

CITY OF JUNCTION CITY
Public Works Design Standards

Sample Developer-City Agreement, Easement Forms, Payment & Performance Bonds, Etc.

Appendix D

Note: Forms in this appendix are sample model documents only, included for convenience of reference by developers. The documents are subject to modification by the City to address project specific conditions (as required by Public Works, the City Engineer or the City Attorney).

IMPROVEMENTS AGREEMENT
(Developer-City Construction Agreement)

THIS AGREEMENT, made and entered into this _____ day of _____, 20___, by and between the **City of Junction City**, a municipal corporation, hereinafter called the "**City**" and _____, hereinafter called the "**Developer**;"

WITNESSETH:

WHEREAS, the City Planning Commission has granted approval to the preliminary plan or plat for _____, with the understanding that the Developer agrees to comply with all planning conditions contained therein; and

WHEREAS, the City will grant approval for construction of public facilities consistent with the conditions contained within said City approval, and;

NOW THEREFOR, the Developer and the City agree to the following conditions for completion of this development to wit:

1. The Developer agrees that all improvements shall be constructed in accordance with the construction drawings approved by the City, which construction drawings were approved by the City with conditions as outlined in the City approvals and letters dated as outlined below, and the said construction drawings and approval letters are incorporated into this agreement the same as if contained herein.
 - a. City Engineer: _____ Approved on _____, 20___
Approval Conditions (See approved construction drawings & approval letter)
 - b. Public Works Department:
Approval Conditions (See approved construction drawings)
 - c. Fire District:
Approval Conditions (See approved construction drawings)

2. The Developer agrees that he shall complete, or cause to be completed all required improvements and construction drawing conditions of approval within 12 months of the date of this Agreement. If the said improvements and conditions of approval are not completed within this 12 month period, all construction drawing approvals shall become null and void. Upon written request of the Developer, however, this Agreement may be extended for a period not to exceed an additional 6 months. The timeline referenced in this Agreement applies only to construction drawing approval, and does not affect or modify any timeline established by the planning approval for recordation of a plat or completion of improvements. If this timeline is in conflict with the planning approval, the more stringent shall apply.

3. The Developer agrees that all improvements shall be done in compliance with all applicable statutes, codes, ordinances and standards and conditions of approval, including but not limited to the City's Public Works Design Standards (PWDS), Specifications and Standards for Public Works Construction (most recent revisions), and the City subdivision and development ordinances. The Developer certifies that copies of the PWDS and PWCS have been purchased by the developer or his representative, and will be available for reference by the contractor constructing the project.
4. It is agreed that the Developer is making certain public utility improvements with the result that the City will accept said improvements as part of the City's public works facilities after the said Developer completes the improvements and procedures to the satisfaction of the Director of Public Works. Final acceptance of the public works facilities shall not occur until the completion of the warranty period and satisfaction of the acceptance policies of the City. In no case shall the warranty period be less than 1 year from provisional acceptance of the public improvements by the City.
5. The Developer shall cause his engineer to provide all surveying services necessary to stake the project prior to and during construction and to prepare as-built drawings when the project is complete, all in conformance with City Standards.
6. The Developer shall cause his engineer to provide all inspection services as required by Section 1.13 of the City's Public Works Design Standards (PWDS) and as necessary to complete the work.
7. The Developer shall, after satisfactorily completing conditions 1 through 6, provide the City a maintenance bond valued at a minimum of 40 percent of the estimated construction costs. The warranty period for the public utility improvements shall not commence until acceptable as-builts and said maintenance bond is provided to the City, and the period of the bond shall be for the full period of the warranty period, not to be less than 1 year.
8. It is agreed between the City and the Developer that no building permits for any structures within the development will be issued until all required improvements have been constructed and all conditions of approval have been met by the Developer and accepted by the City. Any exceptions must be approved in writing by both the Public Works and Planning Departments.
9. If the Developer desires to record the final plat before all required improvements have been constructed and all conditions of approval have been met by the Developer and accepted by the City, the Developer shall provide a security guarantee satisfactory to the Public Works Director that all improvements will be constructed in conformance with all City standards and ordinances and all conditions of approval will be satisfied.
10. If the final plat is recorded before all required improvements have been constructed and all conditions of approval have been met by the Developer and accepted by the City, this agreement shall be recorded in the deed records of Lane County by the Developer and referenced on the face of the final plat, or referenced in a recorded agreement between the Developer and the City.

