.09.

F. As soon as one of the following occurs, the City shall release any performance guaranty which has not been used or encumbered under Section 1.13 as long as the warranty guaranty provides sufficient coverage as required by this Agreement or by law:

1. The final acceptance of all improvements and the posting of warranty guaranty as provided in Section 3.09

2. The expiration of the warranty period as provided in Section 3.08.

2.03 ***PERFORMANCE BOND***

The Developer may provide a performance bond from a company qualified by law to act as a surety in the State of Idaho. The bond shall be in a form approved by the City. The bond shall name the City as the sole oblige and the Developer as the principal.

2.04 ***ESCROW***

The Developer may deposit funds in an escrow account with a bank or financial institution qualified by law to do business in the State of Idaho. The disbursement of the escrowed funds shall be governed by an escrow agreement in a form approved by the City.

2.05 ***LETTER OF CREDIT***

The Developer may cause a bank or financial institution qualified by law to do business in the State of Idaho to issue an irrevocable letter of credit in the form approved by the City.

2.06 ***PREREQUISITES OF CONSTRUCTION***

The Developer shall not obtain permits for the construction of improvements or commence the construction of improvements until approval by all other agencies as required to construct the required improvements have been obtained and this Agreement has been completed and signed by the Developer and the City and all public works inspection fees have been paid as required by City ordinance or resolution. Appendix III to this Agreement is the Public Works Inspection Fee Summary.

2.07 ***ENGINEER***

A. The Developer shall retain an Engineer of Record, registered as a professional engineer under the laws of the State of Idaho, to design and administer the construction of the improvement, including preparing plans and specifications, inspecting and controlling the quality of work and preparing the as-built data. The Engineer shall perform the work described herein in accordance with the City's required procedures for consulting engineers.

B. The Developer shall inform the city of the name and mailing address of the Engineer of Record it has retained to perform the duties described in Subsection A of this section. Developer agrees that notice to the Developer or engineer at the addresses so specified regarding the performance of such duties shall constitute notice to the Developer. The Developer shall promptly inform the City of any change in the information required under this subsection.

2.08 ***PLANS AND SPECIFICATIONS***

A. The Developer shall submit to the city, in such form as the City may specify all plans and specifications pertaining to the construction of the improvements.

B. If the City requires soil tests, traffic studies or other tests and studies pertaining to the design of improvements, the Developer shall submit reports of the test results with the plans and specifications.

C. The City may approve the plans and specifications as submitted, or indicate to the Developer deficiencies to be corrected to secure approval, within a reasonable time from the submission of all plans and specifications for the improvements. The City's approval of the plans and specifications is for general conformance with City Standards. The City will endeavor to provide a complete and thorough review of all plans and specifications; however, ultimate design and function remains the responsibility of the Developer. It shall be the responsibility of the Developer to correct errors and omissions found prior to final acceptance as provided in Section 3.01 of this Agreement.

2.09 ***QUALITY CONTROL PROGRAM***

The Developer's Engineer of Record shall follow the City's project certification and quality control program when performing their duties to provide for certification of the construction work. The Engineer of record shall be responsible, in charge of the quality control / inspection activities.

2.10 ***WORK SCHEDULE***

A. The Developer shall submit to the City, in such form as the City may specify, a work schedule, which shall be Appendix II to this Agreement.

B. The work schedule shall include a progress chart of a suitable scale, indicating the approximate percentage of work scheduled for completion at any given time. The schedule shall indicate starting and completion dates for each improvement, including City and private utility improvements.

C. The City Engineer may require detailed and specific schedule for portions of the work deemed critical for continuation of City services.

D. Contractor's offsite work schedule and efforts shall be to expedite the work, to minimize the inconvenience to the public.

E. In case of an emergency affecting public health and safety, the City may provide to the Developer written notice to take immediate action to construct the improvements or correct deficiencies, setting a time frame in which those improvements must be completed. In the event that the Developer does not take action to construct those improvements within the time frame set by the City, the City may declare the Developer in default and without providing a time period to cure may complete the improvements and pursue reimbursement from the Developer or the security posted by the Developer.