11. The developer hereby designates the person named on Page 4 of this agreement as the Developer's engineer as referenced above and in the PWDS.
12. It is further agreed that any amendments to this agreement or any assignments of responsibilities contained herein shall not be valid without the written consent of the City.

This agreement shall be in full force and effect until said public works facilities are complete and final acceptance in writing is given by the City.

The parties hereto agree that should any suit or action be filed to enforce the terms of this Agreement or any breach thereof, the losing party agrees to pay the prevailing party's reasonable attorney fees in an amount to be set by the court, including costs, disbursements and any such attorney fees associated with any appeal therefrom.

IN WITNESS THEREOF, the City has caused this agreement to be signed by its Public Works Director and Mayor, and the Developer has caused this agreement to be signed, sealed and notarized the same as the date and year first above written.

CITY OF JUNCTION CITY, OREGON

(City Public Works Director)

(Mayor)

DEVELOPER

(Developer)

(Developer)

STATE OF OREGON)
) ss.
County of _____)

On this ____ day of _____, 20____, personally appeared before me, the above named person(s), _____, _____, _____, known to be to be the person(s) whose signature is above subscribed, and acknowledged to me that this is a free act and deed, for the uses and purposes therein expressed.

In testimony whereof, I have hereunto set my hand and affixed by official seal on the day and year last above written.

(Signature)
Notary Public for Oregon
My Commission Expires: _____

IN WITNESS THEREOF, the person designated below certifies that he/she is the Developer's engineer-of record for this project and acknowledges that he/she has been retained to provide engineering and inspection services for this project as required by the PWDS and in accordance with this agreement.

The engineer also certifies that if there is any change in his/her status as engineer-of-record, or if he/she is no longer able to provide engineering services or inspection services (to verify construction to City standards) for any reason, he/she will notify the City in writing within 3 business days of said change in status.

The Engineer also certifies that he/she has copies of the PWDS and PWCS, which will be available for reference during the project.

Dated this _____ day of _____, 20__

Name of Firm: _____

Address: _____

Signature: _____ Title: _____

Type/Print Name: _____
(Oregon Registered Professional Engineer)

STATE OF OREGON)
) ss.
County of _____)

On this _____ day of _____, 20__, personally appeared before me, the above named person(s), _____, _____, _____, known to be to be the person(s) whose signature is above subscribed, and acknowledged to me that this is a free act and deed, for the uses and purposes therein expressed.

In testimony whereof, I have hereunto set my hand and affixed by official seal on the day and year last above written.

(Signature)
Notary Public for Oregon
My Commission Expires: _____

After recording, return to:
City of Junction City
PO Box 250
Junction City, OR 97440

City of Junction City
PERMANENT UTILITY EASEMENT

_____ (Grantor(s)) does hereby give and grant the City of Junction City (City), a municipal corporation of Lane County, Oregon, a perpetual exclusive utility easement across and under the servient estate for the purpose of construction, inspection, maintenance, repair and reconstruction of underground sewer lines appurtenant and connected to the public sewer system of the City of Junction City, and for the purpose of construction, inspection, maintenance, repair and reconstruction of underground water mains, lateral lines and associated facilities, storm drainage, and any other City utility, and right to enter upon the servient estate, including but not limited to excavation through or removal of any permanent surface on the servient estate, hereafter referred to as "City Utility," to be located upon the real property described as:

Legal Description here, or
'See "Exhibit A", incorporated herein by reference.'

City and its contractors, subcontractors, agents or employees shall have the right to enter the easement for the purpose of constructing the City Utility, to permanently maintain the City Utility, to repair or renovate the City Utility. The City of Junction City shall be responsible for restoring the surface to base grade.

Grantor(s) agree not to plant any tree, shrub or plant within the City Utility easement nor build any structure or place any fence in the easement without first obtaining a written permit from City. Balm, poplar, locust, cottonwood or willow trees or bamboo shall not be planted in or within ten (10) feet of the City Utility easement. It is understood that City may remove any physical obstructions including buildings, fences, trees, or shrubbery, and abate any use of the easement if City finds that the physical obstruction or use will interfere with the City Utility or City's ability to maintain or repair the City Utility, and such obstruction or abatement may be removed without recompense to the Grantor(s).