2.11 ***MATERIALS***

A. The Developer shall submit, in such form as the City may specify, detailed information concerning all materials and equipment it proposes to incorporate into an improvement. All materials shall comply with the Post Falls Standards for Public Works Construction.

B. Upon the City's request, the Developer shall submit samples of materials or equipment it proposes to incorporate into an improvement.

C. The City may approve the materials and equipment, or indicate to the Developer unacceptable material and equipment within a reasonable time after submittal. The City's approval of material and equipment is for general conformance with city standards, alternate design and function remain the responsibility of the Developer. It shall be the responsibility of the Developer to correct errors and omissions found subsequent to the City approval. Substitutions may be considered subject to review and approval of the City Engineer.

2.12 ***GENERAL STANDARDS OF WORKMANSHIP***

A. The Developer shall construct all improvements in accordance with plans and specifications approved by the City, and with the terms, covenants and conditions of this Agreement, including installation of street trees unless the developer elects to exercise the option to pay for the trees in accordance with Post Falls City Code 17.28.091instead of installing them. The Developer shall not incorporate any material or equipment into an improvement unless the City has approved its use. Unless the City specifically agrees otherwise in writing, all materials, supplies and equipment incorporated into an improvement shall be new.

B. If, in the course of construction, conditions appear, which in the exercise of reasonable engineering judgment, require a modification of, or substitution for approved materials, equipment, plans, specifications or contracts to meet an acceptable standard of performance, the Developer shall make the modification or substitution. The City shall reasonably approve all such substitution.

C. The Developer shall construct all facilities in the Project not otherwise subject to this Agreement in accordance with applicable statutes, ordinances or specifications.

2.13 ***PLACEMENT OF UTILITIES***

The Developer shall place all utilities underground, except where this requirement is specifically waived under this Agreement. The City Engineer shall approve the alignment of city and private utilities.

2.14 ***WORK IN RIGHTS-OF-WAY***

The Developer shall comply with all ordinances and secure all necessary permits and authorizations pertaining to work in public rights-of-way. The Developer shall coordinate and supervise the installation and construction of all utility improvements, including those not otherwise covered by this Agreement, in a manner that will prevent delays in City construction or other damage to the City and that will permit the City to properly schedule work that it will perform. The Contractor's offsite work schedule and efforts shall be to expedite the work, to minimize the inconvenience towards the public.

2.15 ***SURVEYOR***

A person registered as a professional land surveyor under the laws of the State of Idaho shall make all boundary surveys required for the completion of improvements under this Agreement.

2.16 ***REQUIRED REPORTING***

A. *Quality Control*
The Developer shall submit to the City regularly and promptly written reports certified by the Engineer describing the results of all tests and inspections required by the quality control program and all other test and inspection which the Developer may make.

B. *Construction Progress*
If actual progress indicates that the Developer will not perform the work as scheduled, the Developer shall prepare and submit a revised schedule for the City's reasonable approval.

C. *Surveys*
The Developer shall furnish promptly to the City copies of all final surveys required for the completion of the improvements.

D. *Well Logs/Test Hole Logs*
The Developer shall furnish the City copies of all well and test hole logs required for any purpose during the Project.

E. Express or implied approval by the City of any report or inspection shall not authorize any deviation from approved plans and specifications or from the terms of this Agreement unless such express approval notes such deviation.

F. At the completion of construction prior to acceptance by the City, the Engineer of Record shall submit to the City a report certifying that the improvements were constructed in accordance with plans and specifications and that they meet standards established by the City. This certification shall include a cover letter with the engineer's professional stamp, followed by copies of all inspection records, test results and construction quality control data as indicated with the City's Engineering Project Certification and Quality Control provision.

2.17 ***PROGRESS PAYMENTS***

The Developer shall hold the City harmless against any claims made by Developer's contractors.

2.18 ***OBSERVANCE***

A. The Engineer of record or their representative shall attend regularly scheduled jobsite meetings with a City Representative, to review construction progress and inspection activities.

B. The City may monitor the progress of the work and the Developer's compliance with this Agreement and perform any inspection or test, which it deems necessary to determine whether the work conforms to this Agreement. Such inspections or tests do not relieve the Developer from performing tests and inspections required by 2.16A.

C. If the Developer fails to notify the City of inspections, tests and construction progress as required by Section 2.16, the City may require, at the Developer's expense, retesting, exposure of previous stages of construction or any other steps which the City deems necessary to determine whether the work conforms to this Agreement.

D. Any monitoring, tests or inspections that the City orders or performs pursuant to this section are solely for the benefit of the City. The City does not undertake to test or inspect the work for the benefit of the Developer or any other person.

2.19 ***STOP WORK ORDERS***

A. If the City determines there is a substantial likelihood, based upon reasonable and substantial information, that the Developer will fail to comply, or if the Developer does fail to comply with this Agreement or the Developer and/or his contractors fail to comply with provisions of occupational health and safety standards promulgated by the State and Federal agencies or his actions present a threat to the public health and safety or the Engineer of Record fails to perform their inspection and quality control duties, the City may stop all further construction of improvements by issuing a stop work order regarding the nonconforming construction and notifying the Developer and its Engineer of the order.

B. A stop work order shall remain in effect until the city approves:

1. Arrangements made by the Developer to remedy the nonconformity; and

2. Assurances by the Developer that future nonconformity's will not occur.

C. The issuance of a stop work order under this section is solely for the benefit of the City. The City does not undertake to supervise the work for the benefit of the Developer or any other person. No suspension of work under this section shall be grounds for any action or claim against the City or for an extension of time to perform the work.

D. The Developer shall include in all contracts for work to be performed, or materials to be used under this Agreement, the following provision:

The City of Post Falls, pursuant to a Construction Improvement Agreement on file with the City Clerk and incorporated by reference herein, has the authority to inspect all work or materials under this contract and to stop work in the event that the work performed under this Agreement fails to comply with any provision of the Construction Improvement Agreement. In the event that the City issued a stop work order, the contractor shall immediately cease all work and await further instructions from the Developer and City.

2.20 ***ACCESS***

The City shall have access to all parts of the project necessary or convenient for monitoring the Developer's performance, inspecting, surveying, testing or performing any other work.

2.21 ***MAINTENANCE***

A. Until the City accepts the improvements, the Developer shall maintain at his expense all public improvements associated with the Project that are necessary for access or service to property not owned by the Developer. For the purposes of this subsection, existing roads are roads that physically exist, as distinguished from mere rights-of-way dedicated for road purposes. The maintenance required by this subsection includes cleaning, effective dust control measures, snow removal and similar activities, but does not include repair, replacement or reconstruction, except if the need to repair, replace or reconstruct is caused by the Developer's activities or is required as a condition of this Agreement. If the Developer fails to maintain the road improvements, the City may either contract for the maintenance to be completed, or complete the maintenance by City forces and charge the Developer for all associated costs, including administration fees.

B. The Developer shall repair or pay the cost of repairing damage to any improvement that occurs prior to the City's acceptance of the improvements, except for damage caused solely by the City, its agents, employees or contractors. The Developer shall give reasonable notice to the city before undertaking the repair of any damaged improvement.

2.22 ***OPERATION OF IMPROVEMENTS PRIOR TO FINAL ACCEPTANCE***

A. Before final acceptance, the City may enter upon, inspect, control and operate any improvement if the city determines that such action is necessary to protect the public's health, safety and welfare.

B. The action described in subsection A of this section shall not constitute the final acceptance of any improvement by the city, nor shall the action affect in any way the Developer's warranty under this Agreement.

C. The Developer or his agents may not connect to or operate any City utilities without written consent from the City. No structure shall be occupied, nor shall any land use be established which requires a building or construction permit, until the improvements required by this Agreement or by applicable provisions of law have been accepted by the city or other responsible public agency or have been completed as required by this Agreement.

2.23 ***TIME***

The Developer shall start work and complete construction of improvements required under this Agreement in accordance with the Developer's work schedule as approved by the City and attached as an Appendix to this Agreement.