Grantor(s) and City intend that this easement bind Grantor(s), its/their heirs, successors and assigns. This easement will not be considered abandoned until City has declared the easement abandoned and no longer in use by City.

Consideration for this grant consists wholly of value other than money. Grantor hereby warrants to City that Grantor has full power and authority to grant this easement.

[THE PARAGRAPH BELOW TO BE USED ONLY IF PROJECT INVOLVES USE OF FEDERAL FUNDS]

Grantor(s) acknowledge that if federal funding is used on this project, the Federal Real Property Acquisition Act of 1970, as amended, might apply to this transaction. As such, the Grantor(s) acknowledge that he/she has been advised of his/her right to have the property appraised and specifically waive that right. Further, any real property acquisition procedures required under state or federal law are specifically waived.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

By: _____
(Grantor) (Date)

STATE OF OREGON)
) ss.
County of _____) _____, 2__

This instrument was acknowledged before me on the _____ day _____, 2__,
by _____.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

ACCEPTED this _____ day _____, 2__, by the City of Junction City.

CITY RECORDER

PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS that

(Name of Contractor)

(Address of Contractor)

a _____ hereinafter called "PRINCIPAL", and
(Corporation, Partnership, or Individual)

(Name of Surety)

(Address of Surety)

(Oregon representative for service of process for Surety)

hereinafter called "SURETY", are held and firmly bound unto

The City of Junction City
P.O. Box 250, Junction City, OR 97448

hereinafter called "OWNER" for the use and benefit of claimants as
hereinbelow defined, in the amount of _____

(insert here a sum equal to the
Dollars (\$ _____))

contract price)

for the payment whereof PRINCIPAL and SURETY bind themselves, their
heirs, executors, administrators, successors and assigns jointly and
severally, firmly by these presents.

WHEREAS, PRINCIPAL entered into a certain contract with the OWNER, dated
the _____ day of _____, 19____, hereinafter Contract, a
copy of which is hereto attached and made a part hereof for the
construction of:

NOW, THEREFORE THE CONDITION OF THIS OBLIGATION is such that, if PRINCIPAL
shall promptly make payment to all claimants as hereinafter defined, for
all labor and material used or reasonably required for use in the
performance of the Contract, then this obligation shall be void; otherwise
it shall remain in full force and effect, subject, however, to the
following conditions:

1. A claimant is defined as a person who has supplied labor and
materials for the prosecution of the work provided for in the Contract,
including any person having direct contractual relationship with the
PRINCIPAL furnishing the bond or direct contractual relationship with any

subcontractor, or an assignee of such person, or a person claiming monies due the State Accident Insurance Fund Corporation, the State Department of Employment Trust Fund or the Department of Revenue in connection with the performance of the contract.

2. The above named PRINCIPAL and SURETY hereby jointly and severally agree with the OWNER that every claimant as herein defined, who has not been paid in full before the expiration of a period of one hundred and twenty (120) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this Bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The OWNER shall not be liable for the payment of any costs or expenses of any such suit.

3. No suit or action shall be commenced hereunder by any claimant:

a) Unless claimant, shall have given written notice to the PRINCIPAL and the OWNER, within one hundred and twenty (120) days after such claimant performed the last of the work or labor, or furnished the last of the materials for which said claim is made. Notwithstanding the above, if the claim is for a required contribution to a fund of any employment benefit plan, the notice must be sent or delivered within one hundred and fifty (150) days after the employee last performed.

i. The notice must include the claimant's name; the name of the contractor and the name of the PRINCIPAL; a brief description of the claim, including, if applicable, the labor or materials performed or furnished and to whom said labors or materials were supplied; the sum asserted against the bond; a brief description of the work for which the bond was taken; and, if known, the SURETY or SURETIES upon the bond. The notice shall be signed by the claimant.

ii. Such notice shall be served by mailing the same by registered mail or certified mail, postage pre-paid, in an envelope addressed to the OWNER, at the above address and the PRINCIPAL, at any place the PRINCIPAL maintains an office, conducts business, or at the PRINCIPAL's residence.

b) After the expiration of one (1) year following the date on which PRINCIPAL ceased work on said Contract, it being understood, however, that if any limitation embodied in this Bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

c) Other than in an Oregon court of competent jurisdiction in Lane County, or in the United States District Court for the district in which the Project, or any part thereof, is situated, and not elsewhere.

4. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by SURETY of mechanics' liens which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this Bond.

5. If any provision of this Bond conflicts with state law, such portion will be deemed deleted therefrom and provisions conforming to such state law shall be deemed incorporated herein. The intent is that the bond shall be construed as a statutory bond and not as a common law bond.

IN WITNESS WHEREOF, this instrument is executed in _____ counterparts, each of which shall be deemed an original, this the _____ day of _____, _____.

ATTEST:

PRINCIPAL

(PRINCIPAL) Secretary

(SEAL)

By _____ (S)

(Address)

(Witness to PRINCIPAL)

(Address)

(SURETY)

ATTEST:

(Witness to SURETY)

By _____
(Attorney-in-Fact)

(Address)

(Address)

NOTE: Date of Bond must not be prior to date of Contract.

If CONTRACTOR is partnership, all partners must execute Bond.

IMPORTANT: SURETY companies executing Bonds must appear on the Treasury Department's most current list (Circular 570) and be authorized to transact business in the State of Oregon. SURETY companies must also have an Oregon representative for service of process.

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS that

(Name of Contractor)

(Address of Contractor)

a _____ hereinafter called "PRINCIPAL", and
(Corporation, Partnership, or Individual)

(Name of Surety)

(Address of Surety)

(Oregon representative for service of process for Surety)

hereinafter called "SURETY", are held and firmly bound unto

The City of Junction City
P.O. Box 250, Junction City, OR 97448

hereinafter called "OWNER", in the total amount of _____
(insert here a sum
_____ Dollars (\$ _____)
equal to the contract price)

for the payment whereof PRINCIPAL and SURETY bind themselves, their heirs, executors, administrators, successors and assigns jointly and severally, firmly by these presents.

WHEREAS, the PRINCIPAL has by written agreement entered into a certain contract with the OWNER, dated the _____ day of _____, 19____, a copy of which is hereto attached and made a part hereof and is hereinafter referred to as the Contract. Said Contract is for:

NOW, THEREFORE:

1. The condition of this obligation is such that, if PRINCIPAL shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

2. The SURETY hereby waives notice of any alteration or extension of time made by the OWNER.

3. It is expressly agreed that the Bond shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment of the Contract not increasing the Contract price more than twenty percent (20%), so as to bind the PRINCIPAL and the SURETY to the full and faithful performance of the Contract as so amended. The term "Amendment", wherever used in this Bond, and whether referring to this Bond, the Contract, or the Loan Documents shall include any alteration, addition, extension or modification of any character whatsoever.

4. Whenever PRINCIPAL shall be, and declared by OWNER to be in default under the Contract, the OWNER having performed OWNER's obligations thereunder, the SURETY may promptly remedy the default, or shall promptly:

a) Arrange for the PRINCIPAL, with consent of the OWNER, to perform and complete the contract;

b) Complete the Contract in accordance with its terms and conditions, or

c) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by OWNER and the SURETY jointly of the lowest responsible bidder, arrange for a contract between such bidder and OWNER, and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the SURETY may be liable hereunder, the amount set forth above. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by OWNER to PRINCIPAL under the Contract and any amendments thereto, less the amount properly paid by OWNER to PRINCIPAL.

5. Any suit under this Bond must be instituted before the expiration of two (2) years from the date on which final payment under the Contract falls due.

6. If any provision of this Bond conflicts with state law, such portion will be deemed deleted therefrom and provisions conforming to such state law shall be deemed incorporated herein. The intent is

that the bond shall be construed as a statutory bond and not as a common law bond.

7. No right of action shall accrue on this Bond to or for the use of any person or corporation other than the OWNER named herein or the heirs, executors, administrators or successors of the OWNER.

IN WITNESS WHEREOF, this instrument is executed in _____ counterparts, each one of which shall be deemed an original, this the _____ day of _____, _____.

ATTEST:

PRINCIPAL

(PRINCIPAL) Secretary

(SEAL)

By _____

(Witness to PRINCIPAL)

(Address)

(Address)

(SURETY)

ATTEST:

(Witness to SURETY)

By _____

(Attorney-in-Fact)

(Address)

(Address)

NOTE: Date of Bond must not be prior to date of Contract.

If CONTRACTOR is partnership, all partners must execute Bond.

IMPORTANT: SURETY companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in Oregon. SURETY companies must also have an Oregon representative for service of process.