ARTICLE III

FINAL ACCEPTANCE OF IMPROVEMENTS

3.01 ***PREREQUISITES TO ACCEPTANCE***

The City shall not accept the improvements until all the requirements of Section 3.02 through 3.05 have been met.

3.02 ***SURVEY MONUMENTS AND AS-BUILT DRAWINGS***

A. Upon completing the improvements, the Developer shall replace lost lot corners and survey monuments per Idaho Code.

B. No later than sixty (60) days after the final inspection and prior to final acceptance and certification under Section 3.06F, the Developer shall provide to the City as-built drawings in accordance with current City Engineer's Drawing Submittal Standards. The as-built drawings shall be certified by a professional engineer registered under the laws of the State of Idaho to represent accurately the improvements as actually constructed.

3.03 ***CERTIFICATE OF COMPLIANCE***

The Developer shall furnish the City with a certificate of compliance for the work performed under this Agreement, in the form prescribed in Paragraph 2.15F. Developer shall also certify that all private utility installation has been completed according to plan.

3.04 ***CERTIFICATE OF PAYMENT OF CONTRACTORS AND VENDORS***

Prior to final acceptance, the Developer shall certify that all contractors and vendors have been paid for work owned or maintained by the City or private utilities and no liens or other claims have been recorded, or that the Developer knows of no intent to file a claim or lien against the City or private utility improvements.

3.05 ***CONVEYANCE OF EASEMENTS AND RIGHTS-OF-WAY TO CITY***

The Developer shall convey to the city any easement, rights-of-way, or other property interest necessary to allow access to the city improvements to operate, maintain or repair the City improvements. Documents for conveyance of any and all easements or rights-of-way shall be prepared in accordance with city policies. The Developer may condition the conveyance upon the City's acceptance of the improvements.

3.06 ***INSPECTION***

A. Upon receiving notice that the Developer has completed the improvements, the City shall schedule inspections of the improvements. The City may inspect all improvements and any other work in dedicated easements or rights-of-way.

B. A privately owned utility may inspect any phase of work on an improvement of which it is to assume control.

C. The City or appropriate privately owned utility shall inform the Developer in writing of any deficiencies in the work found in the course of the inspection.

D. The Developer shall, at its own expense, correct all deficiencies found by inspections under Subsection A or B of this section. Upon receiving notice that the deficiencies have been corrected, the City, or appropriate privately owned utility shall re-inspect the improvements.

E. The City or appropriate privately owned utility may continue to re-inspect an improvement until the Developer has corrected all deficiencies in the improvement.

F. After final inspection has revealed that all improvements and other work in dedicated easements and rights-of-way meet City standards and the Developer has furnished the as-built drawings required in Section 3.02B, and project certification required by Section 3.03, and upon written request by the Developer, the City Engineer shall submit to the Post Falls City Council a recommendation for final acceptance of the improvements.

3.07 ***CONSEQUENCES OF ACCEPTANCE OF IMPROVEMENTS***

A. The City's final acceptance of the City improvements constitutes a grant to the City of all the Developer's right, title, and interest in and to the City improvements.

B. Upon final acceptance of the improvements, the City will maintain said improvements, except regarding the Developer's obligations covered by warranty in Section 3.08.

3.08 ***DEVELOPER'S WARRANTY***

A. The Developer shall warrant the design, construction materials and workmanship of the improvements against any failure or defect in design, construction, material or workmanship which is discovered for one (1) year from the data of final acceptance. This warranty shall cover all direct or indirect costs of repair or replacement, and damage to the property, improvements or facilities of the City or any other person, caused by such failure or defect or in the course of repairs thereof, and any increase in cost to the City of operating and maintaining a City improvement resulting from such failures, defects or damages. The warranty period for the project shall begin upon the satisfaction and final acceptance of all improvements.

B. The Developer's warranty shall not extend to any failure or effect caused solely by changes in design, construction or materials required by the City.

C. Except as provided in Subsection B of this section, the fact that the City takes any action, or omits to take any action authorized in this Agreement including, but not limited to, operation or routine maintenance of the improvements prior to acceptance or surveillance, inspections, review or approval of plans, tests or reports shall in no way limit the scope of the Developer's warranty.

3.09 ***WARRANTY GUARANTY***

To secure the Developer's performance of the warranty under Section 3.08, the performance guaranty provided by the Developer under section 2.02 shall remain in effect until the end of the warranty period, or the Developer shall provide a warranty guaranty by one or more of the methods described in Sections 2.03 through 2.05, determined by the following table:

Actual Cost of All Improvements	***Percent to Secure Warranty***
Less than $500,000.00	10.0%
$500,000.00 - $1,000,000.00	7.5%
Over $1,000,000.00	5.0%

3.10 ***CITY'S REMEDIES UNDER WARRANTY***

A. The City shall notify the Developer in writing upon its discovery of any failure or defect covered by the warranty in Section 3.08. The City shall notify the Developer before conducting any test or inspections to determine the cause of failure or defect to the extent the circumstances will allow and shall notify the Developer of the results of all such tests and inspection.

B. The Developer shall correct or make a diligent effort to correct any failure or defect covered by the warranty within thirty (30) days of receiving notice of the failure or defect from the City. The Developer shall correct the failure or defect at its own expense and to the satisfaction of the City.

C. If the Developer fails to correct the failure or defects within the time allowed by Subsection B of this section, the City may correct the failure or defect at the Developer's expense. If the Developer fails to pay the City for the corrective work within thirty (30) days of receiving the City's bill, the City may pursue any remedy provided by law or this Agreement to recover the cost of the corrective work, including calling upon the Developer's security. The City's attorney's fees in pursuit of such remedy shall be an allowed cost.

D. In case of an emergency affecting public health and safety, the City may make immediate required repairs and shall notify the Developer and contractor as quickly as possible.

3.11 ***CONDITIONS OF REIMBURSEMENT***

A. If this Agreement requires the City to reimburse the Developer for all or part of the cost of an improvement, the reimbursement shall be conditioned upon the Developer's performance of all its obligations under this Agreement. Reimbursement shall be limited to that work described herein in Appendix V.

B. Any reimbursement shall be subject to the approval of bonds and/or the appropriation of funds as required by law. If funds are not available at the time any reimbursement is due under this Agreement, the City shall reimburse the Developer when funds become available. The City shall not be liable for any delay in reimbursing the Developer due to the unavailability of funds, nor shall such delay constitute a breach of this Agreement.

3.12 *AUTHORITY*

The Developer accepts full responsibility for the proper development of the Project in accordance with provisions of the law and the specific terms and conditions made applicable to the Project in the course of project review by the City of Post Falls. It is understood that the person(s) who execute this Agreement on behalf of the Developer and Owner, and represent that they have full legal authority to do so. The parties to this Agreement shall accept notices at the following respective addresses and telephone numbers:

DEVELOPER	CITY
_____	City of Post Falls
_____	Engineering Department
_____	408 Spokane Street
_____	Post Falls, ID 83854
_____	(208) 773-8708

IN WITNESS WHEREOF, the parties hereto have set their hands on the date first set forth above.

CITY OF POST FALLS	DEVELOPER
BY: _____	BY: _____
ATTEST:	WITNESS:
_____	_____
City Clerk	Print Name: _____

ATTACHMENT A:	PROPERTY DESCRIPTION
ATTACHEMNT B:	DESCRIPTION OF IMPROVEMENTS
ATTACHMENT C:	COST ESTIMATES
ATTACHMENT C-1:	DETAILED COST ESTIMATES
ATTACHMENT D:	EVIDENCE OF SURETY
APPENDIX I:	CONSTRUCTION PLANS AND SPECIFICATIONS
APPENDIX II:	CONSTRUCTION SCHEDULE
APPENDIX III:	PUBLIC WORKS INSPECTION SUMMARY
APPENDIX IV:	ENGINEER OF RECORD DECLARATION
APPENDIX V:	ENGINEER OF RECORD CERTIFICATION
APPENDIX VI:	CERTIFICATION OF PAYMENT OF CONTRACTORS & VENDORS
APPENDIX VII:	STREET LIGHT FEES (1 YEAR)
APPENDIX VIII:	IRRIGATION SYSTEMS
APPENDIX IX	STREET TREE CASH IN LIEU OF INSTALLATION

DEVELOPER
ACKNOWLEDGMENT

STATE OF _____)
) ss
County of _____)

On this ____ day of _____ 20___, before me, a Notary Public for the State of _____, personally appeared _____, the Developer of _____, known or identified to me to be the person(s), who executed the foregoing Commercial Construction Improvement Agreement and acknowledged to that they executed such Agreement.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year in this certificate first above written.

_____
Notary Public for State of _____
Residing at: _____
Commission Expires_____

CITY ACKNOWLEDGMENT

STATE OF IDAHO)
:ss
County of Kootenai)

On this ___ day of _____, 20__, before me, a Notary for the state of Idaho, personally appeared ***Ronald Jacobson and Shannon Howard,*** known, or identified to me to be the ***Mayor*** and ***City Clerk*** respectively, of the city of Post Falls, Kootenai County, Idaho, executing the herein instrument, and acknowledged to me that such City of Post Falls executed the same.

IN WITNESS WHEREOF, I have hereto set my hand and affixed my official seal the date and year in this certificate first above written.

_____
Notary Public for the state of Idaho
Residing at:_____
Commission Expires:_____

ATTACHMENT "A"
PROPERTY DESCRIPTION
FOR

_____

Developer to submit legal property description and reduced site plan.

ATTACHMENT "B"
DESCRIPTION OF IMPROVEMENTS
TO BE CONSTRUCTED AND INSTALLED BY

_____***(Contractor if known/or Developer)***

FOR

_____***(Project Name)***

_____ Street surfacing or infill paving

_____ Monumentation

_____ Electric

_____ Curbs and gutters

_____ Street lighting

_____ Gas

_____ Sidewalks

_____ Telephone

_____ Drainage

_____ Street signs

_____ Cable TV

_____ Water

_____ Landscaping (Swales)

_____ Sanitary Sewer

_____ Improvements shown on construction plans referenced within Appendix I to this Agreement.

_____ Other - as follows:

ATTACHMENT "C"
COST ESTIMATES FOR

_____

The estimated total cost of the improvements submitted by the Developer and approved by the City Engineer are as follows:

1. Public improvements to be owned operated and maintained by the City of Post Falls: $_____.
2. Public utilities to be owned, operated and maintained by a utility other than the City of Post Falls: $_____.
3. Other improvements for which bonding are required: $_____.
4. Street trees within public right-of-way: $_____
5. Total cost of improvements: $_____.
6. Warranty amount: $_____.

ATTACHMENT "C-1"
DETAILED COST ESTIMATES
FOR

_____

Developer to submit detailed cost estimates. The cost estimate, unit quantities, and costs are provided for budgetary purposes. The Developer is required to construct the project in accordance with the approved construction drawings, regardless of variations in the cost estimate quantities and plan quantities.

ATTACHMENT "D"
EVIDENCE OF SURETY
FOR

_____

The Developer will be performing the majority of required improvements prior to Certificate of Occupancy. A surety company will post a performance guaranty acceptable to the City for the improvements per Section 2.02.

APPENDIX I
TO THE CONSTRUCTION IMPROVEMENT AGREEMENT
BETWEEN THE CITY OF POST FALLS AND

_____

FOR

_____

CONSTRUCTION DRAWINGS

Plans Titled: _____.

Dated: _____.

By: _____

Sheets 1 through _____.

APPENDIX II
TO THE CONSTRUCTION IMPROVEMENT AGREEMENT
BETWEEN THE CITY OF POST FALLS AND

_____

FOR

_____

CONSTRUCTION SCHEDULE

Developer to submit a construction schedule.

APPENDIX III
TO THE CONSTRUCTION IMPROVEMENT AGREEMENT
BETWEEN THE CITY OF POST FALLS AND

_____

FOR

_____

ENGINEERING SERVICES FEE SUMMARY

To be determined by the City of Post Falls, Engineering Division, based on quantity of improvements and current fee schedule.

APPENDIX IV
TO THE CONSTRUCTION IMPROVEMENT AGREEMENT
BETWEEN THE CITY OF POST FALLS AND

_____

FOR

_____

ENGINEER OF RECORD DECLARATION:

The Engineer of Record for the project is established as:

ENGINEER NAME: _____

ENGINEERING FIRM: _____

ADDRESS: _____

CITY: _____ STATE:_____ ZIP: _____

PHONE NO.: _____ FAX NO. _____

E-MAIL ADDRESS: _____

APPENDIX V
TO THE CONSTRUCTION IMPROVEMENT AGREEMENT
BETWEEN THE CITY OF POST FALLS AND

_____

FOR

_____

ENGINEERING OF RECORD CERTIFICATION:

Certification Statement

I, _____, certify that construction observation and quality control for (project, plans with approval date) was performed under my responsible charge. It is my professional opinion that the project was constructed in accordance with the intent of the plans and specifications. The submittal of as-built drawings and the attached documentation within the certification packet provide evidence to support a recommendation of acceptance of the public infrastructure associated with the referenced project plans and specifications.

(Provide Engineer's seal, signature and date.)

APPENDIX VI
TO THE CONSTRUCTION IMPROVEMENT AGREEMENT
BETWEEN THE CITY OF POST FALLS AND

_____

FOR

_____

CERTIFICATE OF PAYMENT OF CONTRACTORS AND VENDORS:

State of _____)
ss
County of _____)

I, _____, hereby certify under oath that all contractors, subcontractors and vendors that have performed work and provided supplies for the construction of the subdivisions public improvements relating to _____ Subdivision, including individuals or firms providing design services or legal services, have been paid in full and that no liens or other claims have been recorded against the real property of the Subdivision for those services.

I further certify that I know of no intent to file a claim or lien against the public improvements or any private utility improvements.

_____
Signature

_____
Print Name

SUBSCRIBED AND SWORN TO before me this ____ day of _____, 20__.

_____
Notary for the State of _____
Residing at:_____
Commission Expires:_____

APPENDIX VII
TO THE CONSTRUCTION IMPROVEMENT AGREEMENT
BETWEEN THE CITY OF POST FALLS AND

_____

FOR

STREET LIGHT CHARGES

Per Section 1.10 E of the Agreement, the Developer reimburses the City for street light charges for a period of 12 months. The street light charges are determined as follows:

Street light utility provider: _____

Street light type: _____

(___) lights X 12 months X $_____ per month = $_____

Street light type: _____

(_____) lights X 12 months X $_____ per month = $_____

TOTAL = $_____

APPENDIX VIII
TO THE CONSTRUCTION IMPROVEMENT AGREEMENT
BETWEEN THE CITY OF POST FALLS AND

_____

FOR
IRRIGATION SYSTEMS

Irrigation Meter Size & Service Line Size:

Irrigation Meter Size	$_____
Capitalization Fee Based Upon Service Line Size	$_____
Total Irrigation Connection Fee	$_____

The Developer will be responsible for establishing an irrigation account with the City ($10.00 fee), purchasing a meter, and paying all water capitalization fees associated with the project.

APPENDIX IX
TO THE CONSTRUCTION IMPROVEMENT AGREEMENT
BETWEEN THE CITY OF POST FALLS AND
_____ ***SUBDIVISION***

FOR

CASH IN LIEU OF PLANTING STREET TREES

_____The Developer agrees to plant street trees approved in the Landscaping Plan and will not utilize the Cash In Lieu of Planting Trees option.

_____The Developer agrees to cash out the obligated street trees approved in the Landscaping Plan, in lieu of planting the street trees for the project. Cashout shall be paid to the City of Post Falls in the amount of $_____, and is based upon _____ trees x $600.00/each, as outlined per Section 2.12 A of the Agreement and City Ordinance No. 1217.